CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 17TH MAY, 2023

SUIT NO. C11/110/21

ERIC KWABENA ASIEDU - PLAINTIFF

VRS

JAMES KOJO ASARE - DEFENDANT

JUDGMENT

In his writ of summons and Statement of Claim which were filed at the registry of this court on the 26th day of April, 2021, the Plaintiff sought the following reliefs;

1. An amount of ten thousand United States Dollars (US$ 10,000) or its cedi equivalent, the same being the debt due and owed by the Defendant to the Plaintiff
2. Interest on the said amount at the prevailing commercial rate continuing and till the date of final payment
3. Costs.

The Defendant per his Statement of Defence and Counterclaim filed on the 5th day of April, 2022 counterclaimed for;

1. Damages for false imprisonment.
2. Costs.

At the application for directions stage, these issues were set down for trial;

1. Whether or not the Defendant had knowledge that the US$10,000 that he delivered to Plaintiff's brother in South Korea was for the purpose of importing used vehicles from South Korea to Ghana for same to be sold.
2. Whether or not Defendant misrepresented and lied to Plaintiff that he had given and or delivered the amount of US$10,000 to Plaintiff's brother in South Korea.
3. Whether or not Plaintiff is entitled to a refund of the amount of US$10,000 plus accrued interest therein.
4. Whether or not the Defendant disclosed the amount of US$10,000 which he was taking out of the country to the Ghana Immigration Service.
5. Whether or not the movement of US$10,000 from the country by the Plaintiff was lawful.
6. Whether or not the action is statute barred.
7. Whether or not the Plaintiff's actions in causing the arrest and detention of the Defendant by the police was malicious.

THE UNDISPUTED FACTS

The undisputed facts of this case are that sometime in November, 1999, the Plaintiff handed an amount of ten thousand united states dollars to the Defendant. At the time, the Defendant was travelling to South Korea and Plaintiff had an elder brother who was in South Korea. The purpose of the money was for the Defendant to hand it over to Plaintiff's brother who was to use it to purchase vehicles to be shipped to the Plaintiff for sale in Ghana.

Defendant returned to Ghana in December of the same year. Prior to his return, he had informed the Plaintiff via a phone call that he handed the money to his brother. The

Plaintiff's brother did not purchase any vehicles and believing that his brother had betrayed his trust, the Plaintiff ceased all form of communication with the said brother.

Meanwhile, Plaintiff and Defendant remained good friends and kept in touch through the years. In December, 2020, Plaintiff's family met to reconcile issues with his brother and at the said meeting, his brother made it known that he had never received the sum of US$10,000 from the Defendant.

The Plaintiff caused the arrest of Defendant. Defendant was detained in cells for some days and then arraigned before the LEKMA District Court for trial on a charge of fraudulent breach of trust. Defendant insists that he handed over the money to Plaintiff's brother in Korea in 1999.

THE CASE OF THE PLAINTIFF

Plaintiff's case is that after finding out at the family meeting held to reconcile him and his brother that the Defendant had acted fraudulently and or deceitfully, he reported the matter to the police. He tendered in evidence EXHIBIT A as a copy of the statement he made to the police.

He contended that the Defendant acted in a fraudulent manner to prevent him from enjoying the fruits of his labour. The Defendant was admitted to bail and he pleaded with the police officer to allow him to refund the amount to the Plaintiff on 18th January, 2021, but he has failed to do so.

THE EVIDENCE OF PW1

PW1 is the elder brother of the Plaintiff who was in South Korea at the time of this incident. His evidence in sum is that he never received the sum of US$10,000 from the

Defendant in November, 1999, and that for reasons unknown to him, communication between him and Plaintiff broke down for some time and it was at a family meeting to reconcile them in December, 2020 that he got to know why the Plaintiff refused to talk to him. He accompanied the Plaintiff to the police station to write a statement. He tendered same in evidence as EXHIBIT B.

THE CASE OF THE DEFENDANT

Defendant insists that when he arrived in Seoul in November, 1999, he contacted PW1 through the telephone number provided to him by the Plaintiff, and that being his first time in South Korea, he could not have located PW1 without those details. Defendant said that Plaintiff did not disclose to him the purpose for the money.

Defendant further contended that PW1 came to him the next day at a scrap yard where he was lodging and he handed the money to him. PW1 counted the money and he tried to call Plaintiff in the presence of PW1 but there was no response. It was after mid night in Ghana. Defendant later called Plaintiff to confirm that he had handed the money to PW1.

Defendant returned to Ghana on 3rd December, 1999 and duly informed Plaintiff. He tendered in evidence EXHIBIT 1 as a copy of his passport page indicating his date of return to Ghana. Defendant said that he lost contact with Plaintiff between 2008 and 2015. They established contact again in 2015 but Plaintiff did not make any complaint. That he remained in constant touch with Plaintiff, and it was on 1st January, 2020 that the Plaintiff for the first time claimed that PW1 alleged that he never received the money.

Defendant said that Plaintiff drove him to the police station and used his national security connections to have him detained in custody by the police, and this was malicious. He contended that because of the actions of the Plaintiff, he was wrongly incarcerated and deprived of his liberty, and his credibility, character and reputation suffered injury. He also says he suffered mentally and this greatly affected his business, as he suffered loss and damage.

Defendant says he made a business proposal to the Plaintiff, and shortly after he made progress in the said business, the Plaintiff filed the ridiculous report to the police. He was placed under severe duress by the Plaintiff and the policemen using the plaintiff's influence within the governing political party. That in fear of his life, he had to promise to refund the money in order to avoid further incarceration even though he had given a statement to the police maintaining that he had duly delivered the money to PW1 in 1999.

He tendered in evidence EXHIBIT 2 as a copy of his statement to the police. Finally, that assuming without admitting that the allegations of the Plaintiff were true, his actions are statute barred. He tendered in evidence EXHIBIT 3 series as pictures of his construction equipment.

CONSIDERATION BY COURT

The Plaintiff is making a claim to certain reliefs in this court. In order for him to be entitled to any of his claims, he has a duty to produce sufficient evidence of such quality, relevance and credibility that would establish on a balance of probabilities, the existence of his claim in the mind of the court. It is only when he has been able to discharge that burden, that the burden of proof would shift unto the Defendant to lead

sufficient evidence to avoid a ruling against him on the issue (s). See ***section 11 and 12 of the Evidence Act, 1975, Act 323.***

The Defendant, having counterclaimed, bore the same burden of proof as the Plaintiff with regard to his counterclaim. The law according to ***section 14 of the Evidence Act 1975, Act 323*** is that unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting. This burden of persuasion is the obligation of a party to establish a requisite degree of belief on a balance of probabilities concerning the existence or non existence of a fact in the mind of the tribunal of fact or the court.

The burden of proof is that of a balance of probabilities. In the case of ***Emmanuel Osei Amoako v. Standford Edward Osei [2016] DLSC 2830,*** the erudite Appau JSC speaking for the Supreme Court held: *"It is trite learning that a bare assertion by a party of his pleadings in the witness box without more is no proof. Proof in law has been authoritatively defined as the establishment of facts by proper legal means. As the celebrated Ollenu, J (as he then was) stated in his judgment in the case of Khoury and Another v Richter, which he delivered on 8th December 1958 (unreported), on the question of proof, which he repeated in the case of* ***Majolagbe v Larbi & Anor [1959] GLR 190 at 192****; "where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true …".* See also the cases of ***International Rom Ltd. v. Vodafone Ghana Ltd. & Another [2016] DLSC 2791.***

I would first consider issue six, for its determination would guide the court as to whether or not it is relevant to consider all the other issues set down for trial.

1. **Whether or not the action is statute barred.**

Section 4 (1) of the Limitation Act, 1972, Act 54 provides that

(1) A person shall not bring an action after the expiration of six years from the date on which the cause of action accrued, in the case of

(a) An action founded on tort other than an action to which sections 2 and 3 apply

(b) An action founded on a simple contract

(c) An action founded on a quasi-contract

(d) An action to enforce a recognizance

(e) An action to enforce an award, where the arbitration is under an enactment other than the Arbitration Act, 1961(Act 38); or

(f) An action to recover a sum of money recoverable by virtue of an enactment, other than an action to which sections 2 and 5 apply.

Section 4 (1) limits a person's right to bring an action six years "from the date on which the cause of action accrued''. The argument of the Defendant is that even if the Plaintiff's claims are true, and he insists they are not, his actions which are based on misrepresentation and fraud are statute barred.

From the undisputed facts, the Plaintiff handed the sum of US$10,000 to Defendant on the 16th day of November, 1999 for him to deliver same to his brother; PW1 in South Korea. Defendant says he delivered the money to PW1 on 19th November, 1999, a day after he arrived in South Korea.

Per EXHIBIT 1 which is the passport page of Defendant, he returned to Ghana on 3rd December, 1999. The Plaintiff reported the matter to the Sakumono police in January, 2021 and took the instant action in April, 2021. Thus a simple calculation of the time the money was to be handed over to PW1 in November, 1999 till the Plaintiff instituted this action in April 2021 is a little over twenty one years.

An accrual of cause of action requires the party making a claim to have been aware of all the factors or elements that give a rise to his/her claim. Those elements must give rise to a complete cause of action otherwise the claim of a Plaintiff would be dismissed for not disclosing a reasonable cause of action.

The case of ***Bruce v. Oddhams Press Ltd [1936] 1 KB 712*** provides that "material facts are facts necessary for the purpose of formulating a complete cause of action''. A Statement of Claim must also disclose an accrued cause of action in every plaintiff and liability in every named defendant. See the case of ***Morkor v. Kumah [1998-99] SCGLR 620***.

As the Plaintiff's claim is that it was only in December, 2020 that he became aware of Defendant's deceit and misrepresentation, it stands to say that he did not have knowledge of the alleged misrepresentation prior to that time. He could thus not have had complete cause of action against the Defendant, prior to December, 2020.

Upon these considerations, I hereby hold that the action is not statute barred.

I would consider issues two and three together

1. *Whether or not Defendant misrepresented and lied to Plaintiff that he had given and or delivered the amount of US$10,000 to Plaintiff's brother in South Korea*

2. *Whether or not Plaintiff is entitled to a refund of the amount of US$10,000 plus accrued interest therein.*

Plaintiff's case is that the Defendant had by his actions defrauded him. As fraud is a crime, the standard of proof required of Plaintiff shifted to one beyond reasonable doubt. In the case of ***Aryeh &Akakpo v. Aya Iddrisu [2010] SCGLR 891***, the apex court held that "the rule in section 13(1) of the Evidence Act, 1975 (NRCD 323), emphasizes that where in a civil case crime is pleaded or alleged, the standard of proof changes from the civil one of the balance of probabilities to the criminal one of proof beyond reasonable doubt''.

The claim of the Plaintiff is that after he reported the matter to the police and the Defendant was arrested, Defendant pleaded for time to pay the money but has since not paid same. He tendered in evidence EXHIBIT A as the statement or complaint that he gave to the police.

As EXHIBIT A is his own statement to the police, it cannot meet the requirements of proof of a crime. Indeed, it is a legal known that a complaint to the police does not equate to proof of an offence more so to conviction for an offence. Evenly, an arraignment of a person before a court on a charge does not constitute proof of a crime. I thus place very little weight on EXHIBIT A.

I would now proceed to the evidence of the Plaintiff. His evidence is that the Defendant misrepresented to him that he had handed the money to PW1 in November, 1999 when indeed that was not true. That it was only in December, 2020 that he realized the misrepresentation by Defendant. PW1 testified as the said brother of Plaintiff and said the Defendant did not give him the money in November, 1999 or anytime thereafter.

Plaintiff concedes that at the time of handing the US$10,000 to Defendant to be given to his brother, he had not communicated with his brother to inform him that Defendant was bringing him the said money.

Under cross examination by learned counsel for the Defendant, he further explained at page 19 of the record of proceedings;

> *Q: And you would agree with me that your brother purportedly knew that money was being sent to him?*
>
> *A: My brother did not know because at the time, we had lost communication. We spoke a month after he left but he moved to a different place and we lost communication.*
>
> *Q: Per your answer, you gave US$ 10,000 to Defendant to be given to your brother. When you had absolutely not communication with your brother?*
>
> *A: Yes please. In 1998, I went to Korea. That was my first time. I went to import cars into the country. Within three (3) days, although I did not know anyone, I got to know about all the garages where Ghanaians frequent. Thus as the Defendant knew my brother in Ghana for about 6 or 7 years, I told him to look for my brother in any of these garages and then hand him the money.*

At page 22 of the record of proceedings, he had answered;

> *Q: You earlier told this court that there was no communication between you and your brother prior to sending the money to him. Is that correct?*
>
> *A: My Lord, my brother left in September and I spoke to him at the end of September. I did not hear from him again. It was in November that Defendant came to me that he was going to Korea and so I gave him the money to look for my brother and give it to him.*

The question any reasonable man would ask is this; why would the Plaintiff hand over the colossal sum of US$10,000 at the time to Defendant to be given to PW1 when he had no idea of the whereabouts of PW1 and had lost contact with him? Plaintiff by his answer knew that PW1 had moved to a different location before Defendant left for South Korea.

The only inference is that since he was not in South Korea, he had knowledge of PW1's relocation either because PW1 or some other person had told him this. He wants this court to believe that he had not bothered to find out where PW1 had relocated to and had also not communicated to him for more than six weeks and yet he gave US$ 10,000 to be given to PW1.

What makes the claim of Plaintiff more uncanny is his evidence that PW1 was not expecting him to send the money and he had also not given Defendant a list of vehicles for PW1 to buy with the money. At pages 19, 21 and 22 of the record of proceedings, he had answered under cross examination by learned counsel for the Defendant;

Q: And you would agree with me that your brother purportedly knew that money was being sent to him?

A: My brother did not know because at the time, we had lost communication. We spoke a month after he left but he moved to a different place and we lost communication.

Q: You would further agree with me that when the Defendant agreed to deliver the US$ 10, 000 to your brother, you did not give him a list of vehicles that you intended your brother to buy?

A: Yes My Lord.

Q: You would further agree with me that since you had no communication with your brother before you sent the money to him, he would not know what you wanted him to use the money for?

A: My Lord, that is not so.

PW1 answered under cross examination at page 33 of the record of proceedings;

Q: *Did your brother talk to you about his intentions of sending you US$ 10,000 for the purposes of importing vehicles?*

A: No please. He did not.

Q: Did your brother know your address in Korea?

A: No please.

From PW1's answer, he did not know or expect Plaintiff to send him US$ 10,000 for the purchase of vehicles.

Plaintiff by the test of reasonable probability wants the court to believe that PW1 was not expecting him to send any money. He had lost contact with PW1 for over six weeks prior to the Defendant travelling to South Korea. He had knowledge that PW1 had relocated from where he was initially staying but did not know exactly where to and yet, he handed over US$ 10,000 to Defendant to be given to PW1 without any telephone number or contact details of PW1 and with no instructions as to what PW1 was to use the money for.

He also did not hear from PW1 after Defendant informed him that he had handed the money to him and he did not contact him. Defendant had under cross-examination by learned counsel for the Plaintiff at page 40 of the record of proceedings answered;

Q: And I also suggest to you that Plaintiff only got to know about the non-delivery of the money in 2020 when the family members gathered to reconcile the difference between the Plaintiff and Amponsah.

A: It is not true. I was in Korea for two weeks and arrived in Ghana on 3rd December, 1999. I had loaded my container. Even before I finished loading my container, I kept calling the Plaintiff for the items that I could buy which would sell quickly because he was already in the field. If he had not heard from his brother Amponsah from the 19th November, 1999 up to the 3rd December, 1999 when I arrived in Ghana, he would have told me. My shop is at Community 1, Presby and his shop is at Community 1, Meridian, so we are on the same route. Again, as a young man who had travelled, I was all over Tema and so everywhere you go, you would find me so when I came, I was with the plaintiff all along and he says now that he had not heard from the brother.

Plaintiff does not dispute this claim of Defendant that he stayed in touch with him whilst in South Korea to seek his advice as to which goods would sell quickly. More importantly, he admits that he was aware and in touch with Defendant when he returned to the country in December, 1999. The question any reasonable man would ask is, since he had not spoken to PW1 all this while, why did he not mention it to Defendant?

One would have expected him to confront Defendant immediately with this important issue of PW1 not calling to confirm receipt of the money. That Plaintiff never did this in itself is an indication that he believed PW1 had received the money from Defendant.

What is even more bizarre is that even though he and PW1 are brothers, he never informed any member of their family about this; not even PW1's wife whom he says

used to come to his house at the initial stages to be able to connect with PW1 on phone. Plaintiff had answered at page 23 of the record of proceedings;

Q: You would agree with me that you never reported to your brother's wife or any other member of the family that your brother had spent your money or failed to buy the cars you asked him to?

A: That is so.

On PW1's part, I find it fictional that even though he never received any money from Defendant and he knew very well that it was the Plaintiff who sponsored his trip to South Korea, he never called the Plaintiff when he was in South Korea after the expiration of his one-month visa. He never also took any steps to find out why Plaintiff had ceased communication with him. I would pause here to ask; if PW1 did not communicate with Plaintiff when he decided to overstay his one-month visa in South Korea, how did Plaintiff know that he had relocated?

PW1 says he returned to Ghana before his mother's funeral in 2006. At page 34 of the record of proceedings, PW1 had answered;

Q: Before the funeral of your late mother in 2006 did you even meet your brother anywhere?

A: No. I never met him anywhere.

Q: Did you attempt to report to him the outcome of your trip to Korea?

A: My Lord, I never saw his face to even talk to him.

Q: Did you try calling him?

A: When I came to Ghana, I did not know his contact and so I did not contact him.

He did not get in touch with Plaintiff even though Plaintiff was the one who sponsored his trip to South Korea, to put him in the know that he had returned to Ghana. After so many years of being away and not staying in touch, I find it quite odd that he made no attempt to get in touch with the Plaintiff for him to even know that the Plaintiff was cross with him.

The circumstances become particularly peculiar when both Plaintiff and PW1 say their mother died in 2006 and they attended the funeral. That means their mother was alive in 1999 through to sometime in 2006 and yet Plaintiff had never informed her of the fact as he believed it to be, that is, that he sent US$ 10,000 to PW1 through Defendant and PW1 did not use the money for its purpose.

What is even more uncanny is that Plaintiff and PW1 still never communicated with each other after the death of their mother. I say so because it is of judicial notice that funerals by custom are well planned in Ghana and the death of a mother would mean that all the children and the extended family would make plans towards the funeral. All this time, the Plaintiff and PW1 did not speak and nobody in their family knew why. Plaintiff never informed anybody of what he believed PW1 had done and PW1 also never went to any family member to intercede on his behalf and find out why Plaintiff was not speaking to him.

PW1 says at their mother's funeral, a misunderstanding occurred between him and Plaintiff that made him leave the funeral before its completion. They both want this court to believe that whatever the misunderstanding was which was so great as to make PW1 leave his own mother's funeral, the Plaintiff had never mentioned the US$ 10,000 which he believed PW1 had misappropriated.

Also, that between that incident in 2006 until 2020, Plaintiff had not mentioned the cause of his fracas with PW1 to their family members until their nephew called a meeting to reconcile them.

It is said that truth is stranger than fiction, but a court of law relies on evidence and it is based on evidence that the truth although strange, may come to be accepted as a fact. The truth that Plaintiff wants this court to believe is neither backed by evidence nor reasonableness. It does not even meet the test of reasonable probability, and for fraud which requires proof beyond reasonable doubt, I find that the Plaintiff has failed to lead sufficient evidence to establish his claim in my mind. The evidence does not establish that the Defendant misrepresented and lied to Plaintiff about handing the sum of US$ 10,000 to PW1.

The evidence of the Defendant appears more reasonably probable, that the Plaintiff gave him the money together with the contact number of PW1. That as it was his first time of travelling to South Korea, he would not have known where to find PW1 but for the contact details. He maintained this under cross examination and was not challenged.

After giving the money to PW1, they both called Plaintiff but as it was after midnight in Ghana, he could not answer. He called the Plaintiff later to tell him he had handed the money to PW1 and stayed in touch with Plaintiff as he needed advise on what items to purchase for his own business since Plaintiff was already in the same business. That upon his return to Ghana on 3rd December, he remained in touch with Plaintiff and Plaintiff never mentioned that he had not given the US$ 10,000 to PW1 in November, 1991.

As it is the Plaintiff who asserted, he had a duty to lead material, cogent and relevant evidence to establish the existence of his claim in my mind. Both Plaintiff and his witness simply repeated their claims on oath. As Plaintiff's claim was denied, he was under an obligation to produce ''*documents, description of things, reference to other facts, instances or circumstances and …other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true''*. This Plaintiff failed to do.

After a careful consideration of Plaintiff's case, I find on a balance of probabilities that he has failed to establish the existence of his claim in my mind. I hereby hold that he is not entitled to his claim. Consequently, I hereby proceed to dismiss his claim *in limine*.

Having dismissed the claim of Plaintiff, I find that issues one, four and five are moot and there would be no need to consider them.

3. The final issue is whether or not the Plaintiff's actions in causing the arrest and detention of the Defendant by the police was malicious.

Prior to determining this issue, it is opportune to note that after setting down the issues for trial, the Defendant amended his statement of Defence with leave of the court and amended his initial counterclaim for "damages for false imprisonment and malicious prosecution'' to "damages for false imprisonment". The issues for trial were set down on 6th October, 2021 and the Defendant with leave of the court amended his Statement of Defence on 5th April, 20222. That being the case, I hereby amend the issue to be *"whether or not the Plaintiff's actions in causing the arrest and detention of Defendant by the police constitutes false imprisonment''*.

I am fortified in my decision by the legal known that although a court cannot unilaterally abandon the issues set down for trial in favour of his/her own issues, where a crucial issue emanates from the pleadings which are not contained in the agreed issues, the court must address same.

Georgina Wood C.J. (as she then was) held in the case of ***Fatal v. Wolley [2013-2014] 2 SCGLR 1070*** as follows: *"It is sound learning that courts are not tied down to only issues identified and agreed upon by the parties at pre-trial. Thus, if in the course of the hearing, an agreed issue is clearly found to be irrelevant, moot or even not germane to the action under trial, there is no duty cast on the court to receive evidence and adjudicate on it, the converse is equally true. If a crucial issue is left out, but it emanates at trial from either the pleadings or the evidence, the court cannot refuse to address it on ground that it is not included in the agreed issues*." See the cases of ***In Re Asamoah (Deceased); Agyeiwaa & Ors. v. Manu [2013-2014] 2 SCGLR 906***.

The Defendant as the assertor bore the burden of establishing his claim in the mind of the court. According to him, on the 1st day of January, the Plaintiff invited him to his house under the pretext of a business deal and upon reaching there, confronted him about not delivering the money to his brother in November, 1999. Thereafter, the Plaintiff drove him forcibly to the police station at Sakumono and lodged a complaint. He alleges that Plaintiff used his national security connections to ensure that he was kept in police custody, and that after some days in custody, he was admitted to bail and put before Court on a charge of fraudulent breach of trust.

The Plaintiff does not challenge this evidence of the Defendant. Indeed, in his Reply and Defence to Counterclaim, Plaintiff did not deny that he invited the Defendant to his house under the pretext of doing business and arrested him to the police station. He

rather denied using any influence within the ruling NPP government, National Security or Ghana police service against the Defendant.

From Plaintiff's own EXHIBIT A, it is manifestly evident that even though he drove the Defendant to the police station on 1st of January, 2021, he made his complaint to the police on the 2nd day of January, 2021 and the Defendant's statement was taken on the even date. PW1's statement per EXHIBIT B was taken the next day i.e 3rd January, 2021.

Thus Defendant spent a night in police cells without any official complaint from the Plaintiff. As to how this happened, the evidence of Defendant under cross examination at page 42 of the record of proceedings is that;

Q: And I suggest to you that Plaintiff never used the police to harass you as you claim.

A: He did. He arrested me to the Sakumono police station and said he was a National Security personnel and so they did not accept anything that I said. He insisted that the police lock me up in cells and so when he returned the next day and saw me at counter back, he insisted that they lock me in the cells.

Q: I put it to you that plaintiff has no control over the police to direct them.

A: On the day, he had control over them.

Clearly, as at 1st January when the Defendant was kept overnight in custody, there was no legal basis for same. In this court, the Plaintiff gave evidence at page 18 of the record of proceedings that he works with National Security. Although that alone is not an indication that he used the position to get the police to detain the Defendant, I generally found the Defendant to be truthful in his evidence on the matter. He testified of the events that happened at the police station with conviction and provided other details

and circumstances of the event from which the court could infer the veracity of his claim.

The Plaintiff lodged a complaint on the 2nd day of January, 2021 and the matter is currently before a District Court. There being no indication as to the decision of the court, I would hesitate to analyse the events after the complaint. In any case, the Defendant simply says he was kept in police custody for some days without being specific as to the number of days.

False imprisonment is defined in ***Clerk and Lindsell on Torts (11th ed.), p. 269, para. 420*** to be this:

"A false imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. Imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man's own house, as well as in the common goale; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail or main prize or otherwise'."

In the case of ***Mansour v. El Nasr Export &Import Co. [1963] 2 GLR 316 -327*** where Prempeh J. quoted with approval Salmond on Torts (12th ed.), p. 301 that:

"An action for false imprisonment will lie against any person who authorizes or directs the unlawful arrest or detention of the Plaintiff by a merely ministerial officer of the law. He who sets in motion a merely ministerial officer, such as a constable, has no protection similar to that which is extended to the litigant in a court of justice. If he makes that ministerial officer his agent he is responsible for any arrest or detention so procured or authorised. It is necessary to prove actual direction or authorization; mere

information given to such an officer, on which he acts at his own discretion, is no ground of liability."

I find that the Plaintiff after forcibly imprisoning the Defendant in his car and driving him to the police station caused the arrest and detention of the Defendant by the police on the 1st day of January, 2021 without probable cause. I also find that he exercised control over the police rather unjustifiably on the said date by the use of his influence as a personnel of National Security to have the Defendant detained over night without probable cause.

Further that this action completely deprived the Defendant of his liberty without lawful cause from around 7:00pm on 1st January, 2021 till he officially lodged a complaint to the police on the 2nd day of January, 2021. That is sufficient evidence of false imprisonment and the Defendant is entitled to damages.

In assessing damages, I am guided by the dictum of ***Prempeh J. in the Mansour case (Supra)*** that "In assessing damages in a case such as this, the court should consider, in addition to the restraint of the plaintiff's liberty and the serious damage to his credit and reputation, the question whether or not the defendants acted bona fide, although quite wrongly.''

From the evidence on record, even if the Plaintiff believed in his claims, the Defendant was not a flight risk. He had seen the Defendant over the course of 20 years. There is no controversy that even when they lost touch, it was the Defendant who came looking for him in his house. They had been friends for more than twenty five years; even prior to the Defendant leaving for South Korea in 1999.

He had no basis to suspect that the Defendant would be on the run after confronting him about PW1's claim of never receiving the money. He had no basis to believe that Defendant would not honour the invitation of the police if so invited or that the police would not be able to arrest Defendant. He could thus not have been acting in good faith when he forcibly drove Defendant to the police station and had him detained without a formal complaint.

The fact that he made the Defendant believe that he was visiting him for a business deal only to have him arrested also does not enure in favour of the Plaintiff. I find that he acted *malafide*. In the circumstances, general damages of seven thousand Ghana cedis (GH¢7,000.00) is hereby awarded against the Plaintiff.

In arriving at costs, I take into account the fact that the matter has been in court since April, 2021. It has been over two years and the Defendant aside legal representation has had to pay the costs involved in transporting himself to court to defend what counsel for Defendant refers to as "ridiculous claims'' of the Plaintiff. Although the Defendant had a counterclaim, same emanated from the malafide actions of the Plaintiff in relation to this same issue. Consequently, costs of this action is fixed at ten thousand Ghana cedis (GH¢10,000.00) in favour of the Defendant.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

DANIEL ADDAE FOR THE PLAINTIFF

EDEM AMEMORNU FOR JOE ABOAGYE DEBRAH FOR THE DEFENDANT