

IN THE DISTRICT COURT HELD AT BAATSONAA ON FRIDAY THE 10TH NOVEMBER, 2023 BEFORE HER WORSHIP MABEL N. L. AHELE WITH MADAM CLARA SOWAH AND MR. ENOCK BAMPOE-ADDY, SITTING AS PENEL MEMBERS

SUIT NO: A6/04/2024

HAPPY OHENE - APPLICANT

VRS

IBRAHIM KASSIM - RESPONDENT

APPLICANT PRESENT

RESPONDENT PRESENT

RESPONDENT'S SISTER PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

1. On 22nd September, 2023 the Applicant filed an application seeking the following reliefs;
 - i. *Custody of her one year old child*
 - ii. *Weekly remittance of Three Hundred Ghana cedis (GHC 300.00) towards the maintenance of the child*
 - iii. *A sum of One Thousand Cedis (GHC 1,000.00) per month to cater for the baby's Medical bills*

2. Respondent avers that the Applicant after giving birth to their son, a year and half ago has been behaving strangely. That the Applicant abuses the child

whenever there is a quarrel between them to the extent of locking the child in a room all by himself and therefore cannot allow custody to be given to the Applicant for fear of Applicant maltreating the child.

3. The Facts of the Case

Applicant and Respondent, now separated, were living together although not as married couple. Whiles living together they had a baby, now 18 months old. Both live in kiosks, about 500 meters away from each other. Both have created their own bathrooms behind their respective kiosks. They visit a public toilet and fetch water at a distance. They are separated because of their frequent quarrels and fights. The child they had whiles living together is now staying with the Respondent's sister because Applicant threatened to kill the child which was reported to the police. The Police allowed the Respondent's sister to take care of the child while the Police carried out their investigations in the matter. Applicant is before the tribunal asking for custody and maintenance of the child.

4. Issues for Determination

- a) Whether or not Applicant is entitled to custody of the child?*
- b) Whether or not the child should be removed from the parents?*

5. Section 2 of the Children's Act, 1998 (Act 560) provides as follows:

2. Welfare principle

- (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 body in any matter concerned with a child.*

Section 37 of the Children’s Act, 1998 (Act 560) provides that: *“the proceedings at a Family Tribunal shall be as informal as possible and shall be by enquiry and not by adversarial procedure.”*

6. Before I proceed, there were few occurrences during the pendency of this suit which need to be stated. From enquiries in accordance with **Section 37 of Act 560** supra, the Tribunal found that the Respondent has not named and/or registered the child at the Birth Registration. The child was also not enrolled in a nursery. In considering the best interest of the child and his right to have a name, interim orders were made for the Respondent to name the child and register the child at the Birth Registration which were complied with. A copy of the Birth Certificate was filed on the day of 23rd November, 2023 at the Registry of this Court as evidence of compliance with the orders of the tribunal. However, the ceremonial rite of the naming was impeded by the unwillingness and behavior of the Applicant.
7. In compliance with the provisions; **Sections 2 and 37 of the Children’s Act, 1998 (Act 560)**, this tribunal went into enquiry of the alleged threat on the child’s life by the Applicant. It was found from the Social Enquiry Report, filed on 15th day of September, 2023 by Mr. Enock Bampoe-Addy and Fustina Yaba that Applicant, on many occasions, had threatened to kill the child anytime she quarrels with or fights the Respondent. The report also revealed that, Applicant drinks a lot and sometimes locks up the child all by himself in a room, a behaviour inimical to the welfare of the child.
8. The tribunal, guided by the welfare principle of the child under **Section 2 of the Children’s Act, 1998 (Act 560)**, took into consideration the evidence on record to determine whether or not the Applicant is entitled to the grant of custody of the child. The tribunal in its consideration was fortified by the

principles set out under **Section 45 of the Children’s Act, 1998 (Act 560)**, particularly **s.45 (2) (b) and (f)** which is as follows:

“Section 45. Considerations 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 or access.

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

(a) the age of the child;

(b) that it is desirable 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.”

9. On record, the Applicant, the child’s mother, has threatened the life of her own child and has on one occasion locked up the child who is barely 18 months in a room all by himself. It is also evident on record that Applicant has a drinking habit and have sometimes not behaved well after the birth of the child. Considering the age of the child, 18 months old, it would have followed a logical and common sense for the mother to have custody of the child. However, since the tribunal is obliged by statute in its decision on a question of custody to have regard to the welfare of the child as its first and paramount consideration, the tribunal is of the opinion that it would therefore be undesirable for the child to be under the care of the Applicant. In questions of custody, it is well-settled that the welfare and happiness of the infant is the paramount consideration. See **BRAUN v. MALLET [1975] 1 GLR 81-95**. See also **FINK v. COELHO [1999-2000] 2GLR 166**. The right to

life, the welfare and happiness of the 18 months child is not guaranteed when custody is granted the mother, hence a reasonable access to the child is what she will be entitled to. Consequently, the other reliefs sought by Applicant are refused.

10. On the issue whether the child be removed from the parents, it is provided under Section 5 of Act 560 as amended as follows;

“Section 5 of Act 560

5. Right to grow up with parents

“A person shall not deny a child the right to live with the parents and family and grow up in a caring and peaceful environment unless it is proved in Court that living with the parents would-

(a) lead to significant harm to the child; or

(b) subject the child to serious abuse; or

(c) not be in the best interest of the child”.”

It was stated in the case of **HAPPEE v. HAPPEE [1974] 2 GLR 186** that; *“no Court should deny a child of access to his parents unless there are strong reasons to the contrary”.*

11. The record shows that both parties who are parents of the child have no convenient place of abode. Both live in kiosks with little facilities. It is also on record that the mother of the child is not in a stable mind and has drunken habits. She is unemployed and has no income to support the child. She herself has threatened to kill her own child. The father who is into car body works will not be in the capacity to take a good care of a child of 18 months old. Both Applicant and Respondent live in kiosks, about 500 meters away from each other and therefore, it is not unlikely that they will come into contact with each other for a fight to be ensued between them again, which

will have a dire repercussion on the child anytime it occurs. In the case of **ATTU v ATTU [1984-86] 2 GLR743**, it was stated that the “*welfare*” must be considered “*in its widest sense*”. In as much as it is necessary and right of for the child to live with his parents, the tribunal considered circumstances of the instant case and is of the opinion that there are strong reasons to sadly deny this child the right to live with his parents to ensure his welfare.

12. The Respondent’s sister, on her appearance before the tribunal, demonstrated positive commitment in the support of the child. She informed the tribunal that, since the child’s life was threatened by her mother, she has taken care of the child as if it was her own. The child, who was with her on day of her first appearance at the tribunal, was looking healthy. The child has been under her care for few months. The Respondent’s sister is employed and living in a house with water and toilet facilities. The house is convenient to raise a child. The 18 months old has since been enrolled in a nursery with the assistance of the Respondent, the father. It was also on record that the Respondent wished the child be under the care of his sister to ensure the child’s welfare and protection from the threats of Applicant.

13. This tribunal upon consideration of the circumstances of the case is of the opinion that the Respondent’s sister must be granted a temporal custody of the child till the mother is stable and in a condition to take up her responsibilities as a mother. Both parents can have reasonable access to the child.

14. Maintenance

Section 47 of Act 560 imposes obligation on parents or any other person legally liable to maintain a child responsible for necessities of life, education, health and reasonable shelter for the child. **Section 49 of Act 560** further

outlines the consideration a Court must bear in mind when making these maintenance orders. Section 49 provides as follows;

- “When making a maintenance order, a family tribunal shall consider,*
- a) the income and wealth of both parents of the child or of the persons legally liable to maintain the child,*
 - b) an impairment of the earning capacity of the person with duty to maintain the child,*
 - c) the financial responsibility of that person with respect to the maintenance of other children,*
 - d) the cost of living in the area where the child is resident,*
 - e) the rights of the child under this Act, and*
 - f) any other matter which the family tribunal considers relevant.”*

That in pursuance of the provisions above, the Respondent shall remit his sister GHC 100.00 every week towards the maintenance of the child effective today 10th November, 2023. The Respondent’s sister shall be responsible for necessities of life and reasonable shelter for the child.

Education

- a. The Respondent shall pay the school fees for the child, pay feeding fees directly to the school and buy uniforms.

Medicals

1. The Respondent is ordered to register the child on the National Health Insurance System.
2. The Respondent shall pay the child’s medical bills that are not covered by the National Health Insurance Scheme when they fall due.

Other Reliefs.

1. Both Applicant and Respondent shall allow visit by the Social Welfare officer to monitor their situations.
2. The sister of Respondent shall allow visit by Social Welfare officer to monitor their situations.

Costs: No cost is awarded.

(SGD.)

H/W MABEL N. L. AHELE

(MAGISTRATE)

MADAM CLARA SOWAH

(PANEL MEMBER)

MR. ENOCK BAMPOE-ADDY

(PANEL MEMBER)