

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON FRIDAY THE 14TH DAY OF DECEMBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM FELICIA COFIE AND MR. WISDOM ATIASE AS PANEL MEMBERS.

SUIT NO. A6/192/22

SAMUEL TEYE LARBI AMANOR
AKUSE, EASTERN REGION

APPLICANT

VS.

CELESTINE ASUMAH
DOME PILLAR TWO, ACCRA
RESPONDENT

RULING

This is a Ruling on an Application filed on 21st December 2021 for the custody of the child in issue.

The Applicant's Case

The Applicant deposed in his Affidavit that he was in a relationship with the Respondent out of which they had a child who is now aged Five (5) years. He stated that he accepted responsibility of the pregnancy and subsequently maintained the Respondent till she gave birth. He added that after the birth of the child, he had to relocate at Akuse for an employment but was still contributing to the upkeep of the child. He further deposed that the Respondent and her family have refused to allow him name the child with the excuse that he marries the Respondent. He further stated that he went ahead to procure the child's Birth Certificate without naming the child and paid the child's school fees

directly to the school but was told by the school authorities that he is not the father of the child. He therefore prays the court for the following;

- a) That Custody of the child to be granted to him (Applicant).
- b) That Reasonable Access granted to the Respondent
- c) An order to compel the Respondent to allow him (Applicant) to name the child.
- d) Any other Order(s) as the Honorable court deems fit.

The Respondent's Case

The Respondent in her Affidavit in Opposition filed on the 31st of December 2021 confirmed the relationship with the Applicant and the birth of the child. She deposed that when she became pregnant, the Applicant had accepted responsibility for the pregnancy, but later absconded and failed to pay the ante-natal and post-natal expenses as well as the up keep of the new born baby except for a few cloths for the child and some cash when the baby was about a month old. She further deposed that when the child was about Six (6) months old, the Applicant made an attempt to get access to the child but was advised to perform the customary rites of the naming the child and also to commence regular maintenance of which he never complied. She is however opposed to granting custody of the child to the Applicant and prays reasonable access be granted to the Applicant only when the customary rites of the naming of the Child is performed. She further prayed for an order compelling the plaintiff to pay all antenatal expenses, hospital bills and maintenance of the child from 2016 and any other order(s) as the Honorable Court deem fit.

DETERMINATION

In view of the processes before the court, the issues were as follows;

1. Whether or not the court can order for the child to be named.
2. Whether or not the Applicant should be granted custody of the child in issue with reasonable access to the Respondent.

In making a determination on the issues before the court, the court is guided by Section 2 (1) of The Children's Act (1998) Act 560 states that '*...the best interest of the child shall be paramount in any matter concerning a child...*' and Section 2 (2) also provides that '*...the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child...*'. In arriving at a conclusion, the court was of the opinion that there is the need to independently investigate the claims of both parties and as such ordered for a Social Enquiry Report (SER).

The Social Enquiry Report

The SER as submitted by the Probation Officer, Madam Janet Dzata dated 20th of July 2022 made certain findings and conclusions including the fact that the child was born out of wedlock but the parties are not on cordial terms as well as the fact that the child has still not been named by the Applicant who is the child's biological father. The SER further indicated that both parties are gainfully employed and of sound mind to cater for the child for the child although the Respondent is currently a final year student of the University of Ghana. The SER again indicated that the parties are having issues at naming the child and the Probation Officer proposed that the court give them the opportunity to name the child. The Probation Officer further observed that the Respondent does not have enough time to cater for the child due to her busy work schedule and her education, but her mother assists her in caring for the child.

Analysis

The first issue for determination is **whether or not the court can order for the child to be named** but on the 18th of July 2022, the Applicant herein filed a Motion praying for an Order to Name the child in issue at the court premises. The Court on the 7th of September 2022 delivered a Ruling in favor of the Applicant and Ordered as follows;

- i. The Respondent and her family are to accept the amount of Ghc1, 500.00 paid by the Applicant as the final payment and fulfilment of all customary requirements for impregnating the Respondent and pave way for the naming of the child as custom demands on or before the 30th day of September, 2022. **In the Alternative or upon failing to organize the naming of the child by the 30th of September, 2022.** The Respondent is come along with the child and at least Two (2) members of her family for the child to be named within the premises of the court on any day between the 2nd day of October and 7th day of October, 2022 and the desired day is to be agreed to by both parties. The Court Connected Alternative Dispute Resolution (ADR) Office is hereby ordered to arranged and coordinate the naming of the child in issue.
- ii. The child shall with immediate effect be known and called **Barack Amanor** as evidenced in his Birth Certificate and the Applicant must take steps to rectify the errors in the said Birth Certificate.
- iii. The Respondent shall immediately introduce the Applicant as the biological father of the child to the authorities of the school the child is

currently attending and ensure that all records of the child in the school bear the name **Barack Amanor**.

- iv. The child's name on all other records and/or official documents must as soon as practicable be changed to reflect the names on the Birth Certificate.

Pursuant to the above, the parties informed the court on the 30th of November 2022 that the child has been named as custom demands and as such the issue of naming has been concluded with.

The next issue for determination is **whether or not the Applicant should be granted custody of the child in issue with reasonable access to the Respondent**.

In custody cases, there is no prima facie right to the custody of the child in either parent, but the court shall determine solely which parent is for the best interest of the child, and what will best promote its welfare and happiness. At common law, the father was generally entitled as a matter of right to custody of his minor children, but later the law generally gave the mother preference. Today, the law recognizes the child's best interest as the determinative factor and this is also referred to as the 'Welfare Principle' as posited by Act 560 stated supra. The Welfare Principle implies that the Court determines what would be best for the child despite both parents' good intentions and competing wishes and the word "welfare" which is said to be paramount or primary has been given various interpretations. In **Re McGrath (Infants)** [1893] 1 Ch 143 at 148, CA it was held that *the word "welfare" of the child must be considered "in its widest sense."* In **R v Gyngall** [1893] 2 QB 232 at 243, CA the Court of Appeal per Lord Esher MR stated further: *"The Court has to consider, therefore, the whole of the circumstances of*

the case, the position of the parent, the position of the child, the age of the child, . . . and the happiness of the child.”

Additionally, Section 2 (1) of the Children’s Act, 1998 (Act 560) states that ‘*the best interest of the child shall be paramount in any matter concerning a child*’ and Section 2 (2) also provides that ‘*the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child*’. The evidence on record shows that the child has been in the custody of the Respondent since birth and appears to have assimilated with the environment and established a pattern of life. The court opines that changing the status quo may not be in their best interest and it is likely to disrupt his schooling since the parties live at different geographical locations of Ghana, and in different regions for that matter. It was held in **Asem vs. Asem** [1968] GLR 1146 that “*the court was obliged by statute in deciding a question of custody to have regard to the welfare of the infant as its first and paramount consideration. The crucial question for decision in the instant case was therefore which of the parents was better suited to be entrusted with the upbringing of the child*”.

Again, **Section 45(1) of Act 560** states that ‘*...a Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access*’. The evidence on record shows that the child is Five (5) years old and it appears too young to be separated from his mother especially when the evidence shows that the child has always been in the custody of the mother and especially when **Section 45 (2)(e) of Act 560** also emphasizes on ‘*... the need for continuity in the care and control of the child...*’ and as such the court is reluctant to change the status quo as far as custody is concerned. In the case of **Opoku-Owusu vs. Opoku-Owusu** [1973] 2 GLR 349, Sarkodee J held that ‘*the Court’s duty is to protect the children irrespective of the wishes of the*

parents. In the normal course, the mother should have the care and control of very young children...'

Consequently, taking into account all the facts and weighing all the circumstances, the court will take a decision based on the best, primary and paramount interest as well as the welfare of the children in issue. The learned Judge, Azu Crabbe C.J., in the case of **Tackie vs. Baroudi** [1977] DLCA 1432 in granting custody expressed his reasons in the following passage of his judgment; *"In all the circumstances of this case, and bearing all the matters in mind [the children's] best interest will be served... where I have a comfortable feeling that they will be well cared for."* The learned judge then continued, *"Let me hasten to add that the court can always be resorted to when things change. One can readily understand the wisdom and good sense of this approach."*

DECISION:

Upon consideration of the Application, the evidence before the Court, the Social Enquiry Report and pursuant to the provisions of the Children's Act (1998) Act 560, the Court is satisfied in the best interest of the child orders as follows;

1. The Respondent shall have custody of the child and the Applicant shall have reasonable access during the child's school holidays. The Applicant shall pick the child up on the first weekend of vacation and shall return the child to the Respondent on the last weekend prior to the resumption of school.

2. The Applicant shall pay the maintenance sum of Five Hundred Ghana Cedis (Ghc500.00) monthly and same is be to paid via the Respondent's Mobile Money Account within the first week of every month with effect from January 2023.
3. The Applicant shall be responsible for the child's medical care and has the option of applying for his Employers' Medical Insurance to cover the child's medical expenses or in the alternative, the Respondent shall register the child under the National Health Insurance Scheme (NHIS) and the Applicant shall pay for all medical bills not covered by NHIS.
4. The Applicant shall pay off the arrears of maintenance in the sum of Two Thousand Four Hundred Ghana Cedis (Ghc2, 400.00) and same must be paid on or before the 31st of December 2022.
5. The parties are advised to ensure a cordial relationship and a healthy atmosphere between themselves in the best interest and welfare of the child.

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H/H HALIMAH EL-ALAWA ABDUL-BAASIT.
PRESIDING JUDGE

I AGREE

I AGREE

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MADAM FELICIA COFFIE
PANEL MEMBER

MR. WISDOM ATIASE
PANEL MEMBER