

22: 06: 2023

IN THE FAMILY TRIBUNAL HELD AT VAKPO ON THURSDAY THE 22ND DAY OF JUNE,
2023 BEFORE HER WORSHIP GIFTY CUDJOE THE MAGISTRATE AND PANEL MEMBERS

SUIT NO. A6/09/2022

1. YAO DUKU
2. TOGBE GBORSI FOLI }
.... APPLICANTS

VERSUS

DANIEL DOGO)
.... RESPONDENT

J U D G E M E N T

The Applicants claim against the Respondent herein is for maintenance arears of **GHC28,800.00** and a monthly maintenance of **GHC300.00** per month. Both Parties agreed to settlement and terms of settlement filed on the 16/02/2023 are that: -

1. The Respondent pay an amount of **GHC4,450.00** as maintenance arears, a sheep and goat, (4) bottles of Castle Bridge and a quantity of Palm Wine. It is on record that the Respondent have complied with these terms accordingly.

The Respondent Pursuant to Order 32 rule 2(1) of the District Court Rules, 2009 (C. I. 59) and Section 44-45 of the Children's Act, 1998 (Act 560) applied for custody of his child with the plaintiffs. The Respondent states that he is the biological father of the child Angel Dogo. That the mother of the child is deceased and he will be in a better position to cater for

the child and also give her a better education. It is his case that the child is not staying with the Respondents/Applicant but rather with an aunty at Anfoega Bume.

On the record, the Plaintiffs/Respondents did not agree formally to the grant of custody of the child to the defendant/Applicants but opposed custody to the Applicant.

The issues for the Court to determine are: -

1. Whether or not the Applicant is entitled to have custody of the child in issue.
2. Whether or not the Plaintiff/Respondents is entitled to have custody of the child in issue.

On the body of evidence, the averments deposed in affidavit in support and the Oral evidence adduced, the record is incontrovertible that the applicant is the biological father of the child in issue. The record is also not incontrovertible that the mother of the child in issue is deceased. The evidence is again conclusive that the child in issue does not live with the 1st and 2nd Plaintiffs/Respondents but live with a maternal aunty at Anfoega-Bume.

The children Act 1998 (Act 560) is the primary legislation that sets out the law on access and custody to a child. Sections (44) and (45) of the Act mentioned states: -

“Section 44” - Access A Parent,
family member or any person
who has been caring for a child
may apply to a family tribunal
for Periodic access to the child”.

Section (45) - Consideration for custody or access.

1. 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 of 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- indecently 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”.

It is trite learning that, in any Proceeding involving custody and access to a child, the court will take into consideration whether the legal right of the father is move superior to that of the mother or whether that of the mother is move superior but will regard the best interest of the child as the first paramount consideration. The court will seek the child welfare both moral and Physical and long term benefit to the child must be weighed against the immediate benefit.

On the record, the evidence adduced by the Parties show that the biological mother of the child is deceased and the child now under the care of her maternal aunty. The Court therefore finds as a fact that the plaintiffs will not be directly involved with custody so to speak but will place the child under the custody of her aunty should the court grant them custody.

To assist the court Social Enquiry Report (S. E. R.) was Ordered on the biological father of the child in arriving at the issues raised for determination. The court considered the Probation Officer as a disinterested witness who responded to the Order of the Court. The report disclosed that the biological father of the child in issue is well established at Afram Plains Kokrobuta, married with two other children.

In all the evidence disclosed that he has 7 children in total, the last two being 7 and 3 years respectively. The physical home condition of the biological father shows that he had 8 single room compound house, a kitchen and toilet facility where he lives with his two children. The report further indicated that the child in issue had been with her maternal aunty since February 6th 2022, At Anfoega Bume. The evidence did not fully disclose where she was prior to her being accepted by her maternal aunty. The court observed that the child in issue is a special child with special needs a condition which the biological father also has thus partial hearing impairment. It is for the reason and all other necessary condition that the Panel is Unanimous that the child be allowed custody with the biological father. Two other siblings are with the biological father and because of the special condition, it is believed that the father will understand and appreciate her better. The findings of the S. E. R. and the recommendations stated therein, also proposed that the custody of the child in issue be granted the biological father.

The court Orders the maternal aunty of the child in issue to hand over the child by close of academic year having granted custody to the biological father. Reasonable access is and hereby granted the Plaintiff/Respondents on holidays. Each Party bear his own cost.

.....sgd.....

GIFTY CUDJOE
THE MAGISTRATE