

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF
JUSTICE, HUMAN RIGHTS DIVISION, COURT '2', ACCRA – GHANA,
HELD ON FRIDAY THE 7TH DAY OF NOVEMBER, 2025 BEFORE HIS
LORDSHIP JUSTICE NANA BREW

CASE CALLED AT 9:25 A.M.

SUIT NO. HR/0052/2025

CYNTHIA ADJEI

VS

1. INNOCENT SAMUEL APPIAH
2. THE ATTORNEY GENERAL

PARTIES: APPLICANT – ABSENT

1ST RESPONDENT – PRESENT

2ND RESPONDENT – ABSENT

COUNSEL:

1. ISAAC AKYERIFI-MENSAH HOLDING THE BRIEF OF BOBBY
BANSON FOR THE APPLICANT – PRESENT
2. HANNAH BORLEY OKAJAH HOLDING THE BRIEF OF
MICHAEL YOURI FOR THE 1ST RESPONDENT – PRESENT
3. CASSANDRA KYEI BAFFOUR (A.S.A.) FOR THE 2ND RESPONDENT
– ABSENT

CERTIFIED TRUE COPY
REGISTRAR
HUMAN RIGHTS COURT "2" ACCRA, G/F
15/12/2025

JUDGMENT

The Applicant is seeking for enforcement of fundamental human rights and these are his reliefs:

- a) A declaration that the 1st Respondent has interfered with the privacy of the Applicant's home, correspondence and communication without any lawful authority.
- b) A declaration that threatened publication of the personal and business information of the Applicant by the 1st Respondent without law lawful authority is in breach of the Applicant right to privacy.
- c) An order of perpetual injunction restraining the 1st Respondent from further interfering in the privacy of the Applicant's home, property, correspondence and communication without lawful authority.
- d) An order of perpetual injunction restraining the 1st Respondent from making public disclosures and communication of the Applicant's private correspondence, communication, documents and property without lawful authority.
- e) An order for the payment of damages by the 1st Respondent to the Applicant for breach of the Applicant's right to privacy.
- f) Costs.
- g) Any further order or orders as this Honourable Court may deem fit.

This application of fundamental human rights is supported by 18 paragraphs affidavit in support.

- 18 paragraph affidavit in support
- It further supported by exhibits
- It further supported by statement of case.

There is an affidavit in opposition

AFFIDAVIT IN SUPPORT OF APPLICATION TO INVOKE JURISDICTION OF THE HIGH COURT TO ENFORCE FUNDAMENTAL HUMAN RIGHTS

Cynthia Adjei of Plot No 03, Oak St. Trassaco Road, Accra do makes oath and say as follows:

That I swear to this affidavit of facts which are within my personal knowledge and those that I have been informed by my Counsel and verily believe same to be true.

That I am a Ghanaian Citizen and a private business woman who has never held any public office. I attach a copy of my Ghana Card as Exhibit CA1.

That the 1st Respondent represents himself as an investigative journalist.

That the 2nd Respondent is a principal legal Advisor to the Government of Ghana, and I am informed by my Counsel and verily believe same to be true that per the provisions of the applicable law, is a necessary party to this action.

That on the 11th of January 2025, I received a whatsapp correspondence from the 1st Respondent wherein he introduced himself as an investigative journalist who had a set of questions for me to answer. A copy of the whatsapp correspondence is attached as Exhibit CA2.

That the 1st Respondent attached a set of questions relating to my private, family and business dealings and which questions I chose not to respond to as I had no reason to respond to same. A copy of the set of questions sent to me by the 1st Respondent is attached as Exhibit CA3.

That from the set of questions listed by the 1st Respondent, it is reasonable to presume that he had procured or at least, he represents to have procured, personal and private documentation and information which I have shared with relevant state entities such as the Registrar of Companies, Ghana Revenue Authority and the likes.

That on the 16th of January 2025, I received another whatsapp correspondence from the 1st Respondent informing me of his intention to hold a press conference to publish my business and personal information and data, the privacy of which is protected by the 1992 Constitution and Right to Information Act and Data Protection Act. A copy of the correspondence and the attachment are attached as Exhibit CA4.

That I am informed by my Counsel and verily believe same to be true that these details are very personal and private and ought not to be put out for public consumption except as provided by law.

That I am informed by my Counsel and verily believe same to be true that my right to privacy of my communication, correspondence, property and documents is guaranteed by the provisions of Article 18 (2) of the 1992 Constitution.

That I am further informed by my Counsel and verily believe same to be true that no person, including the 1st Respondent herein, has a right to interfere with my private communication, documents and property and make public disclosures of same without lawful authority.

That I am informed by my Counsel and verily believe same to be true that the public disclosures by the 1st Respondent of my private communication, correspondence and property is in breach of my fundamental human right to privacy as enshrined in Article 18 (2) of the 1992 Constitution.

That I am informed my Counsel and verily believe same to be true that the publication of my personal biographical details will expose me to possible risk of identity theft and the commission of fraud by unscrupulous persons in clear breach of my right to privacy.

That I am informed by my Counsel and verily believe same to be true that this Honourable Court has the jurisdiction to enforce my right to privacy as enshrined in the 1992 Constitution.

That I am further informed by my Counsel and verily believe same to be true that this Court also has the jurisdiction to restrain the 1st Respondent from the threatened breaches of my fundamental human rights.

That I am informed by my Counsel and verily believe same to be true that this Honourable court has jurisdiction to grant the reliefs indorsed on the motion paper.

That I am informed by my Counsel and verily believe same to be true that no miscarriage will occasion the 1st Respondent if the present application is granted as the laws of Ghana provide him with legal recourse to pursue if he is of the conviction that I have perpetuated any crime in my private dealings, instead of making public disclosures of my private documents and correspondences without any lawful authority or justification.

AFFIDAVIT IN OPPOSITION TO APPLICATION TO INVOKE THE JURISDICTION OF THE HIGH COURT TO ENFORCE FUNDAMENTAL HUMAN RIGHTS

INNOCENT SAMUEL APPIAH of House Number, 9 Boman Street, Lapaz, Accra makes oath and say as follows:

That I depose to facts which unless otherwise stated are within my personal knowledge and belief same to be true.

That I have been served with a motion to enforce fundamental human rights and I am vehemently opposed to same.

That at the hearing of this motion my Counsel would refer to all processes thus filed in this matter as though same was reproduced herein and sworn to.

That I am an award winning Freelance Investigative Journalist and I have been one for the past seventeen (17) years and a journalist for thirty years in good standing.

That I am advised by counsel and verily believe same to be true that the freedom and independence of the media is guaranteed in Ghana.

That advised by counsel and verily belief same to be true that journalists are required to hold public officials accountable to the people.

That the practice of investigative journalism therefore acts as a watchdog, ensuring that powerful individuals and entities are held accountable by bringing their misdeeds into the public domain.

That standard journalistic protocols require that our team gave the Applicant the opportunity to narrate her version of damning allegations against her and her business activities that had come to our attention.

That as an investigative journalist, I adhere to high ethical standards that prioritize truth and accountability.

That my requests for information were made with the intention of uncovering facts pertinent to the public interest, rather than for personal gain or malicious intent.

That investigative journalism serves as a crucial mechanism for uncovering information that affects the broader community.

That my inquiries were therefore aimed at shedding light on practices that could affect the broader Ghanaian community and economy.

That the foundation of this investigation is deeply rooted in unearthing wrong doing of public interest in order to salvage the already drained Ghanaian economy from further plunder.

That investigative journalism also aims to promote and uphold good corporate governance practices.

That the Applicant is either the sole owner or joint owner of a number of business entities.

That the said entities include:

1. Lysaro 3L Ventures
2. Lysaro Home
3. Lysaro 3L Ventures Ltd
4. Lysaro Luxury Apartment Ltd.
5. Children's World Mother Care
6. Children's World Care Plus
7. Children's World Development Fund.

That these entities are together referred to as the Lysaro Group.

That my team and I had information from the grapevine with regards to irregular operations of the Applicant and her business entities and other associates and assigns.

That specifically the information had to do with the following issues:

1. Non-renewal of company documentation and non-filing of annual returns.
2. Nonpayment of taxes.
3. Conflict of interest issues with regards to procurement contracts at GOIL Ghana Ltd.
4. Wrongful acquisition of government lands in prime areas.

That as an Investigative Journalist I am duty bound to uncover information that affects the broader community and economy.

That the information-gathering methodology adopted is in no way intrusive of the privacy of the Applicant. In fact, it is direct and sincere. All inquiries conducted through legitimate channels, respecting the boundaries of journalistic practice.

That some of the documents in my possession are generally publicly available company documents from the Registrar-General Department and GRA tax assessments.

That these documents were acquired through legitimate means, including public access and insights from whistleblowers.

That rather than providing answers to this enquires to put the suspicion to rest the Applicant seeks to gag the Respondent and the right of the public to know.

That Applicant does not in any way indicate in what manner her privacy or that of her business has been invaded by me.

That my communications with the Applicant was only an attempt to afford the Applicant the opportunity to hear her side of the allegation.

That Applicant's allegations against me are vague, ambiguous and without basis.

That as a result she is unable to show how I have invaded her privacy or that of her businesses.

That in any case, I am advised by counsel and verily believe same to be true that the public interest in this matter cannot be sacrificed for her so-called privacy.

That any citizen of Ghana has a legitimate and unwavering interest and duty in ensuring that individuals and entities with substantial influence over public institutions and resources operate with the utmost integrity and in full accordance with the law.

That the Applicant claims I am threatening her without indicating in what manner and by what means.

That Applicant's allegations are baseless. A mere enquiry for information of public interest in order to give the Applicant the opportunity to state her side of the story cannot be described as an invasion of privacy.

That Applicant has not established any legal right worthy of protection by this Honourable Court.

That the Applicant has not established what she has suffered or what she would suffer if she responds to my enquiry.

That I am advised by counsel and verily believe same to be true that the public interest in these matters can never and should never be sacrificed for the Applicant's undemonstrated right to privacy.

That I am advised by counsel and verily believe same to be true that the Applicant has not demonstrated any injury she has suffered that requires compensation.

STATEMENT OF CASE OF THE APPLICANT

A Statement of case was filed for and on behalf of the Applicant herein, detailing the legal arguments in support of the present application to invoke the jurisdiction of this Court for the enforcement of the Fundamental Human Rights of the Applicant on the following facts:

The facts they wholly rely on underlying the present application have been set out in the affidavit in support of their motion

THE LEGAL ARGUMENT:

THE JURISDICTION OF THE HIGH COURT UNDER ARTICLE 33 OF 1992 CONSTITUTION AND ORDER 67 OF C.I. 47.

The instant application invokes the jurisdiction of this Court for the reliefs indorsed thereon.

They pray the Court has jurisdiction to hear and determine this application and to grant the reliefs of indorsed thereon as provided for under Article 33 of the 1992 Constitution and Order 67 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47).

Article 33(1), (2) and (4) of the Constitution of 1992 provides thus:

"(1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or 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.

(2) The High Court may, under clause (1) of this article, issue such directions or orders including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and quo warranto as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled.

(4) The Rules of Court Committee may make rules of court with respect to the practice and procedure of the Superior Courts for the purpose of this article."

Pursuant to the provisions of Article 33(4), Order 67 of the High Court (Civil Procedure Rules) was enacted in 2004 with the following provisions:

"Order 67, CI 47 - ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

Rule 1

A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33

(1) of the Constitution shall submit an application to the High Court.

Rule 2

(1) The application shall be made to the Court by motion supported by an affidavit signed by the applicant or by the applicant's lawyer and shall contain the following particulars:

- the full name and address for service of the applicant and the lawyer of the applicant;
- the facts upon which the applicant relies;
- the relief or remedy sought by the applicant and the grounds on which the applicant seeks the relief or remedy; and
- the full name and address for service of any person directly affected by the application.

2) A copy of the application shall be served on the Attorney-General and such other persons as the Court may direct.

Rule 3

(2) Notice of the application shall be served on the Attorney-General and all parties named in the affidavit of the applicant as being directly affected.

Rule 8:

The Court may issue such directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms of the Constitution to the protection of which the applicant is entitled. "

The wording of these laws reproduced above, there is no controversy on the position that if any person is of the opinion that his or her human rights have been infringed upon;

- That person may commence an action at the High Court.
- The means of commencing that action shall be by originating motion on notice.
- The Attorney General must be a Respondent to that action; in addition to any other entity which may be directly affected by the outcome of the Application.
- Upon hearing of such an application, the Court may issue any directions, orders or Writs for the purposes of enforcing or securing the enforcement of the fundamental human rights of the applicant.

The Applicant further proceeded to set out the legal basis for invoking this jurisdiction of the High Court.

IS THE 1ST RESPONDENT EXEMPTED FROM RESPECTING THE RIGHTS OF OTHER PERSONS IN GHANA?

Article 12 of the 1992 Constitution provides as follows:

Article 12, 1992 Constitution

"(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 freedom of the individual contained in this chapter but subject to respect for the rights and freedoms of others and for the public interest."

These provisions of the 1992 Constitution mean that every person in Ghana must uphold the fundamental human rights of persons who are either residents or citizens of Ghana. The 1st Respondent, who claims to be an investigative journalist, is not above or beyond the prescription to respect the fundamental human rights of citizens or persons resident in Ghana.

THE RIGHT TO PRIVACY

Article 18 (2) of the 1992 Constitution provides;

"No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others."

The right to privacy of a citizen in Ghana has not only been provided for by the 1992 Constitution but also affirmed in a host of decisions by the Courts of the land. In

SCANCOM

VS

ADINYIRA [2016-2017] 1 GLR 1 at page 14,

the Court of Appeal on this matter stated,

"Invasion of privacy is a legal concept dealing with intrusion into an individual's private life. It is a tort that allows the person whose privacy was invaded to file a lawsuit against the person intruding upon his or her privacy. "

See also in

ACKAH

VS

AGRICULTURAL DEVELOPMENT BANK [2016-2017] 1GLR 552 at page 557,
the Supreme Court held that the constitutional protections contained in Articles 18 (2) extends to public communication or correspondence. Consequently, in this case, even though the documents of the Applicant which have been published by the 2nd Respondent were filed with State Entities, the Applicant still had a right of privacy over them.

See also

CUBAGEE

VS

ASARE (2017-2018) 2 SCGLR659

Recognizing the importance of personal identification details and the need to protect such data, the Parliament of Ghana, of which the 2nd Respondent is a part of, has enacted the Data Protection Act, 2012 (Act 843) with the following long title:

"An Act to establish a Data Protection Commission, to protect the privacy of the individual and personal data by regulating the processing of personal information, to provide the process to obtain, hold, use or disclose personal information and for related matters."

It is in furtherance of the individual's right to privacy that Parliament set up a Commission and empowered it to enact appropriate regulations on how the personal data of an individual should be held, used and disclosed in accordance with law. The Constitution of Ghana does not envisage that an individual's right to privacy of personal information be disclosed in a scant regard for his safety and risk of identity theft in the manner that the 1st Respondent has threatened to, with reckless abandon, and without lawful authority, expose.

Pursuant to Article 18 (2) of the 1992 Constitution, an individual's privacy, including that of their home, property, correspondence, or communication, may not be

subjected to interference except in accordance with the law and as may be deemed necessary for the protection of public safety, economic well-being, health or morals, the prevention of disorder or crime, or the protection of the rights or freedoms of others. The actions of the 1st Respondent, in this case, are in direct and apparent violation of the Applicant's right to privacy as no legal authority or justification has been presented. Additionally, the courts have established that constitutional protections extend to public communication or correspondence, as established in the cases such as *SCANCOM V ADINYIRA* (supra) and *ACKAH V AGRICULTURAL DEVELOPMENT BANK* (supra), and that even documents filed with state entities are still protected under the right to privacy.

RIGHT TO INFORMATION ACT

The 1st Respondent may contend that he had the right to disclose the personal affairs of the Applicant under the provisions of the Right to Information Act.

Again, this argument is flawed for the following reasons:

First, the pre-amble of the Right to Information Act provides that it is "AN ACT to provide for the implementation of the constitutional right to information held by a Public institution, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to foster a culture of transparency and accountability in public affairs and to provide for related matters." (Emphasis mine).

Section (1) of the Act provides that

"A person has the right to information, subject to the provisions of this Act."

Section (2) provides that

"The right may be exercised through an application made in accordance with section 18."

Section 18(1) (a) of the Act further provides that

"An application to access information held by a public institution shall be made in writing to the public institution."

Hence any information/correspondence which a citizen files with a public institution cannot be given to a third party, except in consonance with the provisions of this Act.

The question then is whether or not the personal data of the Applicant which the 1st Respondent has threatened to publish were obtained by the 1st Respondent pursuant to the provisions of this Act? The 1st Respondent did not disclose in his correspondence with the Applicant whether he obtained these information in compliant with the provisions of applicable law.

THE COURT'S JURISDICTION TO MAKE AN ORDER FOR PAYMENT OF DAMAGES

In this case, Applicant deposed to how the 1st Respondent has threatened to expose her private property, documents, communication and correspondence to the public without any lawful authority.

Applicant argues that she should be compensated by way of damages. The authority for the proposition that damages should lie in an application for judicial review was settled in the case of

AWUNI

VS

WEST AFRICA EXAMINATIONS COUNCIL

(2003-2005) 2 GLR 381,

particularly at page 415 where Kpegah JSC in his opinion, stated thus;

"In the circumstances, I think a token and moderate compensatory award coupled with the relevant orders and directions to the council will fairly and reasonably redress the contravention of the appellant's rights..."

On the application of the authorities to the facts of the present case, it is submitted that this Honourable Court has the jurisdiction to make an award for the payment of damages to the Applicant for the unlawful actions of the 1st Respondent regarding the unlawful interference with the Applicant's private property, documents, communication and correspondence.

In conclusion, they invite the honourable court to exercise its jurisdiction to enforce the fundamental human rights of the Applicant and grant the relief indorsed on the motion paper.

1ST RESPONDENT'S CASE

1. THE FACTS

The facts in support of and against this application are sufficiently stated in the affidavits of both parties and the 1st Respondent relies entirely on all the facts stated therein. But suffice it to say, the import of this application is that the Applicant is seeking an order to restrain the 1 Respondent from publishing matters that the Applicant believes amounts to an interference to her constitutional right to privacy of herself, her business and her communication.

The 1st Respondent on the other hand disagrees and takes the view that the story yet to be published are not based on personal matters but related to public concerns. Matters of public interest that as a journalist he is duty bound to bring to attention of the public. Specifically, the request for information relates to issues of filing of annual returns, nonpayment of taxes, acquisition of state lands and conflict of interest matters relating to awards of contracts at Goli. The 1st Respondent only made an enquiry from the Applicant in order to hear her side of the story in a straight forward manner without any malice whatsoever. The 1st Respondent contends that this request falls within the constitutional exceptions in which a person's right to privacy can be interfered with and is also a matter protected by the constitutional right of the public interest superseding all other rights. The independence of the media and the duty of the media to hold government and public officials accountable are all guaranteed under the constitution.

2. EVIDENCE ADDUCED

a. By the Applicant

In prosecuting this motion, the Applicant exhibited the following documents:

- Exhibit CA1 Ghana Card of the Applicant
- Exhibit CA 2 WhatsApp chat from the 1 Respondent

- Exhibit CA 3 Letter addressed to the Applicant from the 1st Respondent with subject matter: Urgent request for information and cooperation on investigation into Lysaro 3L Ventures.

- Exhibit CA 4 WhatsApp chat and attached letter from the 1st

Respondent to Applicant.

b. By the 1st Respondent

The 1st Respondent relied solely on his affidavit in opposition with reference to the exhibits filed by the Applicant.

4. ANALYSIS OF THE FACTS, THE LAW AND THE RELIEFS SOUGHT

A.

1. A declaration that the 1st Respondent has interfered with the privacy of the Applicant's home, correspondence and communication without any lawful authority.

2. A declaration that threatened publication of the personal and business information of the Applicant by the 1st Respondent without lawful authority is in breach of the Applicant right to privacy.

Counsel to argues these two reliefs together as there are interconnected. The Applicant in this application is seeking declaratory reliefs in terms of the interference of her privacy.

It is their humble submission that the Applicant failed woefully to support her request by providing this Honourable Court with any satisfactory evidence of any legal obligation, duty or right, which either created some legal wrongdoing on the part of the 1st Respondent or some omission to perform a legal obligation and thus necessitated the protection by the court of same.

The right to privacy is provided for in Article 18(2) of the Constitution, 1992. The said article provides as follows:

2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals,

for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

It can be gleaned from the above provision that the Constitution provides for the right to privacy of home, and property. However, like most other rights, the right to privacy is subject to limitations as stated in Article 18(2) itself.

Most importantly, Article 12(2) of the constitution states that "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".

It is abundantly clear that the enjoyment of human rights in Ghana is guaranteed but subject to respect for the rights and freedoms of others and interest of the public. Article 12 sets general limitations to constitutional rights which includes public interest considerations.

In determining the violation of one's rights, the courts will therefore carry out a balancing act between the rights claimed and the relevant public interest consideration prevailing at the time. The balance must be struck between the claimant's right to privacy and a publisher's right to publish and the right of the public to know. (See *Murray v. Express Newspapers Plc* [2008] EWCA Civ 446).

The concept of privacy connotes circumstances and situations that are not public. Therefore, with any public interactions and situations, the right to privacy may be said to have been ceded. The information for which the Respondent sought the Applicant's side of the story are largely matters that are already in the public domain. These has to do with issues of:

1. Non-renewal of company documentation and non-filing of annual returns.
2. Nonpayment of taxes.
3. Conflict of interest issues with regards to procurement contracts at GOIL Ghana Ltd
4. Wrongful acquisition of government lands in prime areas.

Aside the fact that these documents are in the custody of public institutions they are also matters of public interest and legal requirements by themselves

Section 126(1) of the Companies Act, 2019 (Act 992) states that:

"A company shall, at least once in every year, deliver to the Registrar for registration an annual return including particulars of every member of the company, and every beneficial owner of that company and in the form and relating to the matters prescribed in the Fifth Schedule"

(7) Where a company defaults in complying with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Payment of taxes by individuals and entities is a legal requirement together with the filing of tax returns.

GOIL PLC is a state-owned company listed on the stock exchange. The Applicant husband Mr. Eric Adjei was the Group Chief Finance Officer and later became the Acting Managing Director at GOIL until his recent replacement. Applicant's husband was also the Board Chairman of the Students Loan Trust Fund. A number procurement contracts were allegedly awarded to the Applicant in breach of conflict of interest requirements and procurement rules. Article 284 of the Constitution expressly forbids a public officer from putting himself in a position where his personal interest actually conflicts or is likely to conflict with the exercise of his public duties.

Section 192 of Act 992 also states that:

(1) Despite a provision in the constitution of a company to the contrary, a director shall not, without the consent of the company in accordance with section 193, place that director in a position in which the duties of the director to the company conflicts or may conflict with the personal interests or the duties to other persons, and in particular, without that consent, a director shall not, or Director of a company

(c) be personally interested, directly or indirectly, in a contractor any other transaction entered into by the company except as provided by section 194.

Again, the use of public office for private gain is a crime under chapter 5 of the Criminal Offences Act, 1960 (Act 29)

By the provision of Article 18(2) of the constitution the right to privacy can be interfered with in the following ways:

1. In accordance with law
2. For public safety
3. For the economic well-being of the country
4. For the protection of health or morals
5. For the prevention of disorder or crime
6. For the protection of rights or freedoms of others.

1st respondent submit that the allegations that warranted the request for information by the Respondent from the Applicant as enumerated above all find space within the exceptions stated in Article 18(2) of the constitution.

According to 1st respondent, what may appear to an invasion of privacy has been explained in the case of *University of Cape Coast vrs. Anthony* [19772 GLR] per Apaloo JA as he then was to include eavesdropping, peeping through the bathroom of a lady to relay the result to the public, and photographing of people without their consent for commercial purposes. The Respondent has not engaged in any similar activity. The Respondent conduct was very much in line with Article 12(1) of the Code of Practice of the Ghana Journalist Association which states that "a journalist shall obtain information, photographs and illustration only by straight forward means"

Article 162(1) of the constitution also guarantees the freedom and independence of the media. Per Article 162(5)

"All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana".

Also in *Punjabi Bros v Namih*, 1958 3 WALR, 381, it was further held that the Applicant must not merely show a strong prima facie case in support of the title which he asserts but he must also make out the probability of the Defendant's case failing. A challenge the Applicant has not satisfied in not even the slightest way because the Respondent has not in any way invaded the privacy of the Applicant. And rightly so the Applicant herself does not demonstrate in any way how her

privacy was invaded by Respondent. The Applicant has therefore failed to lead evidence to substantiate that her right to privacy has been invaded to warrant the protection by this Honourable Court.

She has also failed to balance this right to privacy against the overall public interest.

B.

3. An order of perpetual injunction restraining the 1st Respondent from further interfering in the privacy of the Applicant's home, property, correspondence and communication without lawful authority.

4. An order of perpetual injunction restraining the 1 Respondent from making public disclosures and communication without lawful authority.

In *Baiden v Tandoh* [1991] 1 GLR 98 ; *Kpegah J* (as he then was) held that the Applicant had also to establish a prima facie case that the right he was seeking to protect existed. Additionally, he must show that there was a breach of the same and a threat of it continuing so as to cause him irreparable damage if the Defendant was not restrained. Kpegah JSC again unburdened himself in *Centracor Resources Ltd. V. Boohene and Others* [1992-93] GBR PART 4 1512 in delivering the judgment of the Court of Appeal noted at page 1516 as follows:

"My approach has always been that a Plaintiff who seeks an order for interim injunction must show that the right he seeks to protect really exists and that there has been an unjustified interference by the defendant and such interference is likely to continue."

Assuming without admitting that the Applicant had a right, the Applicant has to additionally show that there was a breach of the same and a threat of it continuing so as to cause her irreparable damage if the 1st Respondent was not restrained. As pointed out above, the Applicant has not shown in any way that the Respondent has breached any right of hers. The Respondent is an Investigative Journalist undertaking his routine activities of passing on through publication relevant information to the public. Again, Applicant does not show how this routine activity of journalism through a straight forward request of information from the Applicant has caused her or would cause her irreparable damage. On the contrary if the Respondent is restrained it would deprive the public the benefit of knowing the alleged nefarious activities of the Applicant.

The Plaintiff/Applicant did not aver in detail and with particulars in her supporting affidavit what irreparable loss or damage will be suffered by her if the injunction were not granted. The reason for this omission is obvious, she would have suffered nothing and equally cannot tell what she would suffer if there is an eventual publication.

Article 18 (2) of the constitution that the Applicant relies on in itself provides the balance by not granting an absolute right to privacy but subject to interference in some circumstances. The Applicant in no way make the attempt to subject her right and weigh same against the conditions the right is subjected, to see where the balance would tilt. He who alleges must prove.

Respondent submit that the nature of the information sought by the Respondent fall on all squares within the exceptions provided for in article 18(2) of the constitution.

The Supreme Court in the case of *Raphael Cubagee Vrs Michael Yeboah Asare and Two Others [2018] GHASC 14 (28th February, 2018)* stated thatthe enforcement of human rights is not a one way street since no human right is absolute...

Article 18(2) which is the subject of interpretation in this case states several exceptions to the individual's right to privacy and a court confronted with an objection to evidence on the ground that it was obtained in breach of privacy would need to consider if any of the exceptions are applicable in the circumstances of the case

The Supreme Court stated further in the same case that:

...Furthermore, it is provided by Article 12(2) of the Constitution as follows;
"(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." This provision in our opinion is an explicit direction to the court to undertake a balancing exercise in the enforcement of the human rights provisions of the Constitution...

...The public interest, to which all constitutional rights are subject by the provisions of Article 12(2), in having persons who commit crimes apprehended and punished would require the court to balance that against the claim of rights

of the perpetrator of the crime. Similarly, civil proceedings always involve competing rights of the parties...

It is abundantly clear that all rights are subject to public interest.

Public interest connotes the good of the public or the wellbeing of the society.

Respondent is submitting that the Respondent's enquiries from the Applicant are matters that first fall within the exception in Article 18(2) and are also matters that are in the public interest and for that matter covered by Article 12(2) of the constitution.

In *NWL Ltd v. Woods*, 1979 1 WLR 1294 @ page 1307, Lord Diplock sated '

..... the degree of likelihood that the claimant would have succeeded in establishing his right to an injunction if the action had gone to trial, is a factor to be brought to the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other'

It is obvious from the law so stated and the failure of the Applicant to demonstrate how her interest supersedes the public interest, or how her claim to privacy is not caught by the exceptions in Article 18(2), that her substantive motion has very little chance of success.

C.

5. An order for the payment of damages by the 1st Respondent to the Applicant for breach of the Applicant's right to privacy.

It was stated in *Yungdong Industries v. Roro Services* [2006] 1 MURG 1 SC @PAGE 42-43 Per Dr. Twum, JSC that

"generally, damages in tort are awarded by way of monetary compensation for a loss or losses which a plaintiff has actually sustained and the measure of damages awarded on this basis may vary infinitely according to the individual circumstances of any particular case. It is for a plaintiff to prove what loss if any it has suffered by reason of a tort, and when as in this case, the effect of the tort is potentially adverse interference with the course of its business operations, it is for it to establish that there was in fact such adverse interference and that it suffered a properly quantifiable loss by reason of it"

Again, in *Aschkar and another v. Hardy and Another* [1963] 1 GLR 190 it was emphasized that to show that they have suffered any damage the plaintiffs had to lead evidence and that they had successfully done to merit judgement been given in their favour.'

In *Ecobank Ghana Limited Vrs Alumininium Enterprise Limited* (J4/18/2020) [2020] Unreported SC (13"" May 2020) per Prof Kotey JSC:

"Damages is a sum of money claimed as compensation or awarded by a Court as compensation to the Plaintiff/Claimant for harm, loss or injury suffered by the Plaintiff/Claimant as a result of a tort or breach of contract committed by the Defendant of his agent. When a Plaintiff makes a claim for damages, the Plaintiff/Claimant is required under the law to provide evidence in support of the claim and to provide facts that could form the basis of assessment of the damages he would be entitled to"

Contrary to these requirements the Applicant has not demonstrated any injury she has suffered, in fact she has not even alleged same in her affidavit save to lay a claim for damages in her reliefs.

3. CONCLUSION

On the basis of the affidavit evidence adduced by the parties and all the legal authorities cited herein, it is our humble contention and final submission that in the interests of justice this Honourable Court should not grant the Applicant's instant application for the enforcement of human rights.

Should dismiss same because the right claimed is not absolute it has exceptions and also subject to the overriding need to safe guard the public interest and good. Indeed, the application only seeks to stifle legitimate journalistic enquiries in pursuit of transparency and accountability.

EVALUATION OF EVIDENCE

In evaluating the evidence before me, the right to privacy is a fundamental human right enshrined in Article 18(2) of the 1992 constitution, which states that

"no person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in the accordance with law as may be necessary in a free and democratic society".

This right is further protected by Data Protection Act ,2012 (Act 843) which regulates the collection, processing, storage, use and disclosure of personnel information.

In shaping the law on privacy, particularly in the context of criminal proceedings, is the case of **Raphael Cubagee V Micheal Asare**, the court held that the police's unauthorized access to the applicant's electronic gadget without a court warrant was violation of his right to privacy.

In **Edmund Addo V. I.G.P & Attorney General**, the court ruled that the police's action in accessing the applicant's phone and laptop without warrant was unlawful.

The Data Protection Act, 2012 provides a framework for the protection of personal data and outlines the responsibilities of data controllers and processors. The act requires data controllers to obtain consent from individuals before collecting and processing their personal information, ensure the accuracy and relevance of data, and implement to prevent unauthorized access or disclosure.

It must be stated the Right to Privacy has not only been provided in the 1992 Constitution but also affirmed in a host of decided cases.

See the case of

SCANCOM

VS

ADINYIRA [2016-2017] 1GLR 1 at page 14,

the Court of Appeal stated,

"Invasion of privacy is a legal concept dealing with intrusion into an individual's private life. It is a tort that allows the person whose privacy was invaded to file a lawsuit against the person intruding upon his or her privacy. "

See also

ACKAH

VS

AGRICULTURAL DEVELOPMENT BANK [2016-2017] 1GLR 552 at page 557,

where the Supreme Court held that the constitutional protections contained in Articles 18(2) extends to public communication or correspondence. Consequently,

in this case, even though the documents of the Applicant which have been published by the 2nd Respondent were filed with State Entities, the Applicant still had a right of privacy over them.

See also

CUBAGEE

VS

ASARE (2017-2018|2 SCGLR659

It must be stated these cases in courts have established the constitutional protections be extended to public communication or correspondence and that even documents filed with state entities are still to be protected under the right to privacy.

1st Respondent states that the concept of privacy connotes circumstances and situations that are not public. Therefore, with any public interactions and situations, the right to privacy may be said to have been ceded. The information for which the Respondent sought the Applicant's side of the story are largely matters that are already in the public domain. These has to do with issues of:

1. Non-renewal of company documentation and non-filing of annual returns.
2. Nonpayment of taxes.
3. Conflict of interest issues with regards to procurement contracts at GOIL Ghana Ltd
4. Wrongful acquisition of government lands in prime areas.

That these documents are also in the custody of public institutions and they are also matters of public interest and legal requirements by themselves.

It must be noted that these are personal identification details and the need to protect such data, that is why the Parliament of Ghana enacted the Data Protection Act, 2012(Act 843)

"An Act to establish a data protection commission to protect the privacy of the individual and personal data by regulating the processing of personal information, to provide the process to obtain, hold, use or disclose personal information and for related matters."

The law as regard to it is that, in furtherance of the individual's right to privacy that Parliament set up a commission and empowered it to enact appropriate regulations on how the personal data of an individual should be held, used and disclosed in accordance with law.

To that effect, 1st respondent actions are in direct and apparent violation of the Applicant's right to privacy as no legal authority or justification has been presented.

The law as regard to Right to Information (RTI) Act, 2019 (Act 989)

The 1st Respondent contend that he had the right to disclose the personal affairs of the Applicant under the provisions of the Right to Information Act.

Again, this argument is flawed for the following reasons:

First, the pre-amble of the Right to Information Act provides that it is "AN ACT to provide for the implementation of the constitutional right to information held by a Public institution, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to foster a culture of transparency and accountability in public affairs and to provide for related matters." (Emphasis mine).

Section (1) of the Act provides that

"A person has the right to information, subject to the provisions of this Act."

Section (2) provides that

"The right may be exercised through an application made in accordance with section 18."

Section 18(1) (a) of the Act further provides that

"An application to access information held by a public institution shall be made in writing to the public institution."

Hence any information/correspondence which a citizen files with a public institution cannot be given to a third party, except in consonance with the provisions of this Act.

The question then is whether or not the personal data of the Applicant which the 1st Respondent has threatened to publish were obtained by the 1st Respondent pursuant to the provisions of this Act? The 1st Respondent did not disclose in his correspondence with the Applicant whether he obtained these information in compliant with the provisions of applicable law.

Award of Damages

As regard to award of damages, it must be noted that in **Awuni V. West Africa Examination Council (2003-2005) 2GLR 381**, compensation was granted. In this instant case, it is in a different perspective.

For damages to be granted, there must be evidence given, it must also be pleaded and particularized to depict so, hence in my estimation and evaluation, there is nothing to depict so.

As regards to perpetual injunction, plaintiff or applicant who seeks an order for perpetual injunction must demonstrate that the right he seeks to protect really exists and that there has been an unjustified breach of the right by the defendant that has caused injury and such interference is likely to continue unless it is stopped.

In the instant case, applicant's rights are been invaded and until it is stopped, it will continue to be invaded causing injury and there is the likelihood that it will continue, hence an order for perpetual injunction will stop it.

The law as regard to public interest to which all constitutional rights are subject by the provisions of Article 12(2).

In Ghana law, investigative journalists have the right to gather and publish information but this right is not absolute.

The publication of information about an individual can potentially infringe on their human rights, particularly the right to privacy.

From the totality of evidence available, if the 1st Respondent felt that the information was of public interest, he should not have sought to the publication of them. Rather, he should have reported to Economic Organized Crime Office (EOCO), the Police, CID or the National Intelligence Bureau to take up the action as publishing amounts to evasion of Applicant's privacy rights.

Thus, on a balancing exercise in the enforcement of the human rights provisions of the Constitution this is a clear violation of the Applicant's rights as against the public interest.

In conclusion, the information 1st Respondent is seeking from Applicant for publication is against her fundamental Human Rights particularly her right to privacy.

BY COURT:

I hereby enter judgment on behalf of the Applicant and all the reliefs sought with the exception of relief on damages. I award cost of GH¢10,000.00. Perpetual injunction is granted to stop the 1st Respondent to publish an information as regard to the Applicant.

(SGD.)

H/L NANA BREW

JUSTICE OF THE HIGH COURT

CERTIFIED TRUE COPY
REGISTRAR
HUMAN RIGHTS COURT "2" ACCRA, G/F
18/12/2023