

# The impact of the pandemic on family justice in Ghana

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The Covid-19 pandemic quickly instilled feelings of bewilderment and all-consuming fear for what would lay ahead. Aside from the health of our people, the health of the economy within which we operate became of great concern. As a law firm leader, my concern extended to issues of cash management, liquidity and to my strategy in respect of avoiding the possibility of a business downturn.

Pursuant to the Imposition of Restrictions Act 2020 (Act 1012), on 30 of March, 2020 the country went into partial lockdown – this would impact the two major metropolitan and economic regions, including the capital city of Accra. The Act was passed by the Parliament of Ghana as emergency legislation to combat the spread of the novel coronavirus and in adherence to the World Health Organisation protocols. Practically, this meant a 21-day quarantine for all individuals, except those deemed to be essential service providers. Lawyers were not deemed essential and therefore, subjected to quarantine, whereas judges were permitted to attend court without restriction.

At B&P Associates, the decision was made to initiate work-from-home 1 week prior to the President announcing the partial lockdown, in response to the changing environment and for the health and safety of our staff. The firm invested in surplus electronic equipment and software to support virtual meetings with both staff and clients. Seeking to adapt to the new environment, we implemented routine morning and evening team huddles via Zoom to discuss work schedules. Our experience of remote working was productive and efficient, although it could not replace the advantages of an in-office environment and culture. In my opinion, impromptu catch ups, hallway banter and

meeting new clients in person cannot be replicated effectively from home. I was eager to return to some semblance of normalcy of office culture. Following the mandated 21-day quarantine, the firm eased a transition back to the office. On return, the impact of the virus on litigation was most pronounced given that we were required to attend court without clients and seek adjournments of cases which were not deemed critical as per directives from the Chief Justice of the Republic of Ghana.

There still exists residual concern about the virus, which has necessitated new protocols on cleanliness, sanitation and use of personal protective equipment, including updates to our health and safety and data-protection policies. Although our office is open and fully operational, we continue to encourage virtual meetings with clients when the circumstances allow. It is of comfort to know that the concept of remote working is no longer abstract but a realistic and tested contingent mechanism for working should the need arise again.

Overall, the pandemic has had minimal impact on our firm as a result of effective leadership and implementation of our updated business-continuity and crisis-management plan which takes into account such circumstances. On the ground, we have a safer and more efficient environment within which to work, we commute less (if at all) due to virtual meetings, and have benefited from the acceleration of digital and technological reinforcement and innovation for the workplace.

## **The future for international family law from a Ghanaian perspective**

The paramountcy principle of course holds true in international family law, as does the

importance of a child's voice in the midst of international processes and protocols. The focus on the adequacy of welfare investigations and assessments must remain, be it custody, international divorce, and adoption among other scenarios.

Moreover, Ghana has recently acceded to the 1993 Hague Convention on the Protection and Cooperation in respect of Intercountry Adoption, effectively incorporated within Ghana law in January 2017. In as much as all the relevant institutions are in place, the operational protocols are yet to be fully implemented. This is likely to be an important area of development in the coming years.

The Covid-19 crisis and the recent accession to the Intercountry Adoption Convention, provides a new impetus to seriously consider justice and fair hearings within the context of remote hearings and also, the potential challenges it presents to all stakeholders of the family justice system.

### Electronic working

The Covid-19 crisis presents an unprecedented challenge for the family justice system globally, in circumstances where core justice delivery is to be provided on a remote access basis. Ghana is no different and the question arises whether clients can properly participate in remote hearings concerning important decisions being made about their children and family life. For Ghana, remote hearings or the concept of them are a true novelty. This is against a very recent background of a system of electronic filing as a basis of digitising our court processes, which occurred in 2019.

The Covid-19 crisis has propelled our court system into the future, with remote hearings raising their own challenges. A Notice was sent to members of the Ghana Bar Association initiating pilot court hearings in some select courts from 24 of August 2020 (which coincides with the Ghanaian legal vacation period), to be held via Microsoft Teams. In accordance with the announcement, lawyers were requested to

communicate with and obtain opposing counsel's consent to avail themselves jointly of the virtual court facility. Within this context, the discretion lies with the lawyers on the relevant matter as to their willingness to proceed with the matter using the medium of virtual hearings. This approach begs a number of questions: are all matters suitable to proceed virtually? Who makes that decision; the lawyers or the lay client? What are the criteria for making such a determination? Will the lay client perceive justice to have been done?

The pandemic provides the much-needed platform to consider virtual hearings specifically related to the family justice system (both domestic and international) and in Ghana as a whole.

Whereas the practice of international family law was assumed unsuitable for remote hearings as a rule of thumb we must now fully recognise as practitioners in Ghana, that our system as we know it will not remain the same.

However, like any new initiative, it requires time and effort. Guidelines and protocols must be developed for a process of consultation to ensue. Judges and practitioners must come to terms with the new order and criteria of suitability of family cases developed for remote hearing.

Within the context of international family law, it is my assessment that the complete establishment of remote hearings is a long term endeavour. In the meantime, physical courts will remain open for all family matters. Social distancing protocols will subsist for the foreseeable future, but judges, lawyers and parties will attend court with some level of normalcy. On the other hand, remote hearings will increasingly be promoted and it will continue to be a matter for lawyers to jointly agree to engage in the process willingly.

Some clients will invariably attempt at settling family law disputes amicably, by customary arbitration or more formalised form of arbitration, mediation or negotiation to avoid the risk of being

subjected to virtual hearings or delays in court due to case backlog created as result of the pandemic.

Be that as it may, the new era is upon us and the family justice system cannot be

excluded. The implementation of a new order to the family justice system however needs to gradually evolve and be tested; and it must necessarily involve all stakeholders of the family justice system, for its successful implementation.