
# THE LAW ON BAIL IN GHANA; A DEVELOPING JURISPRUDENCE

*By*

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## Introduction

Half way through law-school, I kept asking myself how am I really going to make money as a lawyer as most of the things though practical still seemed abstract to me? My legitimate concern kept bothering me for days till that lecture- the criminal procedure lecture on bail took place.

I remember with vividness and precision the warm look on her face as Mrs. Evelyn Keelson, one of the Republic's finest prosecutor introduced the topic of bail. Truth be told, not even her warm and tender smile as she was teaching got me excited about the topic, at least not until she said and I quote verbatim, *"you people, should take your study of bail serious because truth is when you come out as 'fresh lawyers', it will be your "saving grace."*

It was after this statement, my interest in the study of bail was piqued. But like all knowledge, the more you know, the more you wish to share.

There is no mystery behind bail as it appears to some and I assure you, I do not intend to bore you with the decision of *Martin Kpebu v AG*[1] nor the guiding factors to the grant or refusal of bail as there have been many writings addressing it. None of these brilliant writings, however, have ever considered the position of accused person who has no favor under *Section 96(5) and (6) of the Criminal and Other Offences Act, 1960 (Act 30).*

> In this article, I aim at providing answers to certain fundamental issues that arises in the granting and refusal of bail.
>
> 1)what happens to the right to liberty of an accused who falls short of the threshold of Sections 96(5) and (6) but has been in remand for an unreasonable time? Will the accused be denied his constitutional right to liberty on the basis of statute-based guiding factors?
> 2)Is the strict import of Martin Kpebu v. AG and Sections 96(5) and (6) such that once an accused cannot meet the threshold of sections 96(5) and (6), the accused should be refused bail?

It will be concluded from this article that the court's discretion in granting bail under the lenses of section 96(5) and (6) should only exist where there has not been an unreasonable delay in bringing accused before the court. Secondly, it will be concluded that in a human right friendly legal system such as Ghana, the guiding factors of section 96(5) and (6) should not be used as grounds to deny an accused his right to bail except in the interest of another or in the interest of the public.

This article also aims at providing an escape route for an accused when the prosecution fiercely opposes his/her bail application, presenting supporting evidence that the accused does not meet the criteria set forth in Sections 96(5) and (6).

### Underlying Facts

The arguments underneath this article is better understood by placing the discretion of the judge in granting bail in two categories

1 [2015-2016] 1 SCGLR 171

1) Judge's discretion in granting or refusing bail where there **has not been an unreasonable delay** in bringing accused before the court
2) Judge's discretion in granting or refusing bail where there **has been an unreasonable delay** in bringing accused before the court.

**Secondly**, it should be understood that the granting of bail is at the discretion of the court. Which discretion, in the case of *Martin Kpebu v AG,* the court was directed to exercise within the parameters of *section 96(5) and (6) of Act 30*

So that needless and long repetition does not lead to boredom as reading statutes often has the tendency to do so, *section 96(5) and (6)* provides that the court in exercising its discretion to grant bail shall consider **whether accused is likely to appear to stand trial, whether the accused will interfere with any witness or hamper police investigation, whether there is a likelihood that the accused will commit further crimes while on bail and whether or not accused is known to have previously committed a crime the punishment of which was not exceeding 6 months while on bail**

The head of these factors upon which prosecution hope of opposing bail often lies is whether or not accused will appear to stand trial[2] .In determining whether accused will appear to stand trial, the court guides itself on the factors stated herein: nature of the accusation, evidence in support of the accusation, previous failure of accused to comply with bail conditions, whether the accused has a fixed place of abode, whether accused is gainfully employed and whether the surety of the accused is independent, has capacity and is of substantial means. In other jurisdictions, these factors are broadly classified as the flight risk tendency of an accused.

**Background**

My first encounter with bail happened in James Town. The town boys and I thronged to court to see justice play out. *Finally, today is today.* Ntim Karikari, who had vandalized every home in James Town and chased us away from our woman, was going to get what he deserved. After a lot of legal nuances that made zero sense, Ntim Karikari's handcuffs were taken off, and he was discharged after spending only 5 days in prison. I remember walking back home, kicking my worn shoe to the ground and to the air, saying, " *You see why I don't like Ghana; the corruption is too much."*

Six years down the line, I came to realize that it was not corruption that procured the release of Ntim Karikari, but the power of democracy steeped in the constitutional right to liberty of all persons that secured the release of Ntim Karikari. Bail is simply the process of securing the release of a person who has been placed in lawful custody either by an undertaking or by providing some form of guarantee through a bail bond (a form of agreement) that the person when released will make himself available before the court to be tried.

The legal basis for which our laws permit bail is grounded *in Article 14(3) of the 1992 Constitution* which provides that any person who is arrested, detained or restricted must be **put before the court with 48hours**[3] and if not, must be released either conditionally or unconditionally. This

2 Republic v Registrar of High Court; Ex-parte Attorney-General [1982-83] GLR 407
3

provision though similar with Article 14(4) does not have the same effect. Article 14(4) of the 1992 Constitution provides that a person arrested, restricted or detained must be **brought before the court within a reasonable time for trial.**

The simple import of these two provisions is that, when a person is arrested, restricted or detained, from the day and date of the arrest, the person has the right to be put before *(presented)* to the court. When the person is put before the court, the presiding judge can do two things, first is to grant the suspect bail and second is to place the suspect on remand. It is only when the suspect is placed on remand then *Article 14(4)* kicks in by providing that the suspect on remand must be brought before the court within a reasonable time for the plea to be taken and for a date to be fixed for his/her trial. The challenge, however, has always been what constitutes reasonable time.[4]

Again, *Article 19(1) of the 1992 Constitution* provides that a person charged with a criminal offence shall be given a fair hearing within a reasonable time by the court. The learned justice, Gbadegbe JSC stated that the language of the above provision is to place obligations on judges to ensure that cases involving accused persons that are brought before them are dealt with reasonable expedition.[5]

**Developing the law on bail**

In the case of ***Gorman v, The Republic***, bail (even though regulated by statute) is said to be a discretionary. In the case of ***Republic v High Court (Criminal Division) Accra***, the Supreme Court stated that like all judicial discretion, it must be exercised in accordance with Article 296 of the 1992 Constitution. It should neither be arbitrary nor capricious; in other words, it should be exercised judicially[6]. For this reason, the court stated in Okoe v The Republic[7], that an application for bail should not be refused as a means of punishment.

In the case of ***Martin Kpebu v AG***, the court stated that bail though discretionary must be exercised within the parameter of *section 96(5) and (6) of the Criminal and Other Offences Act, 1960 (Act 30).*

*Section 96(5) and (6)* provide the factors the judge must consider when granting bail. These factors can be used by both accused's counsel and or prosecutor in bringing an application before the court for granting of bail or for the refusing of bail.

These factors include whether or not it appears the accused may appear to stand trial, whether or not the accused with interfere or hamper with police investigation, whether or not it appears the accused will commit a further crime while on bail and whether or not accused has been charged with an offence the punishment for which is not exceeding 6 months.

Under section 96(7) of Act 30, certain offences were considered non-bailable. These offences included treason, subversion, murder, robbery, hijacking, piracy, rape and defilement or escape from lawful custody and where a person is being held for extradition to a foreign country.

4 Whereas in the case of Owusu v the Republic [1980] GLR 460, three years without trial for attempted murder was deemed unreasonable time. In Brefor v the Republic, three years for murder without trial was not an unreasonable time.
5 Samadzi v Republic (J3 1 of 2016) [2017] GHASC 37 (6 April 2017)
6 Republic v High Court (Criminal Division) Accra (J5 29 of 2016) [2016] GHASC 52 (28 July 2016)
7 [1976]1 GLR. 80

In the case of Martin Kpebu v AG, the court held that Section 96(7) was unconstitutional and should be struck out. The effect being that all offences are now non-bailable and as such the court will give hearing to any application for bail no matter the nature of the offence.

**An argumentative perspective**

The Supreme Court's decision in ***Martin Kpebu v AG***, which declared all offences bailable at the court's discretion, garnered much commendation for reinforcing the right to liberty of an accused. However, I respectfully believe that the court's reliance solely on the guidelines of *Section 96(5) and (6)* without considering the broader scope of *Article 14(4) and 19 of the 1992 Constitution* might not have fully rectified the issue it sought to address.

The concern arises from the fact that by confining the judges' discretionary power in granting bail to the parameters of section 96(5) and (6), there might be instances where an accused, despite not meeting these requirements, has been in remand for an unreasonably prolonged period. Such scenarios were not effectively addressed within the confines of the decision.

The crucial question that arises is, should a statute that sets out guiding factors to assist the judge operate to restrict the fundamental human right of an accused? What about the judge's duty to exercise discretion candidly and fairly?

Indeed, this warrants further examination and consideration to strike the right balance between ensuring the rights of the accused while providing judges with the necessary tools to make sound bail decisions based on individual circumstances. A comprehensive approach that incorporates broader constitutional provisions and acknowledges the judge's duty to impartially exercise discretion might lead to a more equitable resolution of such matters.

**A practical perspective**

Now imagine yourself, a fresh-mint lawyer fresh from the bar, when a client approaches you seeking bail after an agonizing **6 years on remand without a trial.**

It seems like the perfect opportunity to finally cash in on those sleepless nights in law school, so you take up the case without hesitation.

The next day, you march into the courtroom, dressed to impress, ready to present your application for bail. Your arguments are straightforward and persuasive: "*Your Honor, my client is more than willing to show up for trial; he has reliable sureties; not to mention, he's a respectable bank manager at XXX bank. He solemnly promises not to tamper with any police investigation or commit any offense while on bail.*"

But what if, in moving your application for bail, you encounter a "stubborn" prosecutor looking to set an example with your client who ferociously objects to it on strong grounds that "*your client is one who is likely not to appear before trial when granted bail considering the nature of the offense, the severity of the punishment attached, and overwhelming evidence against him, or even if he is likely to appear before trial, he is one who has previously breached his bail conditions and has the reputation of hampering police investigation, or his surety is a "professional surety"*. No doubt, after such vehement arguments, the learned justice will nod his head in agreement.

The big question becomes, can an accused person (your client) who appears unlikely to stand trial, lacks gainful employment, and has a track record of breaching bail conditions find salvation outside the confines of sections 96(5) and (6), **considering the fact that this accused person has been on remand for 6 years without trial?**

**Balancing exercise of accused's right under Article 14(4) against Section 94(5) and (6)**

**FIRSTLY,** the right of an accused to be granted bail in criminal proceedings is premised on the presumption of innocence of all accused persons. This principle was unequivocally stated by the Supreme Court in the case of ***Habeenzu v. The Republic***[8]. In ***R v Oakes***[9], it was beautifully described by the Canadian court as, *"a hallowed principle lying at the very heart of criminal law [that] confirms our faith in humankind"*

The requirement of fair trial in *Article 19 of the 1992 Constitution* is one of the proactive provisions in the 1992 Constitution. **It ensures that the requirement for fair trial is one which must be complied with even before trial commences and during trial.**

Hence with, it should be noted that trial in criminal cases only begins when the accused takes a plea. It thus implies that an individual who is arrested has the right to be treated as an innocent person until it is shown contrarily. For this reason, *Article 19 of the 1992 Constitution* provides that an accused person in a criminal case is **entitled** to be presumed innocent until proven guilty or has pleaded guilty.

This presumption of innocence connotes that the individual who has been arrested on a suspected offence or alleged crime is **entitled to be treated** as one who is at no fault with the law (as such, an innocent person). Being treated as an innocent person means that his right to liberty where there has been such an unreasonable time in bringing him before the court should not be curtailed on basis of *Section 96(5) and (6).*

In my respectful opinion, presumption of innocence which is the crest of criminal proceedings in any criminal case also means that against all other assumed possibilities such as his alleged tendency not to appear before the court, the arrested suspect should be given the benefit of the doubt until evidence is led either by prosecution or of accused's own volition to the contrary. Thus, as have been analyzed the provision of Article 19(2)(c) are such that section 96(5) and (6) where been used as grounds to deny an accused bail in the eyes of **clear violation** of Article 14(4) is to be considered inconsistent with Article 19(2)(c) of the 1992 Constitution.

***SECONDLY,*** an accused's right to bail is a constitutional right. The grant of bail is not merely a mode of procedure in criminal trials; it is a constitutional right. This assertion is one which is strongly established on the provisions of *Article 14 and 19 of 1992 Constitution.*

In Canada, the court, in the case of R. v Antic[10], firmly established that the right to liberty of an individual encompasses the right to be granted bail. This landmark decision reinforced the importance of upholding an accused person's right to freedom pending trial[11].
Needless to say, that as a constitutional right, nothing should impede its realization but the

8 [2008] 1 SCGLR 686. On the basis of presumption of innocence, the Supreme Court held that the denial of bail should in all circumstances be the exception and not the general rule
9 [1986] 1 S.C.R. 103, at pp. 119-20.
10 R. v. Antic, 2017 SCC 27 (CanLII), [2017] 1 SCR 509, <https://canlii.ca/t/h41w4>, retrieved on 2023-07-26
11 See also R v Morales

constitution itself. Consequently, section 96(5) and (6) cannot be used as a basis for denying an accused a right to bail. JUSTICE DOTSE relying on the case of ***Republic v Court of Appeal, Ex parte, Attorney-General (Frank Benneh)***[12] stated that "*statutory interventions, no matter how well intended cannot take away constitutional rights guaranteed under the Constitution*.[13]" That being said, the only law that can curtail a constitutionally guaranteed right is the constitution itself. *Article 12 of the 1992 Constitution* which provides a preamble to all the human rights provisions in the 1992 Constitution subjects the rights of an individual to public interest and the rights of others.

On the established premise, it is my vehement argument that where there has been evident unreasonable delay in bringing an accused before a court of competent jurisdiction, the guiding factors of *Section 96(5) and (6)* should not even be considered at all. The court's only concern should be whether the granting of bail to the suspect will jeopardize the right of another or the interest of the public.

The Nigerian jurisprudence on bail has been so expanded that where there has been an unreasonable delay in bringing a suspect before the court, the accused can bring an application for the enforcement of his or her fundamental human right, never mind that the accused person is not gainfully employed or possesses sureties of substantial means or any other factors.

**AGAIN**, it is relieving for me that I should bring to your attention that the arguments put forward in this article is not entirely novel to our Ghanaian court. Prior to the striking out of section 96(7) which made some offences bailable and others non bailable, the court had stated in the cases of ***Brefoh v the Republic***[14], ***Dogbey v The Republic***[15] and ***Gorman v the Republic***[16] that where there has been an unreasonable delay in bringing an accused before the court even if the offence had to do with those offences which were classified as non bailable offences, never mind *section 96(7)*, the accused should be granted bail. Particularly, in ***Gorman v the Republic***, the Supreme Court held that the right of an accused in Article 14(4) was one whose violation entitled [an accused] the right to bail. Interestingly, the learned JUSTICE BROBBEY had something to say concerning this issue. According to the learned Justice, "since the Constitution is the fundamental law of the land, to the extent that article 14(3) and (4) mandate bail for all offences while Act 30, s 96(7) excepts the grant of bail in murder cases, etc., the latter is deemed to have been repealed by the former by reason of the inconsistency.[17]"

In ***Okoe v the Republic***, the High Court speaking through TAYLOR JSC took the view that "once there was an unreasonable delay in prosecuting the case, section 96 was inapplicable and article 14(3) and (4) of the 1992 Constitution became applicable and in such a situation, bail in all cases must be given subject only to the conditions prescribed in the Article.

Be that as it may, from the time an individual is in remand, he is still nothing more than a "suspect". The failure of the police in carrying out investigation timeously should not be used as a ruse to deny "a suspect" his right to liberty notwisthanding the fact that there may be some circumstance which would put the suspect in unfavorable terms with Section 96(5) and (6).

12 [1998-99], SCGLR 559, at 568
13 Martin Kpebu v Attorney General, p.58
14 [1980] GLR 679-703
15 (1976) 2 GLR 82
16 [2003-2004] 2 SCGLR 784
17 Justice Brobbey, in his Practice & Procedure in the Trial Courts & Tribunals (Vol 1, 2000 p. 466)

**Summary of arguments and candid Suggestions**

In this article, I have sought to establish that:

1. Section 96(5) and (6) of Act 30 must be considered and applied within its proper context as simply guiding factors. Thus, they should merely be used to assist the court in exercising its discretion and not be used as grounds to deny an accused his constitutional right to bail [only] in instances where there has been an unreasonable delay in bringing the accused before court.The only situation where an accused who has been on remand for an unreasonable period of time should be denied bail is when it is necessary to protect the rights of others and the public interest, as stated in Article 12(2) of the 1992 Constitution.In any case, the provisions of sections 96(5) and (6) are statutory and should under no circumstances prevail, much less trample over a constitutional provision that has to deal with the right of an individual to liberty.
2. Again, it was contended in this article that the discretion of the court in granting bail under the glasses of section 96(5) and (6) should and must only arise in instances where the court has made a determination that there has not been an unreasonable delay in bringing the accused before the court[18]. Where there has been an unreasonable delay, there can be no exercise of discretion by the judge, as such an exercise could potentially affect the rights of the accused. In any case, the law is clear that judicial discretion is not to be exercised in a vacuum. It must be exercised in such a way as to uphold the highest law of the land, which is the 1992 Constitution of Ghana, whose heart lies in promoting the rights of the people of Ghana.
3. Furthermore, as a fast-growing legal system, it is my strong opinion that it is about time that the Ghanaian jurisprudence gave a definite time as to what constitutes unreasonable time. The strength of the law and the attainment of justice in all matters, especially criminal matters, lie in the certainty with which criminal matters are to be determined.
4. Lastly, it is the itchy contention of the writer that despite the guiding factors laid down in Section 96(5) and (6), in any instance, where an accused counsel cannot rely on Section 96(5) and (6) to secure bail for his client, the accused person. The sharp lawyer can always make use of Articles 14(4) and 19 of the 1992 Constitution to simply say a refusal of bail to the accused is an infringement of the accused's constitutional right to liberty.

   This argument is one that will have a hearing in any court of this land, because Article 14(4) of the 1992 Constitution is a constitutional provision and must of necessity prevail over section 96(5) and (6) of Act 30, which is statute. Again, it goes without saying that Article 14(4) is not merely a constitutional provision but, a fundamental human rights provision, and it is on such provisions that the foundation of our legal system lies.

18 See Gyakye v. Republic [1971] 2 GLR 280, and Republic v. Arthur, [1982-83] GLR 249, where the application for bail in a case that involved murder, pending trial was refused on the grounds that there was no unreasonable delay contrary to the decision in Gyakye v. Republic.

**What do other jurisdictions have to say? The Comparative Analysis**

While courts in the United Kingdom and some states in the United States have stuck to the default way of granting and refusing bail, relying mainly on the guidelines provided by statute, it's very interesting to note that in jurisdictions like **Canada**, with a fast-growing legal system, even where there has been no unreasonable delay in bringing an accused before the court, the court is cautious of denying an accused bail only because the accused does not meet the criteria provided in a statute. WAGNER J. of the Canadian Supreme Court stated in ***R v. Antic*** that *"the right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons."*

In the instance case, the accused was arrested and charged with several drug and firearms offenses. He was denied release at his bail hearing on the basis that ***Section 515(2)(e) of the Criminal Code*** permits a judge to require both a cash deposit and surety supervision only if the accused does not ordinarily reside within 200 km of the place in which he or she is in custody. *As an Ontario resident living within 200 km of the place in which he was detained, the accused did not meet these criteria.* He later sought a review of the detention order. The Canadian court held that ***since the geographical limitation in s. 515(2)(e) prevented him from granting bail, the provision violated the right not to be denied reasonable bail without just cause*** under ***Section 11(e) of the Canadian Charter of Rights and Freedoms.***

The learned Judge severed and struck down the geographical limitation in s. 515(2)(e) and ordered the accused's release with a surety and a cash deposit of $100,000. In furtherance of this, Wagner J. stated that *accused persons are constitutionally presumed innocent, and the corollary to the presumption of innocence is the constitutional right to bail.*

In ***R v. Pearson***[19], the Canadian court stated that *a statutory provision that allows for the pre-trial detention of an accused triggers the protection of s. 11(e).* Consequently, Section 515(6)(d) of the Code constitutes a denial of bail under s. 11(e) because it puts the onus on an accused to justify pre-trial release if he or she is charged with certain offenses. The effect is that, "this reverse onus amounts to a presumption in favor of detention, This amounts to a departure from the basic entitlement to bail."

In **France,** where there is a similar provision as Section 11(e) of the Canadian Charter, the law reads that a person charged with an offense has the **right to a release** *"assortie d'un cautionnement raisonnable"* ("in conjunction with reasonable bail"). Just like in Canada, but unlike in Ghana or the United Kingdom, there is no deliberation on whether an accused should be granted bail or not; it is an automatic right subject only to constitutional limitations in the public interest and the interest of another.

In jurisdictions like **India** and **Nigeria**, the legal system proactively safeguards an accused's fundamental right to liberty. One remarkable measure in place is anticipatory bail—a shield of protection provided even before an arrest occurs. In India, *Section 438 of the Criminal Procedure Code of 1973* allows for anticipatory bail. When an individual perceives the possibility of being arrested by the police for a non-bailable offense, that individual can file an application for anticipatory bail. This advance bail prevents the person from being arrested by the police once it has been granted by the court.

19 1992 CanLII 52 (SCC), [1992] 3 S.C.R. 665 p. 693

**Counter arguments against this article**

On the downside, it could be argued against this article that is it not against common sense for the court to grant an accused bail in the face of glaring and irresistible evidence that the accused is a flight risk and should be granted only by reason that there has been an unreasonable delay in bringing him before a court. While I acknowledge this perspective, I firmly believe that a progressive legal system and judiciary should adopt a different approach – one that curtails an accused's right to liberty instead of outright denial. Make no mistake about this: denial of bail is denial of the right to liberty. In this regard, I humbly propose that our legal system take a leaf from law enforcement practices in other advanced jurisdictions. Rather than denying liberty altogether, our courts could exercise their full authority to impose alternative measures, such as police surveillance and ankle monitoring, on the accused who pose flight risks. These, among others, are some of the mechanisms advanced countries have adopted to ensure that, as much as possible, an accused's right is restricted and not denied. These alternative measures not only align with the presumption of innocence and the right to liberty enshrined in our constitution but also bring practical benefits. Policy-wise, it is favorable in terms of not congesting the prisons with individuals who, under our law, are still presumed innocent. Economically, it is sound. This is because it reduces the burden on the state to feed and care for a large number of remand prisoners.

Then also, an article such as this most definitely poses the question, should an accused be granted bail where there is glaring evidence that the accused may commit further crime against another or complete his crime against the complainant while on bail? I think the answer is clear, and as I indicated earlier, the grant of bail is a constitutional right subject only to constitutional restrictions. As such, in such instances, in order to ensure that upholding *Article 14(4)* does not lead to violating *Article 12(2)*, the accused's right to bail is to be denied so as to protect the right of another. In the words of the learned Oliver Holmes, the right of an individual ends where another begins.

**Alternatives to pre-trial detention without violating Article 14(4) through prolonged detention without trial within a reasonable period of time**

Below are possible alternatives to pre-trial detention that may resolve the issue of flight risk without denying an accused his right to liberty through placing the accused on remand for an *unreasonable* period of time without bail

1. Electronic or ankle monitoring: The justification behind this approach is that it allows authorities to keep track of the accused's whereabouts without physically detaining them, reducing the risk of flight. This is very common in countries like the United States and Canada. An instance is the case of a non-violent offender awaiting trial for financial fraud. Instead of being held in jail, the accused can be placed under electronic monitoring.
2. Police surveillance or monitoring
3. GPS Tracking and Geofencing. German courts employ a unique combination of Global Positioning System (GPS) tracking and geofencing technology. Suspects wear GPS-enabled devices, and virtual boundaries are set. If the accused ventures outside the approved area, authorities receive immediate alerts, enabling timely

intervention. The GPS-enabled device that allows authorities to monitor their location in real-time.

4. Passport Surrender: If there is a risk of flight, the accused may be required to surrender their passport and travel documents.
5. House Arrest: In countries like Sweden, the accused is placed under house arrest, where they are confined to their residence except for specific purposes, such as attending court hearings or work, church etc.

By implementing these alternatives, the court can address the risk of flight while allowing the accused to await trial outside of detention.

In all humility to all the learned, I would like to quote myself by saying, "*the strength of any effective legal system lies in questioning the status quo*". ***The argument it is not done cannot be reason enough that it should not be done.*** The learned JSC GEORGINA WOOD in encouraging changing of the status quo said in the case of *Martin Kpebu v Attorney General* that, "up until this day, section 96(7) was being strictly applied by our courts until it was challenged as being unconstitutional." There is always room for change.

**Conclusion**

In conclusion, while the Supreme Court's decision in *Martin Kpebu v AG* marked a significant step towards safeguarding an accused's liberty, there is room for further exploration and improvement. Striking the right balance between public interest and individual rights requires an inclusive approach that considers both statute-based guiding factors and broader constitutional provisions. By doing so, Ghana's legal system can ensure justice and fairness for all parties involved in the bail process.

One day, a short time from now, I sincerely hope our courts will actively embrace possible alternatives to pre-trial detention, which can sometimes affect the right to liberty of an accused, and be the pioneers in championing this progression in other African countries.