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# MALICIOUS PROSECUTION

**Case Title:** Anthony Osarfo v. Asamoah Gyan & Anor.  
**Suit No.:** GJ/1350/2020  
**Date:** 8TH DECEMBER 2023  
**Court:** High Court (Financial & Economic crime Division “1”  
**Coram:** Dr. Ernest Owusu-Dapaah JA

## 1. RELEVANT FACTS

The Plaintiff commenced the instant suit against the Defendants, Asamoah Gyan and his manager Samuel Anim Addo, as 1st and 2nd Defendants respectively, on 24th August 2020, claiming an award of GHS 1,000,000.00 in addition to cost of the action, for instituting what plaintiff contended was a malicious case against him before the Circuit Court, Accra. The case of the Plaintiff stated briefly was that the Defendants made a false claim of extortion against him and two others at the Airport Police Station in Accra. That the said complaint of extortion was without any reasonable basis in law and on the facts and was actuated by malice. The Plaintiff further contended that the said complaint and the subsequent criminal prosecution, which terminated in his favour, caused him unbearable hardship, both to his reputation, earning and further opportunities.

Plaintiff further contended that at the time the Defendants filed the criminal complaint with the Police against him, they had no evidence to prove any of the allegations they levelled against him and yet went ahead to testify in court against Plaintiff in the criminal trial in support of the false charges. The Defendants on the other hand contended that they only lodged a criminal complaint with the police and that the subsequent investigation and prosecution by the police was a result of and based entirely on the independent investigation and assessment of the chances of the case made by the Police and to that extent, the Defendants could not be held liable for any loss that the Plaintiff claims to have suffered.

## 2. High Court Decision

After a full trial, the Court, presided over by Dr Ernest Owusu-Dapaa JA, Justice of the Court of Appeal, sitting as additional High Court Judge, held in favour of the Plaintiff and awarded him Nine Hundred Thousand Ghana

Cedis (GH¢900,000.00) as general damages, GH¢101,000.00 as lost earnings for the period between July 2015 to December 2023, and cost of GH¢60,000.00 agreed by the parties. The trial High Court founded its decision on a number of legal and factual considerations and findings including the following.

- A. *“...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... 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).*
- B. *“...that the supposed collection of money in the presence of the Police is not the 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... 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.”*
- C. *“...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 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.”*

### **3. Observations**

This decision of the High Court no doubt throws a very important light on a very important, but perhaps one of the least discussed areas of our tort law, which is the tort of malicious prosecution. The court remarkably set out an extensive review of the common law history of this tort and its contemporary manifestations in other jurisdictions, including Australia and New Zealand and to that extent serves as a great resource, especially for law students. It also highlights

not only the citizens' duty to report crime, but also the responsibility to ensure that at all times, the factual basis of the criminal complaint is well grounded in law, made in good faith, and can stand the test of the acidic test of the criminal justice system.

On the material facts of this case, the relevant question, which the trial High Court resolved in favour of the Plaintiff was whether or not at the time the Defendants lodged the criminal complaint against the Plaintiff, they had any reasonable belief that the offence of extortion had in fact been committed by the Plaintiff. From the evidence adduced at the trial, and the various admissions made by the 2nd Defendant under cross-examination, it became clear that the 2nd Defendant first filed the criminal complaint and then attempted to elicit the support of the police to compile evidence of the offence in respect of which he had already filed the complaint. The High Court was therefore, right when it held that at the material time that the 2nd Defendant filed the complaint with the police, he had no reasonable belief that an offence has in fact been committed by the Plaintiff, and that he highjacked the criminal justice system to his advantage and used it to oppress and maliciously prosecute the Plaintiff without any just cause whatsoever.

One however wonders, in light of the sentiments expressed by the court, whether or not the recourse to the criminal justice system by the Defendants in this case was the better option as against mounting a civil action in defamation. This is because, if the allegation of rape and sodomy against the 1st Defendant, allegedly published by the Plaintiff were in fact untrue, and the Defendants were to prove that, then indeed, an action in defamation stood a better chance of succeeding, than a charge of extortion when at the material time, the essential evidence to prove that offence was not available to the Defendants.

The court has no doubt expanded on the jurisprudence on malicious with this decision. An, appeal, if any is filed at all, may further give the superior courts the opportunity to define the contours of the law and broaden our understanding of this area of the law.