



**PRACTICE DIRECTIONS FOR
DETERMINATION OF
APPLICATIONS FOR
INJUNCTIONS TO RESTRAIN
BURIAL OF A DECEASED
PERSON**

2024



COMPENDIUM OF PRACTICE DIRECTIONS &
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Practice Directions for Determination of Applications for Interlocutory Injunctions to Restrain Burial of a Deceased Person

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A DIRECTION to provide guidelines and uniform standards in the determination of applications for injunctions for burial of deceased persons

II. Citation

This Practice Direction may be cited as **Practice Directions for Determination of Applications for Injunctions to Restrain Burial of a Deceased Person 2024.**

III. Preamble

-Whereas the sanctity of burial rites and the cultural and familial significance of timely and respectful funerals are well-recognized in society and law, there has been a growing concern over the abuse of judicial discretion in granting applications for injunctions to restrain the burial of deceased persons. Such judicial actions, often taken at the eleventh hour, have led to unnecessary distress, inconvenience, and financial burden for the families involved, undermining the dignity of the deceased and the bereaved's right to conduct funerals in accordance with their traditions and beliefs.

-Whereas in recent times, there has been a noticeable increase in applications for interlocutory or interim injunctions to restrain the burial of deceased persons. Such applications often are brought close to burial day, leading to undue inconvenience and distress for the families involved, and disrupting the solemnity and dignity of the funeral process.

Recognizing the constitutional mandate as enshrined in Article 296 of the 1992 Constitution, which stipulates that discretionary powers must be exercised with fairness, candor, and without arbitrariness, capriciousness, bias, resentment, prejudice, or personal dislike, and in accordance with due process of law, it is imperative that judicial discretion in the grant of injunctions, especially in matters as delicate as the burial of deceased persons, is exercised judiciously.

In adherence to the Civil Procedure Rules, particularly Order 25 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47), which regulates the grant of injunctions in civil jurisdictions and provides a framework ensuring that such discretionary powers are exercised in a manner that is just and convenient, this Practice Direction seeks to guide the trial courts in their deliberations and decisions regarding applications for injunctions to restrain the burial of deceased persons.

Noting the court's duty to avoid definitive findings on disputed issues at the interlocutory stage underscores the need for a cautious approach, ensuring that the exercise of this discretionary power respects the deceased's family's right to conduct funerals and burials in accordance with their traditions and beliefs.

-Aware that this practice not only strains judicial resources but also undermines the cultural and traditional significance attached to timely and respectful burials.

Noting, the Supreme Court's decision in Republic v High Court Kumasi, Ex parte Nsiah [1994-95] GBR 593 which highlights the public policy importance of avoiding unburied bodies and sets a precedent that lower courts must follow, barring exceptional circumstances.

-Recognizing the need to safeguard the interests of the deceased's family against undue legal impediments and to uphold the principles of justice and public policy, this Practice Direction is issued to provide guidance to the trial courts on the careful and judicious exercise of discretion with due regard to the rights of the family and the deceased's dignity in handling applications for injunctions to restrain the burial of deceased persons.

I hereby direct that Determination of Application for Interim/Interlocutory Injunction To Restrain Burial of a Deceased Person shall be guided by the following directions:

1. APPLICATION:

This Practice Direction is applicable to Civil Proceedings in the District Courts, Circuit Courts, High Courts, the Court of Appeal and the Supreme Court where the Court under its respective Rules of Court, exercises its discretion with respect to determination of application for interim/interlocutory injunction to restrain burial of deceased persons.

2. Authority Over the Deceased's Corpse

- a. The corpse of a deceased person is under the control and authority of the family, which includes both the immediate and the wider family members.
- b. The family bears the obligation to arrange for a funeral that reflects the deceased's social standing and the family's dignity, as established in *Neequaye and Another v Okoe* [1993-94] 1 GLR 538.

3. Procedure

- a. Applications should be made promptly, with clear evidence supporting the necessity of the injunction.
- b. Application *ex parte* brought less than fourteen days to the scheduled burial and funeral arrangements shall not be entertained by a court except with extremely compelling reasons
- c. Notice to the opposing party should be given unless there are compelling reasons for proceeding *ex parte*, to ensure fairness and an opportunity to contest.

4. Considerations for Granting of Injunctions to restrain burials

- a. Courts must exercise caution and prudence in granting injunctions to restrain burials, particularly when applications are made less than fourteen days before the scheduled funeral services.
- b. The inconvenience and expense imposed on the family preparing for the burial often outweigh the potential harm to the applicant if the injunction is granted. Moreover, the loss experienced by the family cannot be adequately compensated in damages.
- c. Trial courts are reminded of the paramountcy of timely and respectful burial rites and should refrain from granting injunctions that prevent such practices unless there is compelling legal justification.
- d. Where an application is brought less than two weeks before scheduled burial such application ought to be refused unless there is compelling reason to grant it including adequate undertaking as to damages that may be occasioned due to disruption of pre-arranged burial rites and funeral activities.
- e. The timing of the application: Judges should scrutinize applications made at the eleventh hour with greater caution, recognizing the potential for inconvenience and expense to the restraining party.
- f. The balance of convenience: The inconvenience and potential harm caused to the restraining party should be weighed against the consequences for the applicant if the injunction is not granted.
- g. . Irreparability of harm: Consider whether the harm to the restraining party can be adequately compensated, especially given the irreversible nature of burial and the emotional and financial investments involved.

5. General Principles

- a. Applications for injunctions to restrain burials are highly sensitive and must be handled with utmost care, balancing the respect for the deceased and the rights of the parties involved.
- b. Judges must consider the principle of finality and dignity in burial proceedings, recognizing the cultural and societal importance of timely burials.

DATE OF ENTRY INTO FORCE

This Practice Direction comes into force on the of May 2024.

**GERTRUDE ARABA ESAABA SACKY TORKORNOO
CHIEF JUSTICE OF THE REPUBLIC OF GHANA**