

Neutral citation number: [2019] ECC Swk 5

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF LAMBETH CEMETERY

AND IN THE MATTER OF A PETITION BY THUY CHAN HOANG

### JUDGMENT

1. This is the petition of Ms Thuy Chan Hoang to exhume the remains of her father, Mr Nhat Tung Hoang, from the consecrated part of Lambeth Cemetery.
2. Mr Hoang died in 1987 and his remains were buried in the consecrated part of Lambeth Cemetery. Lambeth Cemetery is owned and operated by the London Borough of Lambeth. Mr Hoang was not a Christian and nor are his family; I think from what Ms Hoang tells me of her family's beliefs that they are Taoist. The family did not know until they came to make an application for the exhumation of Mr Hoang's remains that those remains had been buried in the consecrated part of the cemetery.
3. Further, Ms Hoang tells me that *grave was previously acquired under a 50 year lease tenure and the lease will expire on 21 May 2037.*

4. The form of grant was as follows:

*By virtue of the powers conferred on us by the Burial Acts 1853/57, the Local Government Act 1972 and all other powers hereunto them enabling, the Mayor and Burgesses of the London Borough of Lambeth acting by the Council as the burial authority for the said borough in consideration of ...*

*Do hereby grant unto the said purchaser the exclusive right of burial in the grave space in the Lambeth Cemetery and Crematorium numbered ... on the grave space plans*

*To hold the same unto the said purchaser, his personal representatives and such of his assigns as the Council shall approve for the term of 50 years from the date of this grant for the purposes of burial and or burial of cremated remains, subject nevertheless to the fees and regulations in force now and from time to time with regard to interment in and management of the said Cemetery, and particularly to the right of the Council to resume possession of the said grave as set out in the Regulations made by the Council with respect to the said Cemetery and the said purchaser agrees with the Council to comply with the said Regulations during the said term.*

5. The form of grant did not refer to the fact that the grave space was consecrated.
6. I am advised by Lambeth LBC that there are no regulations providing for the resumption of possession of graves.
7. The plot in which Mr Hoang's remains were buried was a double depth grave.

8. Mr Hoang's widow, Ms Dao Anh Ly, died in 2018. She wished her remains to be buried next to those of her husband. However Ms Hoang tells me that it was not possible for this to happen because *cultural tradition prohibits a female to be buried on top of the head of the family*. The family inquired of Lambeth Cemetery whether it would be possible for Ms Ly's remains to be buried next to those of Mr Hoang; unsurprisingly, this was not possible.
9. Accordingly, the family bought a double plot in Beckenham Cemetery and Ms Ly's remains were buried there. This was with the intention of thereafter interring Mr Hoang's remains in that grave. It was only after the interment of Ms Ly's remains in Beckenham Cemetery that the family became aware of any potential difficulty in exhuming the remains of Mr Hoang from Lambeth Cemetery. This fact explains why Ms Hoang and the family did not explore the possibility of exhuming the remains of Mr Hoang from the existing grave, interring there the remains of Ms Ly and then re-interring the remains of Mr Hoang. This still exists as an option, although it would now require the exhumation of the remains of Ms Ly from Beckenham Cemetery.
10. Permanence is the norm of Christian burial and permission to exhume cremated remains is granted only exceptionally<sup>1</sup>. However this is a situation where Ms Ly and her family were not Christians and did not know that the grave where Ms Ly was interred was consecrated. Moreover by virtue of the form of grant of the grave space, Ms Hoang and her family considered that the right of interment of Ms Ly's remains was of limited duration, expiring in 2037. This later circumstance led them to believe that there would not be a problem in transferring the remains of Mr Hoang in due course to Beckenham Cemetery (where, entirely reasonably, in that circumstance, they had organised the interment of Ms Ly's remains.)
11. It seems to me that the facts summarised in paragraph 10 above amount to exceptional circumstances why a faculty to permit exhumation should issue in this case. I so direct.
12. I should add two further comments.
13. First, I note the fact that the double dis-interment of the remains of Mr Hoang and Ms Ly would enable the interference with the remains of Mr Hoang to be limited to dis-interment and re-interment in the same grave. Before the interment of the remains of Ms Ly in Beckenham cemetery, it seems to me that this would have been the preferable course. Now that the remains of Ms Ly have been interred in Beckenham Cemetery, it will cause less disturbance of remains if the faculty is granted as prayed<sup>2</sup>.
14. Second, I think that the intention of the form of grant issued by Lambeth LBC and set out above may simply be to give the purchaser a right of burial, which he or she must **exercise** within 50 years of the date of grant; it is not intended to limit the period within which remains may be retained within the plot. I am not surprised that Mr Hoang's family did not understand it in this way; in particular, they were purchasing a grave plot for immediate use so that it was natural to think that the inclusion of the reference to *the term of 50 years from the date of this grant* related to the length of time the remains were permitted to remain interred in the plot.
15. For present purposes, it seems to me that what is important is how Mr Hoang's family reasonably understood the form of grant. Evidently there may be other cases where exhumation is sought and

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<sup>1</sup> See *In re Blagdon Cemetery* [2002] Fam 299 (Court of Arches).

<sup>2</sup> It is possible that the plot in Beckenham Cemetery is not consecrated but I do not regard that as a weighty matter as regards this aspect of the matter. The disturbance of human remains should be avoided if possible, whether from consecrated ground or unconsecrated ground.

the form of grant has been in the same or similar words. I will deal with those cases on their merits and in the light of the particular circumstances arising. I think that the form of grant is that still used by Lambeth LBC. I shall ask my Registrar to raise the situation arising from what I consider to be its ambiguity with Lambeth LBC. Lambeth LBC should be sent a copy of this judgment.

PHILIP PETCHEY  
Chancellor

2 August 2019