

**IN SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE  
NORTHERN REGION, TAMALE**

**SUIT NO. NR/TL/HC/EI3/8/23**

**DELIVERED ON 12<sup>TH</sup> OCTOBER, 2023**

**IN THE MATTER OF AN APPLICATION UNDER  
ARTICLE 33(1) OF THE 1992 CONSTITUTION  
AND ORDER 67 OF THE HIGH COURT  
(CIVIL PROCEDURE) RULES. 2004 C.I. 47**

**BETWEEN**

**CATHERINE NSOR OF VITTIN DABOSHIE**

**= APPLICANT**

**VRS**

**JAMAILA MOHAMMED AND 6 OTHERS**

**= RESPONDENTS**

**Counsel**

**SYLVESTER ISANG FOR APPLICANT PRESENT**

**IAN AKANTUE FOR SHEIKH ARIF ABDULAH**

**FOR THE 1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS PRESENT**

**Coram**

**JUSTICE ERIC ANSAH ANKOMAH**

**JUDGMENT**

**Background**

This is an originating motion on notice filed by the Applicant, a woman in her prime age who is alleged to have suffered severe beatings, torture and humiliation in the hands of the Respondents and their agents on allegation that she had stolen money from the shop of the 1<sup>st</sup> Respondent.

The application has invoked Article 33 of the 1992 constitution of Ghana as well as Order 67 of High Court Civil Procedure Rules 2004 (C.I. 47) for the Court to enforce the Applicant Fundamental Human Rights and Personal Liberty as against torture and humiliation she purportedly suffered and for damages against her assailants for breach of her rights.

The application is against Seven (7) Respondents named on the originating motion on notice, however the 4<sup>th</sup>, 5 and 6<sup>th</sup> Respondents were not served with the application and as such the Applicant could not proceed against them since they are not aware of the pendency of the case for them to answer. Even though one lawyer Halid Abdul-Rauf initially entered conditional appearance for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, there is no proof of service of the application on the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.

Subsequently, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents engaged the services of another lawyer who filed change of solicitor on 27<sup>th</sup> February, 2023 for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. Once there is no proof of service of the application on the said 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, I will disregard the purported appearance for them by lawyer Halid Abdul- Rauf who never filed any process again in this case after the purported appearance.

The position of the law is that, the Court generally has no jurisdiction to proceed against a party who has not been served.

**See BARCLAYS BANK GHANA LTD v GHANA CABLE [1998-1999] SCGLR 1**

**See also NANA AMPOFO KYEI BARFOUR v JUSTMOH CONSTRUCTION CO. LTD, DESPITE COMPANY LIMITED [2017] DLSC 2602 DELIVERED ON 14 JUNE, 2017**

I hereby treat this application as if it is limited to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Respondents who were served with the motion.

The 7<sup>th</sup> Respondent-The Attorney General who by law is a necessary party in applications of this nature did not file any process though the Attorney General's office in Tamale was served. I see the Attorney General's inclusion in this application as a matter of law since the facts of the case appear personal to the Applicant and the other Respondents without any State institution violating the fundamental human rights of the Applicant. The 7<sup>th</sup> Respondent is thus a nominal Respondent in the matter. The depositions in the case as I put them down will establish the fact that the 7<sup>th</sup> Respondent is indeed a nominal Respondent. Throughout the case no specific averments were deposed to on the failings or abuse or infringement of any rights of the Applicant by any personnel of a State agency or institution.

### *Case of the Applicant*

The substance of the Applicant case in her depositions from paragraphs 1-36 of the affidavit in support of the application as well as her depositions in the supplementary affidavits together with exhibits she attached to them states as follows:

That she is a trader and she resides at Vittin Daboshie a suburb of Tamale.

That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are siblings and traders as well.

That Farouk Mohammed a care taker of the shop of the 1<sup>st</sup> Respondent and Rabbi Fuseini (originally 4<sup>th</sup> and 5<sup>th</sup> Respondents respectively) accused her of being the person who entered the shop of 1<sup>st</sup> Respondent and stole an amount of Twelve Thousand Ghana Cedis (GHs 12,000.00), an accusation she denied.

That this accusation led to her adoption, detention and subsequent torture with the said Rabbi Fuseini taking part.

That Fadila (originally 6<sup>th</sup> Respondent) held her dress up and pulled her to the 1<sup>st</sup> Respondent shop where Aishatu and Rabbi (originally 4<sup>th</sup> and 5<sup>th</sup> Respondents) wrongly identified her as the one who allegedly stole the money from the 1<sup>st</sup> Respondent shop.

That assuming without admitting that she had even stolen money she has been falsely accused of, the 1<sup>st</sup> to 6<sup>th</sup> Respondents did not have the right to subject her to beatings, torture or trial by ordeal after adopting and detaining her.

That the 1<sup>st</sup> Respondent engaged the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents together with many others that the 1<sup>st</sup> Respondent personally knows to beat her, adopt, detain and torture her whilst giving further directions and orders for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and many others to subject her to ordeal that has now put her in permanent disability.

That on 8<sup>th</sup> July, 2022 around 9:00 am, she went to Tamale Central Market to buy some spinach (ayoyo) for soup but realised that, what was available there was not fresh so she decided to go to the Aboabo Market Tamale in search of same vegetable to buy.

That on her return to Tamale Central Market, the 6<sup>th</sup> Respondent held her shirt and said that people have been looking for her and she pulled her to 1<sup>st</sup> Respondent shop where 4<sup>th</sup> and 5<sup>th</sup> Respondents falsely identified her as the one who entered 1<sup>st</sup> Respondent shop and stole money amounting to GHs 10,000.00 which 1<sup>st</sup> Respondent later claimed at the police station to be GHs 12,000.00.

That the 4<sup>th</sup> Respondent was hesitant in stating that she was the person who entered the shop but the 5<sup>th</sup> Respondent and others around the shop beat her and stripped her naked.

That the 1<sup>st</sup> Respondent immediately called the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and on their arrival, the 1<sup>st</sup> Respondent ordered 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to take the Applicant to their house at Zongo where they locked her up and continued with the torture in their room.

That 1<sup>st</sup> Respondent in her investigation cautioned statement to the police admitted that his two brothers (2<sup>nd</sup> and 3<sup>rd</sup> Respondents) and her friend took her (Applicant) to their house at Hausa Zongo which confirms the adoption, false imprisonment/detention and

obviously the torture. The applicant attached copy of the investigation cautioned statement of the 1<sup>st</sup> Respondent to the application and it was marked as exhibit A.

That the 1<sup>st</sup> Respondent followed up to the room where she had been detained together with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and others and they continued to torture her and asked her to produce the money or she will be killed.

That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents tortured her and when it was time for prayers they would go and pray and thereafter return to continue to subject her to ordeal and torture until 4pm when she (Applicant) pleaded with the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to give her a phone to call her relatives to notify them of her situation. That it was at that moment that the 3<sup>rd</sup> Respondent phone was given to her to call her uncle about her plight but he was not available. That she caused them to call her sister and when the Respondents got to know that her Sister was coming, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents took her to the dreaded and notorious Kandahar Boys whom 1<sup>st</sup> and 3<sup>rd</sup> Respondents had already briefed and they were waiting for her arrival.

That as soon as they arrived with her, the Kandahar Boys also striped her naked and subjected her to further torture and humiliation. That the Kandahar boys threatened to burn her up amidst the torture and they were gathering used tyres, petrol and wood to carry out their threat.

That her Sister Beatrice Nsor managed to arrive at the scene and pleaded for her release so that she and other family members would try and resolve the matter with them but they refused such plea and continued with the torture.

That the Respondents then took her to a village around Nyankpala to consult with soothsayer to confirm if she stole the money but they missed his absence.

That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and their agents were preparing to burn her up by procuring a cello tape to seal her mouth when her Sister managed to call a relative to notify the police. When the police eventually arrived at the scene, her sister was beaten as Respondents and their agents accused her of inviting the police.

That it took a tussle between the police, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and their agents before she was rescued and taken to the police headquarters together with the 1<sup>st</sup> Respondent. That she gave statement to the police and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were arrested and they also gave statements to the police.

That when she reported the matter to the police, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents kept on coming with Chiefs and Imams to plead with her to settle the matter. That at a point she agreed that they pay for her medical bills and compensate her. That it was when she demanded GHs 8,000.00 as her medical bill and compensation of GHs 300,000.00 that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents announced in court that the settlement had broken down.

That the police issued her with medical form and she attended hospital. The medical report was attached and marked as exhibit B.

That she was admitted at the hospital and later discharged where she was taken to Yendi for further local treatment.

That she now lives with deformed body and scars and anytime she thinks of the ordeal she becomes emotionally and psychologically stressed.

That she is unable to trade any longer not just because of the fact that she is unable to walk or stand for long but the fact that her little capital has gone to the treatment and medication following the ordeal.

Exhibits C series are pictures of the applicant showing the various injuries she sustained as a result of the torture she went through in the hands of the 1<sup>st</sup> to 5<sup>th</sup> Respondents directly and indirectly.

That her fundamental human rights as enshrined in Articles 12(2), 15(1), 15(2) 17(2) 19(1) and 19(2) (c) have been abused or violated by the 1<sup>st</sup> to 5<sup>th</sup> Respondents.

That by subjecting her to torture, adoption, false imprisonment and forcing her to confess falsely and to implicate her, the 1<sup>st</sup> to 5<sup>th</sup> Respondents have violated her fundamental human rights to personal liberty and respect to personal dignity and right to be presumed innocent.

That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were arraigned before the circuit court on charges of conspiracy to commit crime to wit causing harm and causing harm contrary to sections 23(1) and 69 (1) of Act 29 but for reasons best known to prosecution later on, the charges were substituted with conspiracy to commit crime to wit assault and assault contrary to sections 23(1) and 84 of Act 29.

That the 2<sup>nd</sup> Respondent pleaded guilty to the substituted charge on 6<sup>th</sup> October 2022 and he was convicted and sentenced to caution and discharge for count one (conspiracy) and a fine of 20 penalty units for count two (assault).

That the Respondents will not compensate her for the abuse of her fundamental human rights unless they are compelled to do so by this honourable Court.

She prays for the following reliefs:

1. *Adjudge and declare the following:*

*That by subjecting Applicants to torture, false imprisonment, adoption, trial by ordeal and forcing her to confess falsely and to implicate herself in the theft allegation, the 1<sup>st</sup> to 5<sup>th</sup> Respondents have, are violating or are likely to violate Applicant's fundamental human rights to personal liberty and respect to personal dignity and right to be presumed innocent.*

2. *Award damages or punitive damages against the 1<sup>st</sup> to 5<sup>th</sup> Respondents and in favour of the Applicant for the abuse of the fundamental human rights of the Applicant.*

3. *Cost including cost of medical treatments.*

In the Applicant supplementary affidavit, she attached the witness statements of the prosecution witnesses in the criminal case involving the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to the application. Also included were the investigation cautioned statements of the 1<sup>st</sup> to 3<sup>rd</sup>

Respondents who were the Accused persons in the criminal trial. Black and white pictures of the Applicant after her assault were also attached.

**1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Case**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a common affidavit in opposition to the application on 3<sup>rd</sup> March, 2023 and it was deposed to by the 3<sup>rd</sup> Respondent for himself and on behalf of the other Respondents.

The salient points raised in the affidavit are as follows:

That the 1<sup>st</sup> Respondent is his Sister and Respondents are vehemently opposed to the application.

That they deny paragraphs 8, 9, 10, 11, 12, 13, and 14 of the affidavit in support of the application.

That on 8<sup>th</sup> June, 2022 at about 10:00am the 1<sup>st</sup> Respondent left her shop in the care of her shop assistant Ayisha who was to be supervised by Rabi Fuseini (owner of the shop adjacent to the shop of the 1<sup>st</sup> Respondent). He claims the 1<sup>st</sup> Respondent did that to enable her make a delivery to a customer who had purchased some soap.

That upon the return of the 1<sup>st</sup> Respondent about 10 minutes later, she attempted to make payment for stock of soap which was delivered to her shop, she noticed that she was missing GHs 12,000.00 which she had placed in her grey hand bag that very morning.

That the 1<sup>st</sup> Respondent confronted Ayisha and Rabi and they both informed her that a person adorned with cloths entered the shop.

That the Applicant was later apprehended by a mob because she was the only person to have entered the shop in the absence of the 1<sup>st</sup> Respondent. That whilst the shop attendant was busy searching for the type of soap the Applicant requested for, the Applicant was observed roaming in the shop by Rabi Fuseini. According to him the Applicant subsequently indicated that she was no longer interested in purchasing the 'Obolo soap'.



That with the description given by her assistant and Rabi Fuseini, the 1<sup>st</sup> Respondent notified other shop owners to be on the lookout for a person who matched the description.

That about 30 minutes later, Fadila, the 6<sup>th</sup> Respondent led the Applicant to the 1<sup>st</sup> Respondent's shop where Fadila is alleged to have indicated that the Applicant appearance matched the description that was previously given. That a mob began to gather in front of the 1<sup>st</sup> Respondent store. That some members of the crowd indicated that, on previous occasions monies had gone missing in their shops soon after the Applicant had visited them and asked to purchase products that were non-existent.

That some members of the mob started beating the Applicant. That out of fear that the Applicant will be lynched by the mob, the 1<sup>st</sup> Respondent called the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who quickly came to the market and took the Applicant away to Hausa Zongo, in Tamale.

That the Respondents categorically deny paragraphs 20 to 37 of the Applicants affidavit in support. That on the first day the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were brought to the circuit court a picture of the Applicant was taken showing no bruises at her back. The picture was attached to the affidavit in support and marked as exhibit 1. That via a telephone conversation with the sister of the Applicant (Beatrice Nsor), the Applicant's sister admitted that the burn on the leg of the Applicant was as a result of a burn from the exhaust pipe of a motor bike and not inflicted by the Respondents as the Applicant wants the Court to believe.

A copy of the telephone conversation was downloaded on a pen drive and attached to the affidavit in opposition and marked Exhibit 2. That the conversation was later transcribed in English for the Court perusal and understanding.

That as indicated on the medical examination carried out by a doctor, subsequent to the issuance of a medical form, there is no mention of burns sustained by the Applicant. The medical form was attached and marked as Exhibit 3. That the Applicant has sought to

take advantage of the unfortunate events of 8<sup>th</sup> July, 2022 to extort the Respondent. This they claim is evidenced by the Applicant acquiring multiple receipts from different chemical stores for medication she had purchased sometimes on the same or within days of each other. That they are legally advised and verily believe same to be true that the Applicant is actuated by malice and seeks to use the Court as an involuntary agent to extort the Respondents. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents admit being assertive in their demand for the stolen money but did not participate in any assault against the Applicant. That the evidence to the contrary show that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents rather protected the Applicant against the mob and not harm her in any way. They prayed the Court to dismiss the application with punitive cost. That series of receipts evidencing purchase of drugs and payments made in the name of the Applicant were attached by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to the affidavit in opposition.

### ***Response to Respondents Affidavit by Applicant***

The Applicant pursuant to leave filed supplementary affidavit in support of her application where she denied the depositions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as factually incorrect. That on the day in question she never entered the shop of the 1<sup>st</sup> Respondent as being alleged and that no criminal case has been lodged against her. She claimed that it was a case of mistaken identity that she was assumed to be the one who allegedly entered the shop of the 1<sup>st</sup> Respondent. She further denied that the purpose of taking her to the house of the 1<sup>st</sup> and 3<sup>rd</sup> Respondent was for her protection but rather on the instructions of 1<sup>st</sup> Respondent where she was continuously tortured from morning to the afternoon. That if indeed the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents intended to prevent her lynching, they would have called in the police or taken her to the Police station and not their house. That the deposition in paragraph 20 of the affidavit in opposition rather confirmed her case that, they kidnapped her and falsely imprisoned her and subjected

her to torture. She further opined that she was taken to the Kandahar boys for more torture. That the 1<sup>st</sup> Respondent statement to the Police narrates that, his brothers took her to Kandahar boys in pursuit of the money which she refused to release the money. That the secret picture taken of her is recent and it was taken when the Respondent decided to file a response to the application. That particular picture of her back she exhibited was taken the very day of the incident at the police station.

On the burns, she alleged that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents used electronic iron on her legs as well as her back and the sores developed from there. That because the sores on her leg was as a result of the heat from the iron, it took 3 days to develop so the sores had not developed the first day. That on the receipts attached to the Respondents case, they went to the hospital to screen shoot from her medical records in breach of confidential information of a client of the medical facility and that indeed she purchased those drugs as a result of the conduct of the Respondents. She further denied that her sister claimed in the audio that the sores on her leg was as a result of a motor bike exhaust pipe burn.

### *Jurisdiction of the Court*

From the affidavit evidence and the exhibits the parties attached, the Court formed an opinion that this is a case that can be decided on the affidavit evidence and as such ordered the parties Counsel to file their written address in support of their clients case on or before 29<sup>th</sup> May, 2023. Counsel for the Applicant filed his written submissions on 16<sup>th</sup> May 2023 and Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed his written submissions out of time on 5<sup>th</sup> June, 2023. This notwithstanding I will regularize it and refer to the submissions as I proceed to deal with the substance of the case.

**Article 12 (1) of Chapter 5 of the 1992 Constitution** of Ghana mandates the Executive, Legislature and the Judiciary and all other organs of government and agencies to respect

and uphold fundamental human rights and freedoms enshrined in chapter 5 of the 1992 constitution and the Courts are mandated to enforce these fundamental human rights.

**Article 33(1) of the 1992 Constitution** of Ghana further gives the Courts authority to protect the rights of the people. I hereby quote this very important constitutional provision on the fundamental human rights as enshrined in the constitution of Ghana.

Article 33 (1) of 1992 Constitution is titled;

*Protection of rights by the Courts* and it states as follows:

*“Where a person alleges that a provision of this constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relationship to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.”*

This provision of the constitution gives the High Court the original jurisdiction to hear cases where there is a breach or likelihood of a breach of the fundamental human rights of persons as enshrined in Chapter 5 of the 1992 Constitution for redress.

In determining such breaches or likelihood of a breach of these fundamental human rights, the High Court may issue such directions or orders or writs in the nature of habeas corpus, certiorari, mandamus prohibition and quo warranto as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms for the protection of the person concerned.

**See Article 33 (2) of the 1992 Constitution.**

It is therefore appropriate for applicants to invoke the jurisdiction of this Court if indeed their rights and freedoms have been trampled upon or about to be trampled upon. The Applicant herein who claims that her fundamental human rights was trampled upon by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is in the proper forum for the determination of the matter. **SEE also Order 67 Rule of C.I.47** on the jurisdiction of this Court on matters of this nature.

*“A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33 (1) of the Constitution shall submit an application to the High Court.”*

### **Burden of Proof**

In originating motion of this nature, the Applicant succeeds on the strength of her depositions proved on the preponderance of probabilities. The standard of proof is no less than as set out in sections 11 (4) and 12 of the Evidence Act 1975 (NRCD 323). It is the applicant who bears the burden of proof to provide sufficient evidence on the balance of probabilities to avoid a ruling against her.

In the case of **ACKAH v PERGAH TRANSPORT LTD & ORS [2010] SCGLR 728@736** the Supreme Court stated as follows:

*“It is basic principle of 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 quantity of credibility short of which his claim may fail.”*

The parties are therefore required by law to produce sufficient evidence to support their respective cases to avoid ruling against them.

Under **section 11(1) of the Evidence Act 1975 (NRCD 323)** the burden of producing evidence means obligation on a party to introduce sufficient evidence to avoid a ruling against him.

See **YORKWA v DUAH (1992-93) GBR 278 CA**

*“Under sections 11, 12 and 13, particularly section 179(1) of the Evidence Act 1975, the “burden of producing evidence” means the duty or obligation lying on a litigant to lead evidence. In other words, these latter sections cover which of the litigating parties should be the first to lead evidence before the other’s evidence is led.”*

This being the case, in order to succeed in this action the Applicant bears the burden of proof under section 12 (1) of the Evidence Act.

In the case of **ZABRAMA v SEGBEDZI [1991] 2GLR 221** Kpegah stated as follows:

*“... A person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden.”*

The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have virtually denied the Applicant averments made against them and the Applicant bears the burden to produce sufficient evidence on her depositions and exhibits to avoid a ruling against her.

In **MAJOLAGBE v LARBI AND OTHER [1959] GLR 190** it was held that a denied averment must be proved positively by providing cogent evidence and not merely repeating the averments on oath.

***Issues***

After going through the respective cases of the parties, the following issues are germane and I hereby set them down for determination.

- i. Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents breached the fundamental human rights of the Applicant by subjecting the Applicant to assault, torture and humiliation or not.*
- ii. Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents falsely imprisoned the Applicant and tried her by ordeal against her right to personal liberty and respect to her personal dignity or not.*
- iii. Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were justified in their action on the treatment meted out to the Applicant.*
- iv. Whether the Applicant is entitled to damages.*

I must place on record that per the parties' affidavits, certain facts were not in dispute and I will put them here before I go into the controverted ones.

***Facts that have not been controverted***

There is no dispute that on 8<sup>th</sup> July, 2022 in the morning around 10am, the 1<sup>st</sup> Respondent made a claim that she has lost money in her shop which she left in the care of a caretaker for some time and by this claim, she informed other shop owners and traders around her shop that they should look out for the thief.

**REF: Paragraphs 9, 10, 11, 12, 13, 14 and 15 of the affidavit in opposition.**

Pursuant to the claims of the 1<sup>st</sup> Respondent and the description of the alleged thief, the Applicant was arrested by some people and brought to the shop of the 1<sup>st</sup> Respondent.

**REF: (Paragraph 16 of Respondents 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents affidavit in opposition)**

That it is also not in dispute that the Applicant was assaulted and molested by the group of people in the shop of the 1<sup>st</sup> Respondent.

**REF: (Paragraphs 17 and 19 of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents affidavit in opposition.)**

**SEE also paragraphs 8, 10, 12 and 13 of the Applicant affidavit in support)**

That it was the 1<sup>st</sup> Respondent who called her brothers, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who were not at the scene at that time to come to her shop and upon their arrival, they quickly took the Applicant away to their house at Hausa Zongo-Tamale to keep her there whilst they demanded for the money.

**REF: (Paragraphs 20 and 33 of the affidavit in opposition)**

Again, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents admits that after keeping the Applicant in their room, they took her to the Aboabo Kandahar boys.

**SEE: (Paragraph 23 of the affidavit in opposition)**

That none of the Respondents (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents) saw the Applicant stealing or going into the shop of the 1<sup>st</sup> Respondent.

That the applicant suffered injury and was sent to the hospital where she was admitted as in patient.

**Ref: (Exhibit B-The medical report of the Applicant and Exhibit 2 receipts evidencing payments of drugs purchased by the applicant)**

### *Legal Analysis of the Issues*

From the uncontroverted facts as stated above I proceed to resolve issue (i)



*Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents breached the fundamental human rights of the Applicant by subjecting the Applicant to assault, torture and humiliation or not.*

It is not in doubt that at the initial stage of the assault on the Applicant, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not there. Those who assaulted the Applicant were people (mob) who had gathered in the shop of the 1<sup>st</sup> Respondent when she raised the issue of the theft in her shop and called on other shop owners to help her look for the alleged thief. It was based on her call and description her shop attendant and others gave that caused the arrest of the Applicant.

The Applicant evidence is that all the Respondents assaulted her and it was the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent who took her to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents house for further assault, false imprisonment and torture. This piece of evidence was explained by the Respondents that they took her to the house for her own safety when she was being attacked by the mob. Though they denied beating the Applicant, the evidence before me is clear that the Respondents took the Applicant to their room to cause her to confess since at that time they had formed opinion that it was the Applicant who entered the store and stole the money. The explanation given by the Respondents that they took her to the house for safety cannot be true after admitting that they persisted and insisted that it was the Applicant who stole the money and until she confessed or bring the money she will not be released. If it was for safety of the Applicant, they would have rather taken her to the Police station since at that time they had absolute control of the vulnerable Applicant who had been assaulted in 1<sup>st</sup> Respondent shop and in her own words striped naked. The Applicant at that time had become the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents involuntary agent that they had absolute control of her movements. There is no evidence before me that the Applicant resisted any of the Respondents stands or actions.

Again, the Respondents (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) admitted in their affidavit in opposition that from their room they took the Applicant to Aboabo Kandahar boys. Here the Respondents in paragraphs 19, 20 and 23 of their joint affidavit in opposition:

*“19. That some members of the mob started beating the Applicant.*

*20. That out of fear that the Applicant will be lynched by the mob the 1<sup>st</sup> Respondent called 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who quickly came to the market and took the Applicant away to Hausa Zongo, in Tamale.*

*23. That out of fear of being overrun by the mob that was now converging at the house at Hausa Zongo, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents went with the Applicant to the Aboabo Kandahar boys.”*

The Applicant in describing her ordeal in the captive room of the Respondents stated in paragraph 15 as follows:

*“That the 1<sup>st</sup> Respondent followed up with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the room at Hausa Zongo where I was locked up and together with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and others, I was continuously tortured and asked to produce the money or I will be killed.”*

In the supplementary affidavit in support the Applicant deposed that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents used heated iron to touch her legs and back thereby causing her severe pains. The medical report and the pictures which I shall later on deal with them in details are consistent with the Applicant deposition of torture she went through in the hands of the mob and 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

This piece of evidence cannot be grossed over by the Court in view of the conduct of the said Respondents of handing over the Applicant to the dreaded Kandahar boys.

It is a notorious fact in Tamale that the Kandahar boys and other such groups are notorious people who are used for all manner of things including unleashing violence on

people they suspect to have committed crime to force confession from them. Trial by ordeal is one of their modus operandi and no wonder the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents decided to take the Applicant there for confession and demand for the 1<sup>st</sup> Respondent alleged stolen money. During political seasons, they align themselves with political parties for all manner of violence. The fact that the Respondents decided to take the Applicant to the Aboabo Kandahar Boys and not the Police Station is enough to conclude that they had ulterior motives by using trial by ordeal to force the Applicant to confess to the crime of stealing and I so hold. In the Applicant words she was again stripped naked and was subjected to torture and humiliation by the Kandahar boys and they threatened to burn her and were indeed gathering used tyres, petrol and wood to carry out their threat. That it was at this point that her Sister arrived at the scene and pleaded on her behalf to allow her family to resolve the matter. That the Respondents took her to a Mallam at Nyankpala to consult a soothsayer if she indeed stole the money but when the Mallam declined, the Respondents brought her back to the Kandahar boys to inform them that the Mallam had found her guilty of the theft. That it was when they were to seal her mouth with cello tape to burn her that her Sister managed to call the Police who arrived at the scene to rescue her from the Kandahar boys. That the pictures of the Applicant that were attached to the application show bloody burns all over her back which is consistent with torture and the use of hot object on her body. You can also see strips of severe caning at her back which is also consistent with her case that they used wire to beat her up.

The burns extend to the Applicant hands and swollen legs full of sores. I must say that the pictures show a horrendous attack a woman of her age suffered. It is not a pleasant thing to watch let alone wish for any human being. I am not in doubt whatsoever that, the Applicant was tortured by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, the Aboabo Kandahar Boys and the mob.

Aside the pictorial evidence, the Police medical form which was also endorsed by a medical doctor is consistent with torture the Applicant was subjected to.

The Doctor diagnosed fever, headache, dizziness, chest pains cough, vomiting, dyspnea, pallor, jaundice, afebrile, laceration, multiple abrasions on the back, head bruises, tenderness in palpation, muscular pains and others of the Applicant who was asthmatic patient.

The medical doctor's examination has not been controverted by the Respondents and indeed they attached a copy thereof together with receipts evidencing purchasing of drugs by the Applicant to their affidavit in opposition.

The law is that, a party's evidence against his own interest must be held against him.

**SEE YAKUBU v YAKUBU [2013] GMJ 97 CA**

**TONADO ENTERPRISE & ORS v CHOU SEN LIN [2007-2008] SCGLR 135**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents having produced the medical record of the Applicant as well as the receipts evidencing payments after the assault has corroborated the affidavit evidence of the Applicant that she suffered severe injuries and pains as a result of the torture and she attended hospital for treatment.

There is no better evidence than the admission made by your opponent or corroboration from your adversary.

With these admissions by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, I hereby make the following findings of fact.

That the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and their agents severely assaulted the Applicant on allegation that she had stolen money when she was not caught in the act and upon her arrest she was not handed over to the police to investigate the matter.

That the continuous assault and torture of the Applicant by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the house of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and in the hands of the

Kandahar Boys was to force the Applicant to confess to a crime she denied committing. As at now no court has pronounced that the Applicant stole money the property of 1<sup>st</sup> Respondent. In fact the Respondents have not made any case of stealing against the Applicant.

**Article 15 (1) and (2) of the 1992 constitution** of Ghana is titled; Respect for human dignity and I hereby reproduce relevant portions applicable to this case.

*(1) The dignity of all persons shall be inviolable*

*(2) No person shall, whether or not he is arrested, restricted or detained, be subjected to*

*(a) Torture or other cruel, inhumane or degrading treatment or punishment;*

*(b) Any other condition that detracts or is likely to detract from his dignity and worth as a human being.*

This provision of the constitution was breached by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents when they striped the Applicant naked in their room and also before the Kandahar boys. In fact the witness statement of the Applicant Sister Nsor which was exhibited as part of the documents the Prosecution exchanged corroborate the evidence of the Applicant that she was stripped naked when the she was handed over to the Kandahar Boys by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The maltreatment meted out to the Applicant is exactly what Art 15 (1) and (2) of the 1992 constitution prohibits and I hereby declare that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents breached the fundamental human rights of the Applicant by subjecting her to cruel, inhumane and degrading treatment when the Applicant was in their custody.

The next issue to be determined is:

*Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents falsely imprisoned the Applicant and tried her by ordeal against her right to personal liberty and respect to her personal dignity or not.*

Closely related to issue (1) is the question as to whether the Applicant was falsely imprisoned and thereafter tried by ordeal.

There is no dispute that the 1<sup>st</sup> Respondent caused her brothers to keep the Applicant in their room from her shop. At the time the Applicant was being taken to their room, they had restricted her movement and she could not leave their custody without the Respondents order. The Respondents admitted that from their house they took the Applicant to the Kandahar boys. These pieces of evidence corroborate Applicant averments that she was falsely imprisoned.

**Section 9 (1) of Criminal and other Offence (Procedure) Act 1960 (Act 30)** as amended stipulates that:

*“A person who is arrested, whether with or without a warrant, shall be taken with reasonable dispatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed in a language which the person arrested understands and in detail of the nature of the charge that initiated the arrest.”*

It is not in doubt that a private person may arrest without warrant when an offence like stealing is committed in his presence by that person or arrest without warrant another person when that private person reasonably suspect that, that other person has committed an offence like stealing and indeed the offence of stealing has been committed.

See **Section 12(1) and (2) of Act 30**

The law is that upon such arrest, you have to hand over the arrested person to the Police or other place for the reception of arrested persons.

In the instant case before me, the Applicant was arrested by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents agents on suspicion of having stolen money. Instead of handing her over to the police they handed her to the 1<sup>st</sup> Respondent who also caused her to be handed over to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. Upon taking custody of the Applicant, the said Respondents decided to take her to their home and thereafter to the dreaded Kandahar boys. From the time of her arrest to the time that she was sent to their house and thereafter to the Kandahar Boys, to the Mallam and back to the Kandahar boys before the Applicant was rescued by the Police cannot be a reasonable time not to send the Applicant to the Police. Again the Respondent averment that it was after they handed the Applicant to the Kandahar boys that they caused the Applicant to call her Sister to call the Police even if it is true cannot be reasonable conduct. The Applicant was in their custody and if they wanted to call in the Police they could have done so rather than to keep her in their custody (room) for her to be tortured to say the least was cruel and unpardonable. Within that period, the Applicant freedom of movement had been curtailed by them and they decided to deal with her in their own way. The Applicant had no reasonable escape route and she could not have left on her own volition. Her movement had been restricted. None of the Respondents saw the Applicant stealing money. Their conduct was based on the description others who claim to have seen the Applicant in the store of the 1<sup>st</sup> Respondent gave.

In the case of **MADJEI AND OTHERS v OPOKU WARE [1963] 1 GLR 150 SC** the definition of false imprisonment in Clerk and Lindsell on Torts (12<sup>th</sup> ed) p. 289 was cited with approval by Blay J.S.C and I hereby quote;

*“A false imprisonment is complete deprivation of liberty for any time, however short, without lawful cause.”*

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents completely deprived the Applicant’s liberty and freedom of movement for no reasonable excuse. There is no convincing evidence before me to justify the imprisonment the Applicant suffered in the hands of the Respondents and I so hold.

The next issue to be determined is;

*Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were justified in their action on the treatment meted out to the Applicant.*

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in their defence to the motion seem to justify their conduct and it is important for me to look at the various justifiable grounds of law for false imprisonment and see whether they are applicable in this instant case.

Assuming without admitting that the arrest of the Applicant was justified in law, the position of the law is that immediately a private person arrest on reasonable suspicion of crime, the private person who effected the arrest without delay should handover the suspect to a Police Officer or in the absence of a Police Officer shall take the arrested person to the nearest Police Station.

**See Sect 14 (1) of Act 30**

*“A private person who, without a warrant, arrest another person shall without unnecessary delay hand over the person so arrested to a police officer or, in the absence of a police officer, shall take the arrested person to the nearest police station”*



The Respondents did not take the Applicant to police station after succeeding in putting her at the back of a motor bike as pillion rider but rather took the Applicant to their house to allegedly prevent lynching of her by angry crowd. At the time 2<sup>nd</sup> and 3<sup>rd</sup> Respondents moved the Applicant from the 1<sup>st</sup> Respondent store on a motorbike, they could have sent her to the Police station but they did not do that. Again after maltreating her in their house they failed/refused to take her to the Police station but rather took her to the Kandahar Boys who are notorious for violence and torture in Tamale. These actions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents cannot by any stretch of imagination be said to be justified in law and I hereby reject that piece of evidence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as a cover up after coming back to their senses of the unlawfulness of their actions.

**Article 14 (5) of the 1992 Constitution** states as follows:

*“A person unlawfully arrested, restricted or detained by any other person shall be entitled to compensation from that other person”.*

Compensatory damages as defined in the book; **Nutshells, Award of Damages and Equitable Remedies in Ghanaian Courts** by Derrick Adu-Gyamfi states that:

*“as damages which are intended to compensate for the actual harm which the claimant has suffered as a result of the accident. If an action is framed in torts, the purpose of compensation is to make good to the claimant as nearly as possible the sum of money which will put the person who has been injured in the same position as he would have been if he had not sustained the wrong.”*

**See Boateng v Oliver [2013-2014] 2 GLR 729 CA**

Under this compensatory damages are general damages and special damages. Unlike special damages where the Applicant has to specifically prove same by particularizing to show the nature and extent of damages claimed, general damages are at large and usually assessed by the judge looking at the circumstances of the case, the nature of injury suffered and future repercussions of the injury suffered by the Applicant.

**In DELMAS AGENCY GHANA LTD v. FOOD DISTRIBUTORS INT. LTD [2007-2008] 2 SCGLR 748 at 759 ADINYIRA JSC [Page 759]** the Supreme Court stated that;

*“The authorities are clear on the distinction between special and general damages. I myself had occasion to dilate on it in the case of Yungdong Industries v Ro Ro Services [2005-2006] SCGLR 816 at 839. In the Court of Appeal, learned counsel for the plaintiffs referred to the dictum of my noble and respected senior, Adade JSC, in [page 760] the case of Royal Dutch Airlines (KLM) v Farmex [1989-90] 2 GLR 623 at 633, SC where he said: Chapter 12 | Law of contract 327 “special damages must be pleaded and specifically proved. But the rule does not imply that if one claims damages only, one cannot lead evidence of specific damages as a foundation for an award of general damages. After all, in coming to a decision as to how much general damages to award, the court needs some guidance as to financial loss.”*

*...“General damages is such as the law will presume to be the probable or natural consequences of the defendant’s act. It arises by inference of law and therefore need not be proved by evidence. The law implies general damages in every infringement of an absolute right. The catch is that only general damages are awarded.*

*Where a plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not he is not entitled to anything unless general damages are also appropriate.”*

Again, damages may be classified as pecuniary and non-pecuniary damages such as loss of physical amenity, pain, shock, suffering, humiliation.

**See MUMUNI v AWUKU [2013-2015] 2GLR 186 CA per Ofoe JA**

Applying the decided cases to the application before me, I must say that the Applicant did not make specific depositions on the quantum of money spent on the injuries she suffered save to say that she spent monies on medication and treatment. The amount the Applicant quoted as money spent on medication came about in the failed settlement of the case by the parties at the circuit court during the criminal trial of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The applicant did not attach receipts evidencing payment of drugs purchased or any matter related to the harm she suffered. Rather surprisingly, it was the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who attached some receipts of the Applicant in connection with this matter. The total sum of the receipts attached by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is nowhere near Eight Thousand the Applicant claim she incurred on medication and treatment. Since special damages must be proved in law to the last pesewa, the Applicant has failed on that score and I am unable to grant the Applicant any special damages. In any case the Applicant did not make specific claim for special damages.

However, there is ample evidence on record that the applicant sustained serious bodily harm. There is evidence on record that the Applicant was admitted at the Tamale Teaching Hospital. The Applicant could have helped her case very well if she had attached a comprehensive medical report on her matter from the hospital for the Court to know the degree of injury, the long term effect of the injury, the medication, the cost of treatment and other relevant information. This was not done and a Court of law cannot make speculations on special damages. I take judicial notice of the injuries that the Applicant suffered and I cannot pretend not to see the psychological trauma she might

have gone through and the image of it in the Applicant's memory. The humiliation and the pain the Applicant went through in the hands of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and their agents is something no human being will wish for a woman. The treatment meted out to the Applicant was horrendous and need not to be glorified at all and I hereby condemn it in no uncertain terms. The pictures of the Applicant as attached to her Application tell the untold suffering and pain she went through. The visible injury at the Applicant back is in sync with her affidavit evidence that the said Respondents used hot iron touch her back to cause the injuries. The Applicant was humiliated and exposed to the public as a common criminal. She was detained unlawfully as already pronounced by this Court.

The Applicant is entitled to general damages for breach of her fundamental human rights by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

The Applicant is further entitled to damages for the pain, suffering, injuries, humiliation and the psychological trauma she suffered.

The Applicant is entitled to general damages for false imprisonment as well. There is no doubt that the Applicant spent money in this whole unfortunate incident only that she could not prove it in special damages. I will therefore award the Applicant a lump sum in general damages for all her reliefs granted since I do not deem it fit to itemize the general damages.

I hereby award general damages of One Hundred Thousand Ghana Cedis (GHs 100,000.00) against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents jointly and severally for the benefit of the Applicant.

Cost of Ten Thousand Ghana Cedis (GHs 10,000.00) is awarded against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in favour of the Applicant.

SGN

HIS LORDSHIP JUSTICE ERIC ANSAH ANKOMAH

JUSTICE OF THE HIGH COURT

TAMALE