

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT BUILDING - ACCRA HELD ON THURSDAY 15TH JUNE, 2023, BEFORE HER WORSHIP MAAME YAA AMOAKOA KUSI-MENSAH ESQ. MAGISTRATE, SITTING WITH MADAM FELICIA COFIE AND MR. JOSEPH ATTIGAH AS PANEL MEMBERS

SUIT NO:A6/331/2023

NANA KOFI BERKO-BOATENG - APPLICANT

HARJUNSALEONITE 7 D30

36220 KANGASALA

FINLAND

SUING PER HIS LAWFUL ATTORNEY

CYNTHIA AGYEI BERKO

HOUSE NO. C5, OSEIM

EASTERN REGION

VRS.

EDNA MARFOA AGYEKUM - RESPONDENT

HOUSE NO. B788/5

ATICO BUBIASHIE, ACCRA

Applicant Lawful Attorney: Present

Respondent: Present

Cosmas Andoh Esq for Applicant present

JUDGMENT

BACKGROUND

Before this Court is a maintenance and custody application filed by Applicant herein through his lawful attorney on 1st February, 2023. The Applicant's case is that he currently resides in Kangasala, Finland and he is the biological father of the child in issue (a female aged 15 years at the time of this application and hereafter referred to

as Child Z). Applicant further states in his affidavit that the child has been resident with him in Finland since 2019 with the consent and permission of the child's biological mother (Respondent herein) and further that he is in the process of acquiring a Finnish resident permit to regularise the stay of the child in Finland for which reason he has been requested to obtain custody of the child from a court of competent jurisdiction. Applicant's only relief being sought therefore is for custody of the child in order to complete the procedure for the Finnish resident permit. Applicant in support of his case attached a lawful power of attorney, copies of the birth certificate of the child in issue which states the parties herein as the parents of the child (Exhibit CAB1), Applicant's Ghanaian passport and Finnish residence permit (Exhibits CAB2 and CAB3 respectively), and a copy of the Ghanaian passport of the child which has been duly stamped with a Schengen states visa (Exhibit CAB4). In compliance with orders of this Court given on 16th February, 2023, Applicant on 2nd March, 2023 subsequently filed a translated copy of his exhibit CAB3 which has been duly translated by the Ghana Association of Translators & Interpreters and which indicated that Applicant had a valid Finland residence permit due to expire 21/11/2025. Pursuant to further orders of this Court dated 23rd March, 2023, Applicant through his lawful attorney on 19th April, 2023 filed an affidavit with invoices attached as evidence of Applicant's earnings. Pursuant once again to additional orders of this Court dated 8th June, 2023, Applicant on 12th June, 2023 subsequently also filed an immigration order for the removal of Child Z from Finland which was duly translated by the Ghana Institute of Languages. All of these documents were attached in support of Applicant's application for custody of Child Z.

By an affidavit filed on 14th February, 2023 in response to the application, Respondent stated that she is the biological mother of the child and confirmed that she consented to the child travelling to Finland to live with Applicant. She states further that she has been informed by Applicant that the immigration authority in Finland have requested that a court of competent jurisdiction issue an order of custody for Child Z and indicates that she has no objection to this application for custody. In fact, Respondent

categorically states at paragraph 9 of her affidavit that she prays the Honourable court grants the Applicant custody of the child in issue. In support of her affidavit, Respondent attached a photo ID of her national voter's card, as well as a statutory declaration dated 21st March, 2018 in which she affirmed her consent for Child Z to be given in custody to Nana Kofi Berko-Boateng (Applicant herein). This statutory declaration was duly notarised by George B. Kom Esq. and accompanied with a certification from the Second Deputy Judicial Secretary confirming the said George B. Kom Esq as a notary public of Ghana, together with a certification from the Assistant Director, Legal and Consular Bureau of the Ministry of Foreign Affairs and Regional Integration stating that the signature of the Second Deputy Judicial Secretary is a true and certified signature.

ISSUES

The main issue for determination by this Court is whether custody granted to Applicant will be in the best interest of the child. In considering this issue, the Court has to bear in mind all the circumstances of the case and not merely the wishes of parents, to do what will inure to the benefit or best interest of the child in issue as required by section 2 of the Children's Act, 1998 (Act 560), while also keeping in mind the rights of the child as outlined under Article 28 of the 1992 Constitution.

In light of the sole issue stated above, a social enquiry report (SER) was ordered to assist the Court in the determination of the issue of custody confronting this Court. On 1st June, 2023 the SER was considered and read out to the parties who confirmed the veracity of same.

The report indicated that Applicant, Applicant's current wife (i.e. the stepmother of the child in issue), and Child Z were all contacted respectively via what's app video call on their Finnish numbers provided. In addition, Applicant's lawful attorney and the Respondent herein were all interviewed. The home of Respondent at Atico

Bubiashie was also visited as part of the investigations of the assigned probation officer.

The report submitted confirmed that the issue has been in Applicant's custody since 2019 (about four years now) and she has been enrolled in a school in Kangasala, Finland. The SER further revealed that Applicant lives in a three-bedroom accommodation with basic amenities together with his wife (i.e. the stepmother of the child in issue), two children from a previous relationship, two children from his current marriage and the child in issue. Additionally, the report showed that Applicant owns his own business called Cyclopea-Elo which is into the supply and delivery of food items, pharmaceutical products and groceries. A duly stamped, signed and translated document from the Finnish Patent and Registration office was provided as proof of the registration and existence of the business, in addition to recent invoices of the business which was also attached to the Report. A stamped and signed letter by one Heli Kari (school secretary) and dated 11.04.2023 from Pikkola Elementary school stated that Child Z (grade 8) was in attendance at the said school and this was also attached to the SER.

The SER further revealed that Respondent on the other hand lives in a chamber and hall facility within a compound house and sells combs and makeup at the Makola shopping mall. When interviewed by the Probation Officer during the enquiry, Respondent again admitted giving her consent for her daughter (i.e. the child in issue) to join Applicant in Finland. She indicated also that the Applicant took care of her during her pregnancy and also named the child in issue. She stated that Applicant enrolled the child in school and took care of the child's educational expenses when the child was of school-going age. Respondent also stated that Applicant visited the child frequently and provided her with clothing and other necessities of life while the child was with her in Ghana. She further indicated that Child Z used to visit her half siblings at Tabora near La Paz before they all went to Finland to join Applicant about six years ago.

When Child Z was interviewed, the SER revealed that Child Z stated that she has been living with Applicant for about four years and when she was living with her mother in Ghana, Applicant provided most of her needs. She further stated that she did not lack any necessities of life because her parents adequately provided same. She indicated that now that she is living with Applicant, he provides all her needs and confirmed that her stepmother treats her well so she wants to continue to stay with Applicant. She added that she talks to her biological mother and sister often on the phone and will be glad to be visiting them in Ghana.

APPLICATION OF THE FACTS TO LEGAL POSITION

The law prefers that a child lives with his natural parents except where his rights are persistently being abused by the parents or the parents have effectively surrendered their natural rights and responsibilities in accordance with law (see Article 28 of the 1992 Constitution and section 45(2)(b) of Act 560). Moreover, in spite of the preference of the law for a child to be with their parents, the primary consideration of the Court in deciding issues of custody is what will inure to the best interest of the child. This best interest rule or position has been emphatically laid down under section 2 of the Children's Act, 1998 (Act 560) and further applied and highlighted in a number of judicial decisions including *Asem vs. Asem* [1968] GLR 1146-1150, *Opoku-Wusu vs. Opoku-Wusu* [1973] 2 G.L.R 349, *Happee vs. Happee* [1974] 2 GLR 186, *Beckley vs. Beckley* [1974] 1GLR 393, and *Attu vs. Attu* [1984-86] 2 GLR 743-752). The effect of the above legal positions means that irrespective of the wishes of the parties herein, this Court must ultimately consider which of the parties is better placed to have custody of the issue bearing in mind the best interest of the child.

A stable home, school and general environment enables children and young people to form positive trusting relationships so they can thrive, and stable, strong relationships all contribute towards helping children and young people to feel safe and ready to succeed and contribute positively to society. It is therefore the duty of this Court to

ensure that the child is placed and kept in a safe, stable, and nurturing environment for the child's constructive growth and well-balanced physical and mental development.

From the interviews conducted by the Probation Officer during the enquiry, it is evident that although the parties were never married, Applicant at all material times took up his responsibilities for the care and maintenance necessary for the child's ongoing development. Right from birth, the facts affirm that Applicant did not shirk his responsibilities as a father and was proactive in ensuring the rights and needs of Child Z were taken care of. The facts further show that Child Z since 2019 (i.e. from about the age of twelve years) has been living with Respondent, and is currently in school in Finland after having settled and acclimatised to the Finnish environment in the last four years. Most importantly, there is no evidence from the facts and evidence adduced before this Court which impeaches Applicant's character or conduct, nor is there any indication that the child is in an unsafe and/or abusive environment for which reason she ought to be removed from the custody of Applicant.

As at 2023 and at the time of this judgment, the child is now an adolescent of about 16 years and has likely established a comfortable social network at school and home in Finland. Adolescence is the period of transition between childhood and adulthood. Children who are entering or have entered adolescence are going through many changes in their bodies and brains. These changes inevitably come with physical, intellectual, psychological and social challenges to the adolescent as well as the development of their own moral compass. It would be most traumatising to destabilise a child at this sensitive stage of their growth by abruptly removing her from an environment she has gotten used to, particularly where there is no evidence of danger to her physical, emotional and/or mental well-being.

The Court has also noted the decision of the Finnish Immigration Service duly translated by the Ghana Institute of Languages and filed by Applicant on 12th June, 2023 which report contains an order for the removal of Child Z from Finland. The facts

as captured in the report do not differ significantly from the facts presented by the parties and the SER before this Court. Indeed, Respondent herein in the said report of the Finnish Immigration Service again affirmed her consent to Child Z living in Finland with Applicant herein. The report also makes the same finding of fact that Child Z went to Finland in 2019 and was regularly exposed to the presence of Applicant even when she lived solely with her mother in Ghana.

However, a concerning issue the Finnish Immigration report captured is that Respondent at the time Child Z was in her custody lived with her boyfriend and Child Z's older sister. According to the report, during the oral hearing of Child Z, she stated her mother's boyfriend didn't like her and her older sister and the boyfriend spied on the girls while they were showering. The report also said that Respondent herein had plans of moving abroad to work hence her consent to Child Z moving to Finland to join Applicant herein. These facts were however not averred to by any of the parties in their affidavits regarding the instant application before this Court for custody nor was any indication of same made in the SER. The Court is therefore inclined to believe that those circumstances are no longer prevalent as at the time this application was mounted in 2023. Indeed when asked by this Court if she was planning to travel, Respondent stated that this was no longer the case.

The Court is also minded to comment on some issues that the Finnish Immigration report raises in the mind of the Court. It is curious to note that it is stated in the report that Child Z is *"not registered in the Finnish population information system as children or dependents of Applicant."* It is difficult to say whether this is merely a matter of inaccurate translation or a matter of serious concern regarding the welfare of Child Z since as already set out above there is evidence that Child Z is in fact a dependent of Applicant and is being adequately taken care of. It is also curious to note that the report is dated 3.7.2020, and furthermore that the hearing by the Finnish Immigration of Applicant herein in respect of his residence permit application for Child Z and his two other children (who coincidentally are also the subject matter of a different custody application by Applicant also pending before this court) was on 21 April,

2020. The report further states that Respondent herein was interviewed orally at the Finnish representative office in Abuja on 12th March, 2020. The report then indicates its decision as follows: *“The Finnish Immigration Service does not issue residence permits. Applicants will be returned to their home country of Ghana. **Applicants are given 30 days to leave the country voluntarily**”*. The above decision gives the implication that upon the failure of the Applicants therein to voluntarily leave the country after 30 days, there would be a forcible removal.

Since the decision was given as far back as 2020 and the Applicants in that report (the Applicants in the Finnish Immigration report were named as Child Z and the two other children) were given 30 days to leave, it is curious that Applicant herein waited three whole years before mounting this application seeking a custody order from a court of competent jurisdiction in order to acquire a Finnish residence permit and regularise the stay of Child Z as he states in paragraph 5 of his affidavit in support of this application. Why did Applicant wait this long before taking such steps, especially in light of the fact that there was a pending deportation order from the Finnish Immigration since 2020.

The above notwithstanding, once Applicant has taken the requisite steps, though quite belatedly in the opinion of this Court, the Court is mandated to go into the merits of the application to come to a decision based on the best interest of Child Z.

DECISION

As indicated above, the general position of the law is that a child ought to be placed in the care and custody of their biological parents who have a natural disposition to provide and take care of their children. The exception to this is where there are strong reasons for removing the child from the environment and control of their parents. Thus, it was stated in the case of **Happee vs. Happee** (supra), as follows: *“No court should deny a child of access to his parents unless there are **strong reasons** to the contrary”* (emphasis mine). The court in **Happee vs. Happee** further noted emphatically that not

only does a parent have a right of access to a child but more importantly, it is the basic right of the child to have access to the parent.

With the law as espoused above, and bearing in mind all the circumstances of this case, this Court is of the view that it will be in the best interest of Child Z for the application to be granted.

On the issue of access, although Respondent indicated her consent in the grant of custody to Applicant, I do not think it would be in the child's interest to deprive her of access to her mother (Respondent herein) who alone in certain mother-daughter relationships is likely to be able to contribute to her emotional and self-esteem growth in the long run. Having found no evidence on the record to impeach Respondent's character or to show that the issue will be exposed to some form of risk or harm if the child is to engage and/or interact with Respondent, it is further ordered that Respondent be given reasonable access to Child Z. Particularly, apart from phone calls and video calls which is already ongoing between the child and Respondent, efforts should be made to allow Child Z to visit her mother in Ghana at least once a year.

In this regard, having heard the parties on their affidavits as well as in person and having considered all the supporting exhibits, the Social Enquiry Report and the legal authorities cited above, the Court holds that it will be in the best interest of the issue if she is placed in the care and custody of Applicant, the biological father, Nana Kofi Berko-Boateng. Custody of Child Z is hereby granted to Applicant with reasonable access to Respondent. There will be no order as to costs.

H/W MAAME YAA A. KUSI-MENSAH (ESQ.)

MAGISTRATE