IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, THE GENERAL JURISDICTION 2 ACCRA, HELD ON WEDNESDAY, THE 25TH DAY OF MARCH 2026 BEFORE HER LADYSHIP JUSTICE HALIMAH EL-ALAWA ABDUL- BAASIT

SUIT NO.: GJ/0943/2025

ABUSUA-PANIN KOFI OWUSU - PLAINTIFF

VRS:

1. AKOSUA SERWAAH FOSUH
2. ROBERT GYAMFI A.K.A WOFA YAW POKU
3. ERNESTINA FOSUH
4. NANA YAW AKOSAH, A.K.A PAPA SHEE

DEFENDANTS

PARTIES: PLAINTIFF REP BY JOHN AIDOO
DEFENDANTS PRESENT

COUNSEL: DOMINIC KWADWO OSEI WITH NUHU UMAR HOLDING BRIEF FOR FATI ALI YALLAH FOR THE PLAINTIFF PRESENT

STEPHEN NSIAH OPOKU WITH EMMANUEL DEI-TUMI JNR, GIDEON OKAI AND NAZIHA AMIN GOMBILLA FOR DEFENDANTS PRESENT

RULING: MOTION ON NOTICE FOR INTERLOCUTORY INJUNCTION

Background:

1. On the 18/2/2026, the Plaintiff/Applicant (hereinafter referred to as the 'Plaintiff') issued a Writ of Summons and Statement of Claim against

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the Defendants/Respondent (hereinafter referred to as the 'Defendants') seeking the following reliefs;

i. A Declaration that the Ekuana Royal Family of Parkoso and Nsuta led by Abusua Panin Kofi Owusu, has the sole and exclusive authority to organize, supervise and approve the burial and funeral rites of the late Charles Kwadwo Fosu.

ii. A Declaration that the burial and funeral ceremony held on 13th December, 2025 for the late Charles Kwadwo Fosuh a.k.a Daddy Lumba, constituted the final and valid funeral rites of the deceased under Akan customary law.

iii. Declaration that the Defendants' proposed "Celebration of Life" event scheduled for 28th and 29th March, 2026 is unlawful, unauthorized and contrary to Akan customary law.

iv. An Order of Perpetual Injunction restraining the Defendants, their agents, assigns, or privies from organising, performing, advertising, facilitating, or holding any further funeral, burial, or "celebration of life" ceremony in respect of the late Charles Kwadwo Fosu without the express consent and authority of the Plaintiff.

v. An Order of Interim and/or Interlocutory Injunction pending the final determination of this suit, restraining the Defendants from proceeding with the advertised event scheduled for March, 2026 or any similar event.

vi. An Order restraining the Defendants from soliciting or receiving donations from the public in the name of organizing any funeral or memorial ceremony for the deceased.

vii. Costs, including legal fees.

viii. Any further order(s) that this Honourable Court may deem fit in the circumstances.

2. On the same day, the Plaintiff filed a Motion on Notice for Interlocutory Injunction to restrain the Defendants, their agents, grantors, assigns, privies, or anyone claiming through them from organizing, advertising, or holding any funeral rites, memorial services, or burial-related activities for the late Charles Kwadwo Fosuh (a.k.a Daddy Lumba), pending the final determination of this suit. In an Affidavit in Support deposed to by the Plaintiff, he stated among others upon the death of the late Charles Kojo Fosu a.k.a Daddy Lumba, acting on the recommendations of the Funeral Planning Committee, Ashanteman Tribunal and under his authority, supervision and direction as Head of Family, the final burial and funeral rites of the late Daddy Lumba were duly performed on 13th December, 2026. He added that the next major event on the Akan funeral customary calendar is the one-year celebration which is scheduled for June, 2026.

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3. The Plaintiff deposed further that the Defendants have publicly announced a second funeral event dubbed 'the Celebration of life' on various media outlets in honour of the late Daddy Lumba, scheduled to take place on the 28th and 29th of March, 2026 without the consent, approval, or authorization of the Ekuana Royal family led by the Plaintiff and without consultation with other wife and children of the deceased, and in blatant disregard of Akan customary law. He added that, under the Akan customary law, the right and duty to organize the burial and funeral rites of a deceased family member vest exclusively in the larger family led by Head of Family, and that any attempt by the Defendant to organize another funeral constitutes a direct affront to his authority or the honour of the deceased. He concluded by praying the Court to grant the instant Application in the interest of justice and the preservation of peace within the family.

4. The 2nd and 3rd Defendants opposed the instant Application and in an Affidavit in Opposition deposed to by the 2nd Defendant on behalf of the 3rd Defendant, he stated, among others that the Defendants are members of the immediate family of the late Charles Kwadwo Fosuh and intend to remember and celebrate him, his works as well as his legacy and the instant Application is misplaced because no one is organizing a funeral or burial for the deceased who has since been buried. He deposed further that there is no law that prevents the

immediate family of the deceased from setting aside a day to remember or celebrate him, neither is there any custom nor tradition that prevents the immediate family of the deceased from setting aside a date to remember the deceased.

5. The Deponent further stressed that, the scheduled event dubbed 'Celebration of Life' is not the second funeral of the deceased as wrongly assumed by Plaintiff but rather a commemorative event intended to celebrate the works and legacy of the deceased. He added that the instant Application does not meet the legal requirement for the exercise of discretion in granting an Order of Interlocutory Injunction because the Plaintiff has failed to establish any special circumstances warranting the grant of the instant Application. He concluded by praying for the instant Application to be dismissed.

Analysis

6. From the foregoing, the Court must make a determination on the Application for Injunction and Order 25 Rule 1 of the High Court Civil Procedure Rules, 2004; C.I. 47. Provides that *'... the Court may grant an Injunction by an Interlocutory Order in all cases in which it appears to the Court to be just or convenient to do so, and the Order may be made either unconditionally or upon such terms and conditions as the Court considers just...'* Upon consideration of the processes so far filed by both parties, the onus is on the Court to determine **whether the Defendants can be**

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restrained from organizing a ceremony to celebrate the late Charles Kojo Fosuh.

7. It is trite that the grant or refusal of an Injunction is discretionary but there are certain core considerations that guides the Court in that regard. The foremost consideration is that the Plaintiff must show and/or assert a probability or strong prima facie case that he is entitled to the right allegedly being violated and the Court will typically consider the Affidavit evidence and pleadings to ascertain if the pleadings disclose a recognizable legal/equitable right capable of protection and whether the claim is not frivolous or vexatious as there is a serious question to be tried. (See the cases of **Welford Quarcoo vs. Attorney-General and Anor** [2012] 1 SCGLR 259; **18th July Ltd. Vs Yehans International Ltd.** [2012] 1 SCGLR; **Owusu vs. Owusu** [2007-2008] 2 SCGLR 870).

8. Once a prima facie case has been made out, there is the need to preserve the status quo pending trial so that the eventual Judgment is not rendered nugatory. The Plaintiff must therefore show what the last state of affairs was and how the Defendants' threatened/ongoing conduct would alter that state of affairs before the merits can be tried. Again, in determining whether and how to maintain the status quo, the Court considers the balance of convenience, i.e., whether the grant

or refusal will produce the least risk of injustice pending trial. The Plaintiff must demonstrate the hardship he will suffer if the Injunction is refused versus the hardship to the Defendant if it is granted. (See **Pountney vs. Doegah** [1987-88] 1 GLR 111 and **Baiden vs Tandoh** 1991 1GLR 98)

9. Another key consideration is whether the Applicant's alleged injury is irreparable and not adequately compensable in damages. (See the case of **American Cynamid Co vs. Ethicon Ltd**. [1975] AC 396). Lastly, the grant/refusal of an Interlocutory Injunction is discretionary and must be exercised judicially, fairly, and candidly, taking the settled principles into account. Per the High Court Civil Procedure Rules, 2004; C.I. 47, the Court has power to impose conditions or structure interim restraint to regulate parties' rights pending trial, reflecting the "just and convenient" character of the jurisdiction.

10. As such, upon a careful perusal of the Affidavits in support and opposition as well as the Statements of Case filed by both parties and without delving into substantive matters, the Court notes that, it is the Plaintiff's case that the publicly announced event dubbed 'the Celebration of life' is without the consent, approval, or authorization of the Ekuana Royal family led by him as the Head of Family which act is in blatant disregard of Akan customary law and constitutes a

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direct affront to his authority as head of family or the honour of the deceased. The Defendants also argue that the scheduled event is a free event to commemorate the life, works and legacy of the deceased and as such, nothing prevents the immediate family of a person to hold an event to celebrate their kin.

11. The pleadings show, with respect to the estate of the deceased, that no Administrators have been appointed, neither is there a Will nor a Will yet to be admitted to Probate. The law does not recognize a vacuum in the deceased's estate as same devolves to a Customary Successor (See the **Administration of Estates Act, 1961 (Act 63)**. This appears to be the legal right the Plaintiff is asserting thereby raising serious questions to be tried both at law and custom. (See the cases of **China Shandon International Ltd. vs. Mrs. Vivian Acheampong nd Nana Serwaah Acheampong**; (CA) Civil Appeal No.H1/196/2018 and dated 18/12/2018 and **Baffour Awuah & Others vs. Nana Damoah – Agyeman**; Civil Appeal No. H1/27/2013 and dated 22/03/2013 via (2013) JELR 66362 (CA). There is therefore the need to preserve the status quo pending the final determination of the Suit. However, in preserving the status quo, the Court considers the balance of convenience as well as irreparable harm to the Plaintiff which cannot be adequately compensated with damages.

12. The Plaintiff argues further that refusing the instant Application will cause serious spiritual torment and subject the authority of the Head of Family and the entire Ekuana Royal Family into public ridicule, which harm is unquantifiable. It is the Defendants' case, on the other hand, that, they have expended monies towards the event. On the balance of convenience therefore, the Court observes that the said event or celebration is not a mandatory, legal or customary event but one of choice and is therefore not time bound like a funeral or burial as same can be celebrated on any other day should the Suit be eventually determined in favour of the Defendants.

Conclusion

13. Thus, upon consideration of the processes so far filed, the Court opines that as between the Plaintiff, who sued as Head of Family and the Defendants, there are obviously serious questions to be tried in respect of the customary law of the parties which requires preserving the status quo pending the final determination of this suit. I am guided by the fact that the grant or refusal of an interlocutory injunction is discretionary and must be exercised judicially, fairly, and candidly, taking the settled principles into account. In the circumstances therefore and in the exercise of my discretion, I hold that the equities favour granting the instant Application and same is accordingly granted. The Defendants, their agents, assigns, privies or anyone

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claiming through them are hereby restrained from holding any event in relation to the late Charles Kwadwo Fosuh (a.k.a Daddy Lumba) pending the final determination of this Suit.

14. Consequently, the Court orders the Plaintiff, pursuant to Order 25 Rule 9 of C.I. 47, to give an undertaking to pay any damages that the Defendants may suffer as a result of the grant of the Application if it turns out in the end that the Plaintiff was not entitled to the Order. Additionally, while an Interlocutory Injunction at this stage will be an appropriate remedy until the serious questions are tried and determined, pursuant to Order 25 Rule 7 of C.I. 47, I direct the Defendants to file their Statements of Defence within the next Seven (7) days and all pleadings shall be settled in Fourteen (14) days. The case is adjourned till 23rd April, 2026 for the Application for Directions to be heard.

(SGD.)
H/L HALIMAH EL-ALAWA ABDUL-BAASIT
JUSTICE OF THE HIGH COURT

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