

BAIL

Ghana: Know your rights



COMMONWEALTH HUMAN RIGHTS INITIATIVE
(CHRI, Africa Office)

Kwame looked dejected as he dialed Akua's number from Nima Police Station. "Akua, I have been arrested and would like some legal advice. Can you help me?" Enquired Kwame, thinking that he spent far too much time in this place.

"Of course I can help, I will bring Professor Kofi with me, he is a qualified criminal lawyer" replied Akua.

At the police station, Kwame was becoming increasingly distressed due to his confinement to a cell. "You have to get me out of here, I can't stand being locked up," cried Kwame, when Akua and Professor Kofi came into view.

"Calm down," said Professor Kofi in a reassuring manner "we will try to get you released on bail."

"What is bail?" asked Kwame, such legal words confusing him. "**Bail is the release of an arrested person on condition that the person will appear before the court when required at a future date, and that they will abide by any restrictions imposed upon them,**" replied

Professor Kofi. “A bail bond will set a penalty fee should the conditions not be met, and will sometimes require a surety. Do you have any other questions?”

“Yes, I am still rather confused” replied Kwame “How do I know that I will be granted bail? Is it a right?”

“The granting of bail is done at the discretion of the courts subject to the Criminal Procedure Code,” stated Professor Kofi. “However, for some offences bail should not be granted by the courts. Section 96 (7) of the Criminal Procedure Code states that **a court shall refuse to grant bail in a case of:**

- **Treason;**
- **subversion;**
- **murder;**
- **robbery;**
- **hijacking;**
- **piracy;**



- rape and defilement; or
- escape from lawful custody.

Have you been arrested for any of these offences?”



“No,” chortled Kwame “I was arrested for theft, I stole an akoko kebab from a street vendor.”

“Okay, I shall go and talk to the officer in charge and find out what is happening,” said Professor Kofi.

Following a brief discussion with Inspector Kojo, Professor Kofi was assured that Kwame would be taken before the court in Accra that afternoon. When he returned to the cells Akua asked him, “what considerations do the Court take into account when making a decision to grant bail?”

“The Court will refuse to grant bail if it is satisfied that the defendant:

- a) May not appear to stand trial; or**
- b) May interfere with any witness or evidence, or in any way hamper police investigations; or**
- c) May commit a further offence when on bail; or**
- d) Is charged with an offence punishable by imprisonment exceeding six months and which was allegedly committed whilst on bail.”** Replied Professor Kofi.

Kwame was still panicking at the thought of remaining in custody, however he was also concerned that if released the conditions imposed on him would prevent him from earning a living. With this in mind he asked Professor Kofi “what are the typical conditions imposed upon a person released on bail?”

Professor Kofi replied, “the conditions imposed depend on the nature of the offence and the circumstances of the case, however typical conditions include:

- **Reporting to the police station or court at a fixed time.**
- **Reporting to the police station for questioning.**
- **Not leaving a particular area or country without permission.**
- **Not entering a particular area, for example where the offence was committed or where the victim lives.**
- **Informing the police of any change in the arrested persons status, for example change of address. ”**

Kwame felt reassured by the information Professor Kofi and Akua had gave him, and was sure that he would soon be released.

Later that day Akua and Professor Kofi were walking towards the court house when Akua said “Professor can you explain to me what a surety is?”



“Of course,” Professor Kofi responded “**A surety is a person who promises that the arrested person will follow the bail conditions set by the court, and if the accused does not do so, then the person standing as surety will have to pay a certain amount of money.**”

“Professor Kofi, I am sure Kwame’s girlfriend Ama would like to act as a surety, however, I have heard that the

police turn down women as sureties. Is there a restriction on who can act as a surety?” Akua enquired.

“The Constitution states **that a person can not be discriminated against on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status**. Therefore to prohibit a woman from standing as a surety is unlawful and contrary to the Constitution,” replied Professor Kofi.

“Okay I understand that the courts cannot discriminate on these grounds, but what do they take into consideration when deciding who is fit to be a surety?” said Akua.

Professor Kofi thought back to the many times he had represented arrested persons. “There is no strict legal requirements that a person must fulfil to become a surety,” he said. “However, the court will take into account whether the sureties are **independent, of good character and of sufficient means**. If Ama fulfils these requirements she will be able to stand as surety for Kwame.”

“You mentioned that financial means will be taken into account,” confirmed Akua. “This worries me as I am not sure if any of Kwame’s friends or family could provide money instantly. Does any money have to be deposited with the police or the court for release on bail?”

“No, **if you are released on bail you do not have to provide any money before you are released from custody**” Professor Kofi replied. “**However, a Court or police officer required to execute a bail bond may permit the arrested person to deposit a sum fixed by them in lieu of a bond. This acts as security for the performance of the conditions imposed on him by the Court or officer. If these conditions are breached, the deposit would be forfeited to the same extent as if a bond for that same amount had in fact been executed.**”

“Oh,” Akua gasped, looking perplexed, “I thought that obtaining bail through the court the only option.”

“No Akua the police also have the power to release a person on bail, this is known as **Police Enquiry Bail**. In

circumstances where it is not possible for a person arrested without warrant to be brought before a court within 48 hours the Police may require them to enter into a 'bond'."

"What does such a bond entail?" inquired Akua.

"The bond would typically require the arrested person to appear at a designated court or police station on a specified date. A bond may or may not require the arrested person to provide sureties," Professor Kofi replied.



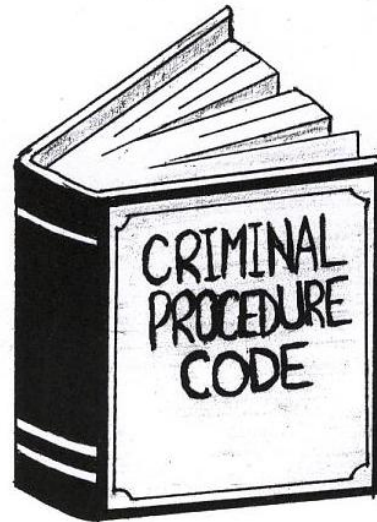
When they arrived at court, Akua and Professor Kofi were disheartened to find out that the

notoriously strict Judge, Justice Kwabena was presiding over Kwame's hearing. He duly granted Kwame bail for ₵2,000,000 with one surety, a role for which Ama was deemed suitable. Knowing both Kwame's and Ama's financial position Akua was horrified.

"Are there any restriction upon the conditions of bail and the bail amount set by the court?" queried Akua anxiously.

"Yes there is" responded Professor Kofi **"according to the Criminal Procedure Code the amount and conditions of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive or harsh."**

Akua stated that given the current circumstances she thought that the amount was



too high. “What can the person do if they feel that their bail has been set too high?” she questioned.

“Well **a person may appeal to the High Court or a Circuit Court and ask that the bail required by the court be reduced.**” replied Professor Kofi. That evening Akua helped Professor Kofi to prepare an appeal to have Kwame’s bail reduced which they submitted to the High Court in Accra the next day.

POINTS TO REMEMBER:

- **A court shall refuse to grant bail in a case of treason, subversion, murder, robbery, hijacking, piracy, rape and defilement, or escape from lawful custody.**
- **Bail can be obtained through the courts or the police, known as Police Enquiry Bail. Where it is not possible for a person arrested without warrant to be brought before a court within 48 hours the Police may release them on bail.**
- **A surety cannot be discriminated against on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.**
- **A person may appeal to the High Court or a Circuit Court where the conditions of bail appear excessive or harsh.**