IN THE SUPERIOR COURT OF JUDICATURE,
IN THE HIGH COURT OF JUSTICE FINANCIAL & ECONOMIC CRIME
DIVISION 1 HELD IN ACCRA
ON FRIDAY THE 8TH DAY OF DECEMBER, 2023
BEFORE HIS LORDSHIP JUSTICE DR. ERNEST OWUSU-DAPAA JA
SITTING AS AN ADDITIONAL HIGH COURT JUDGE

SUIT NO.:GJ/1350/2020

ANTHONY OSARFO — **PLAINTIFF**
VS
1. ASAMOAH GYAN — **DEFENDANTS**
2. SAMUEL ANIM ADDO

PARTIES: **PLAINTIFF – PRESENT**
1ST AND 2ND DEFENDANTS – ABSENT

COUNSEL: **YAW DANKWAH WITH RAYMOND FELLI, ALBERTA ANTOINETTE CUDJOE, CHRISTABEL SAIME, LESLIE DICKSON, SOPHIA ARMSTRONG AND GILBERT BERNASCO ARMAH FOR THE PLAINTIFF – PRESENT**
JACQUELINE BEMPAH WITH JOSEPH ACQUAH HOLDING BRIEF OF ALEXANDER ABREDU SOMUAH-ASAMOAH FOR THE DEFENDANTS – PRESENT

JUDGMENT

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i. Introduction

[1] In his 1844 Article, '**Defects of Criminal Procedure', Law Magazine, 34/64 (1844), p. 257** Pitt Taylor made an illuminating observation that:

> *... the accusatorial duties are too often conducted in the worst spirit, and criminal courts of justice become subservient to the purposes of passionate, vindictive, personal animosity.*

This case brings up a well-known area of tort action namely malicious prosecution. The elements of this tort are well known as it is cause of action with very long history going back to the eighteenth century. To succeed in an action of malicious prosecution the plaintiff must show: (1) that the defendant prosecuted him or instigated his prosecution; (2) that the prosecution ended in the defendant's favour; (3) that there

was no reasonable and probable cause for the prosecution; and (4) that the defendant was actuated by 'malice'. See **B. S. Markesinis and S.F. Deakin Tort of Law (4th Ed, OUP, 1999)**. It is refreshing also that the elements of this tort have been considered in plethora of our local caselaw. I shall return to state the law and its evolution later in this delivery.

ii. The Action

[2]. The Plaintiff by a Writ of Summons filed on 24th August 2020, claims against the Defendants jointly and severally for the following reliefs:-

a. An Order compelling the Defendants to pay Plaintiff General Damages of GH¢1,000,000.00.
b. Costs.

iii. Procedural History

[3]. Effecting personal service of the said writ of summons became practically impossible for Plaintiff. An order for substituted service was therefore obtained on 18/11/2020 to serve the Defendants with the Plaintiff's Writ of summons and statement of claim by substitution. On 22/01/2021 Plaintiff filed Motion on notice for judgment in default of appearance. The Court granted order for substituted service of the Motion for Judgment in default of appearance. On 15/04/2021 A.A. Somuah-Asamoah esq filed notice of appointment of solicitor on behalf of the Defendants. On 23/4/2021 Yaw Dankwah esq filed Supplementary affidavit in support of the Motion for judgment in default of appearance filed earlier on 22/01/2021. The Defendants on 7/05/2021 filed Motion on notice to enter late appearance and file statement of defence. On 14/5/2021 the court granted leave for Defendants to enter late appearance and also filed their defence within 14 days. No cost was awarded against them. Defendants complied partially and enter late appearance on 20/05/2021. Defendants still delay in filing the Statement of Defence by 7 days and eventually did so by 28/05/2021.

[4]. Despite the fact that under the civil procedure rules defendants have 14 days after entry of appearance to filed defence this case was different because the court in

granting the leave for late appearance was explicit that Statement of defence should be filed within 14 days from the date of the order. No Reply was filed by Plaintiff.
After close of pleadings, the Plaintiff applied for directions and on 25/5/2021 the court adopted all the issues field by the Plaintiff 2021.The Parties filed their witness statements.

[5] The Defendants filed a motion on 31/03/2023 for leave to file supplementary witness statement but failed to appear in court in person or through a lawyer to move the said application and same was struck-out for want of prosecution. The proposed supplementary witness statement was in relation to recording of alleged conversation in which Plaintiff had demanded money before desisting from further publication of alleged rape by 1st Defendant. Noteworthy here is the fact that following the striking out of the motion on 17/4/2023 no effort whatsoever was made by Defendants to bring similar application or take any other relevant steps to enable the alleged recording to be included in exhibits Defendants would have relied upon to bolster their defence.

iv. Background Facts from the Pleadings: Plaintiff's Story

[6].The Plaintiff's story grounding the reliefs he seeks per the endorsement on the writ of summons is essentially that in the course of plying his trade as Journalist and Screen writer, the Defendants caused the Police to arrest him and charge him with conspiracy to extort money from 1st Defendant knowing very well that the such allegation against him was false and without basis. Plaintiff stated that 2nd Defendant provided the Police Investigator with Witness Statement on oath that his narrative about extortion allegation to him were true.

[7]. Plaintiff pleaded further that upon instructions of 1st Defendant the 2nd Defendant, Manager of the well-known footballer, Asamoah Gyan, offered to testify in criminal case against the Plaintiff when he knew that no true case could be made against him but went ahead to testify out of malice. Plaintiff spelt out three particulars of malice induced Defendants to instigate case of extortion against him which terminated in his favour. The particulars of malice pleaded were:

(a) that the 1st and 2nd Defendants to save and preserve their career and reputation decided to make false allegation against the Plaintiff and pressed upon the prosecution to prosecute the Plaintiffs for an offence that they knew the Plaintiff did not commit.
(b) That with the malice the Defendants withheld information from the prosecutors which would have ended the prosecution of the Plaintiff and exonerate him but intentionally failed to do so.
(c) That the 2nd Defendant intentionally bore false witness against Plaintiff with impunity when at all material times he knew the testimony and the evidence he was leading were false and without foundation.
[8] Plaintiff also pleaded that Defendants damaged his career present and future as well as his reputation by the manner of his arrest and prosecution which was widely publicised by various media outlets and platforms.

v. The Defendants' Story as per their Pleadings:

[9] The Defendants denied ever instigating the criminal prosecution of Plaintiff as they contend that 2nd Defendant merely lodged complaint to Police and also did testify in the criminal trial to the best of belief regarding truth of his story regarding extortion by Plaintiff.
[10] It is further pleaded by Defendants that they had audio recordings of conversation between Plaintiff Sarah Kwabla regarding his plot to extort money from the Defendants. Defendants also stated that they will tender in evidence video recordings of the Plaintiff trying to take money from the Defendants. Defendants completely denied being responsible for media coverage of Plaintiff's arrest and criminal prosecution. All the particulars of malice were flatly denied by Defendants.

vi. Issues Set Down For Trial

[11]. As no additional issues were filed by Defendants, the court adopted all the issues embodied in Plaintiff's application for directions. These are:

i. Whether or not the Defendants instituted criminal proceedings against the Plaintiff

ii. Whether or not the Defendants acted without reasonable or probable cause.

iii. Whether or not the Defendants acted maliciously.

iv. Whether or not the criminal proceedings were terminated in favour of the Plaintiff.

v. Whether or not the Plaintiff suffered damage or any kind of injury as a result of the prosecution.

vi. Whether or not the Plaintiff is entitled to his claim.

[12] At the trial Plaintiff testified and did not called any witness. 2nd Defendant testified on his behalf and on behalf of the 1st Defendants. No witness was called by Defendants.

THE TESTIMONY OF PLAINTIFF

[13]. The Plaintiff describes himself as a Journalist and a Screenwriter. According to the Plaintiff the 1st and 2nd Defendants lodged a complaint against him and at the time of making the complaint the Defendants did not have a scintilla of evidence to support the complaint. It was the Plaintiff's case that the 2nd Defendant attended the Circuit Court in which the criminal charges were pending against him consistently and regularly as a complainant.

[9]. The Plaintiff also contended that the 2nd Defendant caused a Witness Statement to be written and filed in the Circuit Court in order to pave way for him to testify knowing very well that the Witness Statement was false. Plaintiff further asserted that the 2nd Defendant appeared in Court, testified and was cross-examined, when he could have stopped himself from such a malice.

[14]. The Plaintiff based his clam mainly on the criminal prosecution and tendered the Charge Sheet as "Exhibit "A" and the facts as Exhibit "B". The Plaintiff tendered Exhibit "C" which is a copy of the ruling delivered at the Circuit Court in which he was acquitted and discharged. The 2nd Defendant also made time to testify against

the Plaintiff in the criminal trial at the Circuit, Accra in Court Case Number D2/60/16. The 2nd Defendant also attended the proceedings in Court Case Number D2/60/16, that is the criminal case out of which this action emanates. The 2nd Defendant admitted all these under oath at page 10 of the 12th July 2023 record of proceedings as follows:

Q: Mr. Anim Addo at paragraph 4 of your Witness Statement you have indicated that you are 1st Defendant's manager, is that correct?
A: Yes, my Lord.

Q. You will agree with me that you lodged a criminal complaint against the Plaintiff and 3 others is that correct?
A: Yes, my Lord.

Q: The said complaint you lodged against the Plaintiff and 3 others culminated into a criminal persecution at the Circuit Court is that correct?
A: Yes, my Lord.

Q: And you would also agree with me that you testified in the said criminal prosecution?
A: Yes, my Lord.

Q: And you also attended the said prosecution of the Plaintiff and 3 others.
A: Yes, my Lord.

[15]. Also Exhibit "D" series depict publications made by various media houses which according to the Plaintiff lowered his reputation in the media landscape in Ghana and for that matter the whole world. He further testified that due to his arrest and subsequent prosecution the online entertainment portal; GHBase.com he was reporting for stopped dealing with him, which caused him to lose monthly allowances of GH¢1,000 then.

[16]. The Plaintiff also tendered Exhibit "E", an offer of admission from the University of Western Australia to study BA Law and Society which ambition was shut as a result of his prosecution because he had to attend the trial proceedings. The criminal trial according to Plaintiff prevented him from travelling to pursue legal education in Australia.

[17]. The Plaintiff tendered the following exhibits without any objection from Counsel for Defendant:

1) Exhibits "A" and "B" being the Charge Sheet and Facts respectively of the Criminal Proceedings
2) Exhibit "C" being a copy of the ruling of the Circuit Court acquitting and discharging them
3) Exhibit "D" series about the alleged publications against him.
4) A copy of an offer letter from the University of Western Australia to study B.A. Law and Society as Exhibit "E".

DEFENDANTS' CASE

[18]. The 2nd Defendant is a Football Administrator and a manager of the 1st Defendant. He gave the Witness Statement on behalf of himself and the 1st Defendant. According to the 2nd Defendant, he got to know the Plaintiff through publications he made against the 1st Defendant in 2015.

[19] According to the 2nd Defendant, the Plaintiff published series of stories on a blog named GHBase.com claiming he had video evidence of the 1st Defendant raping one Sarah Kwablah. As a result of the publications other media houses picked up the story from the Plaintiff's blog at the time the 1st Defendant had just signed a contract with a Chinese Football Club.

[20]. It is the 2nd Defendant's case that one Nii Armah Amarteifio contacted him on phone claiming to know the Plaintiff and that the Plaintiff had told him that he could

stop publishing the story of the 1st Defendant's alleged rape but that comes with payment of money to him. The 2nd Defendant claimed to have feigned interest in the proposal and told Nii Armah Amarteifio that he was willing to pay money to the Plaintiff in order for him to stop publishing the story against the 1st Defendant. The 2nd Defendant subsequently reported the matter to the Airport Police Station because he conceived that the Plaintiff was trying to extort money from him. The Police advised him to play along with the Plaintiff if he demanded money and alert the Police to come.

[21]. The 2nd Defendant and the Plaintiff met at Landing restaurant, KIA to collect the money as agreed by them ostensibly with Police Officers which at the time was unknown to the Plaintiff. The 2nd Defendant handed an amount of $1,000.00, GH₵6,000.00 and a cheque of GH₵15,000.00 to the Plaintiff and the Plaintiff was arrested by the Police after receipt of these at the very scene of the well-rehearsed drama.

[22]. It is the contention of the 2nd Defendant that immediately the Plaintiff collected the monies, the Police apprehended him, seized his phone and did their investigation into the matter. The Police later informed 2nd Defendant that they found recordings concerning discussions by the Plaintiff, one Ekow Micah and Sarah Kwablah planning to extort money from the 1st Defendant and how the money would be distributed among them. The Police thereupon charged them that is, Ekow Micah and Sarah Kwablah and one Chris Handler with conspiracy to commit crime and abetment of crime.

[23]. It is further the case of the Defendants that they did not influence the police in any way to prosecute the Plaintiff. The 1st Defendant testified that Police did their own investigation upon a tip-off and, having arrested the Plaintiff in the act (collection of various amounts of monies) proceeded to gather more evidence to substantiate the charges preferred against the Accused Persons.

[24] The Defendants did not tender any exhibit whatsoever to support any aspect of their narrative. Although, Nii Armah Amarteifio was mentioned by 2nd Defendant as being the intermediary or conduit through whom he (the 1st Defendant) pretentiously told Plaintiff that he was prepared to pay him money for him to cease publishing further material about the alleged rape and sodomy, he was never called or subpoenaed by the Defendants as a witness. I shall return to comment on this failure to call or summon Nii Armah Amarteifio as a witness later in this Judgement.

iv. Determination of the Issues by the Court:

[25].Before analysing and evaluating the evidence in order to determine the issues set down for trial, I will set out the law on tort of malicious prosecution.

v. The law on Malicious Prosecution

[26] Malicious Prosecution as a tort has peculiar backdrop which should be stated to provide appropriate context for appreciation of the law and its application in our jurisdiction. For many centuries in England and Wales criminal prosecution was not undertaken by only stated appointed Public Prosecutor. Lay citizens could effect arrest and also prosecute. The Courts at the time were cautious not to discourage prosecution by individuals so malicious prosecution for unsuccessful criminal prosecutions was highly circumscribed. This attitude of English courts was effectively articulated in **ABRATH v. NORTHEASTERN- RAILWAY COMPANY. (1886), l I Ap. Case. 247 at 252** when Baron Bramwel remarked:

> If ever there was a necessity for protecting persons it is an action for malicious prosecution ... First of all a prosecutor is a very useful person to the community. We have something in the nature of a public prosecutor, but everybody knows that the greater number of prosecutions in this country are undertaken not by the State but by private persons, or, as in this case, corporations.

[27] In the 1850s, the British Parliament took the first tentative legislative step in curbing access to the courts by those who would abuse them, by enacting the Vexatious Indictments Act, putting minor restrictions on private prosecutors anxious to use the voluntary bill. From the creation of the Office of the Director of Public Prosecutions in 1879, the foundation was laid for more scrutiny of unfounded serious charges. "Other controls over the private prosecutor, notably statutes requiring the consent of the Attorney-General or the D.P.P., became common only in the twentieth century". **See D. Ilay, Controlling the English Prosecutor', Osgoode Hall Law Journal, 21/2 (1983), pp. 177**.

[28] With the rise of police prosecution, there was a paradigm shift. By the twentieth century, malicious prosecutions, together with investigation, arrest, framing of charges, discretion to drop them, and compilation of evidence, largely became consequences of police policy or the discretionary decisions of individual police officers.

See: **Hay, Douglas, Prosecution and Power: Malicious Prosecution in the English Courts, 1750-50. POLICING AND PROSECUTION IN BRITAIN 1750-1850, pp. 343-395, D.Hay and F.Snyder, eds., Oxford University Press, 1989**

[29] Having noted the historical development of the tort of malicious prosecution in English law which is the origin of Ghanaian legal system by reason of the colonial nexus and in particular the Supreme Court Ordinance of 1876, I proceed to outline the principles of malicious prosecution. In this regard, it is apt to call to mind what Chief Justice Korsah, stated in **AUBIN V. EHUNAKU [1960] G.L.R 167, C.A**.:

> *"In order that an action may lie for malicious prosecution the following conditions must be fulfilled: (1) The prosecution must have been instituted by the defendant; (2) He must have acted without reasonable and probable cause; (3) He must have acted maliciously; (4) The proceedings must have been unsuccessful—that is to say, they must have terminated in favour of the plaintiff. It will be observed that, from the nature of these*

conditions, a plaintiff will fail unless it can be proved that all those conditions are fulfilled. Failure to prove one of them will be fatal to a plaintiff's case."

[30] In **YEBOAH V. BOATENG VII** [1963] 1 G.L.R. 182, Crabbe J.S.C. in reading the judgment of the Supreme Court, similarly stated the essential requirements of a successful action for malicious prosecution in the following words:

"The first duty of a plaintiff in an action for malicious prosecution is to prove that the defendant instituted criminal proceedings against him or was actively instrumental in putting the law in force against him in proceedings which terminated in his favour. But proof of this fact alone will not avail him unless he proves further that the defendant acted without reasonable and probable cause and was guilty of malice. Lastly, the plaintiff must prove that he suffered damage as a result of the prosecution."

[31] In **SOADWAH ALIAS SONDURA AND OTHERS V.OBENG AND OTHERS [1966] GLR 338** The appellant had reported a theft from his house to the police, leading to the respondents being prosecuted and later acquitted. The respondents then claimed that the appellant had maliciously and without reasonable cause initiated an unfounded charge against them. The key legal question was whether the prosecution was instituted by the appellant. The trial judge found that the appellant was actively instrumental in putting the law in force and instigated the prosecutions. However, the appeal court disagreed, stating that the appellant merely gave information to the police who exercised their discretion to prosecute. The Supreme Court concluded that the respondents failed to prove one of the essential requirements for a claim of malicious prosecution, namely, that the appellant initiated the prosecution. His Lordship Mills-Odoi JSC held:

"In this case, all that the appellant is alleged to have done is that he made a genuine complaint to the police and prosecution ensued after normal inquiries had been made by Sergeant Appiah. It terminated in favour of the respondents; but the law appears to be clear that where a genuine complaint is honestly and bona fide laid, the accuser is not

considered or deemed to be the prosecutor or the person who has set the law in force so as to render him answerable for malicious prosecution: see Danby v. Beardsley (1880) 43 L.T. 603."

[32] In the recent High Court decision in **T. L. OGUM V. THE COMMISSIONER (CHRAJ), THE DEPUTY COMMISSIONER (LEGAL & OPERATIONS), THE DEPUTY COMISSIONER (FINANCE & ADMIN.)** (2009) JELR 67124 (HC) HIGH COURT · SUIT NO. BMISC 2454/02 · 8 OCT 2009- Asuman-Adu J held:

The fact that the criminal action terminated in favour of the plaintiff does not mean he has proved the essential ingredients of malicious prosecution. As stated earlier in this judgment, the plaintiff is required by law to prove all the essential ingredients to enable him to succeed in his claim for malicious prosecution. Failure to prove one of these ingredients is fatal to his claim.

In the instant case, apart from the fact that the criminal action terminated in favour of the plaintiff he could not prove any of the other ingredients. It has been discussed at length in this judgment that the defendants did not initiate the prosecution against the plaintiff. ***It cannot also be said that the defendant acted without reasonable and probable cause. This is because the incident complained of actually occurred****.* ***The evidence before the court shows that the plaintiff actually received double salary.*** *That is whilst working with CHRAJ and was being paid he was also receiving his salary from the Civil Service, his former employer. The incident was, therefore, not false and baseless. The fact that he was acquitted in the case does not mean the incident never occurred.* **(my emphasis added)**

[32].As repeatedly stated in this judgement earlier, in a claim for malicious prosecution it is absolutely essential to establish whether the defendant, alleged torfeasor was *prosecutor*. In explicating what amounts to being prosecutor, Chief Justice Azu Crabbe in the landmark case of **MUSA AND ANOTHER V. LIMO-WULANA AND ANOTHER [1975] 2 GLR 290-301** having reviewed the decisions in Alhadi v. Allie (1951) 13 W.A.C.A. 323, Payin v. Aliuah (1953) 14

W.A C.A. 267, Leigh v. Webb (1800) 3 Esp. 165 and Danby v. Beardsley (1880) 43 L.T. 603 remarked at p296 of the Report that:

> *But a defendant, though not technically a prosecutor within the meaning of the authorities discussed above, will nevertheless be liable for malicious prosecution where the complaint he makes to the police or the judicial officer is known by him to be false. Thus, in Tewari v. Singh (1908) 24 T.L.R. 884, Sir Andrew Scoble, in delivering the judgment of their lordships in the Judicial Committee of the Privy Council, said:*
>
> *"If, therefore, a complaint did not go beyond giving what he believed to be correct information to the police and the police, without further interference on his part (except giving such honest assistance as they might require), thought fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution.* ***But, if the charge was false to the knowledge of the complainant, if he misled the police by bringing suborned witnesses to support it, if he influenced the police to assist him in sending an innocent man for trial before the magistrate, it would be equally improper to allow him to escape liability because the prosecution had not technically been conducted by him. The question in all cases of this kind must be—who was the prosecutor? And the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion was not the criterion; the conduct of the complainant, before and after making the charge, must also be taken into consideration.*** *Nor was it enough to say the prosecution was instituted and conducted by the police. That again was a question of fact.* ***Theoretically all prosecutions were conducted in the name and on behalf of the Crown; but, in practice, that duty was often left in the hands of the person immediately aggrieved by the offence, who, pro hac vice, represented the Crown****."* (my emphasis added)

[33]. Similarly, In **Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh (1908) 24 T.L.R. 884**, an appeal to Her Majesty in Council from India, the defendant had falsely informed a police officer that the plaintiff had taken part in a riot, with the result that the plaintiff was prosecuted unsuccessfully, it being found that there had been no riot at all. The Judicial Committee of the Privy Council, on appeal by the plaintiff against the dismissal of his action for malicious prosecution, advised Her Majesty that the appeal should be allowed. Sir Andrew Scoble, giving the advice of the Board, said, at p. 884:

'If, therefore, a complainant did not go beyond giving what he believed to be correct information to the police and the police, without further interference on his part (except giving such honest assistance as they might require), thought fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But, if the charge was false to the knowledge of the complainant, if he misled the police by bringing suborned witnesses to support it, if he influenced the police to assist him in sending an innocent man for trial before the magistrate, it would be equally improper to allow him to escape liability because the prosecution had not technically been conducted by him

[34]. Again in **COMMONWEALTH LIFE ASSURANCE SOCIETY LTD. V. BRAIN** (1935) 53 C.L.R. 343 the plaintiff in an action for malicious prosecution had been charged with conspiring to defraud and committed for trial, though no trial actually took place because the Attorney-General declined to file an indictment. The charge was laid by a police officer acting on information supplied by the secretary of the defendant company, which offered to provide solicitors and counsel for the prosecution. A jury found that the defendant company had instigated the prosecution and had not genuinely believed that the prosecution was justified. Damages were awarded to the plaintiff. The High Court of Australia, on appeal from the Supreme Court of New South Wales,

held that there had been evidence before the jury sufficient to justify its findings. Dixon J. said, at p. 379:

'The legal standard of liability for a prosecution which is instituted neither by the defendant nor by his servant is open to criticism on the ground of indefiniteness. It is clear that no responsibility is incurred by one who confines himself to bringing before some proper authority information which he does not disbelieve, even although in the hope that a prosecution will be instituted, if it is actually instituted as the result of an independent discretion on the part of that authority (Danby v. Beardsley (1880) 43 L.T. 603; Fanzelow v. Kerr (1896) 14 N.Z.L.R. 660). But, if the discretion is misled by false information, ***or is otherwise practised upon in order to procure the laying of the charge,*** *those who thus brought about the prosecution are responsible (Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh; Black v. Mackenzie (1917) N.Z.L.R. 729). Further, the Privy Council has said in a judgment delivered by Lord Dunedin: - 'In any country where, as in India, prosecution is not private an action for malicious prosecution in the most literal sense of the word cannot be raised against any private individual.* ***But giving information to the authorities which naturally leads to prosecution is just the same thing.*** *If that is done and trouble caused an action will lie.' Their Lordships, however, held in the case before them that, as the information supplied to the police was ample cause for the initiation of prosecution proceedings, the plaintiff must, in order to succeed in his action, go the whole way of showing that it was false to the defendant's knowledge (Balbhaddar Singh v. Badri Sah, The Times, 17 March 1926, a case containing dicta apparently inconsistent with the decision of this court in Davis v. Gell (1924) 35 C.L.R. 275). The rule appears to be that those who counsel and persuade the actual prosecutor to institute proceedings or procure him to do so by dishonestly prejudicing his judgment are vicariously responsible for the proceedings. If the actual prosecutor acts maliciously and without reasonable and probable cause, those who aid and abet him in doing so are joint wrongdoers with him.'*

[35]. Also in the Canadian case of **WATTERS V. PACIFIC DELIVERY SERVICE LTD.** (1963) 42 D.L.R. (2d) 661 the plaintiff received delivery of some bottles of beer and in payment tendered to one Sandover, who had made the delivery, a cheque which by mistake was drawn on the wrong bank branch, which when the cheque was presented did not honour it. Sandover later called on the plaintiff with the cheque, and she altered it so as to show the correct branch, which, if the cheque had been presented, would have honoured it. Sandover never did present the cheque, but went to the police station and told an untrue story to one Detective Cotter. After some extraordinary events, which included Sandover identifying as a photograph of the plaintiff the photograph of a known prostitute and thief with a somewhat similar name, Cotter swore an information against the plaintiff charging her with obtaining the beer by false pretences. She was arrested and detained until released on bail. Later she appeared in the Police Court, when the Crown Prosecutor offered no evidence and the charge was dismissed. Munroe J. held that both Sandover and Cotter were liable to the plaintiff for malicious prosecution and awarded her damages. He said, at p. 669:

> *'Counsel for the defendant Sandover submitted that Sandover cannot be liable because he made no information on oath and that, therefore, the sole responsibility and liability for the prosecution of the plaintiff, if any, rests with the defendant Cotter, who swore the information. In short, it is said that the action against the defendant Sandover must be dismissed in any event because he did not institute or continue the proceedings. In support of that submission reliance is placed on a passage to be found in Salmond on Torts, 13th ed. (1961), p. 720. I reject this submission and hold that the defendant Sandover is liable because he instigated the proceedings that resulted in the arrest and imprisonment of the plaintiff, and did so maliciously and without reasonable cause. This is not a case of a person truthfully reporting the facts to a police officer and leaving the latter to determine whether or not such facts warranted prosecution. The bad faith of the defendant Sandover in deliberately deceiving Detective Cotter distinguishes this case from those cases relied upon by counsel for Sandover. In Sinclair v. Haynes(1857) 16*

U.C.Q.B. 247, it was held that it was not necessary to prove that the defendant laid an information on oath; it is enough to show that he set the criminal law in motion.'

[36]. The Court of Appeal of New Zealand has elaborated the same principle in the case **COMMERCIAL UNION ASSURANCE CO. OF N.Z. LTD. V. LAMONT [1989] 3 N.Z.L.R. 187,**. Where a building and contents belonging to the plaintiff were destroyed by fire, and he claimed on the Commercial Union under a policy he had with them. As a result of suspicions that the fire had been deliberately set voiced by a fire safety officer the police made inquiries of the Commercial Union, which sent the police some material from its files. That material was used in a prosecution of the plaintiff on a charge laid by the police of attempting to obtain money from the Commercial Union by false pretences. The prosecution ended with a finding of no case to answer and the plaintiff sued the Commercial Union for malicious prosecution. A jury found in the plaintiff's favour, but on appeal by the Commercial Union the Court of Appeal of New Zealand set aside the verdict and ordered a new trial, on the ground that the trial judge had misdirected the jury as to the circumstances under which the Commercial Union could properly be held to have been the prosecutor of the plaintiff. **The new trial was ordered because in the opinion of the majority of the court there was some evidence which, if accepted by a properly directed jury, might lead them to find that the Commercial Union was liable for instigation of the prosecution.** Richardson J., after a full review of the New Zealand authorities, said, at p. 196:

'To summarise the New Zealand authorities. A defendant who has procured the institution of criminal proceedings by the police is regarded as responsible in law for the initiation of the prosecution. Expressions such as 'instigate,' 'set in motion' and 'actively instrumental in putting the law in force,' while evocative do not provide an immediate touchstone for the decision of individual cases. That requires close analysis of the particular circumstances. In the difficult area where the defendant has given false information to the police that in itself is not a sufficient basis in law for treating the

defendant as prosecutor. That conduct must at least have influenced the police decision to prosecute.'

[37] Richardson J having considered authorities from other jurisdictions, including Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh, 24 T.L.R. 884 and Commonwealth Life Assurance Society Ltd. v. Brain, 53 C.L.R. 343 , Richardson J., said [1989] 3 N.Z.L.R. 187 at 199:

'It does not follow that there is any call for modifying the test which has been developed in the decisions of this court for determining whether a third party is responsible in an action for malicious prosecution for criminal proceedings instituted by the police. What is required is a cautious application of that test where the police have conducted an investigation and decided to prosecute. The core requirement is that the defendant actually procured the use of the power of the State to hurt the plaintiff. One should never assume that tainted evidence persuaded the police to prosecute. In some very special cases, however, the prosecutor may in practical terms have been obliged to act on apparently reliable and damning evidence supplied to the police. The onus properly rests on the plaintiff to establish that it was the false evidence tendered by a third party which led the police to prosecute before that party may be characterised as having procured the prosecution.'

Standard Of Proof, Burden Of Proof And Persuasion

[38] In all forms of civil litigation; the standard of proof is one of the preponderance of probabilities. The proof prescribed in civil trials is provided under sections 10, 11 and 12 of the Evidence Act, 1975, NRCD 323. These sections on the burden of proof, burden of persuasion and burden of producing evidence provide thus:

"Section 10 *(1) For the purpose of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.*

(2) The burden of persuasion may require a party (a) To raise a reasonable doubt concerning the existence or non- existence of a fact, or (b) To establish the existence or non- existence of a fact by a preponderance of probabilities or by proof beyond reasonable doubt.

Section 11 (1) *For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party…*

Section 12(1) *Except as otherwise provided by law, the burden of persuasion requires proof* ***by a preponderance of the probabilities.***

(2) ***Preponderance of the probabilities'*** *means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non- existence."*

[39]. Similarly in **ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 at page 736** Adinyira, JSC stated that:

"It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail…"

See also the case of **Aryee v Shell Ghana Ltd & Fraga Oil Ltd [2017-2020] SCGLR 721 At 733**

[39].It is trite learning that the Plaintiff bear the evidential burden to adduce sufficient evidence if he is to secure a ruling on the existence or non-existence of a fact crucial to the reliefs he seeks. The learned jurist S.A Brobbey, in his book, ESSENTIALS OF GHANA LAW OF EVIDENCE at page 28 posits as follows:

"*In the normal run of affairs, since the plaintiff is the one asking for something from the defendant, he should be the one who will start the proceedings by giving his testimony. That testimony will show what he wants from the defendant and why he wants the court to order the defendant to give it to him. If he drags the defendant to the court but he fails to lead evidence to establish his claim and the basis of the claim, he cannot have the assistance of the court to get what he wants. In life, one gets nothing from nothing. So it is in law. If the party does not lead evidence to establish the claim or its basis, the court will have no grounds or reason or basis for making any order in his favour. If he leads no evidence…".*

[40] The learned jurist, Brobbey JA (as he then was) had the opportunity restated his illumination on the evidential burden imposed by the Evidence Act in the case of DUAH v YORKWA [1993-94]1 GLR 217 wherein he remarked that:

"Part II of NRCD 323 which deals with the burden of proof covers on the one hand, the burden of persuasion under sections 10, 14 and 15 of NRCD 323 and on the other hand, the burden of producing evidence under sections 11, 12 and 13 of NRCD 323. Considering the wording of section 10 (1) of NRCD 323 in the light of the Commentary on the Evidence Decree at pp 14-16, I am of the view that the expression "burden of persuasion" should be interpreted to mean the quantity, quantum, amount, degree or extent of evidence which a litigant is obligated to adduce in order to satisfy the requirement of proving a situation or a fact. The burden of persuasion differs from the burden of producing evidence. Under sections 11, 12 and 13, particularly section 11 (1) of NRCD 323 the burden of producing evidence "means the duty or obligation lying on a litigant to lead evidence." In other words, these latter actions cover which of the litigating parties should be the first to lead evidence before the other's evidence is led.

See also the case of **Sarkodie v. FKA Co Ltd (2009) SCGLR Page 65**

[41] In all civil suits, the court is enjoined by section 12 of the Evidence Act 1975 (NRCD 323) to evaluate and weigh the evidence adduced by the parties on preponderance of probabilities. This requires a careful analyses of the entire evidence as held by Ansah JSC in the case of TAKORADI FLOUR MILLS v SAMIR FARIS (2005-2006) SCGLR 882 at 884 holding 5 as follows:

"it is sufficient to state that this being a civil suit, the rules of evidence require that the Plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence Act, 1975 (NRCD 323). In assessing the balance of probabilities, all the evidence, be it that of the plaintiff or the defendant must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict".

[42]. It follows that if the evidence adduced is such that the scales are evenly balanced, the burden of proof on the plaintiff would not have been satisfied. In that event, the case of the plaintiff should fail. See S. A. Brobbey, Essentials of the Ghana Law of Evidence (2014) page 42

Issue (i) : Whether or not the Defendants instituted criminal proceedings against the Plaintiff

[43]. It is trite that a Plaintiff in malicious prosecution suit must demonstrate the defendant was the prosecutor. Counsel for Defendant in at page 6 of his written address relies inter alia on the cases of **Fitzjohn vrs Mackinder, 142 ER 1** and **Aubin vrs. Ehunaku [1960] GLR 167 CA** and submitted as follows:

> *The evidence on record will exonerate the Defendants in that, before meeting the Plaintiff the 2nd Defendant had already lodged a complaint to the Police. The Police was able to arrest the Plaintiff* ***in the act of the said impending extortion*** *of money from the 1st Defendant as has been reported and which the Plaintiff himself affirms during the cross-examination referred to above. So it is a matter of policy that individuals must try to bring perpetrators of crime to book.*

This court respectfully disagrees with Counsel for Defendants because it will be demonstrated soon in this judgment that the entrapment of Plaintiff was not criminal investigation properly so called rather it was in furtherance of false information contained in the initial complaint by 2nd Defendant which influenced the Police to coordinate with 2nd Defendant in setting up what may at best be described as Kumawood styled drama or Cantata. As noted earlier in this Judgment, defendant need not to have been actual prosecutor. It suffices if the defendant was instrumental in the instigation of the prosecution or setting the law in the motion against the Plaintiff. As can be distilled from the plethora of Ghanaian and exotic authorities above the requirement of initiation of criminal prosecution in the tort of malicious prosecution is satisfied where the complaint setting the law in motion was made

falsely or in bad faith and the Police was influenced dominantly by the false information in exercising their discretion to arrest, investigate or prosecute. I proceed now to ascertain whether Defendants' conduct in the antecedent criminal proceedings meet this criteria.

[44]. In the instant case Plaintiff pleaded in paragraph 4 of the statement of claim that : "The Plaintiff avers that the 1st Defendant caused the 2nd Defendant to have Police arrest and charge the Plaintiff with conspiracy to extort money from the 1st Defendant, knowing very well that the allegation against the Plaintiff was false and without basis." This crucial averment was denied by Defendants. The thrust of Defendant's pleading in traverse is that on reasonable suspicion that the Plaintiff intended to extort money from 1st Defendant they submitted report or complaint to the Police and the Police independently arrested and investigated the matter before mounting prosecution against Plaintiff.

[45]. The Plaintiff testified that the Defendants lodged complaint against him at the Airport Police Station in Accra when at the time of making the complaint had no scintilla of evidence to support the complaint. This testimony of the Plaintiff was vigorously tested during cross examination by Counsel for Defendants but same remained significantly unassailable. On 11/7/2023 during cross examination of Plaintiff this is what happened inter alia:

Q: Indeed apart from the 3 publications you have mentioned you made other publications about the 1st Defendant on the blog?

A: Yes my Lord.

Q: And in respect of each publication about the 1st Defendant, you never spoke to him personally about the information you claim you gathered from Sarah Kwablah.

A: After the third publication someone from Asamoah Gyan's camp approached the Editor with the intention of killing the further publication of the story.

Q: I put it to you that you are making that up and it is not true.

A: No my Lord. I am not making it up.

Q: Do you know Nii Armah Amarteifio?

A: ***Yes my Lord. He is the one from Asamoah Gyan's camp who approached the Editor of GH Base with the intention of killing the story.***

Q: I put it to you that that is not true.

A: That is true my Lord.

Q: I put it to you that you told Nii Armah Amarteifio to tell the 2nd Defendant that you will stop publishing the story if money was paid to you.

A: No my Lord rather he proposed that if we agree to stop the publication Asamoah Gyan is ready to compensate the website for whatever revenue it stands to lose as a result of stopping the publication to protect Asamoah Gyan.

Q: Again I put it to you that that is not true.

A: That is absolutely true.

Q: You had a meeting with the 2nd Defendant is that correct?

A: Yes my Lord.

Q: And you did not know the 2nd Defendant had brought the Police to the meeting.

A: Yes my Lord because as the manager of Asamoah Gyan, I thought he was meeting me for us to see how we can protect Asamoah Gyan.

Q: And at the meeting with the 2nd Defendant, the 1st Defendant's manager gave you 1,000 dollars?

A: No just when he was about to hand the 1,000 dollars. A man held my hand from behind. I asked him who is he? And he said he is a Police officer and that I am under arrest for extorting money from Asamoah Gyan.

Q: 2nd Defendant at that meeting also gave you cash of GH¢6,000.00.

A: In fact he gave all at go and just when I was about to receive it, the Police arrested me.

Q: All refers to the 1,000 dollars, the GH¢6,000.00 and the cheque for GH¢15,000.00?

A: Yes my Lord.

Q: I am suggesting to you that before coming to meet you at Dansoman, the 2nd Defendant had made a report to the Police that you were attempting to extort money from the 1st Defendant, the celebrity.

A: My Lord I believe he did so to make his case appear good and to have me arrested.

Q: The Police seized your phone as well when you were arrested?

A: Yes my Lord.

Q: I am putting it to you that the police charged you for extortion, conspiracy and abetment.

A: Yes my Lord.

Q: The Police charged Sarah Kwablah also for those offences?

A: She was charged with conspiracy to extort only that one.

Q: Do you know what Ekow Micah was charged with?

A: He was charged with abetment.

Q: The Police told you that they had found communication between you, Sarah Kwablah and Ekow Micah concerning the extortion. You were told that.

A: Yes it was after the Police had arrested me and before the Complainant reported me to the Police.

Q: And you were prosecuted, were you not?

A: Yes my Lord as a result of the Complainant writing a Statement, appeared in Court, swore an oath and tendered evidence against me.

[46] . The above testimony of Plaintiff was corroborated by 2nd Defendant during his cross examination by counsel for Plaintiff on 12th July 2023. This is what transpired:

Q: And per your answer to the previous questions asked you actually admitted that you gathered evidence after you lodged the complaint against the Plaintiff and 3 others.

***A**: My Lord I admitted that I reported them for extortion and then after his arrest, the Police gathered more evidence for their prosecution.*

***Q**: Mr. Anim Addo I am suggesting to you that the criminal prosecution at the Circuit Court terminated in favour of the Plaintiff.*

***A**: My Lord I respect all Rulings of the Court and also doesn't mean that Mr. Osarfo Anthony and the 3 others didn't plan to extort money from Asamoah Gyan which the evidence is clear with recordings between the 3 of them that)mu b3 sa nkwae and a lot of discussions between the 3 of them which the Police has all the evidence of the recordings and even a video of Osarfo Anthony receiving money and cheque from myself when he met before the Police arrested him. At that juncture it was the Police duty to do their own investigations and at that level I have nothing to do.*

***Q**: So Mr. Samuel Anim Addo you will agree with me that the said audios and videos in which you are accusing the Plaintiff and others for a wrong doing are not before this Honourable Court.*

***A**: I believe that is the discretion of the Court my Lord.*

***Q**: I am suggesting to you that you have not tendered in any video or audio recordings before this Honourable Court.*

***A**: My Lord as I said I reported Osarfo Anthony for extortion and the Police acted on that.*

***Q**: So you are actually reinforcing that it was your criminal complaint against the Plaintiff and the 3 others which triggered the Police to work?*

***A**:* *I reported Osarfo Anthony when he demanded money from me so that he will stop publication of the publication he was carrying out on Asamoah Gyan, that is rape and other words that I don't want to use in the Court room.*

[47]. What emerges from the foregoing is that Plaintiff established a consistently that **as a** journalist he files report of stories to be published on GhBase website so that it attracts traffic to the website. Increased viewing of the website means more revenue is generated so having done first three instalment of stories on the alleged rape and sodomy of Sarah Kwablah by 1st Defendant, he and his work team were prepared to stop further publication if the website would be given money to compensate for revenue to be lost as a result of low traffic to the website due to stoppage of further publication regarding such a celebrity as 1st Defendant.

[48]. Exhibit C tendered by Plaintiff is a Ruling of the Circuit Court in the criminal case. This was admitted during this trial without any objection from Counsel for Defendants. I have also tested probative value of **Exhibit C** against the provisions of Section 52 of the Evidence Act 1975 (NRCD 323) and have not found any of the considerations stated therein as being present in the factual circumstances of this case to warrant the exercise of my discretion to exclude it from evidence available to the court. My scrutiny of Exhibit C reveals that Defendants' audio recording of Plaintiff planning with others to extort from Asamoah Gyan was not true and it was rather discussion about how Plaintiff and his team could use this high-profile sexual scandal to make more revenue on their website. The 1st Defendant testified that it was one Nii Armah Amarteifio from Asamoah Gyan's camp who approached him with suggestion that Defendants were willing to pay money to them in return for cessation of further publication of the sex scandal which according to Exhibit C had already been reported by the victim to Odorkor Police Station. The court agrees with submission by Counsel for Plaintiff that the news the Defendants relied upon was an alert by one Nii Armah Amarteifio supposedly based on an audio recording. Strangely, the said Nii Armah

Amarteifio was not called as a witness in Criminal Court Number D2/60/16 (see **Exhibit C**) , neither was he called as a witness in this suit. The failure of Defendant to call Nii Armah Amarteifio as a witness in the instant civil case as well as the antecedent criminal case raises question about the veracity of the claim by the Defendants that the Plaintiff and his alleged collaborators decision to extort money unless they were paid by 1st Defendant was communicated to Defendants by him. I will accordingly not attach any weight to whatever role Defendants claim Nii Armah Amarteifio played in the alleged extortion plot by Plaintiff and his team.

[48] Flowing from the above cross examination extracts and within context of the evidence in chief of Plaintiff and Defendants as reflected in their Witness Statements I make a finding that Defendants knew that Plaintiff and other media platforms had done publication of alleged sexual scandal concerning 1st Defendant but wanted to prevent further publication by Plaintiff's GHBase.com so 2nd Defendant commenced communication with Plaintiff with the view of making financial payment to him in return for ceasing further publication of the alleged sexual scandal involving his employer or boss, the 1st Defendant. I also find as established that the complaint which 2nd Defendant made on 1st Defendant's behalf to the Police was known by Defendants to be false as they knew very well that there had been no attempt by Plaintiff to extort money from Defendants.

[49]. There is also evidence on record that indicates that 1st Defendant's signing of new contract with Chinese football team coincided with time that, the alleged sexual scandal involving 1st Defendant with a girl, mentioned in Exhibit C as Sarah Kwabla, had broken out and the 2nd Defendant as the manager of 1st Defendant sought to protect public image of 1st Defendant in order not ruin the Chinese football club opportunity. It is therefore the view of this court that when 2nd Defendant was reporting to the Police at Airport Police station that Plaintiff was trying to extort money from 1st Defendant, he knew that his complaint of extortion was false. It is telling that 2nd

Defendant testified that he feigned interest regarding the arranged meeting to pay the money to Plaintiff.

[50]. When the Police suggested that the 2nd Defendant leads Plaintiff on with regards to financial payment in return for cessation of further publication of the alleged sexual scandal and get him entrapped the Police was actually being used by Defendants to achieve their purpose. Indeed, if the 2nd Defendant had not complained to the Police that Plaintiff was trying to "extort" money, the Police would not have elicited his cooperation for entrapment and gathering of evidence. I am persuaded by decision of the Australian High Court (equivalent of our Supreme Court) in **COMMONWEALTH LIFE ASSURANCE SOCIETY LTD. V. BRAIN** (1935) 53 C.L.R. 343 ; the decision of Court of Appeal of New Zealand in **COMMERCIAL UNION ASSURANCE CO. OF N.Z. LTD. V. LAMONT [1989] 3 N.Z.L.R. 187;** the Canadian decision in **WATTERS V. PACIFIC DELIVERY SERVICE LTD.** (1963) 42 D.L.R. (2d) 661 that where false information was given to the Police then the exercise of Police discretion to arrest, investigate and prosecute will be vitiated by the false information provided by the complainant (the defendant). Beyond the irresistible persuasive appeal of these foregoing foreign decisions this court having made a finding that the complaint made by 2nd Defendant prior to Police arrest and prosecution of Plaintiff was made by 2nd Defendant knowing it to be false, I am bound by the Supreme Court decision in **MUSA AND ANOTHER V. LIMO-WULANA AND ANOTHER [1975] 2 GLR 290-301** and so hold that 2nd Defendant misled the Police by his false information. It is worth recalling the landmark decision of English Court in **MARTIN V WATSON | [1995] 3 ALL ER 559** which for the first time recognised false information or complaint as sufficing to make defendant responsible for ensuing criminal prosecution. Finding in Mr Martin's favour, the UK Supreme Court (then the House of Lords) stated that *'there is no good reason here for making a distinction between persons who procure a police prosecution and those who are technically prosecutors'*.

[51]. All that the Police did right up to prosecution was influenced by what 2nd Defendant stated in the complaint that Plaintiff was trying to extort money from 1st Defendant. If there had been no prior understanding on the financial payment in return for cessation of further embarrassment of 1st Defendant through the alleged sexual scandal publication why didn't Defendants cause their lawyer at the time, Lawyer Kissi Adjabeng to file defamation suit and secure interlocutory injunction regarding the supposed threat to publish what Defendants consider to be untrue regarding the alleged sexual scandal involving Sarah Kwablah. 2nd Defendant definitely ought to have known the truth of the content of earlier three publications and rather opted for criminal prosecution route by craftily misleading the Police to believe that Plaintiff had threatened to extort money from them. Indeed, Plaintiff under vigorous examination on 11/7/2023 adduced unimpeachable evidence that Defendants had sent an intermediary, Nii Armah Amarteifio, to persuade Plaintiff to accept financial payment. This is what transpired between Counsel for Defendant and Plaintiff:

Q: *I put it to you that you told Nii Armah Amarteifio to tell the 2nd Defendant that you will stop publishing the story if money was paid to you.*

A: *No my Lord rather he proposed that if we agree to stop the publication Asamoah Gyan is ready to compensate the website for whatever revenue it stands to lose as a result of stopping the publication to protect Asamoah Gyan.*

Q: *Again I put it to you that that is not true.*

A: *That is absolutely true.*

In the light of foregoing analysis and evaluation of the evidence I hereby resolve issue one in favour of Plaintiff and hold that on preponderance of probability Plaintiff has established that it was the Defendants who instigated the criminal prosecution. Christian Witting, the learned author of **Street on Torts (14th edition, OUP) p.609**, has rightly noted:

"a defendant who complains to the police or magistrates will be regarded as the 'prosecutor' if he falsely and maliciously gave information to the police, making it clear that he is prepared to be a witness for the prosecution in circumstances where it can be inferred that he desires and intends that the claimant should be prosecuted; and the facts of the alleged offence are such that they are exclusively within the defendant's knowledge, so that it is practically impossible for police officers to make any independent judgement about whether or not to proceed with the prosecution"

Issue (ii) Whether or not the Defendants acted without reasonable or probable cause.

&

Issue (iii).Whether or not the Defendants acted maliciously.

[52]. I will deal with issues (ii) and (iii) together as they are related. Reasonable and probable cause was defined by Hawkins J in the case of **HICKS V. FAULKNER (1878)8 QBD 167** as

"an honest belief in the guilt of the accused based on a full conviction founded upon reasonable grounds, of the existence of a circumstances, which assuming them to be true, would reasonably lead any ordinary prudent man and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed. The question of reasonable and probable cause depends in all cases not upon the actual existence, ***but upon the reasonable bona fide belief in the existence, of such a state of things as would amount to a justification of the course pursued in making the accusation complained of—no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another****."* (emphasis added).

[53] Also in **YEBOAH AND OTHERS v. BOATENG VII [1963] 1 GLR 182-194** at holding 4 the Supreme Court held:

> *The test whether the defendant had reasonable and probable cause is objective and is determined by the court on the evidence before it. The yardstick is always the conduct of the reasonable man in the particular circumstances of the case. A reasonable man would take reasonable steps to inform himself of the true state of the case; he or his advisers would finally consider the matter on admissible evidence only, and in all but the plainest case, he would lay the facts fully and fairly before counsel of standing and experience in the relevant branch of the law, receive the advice that prosecution is justified, and he must bona fide accept and act on that advice. Where it is proved that the defendant has failed to take any of these steps that will be evidence from which a judge may infer absence of reasonable and probable cause*.

[54]. At Paragraph 4 of his Witness Statement, Plaintiff testified as follows:

> *The 2nd Defendant on the instruction, and or in concert with the 1st Defendant lodged a complaint against me at the Airport Police station in Accra when the Defendant at the time of making the complaint had no scintilla of evidence to support the complaint. The 2nd Defendant during cross examination which has been captured by the Circuit at page 11, in its ruling ("Exhibit C") admitted under oath that he had no evidence against me yet he went and lodged the complaint against me at the Airport Police Station*.

The above testimony together with its supporting Exhibit C, the Ruling of the Circuit court in the criminal case, was not challenged or impeached in anyway by Counsel for Defendants when the cross- examined Plaintiff for over two hours. **FORI V. AYIREBI** [1966] GLR 627 SC at 647, it was held as follows:

> *"The law is that when a party made an averment, and that averment is not denied, no issue is joined on that averment, and no evidence need be led. Again, when a party gives*

evidence of a material fact and is not cross-examined upon it, he need not call further evidence of that fact."

The principle was further enunciated by Ansah JSC in **Takoradi Flour Mills v. Samir Faris** [2005 -2006] SCGLR 882 when he referred to the case of **Tutu v. Gogo**, Civil Appeal No. 25/07, dated 28th April 1969, Court of Appeal unreported; digested in 1969 CC 76 where Ollenu JA stated thus:

"In law, where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination and the opponent did not tender evidence to the contrary, the facts deposed to in the evidence are deemed to have been admitted by the party against whom it is led, and must be accepted by the court."

[55] In his Witness Statement, 2nd Defendant testified as follows:

"4. Sometime in the year 2015, the Plaintiff published a story on a blog named GHBase.com claiming he had video evidence of the 1st Defendant raping one Sarah Kwabla.

10. One Nii Amarh Amarteifio contact me on phone claiming to know the Plaintiff. Nii Armah also told me the Plaintiff had told him he could stop publishing the story of the 1st Defendant's alleged rape but the 1st Defendant had to pay an amount of money to him.

11. I feigned interest and told Nii Amarh Amarteifio I was willing to pay money to the Plaintiff in for him to stop publishing the story."

Counsel for Plaintiff"

[56] On 12th July 2023 when the above testimony among others was subjected to cross examination this is how 2nd Defendant responded:

Q. You will also agree with me that you lodged the complaint against the Plaintiff before going to look for evidence to substantiate your complaint to the Police?

A: No because I lodged the complaint when he wanted to extort money.

Q: Take a look at **Exhibit C** or go to page 11 of **Exhibit C** and read the fifth question and answer to this Honourable Court.

A: Witness reads "**Q**: You will agree with me that the evidence you gathered was after the alleged offence had been reported to the Police? **A**: Yes".

Q: Mr. Anim Addo I am suggesting to you that the criminal prosecution at the Circuit Court terminated in favour of the Plaintiff.

A: My Lord I respect all Rulings of the Court and also doesn't mean that Mr. Osarfo Anthony and the 3 others didn't plan to extort money from Asamoah Gyan which the evidence is clear with recordings between the 3 of them that) mu b3 sa nkwae and a lot of discussions between the 3 of them which the Police has all the evidence of the recordings and even a video of Osarfo Anthony receiving money and cheque from myself when he met before the Police arrested him. At that juncture it was the Police duty to do their own investigations and at that level I have nothing to do.

Q: So Mr. Samuel Anim Addo you will agree with me that the said audios and videos in which you are accusing the Plaintiff and others for a wrong doing are not before this Honourable Court.

A: I believe that is the discretion of the Court my Lord.

Q: I am suggesting to you that you have not tendered in any video or audio recordings before this Honourable Court.

A: My Lord as I said I reported Osarfo Anthony for extortion and the Police acted on that.

[57]. From the above testimony of 2nd Defendant three critical questions arise. First, why did 2nd Defendant not exhibit the publication Plaintiff allegedly caused to be made on GHbase.com that he had sex video of rape by 1st Defendant. Second, during cross examination of Plaintiff by Counsel for Defendants he asked the number of publications of the sex scandal made by Plaintiff but never made effort to get Plaintiff

to produce the publication from GHbase.com which 2nd Defendant stated in his witness statement that Plaintiff had *video evidence of the 1st Defendant raping one Sarah Kwabla* or to use the court to demand that Plaintiff produced the video evidence. Thirdly, if Nii Armah Amartefio was the person who told 2nd Defendant that he knew Plaintiff and Plaintiff had indicated to him that he will stop further publication of the rape story if 1st Defendant paid money to him why did Defendants not call him or subpoena as witness. The law is settled that a material witness whose evidence would have assisted the court immeasurably if not called clearly dealt a big blow to the parties' alleging's case. See: -i. ***Oppong vs. Anarfi [2011]1 SCGLR 556 per Akoto Bamfo JSC*** ii. ***Abed Nortey vs. African Institute of Journalism [2013-14] 1 SCGLR 698***

Also, if 2nd Defendant had actually been contacted on phone or by whatever means by Plaintiff for money in return for ceasing further publication why did 2nd Defendant not disclose the amount of money the Plaintiff and his alleged collaborators (Sarah kwabla and co) had actually demanded in furtherance of the extortion he complained to the Police.

[58]. At page 9 of his Written Address Counsel for Defendants made the following submission: *"Therefore one would ask the question whether the information given to the Police was reasonably probable. The answer is a big yes. Yes because true to the 2nd Defendant's apprehension of extortion, the Plaintiff actually met the 2nd Defendant and collected the money in the presence of the Police Officer. So, using a reasonable man's test, one would have no other option than to come to the conclusion that the Plaintiff was taking money to stop the vile publication against the 1st Defendant, an act the Police considered to constitute the offence of extortion*"

In the respectful and humble view of this honourable court the learned counsel has woefully misconceived the evidence regarding how the law was set in motion against the Plaintiff and is relying on their stage-managed entrapment evidence of Plaintiff having been caught in the very act of extortion. The court has already made finding that the supposed collection of money in the presence of the Police is not outcome of

investigation into a genuine complaint of extortion but deliberate and mala fide deployment of the criminal justice machinery by Defendants to further the false information of extortion orchestrated by the 2nd Defendant against Plaintiff.

[59]. I am cognisant of the well know legal maxim that a corroborated - evidence is to be preferred to an uncorroborated one See: **TONADO ENTERPRISES V. CHOU SEN LIN (2007 - 08) SCGLR 135**, **ZENABU V. NKRUMAH (20080 17 MLRG 137, SC Holding (2).** In the light of the foregoing evaluation of the evidence I make the following findings of fact:

a. The Plaintiff did not make any threat of publishing sex video of Asamoah Gyan raping Sarah Kwablah unless 1st Defendant paid him an amount of money.

b. Nii Amarh Amarteifio contacted Plaintiff and his alleged collaborators at the instance of Defendants with the view of using a promise of financial payment to compensate Plaintiff and his affiliated media platform, GHbase.com for loss of revenue from discontinuation of further publication of alleged rape and sodomy by the 1st Defendant, who is regarded as celebrity.

c. No evidence has been adduced in this court as well as proceedings from the circuit court as per Exhibit C that Plaintiff was in possession of sex video concerning 1st Defendant and Sarah Kwablah during the time that 2nd Defendant lodged the false complaint to the Police.

d. 2nd Defendant knew that no monetary payment had been demanded under threat of publishing sex videos of 1st Defendant when he lodged complaint with the Police and subsequently testified as PWI in **Exhibit C**.

This court will accordingly resolve issue (ii) in favour of Plaintiff and hold that Defendants acted without reasonable or probable cause when they set the law in motion with their false information that Plaintiff was plotting to extort money or extorting or had extorted money from 1st Defendant.

I now turn to issue (iii) on the requirement of malice by the Defendants in a claim of malicious prosecution.

Malice

[60] In the Supreme Court decision in **YEBOAH AND OTHERS v. BOATENG VII [1963] 1 GLR 182 at 189 Crabbe JSC delivering the unanimous opinion of the court remarked:**

> *The absence of reasonable and probable cause is in itself sufficient evidence of malice in cases where it is such that the jury may come to the conclusion that there was no honest belief in the charge made. If, however there was such an honest belief, the plaintiff must prove malice by some independent evidence.* ***Malice means not only spite or ill-will on the part of the defendant but any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice****. A plaintiff who proves malice but not want of reasonable and probable cause cannot succeed in his claim, because malicious motives may co-exist with a genuine belief in the guilt of the accused. "From the most express malice, the want of probable cause cannot be implied": Johnstone v. Sutton.13 The fact that the plaintiff was acquitted in the prosecution is not in itself evidence of malice.* ***The question whether the defendant was actuated by malice is one of fact****."*

[61] Similarly in Halsburys of law of England, 5th edition, Volume 97, 2015 at paragraph 728 it is stated:

> *A claimant in a claim for damages for malicious prosecution or other abuse of legal proceedings has to prove malice in fact' indicating that the defendant was actuated either by spite or ill-will against the claimant, or by indirect or improper motives. However, there is not malice merely because the claimant's conviction was a necessary step towards the defendant's fulfilment of some ulterior objective. The claimant has the burden of proving malice…A claimant who proves malice but not want of reasonable and probable cause still fails.* ***Malice may be inferred from want of reasonable and probable cause but lack of reasonable*** *and probable cause is not to be inferred from malice*. (references omitted and emphasis added)

[62]. It is worth noting that the element of malice in this tort of malicious prosecution has been widely interpreted so there is no just one particular way of satisfying this requirement to succeed in the claim of this nature. The English Court of Appeal in **HUNT V AB [2009] EWCA CIV 1092** has recently held per the Opinion of **Lord Justice Sedley at paragraph 14 thereof** that:

> *A witness who has convinced himself of critical facts, and whose testimony about them has secured a conviction which is later overset because he is proved to have been wholly wrong,* ***may well have acted without reasonable or probable cause but may equally have acted without malice****.(emphasis added)*

[63]. Although the facts of **HUNT V AB** (supra) are not immediately necessary for resolution of instant dispute, the case shares one thing in common with factual matrix of instant suit, namely allegation of sexual intercourse. AB, the respondent, is a married woman who allowed or invited the appellant, a work colleague, into her home for a cup of tea. An act of sexual intercourse took place which he has always asserted was consensual and she has always asserted was not. She did not go to the police, but some years later a colleague in whom she had confided did so. The police approached her and persuaded her to give evidence. The appellant was convicted of rape, but after he had served some two years in prison the conviction was overset. He then issued the present proceedings against AB for malicious prosecution. Enough of factual backdrop of **Hunt v AB**, I proceed to ascertain whether from the evidence adduced at trial Plaintiff discharged the burden with respect to malice.

[64]. The Plaintiff testified that 2nd Defendant made false complaint of extortion against him and his subsequent prosecution was without any desire or belief on the part of Defendants to bring Plaintiff to justice as no genuine complaint to the knowledge of 2nd Defendant existed regarding allegation that triggered his arrest and subsequent rehearsed drama culminating in his arrest under live video camera recording. This was

further corroborated by 2nd Defendant when he was vigorously cross examined by learned counsel for Plaintiff on 12/7/2023. This is what happened:

Q: *Mr. Anim Addo I am suggesting to you that the criminal prosecution at the Circuit Court terminated in favour of the Plaintiff.*

A: *My Lord I respect all Rulings of the Court and also doesn't mean that Mr. Osarfo Anthony and the 3 others didn't plan to extort money from Asamoah Gyan which the evidence is clear with recordings between the 3 of them that) mu b3 sa nkwae and a lot of discussions between the 3 of them which the Police has all the evidence of the recordings and even a video of Osarfo Anthony receiving money and cheque from myself when he met before the Police arrested him. At that juncture it was the Police duty to do their own investigations and at that level I have nothing to do.*

Q: *So Mr. Samuel Anim Addo you will agree with me that the said audios and videos in which you are accusing the Plaintiff and others for a wrong doing are not before this Honourable Court.*

A: *I believe that is the discretion of the Court my Lord.*

Q: *I am suggesting to you that you have not tendered in any video or audio recordings before this Honourable Court.*

A: *My Lord as I said I reported Osarfo Anthony for extortion and the Police acted on that.*

Q: *So you are actually reinforcing that it was your criminal complaint against the Plaintiff and the 3 others which triggered the Police to work?*

A: *I reported Osarfo Anthony when he demanded money from me so that he will stop publication of the publication he was carrying out on Asamoah Gyan, that is rape and other words that I don't want to use in the Court room.*

[65]. I find the 2nd Defendant to be evasive regarding material information to the theory of defence of Defendants to the case made by Plaintiff regarding presence of malice on part of Defendants when they set the criminal justice machinery in motion against him. If 2nd Defendant was being truthful regarding existence of audio and video recording

concerning plot of extortion and actual extortion by Plaintiff and his alleged collaborators (who were charged and acquitted with him in the criminal case) why did he not produce audio and video evidence to be examined and tested before this court. This court also finds it strange that if such materials existed, and were in custody of the police why didn't Defendants call or summon the Police investigator to appear and produce the supposed audio and video recording during the trial. It is pertinent to emphasis here that in **Exhibit C** (pages 4 and 10 thereof), the circuit court judge played certain audio recording of a series of a conversation alleged to be between the Plaintiff and his alleged conspirators planning to extort money from Asamoah Gyan tendered by the 2nd Defendant as PWI and proceeded to make finding that the they did not reveal any information that suggest plot of extortion.

[66]. Although, this court is not bound by specific findings of fact made by the circuit court apart from the ultimate verdict (of accused persons being guilty or not), this court did not receive any objection from Defendants regarding admissibility of **Exhibit C** and no adverse comment was also made regarding **Exhibit C** by Counsel for Defendants in his written address. To the extent that 2nd Defendant, who had testified in the circuit court and tendered audio recording (alluded to in page 4 of **Exhibit C**) , failed to produce the audio recording he has alluded to in his witness statement and also during his responses under cross examination in the instant case, this court draws the compelling logical inference that no different audio recording other than what 2nd Defendant (as PWI) tendered in the circuit court existed and 2nd Defendant also agreed with the finding by the circuit court judge that the said audio recording did not contain any information evidencing plot by Plaintiff and his alleged collaborators to extort money from any person. This court has already made a finding that the initial complaint of extortion was false and same was known or ought to have been known by Defendants. In the circumstances I base myself on the deliberate falsity of the complaint of extortion by 2nd Defendant and infer that Defendants set the criminal machinery in motion out of malice, that is to say, he wanted to achieve his own

purposes other than bringing alleged criminal to justice. The approach adopted by this court is consistent with the guidance provided the Supreme Court decision in **YEBOAH AND OTHERS v. BOATENG VII [1963] 1 GLR 182 at 189 as** well as the persuasive English Court of Appeal decision in Hunt v AB [2009] EWCA Civ 1092. Taking a global view of evidence adduced in this court including Exhibit C which was not faulted in any way by Defendants it is reasonable to surmise that in his capacity as manager for Asamoah Gyan, the 2nd Defendant wanted to manage public image of the 1st Defendant at the time that he had entered into contractual negotiations with a China based Football Club just around the same time Plaintiff and his GHbase.com as well as other media had started publishing allegation of rape and sodomy concerning 1st Defendant and Sarah Kwabla. I will accordingly resolve issue (iii) in favour of Plaintiff and hold that Defendants in setting the criminal machinery in motion against Defendant will malice.

Issue (iv): Whether or not the criminal proceedings were terminated in favour of the Plaintiff.

[67].As already noted in this judgment, a plaintiff in malicious prosecution case is required to prove that the antecedent criminal proceedings terminated in his favour. The court agrees with submission of learned counsel for Plaintiff at paragraph 25 of his Written Address that, the fact that the criminal prosecution in Court Case Number D2/60/16 terminated in favour of the Plaintiff is not in dispute, and as such requires no further illumination. At page 16 of **Exhibit C** held that: ***"All the Applicants are accordingly acquitted and discharged***". I accordingly make a finding that the antecedent criminal proceedings terminated in favour of the Plaintiff and so hold with respect to issue (iv).

Issue (v). Whether or not the Plaintiff suffered damage or any kind of injury as a result of the prosecution &

Issue (vi). Whether or not the Plaintiff is entitled to his claim.

[68]. I propose to deal with issues (v) and (vi) due to their organic relationship as there can be no relief in absence of damage suffered by Plaintiff. General damages for malicious prosecution typically refer to non-monetary losses that are more subjective in nature, such as emotional distress, damage to reputation, mental anguish, and suffering endured by the Plaintiff due to the wrongful prosecution. These damages are not easily quantifiable and are awarded to compensate for intangible harm. On the other hand, special damages for malicious prosecution are specific and quantifiable monetary losses incurred by the plaintiff as a direct result of the malicious prosecution. These may include financial losses such as legal fees, medical expenses, loss of income or earnings, travel expenses related to Court appearances, or any other measurable expenses directly linked to the wrongful prosecution. In essence, general damages compensate for the non-economic or intangible harm caused by the malicious prosecution, while special damages reimburse the Plaintiff for the concrete, measurable financial losses incurred due to the wrongful prosecution. The amount of money awarded as general damages for malicious prosecution can vary significantly depending on the specifics of each case, the extent of harm suffered by the Plaintiff, and the discretion of the court.

[69]. There isn't a fixed amount, as awards for general damages are based on the individual circumstances and the evidence presented during the trial. Thus in **MUSA AND ANOTHER v. LIMO-WULANA AND ANOTHER [1975] 2 GLR 290-301** the Court of Appeal stated in *"Holding (2) A prosecutor could not be made liable unless the plaintiff proved he had suffered damage and it was unfortunate that in this case the issue of damage was not tried as a preliminary issue.* ***The conditions for proof of damage were: (a) damage to one's fame as if the matter whereof one was accused be scandalous or (b) damage to one's person as where one was put in danger to lose one's life or limb or liberty or (c) damage to property as [p.291] when one was forced to expend money in necessary charges to acquit oneself of the crime of which one was accused. Thus a criminal charge brought and dismissed would only form the basis of an action for***

malicious prosecution if the charge was of a scandalous nature and reason demanded that the standard should be whether a reasonable man, hearing of the proceedings brought against the Plaintiff, would form the view that they were a damaging reflection on the "fair fame" of the Plaintiff. *The plaintiffs by their prosecution were not put in danger of losing their liberty; no scandal was alleged and no reasonable person in Limo village could have formed the view that the charge had injured their fair fame. They failed also to prove that they had spent any money in their defence. Their action therefore did not lie. Savile v. Roberts (1698) 1 Ld. Raym. 374; Wiffen v. Bailey and Romford U.D.C. [1915] 1 K.B. 600, C.A. and Berry v. British Transport Commission [1962] 1 Q.B. 306, C.A. applied".* (emphasis added)

[70]. The Plaintiff had burden of proof with regards to this element of malicious prosecution too. Having completely denied any damages suffered by Plaintiff in their Statement of Defence, learned counsel simply found it unnecessary to address the court on whether Plaintiff had met the evidential burden regarding this element of malicious prosecution. In his Witness Statement Plaintiff testified as follows:

> *10. Immediately I was arrested, various media houses made publications about me which lowered my reputation in the media landscape in Ghana and for that matter the whole world. The defamatory publications against me in the media are annexed hereto and marked as "Exhibit D series".*
>
> *11. Premised on my arrest on 29th July 2015, and subsequent prosecution which was occasioned by the Defendants, the online entertainment portal; GHBase.com I was reporting to stopped dealing with me which has caused me to lose my monthly allowances of GHø1000 then.*
>
> *12. I had an ambition to become a lawyer. So I applied for schools in Australia.*
>
> *13. By a letter dated 25th July 2016, I was offered admission to study BA Law and Society at The University of Western Australia. A copy of the offer of admission from The University of Western Australia is annexed hereto and marked as "Exhibit E".*

14. Again as a result of my prosecution warranted by the Defendants, I had to attend the criminal trial and could not travel to study my BA Law and Society.

15. That I pray this Honourable Court to grant me all the reliefs indorsed on my writ of summons, and also damages for subjecting me to this this full scale litigation when they could in fact have settled.

[71]. The above testimony was not contradicted or impeached in any way by Counsel for Defendants during cross examination of Plaintiff on 11/7/2023 for over two hours. The law regarding failure to cross examine a witness after he has given his evidence-in-chief or cross examine him on material point vis-à-vis the claim or defence is well settled. In the case of ***Takoradi Flour Mills v. Samir Faris [2005-06] SCGLR 882***, Ansah JSC referred to the case of ***Tutu v. Gogo, [Civil Appeal No. 25/67, dated 28th April, 1969, unreported digested in 1969 CC, 76]***, where Ollenu, JA stated thus:

"In law, where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination, and the opponent did not tender evidence to the contrary, the facts deposed to in the evidence are deemed to have been admitted by the party against whom it is led, and must be accepted by the court."

[72]. Similarly, the highly respected jurist, Brobbey J (as he then was), reiterated the principle in the case of ***HAMMOND V AMUAH [1991] 1 GLR 89*** that:

"The law is quite settled that where a party makes an averment and that averment is not denied no issue is joined and no evidence need be led on that averment. Similarly, when party has given evidence of a material fact and is not cross-examined upon it, he need not call further of that fact: see ***Fori v Ayirebi*** *(supra). Indeed it was also held in the case of Quagraine v Adams [1981] GLR 599, CA, that where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by failure to cross-examine."*

[73]. I have also examined defendants' Witness Statement and his responses during cross examination by Counsel for Plaintiff but have not come across any testimony

which contradicts the evidence provided by Plaintiff in his witness statement quoted above. I accordingly make the following findings regarding issue (v):

- first, the Plaintiff is a professional journalist who works part time with GHbase.com
- second, Plaintiff earns remuneration when his reports submitted to GHbase.com are published.
- Third, Plaintiff was earning monthly allowance of one thousand Ghana cedis (GH1000) from GHbase.com until his arrest and prosecution which made GHbase.com stop dealing with him
- Fourth, Plaintiff's arrest and prosecution for extortion was widely published by various media both traditional and online including Daily Guide, myjoyonline.com
- Fifth, the Plaintiff had been offered admission to pursue law programme in Australia after his arrest triggered by false complaint made by 2nd Defendant
- Sixth, no evidence was put before the court regarding acceptance of the admission offer by the Plaintiff as well as concrete steps to travel but for the criminal trial. No visa or air ticket was tendered by Plaintiff.
- Seventh, per **Exhibit D3**, the Plaintiff was detained in police cell for two days following his arrest consequent upon false and malicious complaint by 2nd Defendant.

[74] At paragraph 42-004 of **Mcgregor on Damages, (19th edition, Sweet and Maxwell) page 1685**, the learned editor, Harvey Mcgregor has stated:

> *The principal head of damages here is to the fair fame of the claimant, the injury to his reputation. In addition, it would seem that he will recover* ***for the injury to his feelings, i.e. for the indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him.*** *No breakdown, however, appears in the cases… In Calix v. Attorney General of Trinidad and*

Tobago (2013) UKPC 15) where a claimant sued for malicious prosecution on account of his prosecution on a charge of rape, followed by lengthy confinement in prison, after his acquittal on a related charge of robbery. Damages were held awardable both for the damage to reputation and for the loss of liberty.

[74] At page **1686** of **Mcgregor on Damages** (supra), the learned editor has further stated that

"for appropriate awards in respect of non-pecuniary loss, the basic damages, these being described as the damages before any element of aggravation, there was no concrete guidance until the decision of the English Court of Appeal in Thompson v. Commissioner of Police of the Metropolis. (1998) Q.B. 498 CA. for (1998) Q.B. CA. 514 G at 515 H Lord Woolf M.R., delivering the Judgment of the court, said:

"The figure should start at about £2,000 and for prosecution continuing for as long as two years. …. About £10,000 could be appropriate. If a malicious prosecution results in a conviction which is only set aside on an appeal this will justify a larger award to reflect the longer period during which the claimant has been in peril and has been caused distress".

Decision of the Court

[75] As already indicated the Plaintiff had the burden of proof to prove all the elements of malicious prosecution on preponderance of probabilities. In Re B [2008] UKHL 35, Lord Hoffman clarified the operation of the civil standard of proof using a mathematical analogy:

"If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden

of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

The court is persuaded on the evidence adduced in this trial that Plaintiff discharged the burden of proof on each of the issues set down as well as on the entire claim. In the context of Lord Hoffman's mathematical analogy this court here returns value of 1 and hold that the Defendants maliciously set the criminal justice machinery in motion against Plaintiff without reasonable and probable cause causing the Plaintiff to suffer humiliation, emotional distress, damage to reputation, mental anguish, and suffering endured due to the wrongful prosecution. It is further held that Plaintiff lost his monthly earning from GHbase.com.

At paragraph 734 of Halsburys Laws of England (supra), the learned editor has stated that Damage needs to be shown for malicious prosecution claim to succeed... Once one of the heads of damage is proved, damages are at large and may include compensation for loss reputation and injured feelings.

In the case of **ATTORNEY-GENERAL V. FAROE ATLANTIC CO. LTD [2005-2006] SCGLR 271** Dr. Twum JSC stated as follows at page 290 of the Report; "General Damages are such as the law will presume to be natural or probable consequence of the defendant's act. They arise by inference of the law and need not therefore to be proved by evidence." The settled position of the law is that General Damages are at large, meaning the court will award a reasonable amount having regard of the circumstances of the case. A court may award nominal damages under General Damages where no real loss has been occasioned by the infringement of a right, or award substantial damages where actual loss has been caused to the Plaintiff

Accordingly, I enter Judgment for Plaintiff and hereby award Nine Hundred Thousand Ghana Cedis **(GH₵900,000.00)** as general damages. Having regard to the fact that Plaintiff was earning one thousand Ghana cedis **(GH₵1,000.00)** monthly from GHbase.com when he lost that relationship with GHbase.com following his arrest in July 2015 and subsequent prosecution I will award him GH₵1,000.00 each month for 101 months (that is July 2015 to December 2023) making aggregate measurable lost income as one hundred and one thousand Ghana cedis **(GH₵101,000.00).**
Cost of **GH₵**60,000.00 agreed by the parties is awarded against Defendants in favour of Plaintiff.

EPILOGUE:

Freedom of expression and its related media freedom is a very important human right which goes to the very root of our society. Freedom of expression and media freedom are crucial rights that form the backbone of our society. They allow individuals to voice their opinions, ideas, and concerns without fear of censorship or retribution, fostering open dialogue and diverse perspectives within a community or nation. The new media, internet, various social media platforms, have actually changed the way journalism is done. And for that matter, it is not uncommon for special websites dedicated to celebrity news to be operated so that various things in the area of entertainment, lives of celebrities, including matters from their public and private life.. When it comes to telling stories or reports about celebrities, everything about them is often brought into the news for members of the public to laugh, to admire, or even sometimes to criticize them.

The coverage of celebrities in media often encompasses various aspects of their lives, inviting public reactions that range from admiration to criticism. In countries like the United Kingdom, even the private lives, including intimate details, of royalty and public figures are reported on by both traditional and new media outlets. This reflects

the exercise of freedom of expression and free speech, which are vital for an open and democratic society.

Journalists, using various media platforms, regularly publish stories about celebrities from different walks of life—be it footballers, musicians, or other fields—making every facet of their lives subject to public scrutiny, including allegations of misconduct or impropriety. This broad coverage indeed illustrates the complex nature of freedom of expression within a society. Certainly, when it comes to free speech, freedom of expression, and freedom of the press, it presents a challenge with individuals' right to privacy and dignity. Therefore, in a democratic society, a fine balance has to be negotiated. On the one hand, there is the need for there to be uninhabited expression of ideas, which will promote pluralism and foster debates, and enhance democratic culture, essential for the existence of all modern civilized societies.

However, individuals are also protected in their reputation as they can use the law of defamation, that is, civil law of defamation, where falsehood is published about them, which tarnishes or lowers their reputation in the mind of right-thinking members of society. And for that matter, where a journalist or someone who practices as a media professional publishes a story about an individual, be it a celebrity or any public person, and the story appears to be untrue and damages reputation of that celebrity, the celebrity or the affected individual is very much entitled to invoke the civil suit of defamation to protect his injured reputation. However, we need to discourage the baseless recourse to the criminal justice system for trying to gag a free expression of ideas by journalists.

(SGD)

H/L. JUSTICE DR. ERNEST OWUSU-DAPAA

(JUSTICE OF THE COURT OF APPEAL)