

IN THE HIGH COURT HELD IN KUMASI, IN THE ASHANTI
REGION BEFORE HER LADYSHIP JUSTICE DR. DORINDA SMITH
ARTHUR (HIGH COURT JUDGE) ON FRIDAY 28TH DAY OF
NOVEMBER, 2025

SUIT NO. GJ12/20/2026

AKOSUA SERWAAH FOSUH

...PLAINTIFF

SCHWESTER – ERMELINDIS WEG 9

BORNHEIM SECHTEM 53332, GERMANY

VRS

1. ABUSUA – PANIN KOFI OWUSU

2. PRISCILLA OFORI

...DEFENDANTS

3. TRANSITIONS FUNERAL HOME

A.K.A ENTERPRISE FUNERAL SERVICES

HAATSO, ASORE JUNCTION, ATOMIC ROAD, ACCRA

JUDGMENT

"We can do nothing against the truth, but for the truth."

2 Corinthians 13:8. NKJV

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03-12-2025

I. INTRODUCTION

[1] This is a case in which Akosua Serwaah Fosuh, the Plaintiff herein, seeks a declaration that she is the only surviving spouse of the late Charles Kwadwo Fosuh, aka Daddy Lumba, and as such the only person entitled to perform the widowhood rites of the deceased. She seeks an order from the court to restrain the head of family of the deceased from ever dealing with the 2nd Defendant, Priscilla Ofori as spouse of the deceased and a further order restraining Priscilla Ofori, from carrying herself as a surviving spouse of the late Charles Kwadwo Fosuh aka Daddy Lumba. The Plaintiff alleges that, she and the deceased married at the Civil Marriage Registry in Germany in 2004 and that their said marriage subsisted until the demise of Daddy Lumba on July 26, 2025.

[2] The Defendants opposed the claims in its entirety and deny that the Plaintiff contracted any valid marriage with the deceased in Germany. The documents tendered in by the Plaintiff were challenged for their authenticity, validity, stating that they suffer from irregularities. The defendants, however, contended that Priscilla Ofori was married customarily by the late Daddy Lumba, bore six children with him, and was the only person who took care of him during his long illness until his demise.

[3] Also the Defendants contended that the deceased Daddy Lumba showcased Priscilla Ofori as his wife publicly for more than fifteen years and as a married wife of Daddy Lumba she is entitled to be his surviving widow.

This case has generated great interest and sentiments from the general public in Ghana and abroad.

II. PLEADINGS

[4] The Plaintiff filed a writ of summons out of the registry of this court on 2nd October, 2025 against the Defendants jointly and severally for the following reliefs:

- a) An order of this Honourable Court declaring that the Plaintiff is the only surviving spouse of the late Charles Kwadwo Fosuh a.k.a Daddy Lumba.
- b) An order of this court declaring that, it is only the Plaintiff who has the right to perform the widowhood rites of the late Charles Kwadwo Fosuh aka Daddy Lumba.
- c) A further order restraining the 1st Defendant from ever dealing with the 2nd Defendant as spouse of the deceased.
- d) An order restraining the 2nd Defendant from carrying herself as the surviving spouse of the late Charles Kwadwo Fosuh aka Daddy Lumba.

[5] After the service of the writ with its accompanying statement of claim on the Defendants with the exception of the 2nd Defendant (hereinafter

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referred to as D2), the 1st Defendant (hereinafter referred to as D1), and the 3rd Defendant (hereinafter referred to as D3) filed conditional appearance.

[6] Then counsel for D1 filed a thirty-four paragraphed statement of defence on 22/10/2025. D2 also in a forty paragraphed statement of defence filed on 27/10/25 counterclaimed for the following reliefs:

- i. Declaration that Plaintiff was not married to Daddy Lumba as of 26th July, 2025 when he died.
- ii. Declaration that 2nd Defendant was validly married under customary law to Daddy Lumba in his life time.
- iii. Declaration that 2nd Defendant is the surviving spouse of Daddy Lumba.

[7] Counsel for D3 filed a fifteen paragraphed statement of defence on behalf of D3 on 30/10/25 in which it denied substantially all the allegations and claims of the Plaintiff. The Plaintiff filed a twenty-nine-paragraphed reply denying the D1's defence, a twenty-six paragraphed reply and defence to counterclaim to D2's defence and counterclaim and joined issues with the Defendants.

The Issues for Determination

[8] At the close of the pleadings, the Plaintiff formulated eight issues and the Defendant also filed six additional issues, but the court with counsel

struck out four of the issues, joined some, and added two additional issues.

The issues set down were as follows:-

1. Whether or not the Plaintiff is the only surviving spouse of the late Charles Kwadwo Fosuh aka Daddy Lumba.
2. Whether or not Plaintiff is deemed the only surviving spouse of the late Charles Kwadwo Fosuh aka Daddy Lumba, is the only person entitled to perform the widowhood rite.
3. Whether or not Plaintiff not living with Daddy Lumba for seventeen years constituted abandonment.
4. Whether or not the Plaintiff causing her lawyers to write to Daddy Lumba demanding her share of the properties they both acquired constituted an intention to dissolve the marriage.
5. Whether or not the 2nd defendant can be deemed as a wife on the basis of customary marriage.
6. Can it be said that the 2nd defendant living with the late Daddy Lumba for fifteen years and having six children with him constitute marriage.
7. Whether or not the plaintiff and the late Charles Kwadwo Fosuh married validly under the Federal Laws of Germany.
8. Whether the plaintiff initiated divorce proceedings against the late Charles Kwadwo Fosuh during his life time.

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9. Whether or not the plaintiff and the late Charles Kwadwo Fosuh co-habited and share matrimonial household when he later relocated to Ghana.
10. Whether or not the late Charles Kwadwo Fosuh habitual residency was Ghana or Germany for at least fifteen years prior to his death.
11. Whether or not the marriage between the plaintiff and the late Charles Kwadwo Fosuh had broken down under Germany law as of the time the latter relocated to Ghana.
12. And any other further issues arising from the pleadings.

II. PLAINTIFF'S CASE

[9] The Plaintiff testified through her attorney, Georgina Osei Bonsu. In her evidence-in-chief she said the plaintiff is the lawful wife of the deceased Daddy Lumba both by custom in Ghana and under German Law. She continued that the couple got married on the 23rd December, 2004 under the German Law at the Civil Marriage Registry, Bornheim, Germany. Before the civil marriage the couple first married somewhere in May 1991 at Bomso in the Ashanti Region having being in an amorous relationship from December 1985. The couple begot three children and added that they never divorced until the demise of Daddy Lumba on 26th July 2025.

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[10] She further stated that after the death of Daddy Lumba, the head of family, D1, informed the Plaintiff that she would not be allowed to perform the widowhood rites. She mentioned that D1 and D2 averred that the Plaintiff's marriage was dissolved as she abandoned the deceased for more than a decade which is not true. She said the plaintiff visited her deceased husband periodically in 2011, 2012, 2014, and 2018 when her mother died.

[11] She mentioned that the deceased's name was listed in the funeral poster as an in-law and he was allowed to perform in-law rite. She said it was the plaintiff who bought medications for her deceased husband and that the deceased confirmed so in a video when he was celebrating his 60th birthday so *she did not abandon the deceased.*

[12] The attorney maintained that the Plaintiff was the love of the deceased as he composed numerous songs for her and that D1 in the early days after the death of the deceased confirmed that the Plaintiff was the lawful wife and she is the only one known to the family until he changed his position due to his parochial interest.

[13] She further said that D2 carry herself out as the wife of the deceased simply because she has six children with him, as D2 in a suit, had so described herself. A copy of the writ of summons and statement of claim was admitted into evidence as Exhibit J. Hence, D2 must be restrained in that only legally married women perform widowhood rites and that cultural right accrued to the Plaintiff alone and same cannot be shared with D2.

[14] She said due to the deceased's iconic brand, the Plaintiff decided not to put her marital problems in the public to avoid besmirching the deceased's hard-earned name or brand but that seemed to have made D2 think that she had endorsed her immoral relationship with the deceased. She said the Plaintiff sometimes complained to the deceased and even expressed an intention to walk out of the marriage but the deceased out of love would unreservedly apologise to her to stay since she is the love of his life. She stated that the Plaintiff did not return the traditional drinks to indicate that she had divorced the deceased customarily.

[15] She again said the Plaintiff somewhere in 2018 instructed her lawyers to write to the deceased to complain about some marital issues but she did not instruct her lawyers that she had sent her customary drink to dissolve the marriage.

[16] She maintained the Plaintiff is the only surviving spouse of the deceased and that an amorous relationship with D2 cannot metamorphose into marriage. She said the Plaintiff and the deceased lived peacefully in Germany until the deceased decided to seek medical attention in Ghana.

[17] She tendered in evidence a power of attorney, purportedly notarized marriage certificate with a translation from German language into English, a letter from the German Embassy, pictures, a funeral poster, two videos and pictures of a deceased at a funeral.

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[18] The elder sister of the deceased, Ernestina Fosuh, PW1 also known as Akosua Brempomaa testified as a witness for the Plaintiff. In her evidence-in-chief she mentioned that the deceased married the Plaintiff customarily in May 1991 at Bomso, Kumasi and they had three issues. She stated that she was with the couple in Germany and with another woman by name Georgina when they married under the German Civil Law in December 23, 2004.

[19] She said D2 was in a relationship with the deceased and she bore him six children and that D1 is the head of family of Royal Family of Nsuta and Parkoso and a maternal uncle. She said she had good contact with D2 when she was living with her brother and that the third child of D2 is named after her. She added that about four months prior to the death of her brother, he asked her to find a place for D2 and the last child who was about three years in Germany to acquire his passport. So she does not bear any grudge against D2 by testifying for the Plaintiff.

[20] She continued that it was the deceased who introduced D2 to her and confided in her that due to the marriage with Plaintiff, he cannot marry D2 as a second wife by custom or under the ordinance. So her deceased brother did not marry D2 and he did not also hide things from her since she was close to him.

[21] She mentioned that the deceased informed her about the first child and asked her to buy things for them of which she obliged and shopped heavily for them and she delivered them personally to them at Tantra Hills, residence

of the deceased. She said it was necessary for the Plaintiff to be in Germany as they had contracted a mortgage and she had to work eight hours to defray the mortgage and she was also nursing their last child and taking care of the two children singlehandedly since her brother had to leave for Ghana to seek medical attention.

[22] According to PW1, the deceased returned to Ghana to work and also to seek medical attention and not with intention to permanently stay in Ghana and so he stopped the Plaintiff from frequenting Ghana because there was a debt to be paid and the cost of plane ticket was exorbitant. PW1 said she cannot say the couple had divorced each other because in 2018 she met the Plaintiff in Ghana in preparation for her mother's funeral and they both lodged at Tantra Hills, the home of the Plaintiff and the deceased.

[23] She further said that D2 and her friend came to Tantra Hills that the deceased said they should come and prepare the place for the Plaintiff and the deceased was listed in the funeral poster as an in-law and he performed the in-law rites in her presence.

[24] She said it was the Plaintiff who was buying the medications for the deceased and so the couple had not divorced and the Plaintiff had not abandoned him. She said the deceased referred to the Plaintiff as his lawful wife during his 60th birthday celebration at Bay view Village on September 29, 2024.

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[25] She added that the marriage between the couple had their turbulent times and the Plaintiff occasionally registered her displeasure but she cannot recall that the deceased dissolved his customary marriage with the Plaintiff or that the Plaintiff returned the customary drink. She said the deceased had apologised to the Plaintiff for wrongs committed against her on countless occasions.

[26] She further mentioned that had it not been for recent happenings and ill-intentions of some people in the reproduction of letters well-kept in her brother's bosom, nobody would have heard that the Plaintiff had been going through a lot of ordeals in her marriage to the extent that she had even threatened to leave the marriage. She again said the deceased was overly privileged to have met the Plaintiff as she saw her as a superwoman due to her tolerance and patience.

[27] She added that it will be quite unfortunate for D1 to hold that the Plaintiff was not married to the deceased and therefore not entitled to perform the widowhood rite but rather D2 as D2's hands were not sought in marriage to be conferred with the right to perform the widowhood rites at her brother's funeral.

[28] Counsel for the Plaintiff subpoenaed an expert witness, Osei-Bonsu Safo Kantanka to testify on the Ashanti custom. He testified that he is well-versed in Ashanti custom and has been a resource person for chiefs, universities, courts, professors, and students. He said he has been a funeral committee

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member and in the burial of the two Asantehemaas and Mamponghe. He is an author and has written many articles and books and that he received a grand medal award with his book, "Kente Cloth History and Culture" from former President Kuffour.

[29] He stated that in Ashanti custom, a wife is a woman whom the four families comprising the mother and father's family of the woman and mother and father's family of the man have sat and drunk the head drink to confirm that she has been married to a man but there are variations. He said during the marriage ceremony it is the father or representative of the father of the woman who takes the head drink.

[30] He added that where the family has to perform a funeral rite, it is the head of family who becomes the chief mourner together with the elderly women and others who come together to organise it. He said the head of family, though the figure head, receives directions from the elderly women and other principal members of the family. He said it is the responsibility of a husband or husband's family to buy the casket and if it is a man, it is the responsibility of the children whether young or old or their family who buy the casket. He said it is the responsibility of the head of family with the consent of the elderly women to go and seek for funds towards the funeral.

[31] He continued that funeral observation is believed to be both spiritual and physical and if there is a wife or wives she or they have to perform the widowhood rites. The wives have to go through spiritual purification so that

the deceased husband's spirit cannot in anyway return to the wife or wives to harm her or them. So the widowhood rites finally sever the marriage both spiritually and physically. With widowhood rites, the women who are customarily married perform those rites subject to how she or they treated their deceased relative.

III. DEFENDANTS' CASE

1ST DEFENDANT

[32] Abusuapanin Kofi Owusu, (DI) testified as the head of Royal family of Parkoso and Nsuta, Ashanti. In his evidence-in-chief he said the deceased Daddy Lumba and the Plaintiff were traditionally married in 1991 and they relocated to Germany and allegedly registered their union. But the health of the deceased deteriorated after about ten years and he expressed the desire for the couple to relocate to Ghana for him to seek medical attention especially traditional medicine but the Plaintiff refused and threatened that if the deceased relocated to Ghana, he should consider their marriage dissolved.

[33] He said the deceased tried to convince the Plaintiff to relocate with him without success so he involved his family members to persuade her to relocate but she refused so he relocated alone under serious health conditions without the Plaintiff. He said true to the Plaintiff's words, she never visited the deceased during his illness. And it was during this trying period where

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the deceased was bedridden for five years without spousal support that the deceased met his wife D2 who nursed him back into good health.

[34] He continued that the Plaintiff followed through her threat with actual actions and together with her family, presented the dissolution of marriage drinks to the Ekuona family for the dissolution of her marriage to the deceased in line with Akan tradition. He said the then head of family with the consent of the deceased accepted the dissolution drinks as presented by the Plaintiff and her family. He said all rituals for the dissolution of marriage in accordance with the Akan traditions were performed and both families acknowledged that the marriage between the deceased and the Plaintiff had ended.

[35] He further testified that years after the dissolution of their marriage, the Plaintiff through her Ghanaian solicitors wrote a letter to the deceased dated 4 February 2018 confirming the dissolution of the marriage by the presentation of the drinks and gave a ten day ultimatum for the deceased to settle some alleged marital properties on her. The Plaintiff in the letter admitted the deceased had gone ahead to marry another woman and mentioned that the deceased had fathered seventeen children. He also said the deceased refused to perform the in-law rites when the Plaintiff's mother died. The Plaintiff also said that should the deceased fail to settle the properties on her, she would proceed to the German court to assert her right on the grounds of desertion.

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[36] He said that upon receiving the letter, the deceased informed his family of the content and denied all the allegations of abuse and fathering seventeen children against him.

[37] He continued that the deceased stated that for over ten years that he was sick and returned to Ghana, the Plaintiff took over his properties and businesses in Germany so he has settled her and has nothing to do with her and that message was conveyed to the Plaintiff and her family during the lifetime of the deceased.

[38] He added that the deceased informed his family there was no more marriage between him and the Plaintiff and that for over ten years if he needed to communicate with his three children, he had to go through a third party. He attached proof of financial support from the deceased to the children through a third party and added that all the family of the deceased acknowledge D2 as the current wife of the deceased.

[39] He said even the children of the Plaintiff when in Ghana live with D2 in their matrimonial home and they affectionately refer to her as "mummy."

[40] He added that for the last fifteen years of the deceased last days on earth, he was married to D2. He lived with her and their children and in all public appearances including meeting with Presidents and chiefs, the deceased showcased D2 as his legally married wife and the Plaintiff never challenged that fact.

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[41] D1 mentioned that, the Plaintiff never took steps to cite the deceased for bigamy or to bring to the attention of D2 and the family the alleged subsistence of any valid ordinance marriage between her and the deceased because she acknowledged the marriage between herself and the deceased as dissolved.

[42] He contended that the deceased for the past fifteen years or more travelled overseas to perform various international shows including Germany where the Plaintiff resides but he never visited the Plaintiff and rather ordinarily resided with D2.

[43] Also that the Plaintiff never visited the matrimonial home of the deceased and D2 on the occasions that she visited Ghana until the demise of Daddy Lumba, testifying that there was no marriage between them.

[44] According to D1, the performance of burial and funeral rites of a person is performed in line with customs and traditional beliefs of the deceased person and widowhood rites. And that it is only the traditionally recognised wife that is allowed to perform those rites since it has both traditional and spiritual significance.

[45] He added that when the mother of the deceased died, the Plaintiff did not perform the in-law rites, which is required of every traditionally recognised married wife because she was not married to the deceased at the time even though she attended the funeral as a private person. It was therefore a surprise to the family when they received a letter from the lawyers

of the Plaintiff dated 10th September 2025 claiming that she is the only surviving spouse of the deceased. So the family responded and denied her claim and informed her that the only recognised wife the family knows is D2.

[46] He maintained that since the demise of Daddy Lumba, it is only D2 that has assisted with all the necessary arrangements towards the performance of the burial and funeral rites and that the Plaintiff only came to pay homage to the family and left immediately for Germany to continue with her business.

[47] He said the family finds the actions of the Plaintiff as inhumane, disgraceful and an insult to the customs and traditions of the Akan people particularly the Ekuona family of Parkoso and Nsuta. He said the family finds it difficult to understand why the Plaintiff after abandoning the deceased in his difficult times and taking over all his properties and businesses in Germany for about seventeen years to appear upon the demise of Daddy Lumba to claim that she was the only wife of the deceased.

[48] He said the family of the deceased was not made aware of any registration of their marriage in Germany and that marriage if any did not have any traditional effect as far as the family is concerned. He tendered in evidence a copy of the letter confirming dissolution of the customary marriage, prove of financial support from the deceased to the children through a third party, copies of pictures and videos confirming D2 as wife by family, copies of pictures and videos confirming appearances by the deceased

and D2 as wife, copy of video by the deceased confirming who did the in-law funeral when the mother of the deceased died, and copies of letters written by Plaintiff 's lawyers and the responses from the family.

2ND DEFENDANT'S CASE

[49] D2 did not testify in person but she called a witness, James Beniako Boateng (DW1). He is a tax administrator by profession and an in-law to D2. In his evidence-in-chief he says D2 is popularly known as "Odo Broni" being the pet name given to her by the deceased husband in his show business circles. He said D2 is the younger sister of his wife and he got to know her when he was dating her sister sometime in 2006 at the time D2 was a Senior High School student. He continued that D2 later attended nursing training school in Accra and he first saw the deceased Daddy Lumba with D2 together during a funeral ceremony at D2's hometown, Kwahu Aduamoa. They maintained their relationship for about four years before they got married.

[50] He further said that at the marriage ceremony of D2 and the deceased, he represented his wife who had travelled and matters relating to the previous marriage of the deceased and Plaintiff came up during the family meeting where the deceased mentioned that his marriage with the Plaintiff had broken down in Germany before he relocated to Ghana and that there was nothing between him and the Plaintiff as man and wife. He said the

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deceased further stated that since he came to Ghana, there has not been any relationship between him the Plaintiff.

[51] According to DW1, the deceased confirmed the breakdown of his marriage to the Plaintiff in Germany before his relocation to Ghana during the final ceremonial questioning at the customary marriage between him and D2. He said the marriage took place in April 2010 at the deceased former house at Tantra Hills being part of the plan to stay out of the sight of the prowling media.

[52] He maintained that the deceased was a very private person who always shied away from the media in spite of being a showbiz man and during the marriage ceremony he insisted that there should be no media coverage of the event. He continued that D2 and the deceased stayed in the deceased's house at Tantra Hills before they moved to their present matrimonial home at East Legon sometime in 2016. He added that the couple altogether had six children and a birth certificate of the first child was tendered in evidence.

[53] He stated that he is aware of the late Daddy Lumba's sickness that led to his surgery at Focos Hospital sometime in 2013. He said the deceased and D2 had a very close relationship and they travelled locally and internationally together and undertook many business ventures together during the lifetime of Daddy Lumba. They lived together peaceably at their matrimonial home at

East Legon where from time to time, the deceased first three children paid visit and lived peacefully with D2.

[54] He continued that the deceased composed many love songs for D2 and publicly paraded her as his lawful wife without any protest or objection by the Plaintiff.

[55] He said he got to know Daddy Lumba's last sickness that took him to the Bank Hospital at Cantonments in Accra sometime July 2025 and he took part in a conference prayer for the divine healing before Daddy Lumba unfortunate and unexpected death. He said after the demise of Daddy Lumba, friends, sympathizers both locally and internationally thronged to his house at East Legon to pay tribute and commiserate with the family.

[56] He stated that from the very first time D2 met Daddy Lumba till his death the Plaintiff never showed up anywhere to protest her marriage to the deceased. He adds that at the main vigil to mark the occasion of Daddy Lumba's passing, D2 was officially recognised and called upon to pay tribute to Daddy Lumba as the surviving spouse without any protestation or objection from the Plaintiff who was physically present at the occasion.

[57] He further said that during the one week observation, D2 similarly was formally acknowledged as the surviving spouse of Daddy Lumba without any objection from the Plaintiff. He said D2 has at all time respected the Plaintiff as an elderly lady and even if not an ex-wife of her husband she is the mother of the three step children she has positioned herself to foster a very

strong bond of unity between all the children as her late husband desired. He said that D2 does not harbour any resentment towards the Plaintiff and has always hoped and desired this unfortunate dispute to end so that her late husband will finally be laid to rest.

[58] He tendered in evidence a video of the deceased confirming that when his mother passed, it was Theresa Abebrese who performed the in-law rites. Also in evidence are videos of the deceased celebrating his wife Priscilla on mother's day, a video in which Daddy Lumba is talking about his wife Priscilla's mother and grandmother whose interaction with him inspired the song "*Ye ne wo sere kwa*," a video of the couple and their children at the airport en route to London for a show, a video in which Daddy Lumba is heard talking about the history of the twins in his family that has resulted in his wife Priscilla also bearing twins.

[59] All the videos are with a certified transcription in English. He added pictures of all the children of the deceased together during one of their visits to the matrimonial home of their deceased father and D2, picture of Daddy Lumba with D2 exchanging pleasantries with former President Nana Addo Dankwa Akufo-Addo and former first lady of Ghana, picture of the late Daddy Lumba with D2 paying a courtesy call on the former Inspector General of Police, Dr. George Akuffo Dampare in his office on 25th January 2023, a video of Daddy Lumba appreciating his wife Odo Broni in an interview with TV3 on 12 June, 2015, and a video of the late Daddy Lumba interacting with President John Dramani Mahama at the Jubilee House on 1st July, 2025.

3RD DEFENDANT'S CASE

The D3 did not testify or call any witness.

IV. EVALUATION OF EVIDENCE, FINDING OF FACTS, AND APPLICATION OF THE LAW.

[60] Before I make my findings in respect of the issues before the court, I wish to discuss the burden of proof on each of the parties.

[61] It is a basic principle of law of evidence that a Plaintiff in a civil case has the legal and evidential burden to produce admissible evidence to prove his/her claim and assertions on the preponderance of probabilities. See Sections 11(4); 12(1) and 14 of the Evidence Act, 1975 (NRCD 323.) This position of the law is reiterated in the Supreme Court case ADWUBENG VRS DUMFEH [1996-97] SCGLR 660 where the court crystallized the standard of proof required in all civil actions at **holding 3** of the head note as follows:

"Section 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) (which came into force on 1 October 1979) have clearly provided that the standard of proof in all civil action was proof by preponderance of probabilities-no exceptions were made."

[62] Also in ACKAH VRS PERGAH TRANSPORT LTD [2010] SCGLR 729, Holding (1) the Supreme Court per curiam, held that;

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"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail."

[63] Thus, for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law. This position is supported by **Section 12(2) and Section 14 of the Evidence Act 1975 (NRCD 323)**.

See: ARYEH & AKAKPO v AYAA IDDRISU [2010] SCGLR 891 and FENUKU AND ANOTHER v JOHN TEYE AND ANOTHER [2001-2002] SCGLR 985

Further, in **ABABIO VRS. AKWASI IV [1994 – 1995] GBR 774** Aikins JSC expounded that:

"The general principle of law is that it is the duty of a Plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the Plaintiff leads some evidence to prove his claim. If the Defendant succeeds in doing this he wins, if not, he loses on that particular issue".

[64] By the above statement of the law Aikins JSC reiterated the position of the Supreme Court that the party who asserts has the burden of proof in the

case of ACKAH V. PERGAH TRANSPORT LTD & ORS [2010] SCGLR 728.

See also ZABRAMA V. SEGBEDZI. [1991] 2 GLR 221 and GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LTD v HANNA ASSI [2005-2006] SCGLR 458.

[65] Therefore, the burden is on the plaintiff to prove on the preponderance of probability that; she is legally married to the deceased Daddy Lumba and that nothing prevents her from performing the widowhood rites and that she is entitled to be the sole widow of the deceased Daddy Lumba.

Here, the evidence to be adduced in support of this positive assertion must be credible evidence as was explained by Georgina Woode CJ in CONTINENTAL PLASTICS ENGINEERING CO. LTD. VS. IMC INDUSTRIES-TECHNIK GMBH (2009) SCGLR 298 AT 307.

[66] This credible evidence as held by the Supreme Court is any corroborative evidence that exist and which was likely to be believed by the Court as true ought to be provided.

See FOSUA & ADU-POKU VRS ADU-POKU MENSAH [2009] SCGLR 310.

[67] It is only when the Plaintiff has been able to established her claims in satisfaction of the burden of proof and persuasion that the burden shifts onto the Defendants for them to disprove the Plaintiff's case.

[68] Also, in a situation where there is a counterclaim, the counterclaimant is deemed to be the plaintiff in respect of the counterclaim.

The Supreme Court in the case of GBEDEMA v. AWOONOR-WILLIAMS [1970] CC 12 decided among others as follows: *"A counterclaim is to all intents and purposes an action by the respondent against the applicant. It is an independent and separate action"*.

[69] From the above, it is settled, that a counterclaim is in law a separate and independent action which is tried together with the original claim of the plaintiff. Therefore, if in the course of an action in which there is a counterclaim, the plaintiff action is struck out, dismissed, discontinued or stayed, the defendant can proceed to prosecute his counterclaim.

See: FOSUHENE v. ATTA WUSU [2011] 1 SCGLR 273

IN RE WILL OF BREMANU; AKONU-BAFFOE & ORS v. BUAKU &

VANDYKE (SUBSTITUTED BY) BREMANU [2012] 2 SCGLR 1313

OSEI (SUBST. BY) GILARD v. KORANG [2013-2014] 1 SCGLR 221

[70] In this case, D2 has a counterclaim. Therefore, the Plaintiff as well as the D2 is to prove their respective cases on the preponderance of probabilities.

In the case of VERONICA OPOKU v. MARYLARTEY [2018] 119 GMJ244, the Supreme Court held at page 258 that *"It is pertinent to note that the 1st defendant having filed a counterclaim assumed the position of the plaintiff in the counterclaim and was therefore under a duty to discharge the burden of persuasion on the issue"*.

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See EMMANUEL AZAMETI v. DINGLE ATTIPOE KWAKU NYATEFE
[2023] 183 GMJ 1 SC

[71] Therefore, just as the Plaintiff is to prove her claim on the preponderance of probabilities, the D2 is also required to prove her counterclaim on the preponderance of probabilities.

[72] In this case, there is enough uncontroverted evidence on record that the court need not devote time to determine them even though some of them are part of the issues set down at the direction stage as issues to be determined at the trial.

- It is undisputed from both parties' evidence on record that the deceased Daddy Lumba was a successful musician, a national icon, and he composed songs for all the women in his life.
- It is undisputed that the late Daddy Lumba was born in Ghana, lived in Ghana, travelled to Germany, and became a citizen of Germany.
- It is undisputed that the late Daddy Lumba hails from the Royal Family of Parkoso and Nsuta Ashanti.
- Also not in dispute is the fact that the late Daddy Lumba married the Plaintiff customarily in Ghana before they returned to Germany.
- Also that the late Daddy Lumba relocated to Ghana for medical attention.

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- Another undisputed fact is that the late Daddy Lumba lived at Tantra Hills before moving to East Legon.
- It is again not disputed that the late Daddy Lumba had three children with the Plaintiff, six children with D2, and two children with other(s) making it eleven children.

[73] In the case of FATAL v WOLLEY [2013-2014] 2 SCGLR 1070 at page 1076, Georgina Woode CJ (as she then was) said as follows:

Admittedly, it is indeed sound basic learning that courts are not tied down to only the issues identified and agreed upon by the parties at pre-trial. Thus, if in the course of the hearing, an agreed issue is clearly found to be irrelevant, moot, or even not germane to the action under trial, there is no duty cast upon the court to receive evidence and adjudicate upon it. The converse is equally true. If a crucial issue is left out, but emanates at the trial from the pleadings or the evidence, the court cannot refuse to address it on the ground that it is not included in the agreed issues.

See: ENVIRONMENTAL DEVELOPMENT GROUP LTD v PROVIDENT INSURANCE CO. LTD AND 2 ORS [2020] 165 GMJ 39 SC

[74] The law also allows a court not to restrict itself to the resolution of all the issues set down in the application for directions. The law is that a court of

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law is not bound to consider every conceivable issue arising from the pleadings and the evidence, if in the opinion of the court; few issues could legally settle the matter in accordance with law.

See: VINCENTIA MENSAH v NUMO ADJEI KWANKU II [2018] 117 GMJ 76 SC

[75] I must state that some of the issues will be determined together as they are intertwined and will also not be in the order as listed during the direction state.

[76] The first issue to be determined is whether or not the Plaintiff is the only surviving spouse of the late Charles Kwadwo Fosuh aka Daddy Lumba. This issue required the Plaintiff to lead evidence to the satisfaction of the court that she was married to the late Daddy Lumba, that the marriage contracted was not polygamous, that at the time of death of the Daddy Lumba their marriage had not been dissolved. She is also required to provide sufficient, properly authentic documents which are not contradictory and legally valid in Ghana.

[77] Here, the Plaintiff testified through Georgina Osei Bonsu and she tendered in evidence a Power of Attorney (Exhibit A) which was objected to by all the Counsel for the Defendants. They had concerns with the dates the signature of the Plaintiff was executed on the document and when it was notarized. From the document, the Plaintiff signed it on the 16th October 2025 and it was allegedly notarized on 23rd October 2025. Meanwhile, the notarized

certification says; *"I hereby certify, that the above is the true signature, subscribed in my presence, of..."*

Clearly, that was not the case as the representative of the notary could not have been present on the 16th of October 2025 when the Plaintiff allegedly signed the document.

What is rather clear though is that the signature was signed and witnessed by Prince Daniel Kwarteng.

[78] Counsel for D2 raised issues of the signature purported to be for the Plaintiff as appended on the document and as seen in the passport copy of the Plaintiff, Exhibit CFK1. He is of the view that the signatures are significantly different from each other. Counsel further argues that when the original of Exhibit A was presented, it was different in font, font size, and margins. The court did not accept counsel for D2's submission regarding the signature since the court is not a signature expert and cannot engage in imagination expedition.

[79] Counsel for the Plaintiff in the written submission at page 14 relied on **Florini Luca & Anor v Mr. Samir & Ors (2021) JELR 107275** to the effect that the plain purpose of the presence of a witness when it comes to power of attorney is to attest the instrument. He argues that the vital question the court should address its mind to is whether the plaintiff executed the instrument in the presence of the witness.

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I have considered all the objections and or concerns raised and the response given by counsels and I am of the view that Exhibit A was witnessed and notarized and as such it is accepted as the instrument giving power to the Georgina Osei Bonsu to testify for and on behalf of the Plaintiff. See **Section 1(1) of the Power of Attorney Act, 1998 Act 549** which states:

(1) An instrument creating a power of attorney shall be signed by the donor of the power, or a person authorized by the donor in the presence of the donor.

(2) Where the instrument is signed by the donor of the power one witness shall be present and shall attest the instrument.

From the above and as earlier stated, Exhibit A meets the standard required and hence it is accepted and cannot be disregarded.

[80] Before I proceed to the evidence of the Plaintiff let me firstly address some major topics which this case has raised. I have earlier indicated that this case has generated much public interest and the public is interested in certain topics from the news. It is for this reason that this judgment is not only seeking to resolve the disputes before her but to also use the opportunity to educate and enlighten the general public on certain sensitive matters.

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[81] Types of marriages in Ghana

- In Ghana, there are three main types of marriage which are Customary, Ordinance, and Islamic. Each type of marriage is independently valid and legally recognized.
- Customary marriage is celebrated under the customs and traditions of the couple's tribe or ethnic group. It is mostly based on consent. There should be consent from the two families of the man and woman, consent from bride and groom and a celebration to mark the covenant. Customary marriage in Ghana involves an exchange of a dowry or head drink between the families signifying consent, acceptance, and support. It can be registered under the Customary Marriage and Divorce Registration Law 1985, PNDCL 112. It is potentially polygamous meaning that a man can have more than one wife and there is no limit to the number of wives as long as he remains married under customary law. see GRAHAM V GRAHAM [1965] GLR 407.
- Ordinance Marriage is a statutory, monogamous, and civil union that must be registered, executed by the parties marrying and a marriage certificate is given to the parties. It is strictly monogamous which means that a couple can only have one spouse – one man –one woman. It requires a formal registration processes at a district or municipal Assembly or at the Court registry. In Ghana mostly among the Christians, they marry under customary law and then convert the

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customary marriage to ordinance. Once a marriage is converted to ordinance, it extinguishes all the rights and privileges guaranteed under customary marriages. See COLEMAN V SHANG (1959) GLR 390.

- The last type is Islamic marriage, which is conducted under Islamic law and officiated by an Islamic religious leader and also potentially polygamous. Both couples must be Muslims and must be registered under the Marriage of Mohammedans Ordinance. The registrar of Mohammedan marriages and divorce must be notified within a week of the marriage and it can only be officiated by an Imam, a Sheikh, or a Kadhi. A man is allowed to marry up to four wives and it should not be between family relations and cousins.
- It must be stated that whilst the court is mandated to grant divorce in respect of monogamous marriages under the Matrimonial Causes Act (Act 367) but when it pertains to customary marriages the court is enjoined to consider the customary rules and personal law of the parties in granting incidental reliefs.

[82] Proving a valid marriage

- The primary and direct proof of a valid ordinance marriage is the performance of the marriage. But a combination of other documents corroborating the performance of the marriage is more convincing than a single document.

- There are situations where the marriage certificate may not be enough to prove marriage. For instance, non-consummation of the marriage nullifies the union or mental incapacity of a spouse or the marriage was not legally solemnized in cases of fraud or there are issues with the marriage certificate itself. Again where the marriage is void *ab initio*, then the certificate may not be considered as sufficient prove of a valid union.
- In a situation where one of the spouses was already married to a third party under any of the types of marriage before marrying under the ordinance, or that the marriage was fraudulently contracted, the ordinance marriage certificate may not be considered as prove of a valid marriage. See **Section 46 of the Marriage Act 1884-1985, CAP 127.**
- Similarly, a person who has converted his customary marriage to an ordinance/civil marriage cannot legally marry another wife under any of the three types of marriage in Ghana.

Thus, beside consummation, a marriage can be annulled if

1. One or both of the parties were minors when the marriage occurred
2. One of the parties was married to someone else
3. One spouse was forced into the marriage
4. There was evidence of fraud or deceit
5. The woman was pregnant for another man

6. Incest

- The list is not exhaustive. When any of the above conditions prevail, the marriage certificate alone cannot be waived to prove the validity of the marriage. The marriage is voidable and same can be annulled.

See. ERNESTINA BOATENG V PHYLLIS SERWAA AND 2 ORS, CIVIL APPEAL NO. J4/08/2020 DELIVERED ON 14TH APRIL 2021 SC.

[83] I now return to the first issue where I earlier stated that it is for the Plaintiff to adduce evidence to the satisfaction of the court that:

1. She was married to the late Daddy Lumba under the civil registry marriage of German.
2. That marriage is a monogamous one
3. That monogamous marriage was not dissolved until his demise.

Here, the Plaintiff is required to provide sufficient, properly authentic documents which are not contradictory and legally valid in Ghana as prove of her civil marriage to the late Daddy Lumba. This is very crucial because, it is only a monogamous marriage which when one contracts bars the party from contracting another marriage unless it is dissolved.

The lawful attorney under paragraph 5,6, 12, of the evidence-in- chief states that the Plaintiff and the late Charles Kwadwo Fosuh married on the 23rd day of December, 2004 under the German Law at the Civil Marriage Registry,

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Bornheim, Germany. This evidence mirrors paragraph 2 of the Statement of Claim of the Plaintiff.

[84] The first point for the court to ascertain is the determination of the applicable foreign law in Ghana since from the evidence of the Plaintiff, the marriage was contracted under the German Law. **Section 1(2) of the Evidence Act** provides as follows:

2) The determination of the law of an organization of states to the extent that such law is not part of the law of Ghana, or of the law of a foreign state or sub-division of a foreign state, is a question of fact, but it shall be determined by the court.

(3) The determination whether a party has met the burden of producing evidence on a particular issue is a question of law to be determined by the court.

Here, the courts of a country is presumed to be well versed only with the laws of its country and can only apply its local law and foreign law operates as a question of fact and not as law especially under common law countries and there are many decided cases to that effect.

See MONROE V DOUGLAS, (1820) 5 MADD. 379, 56 E.R.940 and SUSSEX PEERAGE CAZSE, 11 CL. & FIN. 85, 8 ENG. REP. 1034 (H.L. 1844).

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This is to state that a foreign law must be proven by the party usually through an expert witness or evidence and a judge is not expected to automatically take judicial notice of such foreign law.

[85] Thus, the Plaintiff must prove that she and the late Daddy Lumba contracted a civil marriage under the German law through an expert witness such as a qualified legal practitioner or an academician about civil marriage under German law means and the standard of proof is upon the balance of probabilities.

See GODKA GROUP V P.S. INTERNATIONAL (1999-2000) 1 GLR 409 AT 424 where it was held that:

"The general principle has been that no person is a competent witness unless he is a practicing lawyer in the particular legal system in question, or unless he occupies a position or follows a calling in which he must necessarily acquire a practical working knowledge of the foreign law."

It is required that a foreign law must be proved afresh any time it is pleaded since the foreign law may have changed and it is proven on a case by case basis.

In the case of AMA SERWAA V GARIBA HASHIMU AND ANO., CIVIL APPEAL NO. J4/31/2020 DELIVERED ON 14TH APRIL, 2021 per Kulendi JSC the court held among others as follows:

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"Foreign law, is a question of fact and ought to be pleaded and proven at the trial stage. The method of proving foreign law, is by offering expert witnesses. Merely presenting a lawyer with the text of a foreign law will not be sufficient."

Thus, a foreign law can only be proven by calling an expert witness. Even though the court is not bound to accept the opinion of an expert witness, as it is of best persuasive influence, it is to assist the court to arrive at a conclusion after examining the entire evidence.

See FENUKU V JOHN TEYE (2001-2002) SCGLR 985 PER AMPIAH JSC, TETTEH & ANOTHER v HAYFORD (SUBSTITUTED BY) LARBI AND DECKER [2012] 1 SCGLR 417.

[86] The decided cases provide the *ratio decidendi* in determining foreign law and this is in line with **section 1 (2) of the Evidence Act**. The precedent adumbrates that it is the court that determines the weight to be accorded to the evidence of the expert witness. It is for this reason that the court has to give reasons for rejecting expert evidence.

[87] In this case, the Plaintiff did not satisfy the requirement of the rule insofar as proof of foreign law is concerned by calling an expert witness to give evidence on the foreign law in issue. What constitute marriage under the civil law of German law was not proven by the Plaintiff. In

that case, the court is to presume that the German law is the same as Ghana law.

Under Section 40 of the Evidence Act, it says:

Section 40—Foreign Law.

"The law of a foreign state is presumed to be the same as the law of Ghana."

Hence, the court can only presume that the civil marriage in Ghana is the same as a civil marriage in Germany. In Ghana, the marriage under the ordinance is one likely to be presumed to be the same as the civil marriage in Germany. This is a presumption and it can be rebutted. In proving this rebuttable presumption of a civil marriage between the Plaintiff and the late Daddy Lumba the Plaintiff in paragraph 7 of her evidence-in-chief states that "attached is a copy of the notarized and certified German Marriage Certificate between the Plaintiff and her deceased husband."

[88] The tendering of this marriage certificate was objected to by the learned counsel for the Defendants. This objection had been raised during the hearing of the application of the interlocutory injunction on the 28th of October 2025. The court rejected the document and advised counsel for the Plaintiff to ensure that they complied with the

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requirements under the Evidence Act. It is therefore a surprise that the Plaintiff did not comply with the requirements nearly a month later.

[89] Section 6 of the Evidence Act says that in any action, any objection to the admissibility of evidence by a party affected thereby shall be made at the time the evidence is offered.

See ARYEH & KAKPO V AYAA IDDRISU [2010] SCGLR 891

It must be stated that the court is duty bound to consider and evaluate any document if it indeed is inadmissible and to reject same if the court find it as such.

[90] Upon a look at Exhibit B and B1 being the purported marriage certificate and its translated copy and also the purported original that was brought before the court by Counsel for the Plaintiff for the court to compare after the Plaintiff had closed her case, the court agrees with counsel for the Defendants that the purported marriage certificate as submitted has no probative value.

Here, the purported marriage certificate is a foreign document bearing a foreign official signature. Section 161 of the Evidence Act provides that:

Section 161—Foreign Official Signatures.

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(1) A signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his official capacity, of an official of an international public entity or a State or a public entity in a State recognized by Ghana and the writing to which the signature is affixed is accompanied by a certification of the genuineness of the signature and official position of the person who executed the writing.

(2) Such certification must be signed and sealed by a diplomatic agent of Ghana or of a Commonwealth country who is assigned or accredited to that country.

(3) If reasonable opportunity has been given to all parties to investigate the authenticity of a foreign official signature, the court may, for good cause shown, order that it be treated as presumptively authentic without a certification.

[91] These required provisions were not adhered to by the Plaintiff. At page 18 of the written address by the Plaintiff not only did counsel admit that same was not done but with the explanation that there are practical hardship in meeting the statutory demands of section 161 (2) of the Evidence Act. And yet, in the answer to interrogatories, the first question was answered to show that an authentic version of the marriage certificate certified by the consular Ghana mission in Germany was attached which was not the case. This interrogatory was answered

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by Richard Opare Darko (i.e. clerk of the Plaintiff's solicitors) who is not fit to do so since he is not the lawful attorney of the Plaintiff. There is on record a lawful attorney and yet the said Richard Opare Darko went ahead and answered on oath the interrogatories of matters he had no personal knowledge of. Supplying untruth answers as clearly the attached document is not authentically certified document was rather unfortunate and the law clerks should desist from such unlawful acts.

[92] I must state that there is a distinction between the legal burden of proof and evidential burden of proof. When it comes to the legal burden of proof, anyone who makes an assertion bore that burden to prove those assertions but when it comes to the evidential burden of proof it is a tactical onus. Here, a party is to produce evidence in support of an assertion to contradict or weaken the evidence that has been led by the opponent.

See AKUFFO-ADDO, BAWUMIA & OBETSEBI LAMPTEY V. MAHAMA & ELECTORAL COMMISSION (NO.4) (2013) SCGLR)SPECIAL EDITION)
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[93] Let me state that the Plaintiff should have attempted to certify the German marriage certificate and by that she could have tendered in evidence such attempt being a letter written to the Ghana embassy requesting for the certification.

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[94] Besides the lack of certification or authentication, counsel was to bring the original certificate for the court to sight and compare since the court was informed that there was an original certificate. However, what was brought to the court was an extract from a family book or diary which Counsel for the Plaintiff admitted to in open court. The document therefore could not be the original and its copy being Exhibit B. Therefore, the extract cannot be proof of a civil marriage between the Plaintiff and the late Daddy Lumba. The extract is significantly different from the document purportedly tendered in evidence as the marriage certificate.

[95] Also, Counsel for D2 in his written address challenged the extract brought in as the original certificate in detail. The court is convinced that the family book cannot be the original as it rightly says it is an extract on the face of the document. Counsel for D2 relied on Hussey v Edah (1992-93) 4GBR 1707-1722 to the effect that all foreign documents are to meet the requirement of certification by the issuing country or attestation by the issuing officer and that the Ghana mission in that foreign country ought to attest to the validity of the document.

[96] The court agrees with the Defendants' counsel on this issue. This is because **section 136 of the Evidence Act** provides that:

Section 136—Authentication.

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(1) Where the relevancy of evidence depends upon its authenticity or identity, so that authentication or identification is required as a condition precedent to admission, that requirement is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims.

(2) Permissible means of authentication or identification include but are not limited to, those provided in sections 137 to 161.

[97] Here the purported extract from the marriage registry is a foreign document bearing a foreign signature. The Evidence Act specifically provides the condition precedent for its admission by providing the means under section 161. This means that when it comes to foreign signatures they can only be admitted in evidence where those conditions are met as held in the case Hussey v Ebah supra at 1722.

[98] Hence, Exhibit B must bear the authentication and certification of the marriage registrar of the civil office of Bornheim marriage registry. After that the law mandates the person to take the certification to Ghana embassy in Germany and seek another certification from the head of consulate of the Ghana embassy before the court can consider it. Without it the court cannot consider it as there is nothing before the court.

[99] The Plaintiff's witness, Ernestina Fosuh under paragraph 8 of her evidence-in-chief averred that she was present when the Plaintiff and

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the deceased married under the German Civil law. During cross examination, she answered that she was there when the late Daddy Lumba and the Plaintiff signed the marriage certificate. She acerbated that:

Q. Did you see the Plaintiff and Daddy Lumba sign the marriage certificate?

A. I was there.

Q. Per paragraph 8 of your own witness statement, you claimed the only person who witnessed the marriage was Georgina and not you.

A. Daddy Lumba my brother took me and one lady called Georgina to Germany on the same day so we were living with them in Germany.

Q. You agree with me that your brother and the Plaintiff signed the marriage certificate.

A. Oncè they are married they will sign a marriage certificate.

[100] The answers provided by PW1 are clear that a marriage certificate must have the signatures of the couples and if not the more reason an expert witness should have been brought by the Plaintiff to speak to the prominent features of a valid marriage certificate from Germany. Then a look at Exhibit 0 series is supposed to be Daddy Lumba and the Plaintiff signing a document.

If the evidence is true, then a marriage certificate bearing the signatures of the parties should have been submitted or tendered in evidence. In

the alternative the absence of such signatures on the marriage certificate from Germany should have been affirmed by an expert witness.

[101] Ghana marriage certificate has the signatures of the couples and signatures of their witnesses. If the court is presuming German law to be the same as Ghana law then same should be seen unless rebutted which was not done in the instant case. In that respect, the marriage certificate should have the signatures of the parties contracting the marriage. However, there are no signatures for the Plaintiff or the deceased on exhibit B as presented. Hence, what is presented to the court cannot be the marriage certificate. It has already been said that what was presented is an extract or a record of registry in Germany, without any explanation. It is the more reason that the document should have been authenticated and the signature identified and certified as required by NRCD 323.

[102] The same document is seen attached to Exhibit C being the letter allegedly written from the German Embassy. The last paragraph of Exhibit C says that: *"Attached you find a copy of the said marriage certificate for your perusal."*

The document attached to Exhibit C is supposed to be the same document as Exhibit B but it has a different signature and date. The document is signed by Geis Standesbeamter dated 23/10/2025.

Then Exhibit B, supposedly the marriage certificate has the signature of one Berchem, Standesbeamtin dated 12/08/2025. The two documents look similar with similar information but there is no explanation as to why each has a different signature and date. The court has not been given any explanation as to what exactly Exhibit B is since what was brought as the original was said to be an extract. And even if it is the marriage certificate, same cannot be relied on by the court as they were not authenticated or identified and certified contrary to **Sections 136 and 161 of the Evidence Act.**

[103] Also Exhibit C emanating from a foreign embassy has to undergo authentication and certification or the person who executed it should have been called to testify. I must state that it would be a herculean task to bring any foreign consular officer to the jurisdiction of any court in Ghana due to sovereignty issues.

But the fact still remains that the document was not certified or identified as prescribed by law. It must be noted that even though the German Embassy is physically located in Ghana, it is not on Ghana's territory or jurisdiction due to sovereign and diplomatic immunity. With that in mind any document from the Embassy should be taken to be from a foreign state or sub-division of a foreign state as provided under section 161 of the Evidence Act.

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[104] The proof of a civil marriage requires documentary prove in the form of a marriage certificate, marriage license together with other executed documents by the parties and videos of the ceremony and cannot be proved by conduct as it is in the case of customary marriages. The Plaintiff did not tender in evidence any video aside the purported marriage certificate. Even Exhibit O series was tendered in evidence through DW1 after the Plaintiff had closed her case and so the Defendants could not cross examined the Plaintiff's witness on same. Exhibit O series are photographs purporting to be that of the Plaintiff and the deceased signing a document.

Without the marriage certificate and or a video the court cannot prove the civil marriage on a photograph alone especially in the era of photo shoots and Artificial Intelligence, the court is cautious in accepting photographs alone without further credible corroborating documentary evidence where prove of a fact demands a strict documentary proof.

[105] Thus the court finds as a fact that the Plaintiff could not prove her marriage which she alleged was contracted under German Law since proving a foreign law is a matter of fact. She also could not satisfy the presumption that she contracted that marriage by providing an authentic, identified, certified copy of the marriage certificate.

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[106] Consequentially, for the contradictions, lack of authentication or identification, and lack of certification Exhibit B, B1, and C are hereby rejected as they have no probative value and would not be considered for purposes of proving any civil marriage between the Plaintiff and the deceased.

[107] This court has the right not to accord to the said Exhibits any probative weight. The law is settled that if inadmissible evidence has been received with or without objection, it is the duty of the trial judge to reject same when giving his judgment or ruling and to determine the weight to be accorded such documents when giving his judgment. And if it is not rejected by the trial court, it will be rejected on appeal. This is because it is the duty of the court to arrive at their decision upon legal evidence only especially so where all the counsels for the Defendants objected to them. See: FRIMPONG & ANOR V ROME [2013] 58 GMJ 131 CA

JUXON-SMITH V KLM DUTCH AIRLINES [2005-2006] SCGLR 438
THOMPSON V TOTAL GHANA [2011] 34 GMJ 16 SC.

[108] On the strength of the above authorities, I will exclude exhibits B, B1 and C as they are not of probative value. I have considered **Section 5 and 161(3) of the Evidence Act** in rejecting the exhibits. In the case of WEST AFRICAN ENTERPRISE LTD V WESTERN HARDWOOD ENTERPRISE

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LIMITED [1995-96] 1 GLR 155, the Court held that when in a trial any exhibit is found to be ineffective and invalidly or inadmissible, the court ought to consider further whether apart from the inadmissible exhibit, there is no other admissible evidence and materials on the record to sustain the party's claim, the court is duty bound to consider those other matters.

[109] The inadmissibility or invalidity of an exhibit does not mean the automatic failure of the party's claim, unless from the pleadings and the evidence, those claims cannot be sustained on any other ground.

See also, ANTIE & ADJUWUAH V OGBO [2005-2006] SCGLR 494

[110] I will therefore consider the remaining exhibits and the evidence Plaintiff's witnesses. The Plaintiff tendered in evidence Exhibit D and D1 being pictures of the customary marriage between the Plaintiff and the deceased. These pictures were not objected to and they were admitted in evidence. Both the Plaintiff's attorney and witness testified that the Plaintiff was married to Daddy Lumba customarily in 1991 and led evidence on same before they returned to Germany.

[111] At paragraph 24 and 26 of the evidence-in-chief of the Plaintiff's attorney, Exhibit G series was tendered in evidence a video of the deceased at his 60th birthday at Bay view village where the deceased referred to the Plaintiff as his wife he used money to pay her head drink. This video rather supports the case that Daddy Lumba married the Plaintiff customarily and

not otherwise and this is more consistent with the admitted evidence on record.

[112] This evidence was not disputed by the Defendants and thus the court accepts it as a fact that the Plaintiff was married to Daddy Lumba customarily in Ghana. As earlier mentioned customary marriage is potentially polygamous and there is no limit to how many wives a man can marry.

[113] I then move on to the crux of the issue whether the Plaintiff is the only surviving spouse. The 2nd defendant counterclaimed that she was validly married under customary law to Daddy Lumba in his life time and that she is a surviving spouse of Daddy Lumba. As indicated earlier, she also bears the burden of producing credible cogent evidence to prove her assertion as a Plaintiff in the counterclaim that the deceased married her customarily.

[114] D2's witness testified that she was married to Daddy Lumba customarily in 2010. D2 did not testify in person but under interrogatories she answered under oath that she was married to Daddy Lumba and gave a list of the relatives of the deceased. Her witness testified that he got to know D2 and the deceased sometime in 2006 about nineteen years ago. He said D2 and the deceased dated for four years before they got married sometime in April 2010. The only witness testified that he was present at the customary marriage of the Deceased and D2.

[115] DW1 tendered in evidence four videos and photographs. Exhibit JB1 to JB5 shows a video of the deceased referring to D2 as his wife, expressing his

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love towards D2 for being caring towards him and his children. Another video of the deceased referring to D2's mother as his mother -in-law and saying he has two mother-in-laws since D2's mother and grandmother are both alive.

[116] All the exhibits were admitted in evidence without any objections and they were not contradicted by the Plaintiff under cross examination. DW1 gave the date of the marriage ceremony, where it was held, mentioned some names of the people who attended including the then head of family of the deceased and a representative of the deceased late mother. He said more than a year after the customary marriage D2 gave birth to the first child in December 2011. This piece of evidence is corroborated by the certified copy of the passport bio page of the child.

[117] He gave a vivid account from what happened and the court has nothing to consider otherwise. I must state that the evidence of DW1, the witness for D2 was credible, coherent, and consistent. His evidence was not contradicted and he provided credible answers to the court. The evidence of a single witness if credible and reliable is sufficient to prove an issue in dispute. After all, witnesses are weighted and not counted. Therefore, a party does not prove his case by multiplicity of witnesses called but by the quality or credible or reliable evidence led at the trial by himself or by his witness.

See: GHANA PORTS AND HARBOURS AUTHORITY & CAPTAIN ZIEM V NOVA COMPLEX [2007-2008] SCGLR 806

MUZAMA DISCO CHRISTO CHURCH V JEHU APPIAH [2010] 27 MLRG

56 CA.

[118] Furthermore, paragraph 18 of the evidence-in-chief of D1 states that for the last fifteen years of the deceased last days on earth, he was married to D2 and lived with her. He continued that in all his public appearances during those times including meeting Presidents and chiefs the deceased showcased D2 as his legally married wife. This evidence was not challenged by the Plaintiff. DW1 attached pictures Exhibit D1 and a video of some of the public appearance of the deceased and D2. In most of the pictures, they are dressed in similar colors with the deceased holding her hands or waist and some with dignitaries like the former IGP. Pictures of D2's children with the children of the Plaintiff are also in evidence.

[119] PW1, the elder sister of the deceased under cross examination though she denied the fact that D2 was married to the deceased, she admitted that D2 is her in-law as she is caught on tape, Exhibit JB2 series referring to her as her sweet sister-in-law, loving sister-in-law, among others.

[120] It is noted that customary law marriage can even be accepted through the conduct of the parties or through long cohabitation and it does not require documentary proof as marriages under the ordinance do. When PW1 was asked whether her own family has recognized the Plaintiff as their surviving spouse by giving her up-keep money, she said she does not know. She also

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does not know whether her family has notified the family of the Plaintiff of the death of DL with a drink as custom demands. She expressed surprise when she was asked whether she knows the Plaintiff is in court because she wants to be the only surviving widow of the deceased. The answers went like this:

Q. So as you sit here do you know what the Plaintiff wants the court to do for her?

A. Yes I know.

Q. So you know she wants the court to order that she is the only surviving spouse.

A. I don't know.

[121] It is very surprising that PW1 who admitted visiting the deceased and D2 right from the birth of their first child and even the third child is named after her can testify in court to deny D2 as her sister-in-law. From her own answers under cross examination she has been very active in the lives of the deceased and D2.

She confirmed D2 used to call her frequently and according to her the deceased tasked her to get a place for D2 and his last child to stay in Germany for the child's passport acquisition. But for the audios that she sent to D2

which are now in evidence, PW1 would have succeeded in denying that D2 was married to the deceased and that she was her sister-in-law.

[122] Counsel for the Plaintiff in his written address raised an issue about the venue of the customary marriage of D2 and the deceased as it took place in the house of the deceased. I have noted some marriages are contracted at event centres, hotels, parks, and thus meeting at the deceased house for the customary marriage cannot make the ceremony invalid as the most important thing is for the families of both parties to meet and head drink accepted as stated by PW2 and I see no reason to reject his assessment.

Counsel for the Plaintiff also raised a question on a photograph Exhibit CKF2 tendered in evidence by D1 indicating a picture of the deceased and D2 which says it is a picture taken after the deceased had an interview after their customary marriage.

I have already indicated that the evidence of D1 was not given much weight as he had little knowledge of the life of the deceased. I therefore find as a fact that D2 was customarily married to the deceased before his demise and also find as a fact that they got married in 2010. Having so determined, upon the balance of probabilities the Plaintiff cannot be said to be the only surviving spouse of the late Daddy Lumba.

[123] I must state that even if they had not contracted their customary marriage in 2010, per the Ashanti custom and as confirmed by the PW2, the expert witness on customary laws of Ashanti, D2 had become a wife of the

deceased. This is because, there are varied ways a customary marriage can be contracted and it goes beyond celebration. The witness gave many instances under cross examination where a relationship between a man and a woman can be deemed as customary marriage and I accept his evidence.

[124] One of such is when an elderly man enters into an amorous relationship with a young woman and if it is noticed, the family of a woman will sit with the man and if he accepts to live with the woman as his wife, the parties become a man and a wife. Or when a man impregnates a woman, accepts the pregnancy, names the child, and continues to live with her as husband and wife to the knowledge of all then by their practice, they are deemed as husband and wife.

[125] Thus, under customary law even though there are prescribed customs and traditions regarding marriages, there are times some people depart from those prescribed ways and yet it is accepted by the family as a valid marriage as confirmed by PW2, the expert witness. Flowing from the above, the first, fifth, sixth, seventh, and eleventh issues are all determined.

[126] I then move to the other leg of the second issue which is whether the Plaintiff is the only person entitled to perform the widowhood rite as it has already being determined that the Plaintiff is not the only surviving spouse.

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Widowhood rite

[127] Widowhood rite is incidental to custom and cultural practice of the deceased family. Upon the death of a spouse, "*till death do us part*," the body of the deceased returns to its roots, the family. In the case of Daddy Lumba, he is an Ashanti so his mortal remains belong to his matrilineal Royal Family of Parkoso and Nsuta.

[128] The performance of widowhood rite is not an entitlement as it is not incidental to being married to the deceased. It cannot also be used to disinherit a surviving spouse as that cultural injustice has been taken care of under the **Intestate Succession Act, 1985 (PNDCL 111)**. Widowhood is thereby a rite and who has to perform that rite is determined by custom and in this case the matrilineal family of the deceased through the head of family in consultation with the elderly women in the family.

[129] PW2 testified that in Ashanti custom, funeral is believed to be both spiritual and physical and if there is a wife or wives, she or they have to perform the widowhood rite. It is the women who were customarily married to the deceased who perform the rites so the applicable law is customary law. Under cross examination PW2 answered among others the following:

Q. Is there any grounds that a wife can be refused to perform widowhood rites (kuna) by the deceased family?

A. When the family realise that the marriage was at the verge of breaking down and their relation was not well treated by the wife they can refuse the

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wife from performing the widowhood rite. At times it is successful and at times, the wife goes to apologise and there are negotiations and so the wife may be allowed to perform the widowhood rites.

[130] From the answers given by the witness of the Plaintiff, much depends on the family of the deceased as to who can perform the widowhood rites. They decide based on how the spouse treated their deceased relative.

[131] Thus, it is the family of the deceased who has to recognise a spouse as a widow of the deceased. If the family refuses to accept the widow's items for the last bath of the deceased or the burial items that person cannot continue to perform the widowhood rite. It is thus pertinent for a spouse to respect and live peacefully with the family of the deceased's husband and attempt to settle all disputes with them amicably if she intends to perform the widowhood rite.

Divorce

[132] The combined understanding of reading "THE LAW OF FAMILY RELATIONS IN GHANA" in which learned author, W.C. Ekow Daniels at page 319 summarized JB Danquah's extra-judicial divorce procedure and William E. Offei's book, Family Law in Ghana, Fourth Edition, Page 172 Writing under the topic, 'Dissolution of Customary Marriages' together with the evidence of PW2 is that:

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- Dissolution of Akan customary marriage cannot be done without the meeting of the family of both parties.
- There should be a complaint made by the aggrieved spouse.
- The parties are heard in accordance with the rules of natural justice and each party is given the opportunity of stating his or her case and to answer questions posed.
- After the hearing, a serious attempt is made to reconcile the parties. It is only where reconciliation fails that the woman is expected to return the head drink.
- Then properties are shared and or compensation is paid especially in cases of adultery.
- The head of family of the man will then make a pronouncement that the marriage is dissolved by releasing the woman to her family.
- There are times the meeting will not end with the dissolution but the parties are given some time to reconcile but where especially the woman after various attempts thinks she still wants the marriage to be terminated will return the head drink to the man and his family without another meeting being convened.

[133] On the other hand, in Ghana the Matrimonial Causes Act 1971, Act 367, governs the law on dissolution of monogamous marriages. Petitions for divorce under the Act are not open to all persons. Under Section 31 of the

Act, "The court shall have jurisdiction in any proceedings under this Act where either party to the marriage-

- is a citizen of Ghana; or
- is domiciled in Ghana; or
- has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings."

[134] A party has to prove to the court that the marriage has broken down beyond reconciliation. This is the sole ground for divorce. That notwithstanding this sole ground must be evidenced by proof of one of the following:

1. Adultery (JOHN V JOHN & ANOTHER [1973] 2 GLR 434)
2. Unreasonable Behavior (ADJEI V ADJEI (1969) CC 103)
3. Desertion (ARKU V ARKU & ABRAHAM [1965] GLR 269)
4. Separation with consent for two (2) years (ANTWI V ANTWI [1962] 1 GLR 321)
5. Five years of Separation -without consent (KOTEI V KOTEI [1974] 2 GLR 172)
6. Parties are unable to reconcile their difference despite diligent efforts (ANSAH V ANSAH GLR 1127)

[135] Although the Court may find one or more of the facts required to be established for the dissolution of the marriage, the Court shall not grant a

petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation. See DANQUAH V DANQUAH [1978] GLR 371.

Here, there is no evidence on record to show that the late Daddy Lumba went through customary divorce proceedings with the Plaintiff and thus the letter alone indicating a return of the head drink to the deceased cannot be relied on to conclude as such.

[136] The next issue is whether or not Plaintiff not living with Daddy Lumba for seventeen years constituted abandonment. From the Plaintiff's attorney and witness, PW1 the deceased relocated to Ghana in 2013. This is what the lawful attorney said:

Q. When did the deceased husband relocate to Ghana?

A. 2013.

Q. On records the deceased Daddy Lumba permanently relocated to Ghana somewhere in 2007 or 2008 are you aware?

A. The last time I saw him in Germany was in 2014 but permanently in 2017.

Then later after she had denied already given answers

Q. But you will agree with me that some point the deceased relocated to Ghana.

A. I do not know what year.

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Q. Can you confirm if at any point the Plaintiff ever relocated to Ghana from Germany?

A. No, she did not.

[137] The Attorney could not answer most questions averred in her own evidence-in-chief. She had earlier mentioned the Plaintiff could not relocate with the late Daddy Lumba because she had to remain to pay the mortgage, take care of the children as they were young and also pay for loan they had contracted. Yet under cross examination she could not give any detail on any of the reasons by saying I do not recall or denying outright. She gave evasive answers and contradicted her own evidence. She did not know anything about the alleged loan contracted not the amount, date, bank and who contracted it. Even PW1 also denied under cross examination that there was a mortgage to be paid even though that assertion is stated under paragraph 20 of her evidence-in-chief.

[138] When the attorney was asked;

Q. Can you confirm if the Plaintiff performed any wifely/marital duties to the deceased when he was in Ghana?

A. She was in Germany and the deceased was in Ghana.

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Q. Whilst Charles was in Ghana the Plaintiff was in charge of the properties and businesses in Germany.

A. I believe so.

[139] These answers confirm that the Plaintiff did not relocate with the late Daddy Lumba. Meanwhile, it is clear from the evidence on record that he left Germany for Ghana for medical attention. Even though the attorney mentioned 2013, same cannot be correct because her own evidence at paragraph 19 she says that the Plaintiff visited the deceased in 2011, 2012, 2014 and 2018. If the deceased relocated to Ghana in 2013, then the Plaintiff could not have visited him in 2011 and 2012 because he was not in Ghana.

In any case, these dates mentioned are disputed as D2 was at that time married and living with the deceased at Tantra Hills before they moved to East Legon in 2016 from the records. These facts are confirmed by PW1 that D2 was living with the deceased at Tantra Hills from 2010 to 2016.

[140] Meanwhile, paragraph 8 of the statement of claim of the Plaintiff mentioned that they have three children with ages 31, 24, and 20 years and same is repeated under paragraph 13 of the evidence-in-chief of the Plaintiff's attorney. From their evidence the last child is 20 years now so if per her evidence under paragraph 21 that the Plaintiff was nursing the last child, then it means the deceased relocated to Ghana sometime in 2005 or 2006 and not

2013 as the last born was twelve (12) and definitely not been nursed or breastfed at age twelve.

[141] It followed that from the Plaintiff's own account the deceased had been in Ghana for about nineteen years which is consistent with DW1's evidence that he met the deceased with D2 in 2006 and that they dated for four years before marrying in 2010.

[142] Thus, the court can safely infer that the late Daddy Lumba relocated to Ghana sometime in 2006 about nineteen years ago. And from all account the deceased and the Plaintiff decided to stay their separate ways.

[143] This evidence is corroborated by PW1 that D2 had three of her children at Tantra Hills before she moved with the deceased to East Legon. From the records, the first child of D2 was born in 2011. Therefore, it cannot be correct that the Plaintiff visited the deceased in 2011, 2012 and 2014.

And even if she did, then she did not stay at Tantra Hills as D2 and the deceased were staying there. What is mentioned and not disputed though is that the Plaintiff visited Ghana in 2018 for her mother's funeral. This account is not disputed by any of the parties and even that she was at Tantra Hills whilst the deceased stayed with D2 at East Legon as confirmed by PW1 under cross examination.

[144] Whether nineteen, seventeen or fifteen years it can be said that these years are more than enough to confirm that the deceased and the Plaintiff had decided to stay apart. It is not disputed that the deceased had surgery in 2013

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at Focos and yet the Plaintiff did not visit him. From D1's Exhibit DL9 – video, it is a continuation of the Plaintiff's Exhibit G where the deceased mentioned that he was bedridden for more than five years and expressed his gratitude to D2 for taking good care of him during his illness.

[145] DW1 also confirmed that the deceased was in a wheel chair when he visited in 2013 after the surgery. From the video where the deceased himself said he was bedridden for more than five years means that the deceased could not have visited Germany in 2014 as stated by the attorney of the Plaintiff. One thing is clear though that the Plaintiff's children visited the deceased and D2 in their home during summer vacation and there are photographs to corroborate these averments. Aside the photographs none of the parties disputed the assertions that the children visited the deceased and lived with him and D2.

[146] So the question is did the Plaintiff divorce the late Daddy Lumba in his life time? From the evidence on record the court will answer this question in the negative, though according to Exhibit DL1 a letter written to the deceased from the lawyers of the Plaintiff, she gave a ten days ultimatum to proceed to German court for divorce.

[147] The letter is addressed to the deceased and the Plaintiff is copied. This letter is mentioned by the Plaintiff in her reply to D1 at paragraph 9, 11, 17 and yet the lawful attorney purported to deny she instructed her lawyers to

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write to him and labeled it fictitious. The Plaintiff's reply to D1 was in direct reference to the Exhibit DL1 the letter.

[148] The Plaintiff mentioned in paragraph 7 of her reply to D1 that she reluctantly agreed for the deceased to return to Ghana but he wanted to explore other alternative medication in Ghana. In paragraph 6 of the same reply she mentioned that she was taking care of the deceased whilst he was in Germany before he decided to relocate to Ghana for alternative care.

[149] It is on record as admitted by the lawful attorney of the Plaintiff that the deceased had properties and businesses in Germany and it was the Plaintiff who took over those businesses. And from all indications the deceased planned his relocation to Ghana. And he would not have left when he knew of a financial burden without making the necessary provisions.

[150] Due to the fact that the late Daddy Lumba is not around to answer to any of the allegation even though from all indications and from Exhibit DL11, the deceased denied all the allegations as contained in Exhibit DL1, the court is cautious in admitting any evidence where the late Daddy Lumba is not present to answer especially so where the Plaintiff waited for his demise before raising them.

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[151] In AMANKWAH & ORS VRS NSIAH [1994-95] GBR PT2 p.758, this court stated inter alia as follows:

"2. The law was well established that a claim against a dead person should be viewed with utmost suspicion and examined critically. Such a claim must not be taken on its face;

All test for credibility ought to be applied. The claimant ought to explain the omission to make the claim while the deceased was alive. Without some explanation the claim should be considered as false."

[152] The law is settled, that when an attempt is made to charge a dead person in a matter, in which if he was alive, he might have answered the charge, the evidence ought to be looked at with great care. The evidence ought to be thoroughly scrutinized, and the judge must view it with suspicion. The proof of such assertion against a deceased must be strict and utterly convincing since the person is dead and cannot respond.

See: MARGARET OSEI ASSIBEY V JOYCE GBOMITTAH&2 ORS [2012] 47 GMJ 61 SC, FOSUA & ADU-POKU V DUFIE (DECEASED) &ADU-POKU MENSAH [2009] SCGLR 310, IN RE KRAH (DECEASED); YANKYERAAH& ORS V OSEI TUTU &ANOTHER [1989-1990] 1 GLR 638 SC.

[153] Thus it is clear from the records that the Plaintiff and the deceased did not share matrimonial home when the deceased relocated to Ghana but rather

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the deceased lived with D2 in the deceased house at Tantra Hill before they moved to East Legon.

[154] Paragraphs 8 to 10 of the evidence-in-chief of D1 mentioned that the Plaintiff presented a drink to the Ekuona family for the dissolution of her marriage to the late Daddy Lumba. He also said that the then head of family with the consent of the late Daddy Lumba accepted the dissolution drinks and all rituals for the dissolution of marriage were performed and both families acknowledged the marriage as dissolved. He supported his evidence with Exhibit DL1 being a copy of a letter from the Plaintiff's lawyers Mercer & Company dated 04/02/2018 and signed by Benjamin Ampoma-Boaten Esq.

[155] D1 under cross examination admitted that he was not present when the head drink or dissolution drink was presented to the family. He also did not hear about it that is why he thought the Plaintiff was still married to the late Daddy Lumba. According to him he only knew of the Plaintiff and not D2 until after the demise of Daddy Lumba that he went to the house and met D2. He said it was at that time that he got to know D2 was married to the deceased and has had six children with him.

[156] I must state that since D1 was not around and did not know much about the happenings of the family members, he should have called another member who was present and could testify regarding the issues he had raised.

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[157] I have no doubt Exhibit DL1 emanated from the lawyers of the Plaintiff. As I have earlier mentioned the Plaintiff had already admitted same in her pleadings. But the content of that letter alone cannot be relied on to conclude that the Plaintiff returned her head drink to the family of the deceased. It is noted that in Ashanti custom dissolution of a marriage can be initiated by any of the parties to the marriage but the family members will have to meet and attempt reconciliation first. The meeting of the family members is very crucial and it is when reconciliation fails that the head drink can be returned to complete the dissolution.

[158] D1 was not present and he did not call any material witness to testify and corroborate the assertion that the dissolution drink was received from the Plaintiff or that the family member met to dissolve the marriage especially so where the Plaintiff has denied. Even though there are times the dissolution drink can be returned when the family had not met and it would be accepted as confirmed by PW2. This can only happen when the family is aware of the couples' irreconcilable differences. D1 was not aware of anything about the deceased and the Plaintiff and as such his evidence cannot be relied on by the court.

[159] I agree with counsel for the Plaintiff in his written address that intention to dissolve a marriage could not be equated to actual dissolution. At best Exhibit DL1 can be said to be the intention expressed by the Plaintiff as she had already admitted to in paragraph 9 to 11 in her reply to D1 that she

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was going through hard times and used the letter to draw the attention of the deceased.

[160] I have noted that the deceased in the video at Bay view village referred to the Plaintiff as his wife he has used money to marry. This can be taking to mean that the deceased acknowledged and accepted the Plaintiff a year before his death that she is his wife. At the same time he acknowledged D2 as his wife and showed appreciation to her. The court is of the opinion that the deceased intended peace to reign among his wives as he recognized and acknowledged both of them publicly before his death and his intentions must be respected.

In the instant case, the Plaintiff had contended that the late Daddy Lumba changed his domicile to become a German national. The assumption is that the late Daddy Lumba denounced his domicile to acquire his German nationality.

Domicile

[161] Domicile refers to someone's true, principal, and permanent home. That is the connecting factors that link one to the system of law which content constitute his or her personal law. It is the jurisdiction a person has a substantial connection with, or considers as his fixed or permanent home or in which he principally resides.

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In OMANE V. POKU [1972] 1 GLR 295 the court held inter alia that: An individual's domicile is determined by the *lex fori* – the law of the forum. The law distinguishes between domicile of origin and domicile of choice.

- At common law, a child acquires the domicile of his parents. Although the burden of proof is the normal civil standard of proof by the preponderance of probabilities, there must be strong evidence to support a claim that a person with a domicile of origin in Ghana has abandoned it in favour of a foreign domicile.
- Thus, it has been held that naturalization in a foreign country does not necessarily amount to abandoning one's domicile of origin in Ghana.

There are two types of domicile and they are; domicile of origin which is not lost until a domicile of choice is acquired.

- Indeed, domicile of origin is never extinguished. At common law, it remains in abeyance upon the advent of a domicile of choice and it is revived when the domicile of choice is abandoned. This is the doctrine of revival of domicile of origin, which demonstrates the importance placed by the common law on domicile as a connecting factor.
- A domicile of origin is distinguishable from a domicile of choice in some important respects.
- First, domicile of origin is received at birth by operation of law;

- A domicile of choice is acquired by an individual from the voluntary action of residence, plus an intention to remain permanently.

Thus, the personal law of a person is a reference to the system of customary law to which he is a subject. This is the tribe or ethnic origin of a person. There must be an intention of a person to live permanently in a new country to change their domicile. This is due to the fact that a person's domicile is one of the connecting factors that determines which court has jurisdiction over their marriage (Section 31 of the Matrimonial Causes Act), and it may affect how a deceased property is distributed and may have significant tax obligations.

ABU-JAUDEH V. ABU-JAUDEH [1972] 2 GLR 444; SEIDU MOSHIE V. AMADU MOSHIE, SUIT NO. LS 5074/88 (HIGH COURT, 2008).

SIMPSON V. SIMPSON [1960] GLR 105.

Richard Frimpong Oppong & Kissi Agyebeng: Conflict of Laws in Ghana (Sedco Publishing Limited, 2021).

[162] Flowing from the above, the last issue for determination is whether or not the late Charles Kwadwo Fosuh lost his domicile of origin and acquired his domicile of choice. This issue is very important as at common law, questions of personal status are generally determined under the law of a person's domicile. From the records, the deceased stayed in Germany and acquired German citizenship together with the Plaintiff. It is not in dispute

that the deceased relocated to Ghana and he has been in Ghana for almost two decades.

[163] He was born in Ghana, hailed from Ashanti, and had his lineage as an Ashanti royal. From the earlier discussion, the deceased Daddy Lumba became a German citizen but he never lost his domicile of origin. And even if his domicile of origin was deemed to have been held in abeyance when he moved to Germany, worked and lived there, he revived his domicile of origin when he relocated to Ghana, got married, had six children, worked and died in Ghana. Thus the court finds as a fact that the deceased was a Ghanaian domiciliary prior to his death and as such his habitual residence was Ghana. See: AMPONSAH V AMPONSAH (1997-1998) 1 GLR 43.

IV. DISPOSITION/HOLDING

[164] I have considered the entire evidence adduced by the Plaintiff and the Defendants, the exhibits, and the written addresses filed by learned counsel for the Plaintiff and the Defendants. And in the premises I refuse the Plaintiff's reliefs (a), (b), (c), and (d). I also refuse the relief (i) of the 2nd Defendant and rather grant reliefs (ii) and (iii) of the 2nd Defendant.

In the result, I hold that:

1. The Plaintiff was customarily married to the deceased Charles Kwadwo Fosuh aka Daddy Lumba in 1991 in Ghana.

2. The 2nd Defendant was customarily married to the deceased Charles Kwadwo Fosuh aka Daddy Lumba in 2010 in Ghana.
3. I declare that the Plaintiff and the 2nd Defendant are the surviving spouses of the deceased Charles Kwadwo Fosuh aka Daddy Lumba.

Consequential orders:

1. The Ekuona Family of Parkoso and Nsuta, Ashanti represented by the head of family Abusuapanin Kofi Owusu, the 1st Defendant is hereby ordered to recognize the Plaintiff – Akosua Serwaah Fosuh and the 2nd Defendant - Priscilla Ofori, to perform the widowhood rite during the burial and funeral of the late Charles Kwadwo Fosuh aka Daddy Lumba forthwith.
2. There is no impediment in the way of the 3rd Defendant in allowing the Ekuona Family of Parkoso and Nsuta represented by the head of family Abusuapanin Kofi Owusu access to the body of the late Charles Kwadwo Fosuh aka Daddy Lumba to perform his burial and funeral rites.

I make no orders as to costs.

SGD

H/L DR. DORINDA SMITH ARTHUR

JUSTICE OF THE HIGH COURT

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COUNSEL:

WILLIAM KUSI ESQ FOR PLAINTIFF WITH EVANS OPPONG ADOMA ESQ AND HENRY BENJAMIN ARTHUR BAIDOO ESQ.

DOMINIC KWADWO OSEI ESQ HOLDS BRIEF FOR FATI ALI YALLAH FOR THE 1ST DEFENDANT WITH AL-HASSAN HUDI ESQ.

A. K. OSEI-OWUSU ESQ WITH KWASI MENSAH NYARKO ESQ FOR 2ND DEFENDANT.

EBENEZER ADJEI BEDIAKO ESQ WITH EDWARD OMANE ESQ FOR 3RD DEFENDANT.

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