

Neutral Citation Number: [2020] ECC Swk 3

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF LAMBETH CEMETERY. TOOTING

AND IN THE MATTER OF A PETITION BY IBRAHIM SALAH BESTWYN

JUDGMENT

1. This is the petition of Ibrahim Salah Bestwyn, who is the son of Ahmad Aziz Salah.
2. Ahmad Aziz Salah was of the Muslim faith. He died in 1998 and his remains were interred in Plot 214 A4 CONS of Lambeth Cemetery, Tooting.
3. Lambeth Cemetery is a large cemetery, originally opened in 1854 and now owned and operated by the London Borough of Lambeth. In 1998, it had set aside an area of land for burials of remains for those of the Muslim faith. This area was of land which was consecrated according to the rites of the Church of England. Consecration means that land is set aside for ever for Christian burial; accordingly it is surprising that this area was selected as a place for Muslim burials. Of course, burial in the consecrated part of a cemetery is not limited to members of the Church of England. Nonetheless, among the Christian community there have (at least historically) been reservations on the part of Roman Catholics and what used to be called the Non-conforming Churches to burial in land consecrated according to Anglican rites; and there is a reported case in which concerns were expressed on behalf of an atheist buried in consecrated ground¹. I do not know whether there might be such concerns on the part of representatives of the Muslim faith generally or on the part of individuals. If there are such concerns, they do not form the basis of this petition.
4. Although all are welcome to organise burials within consecrated ground, it is land specifically intended for Christian burial. Christian burial is intended to be permanent and permission for exhumation is granted only exceptionally. If the remains of someone who is not a Christian are buried in consecrated ground, it is on the basis of accepting the requirement that permission for exhumation is granted only exceptionally, even though the person whose remains are buried may not have shared the beliefs that form the basis of that rule. But obviously if it is to apply, those making funeral arrangements must be aware of it.
5. The funeral of Ahmad Aziz Salah was organised by the Balham Mosque. I am told by Ibrahim Salah Bestwyn that the Mosque did not know that the land where the burial was to take place was consecrated. In these circumstances, of course, the Mosque and the family of Ahmad Aziz Salah would not have known that there were any constraints upon exhumation at any subsequent time.
6. Naturally, I have asked a representative of the London Borough of Lambeth about this. In answering my questions, Hamid Rana Khan, the Bereavement Services Supervisor, is handicapped because none of his current team were in post in 1998 and have only been able to gather what happened from records and passed on information. Hamid Rana Khan does not know what the Balham Mosque were told or understood. Looking at the matter from an

¹ See *In re Crawley Green Road Cemetery, Luton* [2001] Fam 308 (St Albans Cons Ct).

evidential point of view, he does not contradict what the Balham Mosque say and which I have no reason to doubt. It is possible that further in-depth investigation might reveal more about the circumstances in which consecrated ground was offered for burial of those of the Muslim faith but it is not necessary for present purposes for me to go into that.

7. There **was** a constraint on burial within the larger area of the cemetery within which Plot 214 A CONS sat. This was that, because of ground conditions, it could only be used for single burials.
8. In the course of time, two new areas were identified for the burial of the remains of those of the Muslim faith. These were not consecrated and permit of double burials. I have not been told the circumstances in which this identification came about (and, more particularly, why these areas were not identified earlier). However, once again, for present purposes it is not necessary for me to go into that.
9. The widow of Ahmad Aziz Salah has recently died and was buried in unconsecrated land within the Cemetery. Ibrahim Salah Bestwyn tells me that it was the wish of his parents that they should be buried together; and that is his wish. In 1998 it was not possible to make arrangements for such a burial. If the exhumation of the remains of Ahmad Aziz Salah is permitted such a double burial can come about.
10. It seems to me that the exceptional circumstances to justify exhumation exist in this case. The family of Ahmad Aziz Salah did not know that Plot 214 A CONS was consecrated; and the wish to bring the two sets of remains together is one which I fully understand. I should add that I should not be taken as saying or implying that this latter circumstance on its own would be a sufficient basis for justifying exhumation. As always, it is necessary to look at all the circumstances; each case is decided on its own unique facts.

PHILIP PETCHEY

Chancellor

19 May 2021