

PROOF OF MALICIOUS PROSECUTION IN NIGERIA: ISSUES AND CHALLENGES

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DECLARATION

I, CONVENANT EBERECHUKWU PRINCESS ONUORAH, with the registration number GOU/U21/LAW/426, hereby declare that this long essay is a product of my own research efforts; undertaken under the supervision of DR ANTHONY IFEANYI ONUIGBO and has not been presented elsewhere for the award of a degree or certificate. All sources have been duly distinguished and appropriately acknowledged.

.....

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CERTIFICATION

This is to certify that this long essay is the outcome of the research effort of CONVENANT EBERECHUKWU PRINCESS ONUORAH (GOU/U21/LAW/426) under the supervision of DR ANTHONY IFEANYI ONUIGBO, a lecturer of the Faculty of Law, Godfrey Okoye University, Enugu, in partial fulfilment of the requirements for the award of Bachelor of Law (LLB) Degree.

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DEDICATION

I dedicate this work to Almighty God and my father, Chief Onuorah Azubike Raphael.

ACKNOWLEDGEMENTS

I would like to thank God for his presence in my life. All this would not have been possible if God did not come through for me. His mercy and grace helped me all through the writing of this project, and I am eternally grateful. He gave me strength and hope when I most needed it and words can not even describe or express my appreciation because without him I would have not been able to come this far.

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LIST OF ABBREVIATIONS

ACJA (Administration of Criminal Justice Act)

CFRN (Constitution of the Federal Republic of Nigeria)

DPP (Director of Public Prosecution)

FRN (Federal Republic of Nigeria)

LCN (Law Care Nigeria)

LPELR (Law Pavilion Electronic Law Report)

NWLR (Nigerian Weekly Law Report)

ABSTRACT

A tort known as "malicious prosecution" offers compensation to those who have been the target of baseless lawsuits and legal actions. It is the deliberate injury of another person through the abuse of legal proceedings. It happens when someone intentionally brings wrongdoing against another. There must be evidence that the plaintiff won the original action. This study examined the tort of malicious prosecution, how to prove it, and the problems and difficulties that come with it. The doctrinal approach and conceptual research method are the research methodologies used in this work. According to this analysis, this tort has a poor success rate. There must be evidence for a tort in this case to be successful, that the defendant "set the law in motion". The research shows the gap in the current legal framework. Some recommendations suggested include relaxation of strict proof requirements, legislative intervention, public awareness, strengthening police accountability, judicial clarification of key concepts, encouragement of alternative claims, provision of adequate compensation, judicial training and sensitisation, as well as balancing public policy and individual rights.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

A tort, being a civil wrong, involves a violation of a legally mandated duty that can be remedied mainly through an action for damages¹. Tort law strives to compensate persons who have been adversely affected by the wrongdoings of others. The “rules and principles” established to decide when the law will (or often times won't) offer a remedy for damages sustained make up the substantive tort law. While compensating the individual for the harm accrued to him due to the wrongdoing of the defendant, is the focus of the law of torts, criminal law aims to safeguard the public interest by punishing those found guilty of crimes². Despite this major difference, laws of torts and criminal law are still connected.

In Nigeria, every person has the right to initiate legal proceedings in order to get justice. The idea that “it is better for a hundred criminals to be acquitted than one innocent person be punished” is the foundation of Nigeria's legal system. Similarly, when people are accused falsely without any probable cause they are likely to be shunned by society, and face problems such as loss of reputation. To justify the position of the person who is falsely accused, and also for wasting the valuable time of the court, persons initiating malicious prosecution should face some type of repercussion³. Malicious prosecution, like libel, is an ambivalent tort: in order to protect the plaintiff, severe harm must be inflicted on not only the defendant but also on public ideals. In

¹ Destiny Aisekhaghe, ‘*A Note on the Nature of Civil Litigation in Nigeria*’ [2021] [Available at SSRN 3922608] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3922608> accessed 3 October 2025.

² Gilbert Kodilinye & Oluwole Aluko, *The Nigerian Law of Torts* (Spectrum Books Limited, 2018).

³ D Sindhuja, ‘*An Analysis on the Malicious Prosecution*’ *Supremo Amicus* (2020) [20] 550 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/supami20§ion=62> accessed 26 August 2025.

libel, we may only protect the “plaintiff's rights” at the expense of the freedom of the defendant to speak and the public's right to hear. In malicious prosecution, we may vindicate the plaintiff's right only at the expense of abdicating the “defendant's right” to disclose a crime and the public's right to expect a judicial decision on that alleged crime. A protective balance may be achieved to maximise the plaintiffs' rights in these circumstances without risking public damages⁴.

The commencement of criminal proceedings against an individual while not having “reasonable and probable legal grounds” to stand on, with intents of obtaining a favourable outcome is known as “malicious prosecution”. It is the “criminal prosecution of another person for no legitimate reason”, with no purpose or intent of furthering justice. To put it another way, “malicious prosecution” is the prosecution of a person that results in a positive outcome for the accused and is carried out with intent and without “reasonable and probable grounds”. “Malicious prosecution” occurs when legal process is employed wrongfully and maliciously. To Eze Malemi, “malicious prosecution is a trespass to person⁵”. The procedure is infuriating. It abuses the judicial process. The plaintiff often files a tort claim seeking damages after the initial prosecution has concluded in their favour. This claim for damages is referred to as the tort of “malicious prosecution”. This tort prevents unlawful action from being brought and provides compensation to people who have been wrongfully punished. It protects those who without “reasonable and probable cause” have been prosecuted. The tort strives to balance the following drastically conflicting interests and ideologies. These are: (1) To protect society, it is in accord with the theories of “public policy”, and also necessary to motivate individuals and the community at large to support the process of law enforcement by providing information to the

⁴ Dan B Hobbs, ‘Belief and Doubt in Malicious Prosecution and Libel’ *Ariz L Rev* (1979) [21] 607
<https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/arz21§ion=31> accessed 26 August 2025.

⁵ Eseghe Otejiri Malemi, *Law of Tort* (Princeton Publishing Co, 2nd edn, 2017).

law enforcement authorities, thereby assisting in the prosecution of lawbreakers; and (2) the need to shield individuals from experiencing harassment via unjust, malicious, or wrongful prosecution. In balancing these two objectives, the courts lean towards the interest of society, resulting in a scenario where “the action for malicious prosecution is more carefully guarded than any other in the law of torts.” Thus, due to the needs to protect an “honest and innocent prosecutor”, it is made imperative by the law for a plaintiff to prove the numerous factors that are necessary to be awarded damages in a claim for malicious prosecution⁶. As a result, there are few successful litigations in malicious prosecution.

1.2 Statement of the Problem

Due to the minimal rate of successful litigation in malicious prosecution in Nigeria, as well as the other issues and challenges plaguing malicious prosecution in Nigeria, a thorough analysis of this topic is pertinent. This research seeks to address these challenges and provide recommendations that would optimize the prosecution process for better outcomes.

1.3 Research Questions

This study attempts to examine following important questions emanating from this research:

1. What is the nature of Malicious prosecution under Nigerian law?
2. How can malicious prosecution be proved in Nigeria?
3. What are the issues and challenges hindering successful action in malicious prosecution?

1.4 Aim and Objectives of the Study

⁶ *Brown v Hawkes* [1891] 2 QB 718.

The analysis of the “tort of malicious prosecution” and how to prove it, as well as evaluating the issues and challenges arising therein, were the aim of this study.

On this basis, this study’s objectives are:

1. To analyse the nature of malicious prosecution under Nigerian law.
2. To examine how malicious prosecution can be proved in Nigeria.
3. To identify the issues and challenges hindering successful action in malicious prosecution.

1.5 Scope and Limitation of the Study

The geographical coverage employed in this study is the Nigerian judicial system. It focuses exclusively on the malicious prosecution and its issues and challenges in Nigeria. This study also provides a detailed and thorough exploration of the frameworks in Nigeria, judicial practices and challenges unique to Nigeria. The subject matter of this study is malicious prosecution and thus it’s content will encompass “malicious prosecution” as a tort, the issues surrounding it, as well as it’s challenges. It will explore the elements required to be proved by a plaintiff alleging malicious prosecution. This includes the following: the lawsuit was concluded in the interest of the plaintiff; there was no “probable or reasonable grounds” to prosecute; the defendant initiated the suit with malicious intent; and the prosecution against him was instigated or initiated by the defendant. It will also involve a comparison with the proceedings in other jurisdictions. This will be conducted to highlight any gaps or deficiencies in the Nigerian system.

The research was conducted with some constraints. A limitation of this study includes the fact that not many actions in malicious prosecution are brought in the Nigerian courts. As a result of this, actions in malicious prosecution are not necessarily relied upon. Also, this study is limited to malicious prosecution in Nigeria. It does not cover malicious prosecution in all the judicial

systems around the globe. Time constraints may restrict the depth of exploration into each identified issue. It should also be noted that the subjective nature of judicial interpretations across various jurisdictions can lead to inconsistencies that challenge generalisation. Additionally, evolving legal landscapes could affect the relevance of findings overtime. This is due to legislative changes or shifts in judicial attitudes. Some resources were not explored due to their inherent complexity. Therefore, the project must overcome these complex obstacles and constraints.

1.6 Significance of the Study

This study is of critical significance to relevant entities in legal communities in Nigeria. Firstly, it adds to what is already known about malicious prosecution in Nigeria. It goes into greater detail about how malicious prosecution works and how to bring an action in malicious prosecution. Future litigants will develop a clearer comprehension of the process. This is because the research provides insightful description of the real difficulties encountered by the parties attempting to rely on this action.

The study delivers a thorough assessment on the current issues arising from malicious prosecution. It discusses the difficulties in dealing with malicious prosecution in Nigeria, as well as the defences that might be used in such cases.

The research identifies gaps in the current legal framework from a policy perspective. It proposes reforms that will improve judicial remedies, increase accountability and transparency, and strengthen the legal and institutional environment.

Furthermore, the research adds to current understanding about malicious prosecution in Nigeria. It provides a foundation for future research in this sector. It is also an invaluable resource for law students, professors, and researchers studying malicious prosecution law and practice.

To that end, it is hoped that this study will highlight the crucial importance of actions on malicious prosecution, as well as add to the field's body of research and serve as a tool for further research.

1.7 Research Methodology

Research methodology refers to the research approaches and research methods employed by a researcher which serves as a guide in the collecting and presentation of analysis and data. It includes the principles, frameworks and strategies that guide the researcher in gathering analysis and presenting information. The research approach may be either doctrinal or non-doctrinal. The former means that the research used a library-based search, depending on both secondary and primary sources of data to find a solution to one or two legal assertions, enquiries, or principles. Statutes, case laws, treaties, and other documents are examples of primary sources of data; while journals, articles, books, newspapers, conference papers, and case reviews are examples of secondary sources. These sources of data seek to answer certain questions or propositions⁷. On the other hand, the non-doctrinal or empirical approach emphasises on data collection through field work including carrying out field surveys, questionnaires, personal observations and so on in order to answer specific research questions clarify a hypothesis.

The doctrinal approach is used in this study's execution to completely comprehend malicious prosecution as a tort in its entirety. It also elucidates on its problems and difficulties, using

⁷ Debashree Chakraborty, 'Empirical (non-Doctrinal) Research Method and it's role in Legal Research.' *Int. J. Ad. Social Sciences* (3); Page 23-28.

primary and secondary sources. Legal research methods include conceptual, historical, analytical, and other methods. The method adopted here is mostly a conceptual research method as it involves observing and analysing already existing concepts and theories on the phenomenon being studied. This study will make use of both aforementioned sources.

1.8 Literature Review

A meticulous evaluation of “malicious prosecution” as a tort, the elements to prove said tort, the remedies available to those impacted, and the defences available to the defendants can be found in the various literature on the subject in Nigeria. Utilising this body of literature, this study aims to clarify malicious prosecution in Nigeria as a tort, examine the components needed to establish malicious prosecution, and pinpoint the gaps in the perspectives of various authors.

Ese Malemi⁸ He believes that malicious prosecution constitutes a trespass on the person. "The intentional interference with the body of another person, or his liberty" is how he defines trespass to person. According to him, this includes malicious prosecution. This is due to “malicious prosecution” being defined to be "the criminal prosecution of a person, maliciously and without reasonable and probable cause which terminates in the accused's favour"⁹. He referred to malicious prosecution, in essence, “as setting in motion criminal proceedings against another person maliciously and without reasonable and probable cause, which terminate in the person’s favour”. He described malicious prosecution as “vexatious” and an “abuse of legal process”. According to this text, malicious prosecution as a tort aims to "prohibit unlawful prosecution and provide a remedy for a person who has been unjustly prosecuted." The law aims to achieve this by balancing two diametrically opposed and simplified ideologies. The first philosophy is the

⁸ Ese Malemi, *Law of Tort* (2nd edn, Princeton publishing Co 2013).

⁹ Ibid.

public policy that encourages citizens to provide information to law enforcement in order to help them bring criminals to justice. The necessity to shield people from encountering harassment due to unwarranted and malicious prosecution is the second philosophy. Ese Malemi also stated the fact that the law in trying to balance the two opposing philosophies, lean toward the general interest of society which in turn creates a situation where “the action for malicious prosecution is more carefully guarded than any other action in the law of torts”. He linked this to the low rate of successful litigation in malicious prosecution. The *Balogun v Amubikanhu* case reaffirmed the ingredients of malicious prosecution that are cited in this text.¹⁰ They are the following: the action was initiated by the defendant; the initial action ended in the interest of the plaintiff; there was an absence of legitimate grounds for the prosecution; and the initial action was carried out maliciously by the defendant. However, the damages suffered by the plaintiff are not included in the elements listed in this Supreme Court ruling.

Gilbert Kodilinye and Oluwole Aluko are however of the opinion that, “malicious prosecution arises from an act in which the defendant intentionally and without a good reason starts legal proceeding against the plaintiff, which ends in the plaintiff’s favour and causes harm to the plaintiff’s person, reputation, and property¹¹”. The authors highlighted five essential elements that the plaintiff must demonstrate to receive damages for a malicious prosecution case. He continued by outlining the goals of the legislation. They contend that the law seeks to balance two social policy goals that are opposing. These are: the need to protect people from unwarranted legal action and the goal of encouraging civilians to support law enforcement by apprehending offenders. This paper used more overseas cases than domestic ones to explore the ingredients of

¹⁰ *Balogun v Amubikanhu* [1989] 3 NWLR (pt 107) 18 SC.

¹¹ Gilbert Kodilinye and Oluwole Aluko, *The Nigerian Law of Torts* (Revised Edition, Spectrum Law Publishing, Sweet and Maxwell Limited 2010).

malicious prosecution. However, the work does not incorporate remedies as well as defences against unjust prosecution.

Additionally, Harry Street believes that people are shielded from unfair lawsuits by the tort of malicious prosecution¹². He distinguished between false imprisonment and malicious prosecution because they are two different ideas. He makes an effort to clarify the type of processes that ought to be started. Unlike Ese Malemi, he underlined that the reputation of the plaintiff, his person, freedom, and property must be damaged.

Benedicta Ada Susu on the other hand focused on the aspect of damages. According to her text, “people who are the targets of baseless and deliberately motivated criminal proceedings may be entitled to damages against the prosecutor under the common law tort of malicious prosecution”. The common law system has traditionally encouraged private persons to participate in the judicial process to preserve the community's interests¹³. This can involve providing information or assistance to law enforcement officers, and sometimes even initiating legal proceedings against a suspect. However, the courts also recognize the importance of safeguarding innocent individuals from the inconvenience, expense, and potential harm of the criminal process.

Michael Law-Smith stressed that malicious prosecution had a "historical beginning." The tort originated in the seventeenth century. In this century, private plaintiffs pursued criminal accusations. This background is frequently invoked to justify the need for plaintiffs to demonstrate that the prosecution had an illegal purpose or was motivated by malice, as opposed to merely proving that the prosecutor knew that such an action was unfounded. In the past, the standard of malice was "justified on the need to encourage private citizens to assist in bringing

¹² Harry Street, *The Law of Torts* (6th Edition Butterworths 1976).

¹³ B A Susu, *Law of Torts* (CJCP, 4th Edition, 2011).

criminals to justice." Common law courts, however, continue to acknowledge the tort and employ the conventional malice test¹⁴. Given this context, some questions have been heavily debated amongst legal scholars and experts. Some of these questions include: Is "malicious prosecution" still a tort? In a contemporary system, (one where the state coincidentally prosecutes almost, if not all criminal proceedings), should it remain in its original form? Well, in *Willer v Joyce*, Lord Mance dissented, arguing "that the tort of malicious prosecution of criminal proceedings is virtually extinct", notwithstanding, to expand it will "come close to necromancy"¹⁵. This is the most recent malicious prosecution position from the United Kingdom's Supreme Court.

Donald Iyoha views malicious prosecution as "a legal term used to describe a civil lawsuit where someone who has been wrongly accused of a crime can sue the person responsible for bringing those charges"¹⁶. Essentially, it means that someone has misused the legal system in order to cause harm to another person. When someone falsely files criminal charges against someone else without a good reason and those charges ultimately end up in the accused's interest, such an action is known as malicious prosecution. It means prosecuting someone with malicious intent and without proper justification. In simpler terms, it's like falsely accusing someone of a crime and the case turning out in the accused person's favour. "Malicious prosecution" is considered a violation of a person's rights.

A.O.N Ezeani and R.U. Ezeani¹⁷ in their publication focused on the burden of proof for "malicious prosecution". Demonstrating that prosecution was motivated by malice is the

¹⁴ Michael Law-Smith, 'The Tort of Malicious Prosecution: A Principled Account' *McGill Law Journal* (2024) [69] 141 <<https://www.erudit.org/en/journals/mlj/2024-v69-n2-mlj09756/1115150ar/abstract/>> accessed 25 August 2025.

¹⁵ *Willers v Joyce* [2016] UKSC 43

¹⁶ Donald Iyoha, 'Malicious Prosecution as an Intentional Dignitary Tort.' [2024] Available at SSRN 4872010 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4872010> accessed 3 October 2025.

¹⁷ A.O.N Ezeani and R.U. Ezeani, *Law of Torts (With Cases and Materials)* (Virginia Press 1972).

responsibility of the plaintiff. They continue by outlining every element required for the success of a malicious prosecution lawsuit. They believe that it is not required to use a statutory provision to demonstrate genuine loss or injury. A significant number of examples involving malicious prosecution are included in the publication. Defining prosecution, the purpose of “malicious prosecution” as a tort, the requirements needed to prove the tort, the duty of the defendant to find the truth before prosecuting, and the required standard of proof are all explained by these instances.

Similarly, Nicholas J. McBride & Roderick Bagshaw showed that when there exists “reasonable and probable cause” to pursue civil or disciplinary actions against another, there cannot be a tort of malicious prosecution¹⁸. They used comparable torts to do this. Once an arrest warrant is issued, however, “malicious prosecution” is regarded to have occurred.

Malicious prosecution in the opinion of Wendy Bonython and John Farrar, a “secondary cause of action”. Historically, those who are subject to wrongful prosecution in criminal cases make use of this action. This is because after the initial malicious proceedings have been concluded, the defendant becomes the plaintiff. He then files against the “original prosecutor” a second action for damages, instead of the initiation of the action being exclusive to the investigative agencies, like the police, or the prosecution provided for the state¹⁹. The original prosecutor in this context refers to the individual who made the “untrue complaint” or otherwise caused the institution of criminal proceedings. An action for malicious prosecution, according to John L. Diamond's text,

¹⁸ Nicholas J. McBride & Roderick Bagshaw, *Tort Law* (Pearson Education 2006).

¹⁹ Wendy Bonython and John Farrar, ‘Principle and Policy in Malicious Prosecution’ *Bond Law Review* (2022) [34] 159 <<https://search.informit.org/doi/abs/10.3316/informit.T2024052700010300111138586>> accessed 26 August 2025.

was established to compensate for infringements on the right to be free from unjustified litigation²⁰.

²⁰ John L Diamond, *Cases and Materials on Torts* (2nd edition Thomson West 2008).

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

Conceptual framework refers to the analytical tools of research used to organise ideas and illustrate variables to be studied in the research. It helps to guide the research inquiry. It explains and simplifies the interrelated components that make up the main focus of the study. The conceptual framework clarifies the key concepts or variables and displays their relationship.

2.1.1. Malice

"Malitia," which translates to "physical wickedness in disposition or in conduct," is the Latin word for malice²¹. Malice in legalese refers to a purposeful act rather than a personal grudge²².

Malice is described in the Free Dictionary as

“...the intentional commission of a wrongful act, absent justification, with the intent to cause harm to others; conscious violation of the law that injures another individual; a mental state indicating a disposition in disregard of social duty and a tendency toward malfeasance²³”.

Similarly, Alderson B refers to malice in *Stevens v Midland Counties Ry Co*²⁴, as

“...any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice.”

Malice is the intentional commission of a criminal offence, such as murder or assault, or a civil wrong, such as libel, with the goal of causing harm to another person²⁵. When someone acts against the interests of another person with the sole intent of harming that person without

²¹ BA Garner (ed), *Black's Law Dictionary* (8th edn, Thomson West 2004).

²² Black's Law Dictionary <<https://thelawdictionary.org>> accessed 19 January 2026.

²³ The Free Dictionary <<https://legal-dictionary.thefreedictionary.com>> accessed 19 January 2026.

²⁴ *Stevens v Midland Counties Ry Co* [1854] 156 ER 480.

²⁵ Legal Dictionary <<https://dictionary.law.com>> accessed 29 February 2026.

a valid reason, that action is considered to be motivated by malice. Thus, when a wrongful act with intent of causing harm is carried out by a person, then that is malice.

“Malice” is also described to be "the state of mind which prompts a person to do a wrongful act wilfully to the injury of another without justification or excuse"²⁶. A person's conscience determines if an act is malevolent if it violates the law and a citizen's legal rights. According to the laws regarding “malicious prosecution”, malice is the deliberate act of prosecuting someone in order to cause harm rather than to administer justice²⁷. Per Nnamani, J.S.C., in *Balogun v Amubikanhu*²⁸ has interpreted “malice” in actions of “malicious prosecution” as a display that a party is behaving unlawfully and indirectly rather than as a manifestation of animosity or retribution against a specific person. Therefore, it is possible to prove malice when the complainant was careless in his police report or lacked confidence in the veracity of his complaint.

2.1.2. Prosecution

In contrast to defence, prosecution is the start of a court case in support of a complaint²⁹. It is a procedure initiated before an appropriate court to determine an accused person's status³⁰. To prosecute someone is to start a legal action against them. In order to administer justice in an amicable manner, the prosecution works to determine whether a situation is correct. Prosecution is "a proceeding instituted and carried on by due course of law, before a competent tribunal for

²⁶ MA Henry Campbell Black (ed), *Black's Law Dictionary* (6th edn, West Publishing Co 1990) 956.

²⁷ Ibid.

²⁸ *Balogun v Amubikanhu* [1989] 3 NWLR (Pt. 107) 18.

²⁹ Webster-dictionary.org <<https://www.Webster-dictionary.org>> accessed 19 January 2026.

³⁰ Black's Law Dictionary <<https://thelawdictionary.org>> accessed 19 January 2026.

the purpose of determining the guilt or innocence of a person charged with crime”³¹. It is described as the continuous examination of an individual who has been charged with a public offence using the legal instruments designed to ascertain the accused's status. The phrase has also been applied to civil litigation, including all stages of the process from the beginning to the end.

2.1.3. The Tort of Malicious Prosecution

“An award of unliquidated damages”, “an injunction”, or “another suitable civil remedy” is usually used to rectify a tort. A tort is an infringement on a person's legally mandated civil responsibility. Tort law aims to prevent torts and provide a remedy when they are committed. Tort law covers the following subjects: trespass to person, chattel, and land; Defamation, economic torts, negligence, nuisance, and malicious prosecution.

Malicious prosecution, as a common law tort, is a legal cause of action that a plaintiff who has been subjected to an unreasonable judicial proceeding may pursue against the defendant. Malicious prosecution occurs when legal action is taken unfairly against someone without a good reason or reasonable suspicion, and the case ultimately benefits the plaintiff. It is the prosecution of someone for a crime for an inappropriate cause rather than a legitimate motivation or to bring them to justice³². In the observation of AM Witte, this tort has not traditionally excited special interest, nor does there appear to be any particular reason why it should do so³³. According to Green, there is "no other cause of action which is more carefully guarded"³⁴; due to this, the amount of cases reported is sparse.

³¹ MA Henry Campbell Black (ed) and others, *Black's Law Dictionary* (6th edn, West Publishing Co 1990).

³² Simply put, it is the criminal prosecution of a person with malicious intent and without probable cause and which prosecution terminates in the favour of the accused. It is regarded as a trespass to person. Eze Malemi, *Law of tort*, 2nd Edition (Princeton Publishing Co 2013) 192.

³³ AM Witte, ‘Damages for Injury to Feelings in Malicious Prosecution and Abuse of Process’ *Clev.-Marshall L Rev* (1966) (15) 15 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/clevslr15§ion=8> accessed 25 January 2026.

³⁴ Leon Green, *Judge and Jury*, (Kansas City: Vernon Law Book Co, 1930) p. 338.

A malicious institution opposing false accusations of criminal activity, bankruptcy, or liquidation processes is known as malicious prosecution³⁵. It is the legal action taken without probable or reasonable grounds by someone acting maliciously. As an ambiguous tort, malicious prosecution requires a substantial danger of harm to both the offender and public principles so as to defend the plaintiff. It is widely accepted that in establishing "malicious prosecution," there must be clear evidence that the defendant initiated a criminal prosecution in the past, that the plaintiff benefited from the first action, and that the defendant's prosecution was driven by malice³⁶. Furthermore, it must be proven that there was no justification for the prisoner's prosecution. In the decided cases, this final component is unquestionably the most significant single problem. A test of probable cause is objective. An accuser is too hasty to make conclusions when he accuses the plaintiff of possessing hard drugs just because he witnesses the accused passing a road where illegal substances are sold. Despite speaking in good faith, the accuser lacks objective probable cause since the majority of reasonable individuals would not conclude that this evidence warrants a finding of possession. Even though it is still an inference rather than a matter of direct perception, "probable cause" is established objectively if the accuser gets information supporting the inference of possession. The presumption of possession is strengthened if the accuser witnesses the accused giving money to a drug dealer and receiving a package in return. In the objective sense, an assumption of possession is likely justified if the accuser then detects marijuana smoke as he passes the accused's room. This demonstrates that the prosecution has "probable cause". According to the "reasonable man test", the defendant has "reasonable and

³⁵ D Sindhuja, 'An Analysis on the Malicious Prosecution' *Supremo Amicus* (2020) (20) 550
<https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/supami20§ion=62> accessed 26 August 2025.

³⁶ Dan B Dobbs, 'Belief and Doubt in Malicious Prosecution and Libel' *Ariz L Rev* (1979) (21) 607
<https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/arz21§ion=31> accessed 26 August 2025.

probable cause" for the action, thus if the prosecution is successful, the accused cannot file a malicious prosecution action.

Generally speaking, giving the police information alone does not amount to initiating legal action against a person. Therefore, it does not constitute malicious prosecution to simply inform the police that a person or plaintiff is being suspected. In *Onah v Okenwa*, it was decided that just reporting a matter to the police does not automatically make one accountable if the police make an arrest on such basis³⁷. Similarly, In *Garba v Maigoro*³⁸, The defendant submitted to the police a report that his car had caught fire while it was parked directly in front of his property. When asked whether he had any suspicions about anyone, he replied that he didn't. However, when asked if he had any miscommunications with anyone, he brought up the plaintiff, his political adversary. Thus, he was detained and accused of causing mischief by fire; nevertheless, he was released due to the prosecution's inability to prove a prima facie case. The respondent subsequently filed a malicious prosecution lawsuit against the appellant. The respondent claims that the appellant submitted said report wilfully and recklessly, having knowledge of its falsity. He claimed further that a significant amount of concern, mockery, and animosity towards his company and reputation had been caused him as a result of the false report. It was decided that:

“the appellant was not liable for malicious prosecution on a mere suspicion that the respondent was the person that burnt his motor vehicle. The report made by the appellant to the police was the mere putting of the police on enquiry to enable them track down the culprit. The appellant was not actively responsible, nor instrumental in setting the law in motion against the plaintiff. It is true that the appellant’s vehicle was destroyed by fire set by an unknown person. He suspected the respondent and reported the matter to the police who charged with the responsibility to investigate criminal complaints. It is also evident that the police investigated and decided to charge the

³⁷ *Onah v Okenwa* [2010] 7 NWLR (pt 1194) 512.

³⁸ *Garba v Maigoro* [1992] 5 NWLR (pt 243).

suspect. In the instant case, it was the police that set the judicial process in motion against the plaintiff³⁹.”

2.1.4. Malicious Prosecution under Nigerian Law

Tort law, a component of English common law, was brought into Nigeria alongside English law itself⁴⁰. This transpired when local statutes authorising the use of English law in Nigeria came into effect. The English law that became operational within Nigeria was made up of common law, equity, and the Statutes of General Application, which had been in effect in the United Kingdom on January 1, 1900. The Regional High Court Laws, The Interpretation Act, and The Supreme Court Act of 1914 were the local statutes that incorporated the English laws that applied in Nigeria⁴¹. Furthermore, the regional parliament was obligated to recognise only English common law when it passed the English law⁴².

It is widely understood that January 1, 1900 only applies to English legislation with widespread application, and hence prohibits the application of English statutes enacted after that date to the present in Nigeria. As a result, if the equitable and common law principles currently in force in England remain unchanged by the time specified, they ought to be applied in Nigeria as long as they do not clash with any Nigerian statutes or case law, and the appropriate court's jurisdiction allows for it to apply English law. Since laws issued in England after January 1, 1900 cannot be of use in Nigeria, it is completely up to legislators at all levels to write legislation that will⁴³.

The current Nigerian legal system recognises that in the event the rights of another person or property is violated, such individuals have the right to submit a formal complaint with the

³⁹ Ese Malemi, *Law of Tort* 2nd Edition (Princeton publishing Co 2013).

⁴⁰ Malicious Prosecution under the Nigerian Law <<https://codemint.net/law/malicious-prosecution-under-the-nigerian-law/index.html>> accessed 7 March 2026.

⁴¹ Ibid.

⁴² Laws of Western Region of Nigeria (1959), S.3.

⁴³ Malicious Prosecution under the Nigerian Law <<https://codemint.net/law/malicious-prosecution-under-the-nigerian-law/index.html>> accessed 7 March 2026.

appropriate authorities. It also recognised the civic responsibility in disclosing illicit activities to the appropriate authorities, irrespective of whether one is neither an innocent bystander or target of the crime. Given the present security issues and the huge increase in crime that has now plagued the entire country, this needs to be emphasised. Although this may appear to be a simple issue on the surface, it has been demonstrated over time that, whilst numerous individuals with intentions of helping and in good conscience would come forward with the truth about the commission of a crime, a few might maliciously make false and unsubstantiated claims against innocent people. The suspects are subsequently exposed to the rigorous nature of the criminal justice system after the authorities initiate criminal proceedings against them. It is only a long time afterwards that they discover that the charges against them happened to be false and had no justification that go beyond a hostile intent to utilise the governmental apparatus to hurt a perceived enemy.

There have been concerns about how to strike a balance between citizens' rights to honestly report illegal activity to law enforcement and others' rights to be free from malicious accusations, the harshness of criminal processes, and state prosecution. The tort remedy known as malicious prosecution is used against “anyone who sets the law in motion against another with malicious intents when he/she knows there exist no cause of action to support the allegation⁴⁴”. This tort seeks to balance everyone's right to establish laws and prosecute criminals, and the necessity of preventing false accusations against innocent people⁴⁵.

According to the Administration of Criminal Justice Act 2015 in section 88(1), anybody has the inalienable right to bring forth a complaint before law enforcement agency. This section offers

⁴⁴ *Mohammed Amin v Bannerjee* [1947] AC 322.

⁴⁵ *Glinski v McIver* [1962] AC 726.

that “a person may make a complaint against any other person alleged to have committed or to be committing an offence⁴⁶.” The filing of these complaints is considered to have started the legal process that would typically result in the offender's prosecution. The complainant remains safeguarded primarily by the law as long as there was probable cause, irrespective of whether it is discovered later that he was mistaken about the genuine circumstances of the alleged criminal behaviour, if the complaint against him was submitted in good conscience and in the completely forthcoming performance of a civic duty. Probable cause denotes a genuine belief that the individual is guilty⁴⁷.

However, if the complaint was put forward with the complainant intending to injure another person or to use the police as an instrument to ambush another by means of false charges, the individual responsible will be liable for the tort of malicious prosecution⁴⁸. In *Balogun v Amubikanhu*⁴⁹, Balogun accused a gang of people of plotting to murder him and take his belongings and denounced them to the police. Because of his privileged position, he encouraged the police to prosecute these unfounded and false accusations in court. Since there was no evidence to back up these accusations, the court dismissed and cleared the defendants. The trial's victims received damages after suing for malicious prosecution.

2.2. Theoretical Framework

A theoretical framework refers to reviewing already existing theories of a specific subject matter to limit the scope of relevant data. A theoretical framework employs language, representation, industries, and audiences to streamline arguments and ideas.

⁴⁶ Administration of Criminal Justice Act, 2015.

⁴⁷ *Bayoi v Ahemba* [1992] 8 NWLR (pt 257).

⁴⁸ *Gliniski v Mclver* [1962] AC 726.

⁴⁹ *Balogun v Amubikanhu* [1989] 3 NWLR (pt 107) 18.

2.2.1. Historical Foundation of Malicious Prosecution

For centuries, legal systems have recognized the inherent unfairness of groundless litigation. Malicious prosecution is a later iteration of Anglo-American attempts to curb the abuse of both criminal and civil process⁵⁰. Its roots first appeared in English law by the seventh century, as Anglo-Saxon courts grappled with false suits brought against others in early manifestations of "abuse of process"⁵¹.

"Malicious prosecution" is the intellectual progeny of earlier "Anglo-Saxon" and "Norman" legal strategies to discourage prosecutors from hurling accusations at innocent people. The Anglo-Saxon practice of either cutting off a losing complainant's tongue or making him pay a status-based amount to his wrongly accused defendant is where the tort originated⁵². Modern malicious prosecution differs greatly from this brutal practice. It does not differentiate between scenarios that are obviously irrational and those that are reasonable but unsuccessful. In other words, unlike modern malicious prosecution as we know it today, the historic tort did not need an affirmative demonstration of lack of "reasonable cause". In Anglo-Saxon times, the court would automatically impose the sentence. The Anglo-Saxon custom originated from the pre-Norman trial system, which eliminated the possibility of legitimate but unsuccessful lawsuits. Therefore, if the victim's harassment was instantly apparent, there was no need for a separate lawsuit to compensate him. A court-imposed fee system replaced the tongue-or-fixed charge system following the Norman conquest. A losing prosecutor or plaintiff was not in danger of losing his tongue under this new "amercement" regime, but he would probably have to pay a

⁵⁰ Timothy Tymkovich and Hayley Stillwell, 'Malicious Prosecution as Undue Process: A Fourteenth Amendment Theory of Malicious Prosecution' *Geo JL & Pub Pol'y* (2022) (20) 225 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/geojlap20§ion=12> accessed 25 January 2026.

⁵¹ *ibid*.

⁵² W Campbell, 'Groundless Litigation and the Malicious Prosecution Debate: A Historical Analysis', *Yale L.J.* (1979) (88) (6) 1218, 1219.

discretionary fee. The victim of a false suit has less to show for his trial than under the previous system because the cost was paid to the court rather than the wrongfully accused. Nevertheless, one feature of the amercement system was a significant step toward the customised sanctions that are the current remedy for malicious prosecution. These "penalties could serve as a more customised and specific form of deterrence and were assessed according to the extent of the wrong done.

Then, in order to fill a void in the system of coercion, Parliament established the writ of conspiracy in 1293. The writ of conspiracy only targeted "straw-party actions," not any malicious prosecutions or even those that caused particular problems. In these cases, a person would either employ or work with a third party to bring charges against their victim. Usually, the person using the third party did so to protect himself from the consequences of the amercement system and other legal expenses. That vacuum was closed by the writ of conspiracy. The first disincentive to fraudulent prosecutions was the writ of conspiracy, which forced the victim to file a separate lawsuit against the alleged perpetrator. The writ of conspiracy required proof of malice, just like the current malicious prosecution action. The family of remedies that finally led to malicious prosecution began with this writ. The internal sanction, or the charge paid to the court for false suits, was crucial to the amercement-conspiracy system's efficacy, but it started to lose favour. As a result, both the system's efficacy and internal sanction were constrained. In response, Parliament strengthened the internal sanctions "by enacting a series of costs statutes over several centuries, each of which left the costs sanction broader and more useful than the one before. Costs were important in giving a defendant who had been wronged some recompense, but they were insufficient to cover consequential damages and to fully compensate the defendant. The development of "the action on the case" marked the beginning of the contemporary rule. This

cause of action focused on malicious prosecution tactics that were no longer accessible due to internal sanctions. In *Saville v Roberts*, an English court refined malicious prosecution claims around the end of the seventeenth century by restricting them to cases that resulted in damages. The court faced this question: "if a plaintiff procures a defendant falsely and maliciously to be indicted ... upon which indictment the defendant is acquitted, whether the defendant may have an action against the plaintiff for so falsely and maliciously procuring him to be indicted⁵³?" The court responded in the yes, but only if there was proof of damage, which may include (1) damage to a man's reputation, (2) damage to the individual, or (3) damage to his property. The "English Rule" refers to this damage requirement. The protection of the innocent and the courts from unjust litigation is at the heart of the malicious prosecution claim.

Throughout the history of the modern tort, this fundamental protection has been used to discourage wrongful litigation through measures like tongue-cutting, amercements, and costs.⁵⁵ Originally intended as a remedy for pointless criminal procedures, the tort of malicious prosecution was eventually extended to include civil actions. The tort was designed to remedy damages suffered by a party subjected to a previous frivolous action⁵⁶.

2.2.2. The Tenets of Natural Law and Malicious Prosecution

Natural law theory holds that moral values and particular liberties are inherent in the nature of human beings and are universally comprehensible, independent of laws or social norms. Natural law proponents contend that morality is centred on the general good. Aristotle asserts that the first moral precept is *bonum faciendum malumque vitandum*, or "good must be done and evil

⁵³ *Saville v Roberts* 1 Ld. Kaym. 374 [1678].

⁵⁵ Tymkovich and Stillwell (n 30).

⁵⁶ Timothy P Getzoff, 'Dazed and Confused in Colorado: The Relationship Among Malicious Prosecution, Abuse of Process, and the Noerr-Pennington Doctrine' (1996) 67 U. Colo. L. Rev. 675 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ucollr67§ion=29> accessed 25 January 2026.

must be avoided.” Malicious prosecution is somewhat based on this principle. A person cannot maliciously cause the initiation of proceedings against another under natural law, this falls under the evils that should be avoided. By reducing the prevalence of excessive selfishness, toxic behaviour towards others, internecine conflict, and other potentially disintegrating elements in societal life, morality in its social meaning attempts to increase social peace⁵⁷. Natural law uses a few broad principles to guide human behaviour. The most basic of these rules is that evil should be avoided and good should be done. According to St. Thomas Aquinas, we are able to discern between morally right and wrong deeds because of the voice of reason within us, which gives us a sight of the eternal rule. His thesis holds that things that humans are naturally inclined towards must be considered to be a part of natural law⁵⁸.

2.2.3. Schools of Thought on Malicious Prosecution

The varying schools of legal thought (which include the philosophical school of thought, the analytical school of thought, the historical school of thought, the comparative school of thought, as well as the sociological school of thought) represent various approaches to distinct objectives rather than a shared one. It's more than just three blind men who are unable to concur on how to describe an elephant they've been led to. Regarding which of the creatures is the elephant, there is a sincere disagreement. The earliest and most persistent distinction between the schools stems from how they define law, laws, and the law. Then, of course, they have different definitions of jurisprudence. Is it a theory, a method, a system, a philosophy, a general attitude, or a science⁵⁹?

⁵⁷ B. O. Okere, ‘The Relationship of Law and Morality: Dichotomy or Complementarity’, *The Nigerian Juridical Review*, (2002-2010) (9) 4-6.

⁵⁸ Ibid.

⁵⁹ Nathan Isaacs, ‘The Schools of Jurisprudence. Their Places in History and Their Present Alignment’ *Harvard Law Review* (1918) (31) 373 <<https://www.jstor.org/stable/1327078>> accessed 5 March 2026.

A school of thought is defined as the varied viewpoints or methods used by various academics, philosophers, or legal experts while examining a subject. A school of thought might include a collection of beliefs, tenets, and presumptions that help members of that school comprehend a certain idea. The history of ideas is frequently recounted in the context of schools of thought that rise and fall in popularity, win battles over specific problems, or lose. Similar to other periods in the history of ideas, legal philosophy has seen the emergence and collapse of schools of thought, sometimes with little justification. Some have vanished from view, but for no apparent cause. According to Joseph Raz, this can be explained because legal theory has an inherent obsolescence since cultural self-understandings are constantly evolving. This is due to the fact that legal theory aims to capture the fundamental elements of law as they are embodied in a culture's self-understanding⁶⁰. Consciously or unintentionally, the "schools" are at odds with one another. They are the offspring of various eras and geographical regions, and they differ not only in their perspectives, approaches, and inclinations but also in their core ideas, issues, and goals—in other words, in the subject matter of their academic pursuits⁶¹. The legal framework of justice, individual rights, and the function of the legal system in society are all examined by the school of thought on malicious prosecution. This tort has been regarded as a breach of an individual's fundamental human rights. The naturalist and positivist schools of thinking will be addressed.

St. Thomas Aquinas and the Greek scholars are credited with giving rise to Natural Law philosophy. Unlike other schools of thought that have faded with time, natural law theory is thought to have existed for at least millennia and is still relevant now. In more recent times, Natural Law legal theory has been changed and revitalised by theorists such as Robert George,

⁶⁰ Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (1st edn, Wiley 2005) <<https://doi.org/10.1002/9780470690116>> accessed 5 March 2026.

⁶¹ Isaacs (n 38).

Germaine Grisez, and John Finnis⁶². Within the framework of the hypothesis of natural law, law can be perceived as a pure social fact of power and practice. Law can, in addition, be discussed as a collection of reasons for action that can and often are sound as rationalisations and, therefore, normative for rational individuals addressed by these theorists⁶³. Natural law proponents' primary objective is to define law in a morally laden manner. They continually insist on refusing to refer to regulations passed in the name of legislation as "law" unless they meet specific moral standards.

Legal positivism is neither a new fad nor a millennium old. Legal positivism is a recognised approach to the essence of law that has been around for about 200 years, some of its elements can be traced back to Thomas Hobbes and possibly even Thomas Aquinas⁶⁴. Legal theorists who characterise their opinions as "positivist" or as an instance of "legal positivism" believe that natural law theory is incompatible with their views, or at the very least distinct from their views⁶⁵. Aquinas was the first to popularise the phrase "positive law" (albeit not "positivism") in philosophy⁶⁶. The goal of putting forth a legal positivist stance seems clear when one examines the writings of John Austin, one of the main proponents of the positivist school. It is an attempt to create a study of the essence of law that is separated from recommendations and guidelines for the enactment of legislation or the preservation or reform of legal practice⁶⁷.

Given that malicious prosecution ultimately violates established legal norms and concepts, such as the need for probable cause and the obligation to pursue justice impartially, malicious

⁶² Oran Doyle, 'Legal Positivism, Natural Law and the Constitution' Dublin ULJ (2009) (31) 206
<https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/dubulj31§ion=11> accessed 5 March 2026.

⁶³ Finnis John, 'Natural Law Theories', *The Stanford Encyclopedia of Philosophy* (2025) 1
<<https://plato.stanford.edu/archives/sum2025/entries/natural-law-theories/>>.

⁶⁴ Golding and Edmundson (n 39).

⁶⁵ Finnis John (n 43).

⁶⁶ Ibid.

⁶⁷ Golding and Edmundson (n 39).

prosecution has been denounced by the positivist school. Additionally, naturalists contend that human behaviour is governed by fundamental rules that specify how people should act. It holds that this tort is a moral transgression that goes against the values of justice, fairness, and consideration for the interests of one's neighbours. The legislation aims to preserve equilibrium between two competing ideas regarding malicious prosecution. One of which is the public policy and the need for persons “to assist in the enforcement process of bringing lawbreakers to justice” on the one hand, and on the other hand, the need “to ensure persons are not subjects of unjust prosecution”⁶⁸.

2.2.4. Rule of Law

The principle of rule of law dictates that “every” individual or body is “subject to the law”. This principle preaches equality before the law. It is a system of laws and norms that ensures that accountability for individuals and government alike as well as safeguarding rights. No person can act arbitrarily, as “no one is above the law”. In *Omiyale v Macaulay*, the Supreme Court of Nigeria held that “the law is no respecter of persons and the rule of law is supreme and must be upheld”⁶⁹. In the spirit of accountability, the tort of malicious protection plays a vital role in ensuring that no person who causes another to be prosecuted, through sheer malice, can escape the long arm of the law.

2.2.5. Due Process

The term ‘due process’ as defined in *Okoreaffia v Agwu* means, “the conduct of legal proceedings in accordance with laid down rules and principles for the protection and

⁶⁸ Ibid.

⁶⁹ *Omiyale v Macaulay* [2009] 7 NWLR (pt 1141) 597.

enforcements of private rights”⁷⁰. The Nigerian Constitution in section 35(1)(c), which protects the right to personal liberty, makes it very plain that the right of an individual to exercise personal liberty may be infringed upon if there is a good reason to believe they have committed a crime or to stop them from doing so⁷¹. Any person who incites a police officer to maliciously prosecute another does not follow the due process of reasonable suspicion, and is in contravention of the law. In *Jim-Jaja v COP*, the court held that,

“the tort of malicious prosecution requires proof of the absence of reasonable and probable cause for commencing proceedings and the proof of improper purpose or motive which involves abuse or perversion of the due process of criminal justice. In Nigeria, it is enough if the allegation is without reasonable and probable cause, or malicious, or patently false. The falsity of the allegation resulting in his arrest and detention entitles the plaintiff to judgement”⁷².

⁷⁰ *Okoreaffia v Agwu* [2008] 12 NWLR (pt 1100) 165.

⁷¹ CFRN 1999 (as amended).

⁷² *Jim-Jaja v COP* [2011] 2 NWLR (pt 1231) 375.

CHAPTER THREE

LEGAL FRAMEWORK FOR MALICIOUS PROSECUTION IN NIGERIA

3.1. Legal Framework Governing Malicious Prosecution in Nigeria

A set of constitutional, legislative, regulatory, jurisprudential, and managerial standards that collectively define rights, govern behaviour, and guarantee compliance might be considered a legal and regulatory framework. International agreements, national laws, and institutional organisations make up Nigeria's legal framework for malicious prosecution. It emphasises pertinent statutes, judicial provisions, and common law foundations.

The Nigerian tort of malicious prosecution is based on a number of judicial statutes; however, the locus classicus on this field is the Supreme Court case of *Balogun v. Amubikahun*⁷³. In this instance, the defendant/appellant, a lawyer, had a case against the respondent that was pending in court at all relevant dates. The respondent claims that the appellant lodged a complaint against him, where he was charged with conspiring with one Madam Olufunmilayo to kill the appellant and possess the property of the appellant using juju. The woman's and the respondent's arrest was aggressively supported by the appellant. When the respondent was being held at the police station, the appellant attempted to prevent others from serving as surety for him. Both Madam Adekunle and the respondent were arraigned before the magistrate, but they were both found not guilty. During their joint trial, the woman admitted that the appellant had paid her N300.00 to coerce her into implicating the respondent. After the respondent was found not guilty, he filed a lawsuit in the High Court against the appellant, alleging malicious prosecution and seeking damages.

⁷³ *Balogun v. Amubikahun* (1989) 3 NWLR (Pt. 107) 18.

The learned justices of the Supreme Court thoroughly discussed the concept of malicious prosecution in the Nigerian legal system. In the main ruling, Belgore, JSC discussed malicious prosecution and its elements. According to his opinion, "the plaintiff must plead and demonstrate by evidence that he was prosecuted by the defendant in an action for malicious prosecution." In this sense, it must be demonstrated unequivocally that the legal action against the plaintiff was initiated by the defendant, which could result in a criminal prosecution. Second, the aforementioned prosecution led to the plaintiff's discharge and acquittal; in other words, the prosecution had been terminated in the interest of the plaintiff. Thirdly, it must be argued by the plaintiff, and proof must equally be provided to the court, that there was an absence of reasonable and probable cause for the defendant's prosecution. Lastly, the defendant's animosity (malice) towards the plaintiff resulted in the prosecution. For a successful malicious prosecution action, the four of the aforementioned components must be present in their entirety, and the burden of proof is always on the plaintiff⁷⁴. He further went into details of what prosecution means. Thus,

"To prosecute, in essence, is to set in motion the law whereby an appeal is made to some person with judicial authority with regard to the matter in question and to be liable for malicious prosecution, a person must be actively instrumental in setting the law in motion. Merely giving information to the police is not enough; that, at best, may lead to an action for false imprisonment if the police act on the information and make an arrest and prosecute unsuccessfully⁷⁵."

Obaseki JSC had a similar view. To him, "to prosecute is to set the law in motion", and only an appeal to a person having "judicial authority" over the matter in consideration can "set the law in motion". To be held liable for malicious prosecution, an individual must have been "actively responsible or instrumental" in setting this law in motion. If a police officer receives a charge and then makes an arrest, then the person who filed the complaint will be held accountable for

⁷⁴ Ibid.

⁷⁵ Ibid.

false imprisonment. This principle is in tandem with the Latin maxim ‘qui facit per alium facit per se’. He may be liable for malicious prosecution, however, if such a person appears in the presence of a magistrate who then, in turn, issues a warrant or summons. Since the person filing the charge is a judicial officer rather than a ministerial authority, he is not subject to a false imprisonment lawsuit⁷⁶. Nnamani JSC concurred also by stating that,

“It seems fairly well settled that in an action for malicious prosecution the plaintiff has to establish that the defendant was the prosecutor, or in ordinary and usual parlance, that he set the law in motion against him; that he was tried in a court of competent jurisdiction of criminal charges and only found not guilty and discharged; that the report against the plaintiff and his prosecution was without reasonable and probable cause but was rather actuated by malice⁷⁷.”

3.1.1. International Provisions

Malicious prosecution has caused significant dispute and misunderstanding in common law jurisprudence. People who are the targets of baseless and deliberately motivated criminal proceedings may be, under the common law tort of malicious prosecution, entitled to damages against the prosecutor. In the eighteenth century, when individuals pursued criminal charges themselves, the tort was created. This history is frequently used to explain why plaintiffs have to demonstrate that the prosecutor was driven by malice or an unlawful motive rather than the plaintiff simply being aware or having ought to have known that the action was baseless⁷⁸. In the past, the necessity to motivate private persons to help prosecute criminals served as justification for the malice standard. In a unanimous ruling, the House of Lords held that malicious prosecution could not be applied in administrative processes but that it might be used in civil matters. Thirteen years later, in *Crawford Adjusters v. Sagicor General Insurance*, the victim of a spurious civil claim alleging fraud and conspiracy had a cause of action for malicious

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Michael Law-Smith, ‘The Tort of Malicious Prosecution: A Principled Account’ *McGill Law Journal* (2024), [69] 141 <<https://www.erudit.org/en/journals/mlj/2024-v69-n2-mlj09756/1115150ar/abstract/>> accessed 16 March 2026.

prosecution, according to a 3-2 majority of the Privy Council. This ruling disregarded more than a century of precedent that limited the tort to exceptional processes that may injure the defendant instantaneously. The majority's reasoning applies to defective administrative procedures as well, raising questions about the validity of the House of Lords' previous ruling⁷⁹. In earlier times, malicious prosecution was the most prevalent and widely recognised strategy for preventing false criminal accusations. It is hardly surprising that many courts and pundits portray the tort as being "restricted to criminal and quasi-criminal proceedings" without taking into account its applicability in other circumstances, given that this is its predominant application⁸⁰.

3.1.2. National statutes

All torts in Enugu State are governed by the Revised Laws of Enugu State, 2004 CAP 150. These statutes, which additionally pertain to Ebonyi State, were restated in the Anambra State statutes. It is an extensive collection of tort laws that have been codified for convenience and reference. This statute forbids the malicious prosecution of an innocent person. According to Section 311 of this law, an individual is considered to have commenced a malicious prosecution action if they either file an information to that effect or persuade a third party who is a prosecutor to start the procedures⁸¹. This goes to show that for a person to be liable for malicious prosecution, such an individual must have instituted proceedings either directly or indirectly. Using a third party as a reason is not acceptable. Also, it is quite crucial to note that the burden of proving that the initial criminal prosecution was started deliberately rests with the individual who was the target of the prosecution. To accomplish this, such a person must demonstrate that he (the plaintiff) was successful in the initial proceedings, the defendant had malicious intent when the prosecution

⁷⁹ Michael Marin, 'The Uncertain Scope of Malicious Prosecution: Insights from Canada' *Tort Law Review*, [2016] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728118> accessed 16 March 2026.

⁸⁰ Ibid.

⁸¹ CAP 150 Revised Laws of Enugu State of Nigeria, 2004.

commenced against him, and there existed an absence of reasonable and probable cause to start the action. Section 309 of that same law outlined these components⁸². Also, a person is not said to have initiated prosecution maliciously if it was brought *uberrimae fidei*.

Although the law of torts governs malicious prosecution, other statutes only partially address this idea. It is a well-known rule in malicious prosecution that once an action is initiated, malice must be present. The plaintiff will be held not liable for prosecuting maliciously if the case is brought in good faith. Section 59 of the Criminal Procedure Act provides that,

“Any person may make a complaint against any other person alleged to have committed or to be committing an offence, unless it appears from the enactment on which the complaint is founded that any complaint for such offence shall be made only by a particular person or class of persons, in which case only the particular person or a person of the particular class may make such a complaint⁸³.”

The foregoing provision reaffirms that the plaintiff will not be held accountable for malicious prosecution if the complaint is not submitted maliciously or in poor faith. As long as they have a good reason to do so, anyone has the right to file a complaint against another person. In a similar vein, the Criminal Code Act in Sections 125 and 126 forbade bringing or persuading someone to falsely accuse someone else. Additionally, it forbids the perversion of justice due to these untrue assertions⁸⁴.

3.2. Institutional Framework

The structures in place that govern malicious prosecution as a tort in Nigeria are referred to as the institutional framework. The police and the courts of justice are the primary subjects of discussion here.

⁸² Ibid.

⁸³ Criminal Procedure Act.

⁸⁴ Criminal Code Act.

The judicial powers of Nigeria are, by section 6(5) of the Nigerian Constitution, conferred on the courts⁸⁵. It lists courts, including the higher courts of record as well as the other courts which are authorised by law. Nigerian courts are essential in shielding people from unfair prosecution. The courts' role in malicious prosecution is to protect public policy and provide compensation to victims of the chaotic trials. This kind of conduct is addressed by Nigerian courts as an abuse of the legal system, and they take action to safeguard its integrity. A high court may hear a malicious prosecution lawsuit.

The police force, on the other hand, is established by section 3 of the Police Act⁸⁶. Its main goals are to safeguard citizens, deter criminal activity, and uphold public safety and order. When an individual intentionally files a lawsuit against an innocent person without a valid justification, this is known as malicious prosecution. The prosecution may also be considered malicious if a civilian reports to a police officer and persuades them to file charges against an innocent individual without an adequate rationale. The question then lies, “Who is liable for malicious prosecution, the complainant or the police officer? Who started the legal process, the police officer or the complainant?” These questions cannot be answered without first considering who can prosecute. Any police officer who practices law has the authority to prosecute in any court of law, as per section 66 of the Police Act. When an alleged wrong is reported to such an official, he has the authority to take legal action⁸⁷; however, when such a wrong is a civil wrong, the police officer has no such right to bring the action before a court of law⁸⁸. This demonstrates that a police officer has the authority to file charges against someone based on a complaint from another. The concept of "reasonable and probable cause" is required to be examined in order to

⁸⁵ Constitution of the Federal Republic of Nigeria, 1999.

⁸⁶ Police Act, 2020.

⁸⁷ S 31, Police Act. 2020.

⁸⁸ S 32(2), Police Act, 2020.

respond adequately to the aforementioned query. The complainant alone, rather than the police officer, will be held accountable for malicious prosecution where it is established that he acted in bad faith and without sufficient cause. However, the police officer will also be held accountable if he does not have reasonable cause⁸⁹. In *Obi v Chukwuma*, the plaintiff sued the defendant, who filed an oath complaint, which led to the Director of Public Prosecutions (DPP) filing criminal proceedings against the plaintiff. It was decided that the DPP should decide whether to prosecute the plaintiff rather than the defendant who filed the complaint. The DPP was deemed the one to have “set the law in motion” instead of the defendant, who merely made a complaint⁹⁰. It is noteworthy that a mere complaint made in good faith does not render one ipso facto liable in malicious prosecution. In *Garba v Maigoro*, the defendant appellant reported to the police that his car, which was parked in front of his property, had caught fire. He denied having any suspicions about anyone, but when asked whether he had any miscommunications with anyone, he identified the plaintiff respondent as his political adversary. In consequence of this, the plaintiff respondent was detained and accused of mischief by fire; nevertheless, he was released due to the prosecution's inability to establish and provide a prima facie case. Afterwards, the respondent filed, against the defendant appellant a malicious prosecution lawsuit, claiming that the appellant allegedly made the report carelessly and intentionally, knowing it was untrue. He further claimed that the report had caused him a significant deal of concern, mockery, and animosity against his company and reputation. The court decided that the appellant could not be liable for malicious prosecution based only on a suspicion that the respondent was the one who set fire to his car. The appellant's report to the police merely prompted them to conduct an investigation in order to identify the offender. The defendant appellant did not deliberately cause

⁸⁹ *Obi v Chukwuma* [1964] LLR 105. (This case is an example, albeit a rare one, of an instance where a malicious prosecution action was brought against a police officer.)

⁹⁰ *Ibid.*

the law to be used against the plaintiff or play a significant role in doing so. An unidentified person indeed set fire to the appellant's car, destroying it. He submitted his suspicions about the respondent to the police, who are tasked with looking into criminal charges. The court also concluded that it was clear the police looked into the matter and chose to charge the suspect. The police commenced the proceedings against the plaintiff in the instant case.

Notwithstanding, it is noteworthy that people who instigate malicious actions usually do so through the police. They encourage the police to start investigations without a good justification. The police are employed by the courts as an enforcement instrument and serve as a regulating authority for malicious prosecution. Additionally, the Nigerian Police Force makes sure that police officials suspected of malicious prosecution face legal consequences⁹¹.

3.3. Elements of Malicious Prosecution

The elements of malicious prosecution is enumerated in the case of *Balogun v Amubikahun*. Here, the learned justices stated that the plaintiff must plead and prove the following in an action for malicious prosecution:

- “(a)That he was prosecuted by the defendant, that is, the defendant set in motion against the plaintiff, the law leading to a criminal charge.
- (b)That as a result of the prosecution aforementioned, the plaintiff was discharged and acquitted.
- (c)That the prosecution by the defendant was completely without reasonable and probable cause.
- (d)That the prosecution was as a result of malice by the defendant against the plaintiff⁹².”

⁹¹ S 103, Police Act, 2020.

⁹² *Balogun v. Amubikahun* (1989) 3 NWLR (Pt. 107) 18

The plaintiff bears the onus to prove malicious prosecution. A claim for malicious prosecution will be rejected if the plaintiff is unable to furnish proof of any one or more of these components⁹³. However, once the tort of malicious prosecution has been established, it is typically not disputed whether the plaintiff has incurred injury. This is especially true in blatant situations of malicious prosecution⁹⁴.

3.3.1. Institution of Prosecution by the Defendant

The plaintiff needs to furnish proof that the defendant “set the law in motion” against him. He has to demonstrate that the defendant started the legal proceedings against him. In essence, to prosecute is to initiate the legal process by appealing to a person who possesses judicial authority to take action on the topic which is in question. First and foremost, the plaintiff must prove this. In “setting the law in motion”, the defendant must have been “actively instrumental”⁹⁵. Malicious prosecution action is built heavily on this basis, and if it is not proven, the plaintiff's case is typically unjustified and without merit. The court will subjectively decide what constitutes the “initiation” of the legal process in each individual case. The prosecution does not have to be carried out by the defendant in order to “set the law in motion”. For instance, if he presented a magistrate with information that led to the magistrate issuing an arrest warrant or a summons against the plaintiff, it would be sufficient to establish liability⁹⁶. In this situation, the defendant cannot avoid responsibility by arguing that the plaintiff's later prosecution was neither technically carried out by the police nor that it was started at the magistrate's discretion⁹⁷. Additionally, it was once assumed that the defendant would not be held accountable till the

⁹³ *Aubin v Ehunaku* [1960] GLR 167 168.

⁹⁴ *Ese Malemi, Law of tort*, 2nd Edition (Princeton Publishing Co., 2013) 193.

⁹⁵ *Mandilas & Karaberis Ltd v Apena* [1969] NMLR 199 203.

⁹⁶ *Casey v Automobiles Renault of Canada Ltd* [1965] 54 DLR 600.

⁹⁷ *Malz v Rosen* [1966] WLR 1008.

litigation could be deemed to have officially begun (an instance is by the magistrate issuing a summons). In *Mohammed Amin v Bannerjee*, however, the Judicial Committee decided that it was sufficient if the proceedings attained a pinnacle where it might be claimed that the reputation of the plaintiff was damaged. An example of this is, if a magistrate investigated a charge in open court without issuing a warrant or summons, which led to the ultimate dismissal of the complainant. It is not a defence that the magistrate acted without authority when issuing a warrant, since, for the same reason, the fact that there was technically no prosecution at all does not mitigate the harm to the plaintiff's reputation. Furthermore, the defendant will not be deemed to have initiated legal action if he merely provides the police with specific facts that implicate the plaintiff and the police choose to prosecute. "The stone set rolling" by the defendant is only a suspicion⁹⁸.

However, in *Tewari v Singh*, it was established that even though the prosecution was not officially carried out by him, the defendant will be accountable as a prosecutor if he intentionally submits to the police or a judge, a false accusation leading to the trial of an innocent man⁹⁹. Similarly, in *Inneh v Aruegbon*, to have the plaintiff, who was residing in Lagos, arrested and transported to Benin so that he could serve her with a summons in a matrimonial action, the defendant, who was based in Benin, filed an unjustified report of theft against her. When she was taken into custody and transported to Benin by the police, she received the summons. She brought a complaint alleging malicious prosecution. The defendant was found guilty by the court

⁹⁸ *Danby v Beardsley* [1880] 43 LT 603.

⁹⁹ *Tewari v Singh* [1908] TLR 884.

of "malicious prosecution." To the best of his knowledge, the defendant's criminal report was false. Without a valid reason, he brought a case against the plaintiff¹⁰⁰.

3.3.2. Termination of Prosecution in Favour of the Plaintiff

The second prerequisite for a "malicious prosecution" case to be successful is that the plaintiff's complaint was successful in the prosecution. It is a rigid rule that an individual who has been found guilty of a crime is incapable of suing his prosecutor for malicious prosecution. This is so even if he is able to demonstrate that the charge was indeed both baseless and malicious. This is because if someone could file a lawsuit for malicious prosecution after the trial has already been concluded against him, the question of his guilt would be reopened, which would challenge the validity of the conviction and possibly result in the decision of the court being "blown off by a side-wind"¹⁰¹. Although a lawsuit for "malicious prosecution" cannot be filed by the plaintiff if he is found guilty, this, however, does not imply that the plaintiff can only file a lawsuit if he was found innocent therein. The fact that he hasn't been found guilty is more important than whether he has been proven innocent¹⁰². Since every individual is believed to be innocent unless and until it is proven otherwise, the prosecution will be considered to have been appropriately dropped in the plaintiff's best interests when:

- A. Due to procedural irregularities, the plaintiff's conviction from a lower court was overturned on appeal¹⁰³.

¹⁰⁰ *Inneh v Aruegbon* [1952] 14 WACA 73.

¹⁰¹ *Vanderbergh v Blake* [1661] 145 ER 447.

¹⁰² John G. Fleming, DCL, *The Law of Torts* (4th edn, Law Book Co. Ltd. 1971) 538.

¹⁰³ *Wicks v Fentham* [1791] 100 ER 1000.

- B. The plaintiff, although guilty of a lesser wrong, was exonerated of the relevant accusation¹⁰⁴.
- C. Due to a technicality, such as an error in the indictment, the plaintiff was not found guilty.
- D. The case or the charge was dropped by the prosecution, even if it didn't affect their right to recommence¹⁰⁵.
- E. A “nolle prosequi” to halt the procedures was entered by the Attorney General¹⁰⁶.

In *Iyalekhue v Omoregbe*, a piece of farmland was under dispute between the appellant and the defendant responder, who were both from the same hamlet. The respondent reported the issue to the village chief after discovering some individuals harming his crops on the property. The respondent called the police, detained the appellant and two others, and charged them in court while settlement negotiations were underway. In response to the appellant's attorney's no case submission, the appellants were found not guilty but were conditionally discharged after agreeing to behave well for three years. The appellant filed a malicious prosecution lawsuit against the respondent after the criminal proceedings were terminated. The respondent was not found guilty by the appellate court. This was justified by the fact that the appellant was bound by an order resulting from the criminal proceedings against him. He had the right to appeal the order, but he chose not to. Even though he was not found guilty of the charges against him, he can no longer claim that the prosecution had ended in his interest. Therefore, even if a plaintiff claims that the defendant's report that led to his prosecution was incorrect, he will not be successful in a claim for “malicious prosecution” if he was found guilty or bound over in the prior case¹⁰⁷.

3.3.3. Absence of Reasonable and Probable Cause for the Prosecution

¹⁰⁴ *Boaler v Holder* [1887] 3 TLR 546.

¹⁰⁵ *Casey Automobiles Renault of Canada* [1965] 4 DLR 600.

¹⁰⁶ *Khoury v Tabbara* [1953] 12 WACA 246.

¹⁰⁷ *Iyalekhue v Omoregbe* [1991] 3 NWLR 177.

The third condition is one of the most challenging to meet since, in addition to requiring “proof of an absence”, the idea of “reasonable and probable cause” is still ambiguous and challenging to implement in specific situations. In *Hicks v Faulkner*, “reasonable and probable cause” is defined by Lord Hawkins J to be

“...an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed¹⁰⁸.”

However, the idea of “reasonable and probable cause” has additional tenets. The concept is both subjective and objective. Determining whether a “reasonable man” would have determined that the plaintiff was most likely guilty of the claimed offence based on information the defendant had at the beginning of the prosecution is an inherently objective test. Diplock LJ in *Dallison v Caffery*, explained the test for determining the reasonableness of a prosecution thus:

“...one word about the requirement that the arrestor or prosecutor should act honestly as well as reasonably. In this context, it means no more than that he himself at the time believed that there was reasonable and probable cause, in the sense that I have defined above, for the arrest or for the prosecution, as the case may be. The test whether there was reasonable and probable cause for the arrest and prosecution is an objective one, namely, whether a reasonable man, assuming to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause¹⁰⁹.”

However, “whether the defendant thinks the plaintiff was guilty” is a subjective question. If the defendant acts on the basis of misleading information, he may argue that his honest beliefs—even if they are untrue—will be taken into consideration instead of the facts. In a similar vein, he may assert that he should be assessed based on his sincere beliefs if he acts honourably based on fiction. In *Glinski v McIver*, the appellant filed a writ alleging “malicious prosecution” against the respondent. He claimed the respondent was found not guilty by a jury on accusations of conspiracy and obtaining commodities under false pretences, and that he was in charge of the

¹⁰⁸ *Hicks v Faulkner* [1878] 8 QBD 167.

¹⁰⁹ *Dallison v Caffery* [1965] 1 QB 348.

case and was at all relevant times responsible for laying the complaint and the information. Without "reasonable and probable cause," the respondent filed an information and maliciously preferred allegations of conspiring to swindle and obtain items under false pretences. He was consequently committed for trial and sent to jail. Following his prosecution on these accusations, the trial's learned judge found him not guilty. Regarding a malicious prosecution case, Lord Denning expressed the following opinion regarding a malicious prosecution action;

“Did he honestly believe that the accused was guilty? Or, as I would prefer, did he know there was no good ground for the charge he made?... These cases must be carefully watched as to see that there really is some evidence from his conduct that he knew it was a groundless charge. It must always be remembered that, if a charge is genuine, the mere fact that the prosecutor has made an unfair use of it does not raise any interference with a belief that there was no reasonable or probable cause¹¹⁰.”

The defendant's belief must have been accompanied by information that he was aware of when he started the prosecution. Therefore, the defendant cannot cite later-discovered incriminating details that would have provided the prosecution with “reasonable and probable cause” to defend his actions. Thus, in *Turner v Ambler*, the plaintiff claimed the defendant (who was also his landlord) had brought legal action against him in an effort to evict him. Later on, it was discovered that some of the fixtures of the landlord had been removed and sold by the tenant. The initial prosecution was found to be malicious by the jury. Unfair use of a charge may indicate malice, according to Lord Denman, who approved or at least did not contest the jury's verdict on this part of the case¹¹¹. He will also be accountable if further information shows that the prosecution is baseless. Until he notifies the court of the new information, that is¹¹².

In most cases, the defendant will be considered to have "reasonable and probable cause" for the prosecution if they believe the plaintiff is guilty, give the entirety of the evidence to the police,

¹¹⁰ *Glinski Mclver* [1962] AC 726.

¹¹¹ *Turner v Ambler* [1847] 116 ER 98.

¹¹² *Tims v John Lewis & Co Ltd* [1951] 2 KB 459.

and are then told that a prosecution is necessary. In *Yeboah v Boateng*, the defendants, who were the plaintiff's tenants, had offended the supreme chief by paying tributes to another traditional ruler without the plaintiff's consent. The defendants were ordered to pay pacification fees and apologise to the plaintiff in front of the elders during an arbitration that was conducted with the parties' consent. They complied. The defendants subsequently reported to the police that the money was demanded from them by the plaintiff. The police said, "Police cannot interfere," and they chose not to press charges. "Nothing Criminal disclosed" was noted in the station's journal. The defendants were dissatisfied and thus instituted an action, and it was found that a "prima facie" case existed. The plaintiff was then apprehended. He was subsequently released after the Attorney General submitted a "nolle prosequi". After that, he filed a lawsuit on the tort in question. Among other things, the Supreme Court of Ghana decided that there was insufficient proof of malice or "reasonable and probable cause" for the defendants to continue prosecuting the plaintiff after the police informed them that no offence had been committed. Nevertheless, the defendants "could not have had reasonable and probable cause for the prosecution" because they could not have genuinely believed the plaintiff was guilty. This is due to the fact that it was evident that they understood that paying pacification fees was legal and consistent with custom¹¹³.

Similarly, in *Abbott v. Refuge Assurance Co*, the insurance company presented the plaintiff's alleged fraud facts to the DPP and the police. They both chose not to press charges. In a memo, the insurance company's senior legal consultant recommended against pursuing the claim. Counsel recommended that both the plaintiff and his secretary be prosecuted once the information and papers pertaining to the plaintiff's secretary's fraud were presented. A statement attempting to incriminate the plaintiff was presented to counsel, but the memorandum from the

¹¹³ *Yeboah v Boateng* [1963] 1 GLR 182.

insurance company's legal adviser had not been. In light of this, the insurance company's general manager and managing director opted to file charges against the plaintiff even though they were aware that the plaintiff had disputed all of the accusations against him. The plaintiff's attorney argued during the trial that he had no case to answer. The prosecution successfully resisted this submission. After concluding that the jury should never have been given the chance to resolve the case, the Court reversed the plaintiff's conviction. After being imprisoned for four months while also awaiting the outcome of the appeal, the plaintiff filed a malicious prosecution lawsuit against the insurance company. The Court's majority ruled thus: the plaintiff had not met the burden placed on him of proving that the prosecution lacked "reasonable and probable cause"¹¹⁴.

To demonstrate that the defendant disbelieved in the plaintiff's guilt, the latter must provide evidence to draw a conclusion regarding the defendant's actual beliefs. As indicated by Fleming, it might be enough for the plaintiff to show, for instance, that the defendant was aware of information which so strongly suggested the innocence of the plaintiff that no reasonable person could possibly have concluded that he was guilty¹¹⁵.

3.3.4. Malice

The defendant's actions had to have been malicious. In the context of malicious prosecution, "malice" can refer to both *malus animus*, which indicates that the party who is initiating the lawsuit is motivated by indirect and improper motivations, as well as spite or animosity directed at an individual¹¹⁶. In this instance, malice has considerably broader meanings. It is any inappropriate or covert motive. The case's facts and surrounding circumstances may provide evidence of malice. One example of a fact that constitutes malice in an action of "malicious

¹¹⁴ *Abbott v Refuge Assurance Co Ltd* [1962] 1 QB 432.

¹¹⁵ Fleming John G DCL, *The Law of Torts* 5th Edition (Law Book Co. Ltd 1971).

¹¹⁶ Eise Malemi, *Law of Tort* 2nd Edition (Princeton Publishing Co. 2013).

prosecution” is a lack of sincere belief in the plaintiff's guilt. Alderson B in *Stevens v Midland Counties Ry Co* defined malice as “any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice¹¹⁷.” Similarly, Bowen LJ in *Abrath v North Eastern Ry Co*, explained that it occurs when proceedings “were initiated in a malicious spirit, that is, from indirect and improper motives and not in furtherance of justice¹¹⁸.” In *Balogun v Amubikanhu*, Belgore JSC and Nnamani JSC explained further that securing the goals of justice, rather than punishing an innocent person, is the appropriate motive for any prosecution. The lack of faith in a complaint's veracity or the determination to convict someone by whatever means ultimately results in fabricating proof of malice. The key to proving the absence of malice is to demonstrate an honest belief. This belief must be more than just the prosecution's conviction of the accused; rather, it must be a belief that the prosecution will be able to present enough proof in front of the court to support the accused's conviction.

Some instances where improper purposes amount to malice include: when a action is filed to blackmail the person accused; when the prosecution's goal is to recover a debt, in which case the civil process should be used instead of the criminal one; when a man is prosecuted as a way to punish him for testifying against the police in the past; and when a landlord files criminal charges against his tenant to force the latter to leave the property¹¹⁹.

The components of “reasonable and probable cause” and “malice” definitely intersect. It is long established, therefore, that evidence of the existence of malice does not ipso facto prove the absence of existence of “reasonable and plausible cause”. This demonstrates that if the defendant had good reason to believe the plaintiff was guilty of the alleged offence, he would not be held

¹¹⁷ *Stevens v Midland Counties Ry Co* [1854] 156 ER 480.

¹¹⁸ *Abrath v North Eastern Ry Co* [1883] LR 11 QBD 440.

¹¹⁹ Gilbert Kodilinye & Oluwale Aluko, *The Nigerian Law of Torts* (Spectrum Books Limited, 2018).

accountable for malicious prosecution, regardless of how malevolent the defendant may have been. This was so in the case of *Usifo v uke*, where Two Agbon clan villages, Okpara and Kukori, were at odds with one another. Both communities claimed the right to select the ovie, the highest chief of the clan. The Okpara defendants immediately filed a complaint under oath before a magistrate after learning that the Kukori people planned to crown the plaintiff as the Ovie. They claimed that any meeting to the effect of crowning the plaintiff as Ovie would probably lead to a breach of harmony and peace, so they sought to have the plaintiff and a few other Kukori people bound over for the sake of safeguarding the peace. The plaintiff brought a similar lawsuit against the defendants as payback. Both parties were required by the magistrate to maintain harmony while the investigation was underway. The plaintiff and his supporters proceeded with the ceremony, and it went down without incident or disruption. After the defendants filed another complaint with the magistrate, the plaintiff and four of his colleagues were called before the court and accused of acting in a way that could have resulted in a disturbance of the peace. After the accused were tried and found guilty, the conviction was overturned on appeal. The plaintiff's attorney contended that once the element of malice is proven, little to no evidence is needed to prove the lack of "reasonable and probable cause". They also contended that since the evidence demonstrated the defendants' determination to stop the coronation and perhaps even to uncrown the plaintiff after the event, there was, without doubt, no "reasonable and probable cause" for the charge¹²⁰. The learned De Lestang Ag FCJ giving the leading judgement rejected this contention quoting *Johnstone v Sutton*¹²¹ that "... from the most express malice, want of probable cause cannot be implied...", as well as Lord Denning LJ in *Tempest v Snowden* "...even though a prosecutor be actuated by the most express malice, nevertheless, he is not liable so long as there

¹²⁰ *Usifo v uke* [1958] 3 FSC 58.

¹²¹ *Johnstone v Sutton* [1786] 99 ER 1225.

was reasonable and probable cause for the prosecution....” Therefore, even while it was equally evident that the defendants had conducted the prosecution in a malicious manner, it was evident that they had “reasonable and probable cause”.

3.3.5. Damage Suffered by the Plaintiff

Lastly, the plaintiff must always demonstrate that the prosecution has done damage to his reputation, his person, or his property. He must convince the court that the accusation made against him was inherently and inevitably defamatory in order to demonstrate damage to his reputation. Damage to fame or reputation was established in *Rayson v South London Tramways Co*. The plaintiff was accused falsely by the defendant corporation of using the tram without actually shelling out the cost of his trip. He instituted an action alleging “malicious prosecution” as the charges were not proven. The plaintiff was granted general damages after the court determined that this false accusation clearly harmed the plaintiff's reputation¹²². However, there will be no such damage where the charge is not necessarily defamatory. In *Wifens v Bailey & Ramford UDC*, the plaintiff was accused in a report by the defendant, a local government official, of violating health laws by neglecting to maintain and clean the rooms that the plaintiff had rented. The court determined that even though there was no “reasonable and probable cause” malice had been proven notwithstanding; however, the claim would be dismissed because no particular damages were shown¹²³.

In cases where the prosecution put the plaintiff in danger of being imprisoned or subjected to other forms of corporal punishment, damage to his person will be determined. As with slander,

¹²² *Rayson v South London Tramways Co* [1893] 2 QB 304.

¹²³ *Wifens v Bailey & Ramford UDC* [1915] 1 KB 600.

which is actionable in and of itself, the offence for which the plaintiff was accused had to be one that could only result in jail time if a fine or other penalty was not paid¹²⁴.

The plaintiff's defence costs are adequate to support the claim for "malicious prosecution" with relation to property damage unless the court hearing the case awarded him an allowance comparable to the costs he actually incurred. In *Berry v British Transport Commission*, where the plaintiff was accused of tugging on the communication cord while riding a train, but he was found not guilty. It was decided that the plaintiff was not defamed by this accusation. No compensation would be given if damages could not be proven. In this instance, Lord Diplock stated that the plaintiff's allegations were not scandalous and that the claim for damages incurred because of the malicious prosecution was unsupportable¹²⁵.

As we have seen, malicious prosecution is not actionable until there is proof of harm to the reputation, person, or property. However, the criteria used to determine damages are comparable to those used in false imprisonment cases if such damage has been proven. As a result, the plaintiff is entitled to compensation for any detention he has had, damage to his reputation, and damage to his emotions (i.e., for the embarrassment, shame, and indignity brought on by the accusation). Additionally, he is also entitled to reimbursement for any subsequent loss of business or employment¹²⁶.

3.4. Malicious Prosecution as a Secondary Cause of Action

The definition of a cause of action in English Common Law is extremely limited and narrow-minded. Only a few types of cases are recognised and given remedies under the common law

¹²⁴ *Musa v Limo-Wulana* [1975] 2 GLR 290.

¹²⁵ *Berry v British Transport Commission* [1962] 1 QB 306.

¹²⁶ Salmond, *Torts* 17th Edition (1977).

system of writs. There is no actionable cause of action for litigants whose complaints do not fall under the current writs. Until Elizabeth I's reign, malicious prosecution was one of the complaints for which there was no common law remedy.

The Nigerian Courts have taken time to define the term “cause of action” in a plethora of cases. Ejiwunmi JSC defined “cause of action” in *Ikine v Edjerode* to mean all those things which are deemed prerequisites to give a right of action¹²⁷. Kalgo JSC in *P N Uddoh Trading Co. Ltd. v Abere* defined the term as “a set of conditions and facts that give an individual the right to bring a claim in court for a remedy”¹²⁸. Oputa JSC in *Egbe v Adefarasin* defined it similarly as “a factual situation which gives a person the right to judicial relief”¹²⁹. It is evident from the aforementioned definitions that a cause of action arises from facts or factual circumstances. The claimant has the right to pursue remedies in a court of law if a cause of action emerges.

In the context of this study, an action that depends on the existence of an earlier action is referred to as a secondary cause of action. This is an activity that is only possible due to the existence of an earlier action. In this respect, “malicious prosecution” is a secondary action as the plaintiff must provide evidence of a previous action brought against him without good reason and with malice, and that the action ended in his favour, for a claim for this tort to begin. There must have been an earlier action that initially began and was subsequently terminated.

Malicious prosecution is evidently a “secondary cause of action”. This is because those who have been wrongfully or maliciously prosecuted in criminal cases have historically had access to a further right of action known as malicious prosecution. After the primary criminal proceedings are concluded, the defendant becomes a plaintiff who then files a second action for compensation

¹²⁷ *Ikine v Edjerode* (2001) 8 NSCQLR 341.

¹²⁸ *P N Uddoh Trading Co. Ltd. v Abere* (2001) 11 NWLR (Pt. 723) 114.

¹²⁹ *Egbe v Adefarasin* (No. 2) (1987) 1 NWLR (Pt. 47) 1.

against the “original prosecutor”. The original prosecutor is not limited to the state’s prosecutor or investigator, but rather is the individual who filed a wrongful report or otherwise initiated the criminal proceedings¹³⁰. Therefore, the original prosecutor in this context refers to the individual who made the “untrue complaint” or otherwise supported the bringing of criminal proceedings and is the subject of the further cause of action exercised by the subsequent prosecutor.

¹³⁰ Wendy Bonython and John Farrar, ‘Principle and Policy in Malicious Prosecution’ *Bond Law Review*, (2022) [34] 159 <<https://search.informit.org/doi/abs/10.3316/informit.T2024052700010300111138586>> accessed 26 August 2025.

CHAPTER FOUR

ISSUES AND CHALLENGES IN MALICIOUS PROSECUTION SUITS

4.1. Defences for Malicious Prosecution

The word "defence" is frequently used to describe any argument put out by the defendant that, should the court accept it, will absolve the defendant of responsibility. In this sense, defences are the defendant's assertions that a component of the tort or crime he is charged with is absent¹³². Additionally, the term "defence" is used more narrowly to refer simply to regulations that, if applicable, free the defendant from liability for a crime or tort even when all the necessary components of the relevant offence or tort are present. When the term "defence" is used in this sense, only laws that prohibit liability from occurring and are not included in the definitions of crimes and torts are considered defences¹³³.

One of the main tenets of private law is tort law, which is intended to both prevent socially undesirable activity and offer remedies for civil wrongs. However, the legal system acknowledges a number of defences that, when proven, lessen or eliminate a defendant's guilt, thus the imposition of liability is not absolute. These defences are manifestations of normative decisions rather than just technicalities¹³⁴. Defences allow a defendant to disclaim accountability by pointing out the claimant's own wrongdoings or by noting their own positive activities, much as tort law determines which claims are actionable and which are not by using considerations like remoteness or absence of responsibility. Some of these defences are known as "partial defences" since they will merely lower the damages award. Others are referred to as "complete

¹³² James Goudkamp, 'Defences in Tort and Crime' [2014] Unravelling Tort and Crime
<<https://ora.ox.ac.uk/objects/uuid:a662324e-d959-4acb-9c08-c590e2f9cbbc>> accessed 1 April 2026.

¹³³ Ibid.

¹³⁴ Vanshika Singh, 'General Defences in Tort Law and Its Importance'
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5525858> accessed 1 April 2026.

defences" since they will remove all responsibility. It should be mentioned that even in situations where these defences are not relevant, both parties may provide aggravating and mitigating circumstances to convince the court that a higher or lesser amount of damages should be awarded. It's also critical to acknowledge that if the above said defence is unsuccessful, the court may use one defence as a mitigating factor¹³⁵.

The defences for malicious prosecution include:

1. A "reasonable belief" that the plaintiff committed the crime for which he was charged. A full defence is that there are "reasonable or probable grounds" to prosecute the plaintiff. Consequently, the defendant's genuine conviction that the plaintiff is guilty constitutes a defence. The Court of Appeal's ruling in *Commissioner of Police Ondo State v Obolo* established that an objective standard determines what constitutes a "reasonable belief" in the plaintiff's guilt. This means that the question is not what the defendant deems reasonable, but rather whether the information they are aware of reveals the basis for anyone to conclude that the plaintiff was the one who committed the crime¹³⁶.
2. That the prosecution was a decision made by law enforcement officials. In general, providing information to the police does not constitute filing a lawsuit against an individual. Therefore, merely telling a police officer a person or plaintiff is suspicious does not amount to malicious prosecution. According to the ruling in *Onah v Okenwa*, just reporting a problem to the police does not automatically hold someone accountable if the police use the complaint as justification for an arrest¹³⁷. This was also the legal

¹³⁵ All Answers Ltd, 'General Defences in Tort Law Lecture' (LawTeacher.net, April 2026) <<https://www.lawteacher.net/lectures/tort-law/general-defence/?vref=1>> accessed 1 April 2026.

¹³⁶ *Commissioner of Police Ondo State v Obolo* [1989] 5 NWLR (Pt 120).

¹³⁷ *Onah v Okenwa* [2010] 7 NWLR (pt 1194) 512.

position in *Garba v Maigoro*, when it was decided that making a police report did not start a lawsuit¹³⁸.

3. Fault of the plaintiff. This is the plaintiff's contributory negligence through deceptive behaviour that gave rise to the false impression that served as the foundation for the "reasonable suspicion" and subsequent prosecution of the offence. According to the contributory negligence defence, the plaintiff's damages were essentially the result of both the parties' fault; thus, the amount of damages claimed should be lowered to the degree of the plaintiff's responsibility.¹³⁹ In *Evans v Bakare* Contributory negligence, according to the Supreme Court, is when the person accusing someone else has contributed to the incident via his own carelessness. The plaintiff is at fault for contributory negligence. It occurs when the plaintiff's deceptive behaviour established a false impression that served as the foundation for the probable cause and legal action¹⁴⁰. After pleading contributory negligence, the defendant who relied on the plaintiff's false impression and filed a lawsuit against him will only be held accountable to the extent of his contribution¹⁴¹.
4. Judicial immunity as an instance of judicial authority. A theory known as "judicial immunity" shields judges from being sued for actions they took while serving as judges. An instance of this occurring is when a magistrate brings criminal charges against a person, and that person is later released and found not guilty. The magistrate cannot be the target of a malicious prosecution lawsuit due to the principle of judicial immunity.

¹³⁸ *Garba v Maigoro* [1992] 5 NWLR pt 243.

¹³⁹ Ese Malemi, *Law of Tort* (2nd edn, Princeton Publishing Co 2013) 137.

¹⁴⁰ *Evans v Bakare* [1973] 3 SC 77.

¹⁴¹ Ese Malemi, *Law of Tort* (2nd edn, Princeton Publishing Co 2013) 206.

Judges are protected from civil culpability by the nearly complete defence of judicial immunity against malicious prosecution¹⁴².

5. Legal authority, or statutory authority. This is a general defence against the malicious prosecution tort. Statutory authority refers to a statute that either exempts a tortfeasor from liability or authorises an act that causes harm to the plaintiff¹⁴³. In a tort suit, the defendant has a complete defence if they can demonstrate that the alleged wrongdoing was made possible by a statute or other piece of law¹⁴⁴. Consequently, the defendant is released from liability for any damages caused by a conduct that has been approved by law¹⁴⁵. The defence of statutory authority may be used if someone is sued for the tort of malicious prosecution because their actions may have been permitted by a statute, shielding them from liability¹⁴⁶. A statute may grant someone unlimited or conditional authorisation to carry out an act. It is absolute once the public authority in consideration has a duty to perform an act for which he is unlikely to be held accountable for any harm brought about by the carrying out of the authority, as long as the public authority has done so fairly and there is no other way to perform the act, as long as it is not done in a way that would endanger other people¹⁴⁷.
6. Preservation of national or state security. A public official may take action to maintain the state's security. According to section 45 of the Federal Republic of Nigeria's 1999 Constitution (as amended), "nothing in sections 37, 38, 39, 40, and 41 of the constitution shall invalidate any law that is reasonably justifiable in a democratic society; in the

¹⁴² *Egbe v Adefarasin* [1987] 1 NWLR pt 47.

¹⁴³ Ese Malemi, *Law of Tort* (2nd edn, Princeton Publishing Co 2013) 105.

¹⁴⁴ *Ibid.*

¹⁴⁵ Toppr Guides, General Defences to an Action in Tort: Private Defence, Act of God
<<https://www.toppr.com/guides/legal-aptitude/law-of-torts/general-defences-to-an-in-tort>> accessed 4 April 2026.

¹⁴⁶ Ese Malemi, *Law of Tort* (2nd edn, Princeton Publishing Co 2013) 105.

¹⁴⁷ *Ibid.*

interest of defence, public safety, public order, public morality, or public health or for the purpose of protecting the rights and freedom of other persons." Therefore, it is a defence that can be used to avoid liability for damages when the defendant's goal is to safeguard the state's security.

7. Statute bar, such as under a statute of limitations, which establishes a time restriction beyond which a lawsuit cannot be filed. The period of time within which a lawsuit to achieve a remedy may be filed is known as the statute of limitations. Generally speaking, limitation of an action refers to the legal principle that a claim is no longer sufficient to recover damages once the statute's time limit for filing a lawsuit to do so has passed. There was no time limit under common law. However, the court might use its discretion to reject a plaintiff's claim under the doctrine of laches and acquiescence if the plaintiff failed to file a lawsuit in a timely manner, according to the doctrine of equity, which came to lessen the severity of common law. The Public Officers Protection Act and the state's comparable statutes serve as an illustration¹⁴⁸.

4.2. Proof of Malicious Prosecution

Evidence of unlawful aim or motive, which includes misuse or distortion of the criminal justice system, as well as proof of no "reasonable and probable cause" for starting proceedings, is required for the tort of "malicious prosecution." If the accusation is obviously false, malicious, or devoid of "reasonable and probable grounds", it is sufficient in Nigeria. The plaintiff is entitled to a judgement because the accusation that led to his detention and incarceration was false. In a lawsuit for "malicious prosecution" and false incarceration, the plaintiff will win if the defendant's accusation that resulted in his arrest and detention or the filing of the charge was

¹⁴⁸ Ibid. p. 152.

negligent¹⁴⁹. Once the components of "malicious prosecution" are identified, the question of eligibility for judgment automatically emerges¹⁵⁰. The circumstances surrounding the event may offer proof of malice. A lack of genuine belief in the plaintiff's guilt actually proves malice in a case of "malicious prosecution"¹⁵¹. The responsibility is on him to establish malicious prosecution in a civil lawsuit. To prove that the defendant was utilising a premeditated animosity to get revenge, he must show that the complaint was malicious. Additionally, the plaintiff must show that the defendant was motivated "not only to embarrass the plaintiff at all costs" and that he was imprisoned or penalised for a crime for which he lacked actus reus, mens rea, or both. The defendant must behave or think clearly to destroy the innocent plaintiff¹⁵².

4.3. Issues Arising from Malicious Prosecution

A tort such as "malicious prosecution" places a high priority on compensating those who have been the target of pointless legal action motivated by malice. Justice cannot be served when someone "sets the law in motion" with malevolent intent and without good justification. The following discusses a few of these problems that impede the efficient implementation of tort law, hence impeding justice.

4.3.1. Abuse of Prosecutorial Power

"Abuse of prosecutorial power" can also be known as "abuse of judicial power", "abuse of process", or merely "abuse of power". At common law, the torts of "abuse of process" and "malicious prosecution" developed to address distinct wrongs. These torts are not subjects which have traditionally excited special interest, nor does there appear to be any particular reason why

¹⁴⁹ *Jim-Jaja v COP* [2011] 2 NWLR (Pt. 1231) 375.

¹⁵⁰ *Musa v Yusuf* [2006] 6 NWLR (Pt. 977) 454.

¹⁵¹ *Garba v Maigoro* [1992] 5 NWLR (Pt. 243) 588.

¹⁵² *Ojo v Okitipupa Oil Palm Plc* [2001] 9 NWLR (Pt. 719) 679.

they should do so¹⁵³. According to Green, there is "no other cause of action which is more carefully guarded"¹⁵⁴; as a result of this, the cases reported as a whole are sparse. Although similarities exist between the two torts, the required elements and underlying policies of each are different¹⁵⁵. In *Dean v. Kochendorfer*¹⁵⁶, it was agreed that although the courts find it difficult to differentiate between "malicious prosecution" and an action for "abuse of court process", the two subjects of discourse are very distinguishable. In contrast to malicious prosecution, which is the unlawful start of an action or forcing a process to issue, "abuse of process" refers to the use of a legal process for an improper purpose once it has been issued¹⁵⁷. The tort of abuse of prosecutorial power was established to correct an injustice that could not be fixed by malicious prosecution alone¹⁵⁸. When a lawsuit with a solid factual and legal foundation is wrongly exploited as leverage, usually in the form of extortion or threats to achieve collateral benefits outside the purview of the initial case, wrongdoing results¹⁵⁹.

The tort may be available to those who have been the object of a baseless or frivolous action brought for an improper reason. The tort of "abuse of process" may be used to remedy legal actions that have a sufficient basis in both fact and law but are nevertheless managed to obtain an improper collateral advantage outside the scope of the case itself. Malicious prosecution focuses

¹⁵³ AM Witte, 'Damages for Injury to Feelings in Malicious Prosecution and Abuse of Process' *Clev.-Marshall L Rev* (1966) (15) 15 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/clevslr15§ion=8> accessed 25 January 2026.

¹⁵⁴ Leon Green, *Judge and Jury*, (Kansas City: Vernon Law Book Co, 1930) p. 338.

¹⁵⁵ Timothy P Getzoff, 'Dazed and Confused in Colorado: The Relationship Among Malicious Prosecution, Abuse of Process, and the Noerr-Pennington Doctrine' *U Colo L Rev* (1996) (67) 675 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ucollr67§ion=29> accessed 25 January 2026.

¹⁵⁶ *Dean v Kochendorfer* [1924] 237 NY 384.

¹⁵⁷ Charles G Bretz Jr, 'Abuse of Process-A Misunderstood Concept' *Clev St L Rev* (1971) (20) 401 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/clevslr20§ion=41> accessed 25 January 2026.

¹⁵⁸ W Page Keeton and others, *Prosser And Keeton On The Law Of Torts*, 5th Edition (West Publishing Co, 1984).

¹⁵⁹ Timothy P Getzoff, 'Dazed and Confused in Colorado: The Relationship Among Malicious Prosecution, Abuse of Process, and the Noerr-Pennington Doctrine' *U Colo L Rev* (1996) (67) 675 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ucollr67§ion=29> accessed 25 January 2026.

on unnecessary lawsuits, while abuse of process addresses a different type of violation. Litigants who unlawfully utilise court processes to demand a benefit—such as money—that is not otherwise supported by the pleadings are particularly referred to as abusing the process. In order to right wrongs that were previously uncorrected and undaunted by hostile prosecution alone, the tort of “abuse of process” is required¹⁶⁰.

Regular use of the process does not ipso facto connote an “abuse of process”, even if the motivations are wrong¹⁶¹. For instance, the mere fact that a creditor obtains a warrant for the arrest of his debtor, who has broken the law, in order to collect the debt, does not constitute a “abuse of process” as long as the creditor's actions regarding the criminal process are appropriate and within the parameters of that process. This holds true whether the debt is settled willingly and the criminal case is abandoned, or if the debt is paid off as a result of the criminal prosecution. Performing allowed conduct in a legal method is not actionable¹⁶². However, if the creditor utilises the criminal justice system to force a settlement from the debtor, he is going beyond its usual bounds¹⁶³. It is not necessary for the first action to be terminated or for the termination to be in favour of the plaintiff because improper use of the authorised procedure is the essential component of “abuse of process”¹⁶⁴. The “cause of action” accrues upon improper use¹⁶⁵. Similarly, even if the process was improperly started, abuse of process will still occur regardless of whether the procedure was issued validly or not¹⁶⁶. An action brought maliciously is an “abuse of prosecutorial power”. It is an abuse because it leads to frivolous and groundless

¹⁶⁰ Ibid.

¹⁶¹ *Brown v Robertson* [1950] 92 NE 856.

¹⁶² *Glidewell v Murray-Lacy and Co* [1919] 98 SE 665.

¹⁶³ *Mullins v Sanders*, [1949] 54 SE2d 116.

¹⁶⁴ *Baldwin v Davis* [1939] 4 SE2d 458.

¹⁶⁵ *Little v Sowers* [1949] 167 Kan 72.

¹⁶⁶ *Hoppe v Klapperich* [1947] 224 Minn 224.

action, effectively wasting the time of the court as well as the person falsely accused of committing a crime and prosecuted on that basis.

It is impossible to discuss the idea of abuse of prosecutorial power without considering who has the authority to bring charges. A civil suit may be filed by any person who is of sound mind. Nonetheless, criminal charges may be brought by the Attorney General (AG) of a state or the federation, if applicable. The AG has the power to initiate a matter, assume control of it at any time, and conclude it whenever he deems it appropriate. Prosecution authority may also be granted to any judicial officer in the AG's department. The Nigerian Constitution's Sections 174 and 211 grant the right to prosecute. Subsection 3 of the above sections went further to provide that "In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process". The idea of "abuse of process" was codified in this section, which also emphasised the necessity to stop prosecutorial authority abuse. Therefore, even someone working on behalf of the AG must make sure that the public interest and policy, as well as preventing a perceived abuse of process, are taken into consideration when initiating an action.

A malevolent conduct is a misuse of prosecutorial authority. This is due to the fact that it results in pointless and frivolous action, which essentially wastes the court's time and that of the person who is wrongfully charged with a crime and prosecuted for it.

4.3.2. Police Misconduct and Victimisation

To John Locke the "use of force was an essential part of the social compact between the people and their state". In addition to having the ability and right to employ force against its citizens, the state also had an obligation to protect them. According to Max Weber, the application of

reasonable, non-arbitrary, and proportionate force or limits is necessary for the “state's authority” to be legitimate. To safeguard citizens, they must also be subject to bureaucratic restrictions. More recently, academics who study policing have acknowledged that for governments and the law to be seen as legitimate, people must have faith in the state and law enforcement. Additionally, it has become evident that impartial and equitable criminal procedures can foster the confidence in governmental institutions necessary for a functioning democracy¹⁶⁷. On the other hand, mistrust brought on by unfair, opaque, and unaccountable policing methods damages citizens' perceptions of the legitimacy of the state, which might lower legal compliance. A comprehensive and open police investigation may find holes or weaknesses in the current evidence, leading to the discovery of additional trustworthy information or perhaps a different suspect¹⁶⁸.

Although the aforementioned authors' ideas have some validity, a society can be made or broken by its police. To keep society going, force alone is insufficient. The task of maintaining communal peace and order falls to the police. They do this by performing their tasks and obligations with dedication; any deviation from this leads to police misconduct. The issue of police misconduct may arise when police “set the law in motion” unfairly against someone they know to be innocent.

The criminal acts that police officers commit while performing their responsibilities are known as police misconduct. This can be accomplished by using force, fabricating evidence, or even by neglecting the due process necessary for them to do their duties in an efficient manner. When a

¹⁶⁷ Carolyn Hoyle, ‘Review of Wrongful Convictions Following Police Misconduct: A Study of the English Criminal Cases Review Commission’ (2023) 106 *Monatsschrift für Kriminologie und Strafrechtsreform* 214 <<https://doi.org/10.1515/mks-2023-0021>> accessed 11 April 2026.

¹⁶⁸ Max Schanzenbach, ‘Policing the Police: Personnel Management and Police Misconduct’ *Vand L Rev* (2022) (75) 1523 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/vanlr75§ion=40> accessed 11 April 2026.

police officer abuses their position to take an arbitrary action against someone, it can turn into a case of malicious prosecution. In the long run, this impedes justice and compromises the legitimacy of the legal system. Innocent people in society become victims of it. Malicious prosecution can lead to police misconduct in the following situations: when a police officer, with ulterior motives, prosecutes someone based on personal bias; when a police officer plants evidence to create the illusion that he has reasonable suspicion and cause to institute an action; when a police officer ignores evidence demonstrating the suspect's innocence, or when there is no evidence at all. In *Garba v Maigoro*, the appellant made a complaint to the police department that his vehicle was burnt down. He stated expressly that he did not have any suspect in mind. Upon further questioning, he gave the name of the respondent as his “political rival”. The police neglected to do their proper diligence in investigating the burning of the appellant’s vehicle, and instead decided to prosecute the respondent. It was held that the officer was responsible for “setting the law in motion”¹⁶⁹.

4.3.3. Delays in the Criminal Justice System

The idea of "justice" in the Nigerian legal system normatively reflects the Roman notion of "justitia," "fiat justitia, ruat caelum" (may there be justice though the heavens fall). That is, regardless of whose ox gets gored, justice must win out. Justice is associated with the concepts of just desert in its corrective schema. A just law grounded in the retributivist principle—where punishment is commensurate with the seriousness of the offense—makes justice in this sense conceivable. If criminal justice is to achieve the moral and political legitimacy it seeks as a means of societal control, this concept must endure. Unfortunately, Nigeria's criminal justice

¹⁶⁹ *Garba v Maigoro* [1992] 5 NWLR pt 243.

system regularly jeopardises these objectives, particularly because of the delays brought on by the country's many malicious prosecutions.

In their relationships with other people and societal structures, people should strive for justice as a moral goal. The concepts of just desert or the Latin phrase "Suum cuique tribuere," which translates to "to allocate to each his own," are strongly linked to justice for the majority of scholars. "If rewards and punishments are given to those who deserve them and in the appropriate proportion, then they are distributed justly." Giving individuals their due is, therefore, what justice entails. Among the major philosophers who envisioned justice in this way were Aquinas, Kant, and Spinoza. It is the "perpetual and constant will of giving everyone his due," according to Aquinas. According to Kant, it means "giving every person his due," living honourably, and harming no one. According to Spinoza, "justice is the habitual rendering of everyman his lawful due"¹⁷⁰.

Despite its many shortcomings, the Nigerian legal system's only goal is to provide justice and equality before the law. One of its most notable shortcomings is the delays in criminal justice system's. However, intentional prosecution may make these shortcomings more noticeable. Criminal justice is delayed as a result of malicious prosecution, which clogs the legal system with persistent, unfounded prosecutions. When it comes to obtaining justice in Nigeria, time is a limited resource. This is brought on by the courts' stringent procedures as well as a shortage of judicial staff and facilities. When a person "sets the law in motion" against another, without "reasonable cause" and with malicious motives, this action adds to the pile of caseload accruing on the judges, thereby stalling the actualisation of justice for people who actually have a reasonable cause for their actions.

¹⁷⁰ Ibid.

4.3.4. Lack of Access to Remedies for Victims

The only goal of tort law is to guarantee that the tortious act is legally corrected by securing compensation against the defendant in a court of “competent jurisdiction”. A legal remedy is a way for someone who has been wronged to get compensation for their injuries. Additionally, it is a way for the court to enforce a legal right resulting from a civil action that is successful¹⁷¹. The most common remedy accessible to victims of “malicious prosecution” is a monetary award in the form of damages¹⁷². A plaintiff who is the target of an unfair prosecution has recourse. However, in practice, it is more difficult to prove that a plaintiff has incurred harm than it is in principle. Adequate damages, if any at all, are seldom granted to many people who allege malicious prosecution. This is apparent in *Wifens v Bailey & Ramford UDC*, the defendant, a local government, falsely accused the plaintiff of failing to maintain and clean the rooms the plaintiff had rented out in accordance with health rules. Although the court determined that there was no “reasonable and probable cause” for the report, the plaintiff’s claim was dismissed because no special damage was established. This demonstrates that the victims receive nothing more than a proclamation that the behaviour was malevolent. The victims do not have access to real treatments despite the illusion¹⁷³.

4.4. Challenges in Addressing Malicious Prosecution in Nigeria

Addressing the tort of “malicious prosecution” more often than not ends in challenges rooted mainly in systematic institutional inefficiencies, glaring constraints on the victims and corruption.

¹⁷¹ Cornell Law School, ‘Remedy Wex US Law LII Legal Information Institute’ <<https://www.law.cornell.edu>> accessed 16 April 2026.

¹⁷² Ifeoma P. Enemo, *The Law of Tort* (Chenglo Limited 2007) 411.

¹⁷³ *Wifens v Bailey & Ramford UDC* [1915] 1 KB 600.

Malicious prosecution inevitably is subject to the challenges plaguing Nigeria's justice system. These challenges will be discussed below.

4.4.1. Institutional Challenges

The institutions in charge of regulating, preventing malicious prosecution, as well as giving justice to persons who are victims of the tort, include the Police and the DPP (Director of Public Prosecutions), and the judiciary, which is the court. It has been established in this study that there are some instances where police officers or the DPP, out of their own volition, decide to "set the law in motion" against individuals. This is not in line with the tort of "malicious prosecution", which seeks to protect individuals from arbitrary and frivolous prosecution without "reasonable or probable cause". Also, concerning the judiciary, it is well known that due to some factors, including tedious protocols and the shortage of staff, the judiciary can go through delays while bringing justice. This is especially sensitive because the subjects of these false malicious charges can be in precarious situations, or receive extended damage to their reputation or property as a result of such "malicious prosecution". These institutional challenges can cause a setback in the delivery of justice.

4.4.2. Evidentiary Burden on the Victim

The Burden on the victim is usually considered in terms of damages, whether to their reputation, property, or person. The most evident form of victim burden is financial loss. When victims go through the first prosecution, a lot is expended proving their innocence. Seeking redress requires further expenditure of resource. Most victims who have gone through the first prosecution do not have the financial and mental capacity to go through with a secondary action. And those who in fact pursue the action further, are often times met with inadequate compensation. Only nominal

damages will be awarded, thus reinforcing the beliefs that there need not be further prosecution once a person's name has been cleared.

4.4.3. Corruption and Political Interference

The issue of corruption in Nigeria is not a novel one. It is so common, and it seeps into the way everything is managed. This challenge goes down to the grassroots of the community. It can be seen in various aspects. When a person uses law enforcement as a private tool to pursue a personal vendetta against others, by enlisting the police to institute an action against a person who is known by the prosecutor to be innocent just for nefarious reasons, the prosecution in question is malicious. However, in scenarios such as this in Nigeria, a step forward is taken by using political thugs to prevent the victim from bringing an action in malicious prosecution.

4.5. Lessons to be Learned from Other Jurisdictions

The concept of malicious prosecution, its frameworks, as well as its elements, have been extensively discussed in the previous chapters and subheadings contained in this study. Here, malicious prosecution as seen under the Nigerian justice system will be comparatively analysed with the concept of "malicious prosecution" in other jurisdictions, and lessons derived therein will be highlighted. The other jurisdictions that will be considered in this study include Australia, India, and the USA.

In the civil environment, American law recognises two different approaches to malicious prosecution: a narrower approach that restricts the cause of action to procedures that cause harm to the plaintiff's property interests, and a broader one that just requires the lack of improper purpose and probable cause. Because costs awards are unusual in the United States and hence insufficient to recompense the victim of a malicious legal case, the majority of state courts and

prominent commentators prefer the first option. The second, more stringent strategy functions similarly to the conventional "English rule." According to English law, malicious prosecution can be used in civil processes but not in administrative ones. The worry that the tort's growth would discourage lawful civil lawsuits or lead to never-ending litigation justifies it. On the other hand, American courts have come to a consensus that a malicious prosecution claim may result from improper administrative actions¹⁷⁴.

“Malicious prosecution” can only be used in criminal cases in India; it cannot be used in civil cases. Sections 211 and 499 of the Indian Penal Code, for example, deal with the malicious proceedings of only criminal suits in India. These sections make malicious prosecution illegal by imposing a sentence of 2 years in prison, a fine, or both upon default; if the false charge carries a death or life sentence, the sentence is seven years in jail. When a claimant would have no remedies under any civil law other than the Municipalities Act, these sections become relevant. Compared to its civil counterparts, obtaining compensation for unfair prosecution in criminal proceedings is simpler. There are no reasonable remedies in malicious civil prosecution; instead, the plaintiff must demonstrate special damages in the court's opinion, excluding litigation costs. In India as well, when a year has passed, an injured party is statute-barred from filing a claim under “malicious prosecution”. India's conservative beliefs on prosecution make it resistant to malicious civil prosecution¹⁷⁵.

Australian courts have remained hostile to malicious prosecution claims based on a prior administrative proceeding, clinging to precedent in the absence of a principled reason to

¹⁷⁴ Michael Marin, ‘The Uncertain Scope of Malicious Prosecution: Insights from Canada’ *Tort Law Review*, [2016] March <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728118> accessed 16 March 2026.

¹⁷⁵ D Sindhuja, ‘An Analysis on the Malicious Prosecution’ *Supremo Amicus* (2020) (20) 550 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/supami20§ion=62> accessed 26 August 2025.

maintain the distinction¹⁷⁶. This problematic tendency can be illustrated in *Noye v. Robbins*, a case where the Supreme Court of Western Australia quashed a claim for “malicious prosecution” because “the authorities were clear and uncompromising” to that effect, while also acknowledging that the core administrative proceeding, like a criminal charge, was brought under statutory authority and exposed the plaintiff to “severe impact and damage”. Australian courts' ongoing opposition to the tort when it occurs in an administrative setting is hard to defend as they shift toward a progressively liberal view of malicious prosecution in civil cases, which puts them at conflict with the prevailing American attitude.

Thus, where malicious prosecution is available for both civil and administrative prosecutions in America, it differs in other countries such as India and Australia, which only extend the tort of “malicious prosecution” to cover civil prosecutions.

¹⁷⁶ Kit Barker, *The Law of Torts in Australia*, 5th Edition (Melbourne: Oxford University Press, 2012) at 85.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This research finds that, grounded in common law principles, malicious prosecution and it is a tort which is well established in Nigeria. It also protects individuals from judicial process being abused, and it balances the interests of the public. It is revealed that the tort has a steep burden of proof, and every element must be proved or the claim will fail. The study shows that there is a low success rate for malicious prosecution. This is mostly because of the onerous approach by the judiciary, which is used to protect claims which are genuine and promotes the reporting of crimes without fear. According to the research, it can be challenging to demonstrate malice and the absence of "reasonable and probable cause." This study demonstrates that reporting anything to the police does not automatically result in a malicious prosecution. Liability primarily arises when the defendant "sets the law in motion" and plays a key role in doing so. According to the research, courts typically prioritise public policy since they need to encourage crime reporting. As a result, the tort of "malicious prosecution" is applied more narrowly. There are sufficient institutional procedures, case law, and statutory provisions. However, these frameworks are not efficiently utilised. The study reveals that there is usually a combination of malicious prosecution claims with other torts by the plaintiffs in order to increase the chances of a successful claim. Victims of "malicious prosecution" are usually found to have suffered harm, yet adequate compensation is usually unattainable. The research shows the gap in the current legal framework. There is a lack of clarity in the standards for proving essential elements.

5.2 Recommendations

1. Relaxation of Strict Proof Requirements

There should be a more flexible approach in evaluating the essential elements of the tort adopted by the courts. This will make sure that access to justice will be enhanced. The courts ought to take a more accommodating stance when assessing the fundamental components of the tort. This will guarantee improved access to justice.

2. Judicial Clarification of Key Concepts

malice can refer to both *malus animus*, which indicates that the party who is initiating the lawsuit is motivated by indirect and improper motivations, as well as spite or animosity directed at an individual. Key concepts like “malice” and “reasonable cause” should be further clarified by the courts in order to reduce ambiguity.

3. Legislative Intervention

Although the law of torts governs malicious prosecution, other statutes only partially address this idea. There should be statutes and laws enacted by the legislature that regulate the tort of malicious prosecution. The elements, scope and remedies should be clearly defined in this legislation.

4. Public Awareness and Legal Education

Public awareness campaigns and seminars that educate the populace on malicious prosecution should be conducted. The public should be informed about malicious prosecution through workshops and awareness-raising initiatives.

5. Strengthening Police Accountability

The prosecution may also be considered malicious if a civilian reports to a police officer and persuades them to file charges against an innocent individual without an adequate rationale. There should be better training of law enforcement agencies, and they should

be monitored in order to reduce the probability of them initiating prosecutions without proper investigations. There should also be a strengthening of the mechanisms for accountability.

6. Encouragement of Alternative Claims

The combination of malicious prosecution claims with other claims should be encouraged in order to improve the chances of getting a remedy for the victim. To increase the likelihood that the victim would receive a remedy, it should be urged to combine malicious prosecution claims with other claims.

7. Provision for Adequate Compensation

Adequate damages should be awarded by the courts. These damages should reflect the harm suffered and should include reputational damage, emotional distress, and financial losses. The courts ought to grant adequate damages. These damages, which could include financial losses, emotional pain, and reputational impairment, should be commensurate with the harm sustained.

8. Judicial Training and Sensitisation

Judicial officers should be continually trained and sensitised to the evolving trends of malicious prosecution. It is imperative that judicial officers receive ongoing training and be made aware of the changing patterns of malicious prosecution.

9. Balancing Public Policy and Individual Rights

The tort strives to balance the following drastically conflicting interests and ideologies. These are: (1) To protect society, it is in accord with the theories of “public policy”, and also necessary to motivate individuals and the community at large to support the process of law enforcement by providing information to the law enforcement authorities, thereby

assisting in the prosecution of lawbreakers; and (2) the need to shield individuals from experiencing harassment via unjust, malicious, or wrongful prosecution. There must be a better balance struck by the courts by making sure that there is adequate protection of individuals from legal process, and not leaning more towards the encouragement of citizens to report crimes.

5.3 Conclusion

"Malicious prosecution" refers to the initiation of criminal proceedings against a person without "reasonable and probable legal grounds" in order to get a positive result. It is the "criminal prosecution of another person for no legitimate reason," meaning that justice is not being served. In other words, "malicious prosecution" occurs when the legal system is exploited improperly and maliciously. It is defined as the prosecution of an individual that leads to a favourable end for the accused and is carried out with intent and without "reasonable and probable grounds." According to Eze Malemi, "malicious prosecution is a trespass to person." The process is tedious. It misuses the legal system. Once the initial prosecution has completed in favour of the plaintiff, the plaintiff frequently files a tort suit seeking damages. The tort of "malicious prosecution" is the name given to this demand for damages. This tort offers compensation to those who have been unfairly penalised and stops illegal action from being taken. It shields anyone who have been prosecuted without "reasonable and probable cause." The tort aims to strike a balance between the following sharply divergent ideas and interests. These are: (1) To protect society, it is in accord with the theories of "public policy", and also necessary to motivate individuals and the community at large to support the process of law enforcement by providing information to

the law enforcement authorities, thereby assisting in the prosecution of lawbreakers; and (2) the need to shield individuals from experiencing harassment via unjust, malicious, or wrongful prosecution. In balancing these two objectives, the courts lean towards the interest of society, resulting in a scenario where “the action for malicious prosecution is more carefully guarded than any other in the law of torts.” Therefore, the law requires a plaintiff to demonstrate the many elements required to be granted damages in a claim for malicious prosecution in order to safeguard an "honest and innocent prosecutor." Because of this, there aren't many successful cases involving malicious prosecution.

Malicious prosecution is a restrictive but highly pertinent tort in Nigeria. It plays an important role in providing protection for individuals from abuse of legal process. However, the stringent requirements have limited the efficiency of the remedy. Two competing interests which the courts aspire to strike a balance between are the need to promote the reporting of crime by citizens and the need to protect individuals from abuse of legal process. However, in practice, the courts usually lean more towards the public interest route. Even though there is an existing legal framework, there are lucid gaps in its application. There needs to be reforms and a more balanced judicial approach, or the victims may still continue to be offered limited practical relief.

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