

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE, HO (COURT '1') HELD ON THURSDAY  
27 APRIL 2023 BEFORE JUSTICE GEORGE BUADI, J.**

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SUIT NO. E12/49/2022

IN THE MATTER OF ABAASON G OHENE & 2 ORS } PLAINTIFFS

Versus

ALICE ADEKPUITOR & 2 ORS } DEFENDANTS

**AND IN THE MATTER OF CONTEMPT**

THE REPUBLIC

Versus

1	ALICE ADEKPUITOR	}	
2	BRIGHT MAWULI OHENE	}	
3	JEFF SETH OHENE	}	
4	PROSPER KUMAH	}	
5	SENYO ADEKPUITOR	}	
6	OLYMPPIO ADEKPUITOR	}	
7	FRIDOLIN ADZRAKU	}	
8	MAWUTOR KUMAH	}	
9	SEFADZI KUMAH	}	
10	CHARLES DONKOR	}	RESPONDENTS

*EX-PARTE:*

1	ABAASON GERHARD OHENE	}	
2	EMMANUEL DELALI OHENE	}	
3	JOHN DEBRAH	}	APPLICANTS

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**JUDGMENT ON APPLICATION FOR CONTEMPT OF COURT**

On 24 February 2022, the Applicants filed this application under *Order 50 of the Rules of Court – (C.I. 47)* - for an order of the court to punish the Respondents for

disobeying the orders of the Court dated 14 December 2021. The said order gave the Applicants the right to the corpse of their deceased family member **Gershon Doh Ohene** and to conduct and organize his final funeral rites. The Respondents are the surviving spouse and children of the deceased including others, who according to the Applicants hijacked, in fact, forcibly took away the corpse of the deceased, buried him, and conducted the funeral of the deceased Gershon Doh Ohene contrary to the orders of the court dated 14 December 2021.

The facts are that, following the death of Gershon Doh Ohene on 7 August 2021, the Applicants herein representing the head of the Ohene-Debrah Family of Dzolo-Gborgame and the siblings of the deceased on 16 November 2021 commenced a civil action in this court by a writ of summons against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who are the surviving spouse and the son of the deceased for the following reliefs:

- a A declaration that the Ohene-Debrah Family [of Dzolo-Gborgame] is the right and the lawful entity to plan and organize the burial and funeral of their son GERSHON DOH OHENE (Deceased)
- b Perpetual injunction restraining the defendants by themselves, their assigns, agents, privies servants, and all other persons or bodies claiming through them from planning and organizing the burial and funeral of GERSHON DOH OHENE (Deceased)

On the back of the second relief on the writ, the Applicants on December 1, 2021, filed an application for interlocutory injunction for an order restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from proceeding to claim the corpse of the deceased Gershon Ohene Doh from the Saviefe Mortuary and from going ahead to bury the deceased Gershon Ohene Doh. The Court on 14 December 2021 granted the application but added that the Applicant's family of the deceased are to "... **cooperate** with the [1<sup>st</sup>

and 2<sup>nd</sup> Respondent] **to sit down** and ensure befitting and peaceful burial rites for the deceased". (Emphasis added)

Applicant's case is that, contrary to the orders of the court that granted them the right to receive the corpse, bury and conduct the funeral rites of the deceased Gershon Doh Ohene, thus restraining 1<sup>st</sup> and 2<sup>nd</sup> Respondents from unilaterally planning and organizing the burial and funeral of Gershon Doh Ohene without the Applicants, the Respondents including 1<sup>st</sup> and 2<sup>nd</sup> Respondents in a contumacious manner did the opposite, thus disrespecting the orders of the court.

The Applicants' case is not solely against the surviving spouse and children of the deceased but also against other Respondents who assisted the 2<sup>nd</sup> Respondent to break in the door to the room where the corpse of Gershon Doh Ohene was being kept; took away the corpse and participated in the unlawful burial and conduct of the funeral rites of the deceased. Learned counsel for the Applicants submits that though an order of the Court ordinarily binds the parties – 1<sup>st</sup> and 2<sup>nd</sup> Respondents - to the action, a 3<sup>rd</sup> party as in the case of the other Respondents who assisted the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in disrespecting the orders of the Court can be proper subjects of being cited for contempt.

The Respondents filed their responses opposing the application per their separate affidavits that have some common thread of defence. Respondents' cases, generally are that pursuant to the orders of the court for cooperation to conduct the funeral of Gershon Doh Ohene, the parties<sup>1</sup> as per Exhibit AA1 sat down and agreed with the Applicants in planning the organization of the funeral.

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<sup>1</sup> That is, the Applicants and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Their counsel submitted that the Respondents were all aware of the order of the court and that they did nothing in disobedience to the Court order. Learned counsel contends that whatever the Respondents did were in concert with the Applicants in consonance with the directives of the Court for cooperation. Counsel submits further that the hands of the Applicants are not clean in this matter, as they did not appear to have complied with the court's order in conducting the funeral in cooperation with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and that the Applicants cannot run to this Court for a request to punish the Respondents for contempt.

Based on the depositions on the respective affidavits and the submissions of the lawyers, I make the following findings of facts. None of the Respondents herein deny the fact, firstly, of the civil action the Applicants filed in this Court, and the subsequent application for interlocutory injunction, which the Court granted on 14 December 2021. Secondly, the interlocutory order by the Court granted the rights of burial and conduct of the funeral of the deceased Gershon Doh Ohene to the Applicants. I need to emphasize however that the order of the Court dated 14 December 2021 went further to state that **the Applicants are to cooperate with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents** as the surviving wife and first son of the deceased to sit down and ensure a befitting peaceful burial and funeral for the deceased. That suggests to me that whilst the court restrained the Respondents from unilaterally, indeed, solely proceeding to plan and organize the funeral of their late husband and father, the Applicants, as the family of the deceased Gershon Doh Ohene, were likewise directed to conduct the burial and funeral of the deceased **in cooperation with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and not to exclude them.**

I find also that in line with the orders of the court for cooperation with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to conduct the funeral, the Applicants per Exhibit AA1 sat down

on 7 January 2021 with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to plan the organization of the funeral. Per the papers filed and the submissions of both learned counsel of the parties, roles were assigned to the parties for the conduct of the funeral. They are:

- That the parties mutually agreed “to act in harmony to give the deceased a befitting burial from [Friday] the 28<sup>th</sup> to [Saturday] the 29<sup>th</sup> January 2022”.
- That the children of the deceased were to provide a casket, and gown for the burial of their later father; organize the youth for the digging of the grave for the burial; provide canopies, firewood, brass band, and food; and pay for the mortuary fees.
- That the 2<sup>nd</sup> Respondent accompany the Applicants in the ambulance to collect the corpse from the mortuary and to make a brief rest stop for some thirty minutes at the deceased new residence before proceeding to the church premises.
- That the Applicants were to be responsible for the preparation of posters, funeral invitation cards, and funeral brochures.

I find the assignment of roles above as agreed by the parties after the order of the Court not inconsistent with the orders of the court nor supplanting it, as long as the assignment of the roles flows from a mutual agreement in furtherance to the orders of the court. I find the dates for the organization of the funeral per the posters and brochures the Applicants prepared - Exhibit C - not in conformity with dates that had been mutually agreed at the meeting for the collection of the corpse from the mortuary and conduct of the funeral. The incorrect dates on the brochures and posters on Exhibit C have the basis to cause some genuine disquieting concerns amongst sympathizers of both families as to the actual dates for the funeral. What appeared to me as an inadvertent mistake that could be attributable to the printing house was not in my view addressed in a more dialoguing

cooperating manner by the Applicants considering the already bad blood and tense atmosphere that has been generated over the organization of the funeral of the deceased, coupled with the order of the court that the Applicants cooperate with the Respondents to conduct a peaceful befitting funeral for the deceased.

I deem it a piece of public knowledge, all other things being equal, that funerals in Ghana are conducted at the weekends; the corpses are usually collected from the morgue on Fridays, and funeral rites are conducted on Fridays and Saturdays extending to Sundays for Thanksgiving Services. All the same, I find that the parties have agreed to collect the corpse on the 28<sup>th</sup> and to conduct the funeral on the 28<sup>th</sup> and 29<sup>th</sup>. By the posters the Applicants posted, the conduct of the funeral was to commence on Thursday 27<sup>th</sup>, indeed contrary to the date that had been mutually agreed by the parties. I find a real confusion here regarding the smooth conduct of the funeral, which the Applicants in my view appeared not interested to correct for the smooth organization of the funeral.

The apparent date anomaly that I find was causing concerns from sympathizers, and the Applicants. The apathy of the Applicants to correct the anomaly compelled the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to proceed to print posters and brochures as in Exhibit D and E. Though this role was not assigned to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, I cannot fault them for what I find as seeking to correct an obvious wrong caused by Applicants who were unprepared to salvage the situation. I find this act of printing Exhibits D and E by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as one for the good of all, intended just to salvage the default that inures not solely to the Respondents but to both parties. Indeed, apart from the dates that were corrected, I find no extra information in Exhibits D and E that are inconsistent with the contents on Applicants posters Exhibit C printed earlier.

Beyond this, as part of their case, 1<sup>st</sup> Applicant on behalf of the other Applicants deposes in paragraph 15 of his affidavit in support that:

That on arrival at Dzolo Gbogame with the corpse, the 2<sup>nd</sup> Respondent assisted by the 3<sup>rd</sup> Respondent broke the door **where the remains of the [deceased] were kept** and forcibly took the corpse away (Emphasis added)

Per the mutual agreement, including the prearranged itinerary, I find no support for the corpse to find its way into any holding room other than the new residence of the deceased where the corpse was to have its final rest stop for just thirty minutes and to proceed to the church premises for church services before the burial. I find the entry of the corpse from the mortuary into the room or any place other than at the deceased new residence as prearranged inconsistent with the hitherto mutual agreement and prearranged itinerary for the corpse. By the Applicants' deposition in paragraph 15 cited just above, I am inclined to believe the 2<sup>nd</sup> Respondent's depositions in his affidavit:

20     ... to my utter surprise, immediately the body was released and placed in the [ambulance, it] sped off to an unknown destination under the orders of the 1<sup>st</sup> Applicant.

21     ... some elders with whom I have gone to the mortuary advised that we go back home and find means to locate the body of our father.

22     ... upon reaching the town, I made diligent searches which led to the room where the body of our father was secretly kept by the applicants.

I am inclined to believe Respondent's depositions in their respective affidavits that these acts of the Applicants including evidence of incorrect printing of dates for the collection of the corpse at the mortuary; the burial, and funeral dates; the act of sneaking away with the corpse of the deceased; its dispatch unto an unknown destination contrary to the agreed route and final holding place before procession to the church premise; and what I deem as unauthorized digging of a grave by the Applicants are not positive evidence of Applicants commitment to cooperate with Respondents as ordered by the court, as well as per the parties' agreement.

These acts, in my view, were meant or were understood by me to point to one conclusion, which is, to exclude and avoid the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the conduct of the funeral of the deceased contrary to the directives of the court. I find justification therefore of the 2<sup>nd</sup> Respondent's act, including whoever assisted him in removing the corpse from the room to the deceased's new residence and to the church premises as initially agreed. I find further that the harm or injury caused to whoever sought to restrain the 2<sup>nd</sup> Respondent cannot be unlawful nor without justification under the circumstances. I find that the force used thereof cannot also be not unreasonable.

According to the Applicants, having succeeded in forcibly removing the corpse from the room, the Respondents buried the deceased in their chosen tomb contrary to the one they - the Applicants' family - have dug for the burial of the deceased. I reiterate that by mutual agreement, part of the responsibilities assigned unto the children of the deceased who include some of the Respondents herein was to dig and prepare the grave and to provide gowns and other apparel for the burial. The agreement by the parties for the conduct of the funeral laid no such responsibility on the Applicants. I find no reason on record why the Applicants chose to prepare



another grave for the burial of the deceased. I find no binding obligation on the Respondents to bury the deceased in any other grave other than the grave they were per the agreement tasked to prepare.

I find support to presume that the Applicants at a point in time, indeed after the 2<sup>nd</sup> Respondent and other Respondents took away the corpse, chose to withdraw from any further participation and conduct of the funeral. The proper and best practice was for either of the parties to come back to the court to report the turn of events but I take notice of the nick of time and agree therefore that the circumstances will not permit nor give credence for either party to chart that path other than to proceed to dispose of the corpse on grounds of public health, which I hereby endorse.

Based on the totality of the evidence, I have no basis whatsoever to hold Respondents as having disrespected the orders of the court. On the other hand, I find a legitimate basis to hold that the Applicants did not cooperate with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to conduct a befitting and peaceful funeral for the deceased as ordered by the court or per their mutual agreement with the Respondents. I am inclined therefore to believe the submission of counsel for Respondents that the hands of Applicants are not clean and that they did not comply with the court's order to cooperate with 1<sup>st</sup> and 2<sup>nd</sup> Respondents to conduct a peaceful and befitting funeral for the deceased. Neither do I find the Applicants to have abided by their mutual agreement in furtherance with the order of the Court. I subscribe further to counsel's submission that the Applicants, within the circumstances cannot run to this Court, a court of equity for grant of the application within the circumstances I find herein the matter.

A civil contempt partakes of the nature of a criminal charge, as conviction might entail imprisonment. Consequently, the principle of law is that where a person is charged with contempt of court, his guilt should be proved with the same strictness as required in a criminal trial: that is, proof beyond a reasonable doubt. Evidence Act, 1975 (NRCD 323) sections 11, 12, and 13. On the face of the evidence before me, I have the calmness to hold that the Applicants have failed to provide the required satisfactory proof of their case. I find the application without merit, lacking support; indeed, in my view mischievous within the circumstances of the conduct of the Applicants. The court cannot lend its support for any such conduct. The application, therefore, is dismissed.

Ordered accordingly.

**(Sgd.) George Buadi, J.**

High Court (1) Ho.

**Lawyers:**

- 1 Ernest Dela Akatey, Esq. for the Applicants
- 2 Ms Joan Akorfa Osei for the Respondents