

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:A6/330/2023

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.

FREDA SERWAA - RESPONDENT

HOUSE NO. 719

YELLOW HOUSE STREET

TABORA, ACCRA

Applicant's 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 two

children in issue (two males aged 12 and 9 years respectively at the time of the application and hereafter referred to as Child KB and Child AK respectively). Applicant further states that the two children have been resident with him in Finland since September 2019 with the consent and permission of their biological mother (Respondent herein). Applicant states further that he is in the process of acquiring a Finnish resident permit to regularise the stay of the two boys in Finland for which reason he has been requested to obtain custody of the children from a court of competent jurisdiction. The only relief being sought by Applicant therefore is for custody of the child in order to complete the procedure for the Finnish resident permit and allow the children to obtain other benefits in the interest of the welfare of the children. Applicant in support of his case attached copies of a lawful power of attorney, Applicant's Ghanaian passport and Finnish residence permit (Exhibits FS1 and FS2), a copy of the Ghanaian passport of the Child KB duly stamped with a Schengen states visa (Exhibit FS3), and a copy of the Ghanaian passport of the Child AK duly stamped with a Schengen states visa (Exhibit FS2). 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 FS2 which had 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 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 KB and Child AK from Finland which was duly translated by the Ghana Institute of Languages. All these documents were attached in support of Applicant's application for custody.

Respondent by an affidavit filed on 14th February, 2023 stated in response to the application, that she is the biological mother of Child KB and Child AK and affirmed that she consented to the two children travelling to Finland to go and 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 KB and AK 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 children in issue. In support of her affidavit, Respondent attached a photo ID of her Ghanaian passport, as well as copies of the Ghanaian passports of the two boys and that of the Applicant. In addition, Respondent attached a statutory declaration dated 1st October 2019 in which she declared her consent for Child AK and Child KB 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 two children. 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 children 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 two boys who are the subject matter of this application), and Child KB and AK 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 Tabora near La Paz was also visited as part of the investigations of the assigned probation officer.

The report submitted confirmed that the issues have been in Applicant's custody since 2019 (about four years now) and they have 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 children in issue), the two boys who are the subject matter of this application, a daughter from a previous relationship, and two children from his current marriage. 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 invoices of the business which was also attached to the Report. A stamped and signed letter by one Marjaana Palonen (school secretary) and dated April 5th 2023 from Suoraman Koulu/Suorama Elementary school stating that Child KB (grade 5) and Child AK (grade 2) are in attendance at the said school was also attached to the SER. The birth certificates of the two boys which state the parties herein as the parents of the two boys was also attached.

The SER further revealed that Respondent sells foodstuff at Tabora near La Paz and lives in a two-bedroom house within a compound house at Tabora with digital address being GC 010-1980. Respondent was found to occupy the accommodation with the maternal grandma of the two boys and a daughter from a previous marriage. When interviewed by the Probation Officer during the enquiry, Respondent indicated that Applicant took care of her during her pregnancy and also named the two children in issue. She stated that Applicant enrolled the children in school and took care of the

child's educational expenses when they were of school-going age. She added that Applicant visited the children frequently and provided them with clothing and other necessities of life. Respondent also stated that when Applicant travelled to Finland about six years ago, he continued to provide for the needs of the children through monthly remittances of about One Thousand Five Hundred Ghana Cedis (GHC 1500). She added that Applicant also paid the medical expenses of the children and intimated that Applicant visited the children once in Ghana before coming for them to live with him in Finland about four years ago.

Respondent admitted giving her consent for the two children between her and Applicant to join Applicant in Finland. She stated that she has no problem with the two boys living with Applicant and his current wife in Finland because she knows they are being well-supervised and are getting the best of education.

When interviewed, the SER revealed that Child KB and AK stated that they joined Applicant in Finland with their half-sister in 2019. Child KB recalled that they were all enrolled in a language school where they were taught how to speak and write in Finnish. He confirmed that he and his siblings have been enrolled in school where they are instructed in Finnish. Child KB expressed his desire to remain in the custody of Applicant because he likes his new school much better than his old school in Ghana. He also expressed his desire to be visiting his biological mother and older sister in Ghana. Child AK expressed the same sentiment of wishing to remain in the custody of Applicant and added that he is comfortable living with Applicant and his step-mother, half-siblings and sibling. He also expressed his desire to be visiting his biological mother in Ghana. Although Child AK could not indicate who paid his school fees while he was living and schooling in Ghana, he indicated that he never lacked any learning materials nor was he ever sacked for school fees.

The step-mother of the children, one Anna Berko-Boateng (Applicant's current wife) was also interviewed. She confirmed that the two boys with their half-sister came to live with them in 2019 and that they have bonded very well with the children she has

with Applicant. She indicated that she has helped develop the hobbies of the children such as swimming and playing football and that she has a cordial relationship with them.

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). Notwithstanding, the preference of the law for children 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 separated about eight years ago, 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 needs of the boys were taken care of. The facts also show that Child KB and AK since 2019 (i.e. from about the ages 8 and 5 years respectively) have been living with Respondent, and both of them are 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 children are in an unsafe and/or abusive environment for which reason they ought to be removed from the custody of Applicant.

As at 2023 and at the time of this judgment, the boys are about thirteen and ten years old respectively and although still young, are about entering into their adolescent years. The Court is of the view that young boys of such a tender age who are growing into their adolescence require more of the physical presence and nurturing of a positive male role model to structure and guide them on the proper role a man must play in today's society, and who is better-placed than their biological father to play such a role? There is nothing to show that the Applicant herein is handicapped in his capacity as their father either financially, emotionally or mentally to fully perform his responsibilities as the father of the two boys. Furthermore, it would be most traumatising to destabilise the children by abruptly removing them from an environment they have gotten used to, particularly where there is no evidence of danger to their physical, emotional and/or mental well-being.

The Court would also like to put on record that it has noted the decision of the Finnish Immigration Service duly translated by the Ghana Institute of Languages and filed by Applicant on 12th June, 2023. The facts as captured in the report do not differ significantly from the facts presented by the parties and the SER before this Court. However when it came to the specific section earmarked in the original report for the two boys, the translation of the report stops abruptly and does not indicate the specific

findings of the report on the two children in issue herein. Notwithstanding this inadequacy, the Court was able to conclude from the translated version of the report that the final decision of the Immigration authority of Finland as has been captured in the original report indeed contained an order for the removal of Child KB and AK from Finland.

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 KB and AK are “*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 the two children since as already set out above there is evidence that the boys are in fact dependents of Applicant and are 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 the two boys and one other child (who coincidentally is 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 (named in the Finnish Immigration report as Child KB and AK and the other child of Applicant) 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 his two boys 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 KB and AK.

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.”* 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 KB and AK 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 children’s interest to be deprived of access to their mother (Respondent herein), particularly where the children themselves have expressed their desire to be visiting her in Ghana. Having found no evidence on the record to impeach Respondent’s character or to show that the issues will be exposed to some form of risk or harm if they are to engage and/or interact with Respondent, it is further ordered that Respondent be given reasonable

access to Child KB and AK. In particular, apart from phone calls and video calls between the children and Respondent, effort should be made to allow the boys to visit their 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 children in issue if they are placed in the care and custody of Applicant, the biological father, Nana Kofi Berko-Boateng. Custody of Child KB and AK 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