

IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4) HELD IN ACCRA ON THE MONDAY THE 19TH DAY OF DECEMBER, 2022 BEFORE HER LADYSHIP OLIVIA OBENG OWUSU, (MRS) J.

SUIT NO: GJ/0955/2022

CHARLES YARNIE :: 1ST PLAINTIFF
B767/7, KANESHIE – ACCRA
(SUING FOR HIMSELF AND AS HEAD OF YARNIE FAMILY OF AMANFRO NEAR POKUASE)

GRACE DEDE YARNIE :: 2ND PLAINTIFF
B767/7, KANESHIE – ACCRA
(SUING FOR HERSELF AND AS PRINCIPAL ELDER OF YARNIE FAMILY OF AMANFRO NEAR POKUASE)

CHRISTIANA DEDE YARNIE :: 3RD PLAINTIFF
B767/7, KANESHIE – ACCRA
(SUING FOR HERSELF AND AS PRINCIPAL ELDER OF YARNIE FAMILY OF AMANFRO NEAR POKUASE)

VRS

SAMPSON YANYONGOLO :: 1ST DEFENDANT
ACCRA

OSADU BIBIOO :: 2ND DEFENDANT
ACCRA

RULING

This is an Application by Learned Counsel for the Plaintiffs/ Applicants for an Order of Interim Injunction restraining the Respondents either by themselves, their workmen, privies or assigns from burying and conducting the Funeral Service of the late Nii Saban Yarnie as a member of the Yarnie Family in the Family Mausoleum and the Royal Palace pending the final determination of the suit. I shall refer to the Plaintiffs/Applicants as the Plaintiffs and the Defendants/Respondents. The Plaintiffs/Applicants will hereafter be referred to as the Plaintiffs and the Defendants/Respondents, the Defendants.

The Court has given due consideration to the pleadings the arguments put forward by Learned Counsel for the parties and perused the affidavit filed for and against the Application for Interim Injunction

Under Order 25 of C.I. 47 the Court may grant an injunction in all cases in which it appears to it to be just or convenient to do so. It is well established that in such cases the balance of convenience is always of great importance. In the case of ***WELFORD QUARCOO VRS ATTORNEY GENERAL AND ANOTHER [2012] 1 SCGLR 259 @ 260*** Date-Bah JSC explained that the balance of convenience means *“weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief.”*

In a nutshell the Plaintiffs’ case is that they are the Lawful Head and Principal elders of the Amanfro Family near Pokuase. They maintain that the Defendants are planning to conduct the funeral and a burial service of Nii Saban Yarnie without their consent. They contend that by custom the Defendants cannot bury the late Nii Saban Yarnie or perform the traditional and customary rites reserved for the Lawful Head and that until restrained the Defendants will dilute, change

and contaminate the rich culture of the Yarnie Family of Amanfro. They contend further that if the Defendants are not restrained it will open the floodgate for other people to adopt the name of the Yarnie and be expected to be afforded the same customary rite as a Yarnie.

Nii Saban Yarnie died on the 11th April, 2022. The Writ of summons, Statement of Claim with the accompanying Application for Injunction were filed on the 16th of June, 2022 a day before the Funeral Rites of the late Nii Saban Yarnie. The question to be answered is this: Why did the Plaintiffs wait till the 11th hour to bring this Application for Injunction? The delay in pursuing relief provokes suspicion of bad faith and militates against the exercise of the Court's discretion in favour of the Plaintiffs. The Court is mindful of the fact that the refusal of the Application may substantially dispose of the matter but no law ties the Court's hands from so ordering. See the case of *IN RE BOB KWAME AND CO LTD; GYINGYI VRS BERNARD [1989 -90] 1 GLR 87*.

It is obvious that the Defendants would have expended monies and invested a lot of time into the planning of the Funeral Rites which was scheduled for the 17th of June, 2022. Further delay in performing the burial rites would also increase the funeral expenses. A consideration of these matters leads the Court to hold the view that greater hardship would be caused in granting the Application than in refusing it. Granting the Order of Interim Injunction would cause irreparable damage to the Defendants.

It is the considered opinion of the Court that on the balance of convenience the Application should be refused. The Court accordingly declines to exercise its discretion in the Plaintiffs favour and dismisses this motion for interim injunction. There will be costs of Five Thousand Ghana Cedis (**GH¢5,000.00**) awarded against the Plaintiffs/Applicants.

(SGD.)

H/L OLIVIA OBENG OWUSU (MRS.)

JUSTICE OF THE HIGH COURT

PARTIES:

1ST PLAINTIFF/APPLICANT PRESENT

2ND PLAINTIFF/APPLICANT REPRESENTED BY OKOE ARMAH

3RD PLAINTIFF/APPLICANT REPRESENTED BY ROBERT DSANE

DEFENDANTS/RESPONDENTS PRESENT

1ST

COUNSEL:

RAYMOND FELLI ESQ., WITH NELSON OWUSU ANSAH ESQ.,

*H/B FOR YAW DANKWAH ESQ., FOR PLAINTIFFS/
APPLICANTS PRESENT*

*LESLIE ANIM ESQ., WITH GRACE GARNER ESQ., FOR
DEFENDANTS/RESPONDENTS PRESENT*

CASES REFERRED TO:

1. WELFORD QUARCOO VRS ATTORNEY GENERAL AND ANOTHER
[2012] 1 SCGLR 259
2. IN RE BOB KWAME AND CO LTD; GYINGYI VRS BERNARD [1989–90]
1 GLR 87.