

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
(GENERAL JURISDICTION DIVISION, COURT 12) ACCRA, HELD ON THE 16TH
DAY OF JANUARY 2025 BEFORE HIS LORDSHIP JUSTICE AYITEY ARMAH-
TETTEH

SUIT NO: GJ/0366/2023

KWABENA BAFFOUR ASARE

-

PLAINTIFF

VRS

1. ATTORNEY GENERAL

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DEFENDANTS

2. GHANA IMMIGRATION SERVICE

PARTIES: - PLAINTIFF ABSENT

1ST DEFENDANT ABSENT

**2ND DEFENDANTS REPRESENTED BY ASI AKOSUA AYAKOR
TUAPANY**

**COUNSEL: - JOHN KWASHIGA NENYO, ESQ., FOR REINDORF TWUMASI
ANKRAH, ESQ., FOR PLAINTIFF**

**MRS YVONNE CHLOE MESSIBA (SA) LED BY UMO ZAKARI FOR
DEFENDANTS (PSA)**

JUDGMENT

INTRODUCTION

[1] The Ghana Immigration Service (2nd Defendant) on 1st June, 2022 per a wireless message, the Deputy Comptroller-General/Operations directed the Commander KIA, OIC/Aflao, Elubo and Paga to place a suspect **Kwabena Asare alias Kobby** a male Ghanaian national who resides in Germany on the SPOTLIST. They were requested to

apprehend him when he attempts to exit the country and bring him to the attention of the Deputy Comptroller-General /Operations. The wireless message was based on a request by the Ghana Police Service.

[2] The Plaintiff **Kwabena Baffour Asare** a Ghanaian and a resident of Berlin, Germany came to Ghana in May 2022 for the funeral of his late mother and decided to return on 17th June, 2022. When he got to the Kotoka International Airport and had gone through all the pre-boarding procedures and was preparing to board his flight, he was prevented by officials of the 2nd Defendant for being on their 'Wanted Persons' list. He was detained and later taken to the Head office of the 2nd Defendant. He was later in the early hours of 18th June 2022, handed over to the Ghana Police Service who subsequently took him to the Adenta Police Station where his statement was taken. He was subsequently released by the police after the police noticed that he was not the wanted person.

[3] Later on, in the evening of 18th June, 2022 while he was going through pre-boarding procedures at the airport to leave the country for Germany he was once again stopped for the same reasons. Even though he showed the Immigration Officer a Police extract which indicated that he was not the wanted person, he was not allowed to travel. It was not until 20th June 2022 that he was allowed to travel. The Plaintiff considers that the officers acted negligently, unlawfully, and unfairly and contends that his rights have been abused, and has come to this court for redress. Defendants deny the claim of Plaintiff and contend that the 2nd Defendant was performing its statutory duty and was not negligent. The main issue that arises is whether the Officers of the 2nd Defendant were negligent in refusing to allow the Plaintiff to travel.

PLAINTIFF'S PLEADINGS

[4] The case of the Plaintiff is that in or about the month of May 2022 he arrived in Ghana for the final funeral rites of his late mother which took place on or about the 27th May, 2022 through to the 30th May, 2022.

[5] According to Plaintiff, on or about 17th June, 2022 when he was due to travel back to Germany, he reported to the Kotoka International Airport (KIA), and after he had gone through all necessary pre-boarding procedures at the airport and was preparing to board his flight, he was arrested by officials of the 2nd Defendant and further detained without being told of the reason for his arrest and detention.

[6] According to Plaintiff he demanded to know the reasons for the arrest and detention but was not informed of same until after persisting and threatening to sue the State that he was informed that, there is an order for his arrest in relation to a crime he is alleged to have committed.

[7] According to Plaintiff while at the Head Office of the 2nd Defendant, he demanded from the officers there to know why he had been prevented from travelling and he was told that, his name was in the 2nd Defendant's database as a wanted person and that the report was sent to them by the Ghana Police Service. Upon several demands to know the name and details contained in the database, he became aware that, the name in the database is **Kwabena Asare** whose name on its face is different from his name **Kwabena Baffour Asare**.

[8] It is the case of the Plaintiff that by the said arrest and detention he was prevented from travelling on 17th June, 2022 and his luggage which had already been checked-in, was retrieved and brought back to a holding room where he was being held. He was subsequently moved from the holding room at the airport to the Head office of the 2nd Defendant around 1.00 am the following day.

[9] According to Plaintiff he was later on in the early hours of 18th June, 2022, transferred to the Adenta Police Station where his statement was taken who subsequently released him after the police noticed that the details sent to the 2nd Defendant did not match the details of Plaintiff. The Plaintiff demanded and obtained Police Extract from the Police to show to the Immigration Officers at the Airport when he makes another attempt to travel on the evening of 18th June, 2022 to Germany.

[10] According to Plaintiff having become abundantly clear that 2nd Defendant had the wrong person, it was expected that 2nd Defendant's Officers would work to ensure that he travelled back to Germany without further challenges. However, just as happened on 17th June, 2022, while he was undergoing pre-boarding procedures at the airport, he was once again arrested and detained for the same reason.

[11] According to Plaintiff, he showed the officers of the 2nd Defendant the Police extract given him by the Police Service indicating that he was not the wanted Person but, the 2nd Defendant's Officers disregarded the Police extract and he was again turned away and prevented from travelling.

[12] Plaintiff contends that he was unlawfully, unfairly and negligently prevented from travelling on 17th and 18th of June 2022 because there was no absconding Warrant of Arrest from any Court or an Order demanding his arrest.

[13] According to Plaintiff as a result of the actions of the officers of the 2nd Defendant Plaintiff lost his job in Germany which was relatively earning him a good income.

Defendants' Pleading

[14] The Defendants deny the claim of the Plaintiff in its entirety and contend that the name Kwabena Asare is in their database because they received a letter from the Ghana Police Service in respect of one Kwabena Asare residing in Germany who is alleged to have committed an offence. According to the Defendants the message from the Ghana Police Service was not accompanied by any photograph of the said Kwabena Asare but the 2nd Defendant however placed the name on its Stop List.

[15] According to Defendants when Plaintiff got to the Kotoka International Airport on 17th June, 2022 and was going through the departure formalities, Plaintiff's details popped up in its Immigration Control at the Airport and revealed a similarity match of 94% and that the Officers of the 2nd Defendant had no option than to conduct further checks on the Plaintiff.

[16] According to the Defendants, it was not until 20th June, 2022 that the 2nd Defendant received official communication from the Ghana Police Service that the Plaintiff was not the wanted person that the Plaintiff was allowed to travel.

[17] Defendants contend that the Officers of the 2nd Defendant did not act negligently in not allowing Plaintiff to travel on the 17th and 18th June 2022. Defendants further contend that they acted in good faith devoid of any malicious intentions and was geared towards making our country safe and secure.

[18] At the close of pleadings, the following issues were settled for the determination of the suit.

1. Whether or not the Defendants owed the Plaintiff a duty to ensure that the information in their database was an exact match of the details (age, name, photo) of the Plaintiff before arresting and preventing the Plaintiff from travelling on 17th June, 2022.
2. Whether or not officers of the 2nd Defendant at the Kotoka International Airport acted negligently in the discharge of their official duty when they stopped Plaintiff from travelling on 17th and 18th June, 2022.
3. Whether or not the officers of the 2nd Defendant at the Kotoka International Airport in the performance of their lawful duties by stopping the Plaintiff from travelling to Germany on 17th and 18th June 2022, constituted harassment and unfair treatment.
4. Whether or not the Defendants acted negligently in arresting/detaining and preventing the Plaintiff from travelling on 18 June 2022 when/after the Ghana Police Service had confirmed in writing that the Plaintiff is not the same as the "wanted person" in the database.
5. Whether or not the Defendants acted negligently by failing to ensure that information entered into their database contained sufficient details which will lead to an irresistible conclusion that the Plaintiff is the "wanted person" before

arresting/detaining and preventing the Plaintiff from travelling on the 17th and 18th of June, 2022.

[19] I will discuss issues 1, 2, 4, and 5 together as all are to the effect of whether the 2nd Defendant's Officers acted negligently on 17th and 18th June 2022 when they detained and prevented the Plaintiff from travelling to Germany.

[20] The **Black's Law Dictionary** 10th Edition, 2014 has this on Negligence as follows:

The failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation; any conduct that falls below legal standards established to protect others against unreasonable risk of harm except for conduct that is intentionally, wantonly, or wilfully disregarding of others' rights, the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances. The elements necessary to recover damages for negligence are (1) the existence of a duty on the part of the defendant to protect the Plaintiff from the injury complained of, and (2) an injury to the Plaintiff from the defendant's failure.

[21] In the text **Clerk and Lindsel on Torts**, 7th Edition, at pages 427 and 428, the Learned Authors stated the requirements of the tort of negligence as follows:

The tort is committed when damage, which is not too remote, is caused by the breach of a duty of care owed by the defendant to the plaintiff. In traditional terminology the ingredients of liability are duty of care, breach and damage:

[22] Also, the text **Windfield and Jolowics on Tort** 17th Edition defines the tort as follows:

Negligence as a tort is a breach of a legal duty to take care which results in damage to the claimant. Thus, its ingredients are (1) a legal duty on the part of D towards C to exercise care in such conduct of D as falls within the scope of the duty;(2)

breach of that duty, i.e. a failure to come up to standard required by law; (3) consequential damage to C which can be attributed to D's conduct

[23] The courts have also explained the tort of negligence and its elements. In the celebrated case **Donoghue v Stevenson** [1932] AC 526, Lord Atkin in giving the essential elements of negligence stated as follows:

The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question "who is my neighbour" receives a restricted reply. You must take reasonable care to avoid acts or omission which would likely to injure your neighbour. Who then in law is your neighbour? The answer seems to be persons who are so closely and directly affected by my act, that I ought to reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

[24] In the Ghanaian case of **Edward Nassar v McVroom** [1996-1997] SCGLR 468 at 478 Acquah JSC stated as follows:

It is trite learning that the first step in proving negligence in tort is to establish a duty of care owed by the Defendant towards the Plaintiff, which duty must arise from nature of the relationship between them. A breach of this duty by Defendant must establish and finally, there must be damage suffered by the Plaintiff as a result of this breach.

[25] Essiam JA also in the case of **Gyan v Ashanti Goldfields** [1991] 1 GLR 466 in quoting **Mc Nair J. in Bolam v. Friern Hospital Management Committee** [1975] 2 All ER. 118 at 121 stated as follows:

.... I must explain what in law we mean by 'negligence'. In the ordinary case which does not involve special skill, negligence in law means this : Some failure to do some act which a reasonable man in the circumstances would do, or doing some act which a reasonable man in the circumstances would not do; and if that failure or doing that act results in injury, then there is a cause of action.."

[26] In the present case, Plaintiff asserts that the events which led to him being restricted and prevented from travelling outside the country on 17 and 18 June 2022, were a breach of duty of care by Defendant. As a result of this breach, he lost his job in Germany and experienced harassment and unfair treatment.

[27] Defendants, in response to Plaintiff's claim, assert that the officers of the 2nd Defendant at Kotoka International Airport were not negligent in preventing Plaintiff from travelling on those days. The Defendants argue that the 2nd Defendant did not owe the Plaintiff a duty of care to ensure that the information in their database exactly matched that of the Plaintiff. They maintain that the 2nd Defendants were simply performing their official duties.

[28] I intend to discuss the happenings or events of 17th June, 2022 and 18th June, 2022 separately as in my view they carry different responsibilities and consequences.

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[29] On 17th June 2002, when Plaintiff got to the Kotoka International Airport and had gone through all the pre-boarding procedures and was preparing to board his flight, he was prevented by officials of the 2nd Defendant from boarding and subsequently detained. The reason was that Plaintiff's details matched the details of a wanted person on the 2nd Defendant's stop list. Plaintiff then was taken to the Head Office of the 2nd Defendant and later in the early hours of 18th June 2022, handed over to the Ghana Police Service who subsequently took him to the Adenta Police Station where his statement was taken but later was allowed to go because he was not the wanted person.

[30] The 2nd Defendant had earlier received a letter from the Ghana Police Service which requested them to apprehend one Kwabena Asare a male Ghanaian residing in Germany who is alleged to have committed arson. The details of the said suspect were placed in the 2nd Defendant's database as a wanted person and put on the stop list. When Plaintiff's details popped up in 2nd Defendant's immigration control at the Airport and revealed a

similarity match of 94%, the Officers prevented him from travelling to enable them to conduct further checks on Plaintiff.

STATUTORY MANDATE OF 2ND DEFENDANT

[31] 2nd Defendant is statutorily mandated to control and facilitate the movement of people across Ghana's Borders, as well as to operate a credible Work and Residence Permit System that meets the socio-economic needs of Ghana. This mandate is derived from the Immigration Service Act, 1989 (PNDC Law 226) and the Immigration Act, 2000 (Act, 573). The 2nd Defendant in enforcing these laws regulates the work and residence of persons of other nationalities in Ghana among others. The 2nd Defendant also performs other functions such as combating human trafficking, money laundering, aspects of refugee management, among others.¹

[32] In the present case, the actions taken by the officers of the 2nd Defendant on 17 June 2022 were carried out in accordance with their statutory duty to regulate and control our borders and ports. This includes ensuring that individuals who have committed crimes and are declared wanted are apprehended. The officers work to prevent these individuals from leaving the jurisdiction in order to evade responsibility for their actions. The statutory duty is contained in sections 9, 10 and 12 of the **Immigration Act 2000, Act 573**.

[33] Section 9—Embarkation.

A person in charge of a vessel, aircraft or vehicle departing from any port or place in Ghana shall not permit any passenger to embark until embarkation has been authorised by an immigration officer.

Section 10—Appearance Before Immigration Officer of Person Leaving Ghana.

¹ Ghana Immigration Service Legal Handbook , August 2016

(1) A person leaving Ghana shall appear before an immigration officer at the immigration post at any of the approved places of departure.

(2) The immigration officer may examine a person who appears before him and shall ask that person to complete a form as may be prescribed.

(3) The immigration officer may dispense with personal attendance of any person leaving Ghana if he is satisfied by documentary or other evidence of the person's identity and his right to leave Ghana.

(4) A person who wilfully or recklessly makes a statement to an immigration officer which is false or who refuses to answer a question properly put to him by an immigration officer may be disallowed re-entry into Ghana temporarily.

Section 12—Conditions of Departure. Subject to this Act where an immigration officer is satisfied that a person leaving Ghana:

(a) is not a wanted person;

(b) is in possession of a valid travel document;

(c) has a valid visa to enter the country of destination; and

(d) is not in arrears of payment of fees or penalty to the Director the officer may permit that person to leave Ghana on completing the prescribed form and endorse his passport or travel document.

[34] In her written address, Counsel for the Defendants contended that the Officers of the 2nd Defendant were carrying out their statutory duties and did not owe the Plaintiff any duty of care to ensure that the information in 2nd Defendant's database was the exact details of the Plaintiff and as a consequence, they were not negligent. The question that needs an answer is, can a public officer or a public body in performing a statutory duty be liable for negligence? This question would be answered after examining a few legal authorities.

[35] In **X (Minors) v Bedfordshire County Council** [1995] 2 AC 633 Lord Browne-Wilkinson at page 736 stated as follows:

It is clear both in principle and from the decided cases that the local authority cannot be liable in damages for doing that which Parliament has authorised. Therefore, if the decisions complained of, fall within the ambit of such statutory discretion, they cannot be actionable in common law. ***However, if the decision complained of is so unreasonable that it falls outside the ambit of the discretion conferred upon the local authority, there is no a priori reason for excluding all common law liability. (Bold italics mine).***

[36] In **Edem Adinyira v Scancom & Anor** (2017) JELR 107064 (CA) the court held that:

It is trite learning that if a person suffers damage due to the breach of a statutory duty, she/he may be able to bring an action for breach of statutory duty simpliciter. The careless performance of a statutory duty will not give rise to a cause of action unless there exists a right of action for breach of statutory breach simpliciter or a common law duty of care of negligence."

[37] Then in the recent case of **Robinson v Chief Constable of West Yorkshire Police [2018] UKSC 4**, the United Kingdom Supreme Court explained the legal principles in relation to duty of care connected with the performance of statutory duties by public bodies thus:

"Public authorities other than the Crown were traditionally understood to be subject to the same general principles of the law of tort, at common law, as private individuals and bodies Accordingly, if a conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority."

[38] Lord Reed in the case of **Poole Borough Council v GN and Another** [2019] UKSC 25, para 27 in referring to Lord Reid's explanation on the subject in **Dorset Yacht Co Ltd v Home Office** [1970] AC , 1004 stated thus:

"In particular, as Lord Reid explained in *Dorset Yacht Co Ltd v Home Office* [1970] AC , 1004, 1030, a person performing a statutory duty was liable for an act which, but for the statute, would be actionable at common law, if he performed the act carelessly so as to cause needless damage. His liability arose because the defence which the statute provided extended only to the careful performance of the act.

The rationale, Lord Reid explained, was that:

" Parliament deems it to be in public interest that things otherwise unjustifiable should be done, and that those who do such things with due care should be immune from liability to persons who may suffer thereby. But Parliament cannot reasonably be supposed to have licensed those who do such things to act negligently in disregard of the interest of others so as to cause them needless damage."

[39] The court in **Poole Borough Council v GN and Another** (supra) further held that:

"The approach as to whether a public authority was under a duty of care was based on the premise that public authorities were *prima facie* subject to the same general principles of the common law of negligence as private individuals and organizations, and could therefore be liable for negligently causing individuals to suffer actionable wrongs."

[40] Public authorities are generally held to the same principles of law regarding the tort of negligence. Simply having statutory obligations does not automatically create a duty of care in negligence. However, in certain situations, a duty of care may arise from actions or inactions related to the operation of a statutory scheme. A duty exists when actions

are taken within the context of a statutory service, and if negligent performance results in harm, there may be a valid claim.

[41] 2nd Defendant is statutorily mandated to control and facilitate the movement of people across Ghana's Borders and screen passengers on arrival and at the point of departure from Ghana, and they owe a duty of care to all travellers to ensure that their actions and inactions do not cause harm or injury to them.

[42] Immigration Officers at Kotoka International Airport, as well as at all other entry and exit points of the country, are required to perform their duties with reasonable care. This means they must perform their duties with due care to avoid any actions or omissions that could harm persons undergoing immigration procedures at our ports of entry and exit. If the officers breach this duty and cause injury to persons, the Defendants would be held liable for damages.

[43] On 17th June 2022, the 2nd Defendant's Officers were performing their statutory duties at the Kotoka International Airport. They had earlier received information via a wireless message from the Head Office that the Ghana Police Service requests that one Kwabena Asare, a Ghanaian male residing in Germany who was alleged to have committed an offence be put in their database as wanted man and should be apprehended when he attempts to travel outside the country. In effect, Kwabena Asare was a wanted man and should not be allowed to leave the jurisdiction. That was the dictates of Exhibit 3. The details of the wanted person given in Exhibit 3 are as follows:

Name: KWABENA ASARE

ALIAS: KOBBY

GENDER: MALE

NATIONALITY: GHANAIAN

The details of Plaintiff per the biodata of his passport, Exhibit A are as follows:

NAME : KWABENA BAFFOUR ASARE

SEX: M

NATIONALITY: GHANAIAN

DOB: 18 May 1958

[44] Per Section 12 of Act 573, one of the conditions of departure of a person from Ghana is that the person is not a wanted person. If the immigration officer is satisfied that the person intending to exit the country is a wanted person, the immigration officer shall not allow the person to exit Ghana.

[45] It is the case of the Defendants that, the details of Plaintiff popped up as a wanted person with a similarity match of 94% of the details of the wanted person. The Plaintiff tendered Exhibit H through DW1. Exhibit H is the screening List Match Report of the 2nd Defendant at the Kotoka International Airport for 17th June, 2022. The details of Exhibit H indicate that the Traveller was Kwabena Asare Baffour, a Ghanaian Male, the documents provided were a passport of the traveller which included his date of birth as 16th May 1958. The Matching Screening List Person's name was Kwabena Asare with a date of birth of 01/12/1981. With these details, the Matching percentage was 94%.

[46] The question is, did the 2nd Defendant's Officers with a similarity match of 94% act negligently when they prevented the Plaintiff from travelling to enable them to conduct further checks on him? I do not think so. In my view, a similarity matching need not be 100% before Immigration Officers or any other security agencies could apprehend and restrain a person to do more checks to confirm if indeed that person is a wanted person.

[47] I take judicial notice of the fact that Asare is a general Akan name and every Twi male child born on Tuesday is called Kwabena. Even though Kwabena Asare might be a general Akan name in Ghana, other details of the wanted person were placed in the database making it generate a similarity match of 94%. In my view, having a similarity match of 94% would constitute a reasonable suspicion enough to stop and identify the person involved and make further checks if indeed he is the wanted person who has been

placed on the stop list. Any prudent and reasonable Immigration Officer who finds that a person's details reveal a 94% match to the details of a wanted person in their database will have to do further checks on the traveller to ascertain if indeed that person is the wanted person. The way to do this in the circumstances of this case is not to allow the Plaintiff to proceed on his journey but to stop him from proceeding on his journey and make the necessary checks.

[48] On the evidence, I am satisfied that the Immigration Officer acting for and on behalf of the 2nd Defendant on 17th June, 2022 did not act negligently in stopping Plaintiff to travel to enable the Officer to do further checks on him to know if he was the wanted person that the police is looking for. The Immigration Officer on 17th June, 2022 did not breach any duty of care towards the Plaintiff.

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[49] On the evidence, I am satisfied that the Immigration Officer on 18th June, 2022 acted negligently, he did not act with reasonable care. Officers of the 2nd Defendant are required to make decisions in the course of performing their public duties that have legal consequences and affecting the liberty of persons travelling and in performing that duty they have to act reasonably and prudently.

[50] The Immigration Officer on 18th June, 2022 had no reasonable cause to prevent the Plaintiff from exiting the country. When the Plaintiff was stopped from travelling on 17th June 2022, he was sent to the 2nd Defendant's Head Office where he was later on in the early hours of 18th June, 2022 transferred to the Police .The Police after their investigations found out that the Plaintiff was not the wanted person and issued him with a Police extract which indicated that Plaintiff was not the wanted person.

[51] The Plaintiff testified as follows:

I was further held at the Head office of the 2nd Defendant and subsequently handed over to the Ghana Police Service around 3 a.m. on the dawn of 18th June 2022. The Ghana Police Service after noticing that the details sent to the 2nd

Defendant did not match my details immediately released me and gave me extract (a document the 2nd Defendant demanded that I bring from the police before I could travel). I was directed to show the extract to the Immigration Officers when I get to the Airport in the evening of 18th June, 2022 when I make another attempt at travelling..... Unfortunately for me, just as happened on the 17th June, 2022 while I was undergoing pre-boarding procedures at the Airport, I was once again restrained/arrested by 2nd Defendant for the same reason(s) as already mentioned when I attempted to once again travel out of the country on the 18th June, 2022. Although I showed the Officers of the 2nd Defendant the Police extract given to me by the Police service indicating clearly that I was not the 'Wanted Person' the Police was pursuing, 2nd Defendant disregarded this document. I was once again turned away and prevented from traveling by the then officer of the 2nd Defendant who was in charge of departures at the time whose name I recall as Ambrose.

[52] The said Ambrose testified on behalf of the Defendants as DW1 and this was his testimony on the Police extract:

On the next day which was 18th June, 2022, the Plaintiff was again stopped from travelling and he was transferred to the Intelligence Unit. He was holding a Police extract stating that the Police had cleared him. I called my supervisor again and informed him about the situation. My supervisor informed me that there is no official communication indicating that the Plaintiff had been cleared by the Ghana Police Service, from the Headquarters of the 2nd Defendant Institution so we cannot allow him to travel.

[53] He testified further under cross-examination as follows:

Q. On the 18th June 2022, the Plaintiff came back to the airport with a police extract. Is that not the case?

A. Yes

Q. In your practice and based on your experience, you are familiar with what a Police extract is. Is that not the case?

A. Yes, I am.

Q. Kindly tell us what you know about a Police extract.

A. It is a simple communication from the police on an issue on their letterhead with an official stamp.

Q. When the Plaintiff was brought to you in the back room on the 17th and 18th June, 2022, kindly tell this court what transpired.

A. On that fateful day the traveller presented a Police extract purporting to allow him to travel. Per our standard, a passenger cannot wield his own clearance letter. An officer from the requesting agency is expected to present the clearance letter to GIS headquarters before it will trickle down to, we the frontline officers, and I remember vividly I advised Mr. Kwabena Asare to do same since I did not originate the letter that placed him on the stop list. And that has been our standard.

Q. And this standard is in the document you have failed you to exhibit before this court. Is that not the case?

A. Yes, the last time I tried taking such a decision even in the company of the CID, I was queried.

Q. You are aware that this court does not have the benefit of all the circumstances that led to your query based on the decision you took.

A. Yes.

[54] From the evidence of DW1, a Police extract is an official document from the police on its letter head and it is authenticated by an official stamp. Exhibit D had all the features of a Police extract described by DW1. His only reason for refusing to accept it was that,

the Plaintiff was holding his 'own clearance letter' and that is not allowed by their standards, and that they were waiting for an official communication from their Head Office.

[55] In my view, the Officers of the 2nd Defendant on 18th June, 2022 acted without due care. They had no reasonable cause to detain and prevent the Plaintiff from travelling. They acted unreasonably and without prudence. A Police extract as correctly described by DW1 is an official document from the Police giving a certain state of affairs. The Plaintiff testified that he was asked by the Police to show it to the Immigration Officers at the airport the next time he makes an attempt to travel. When he showed it to the Immigration Officers, he was not allowed to travel because according DW1 there is no official communication from the Police that Plaintiff has been cleared.

[56] Portions of Exhibit D reads as follows:

...Pictures or photo of the said suspect which was taken on the spot and sent to Abokobi Ayimensah District Commander Supt Edward Kojo Tetteh and the complainant confirmed that the suspect is not the one under investigation but rather mistake identity, that the names are same. Meanwhile the main suspect is in his thirties while this man is in his sixties. Upon instruction of the Abokobi Ayimensah District Commander, suspect Asare Kwabena Baffour was released on self-recognition bail.

Extract of occurrence was prepared from the station diary and handed over to the suspect Mr. Asare Kwabena Bafour for the information of authority to whom it may concern.

[57] The contents of Exhibit D are in similar terms with Exhibit C the so-called official communication from the Police which was received by the 2nd Defendant on 21st June, 2022 and acting on Exhibit would have prevented the Plaintiff from being detained and prevented from travelling on 18th June, 2022. The 2nd Defendant's Officers acted negligently when they ignored Exhibit D by saying it was not an official communication

from the Police and failed to communicate with the Police before turning Plaintiff away. Any reasonable and prudent Immigration Officer would have made further checks to verify if Exhibit D was issued by the Police especially so, when the Plaintiff had intimated to them that he would lose his job if he does not get to Germany by 20th June, 2022.

[58] DW2 testified under cross examination that telephone communication is employed in the performance of their duties.

Q. Are you aware that, the wireless message from your bosses from GIS instructing the KIA Division to permit Plaintiff to travel was received on 21st June 2022 ?

A. Yes, I am very much aware of it. With the Police we have communication channel through our Head office, so communication to allow passenger came to me on 20th June 2022 i.e. telephone communication came to me but the actual paper instructing the removal of name came on 21st June 2022. On the stop list window, we have active and inactive button to select from the system. When the phone call came in the inactive button was selected for that subject or the plaintiff. Then on 21st June, 2022 when the actual paper work came in, we did the attachment of the instruction thereon to allow passengers to proceed.

[59] From the evidence of DW2, telephone communications are used and permitted in sending information across and such telephone communications are acted upon. When the Plaintiff presented Exhibit D to the Officer on 18th June 2022, a prudent and reasonable officer would have made a telephone call to either the Head Office or to the Police that issued Exhibit D to confirm it. As it turned out later, it was through a telephone call on 20th June, 2022 from the 2nd Defendant's Head Office that the Officers at the airport were informed that the Plaintiff was not the wanted person and was allowed to travel. In any case, the Officers of the 2nd Defendant are agents and act on behalf of the 2nd Defendant, showing Exhibit D to the Officers at the airport in my view constituted knowledge of it to the 2nd Defendant and the Officers should have acted upon the Police report and allow the Plaintiff to travel.

[60] On 18th June 2022, the Plaintiff was known not to be the wanted person Kwabena Asare who is on the 2nd Defendant's stop list. The police who sent the details of the said Kwabena Asare to the 2nd Defendant had issued a police extract to that effect. The conduct of the Officers at the airport fell below the normal standard of a reasonable and prudent man in the circumstances of this case.

[61] If the conduct of a person falls below the standard required by law, he would be said to have breached a duty of care. The standard normally set is that of a reasonable and prudent man. In the case of **Blyth v Birmingham Waterworks** [1856] 11 Ex 781 at 784 Baron Anderson stated as follows:

Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do; or doing something which a prudent and reasonable man would not do.

[62] On 18th June 2022, in terms of section 12(a) of Act 573, the Officers of the 2nd Defendant knew or ought to have known that Plaintiff was not a wanted man and was to be permitted to exist the country without any restriction if the other requirements for travel under section 12(a) were complied with. By refusing the Plaintiff to travel on the 17th June 2022 the 2nd Defendant's Officers acted negligently and the Plaintiff is entitled to damages. They failed to take reasonable care when they knew or ought to have known that on 18th June 2022, the Plaintiff was not the wanted person on their stop list. Defendant is vicariously liable for the actions of its officers and are liable in damages to the Plaintiff.

I will now deal with issue 3.

[63] The Plaintiff was unjustifiably restrained and prevented from travelling on 18th June, 2022 and as a consequence lost his job. His rights were also abused. Article 12 of the 1992 Constitution provides as follows:

12. PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

(1) The fundamental human rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other Organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution.

(2) Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest

[64] And Article 21(1)(g) provides as follows:

21. GENERAL FUNDAMENTAL FREEDOMS.

(1) All persons shall have the right to—

(g) freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana.

[65] 14. PROTECTION OF PERSONAL LIBERTY.

(1) Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law—

(5) A person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation from that other person.

[66] The Plaintiff testified that as follows:

Although, I showed the Officers of the 2nd Defendant the Police extract given to me by the Police service indicating clearly that I was not the “Wanted Person” the

Police was pursuing (sic), 2nd Defendant disregarded this document. I was once again turned away and prevented from travelling by the then Officer of the 2nd Defendant who was in charge of the departures at the time."

[67] DW1 also testified as follows:

On the next day which was the 18th of June, 2022, the Plaintiff was again stopped from travelling and he was referred to the Intelligence Unit.

And under cross-examination of DW1 he testified further as follows:

Q. In fact, it gives you the power of the Police to arrest and detain. Is that not so.

A. Yes

Q. And you exercise this power when there is a reason to do so. Especially when someone is on the wanted list. Is that not the case?

A. No. people on the stop list are not under arrest in this particular situation but if you tell him he is under arrest, he will ask you why. Some of the arrests are on an order for the court. We only stop and tell you this agency wants you, whether police of BNI.

Q. So when you stop a person from travelling, can the person pick up their luggage and go home?

A. No.

Q. Why?

A. he has been stopped from travelling.

Q. So you will agree that because the person stopped from travelling cannot go home you put in measures to prevent him from escaping your custody?

A. Exactly.

[68] On the evidence presented, I conclude that Plaintiff's freedom of movement, particularly his right to leave the country, was unjustifiably violated by the officers of the 2nd Defendant. The Plaintiff's rights were violated by the Officers of the 2nd Defendant. The Officers were negligent and that negligence led to the violation of Plaintiff's rights and eventually led to the loss of his job. The Officers exhibited a lack of sensitivity towards the Plaintiff's situation. Looking at what the Plaintiff had gone through the day before, one would have expected the Officers of the 2nd Defendant to act prudently on 18th June, 2022 when the Plaintiff made an attempt to travel and showed them exhibit D. They showed no regard for the Plaintiff's interests, resulting in restrictions and restraints imposed on him. As a result, the Defendants are liable to compensate the Plaintiff with exemplary damages.

[6] In **Robinson v Chief Constable of West Yorkshire Police** (supra) the court held as follows:

Since it was reasonably foreseeable that the claimant would suffer personal injury as a result of the officer's conduct unless reasonable care was taken, a duty of care arose in accordance with the principle in *Donoghue v Stevenson* [1932] AC 562.

[70] I will in the circumstance of this case award Plaintiff exemplary damages of Ghs 650,000.00 against the Defendants for the violation of his freedom of movement out of the country.

[71] It is the further claim of Plaintiff that as a result of the conduct of the Officers of the 2nd Defendant, he was not able to get to Germany by 20th June, 2022 and as a result lost his lucrative job in Germany where he has worked for 30 years and he is asking for loss of earnings. The Plaintiff's employment was terminated. Plaintiff testified that he told the Officers of the 2nd Defendant that if he did not get to Germany by 20th June, 2022 he was going to lose his job. This piece of testimony was not denied by the Defendant under cross-examination. The Officers at the airport having been told by the Plaintiff that he would lose his job if he did not get to Germany by 20th June 2022, they did not bother to

take reasonable care to ensure that the Plaintiff travelled in good time to Germany so he would not lose his job.

[72] In **Robinson v Chief Constable of West Yorkshire Police** (supra) the court held as follows:

Since it was reasonably foreseeable that the claimant would suffer personal injury as a result of the Officer's conduct unless reasonable care was taken, a duty of care arose in accordance with the principle in *Donoghue v Stevenson* [1932] AC 562 .


[73] The Plaintiff tendered in evidence exhibit G. Exhibit G is a letter of termination of the employment of the Plaintiff. The reason for the termination per Exhibit G is that the Plaintiff failed to show up for work by 21st June, 2022 according to Plaintiff. I will grant him 12 months loss of earnings. I will award him Ghs250,000.00 as loss of earnings.

[74] The Plaintiff pleaded special damages of Legal fees Ghs10,000.00, accommodation in Accra from 17th to 20th June 2022, Transport and feeding for the days he spent in Accra because of the conduct of the Officers. I will award him special damages of Ghs14,000.00

[75] In Conclusion, I enter judgment for the Plaintiff as follows:

1. General damages of Ghs650,000.00 for negligence and unjustifiable violation of Plaintiffs.
2. Loss of earnings of Ghs250,000.00
3. Special damages of Ghs10,000.00
4. Costs of Ghs50,000.00 in favour of Plaintiff.

(SGD.)
AYITEY ARMAH-TETTEH J
 (JUSTICE OF THE HIGH COURT)

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 HIGH COURT
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