

IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON WEDNESDAY THE 24<sup>TH</sup>  
 DAY OF MAY, 2023 BEFORE HER WORSHIP LOVE

---

**SUIT NO. A11/11/2023**

TOGBE OKYRE VII ) .... PLAINTIFF

VERSUS

PETER AGBELI ) .... DEFENDANT

### **J U D G E M E N T**

The plaintiff claims against the defendant as follows:

- a) An Order compelling the named defendant being the "Veetor" to withdraw their intended private burial of one Sheri Dzanka deceased at the deceased resident in Tsrukpe.
- b) Cost.

The plaintiffs case is that the defendant is an elder of their community. That the defendant have prepared a burial place for deceased named Sherri Dzanka to be buried at home. That there is a general public burial place for all deceased persons to be buried. That where the deceased is to be buried is near a school and there is a pipe water situated there. That he told the defendants that if they bury there the water may be contaminated and suggested that the deceased be buried at the public cemetery. That the defendants have prepared a burial place for a deceased name Sherri Danka to be buried at home. That there is a general public burial place for all deceased persons to be buried. That where the deceased is to be buried is near a school and there is a pipe water situated there. That he told the defendants that if they bring there the water may be contaminated and suggested that the deceased be buried at the public cemetery.

The defendant told the court in defence that his daughter lost a child and the

daughter requested that the deceased be buried at Tsrukpe-Tota.

That the daughter had gone through all necessary procedure for her to be buried.

They were at the preparations when he was Summoned to attend court.

In Proof of his case the plaintiff tendered Exhibit "A" a letter from the North Dayi District Assembly titled "**Burial Outside Cemetery**" directed at the chief.

Tota Traditional Area Tsrukpe - Tota.

Exhibit "A" 1 is a letter written by one Togbe Kwaku Madugu directed at the D. C. E, North Dayi District Assembly. The plaintiff also called a witness PW (1).

The defendant tendered Exhibit (1) a brochure of Burial Memorial and Thanksgiving Services of one Godsway Gome.

Exhibit "2" a letter Headed "Application for Home Burial" directed at the Co-Ordinating Director, North Dayi District Assembly and Exhibit "3" a receipt stamped by the North Dayi District Assembly with the caption "Being payment of Private burial".

Section 26 of the Mortuaries and Funeral Facilities Act 1998 (Act 563).

States:-

"No Persons shall bury the human remains of any person in any place other than in a burial other than in a burial ground authorised under this part".

Section (27) of the Act. mentioned Supra reads: -

"Each District Assembly shall on the advice

of its District Committee provide public burial grounds for the burial of human remains or corpses in the area of authority of the District Assembly”.

2) Section 28 (1) reads: -

“A District Assembly may on the advice of its District Committee license a Private burial ground any parcel of land which a Person may wish to set aside as a private burial ground”.

The issue for the court to determine are:-

- (a) Whether or not the plaintiff has permission from the traditional authority before digging the grave at a private place.
- (b) Whether or not the North Dayi -District Assembly has given approval for burial at the private place.

From the plaintiff’s evidence and as supported by exhibit. “A” 1 find as a fact that the chiefs and elders are cautious of their environment and subsequently a letter dated as far back as 25/07/2013 was written to the District Assembly in respect of land allocated for a public cemetery. The plaintiff however is in court due to a planned burial of a daughter of the land at a burial place cemetery to the agreed and accepted burial place for all.

This piece of evidence is corroborated by the evidence of PW (1) who revealed that he is a linguist at Tsrukpe-Tota.

Cross examination on Plaintiff by Defendant reveals: -

- Q. Do you know some people have buried their dead at homes and not the public cemetery?
- A. Yes. The practice has been going on. We wrote to the D. C. E. so the practice can stop.

Q. I am putting it to you that by practice the whole community must be informed about the letter?

A. We informed the whole community.

The defendant and DW (1) confirmed the intended burial of the deceased at a private place. Per exhibit "2" the deceased mother went through same.

Processes unknown to the plaintiff herein

Exhibit "2" is an application written to the Co-coordinating Director of the north Dayi District Assembly seeking permission for this private burial. On this letter is the signatures of one Togbe Kpo VII Chief of Tsrukup-Tota.

The assembly member of Tsrukup – Tota together with that of the family Head and DW (1) mother of the deceased. DW (1) in her evidence states:-

"..... I went to the District Assembly.  
They sent me back to the chief of the village.  
I narrated everything to him. The chief  
accepted my proposal ....."

From the defendants evidence therefore she sought permission from the chiefs of Tsrukup-Tota. The court came to this conclusion because when he was given the opportunity to cross examine DW (1), the plaintiff had no questions for her. The court finds as a fact that there was not communication between Togbe Kpo VII, Togbe Okyre VII who instituted the present action. The evidence adduced by the defendant showed that they proceeded to the District Assembly in present of the private burial ground.

DW (1) states :-

"They promised to send Health Workers  
to check the place. Two weeks' after  
they called me that the health workers were there.  
Thereafter, the Health Directorate called me that  
they were satisfied and I can go ahead ....."

Exhibit "3" showed a receipt stamped by the North Dayi District Assembly, Revenue Unit with the

Caption: -

"Received from Sherrie Djanka Emefa the sum of **GHC2,000.00** being payment of burial at Tsrukpe -Tota on 27/05/2023".

I have found as a fact that the defendant by their letter to the chief and his endorsement. Have duly informed the chief, the custodian of the land who gave approval.

Section 28 (1) of The Mortuaries and Funeral Facilities Act 1998 Act. 563 authorized the District assembly to license a private burial ground. The evidence adduced by the mother of the deceased shows that she has been at the District Assembly. Interacted with the Health Directorate of the assembly who also gave their approval, after their inspection.

It is noted that DW (1) was made to pay an amount of **GHC2,000.00**.

The plaintiffs concern for the community is genuine but the defendant on all of the evidence together with their supporting documents have gone to the due process before going ahead with their decision to bury privately.

Having discussed all of the evidence of the plaintiff and that of the defendant, I dismiss the claim of the plaintiff stating that on the preponderance of probabilities, the defendant has been able to prove that they did not just prepared, created and allocated land for their private burial with impunity and without little or no regard to the rules and regulation governing same. The community as a whole.

Because of my observation from the Writ that the plaintiffs wish is to maintain Order in the community, I will refuse cost against the plaintiff herein.

Judgement is and hereby entered for the defendant as the plaintiff Writ is dismissed.

.....sgd.....

GIFTY CUDJOE  
THE MAGISTRATE