IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE AT LAW COURT COMPLEX, ACCRA (GENERAL JURISDICTION 11) HELD ON WEDNESDAY THE 19TH DAY OF JULY, 2023 BEFORE HIS LORDSHIP JUSTICE RICHARD APIETU (J)

SUIT NO.GJ/0027/2023

RANSFORD ANINAGYEI-BONSU - APPLICANT

VRS.

VODAFONE GHANA & 2 ORS - RESPONDENTS

RULING

On 11th October, 2022, the Applicant herein originated the instant action for compensation on account of unlawful arrest, restriction and detention caused by the Respondent hereinafter referred to as 1st Respondent on 20th July, 2022 at the premises of Vodafone office at Community 1, Tema. On the orders of the Court dated 13th December, 2022 the Respondent filed a revised Application to include the Inspector General of Police and Attorney General as 2nd and 3rd Respondents.

In the application which is anchored on Article 14 (5) of the Constitution of the Republic of Ghana, 1992, the Applicant prays for the following reliefs:

(a) Apology from Vodafone for their unprofessional conduct and my humiliation.

(b) Damages for defamatory conduct: GH¢5,000,000.00.

(c) Damages for false imprisonment: GH¢70,000,000.00.

(d) Cost of Legal Services.

THE CASE OF THE APPLICANT

The facts that have hurled the parties before this Court arise from the encounter between the Applicant and the 1st Respondent on 14th July, 2022 at the 1st Respondent's office at Community 1, Tema.

According to the Applicant, per the affidavit in support of this action filed on 16th December, 2022 he is an Environmental Engineer, and currently pursuing his legal studies at Mountcrest University, Accra. He is a customer of Vodafone, with mobile phone number 020-020-9349, in addition to having Airtel/Tigo mobile number 0262-974-928.

The Applicant states that on 14th July, 2022, he decided to register his Vodafone mobile number but when he dialed their code *404#, for the SIM registration, another name popped up: Issa Usman.

The Applicant states further that he attempted unsuccessfully to get it corrected at the Accra Mall, and Vodafone headquarters, till he eventually ended up at Vodafone office at Community 1, Tema. At Tema, he enquired of the Manager, and reported the wrong name to him, whereupon he requested to see the chip. He told him the chip was not with him, but he could produce it in an hour or two. At any rate, to allay his fears, he produced his IDs, and the office stamp of his company: Baruscans Group Engineering, bearing the Number 020-020-9349.

According to the Applicant he asked him to follow him to an inner room, then blurted out: YOU ARE FRAUDSTER, SO POLICE IS COMING TO ARREST YOU! He summoned a security man to stand guard over him, then closed the door behind him. He then called his brother to come with the phone with the chip. Within minutes, the police came, arrested, and handcuffed him and walked him away within sight of other customers and staff at the office, and sent him to the Community 1 Police Station. He was sent behind the counter in handcuffs, and not too long, his brother arrived with the phone, and narrated his problem in attempting to register the Vodafone number. The Commander realized he was genuine, and they released his handcuffs. However, the Vodafone Manager, realizing the mistake they had committed, did not condescend to apologize, and they have not done so till now.

He subsequently wrote to them and narrated the mishap, and demanded an apology and compensation from them. He attached a copy of the letter as Exhibit A.

The Applicant says that he was referred to a Lawyer from N. D. Ampofo Associates, who took his case up, and wrote to the National Communications Authority (NCA), requesting them to compel Vodafone to apologize to him and pay him due compensation for the embarrassment caused. He attached a copy of the letter as Exhibit B.

The Applicant deposes that the NCA failed to respond to the letter, whereupon his Lawyer wrote a reminder, and, this time, demanded compensation of USD200,000,000 (Two Hundred Million Dollars: being 90% shares in Vodafone Ghana, and 10% cash), along with the proposition that the NCA should invoke the dispute resolution clause of their establishment to resolve the matter. He attached a copy of the letter as Exhibit C.

The Applicant states that in view of the delay by Vodafone in responding to his letters he wrote to the Board Chairman about the matter. He attached a copy of the letter as Exhibit D. Vodafone Ghana replied to the letter sent to the NCA and stated they would prefer to deal with his Lawyer through NCA to avoid repetition of responses. He attached a copy of the letter as Exhibit E. The NCA replied on 24th August, 2022, to the effect that the nature of the letter did not lend itself to Dispute Resolution, and that Vodafone should bear direct responsibility in handling the matter. He attached a copy of the letter as Exhibit F.

The Applicant states further that consequent upon this information, he went to Vodafone office at Airport City with two Lawyers to engage them in discussion, but it was apparent the three officers who met them had no mandate to negotiate a settlement, so they booked another meeting with the Litigation Manager of Vodafone, a Lawyer, for 26th September, 2022. On 26th September, 2022, the Vodafone Lawyer, who gave them the date of the appointment, was not in office to honour his appointment with them.

According to the Applicant he also thought he should acquaint the Police with what had happened, so he wrote to the Police Professional Standards Bureau of his arrest, and related how two police personnel took him away from Vodafone office in hand-cuffs, and requesting that they must answer for their conduct. He attached a copy of the letter as Exhibit G. He followed up with a letter to the IGP, and informed him about the reaction of the letter sent to the DG, PPSB, in which the DG stated that he should sue Vodafone, and the Police would give evidence on how they came in, at the instance of Vodafone. Attached is a copy of the letter as Exhibit H.

It is the Applicant's case that as a corollary to his false imprisonment, the Police did not ask him to accompany them to the Police station, but rather they hand-cuffed him, and walked him away in the presence of other customers and staff in the yard, thus

humiliating him, and thereby acting defamatorily against him even though he had committed no crime.

THE CASE OF THE 1ST RESPONDENT

The Application has been opposed by the 1st Respondent per the Affidavit in Opposition filed on 27th March, 2023.

According to the 1st Respondent a review of its records (SIM Registration Data Base) after the said incident revealed that SIM number 0200209349 is registered in the name of a customer by name Issa Usman and not in the name of the Applicant which was duly linked to the Ghana Card of Issa Usman on February 10, 2022 and that on July 1, 2022 in accordance with the SIM Registration exercise, the bio data details of the Customer Issa Usman was captured and that concluded the re-registration of the SIM, making Issa Usman, the recognized owner of the SIM.

The 1st Respondent says that in the SIM registration process, a person cannot commence and complete the registration process unless he is in physical possession of the SIM that is meant to be registered and that the first and most important action for the registration of a SIM card under the 2021 SIM registration exercise is the Customer's act of submitting his Ghana Card details via the USSD Short Code 404 and that the details required here are, Full name, Date of Birth, Ghana Card Number and Gender. After the submission of the details mentioned the Mobile Network Operators (MNOs) then confirms Customer's ownership of the SIM by comparing the details (Full name, Date of Birth and Gender) with existing registration data base and where there are no issues, the registration process proceeds.

According to the 1st Respondent in situations where the details on the Ghana card of the customer and the details of the customer on the MNO's data base does not match, a short code i.e. *151*9# has been provided and that this code will generate security questions that can only be answered by the owner of the SIM.

The 1st Respondent says that its records on SIM Number 0200209349 indicates that the SIM was purchased and used as a pre-registered SIM sometime in 2015. A pre-registered SIM is one which has been activated for use without a verification of an ID card and that the SIM is already activated before it is sold to the eventual user.

The 1st Respondent also says that from the record it has on SIM Number 0200209349, prior to February 10, 2022 and the details on the Ghana card of the Customer Issa Usman, the re-registration of the SIM was concluded via the activation of the short code *151*9# and that customer Issa Usman could have concluded the SIM re-registration process after he had duly answered the required security questions correctly and that he could have done this only because he had the SIM in his possession and had had same with him for a number of months.

The 1st Respondent states that the complete registration of SIM number 0200209349 in the name of Issa Usman is conclusive that he is the owner of the SIM and that the Applicant bears the duty to substantiate his claim that he is the owner of the SIM and bears the duty to explain how the SIM if: he is the owner, got into the hands of Issa Usman to enable him to commence and complete the registration process, if he is not the owner, how did the SIM come into his possession. The 1st Respondent attached a copy of the National Communications Authority's 2021 SIM Registration Manual for Spokespersons as Exhibit 1.

The 1st Respondent says that as of July 20, 2022, when the Applicant visited 1st Respondent's retail office, the SIM re-registration exercise had been on-going in the country for over twelve (12) Months with numerous public sensitization promotions communicated by both the government and the Mobile Network Operators (MNOs) and that it is a notoriously known fact that a SIM card cannot be registered without the presence of the SIM at the time and location of the registration.

The 1st Respondent says further that its Retail Shop Manager was under a duty to process the request of the Applicant in accordance with the set procedure, which procedure includes the dialing of code *400# on the phone which host the SIM that is to be registered to ascertain the status of the SIM.

The 1st Respondent avers that it's Retails Shop Manager requested the Applicant to confirm the status of the SIM in the registration exercise by dialing *400# and that the result of this action was to determine the desired solution or the next step to take in executing the Applicant's ask.

The 1st Respondent states that when 1st Respondent's Retail Shop Manager asked the Applicant to dial *400#, the Applicant responded by saying that the SIM was in his iPAD which had a cracked screen so it cannot perform that function (i.e. dialing of *400#) because the touch screen of the iPAD for some of the keys in *400# had been disabled by the crack.

The 1st Respondent further states that the 1st Respondent's Manager, decided to ask the Applicant some questions under Know Your Client (KYC) procedure to ascertain the connection of the Applicant to the SIM he intended to register in his name, and that these questions included the following: (a) When was the last time he purchased airtime on the SIM? (b) When was the last time he purchased data bundle on the SIM? (c) What is his

last dialed number on the SIM? (d) What is his frequently dialed number on the SIM? The Applicant failed woefully in answering the above questions.

The 1st Respondent says that its Shop Manager became suspicious of the Applicant after his performance on the KYC questions since all the answers to the KYC questions were questions that would ordinarily be remembered by owners of SIM cards or better still could have been picked from the phone or iPAD that hosted the SIM which was supposedly in possession of the Applicant in the shop at the time of the interaction.

The 1st Respondent avers that it's Shop Manager after this initial suspicion took further steps to ensure that the duty that the 1st Respondent hold in protecting the interest of its customers which duty includes the protection of Personal Data of customers from theft and prevention of unauthorized SIM swaps are well ensured even as he continued to help the Applicant.

The 1st Respondent further avers that it's Shop Manager then requested Applicant to remove the SIM from the iPAD so it can be placed in the Shop's Demonstration Phone for alignment on the *400# so 1st Respondent could assist Applicant with his request. It's Shop Manager was taken aback when after his requests the Applicant said that unknown to him, he had left the SIM in a different phone in his office at Sakumono.

The 1st Respondent states that it's Shop Manager did place a call to the SIM under discussion and the call was received by someone who claimed to be the user of the SIM (user sounded semi-literate) and that he was somewhere in town; a place other than Sakumono.

The 1st Respondent says that the inconsistencies and the bare untruths that were told by the Applicant necessitated all the actions that were taken by the 1st Respondent and that

these actions have been overly exaggerated by the Applicant and that even if the actions complained of by the Applicant were committed by the 1st Respondent or any of the named Respondents, those actions were justified within the circumstances as it happened in the Retail Shop and the reported number of fraudulent SIM swaps that are being used to swindle and defraud unsuspecting members of the public.

The 1st Respondent states that it was its Shop Manager who requested to see an identity card of the Applicant (if any), when he noticed the inconsistencies in the Applicant's narrative and conduct and that it's Shop Manager led the Applicant to the shop's back office purposely to make room for other customers who needed to be served at the main office and for further conversation with the Applicant.

The 1st Respondent says that the Applicant pretended to place a call by putting the phone by his ears as if he was making a call and that it was the 1st Respondent's Manager, who requested the Applicant to call someone from his office to bring the SIM so his information could be confirmed, and assistance provided to him on his request for SIM registration.

The 1st Respondent says further that it's manager suspected that Applicant failed to place the call as he was asked to do and that when this suspicion was made, Applicant was asked to place the call and put it on speaker so 1st Respondent's Manager could hear the person at the other end of the call but the Applicant refused to comply with this just request.

The 1st Respondent says that after waiting for some twenty (20) minutes following the Applicant's failure to call for the SIM to be brought on speaker, its Shop Manager reported the incident to the Tema Community 1 Police who arrived at the scene within minutes of the report and that it is the Ghana Police Service that after their assessment of the incident

sent the Applicant to the police station and that the 1st Respondent does not have the mandate to speak for the Ghana Police Service on how it undertakes its official mandate.

The 1st Respondent says further that the Police officers who came to the scene did interact with the Applicant and made him call the SIM in question with the phone on speaker for all to hear before deciding to send the Applicant to the Police Station.

The 1st Respondent says that when the SIM was called and put on speaker, someone did pick the call upon which the Police requested that person to come to the 1st Respondent's Shop at Tema Community 1 with the SIM and that the Police decided to move the Applicant to the Police Station when the one with the SIM delayed in coming to the shop after he had promised to do so and that the alleged arrest (if any) did happen on the day in question, then that arrest was made by the Ghana Police Service and not by the 1st Respondent.

The 1st Respondent states that it has not rendered an apology to the Applicant and that its manager did his work in accordance with its approved standards and that no wrong was committed by the manager that warrants any apology.

The 1st Respondent says that all the actions taken by its Shop Manager were justified on the understanding that no SIM registration is done without the presence of the SIM and that 1st Respondent was under a duty to ensure that the Applicant produced the SIM after he had requested for its registration.

The 1st Respondent says that its suspicion was justified on Applicant's failure to produce the SIM for the registration exercise and that when the SIM was produced with the assistance of the Police that reasonable suspicion was cured.

The 1st Respondent says further that Vodafone is a multinational company with Telecel Group owning 70% of the business and per the organizational structure of the business, the Two Hundred Million Dollars ($200.000,000.00) quantum of compensation that the Applicant was fantasying per his letters could not be negotiated and approved by authorities of the business in Ghana and that it is not ready and has never given the minutest of impressions that it is ready to negotiate any compensation payment with the Applicant based on the claims of the Applicant.

The 1st Respondent states that there is no record of the Director General of the Police Professional Standard Bureau (PPSB) advising the Applicant to sue Vodafone.

The 1st Respondent says that Applicant is undeserving of any compensation from the 1st Respondent based on the claims made and that same should be dismissed with cost.

The 1st Respondent says that if the Applicant was ever arrested or suffered any defamatory action then the said arrest or defamatory act was made by the Ghana Police Service and not the 1st Respondent and the Applicant did file an official complaint dated July 21, 2022, against the alleged conduct of officers of the Ghana Police Service who did attend to his issue on the day in question which was addressed to the Director General, Police Professional Standards Bureau (PPSB) who duly investigated and made a decision on the subject.

The 1st Respondent states that the Applicant not satisfied with the decision of the Director General of PPSB on his complaint on September 12, 2022, appealed to the office of the Inspector General of Police (IGP) to review the decision made by the PPSB Director General. Copies of the complaint letter filed with PPSB dated July 21, 2022, and the Appeal filed with the office of the Inspector General of Police dated September 12, 2022 are attached as Exhibits 3 and 4.

The 1st Respondent says that the Applicant's claim is frivolous, unmeritorious and a clear case of an applicant seeking to use the Court to enrich himself unjustly for no work done nor for suffering any loss or harm and that the entire Application should be dismissed in its entirety with huge cost to serve as a deterrent to persons in the like of the Applicant who may attempt such unjust enrichment antics in this honourable Court in future.

ISSUES TO BE DETERMINED

I have read the Applicant's Revised Application for Compensation, the supporting affidavit, and the Statement of Case and examined the exhibits put in evidence by the Applicant and the Affidavit in Opposition and the Statement of Case filed by the 1st Respondent. Even though the 2nd and 3rd Respondents were served with the Applicant's Revised Application for Compensation as ordered by the Court, they did not file any Affidavit in Opposition and they have been absent in Court without excuse or justification.

In my view the main issues to be determined in order to settle the matter before me are:

1. Whether or not the Applicant's relief for damages for defamatory conduct being sought by way of an Originating Motion is incompetent?

2. Whether or not the Applicant was falsely imprisoned by the 1st Respondent?

In resolving the issues, reference shall be made to the relevant laws and authorities in relation to the subject matter before me.

Order 2 Rule 2 of C. I. 47 provides as follows:

"Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a writ of summons".

Order 57 Rule 2 of C. I. 47 provides as follows:

"Before a writ is issued in an action for libel, it shall be indorsed with a statement giving sufficient particulars of the publication in respect of which the action is brought to enable them to be identified".

Article 33 (1) of the 1992 Constitution provides as follows:

(1) 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 relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.

Looking at Order 2 Rule 2 and Order 57 Rule 2 of C. I. 47 which applies to actions for libel and slander, there is no doubt that a defamation action ought to be commenced by a Writ of Summons.

Looking at Article 33 of the 1992 Constitution, there is also no doubt that human right actions ought to be commenced by way of an application i.e. an originating motion on notice.

In the case of **REPUBLIC VS. HIGH COURT, KOFORIDUA; EX-PARTE ASARE (BABA JAMAL AND ELECTORAL COMMISSION-INTERESTED PARTIES) [2009] SCGLR 460**, the interested party was the National Democratic Congress (NDC) parliamentary candidate at the parliamentary election for Akwatia Constituency in 2008.

At the close of voting, the Electoral Commission (EC) noticed some irregularities at six polling stations and decided to conduct a re-run at those polling stations but the interested party protested, claiming that the irregularities were widespread so the re-run ought to be conducted at all the polling stations. In order to stop the EC from doing the re-run at only six polling stations, the interested party filed a writ of summons in the High Court, Koforidua and obtained an order of injunction restraining the EC from conducting the re-run at the six polling stations. The New Patriotic Party (NPP) candidate, who appeared to be winning the election, applied to the High Court and was joined to the suit after which the interested party amended his writ of summons and claimed for a declaration that the elections were fraught with widespread irregularities and ought to be cancelled and for an order for a re-run of the entire election. The NPP candidate then filed a motion to set aside the writ of summons arguing that the filing of a writ of summons to commence the case, instead of an election petition as stated in the electoral law, denied the court jurisdiction in the case. His motion was dismissed by the High Court. On an application by the NPP candidate for certiorari to the Supreme Court, the court quashed the whole proceedings in the High Court on the ground that the procedure adopted by the plaintiff in filing a writ of summons instead of an election petition was fundamentally flawed.

Dotse, JSC in his concurring opinion at page 514 of the Report observed as follows;
"In the instant case, the first interested party are in the right forum. However, the procedure adopted was clearly wrong, unwarranted and an abuse of the process of the court. It is the non-compliance with the procedural requirements that the first interested party has faulted in, thereby making the commencement of the entire action premature and unwarranted in law."
At page 511, the learned justice stated thus;

"I believe the time is ripe for the courts of law to frown upon and condemn any attempt whatsoever aimed and directed at circumventing laid down procedures as established by law. These species of conduct has the effect of destroying the fabric of the constitutional and legal structure of society."

In the Baba Jamal case (supra) the court conceded that the interested party had a grievance and was even in the right forum, but the means by which he entered the right forum was wrong so he was thrown out.

See also the case of **REPUBLIC VS. GHANA NATIONAL GAS COMPANY; CIVIL APPEAL NO. J4/61/2021 DATED 15 DECEMBER, 2021**, the Supreme Court, per Pwamang JSC, made the following observations on using a wrong procedure to approach a court:

"Procedural law is a vital integral component of law as a whole. Its remit is the prescription of remedies, the regulation of the means by which persons who are aggrieved may seek redress and the manner in which court proceedings are to be conducted. In respect of certain matters, legal remedies and procedure are provided for in substantive statute or even in a constitutional text, for example, criminal offences and evidence. But, it is mostly by subsidiary legislation and the settled practices of the courts that the detailed rules of procedure for civil cases are provided for. As a major raison d'etre of laws in any society is to ensure the orderly conduct of human affairs. Judges have insisted perennially, that procedure rules must be observed strictly, except in special circumstances that are clearly stated. Consequently, the fact that a person has a claim which is judicially enforceable does not entitle her to walk into any court building or approach any judge and request for any form of remedy."

In the same Ghana National Gas Company case, Dotse JSC, also made the following observations:

> "I will under the circumstances state without equivocation that, where a law or rule of procedure prescribes a method by which an action should be commenced and that procedure or method has not been followed, such a phenomenon would render that entire process and all actions therein invalid and the procedure cannot be deemed to have been properly initiated. The procedural rules stated in Order 2 r. 2 of C. I. 47 (Writ of Summons) under the circumstances of this case present the best procedure for the Applicants to have commenced their action against the Respondents. Not having done that, the process of invoking Mandamus to seek payment of compensation due them is flawed and must be deemed as having resulted into in a nullity. My examination of the nature of the reliefs the Applicants issued against the Respondents which I have copiously referred to supra, reveals quite clearly that, a writ of summons should have been the proper mode of the commencement of these proceedings instead of the Judicial review procedure of Mandamus. This conclusion has been reached by me in view of the analysis I have made of the different methods of initiating civil processes other than writs of summons explicitly spelt out in C. I. 47 supra."

From the laws and authorities stated above, it is very clear that it is a grave procedural error to join a defamation suit to a human right action. This is because these two causes of action are to be instituted through separate and independent legal procedures. The Applicant therefore cannot make a claim for defamation and add that cause of action in a human right application. It is therefore my considered opinion that Applicant's relief for damages for defamatory conduct ought to be struck out as incompetent and it is accordingly struck out.

The second issue to be determined is Whether or not the Applicant was falsely imprisoned by the 1st Respondent?

EVALUATION OF THE LAW AND THE 2ND ISSUE THAT ARISE

The 1st Respondent deny the allegation of false imprisonment in its affidavit in response. Before delving into the evidence on record as adduced by both parties in relation to this allegation of false imprisonment, I shall first allocate the evidential burden on the parties.

The burden of persuasion as to the alleged violation of the Applicant's fundamental human rights rests on the Applicant and same is defined under Section 10 (1) of the Evidence Act, 1975 [NRCD 323] as follows:

For the purposes of this Act, the burden of persuasion means the obligation of the party to establish a requisite degree of belief concerning a fact in the mind of tribunal of fact or the Court.

The burden of producing evidence is also defined under Section 11 (1) of NRCD 323 as "the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against the party".

In explaining the principles relating to the duty to produce evidence, the learned S. A. Brobbey states at page 31 of his book ESSENTIALS OF THE GHANA LAW OF EVIDENCE thus:

This literally means "the proof lies upon him who affirms, not on him who denies, since by the nature of things, he who denies a fact cannot produce proof".

Where the Plaintiff makes a positive assertion at the start of the trial, he bears the legal burden. At the same time, he bears the evidential burden to adduce evidence at the state of the trial.

Section 14 of NRCD 323 also provides as follows:

"Except as otherwise provided by law, unless 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 that party is asserting. Upon the discharge of this burden, it is incumbent on the Respondents to disprove same to avoid a determination against them."

In the case of **ABABIO VS. AKWASI IV [1994-95] GBR 774,** Aikins JSC., held at page 777 thus:

The general principle of law is that it is the duty of a Plaintiff to prove his case as he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the Plaintiff leads some evidence to prove his claim. If the Defendant succeeds in doing this, he wins, if not he loses on that particular issue.

Throughout this proceedings, the 1st Respondent has denied any infringement of the rights of the Applicant.

The position of the law is that a party must adduce further evidence in proof of an assertion that has been traversed by the other party. This position was given effect to in the case of **MAJOLAGBE VS. LARBI [1959] GLR 190 at page 192** thus:

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 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.

Further, in the case of **AMBROSE DOTSE KLAH VS. PHOENIX INSURANCE COMPANY, CIVIL APPEAL NO. J4/19/2011, dated the 30th of May, 2012,** the Supreme Court at page 8 of the judgment in relation to the aforementioned principle held thus:

> ".. since a party's pleadings constitute allegations, as opposed to evidence; where an averment is positively denied as in the matter under consideration, it is incumbent upon the party asserting to substantiate those averments by leading evidence thereon..."

In the face of the denial by the 1st Respondent that they never caused the arrest or detention of the Applicant, it was not sufficient for the Applicant to merely repeat his allegations. He was obliged to adduce further evidence to debunk the denial by the 1st Respondent. The Applicant failed to execute this burden incumbent on him.

From the above law and authorities the question that arises in determining issue 2 is whether or not the Applicant has discharged the burden of proof to entitle him to the relief he seeks before this court?

In answering the question I will proceed to examine the evidence before this Court and whether the Applicant has discharged the legal and evidential burdens placed on him to entitle him to his reliefs.

The Applicant's reliefs, borders on the tort of false imprisonment and compensation for false imprisonment. Applicant states that 1st Respondent's shop manager asked him to follow him to an inner room, then blurted out: "you are fraudster, so police is coming to arrest you". Applicant alleges that the manager then summoned a security man to stand guard over him and closed the door behind him. Applicant states that he then called his brother to come with the phone with the chip. Shortly after, Applicant alleges, the police came, arrested and handcuffed him, and was walked away in the sight of 1st Respondent's customers and staff, and taken to Community 1 Police Station. Applicant further stated that on his brother's arrival, his brother narrated to the police his problem in registering the Vodafone number. Applicant stated that the police realized he was genuine and released him but 1st Respondent, upon detecting their mistake has failed to apologize to Applicant.

The tort of false imprisonment is a tort actionable per se, that is the claimant need not prove that he/she suffered damages. The question therefore is what constitutes false imprisonment.

False imprisonment is defined in the case of **ATTA AND ANOTHER V. AMOASI AND OTHERS (1976) 2 GLR 201** as follows:

> "False imprisonment meant the complete deprivation of liberty for any time however short, without lawful justification. The starting point in the consideration of a case of false imprisonment was the point where total restraint was imposed."

The courts have also held that a wrongful or false arrest amounts to false imprisonment. In **ADEJUMO VS. ABEGUNDE AND ANOTHER (1965) GLR 499**, it was held thus:

> "If a person states facts to a police officer who acts on his own initiative and arrests the person implicated, no trespass is committed by the person who gives the information to the police."

But in the instant case, it was the Defendant who had preferred the charge against the Plaintiff and it had been prepared in such a manner that it became the duty of the police to act without exercising their own discretion, since the Defendant insisted on the Plaintiff being taken into custody before he had time to dispose of the letter. The Defendants had done more than just give bona fide information to the police and could not therefore shield themselves behind the Police. They were therefore responsible for Plaintiff's arrest. In an action for false imprisonment, the Plaintiff did not need to prove that the imprisonment was unlawful, but established a *prima facie* case if he proved that he was imprisoned by the defendant; the onus was on the defendant to prove justification.

As it was partly held in the Adejumo case cited supra, where a complainant gives information to the police and the police act independently based on their own judgment, the complainant is not liable for false imprisonment.

The court also stated in the case of **NARWU VS. ARMAH AND OTHERS (1972) 2 GLR 331** as follows:

> "Where a complainant gives information to a police officer and the officer acts according to his own judgment and makes an arrest, the complainant incurs no responsibility in tort for false imprisonment, but where a complainant does not

merely give information but directs the officer to effect the arrest, the officer in that case is considered as the servant of the complainant for that purpose and the complainant will incur liability in the tort of false imprisonment."

The question in issue here is was the arrest of the Applicant by the police wrongful. As to what constitutes an arrest, the court in **AMADJEI AND OTHERS VS. OPOKU WARE (1963) 1 GLR 150** stated thus:

"Arrest does not mean simply that a person is taken by the police to a police station. There is an arrest whenever there is a restraint of liberty, with or without actual confinement. There is an arrest when a police officer makes it clear to someone that he cannot go out of the presence and control of that officer, and when a suspected person makes a real submission to a request or command by a police officer. An arrest is malicious and unlawful when it is made without reasonable and probable cause, and, unless the arrested man is caught, red-handed, when the arresting officer fails to inform the suspect as soon as is practicable that he is being arrested and also the grounds for his arrest. The respondent went beyond a mere informer. His complaint, which was falsely and recklessly made, was the cause of the arrest of the appellants."

As stated above, was the arrest of the Applicant wrongful or false? Was the arrest unjustified? Was there no reasonable or probable cause for the arrest? It is the position of the 1st Respondent that the alleged arrest of the Applicant in whatever form or shape it is placed was justified within the confines of the law.

The 1st Respondent, in its affidavit in opposition has demonstrated in detail the regime for the SIM re-registration exercise as laid down by its regulator, the National Communications Authority and the Ministry of Communications. 1st Respondent also

deposed in its affidavit as to how for the past twelve (12) months preceding the visit of Applicant to its retail shop it has been sensitizing the general public on the procedure for the SIM re-registration. When the 1st Respondent's shop manager encountered the Applicant who was attempting to register the Vodafone number in question, the Applicant's conduct created a lot of doubt on the mind of the 1st Respondent's Shop Manager. The questions that come to my mind are: How could the Applicant attempt to register a SIM without physically having the SIM with him? How could the Applicant tell an untruth that the SIM was with him when he knew that it is not true? How could the Applicant say that the SIM was in his office, when he knew that he had given it to someone to use for months? Indeed, the 1st Respondent had reasonable grounds/suspicion to invite the Police to take over the situation and that, if it is the case of the Applicant that the 1st Respondent effected his arrest even before the Police arrived at the scene, then that alleged arrest was justified.

The Applicant himself acknowledged the fact that the Manager of the 1st Respondent had some fear about the genuineness of the Applicant by stating in Paragraph 7 of his affidavit as follows "At any rate, to allay his fears, he produced his IDs, and the office stamp of his company: Baruscans Group Engineering, bearing the No. 020-020-9349.

As 1st Respondent has stated in its affidavit, which fact Applicant asserts as well, the SIM Applicant attempted to register was in the name of another person, who had successfully registered the number through the biometric process. Quite clearly, any officer of the 1st Respondent who is faced with such a situation will be on high alert. This is because the high rise of cases of unauthorized SIM swaps is causing the players of the telecommunication and mobile money industry and indeed the entire banking sector a lot of pain. To make matters worse, Applicant came to the retail shop without a SIM card to register the number. Having painted the picture that the SIM card is in his iPAD, Applicant turned around to say that the SIM card is in another phone in his office. A

further attempt to get the Applicant to call someone to bring the SIM card all in the bid to assist Applicant was met with noncooperation from the Applicant.

It is noted that it was based on these surrounding suspicious circumstances that the 1st Respondent invited the police to come. There is no evidence that the 1st Respondent instructed the police to arrest the Applicant on their arrival.

It is also noted that the Police did not just arrest the Applicant, they interrogated him, after listening to him, they made him call the SIM in question, spoke with the person with the phone and requested the person to come to the 1st Respondent's Tema office with the SIM as soon as he could, they waited for him and when he failed to show up, they decided to move the Applicant to their station.

The 1st Respondent stated that it never arrested the Applicant nor asked the Police to arrest or participated in this exercise of an official mandate by the Ghana Police i.e. the legal authority to effect an arrest.

In **Narwu vs. Armah and Others supra**, this was what the court stated:

> "Where a complainant gives information to a police officer and the officer acts according to his own judgment and makes an arrest, the complainant incurs no responsibility in tort for false imprisonment, but where a complainant does not merely give information but directs the officer to effect the arrest, the officer in that case is considered as the servant of the complainant for that purpose and the complainant will incur liability in the tort of false imprisonment."

It is my view that the 1st Respondent was justified in inviting the police and cannot be guilty of false imprisonment for any step it took prior to the arrival of the Police. Upon

their arrival, the police acted according to their own judgment and deployed their professional protocols before they decided to move the Applicant to the Police Station.

It is my considered opinion that the Applicant has failed to show that the 1st Respondent's shop manager went beyond giving a bona fide information to the police by authorizing the police to arrest the Applicant. The Applicant has failed to demonstrate with cogent and credible evidence as to how his arrest was wrongful to find a claim on false imprisonment.

I therefore hold that the 1st Respondent acted responsibly in its dealings with the Applicant and is not guilty of any wrongdoing. It is therefore my considered opinion that the Applicant's action ought to be dismissed and it is hereby dismissed as I find his claim frivolous, unmeritorious, vexatious and an abuse of the Court process.

Cost of GH¢10,000.00 awarded in favour of the 1st Respondent against the Applicant.

(SGD)

JUSTICE RICHARD APIETU

(HIGH COURT JUDGE)

PARTIES:

APPLICANT PRESENT

RESPONDENTS ABSENT

COUNSEL:

EMMANUEL ADDY HOLDING THE BRIEF OF THOMAS GBLORVU FOR APPLICANT PRESENT

EMMANUEL MURRAY HOLDING THE BRIEF OF MARTIN AGYEN- SAMPONG FOR THE 1ST RESPONDENT PRESENT

REFERENCES:

CASES CITED

(1) REPUBLIC VS. HIGH COURT, KOFORIDUA; EX-PARTE ASARE (BABA JAMAL AND ELECTORAL COMMISSION-INTERESTED PARTIES) [2009] SCGLR 460

(2) REPUBLIC VS. GHANA NATIONAL GAS COMPANY; CIVIL APPEAL NO. J4/61/2021 DATED 15 DECEMBER, 2021

(3) ABABIO VS. AKWASI IV [1994-95] GBR 774

(4) MAJOLAGBE VS. LARBI [1959] GLR 190

(5) AMBROSE DOTSE KLAH VS. PHOENIX INSURANCE COMPANY, CIVIL APPEAL NO. J4/19/2011,

(6) ATTA AND ANOTHER VS. AMOASI AND OTHERS (1976) 2 GLR 201

(7) ADEJUMO VS. ABEGUNDE AND ANOTHER (1965) GLR 499

(8) NARWU VS. ARMAH AND OTHERS (1972) 2 GLR 331

(9) AMADJEI AND OTHERS VS. OPOKU WARE (1963) 1 GLR 150

STATUTES

(1) ARTICLE 14 (5) OF THE 1992 CONSTITUTION OF THE REPUBLIC OF GHANA

(2) ORDER 2 RULE 2 OF C. I. 47

(3) ORDER 57 RULE 2 OF C. I. 47

(4) ARTICLE 33 (1) OF THE 1992 CONSTITUTION

(5) SECTION 10 (1) OF THE EVIDENCE ACT, 1975 [NRCD 323]

(6) SECTION 11 (1) OF NRCD 323

(7) SECTION 14 OF NRCD 323