

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT
BUILDING- ACCRA HELD ON FRIDAY, THE 24TH DAY OF FEBRUARY, 2023.
BEFORE HER HONOUR MRS. MATILDA RIBIERO, CIRCUIT COURT JUDGE,
SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMINA
SACKEY AND MADAM GIFTY OKAI AS PANEL MEMBERS

SUIT NO...A6/266/23

FRANK BERKO

OF JAMESTOWN, ADEDENKPO

.....

APPLICANT

ACCRA

Versus

PHILOMINA TREBI

.....

RESPONDENT

OF JAMESTOWN, ADEDENKPO

ACCRA

Applicant: Present

Respondent: Present

No legal representation for both parties.

JUDGMENT

Applicant is the father of the about six (6) year old female child in issue (hereinafter referred to as 'the issue'). All he prays for per his Affidavit in Support of the Maintenance and Custody Application filed on the 16th day of December, 2022 are for:

1. An order awarding custody of the child herein to the Applicant.
2. Any other order(s) that this honourable Court may deem fit.

The mainstay of his case against the Applicant as contained in the affidavit in support of the application is that Applicant the mother of the child is incapable of ensuring the issue's best interest and welfare. According to him, Applicant is fond of dumping the issue on him for days without notice and also gallivants with the issue on school days causing the issue to miss school. The issue is therefore not consistent in school even though he pays all her educational expenses. He alleged that the Respondent threatened to poison the issue. Again, that Applicant once burnt the issue with a pressing iron. He further alleged that the Applicant maltreats the issue, a situation which causes him emotional distress and anxiety and greatly affects the issue's wellbeing. For which reason he wants custody of the issue to be awarded to him since he can better supervise the issue than Respondent and also, provide all her educational needs. Before coming to Court he said he had reported Respondent's conduct to her grandmother and the Domestic Violence and Victim's Support Unit (DOVVSU) but on both occasions, Respondent failed to abide by the consensus arrived at.

Though Respondent did not file a response to Applicant's application before the Court, she indicated during proceedings upon enquiry by the Court pursuant to **section 37 of the Children's Act 1998 (Act 560)** that Applicant gave the issue GHC10.00 daily for school instead of GHC18.00 and this usually generated quarrels between them. Also, that Applicant did not comply fully with the maintenance agreements reached. She said she relocated to Tetegu with the issue because Applicant liked to pick up quarrels with her. She prayed for custody to be granted to her because as the mother, she can better supervise the issue than Applicant. She also stated that Applicant can support with the maintenance the issue if he wants. If not, she will single handedly provide the needs of the issue. She denied maltreating the issue and threatening to poison her.

With this background, the parties were given the opportunity to settle the matter amicably by resort to the Court Connected Alternative Dispute Resolution (CC-ADR) but they could not agree so on the 27th day of January 2023, an order was made for a social enquiry report (SER) to assist the Court determine the matter in the best interest of the issue. This is because as held in the cases of **Braun v. Mallet [1975] 1GLR 81** and **Ansah v. Ansah [1982-83] GLR 1127**, the Court has to consider all the circumstance of the parties and the issue, consider the facts from every angle and give due weight to every relevant factor before determining the custody issue presented to the Court.

On the 24th day of February 2023 the Court in the interim, granted Applicant bi-weekly weekend access to the issue and ordered him to maintain the issue with GHC300.00 monthly pending the final determination of the matter. Respondent was also ordered to show Applicant her current residence to facilitate the interim access given.

The question for determination is whether or not the Applicant is entitled to have custody of the issue. To effectively answer this question, we will do a quick review of the law on the subject matter and then apply it to the facts of the case. **Section 45 of the Children's Act (Act 560)** which is the primary authority on the issue of child custody provides 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.

(2) Subject to subsection (1) a Family Tribunal shall also consider —

(a) the age of the child;

(b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;

(c) the views of the child if the views have been independently given;

(d) that it is desirable to keep siblings together;

(e) the need for continuity in the care and control of the child; and

(f) any other matter that the Family Tribunal may consider relevant” (emphasis supplied)

You will realise that the law is generally skewed in favour of the mother when it comes to custody of young children as provided by **section 45(1) of Act 560** supra and cases like **Braun v. Mallet [1975] 1GLR 81** where custody of very young children was awarded to the biological mother because the court found that it was in their best interest to be taken care of by the mothers who are naturally endowed with the care of young children.

Section 57 of Act 560 also provides that “*A non-custodian parent in respect of whom an application is made to a Family Tribunal for an order of parentage, custody, access or maintenance under this Part shall have access to the child who is the subject of the order*”

Section 11 — Right of Opinion.

“No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child”.

In all of this, **section 2 of Act 560** requires the Court to consider the best interest of the child(ren) in issue in the determination of who should have custody. It provides that

“(1) The best interest of the child shall be paramount in any matter concerning a child.

(2) 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”

Now let us go through the maze of facts of the case to determine which of the parties should have custody of the issue in order to ensure her welfare and best interest. The evidence on record and the Social Enquiry Report (SER) submitted by the Probation Officer on the 24th day of February 2023 shows that, the parties had the issue out of cohabitation, but they have been separated since August 2022. Upon their separation, the

Respondent moved back to her family house at Jamestown Palladium which is just about five (5) minutes' walk from Applicant's home. The applicant therefore had easy access to the child. Respondent however moved out of the family house with the issue at the later part of the year 2022 to live with her paternal grandmother at Tetegu also a suburb of Accra without the consent of Applicant. Respondent has enrolled the issue into a new school at Tetegu. Applicant does not know where the issue currently lives, and schools and he has not had access to the issue since then. The current home of the issue is about ten (10) minutes' walk from the current school but quite a distance from their previous residence in Palladium. The school fees at the current school is GHC180.00 termly, feeding fee is GHC6.00 daily and classes fee is GHC1.00 daily. Though Applicant used to take care of the issue's education and maintenance, he has not done so this year 2023.

The Applicant lives in a suburb of Accra called Palladium Wisdom in a single-room wooden structure with a porch which has been converted into a kitchen. He lives with his wife and a nine-year-old son. According to the SER, there is a single bed in the room which has occupied the greater portion of the room. That it will be very difficult for two children to occupy the very small space on the floor in front of the bed. The facility is also not well ventilated. Respondent on the other hand occupies a spacious room within a six-bedroom house of the paternal grandmother with the child. Her two aunties and two uncles also live in the same house which is gated and walled.

The SER confirms that the current neighbourhood of the Respondent at Tetegu appears to be more conducive for the upbringing of the child as compared to Applicant's home in James Town, Paladium. Applicant's wife is pregnant. She is the mother of Applicant's nine-year-old son and she used to live in Applicant's hometown. Upon the parties' separation, Applicant reconciled with her and invited her to come and live with him in Accra.

Applicant is a Sewage Attendant at Sewage System Ghana Limited. He works on shifts. He indicated that he earns about GHC2,000.00 monthly but could not produce any evidence in support of same. Respondent also works as a Laundry Attendant in the paternal grandmother's laundry. She is paid GHC 300.00 monthly.

Applicant's paternal grandmother with whom she currently lives with the child said she invited Respondent to come and live with her because the parties constantly quarreled, and she did not like where they lived in Palladium. She said she has enrolled the child in a school near her home and that providing the needs of the issue is not a problem for her because all her children are grown and independent.

It appears Respondent's grandmother uses the Respondent in her laundry and in exchange, provides her with food and accommodation as well as the needs of the issue plus a monthly allowance of GHC300.00. When Applicant was asked why GHC300.00 for a whole month's service, her response was that, *"Please it is my grandmother who takes care of the child's educational needs and also gives us food. The laundry I work in is for her"*.

Respondent confirmed that when she has to attend family programmes or obligations which took her out of the house for days, she goes with the issue and this leads to the issue missing school for some days. She however denied burning the issue with a pressing iron as alleged by Applicant. According to her, it was an accident. That she was beating the issue to sleep since it was late, and the issue's hand touched the iron she had plugged to iron her clothes for school the next day. In response to her alleged threat to poison the issue, she denied ever saying that and that what she said was that she wishes God will take the life of the child so that she will have nothing to do with the Applicant, and Applicant will stop sending her to places. She said she uttered these words out of frustration and anger at Applicant sending her to places because of the issue. She said when Applicant reported her at DOVVSU for custody, she was granted custody of the issue with access to Applicant and denied sending the issue to Applicant to have custody.

So apart from Applicant making these allegations (threat to poison the issue and Respondent burning the issue with an iron) against Respondent, allegations which Respondent has denied, he did not lead any evidence in support of same to convince the Court (**see section 11(1) and (4) of the Evidence Act 1975 (ND CD 323)**). He thus failed to meet the evidential burden placed on him by Act 323. Respondent however admitted not allowing the issue to go to school consistently because she sometimes attends family programmes with her. She subsequently apologized to the Court for this conduct of hers after it was brought to her attention that that conduct of hers was inimical to the best interest of the issue.

The view of the issue in this matter was also sought and she expressed her desire to live with Applicant the father because Respondent beats her at the slightest provocation. Applicant also mentioned in Court that it was in the process of beating the issue to sleep that the issue's hand touched a pressing iron she had plugged to iron her uniforms. When Respondent was asked whether the appropriate way to put a child to sleep is by beating? She quickly admitted her fault and apologized. The Court in considering the view expressed by the issue, has to weigh the views against her age and maturity, consider all the circumstances of the issue as against her overall welfare and best interest and make orders that will ensure her welfare and best interest.

With this background and the law, I ask again 'in which of the parties' custody will the best interest of the issue be ensured?' Hang on a second. Before proceeding to answer this question let us open the page on maintenance of the issue. Although Respondent did not pray for any relief apart from asking that the issue remains with her, Applicant prayed for any other orders that the Court may deem fit. The adequate maintenance and provision of the needs of the issue are very critical in ensuring her welfare and **section 2(1) of Act 560** empowers this Court to make orders it deems to be in the best interest of the issue.

Section 47 of the Children's Act 1998 (Act 560) states that *"A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child"*

According to **section 49 of Act 560** the court has to consider, *the income and wealth of both parents of the child or of the person legally liable to maintain the child; any impairment of the earning capacity of the person with a duty to maintain the child; the financial responsibility of the person with respect to the maintenance of other children; the cost of living in the area where the child is resident; the rights of the child under this Act; and any other matter which the Family Tribunal considers relevant when making a determination of maintenance for a child(ren).*

Now the court upon considering the law on child maintenance, custody of and access to children, the evidence on the record, the social enquiry report which provided a detailed report on the circumstances of the parties and the issue herein and having most importantly considered the welfare and best interest of the about six-year-old female child in issue enters judgment as follows:

Custody: Custody of the issue (Franklyna Berko) aged six shall remain with Applicant the biological mother. This is because the issue is quite young and also to ensure continuity in the care and control of the issue since she has at all material times and purposes since the separation of the parties been in the custody of Respondent (see section 45(2)(a) and (e) of Act 560). Another factor considered is the fact that the living environment and conditions at Respondent's current home at Tetegu is better for the development of the issue than that of Applicant at Palledium so the issue's welfare may be better ensured with Respondent see section 45(2)(f) of Act 560. Respondent is however cautioned and warned against any high-handed treatment of the issue such as is likely to harm her either physically or psychologically. Children are to be disciplined but this ought to be done in love in order to yield the best results.

Respondent is also advised to prioritize the education and welfare of the issue. We are hopeful that with her new environment and work, she will be a bit more stable and not be moving from one programme to the other thus preventing the issue from attending school. Respondent and for that matter the parties are to note that orders affecting children are subject to variation depending on the circumstances at any point in time in order to secure the best interest of the child in issue.

Access: Applicant being the biological father of the issue is entitled to have reasonable access to her in accordance with **sections 57 and 44 of Act 560**. Accordingly, Respondent shall have bi-weekly weekend access (from Friday after school to 5pm on the Sunday following) to the issue plus half of her school vacation periods in his home in order to enable them bond and share time together.

Education: Respondent has already enrolled the issue in a new school at Tetegu where she currently lives. The educational responsibilities there are not that different from her previous school. Applicant shall pay for all educational expenses of the issue including school fees, cost of books, stationery and classes fees as he used to do whilst Respondent pays for school feeding fees.

Respondent is advised to prioritize the education and welfare of the issue. I am hopeful that with her new environment and work, she will be a bit more stable and not move from one event to the other thus preventing the issue from attending school regularly.

Maintenance: Applicant shall maintain the issue with GHC300.00 monthly effective April 2023 and this is subject to periodic review.

Medicals: Applicant shall be responsible for the cost of medical care for the issue not covered by the National Health Insurance Scheme (NHIS) whilst Respondent sees to the renewal of same when the subscription expires.

The parties are to note that orders affecting children are subject to variations depending on the circumstances at any point in time in order to secure the best interest of the child in issue. They are both advised to priorities the welfare and best interest of the issue at all times.

H/H MRS. MATILDA RIBEIRO
CIRCUIT COURT

JUDGE