IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: YEBOAH, JSC (PRESIDING)

BAFFOE-BONNIE, JSC

GBADEGBE, JSC

APPAU, JSC

PWAMANG, JSC

CRIMINAL MOTION
NO. J8A/03/2017

30TH MAY, 2018

ERIC ASANTE ..... APPLICANT

VRS

THE REPUBLIC ..... RESPONDENT

RULING

GBADEGBE, JSC:-

We have before us in the exercise of our jurisdiction under article 14 (7) of the Constitution a claim by the applicant herein for compensation. Article 14(7) provides:

> "Where a person who has served the whole or a part of his sentence is acquitted on appeal by a court, other than the Supreme Court, the court may certify to the Supreme Court that the person acquitted be paid compensation; and the Supreme Court may, upon examination of all the

> facts and the certificate of the court concerned, award such compensation as it may think fit; or where the acquittal is by the Supreme Court, it may order compensation to be paid to the person acquitted."

The background to the matter herein may be set out shortly as follows. The applicant was convicted on a charge of defilement by the High Court on September 05, 2005. His appeal to the Court of Appeal was unsuccessful but a further appeal to this court was allowed in an unreported judgment dated January 26, 2017, a copy of which has been exhibited to the proceedings herein as "A". Following his acquittal, the applicant has applied to us under article 14(7) of the Constitution and a related provision contained in article 14 (5) of the Constitution for compensation. The substance of the complaint made under article 14 (5) is that as the conviction was founded upon his arrest on November 14, 2003 and he remained in custody from that date until he was acquitted and discharged by the Supreme Court, the period of his confinement before the trial process be taken into account in determining the appropriate compensation to which he is entitled. Article 14 (5) of the Constitution provides:

> "A person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation rom that other person."

Our understanding of the claimant's prayer to the court is that as his arrest and detention before his trial was at the instance of the Republic, the period commencing from November 14, 2003 to the date of his release on January 26, 2017 be used in determining the length of his confinement for the purpose of computing his entitlement. Although article 14(7) utilizes the words *"… a person who has served the whole or part of his sentence is acquitted on appeal……."* before conferring the right to compensation on persons who come within that category, a detention arising from an arrest for a crime though strictly speaking not a sentence, it is interrelated with the criminal process which was initiated by the Republic and therefore may in appropriate cases be taken into account in determining the period conviction of confinement suffered by an acquitted person since it is substantially, a violation of article 14(1) of the Constitution by which it is provided:

> "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."

The is approach converges with the definition of Daniel Ehighaluqa in his Essay "Nigerian Issues In Wrongful Convictions", published by University of Cincinnati in 80 U. Cin. L. Rev. (2012) wherein he stated as follows:

"Wrongful conviction in this sense encompasses the whole gamut of miscarriages of justice beginning when an accused person is arrested, interrogated, up through the court proceedings-including the appeal, sentencing, execution and clemency stages".

The scope and full effect of article 14 (5) and (7) of the Constitution was considered and pronounced upon by the Supreme Court in the case of **Dodzie Sabbah (no 2) v The Republic** [2015-2016] 1 SCGLR 402 in which the nature of the power conferred on the court and the factors that may guide it in the award of compensation were spelt out. The effect of the said decision which is binding on us is that the award of compensation is not automatic upon an acquittal on appeal but is discretionary. Again, the court unanimously came to the view that the nature of compensation that may be awarded to a person under article 14(7) is in its nature general damages except where in a particular case, the victim of wrongful conviction satisfies the court that beyond the invasion of his right to freedom of movement enshrined in article 14(1), he has suffered damages that require to be awarded specially, being in their nature damages in fact such as pecuniary damage or loss subject to the applicant discharging the burden which he assumes in the matter. Where the applicant is unable to satisfy the court on his entitlement to an award beyond general damages, a modest and reasonable global sum of money would be an adequate recompense. Although the learned justices of the Supreme Court in the Dodzie Sabbah case (supra) delivered plurality judgments, each such judgment emphasised the discretionary nature of the right to compensation and the relevant factors to be taken into account by the court in making an award under article 14(7) and the related provision contained in article 14 (5), we wish to commend the painstaking effort of the learned justices of the Court. We wish to say that but for time constraints, we would have referred

to the various judgments by way of acknowledgement of the remarkable industry that the learned justices exhibited in providing us with a clear and authoritative pronouncement on the scope of the provisions of the Constitution on which this case turns. But as it is, reference is made only to the lead judgment of the learned Chief Justice, Wood JSC (as she then was) at page 433 wherein she delivered herself in the following words:

> "The determinant factors must necessarily include all the indices I have already identified, including but not limited to the gravity of the offence with which the appellant was charged, the period of incarceration, the stigma associated with the offence charged, the seriousness of the injustice meted out to the applicant coupled with the nature of the sentence imposed. We may also take into account the specific pecuniary and proved losses as a result of the incarceration."

Applying the principles expounded in the said judgment to the claim before us in these proceedings, we are of the view that the applicant has made a case out for the exercise of a discretion in his favor regarding his entitlement to compensation. In our opinion, the new evidence led on appeal with leave of the Supreme Court was decisive in compelling the learned justices to the view that the claimant had nothing to do with the act that was alleged to have resulted in the pregnancy of the victim of the defilement. A reasonable inference that can be made from the evidence introduced on appeal to the Supreme Court is that the claimant is innocent of the offence with which he was charged. This concession is a clear indication that the claim has been brought within the statutory remit contained in section 31 of the Courts Act, Act 459 for allowing appeals in criminal and in particular that the conviction of the claimant was an instance in which the ends of justice were not well served. It being so, the matter before us is a fit one in which we are entitled under article 14(5) and (7) to make a recompense to the applicant. In our considered view, the applicant who from the date of his arrest on November 14, 2003 to the date of his release in January, 2017 was deprived of his freedom of movement or in detention for a period of more than 13 years. As indicated elsewhere in the course of this judgment,

the claimant's entitlement to compensation is derived primarily from article 14(5) and (7) of the Constitution.

The question which then emerges is what is the quantum of compensation that may be awarded in his favor? In describing the consequences of the wrongful conviction and subsequent imprisonment on the applicant, we wish to refer to an article by Adrian Hoel entitled "*Compensation for wrongful conviction*" published by the Australian Institute of Criminology dated May 2008 in which the following description was made of victims of wrongful conviction:

> "Wrongful convicted people may experience psychiatric and emotional effects from the conviction and subsequent imprisonment. They undergo enduring personality changes similar to that experienced by people suffering a catastrophic experience. They often exhibit serious psychiatric morbidity and display symptoms of disorders including post-traumatic stress disorder.

Wrongfully convicted people may also suffer ongoing emotional effects from the conviction and the disengagement from society that it brings. Fear of physical and or sexual assault may cause some people to develop physically aggressive/intimidating character traits as a coping mechanism. They often exhibit feelings of bitterness, loss, threat, paranoia and hopelessness. Ironically, the accelerated pace of release that the discovery of a wrongful conviction will normally herald can have adverse effects. ……..

The process of being inducted into 'total institutions' such as a prison involves stripping away the prisoner's former identity. Anew identity is forced upon them by the institution and or other prisoners. This new identity may simply be 'a prisoner' or 'an offender' but also may extend to specific identities such as 'a rapist' or 'a murderer"

We are of the opinion as indeed any reasonable person would that wrongfully convicted persons suffer loss of dignity arising from the conviction and subsequent imprisonment and require some form of solatium as provided in the provisions of the Constitution with which we are concerned in these proceedings. The applicant has in an attempt to satisfy

us on the appropriate damages to be awarded in his favor filed a process dated August 22, 2017 described as "Further Affidavit Evidence and Variation in Respect of Compensation Claim Pursuant to leave of The Court" in which he claimed a total amount of 7,335, 725.70 comprising various heads of damages that were set out in paragraph 26 as follows:

		GH₵
(1) Average lost salary for 13 years	-	226,525.70
(2) Part-time teaching wages for 13 years	-	78, 000.00
(3) Extra Classes wages for 13 years	-	31, 200.00
(4) Compensation for lost business investment over 13 years	-	2,000.000.00
(5) Loss of Opportunity to attain degree in Business Administration	-	2,000.000.00
(6) Loss of Social business and lifetime opportunities	-	2,000,000.00
(7) Mental and Psychological anguish	-	1,000,000.00

In the course of the proceedings before us in this matter, learned Principal State Attorney for the Republic-Respondent informed the court that the applicant had been reinstated into office, an indication which was concurred in by learned counsel for the applicant. In our opinion the said unequivocal indication by the parties has the effect of their having reached an understanding or agreement in regard to the applicant's prayer contained in relief (c) of his further affidavit by which he sought 'An order directed at the Ghana education Service to reinstate or reengage me with my salary arrears over the 13 years with various promotions and increment benefits'. That agreement has the effect of superseding the demand made on us to determine the said claim and precludes us from proceeding to make any determination of his entitlement thereto. Accordingly, we are without jurisdiction to determine the said claim.

The applicant has regard to the other heads of damages numbered as 2-6, which in our view belong to the category of special damages, exhibited an unfortunate misconception of the nature of compensation to which he is entitled by virtue of article 14(5) and (7) of the Constitution. Although as said by the Supreme Court in the Dodzi Sarbah case (supra) and reiterated in this delivery, an applicant may be awarded damages beyond that which the law imputes from the invasion of his constitutional rights, to succeed in such a claim the applicant does not satisfy the court merely by listing figures against alleged heads of damage and by a simple process of arithmetical computation invite the court to make an accession thereto. A claim for special damages is an allegation that the claimant has suffered particular loss of income which having actually been suffered is capable of computation and relates to income that he would have earned but for the tort which is the cause of action. In asserting his claim to such damages, an applicant is not entitled to base his claim on income which he could have earned hence the insistence by courts that special damages be proved strictly. As the applicant has not been able to satisfy the evidential burden relating to the said heads of damage, it is difficult to accept them as appropriate heads of damage arising from the wrongful conviction. The applicant's claim therefore in relation to reliefs (2-6) are hereby dismissed.

Regarding the claim numbered as relief (7) for mental and psychological anguish, the applicant has not made any effort to explain that he has actually suffered any mental or psychological illness consequent upon the conviction such as to entitle him to the huge sum of money claimed in relation to it. From the circumstances of the case, we are of the view that the applicant must only have suffered lost emotions which can be adequately compensated by employing the model which was applied by this Court earlier on in the Dodzi Sarbah case. Indeed, throughout his appearance before us, the applicant impressed us as a healthy looking young man who has braved the prison environment with a little or no impact upon him. The applicant's claim contained in relief (7) is also dismissed.

We are now left with the damages which the law imputes from the invasion of the applicant's constitutional right. In the Dodzie Sabbah case (supra) which also concerned

a claim for wrongful conviction under article 14(7) of the Constitution, the Supreme Court after a careful consideration of the amount of compensation to be awarded to the victim of a wrongful murder conviction the court affirmed its approach in a previous case entitled **Awuni v West African Examinations Council** [2003-2004]1 SCGLR No 2)471 and advocated the award of what it considered to be a *"rationally reasonable sum, a global sum...."* The learned Chief Justice, Wood JSC (as she then was) preceded the award of compensation with the following words:

> "For policy reasons, and in order to minimize the floodgate effect and also protect the public purse, I would affirm the position adopted by my brothers in the Awuni case and advocate a rationally reasonable sum, a global sum, to compensate for this manifest injustice."

Utilizing the said approach, the Supreme Court awarded to the applicant, whose appeal from a conviction for murder and a sentence of death it had allowed, a sum of GH₵35, 000.00. The said award was made notwithstanding the fact that the learned justices of the Supreme Court thought that the prosecution was oppressive and unjustified, and concerned a graver offence and a more serious punishment than that before us in these proceedings. Taking into account the fact that the value of the cedi has suffered a slump since the date of the said award, we propose to utilize the multiplier of GH₵3,180.00 in the Dodzie Sabbah case (supra), for each year that the applicant herein was in unlawful custody. By a simple arithmetical computation, the applicant is awarded the sum of GH₵3,180.00 x 13 which comes to GH₵41,340.00, a figure which we round up to GH₵45, 000. 00.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

VICTOR KWESI OPEKU FOR THE APPLICANT.

VICTORIA ASIEDUWAH, SENIOR STATE ATTORNEY FOR THE RESPONDENT.