

Neutral Citation Number: [2021] ECC Swk 9

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF MITCHAM ROAD CEMETERY, CROYDON (NO 2)

AND IN THE MATTER OF A PETITION BY MS KOULLA PIEROULLI

JUDGMENT

Introduction

1. This is the petition of Kuolla Pieroulli dated 2 November 2021. By it she seeks a faculty to exhume the remains of her father, Savvas Michael Hajiyianni from Grave Number 9462 in Section E2 of Mitcham Road Cemetery, Croydon. The grave is consecrated. Mitcham Road Cemetery is owned and run by the London Borough of Croydon. All Mr Hajiyianni's immediate family support the petition¹.

The facts

2. Mr Hajiyianni died on 17 September 2020 and his remains were buried in Grave Number 9462, a double depth grave. It was intended that, in due course, the remains of Mr Hajiyianni's widow would in due course be interred in this grave. Ms Pieroulli emphasises that her father died during the time of lockdown restrictions and it was not possible for the family to choose a grave, although at that time there would have been no reason to think that there would be any problem with the interment there of Mrs Hajiyianni's remains when the time came.
3. Sadly, Mrs Hajiyianni died just over a year later – on 27 September 2021. The family then discovered that after Mr Hajiyianni's death a very large memorial had been erected on an adjoining grave.
4. Ms Peroulli says that this then faced the family with a difficult choice. The new memorial was at a height significantly greater than that of any of the adjoining graves and they considered that it overshadowed Mr Hajiyianni's grave. They did not wish the remains of Mr Hajiyanni to be buried in a grave next to this large memorial; on the other hand they did want the remains of their parents to be interred together and this was what had always been planned. Accordingly, having consulted with the cemetery authorities, they arranged for the remains of Mrs Hajiyianni to be buried in another double depth grave within the Cemetery. This grave is also consecrated. In the light of that decision, they now seek to exhume the remains of Mr Hajiyianni so that they may be interred with those of Mrs Hajiyianni in order to fulfil the desire that they should be interred together.
5. In her petition, Ms Pieroulli suggests that the memorial on the Stokes family grave does not comply with the cemetery regulations. Accordingly I asked for the view of the cemetery authorities about this. I am grateful to Mr Eddie Ranger, the Office and Records Manager, for his prompt and clear reply. This is as follows:

*Regarding the memorial itself, this was erected over a weekend and without a permit and exceeds the size permitted for this plot, that said, it has subsequently been deemed structurally sound by an assessor from the National Association of Memorial Masons (NAMM) and **does not** encroach on to other plots but certainly overshadows the plot of Mr Hajiyianni's. As you would appreciate, given the circumstances of the two persons interred beneath it, the first, a young lady of 11 years, and later, her father who died at a relatively young age of 42 years, we are reluctant to just remove it without first looking at all*

¹ In these circumstances, it seemed to me that it was not necessary to require public notice of the petition to be given (see rule 6.6 of the Faculty Jurisdiction Rules 2015)

circumstances. In all honesty, we just do not know at this stage what the outcome will be but suspect that it will be allowed to stay.

In any instance, the family of Mr Hajiyianni felt they had no choice but to bury their Mother and only discovered the memorial had been placed a few days before Mrs Hajiyianni was due to join her husband in the plot, at this time they asked us if the memorial was going to be removed, we honestly could not say one way or the other, and as I've stated, we still don't know. All we do know is that this is not a matter that can be dealt with hastily, is likely to be a protracted process and whatever the final decision, it will have repercussions either way.

This an extremely challenging situation and we are doing all we can to support both families (emphasis in the original).

6. The situation is causing Mr and Mrs Hajiyianni's family considerable distress.

Consideration

7. It does appear to be the case that the memorial on the Stokes family grave does not comply with the cemetery regulations, although I have not heard any submissions from the Stokes family about this. The immediate relevance of the regulations is as to what size of memorial the Hajiyianni family might reasonably have expected to be erected on a grave adjoining that of Mr Hajiyianni; I am satisfied that they would not have expected a monument of the size that has been erected². Further, I think that their concern about the situation is a reasonable one and that, in the circumstances, their decision to inter the remains of Mrs Hajiyianni in a separate grave was a reasonable one. These facts do not dictate the outcome of this petition but they are important matters to take into account.
8. The norm of Christian burial is permanence and permission for exhumation is only granted exceptionally³.
9. The circumstances in the present case do appear to me to be exceptional. In saying this, I recognise that the facts may change and one possible outcome of the situation is that the memorial on the Stokes family grave might be removed or modified. (I should add that control over municipal cemeteries falls to be exercised by the Consistory Court only in the clearest of cases and whether the memorial is removed or modified will not be a matter for me but Croydon LBC⁴). There can of course be no certainty of this although, realistically, there will be a stronger reason for the cemetery authorities to initiate action about the memorial if exhumation of Mr Hajiyianni's remains is not permitted. What does seem certain if this faculty is not granted is a prolonged period of uncertainty causing additional distress to the Hajiyianni family. The way to avoid any further distress is to grant a faculty and this I propose to do. It seems to me that the importance of maintaining the norm of permanence – which of course is not inflexible – should yield on this occasion to weighty pragmatic considerations.
10. Accordingly, I direct that a faculty should issue in this case.

PHILIP PETCHEY
Chancellor
16 November 2021

² If they have concerns about other aspects of the design of the memorial, they have not expressed them. The height and bulk of the memorial are of course an integral part of its design.

³ See *In re Blagdon Cemetery*, [2002] Fam 299 (Court of Arches).

⁴ See the discussion at paragraphs 25 – 27 in *In re Camberwell Old Cemetery* [2017] ECC Swk 2.