

Neutral Citation Number: [2022] ECC Chd 3

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

IN THE MATTER OF CITY OF LONDON CEMETERY: PETITION NO. 3375

JUDGMENT

1. Mr Edward Burkson Amo was born in Hwidiem, Ghana in April 1922. At some point in the course of his long life, he moved to London. He had ten children, of whom nine survive, and many grandchildren, great-grandchildren and even great-great-grandchildren. As will appear below, some of his many family members are in London and others in Ghana.
2. I am told by Mr Kofi Amo, who is one of Mr Edward Amo's sons and is the Petitioner in these proceedings, that in April 2020 and despite being 98 years of age, Mr Edward Amo was "*quite active*". However, on 8 April 2020 he died suddenly. He was buried in the City of London Cemetery ("the Cemetery") in circumstances which I describe further below.
3. By the Petition, which is dated 9 June 2022, Mr Kofi Amo seeks permission for the exhumation of his father's remains, with a view to their being flown to Ghana. He intends that they be reinterred in a grave in Hwidiem, which is the hometown of the Amo family and their clan, the Ashanti clan.
4. I have been provided with the following materials in support of the Petition (as well as the Petition itself):
 - (i) A certified copy of Mr Edward Amo's death certificate, which states that he died from COVID-19 pneumonia and metastatic prostate carcinoma, in Homerton University Hospital, Hackney, on 8 April 2020;
 - (ii) An undated letter from Mr Kofi Amo setting out the reasons for the Petition: I refer to this in detail below;
 - (iii) A letter dated 4 April 2022 from Mr Abdul Rahaman Abukari, the Municipal Environmental Health Officer of the Tema West Municipal Assembly in Ghana, indicating that there is no objection on health grounds for the importation of Mr Edward Amo's remains and that the Environmental Health Officers and Lashibi Funeral Homes, funeral directors in Ghana, are ready to receive and bury those remains;

- (iv) A letter dated 10 May 2022 from Mr Abi Sesu Carter, of African-Caribbean Funeral Services of Stoke Newington (“ACFS”), the funeral directors who arranged the interment, explaining the circumstances in which Mr Edward Amo came to be buried in London and supporting the Petition;
 - (v) A letter dated 11 May 2022 from Ms Valerie Hadley of IAG Cargo, confirming that her company will accept the exhumed remains of Mr Edward Amo for repatriation to Ghana;
 - (vi) A letter dated 10 June 2022 from Mr Gary Burks FICCM (Dip), the Superintendent and Registrar of the Cemetery, confirming that the City of London Corporation (“the Corporation”), which owns the Cemetery, supports the Petition;
 - (vii) An undated letter from the Chief of Staff of the Hwidiem Traditional Council and the Queen Mother of Hwidiem in support of the Petition;
 - (viii) Emails, variously dated, from six of Mr Edward Amo’s other nine children, three of whom are in London, one in Italy and two in Ghana. They are Mr Emmanuel Amo, Ms Ataa Amo, Ms Abina Amo, Ms Nana Amo, Mr Edward Amankwa Amo and Mr Kwasi Oduro Amo, and all confirm their consent to the exhumation and repatriation of Mr Edward Amo’s remains;
 - (ix) An email dated 13 June 2022 from Mr Kofi Amo, explaining that of the remaining three children of Mr Edward Amo, one has predeceased him and the other two, who are based in Ghana, are illiterate, of riper years and have no access to email.
5. I have seen no evidence that there is any opposition to the Petition. Public Notices have been displayed for the 28 day period that is required for exhumations, and no objections have been received.

The circumstances of the burial, and the reasons why exhumation is sought

6. Mr Kofi Amo states in his letter that his father’s death was sudden. As I have noted above, Mr Edward Amo was, despite his great age, reasonably active, and enjoyed attending his local community centre three times a week. In March 2020, the lockdown necessitated by the COVID-19 pandemic meant that his visits to the centre had to stop. On 4 April 2020, Mr Edward Amo celebrated his 98th birthday. Unfortunately, just three days later he was hospitalised with breathing difficulties

and died. As I have noted above, COVID-19 was noted as one of the causes of death on his death certificate.

7. Mr Kofi Amo explains that, sadly, because of the COVID-19 restrictions that were then in force, many of Mr Edward Amo's family members were not able to see him when he was in hospital. This experience was very distressing for them.
8. Mr Edward Amo left no will or written statement of his intentions with regard to his place of interment. However, Mr Kofi Amo states that his father had expressed the wish to be buried in the family's ancestral home in Ghana, following Ghanaian customary funeral rites. This is consistent with his having paid visits to Ghana in 2017 and 2019, as Mr Kofi Amo also states, with a view to spending his last years in Hwidiem, in a house which he had built. The letter from the representatives of the Hwidiem Traditional Council also states that Mr Edward Amo had "*always wanted*" to be buried in Ghana, and Mr Carter of ACFS states that he understood the deceased's wish to be that he should be buried in Ghana alongside members of his family.
9. Following Mr Edward Amo's death, his family had hoped to have his body embalmed. However, because he had contracted and died from COVID-19, UK guidelines in force at the time of his death did not permit this. Indeed, his family were not even able to view his body as they had wished; instead, they were advised that it was necessary for him to be buried expeditiously in a sealed coffin. There was no prospect at this stage of the burial taking place in Ghana since in April 2020 the repatriation of human remains into Ghana was prohibited because of concerns over the spread of the COVID-19 virus.
10. Mr Carter states that Mr Edward Amo's family agreed to the burial taking place in the Cemetery. (The only alternative would have been to have his body cremated, but this was rejected by the family as being antithetical to Ghanaian culture.) However, they did so on the basis that, if it became possible to do so, they would apply for the exhumation, repatriation and reburial of his remains. Mr Carter notes that both ACFS and the Corporation were aware of the family's plan and, in the absence of an alternative, indicated that they were willing to facilitate it when the appropriate time came.
11. ACFS also advised that it would make exhumation and repatriation easier if the family chose a zinc-lined coffin for his remains, which they duly did. In addition, and again on AFCS' advice, Mr Amo's coffin was buried not in the ground but in a (more expensive) catacomb: the Cemetery is unusual in having this facility.

12. The catacomb so chosen was, as I have already noted, on consecrated ground. Mr Kofi Amo states that the family were not aware of this at the time, although the choice was not inappropriate because Mr Edward Amo is said to have been an Anglican.
13. Mr Kofi Amo advises that, if this Faculty is granted, the plan is that Mr Edward Amo's funeral and reburial will take place on 23 September 2022 in Hwidiem, according to traditional Ghanaian cultural burial practices. He states that the family in London, as well as many relatives overseas, plan to attend. His view is that the ceremony will bring closure for the family following what has, undoubtedly, been a very distressing period for them.
14. It is in these circumstances that the Petitioner seeks the exhumation of Mr Edward Amo's remains.

The applicable law

15. The relevant principles are set out in the judgment of the Court of the Arches in Re Blagdon Cemetery [2002] Fam 299. The starting point is that there is to be no disturbance of consecrated ground except for good reason: see [34], citing the decision of Quentin Edwards Q.C. in Re Church Norton Churchyard [1989] Fam. 37. Because of the theology of Christian burial in consecrated ground, which treats burial as a symbol of entrusting the person to God for resurrection, there is a presumption *against* exhumation, and "*a faculty for exhumation will only be exceptionally granted*" (see Re Blagdon at [33]).
16. As to where the burden of showing exceptionality lies, "*it is for the petitioner to satisfy the Consistory Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial... is final*" (ibid., [35]).
17. Whether a case is an exceptional one is for the Chancellor to determine on the facts of that case and on the balance of probabilities, and is ultimately a matter for the Chancellor's discretion (ibid., [35], [41]). In Blagdon, the Court identified a number of matters as being relevant to the exercise of that discretion. It also made clear that there is no closed list of factors which may be relevant, though it identified some that may often come into play.
18. It should also be noted that particular care is to be taken by Consistory courts when considering an application to exhumed remains and reinter them in non-consecrated ground. That is so particularly when the proposed new burial site does

not form part of a local authority cemetery which is subject to statutory protection. As the Court stated in Blagdon at [16]:

“Questions about proper care of the new grave in the future and the prospects for visiting access by future generations would need to be addressed by those involved in such cases, and in turn examined with care by the consistory court in deciding whether or not to exercise its discretion to grant a faculty for exhumation.”

The application of the law to the facts of this case

19. The question for me, therefore, is whether the Petitioner has demonstrated the exceptional circumstances that are required to displace the presumption that burial in consecrated ground is final. On the unusual facts of this case, I consider that he has. I take the following factors, in particular, into account:
- (i) On the basis of the evidence before me, it appears that Mr Edward Amo’s wish and intention was for him to be buried in Ghana and not in London.
 - (ii) It was only the circumstances of the COVID-19 pandemic, and the restrictions in force at the time of his death, which prevented this from occurring.
 - (iii) All those involved in his interment were aware of the exhumation and repatriation plan at the time; there is no question that there was a change of mind on the part of the family. They simply did the best that they could in unfortunate circumstances.
 - (iv) There appears to have been no particular intention to bury Mr Edward Amo in consecrated ground, and it certainly does not seem that the family understood the potential consequences; to that extent there was at least a degree of mistake involved (and I note that “mistake” is one of the factors identified in Blagdon as capable of amounting to special circumstances justifying exhumation).
 - (v) The Petition has strong support from the family of the deceased, some of whom live in Ghana (again, I note that family support was cited in Blagdon as being one of the circumstances justifying exhumation).
 - (vi) The proposed plan will entail Mr Edward Amo’s remains being buried with members of his family.

- (vii) ACFS have set out precise details as to how the repatriation is proposed to be carried out, and all necessary consents and approvals appear to be in place.
- (viii) In particular, the local funeral directors in Ghana are ready, willing and able to carry out the family's wishes.
20. I have taken into account the fact that Mr Edward Amo's remains will be reinterred in ground that is not consecrated and, what is more, in a place that is very different from the local authority controlled cemetery that was under discussion in Blagdon. However, I am satisfied, on the basis of the evidence before me, that Mr Edward Amo's reinterment will be conducted appropriately and in accordance with his wishes, and that his new grave is likely to be properly looked after.
21. I am therefore content to grant the Faculty that is sought and to order the exhumation of Mr Edward Amo's remains. I do so on the following conditions:
- (i) That the removal of the coffin from its present resting place be effected with due care and attention to decency, early in the morning and the grave screened from the view of the public;
 - (ii) That, pending the repatriation of the coffin to Ghana, it shall be kept safely, privately and decently;
 - (iii) That the Petitioner, whether himself or through ACFS, applies for any further approvals that may be necessary for the repatriation of his father's remains to Hwidiem, Ghana;
 - (iv) That the Petitioner, whether himself or through ACFS, liaises with the Lashibi Funeral Home so as to ensure, so far as possible, that the coffin be kept safely, privately and decently pending the reinterment of Mr Edward Amo's remains in Ghana, and reinterred in Ghana in accordance with the plan outlined to me as part of this Petition.
22. I wish the Amo family well and waive my fee for the writing of this judgment.

PHILIPPA HOPKINS, Q.C.
Chancellor

2 August 2022