

IN THE FAMILY TRIBUNAL/COURT, HELD AT BONGO IN THE UPPER EAST
REGION OF GHANA, ON THURSDAY, THE 6TH DAY OF FEBRUARY, 2025.

CORAM: H/W MAWUKOENYA NUTEKPOR (CHAIRPERSON)

MR. PIUS NGAARA (PANEL MEMBER)

MR. JOHN AZAM (PANEL MEMBER)

POGNABA CHRISTIANA NGEH (PANEL MEMBER)

SUIT NO. UE/BO/DC/A8/05/24

RAZAK ALEMYA

PLAINTIFF

OF ASAA'S HOUSE, NAMOO-BONGO

VRS.

1. LAMISI MARIAMA RAZAK

2. ATAMPUGBIRE NKAIRIKO AKOLGO

DEFENDANTS

BOTH OF AMOLIGA'S HOUSE,
BONGO-SOE

TIME: 10:36AM

PARTIES PRESENT

NO LEGAL REPRESENTATION FOR THE PARTIES

JUDGMENT

Introduction

1. This is a unanimous decision of this court concerning the custody of the children in issue. This matter could have been resolved out of court if the plaintiff and 1st defendant were in good terms with each other or were communicating properly/regularly with each other. It is their inability to resolve the issue of custody of the children in issue which led to the commencement of this case before this court. Thus, the Plaintiff commenced this action on the 1st day of July, 2024 and claims against the Defendants for the following reliefs:

(a) An order of custody of the three children namely, Issah Razak aged 14 years, Faizatu Razak aged 11 years and Jumin Razak aged 7 years which he had with 1st Defendant.

(b) Any other order(s) that the Honourable court may deem fit and just.

2. The Defendants filed their response on 25/10/2024 and 1st Defendant counterclaimed against the Plaintiff as follows:

a. An order for 1st Defendant to be granted custody of the three children.

b. An order for Plaintiff to buy sewing machine for 1st Defendant to enable and establish her to start her seamstress work in order to support the upkeep of the children.

c. Any other order(s) as the Honourable court may deem fit and just.

Plaintiff's Case

3. Plaintiff says he is a trader and the Defendants are unemployed, and that 1st Defendant is his ex-wife of whereas 2nd Defendant is the mother of 1st Defendant. Plaintiff says that he got married to 1st Defendant 13 years ago and their marriage is blessed with three children namely, Issah Razak aged 14 years, Faizatu Razak age 11 years and Jumin Razak 7 years. Plaintiff says that in the course of cohabitation with 1st Defendant they had some issues and were able to resolve them. Plaintiff says however that 1st Defendant traveled to Kumasi and stayed

there for almost a year and upon her return he enquired from her as to whether or not during her stay in Kumasi she had an affair with any man because according to the Frafra custom such an act is a taboo.

4. Plaintiff further says that 1st Defendant admitted she had an affair with a man in Kumasi and as a result he told the 1st Defendant his intention to arrange for her to perform some customary rite to cleanse her as custom demands of which she agreed. Plaintiff says he later informed 1st Defendant's parents about the situation but 1st Defendant was not happy with that, since she did not want her family to know and for that matter she decided to pack her personal belonging to her father's house together with two of the children i.e. first and second child, leaving the youngest child with Plaintiff. Plaintiff avers that custom demands he followed up to her father's house for amicable settlement and after deliberations the elders of 1st Defendant's family instructed her to come back to him for the cleansing rites to be performed for peaceful cohabitation but 1st Defendant declined.
5. Plaintiff says that after about one month 1st Defendant reported the matter to the Commission on Human Rights and Administrative Justice, Bongo and he was invited for mediation. Plaintiff says that after the mediation process they arrived at an agreement and a day was set for both parties to come with the children but 1st Defendant never turn up. Notwithstanding, Plaintiffs says he has been remitting monthly through CHRAJ for the upkeep of the two children living with her but 1st defendant has refused to go for the said monies/remittances.

6. Plaintiff says that 1st Defendant is always unavailable leaving the children in the custody of 2nd Defendant who cannot bring them up properly. Plaintiff says his investigations also revealed that 1st Defendant is currently residing in Tamale, leaving the children with her mother, 2nd Defendant at Bongo – Soe. Plaintiff says that being their biological father and a trader, he is in the right position to provide and give the children proper upbringing. It is the Plaintiff's case that the children are very young and needs to be taken from their grandmother (2nd Defendant herein). Plaintiff therefore prays for the above-mentioned reliefs.

Defendants Case

7. 1st Defendant denies plaintiff allegations to some extent and says that she is still the wife of Plaintiff because the customary marriage between her and the Plaintiff has not been dissolved yet only that there is a problem which is unresolved. 1st Defendant says that after she returned from Kumasi, she stayed in Plaintiff's house for about a year but there was no cordial relationship between her and Plaintiff even before she travelled to Kumasi and same continued after her return from Kumasi to the extent that Plaintiff was not eating the food prepared by 1st Defendant. 1st Defendant further says that she made several efforts to be at peace with Plaintiff while in her matrimonial home and on one occasion she knelt down before Plaintiff and pleaded with him to forgive her if she has offended him in anyway and Plaintiff indicated that he bears no grudges with her.

8. 1st Defendant says that after she made peace with Plaintiff they made love as couple but to her utmost surprise, about three or four days afterwards Plaintiff asked her whether or not she had an affair with another man when she travelled to Kumasi to which she replied in the negative. It is 1st Defendant's case that she never at any material time admitted committing adultery and neither did she agrees to perform any customary rite of cleansing as alleged by Plaintiff. 1st Defendant says that she left her matrimonial home to her father's house after Plaintiff reported to 2nd Defendant and the chief of Soe-Kaabre alleging that 1st Defendant has committed adultery. 1st Defendant further states that the reason for going to her father's house was to stay with the mother temporarily while trying to resolve the false accusation of infidelity leveled against her by Plaintiff and that she never took her belongings along at that point.

9. 1st Defendant states that in an attempt to resolve the issue, both families agreed that they consult a traditional priest in order for 1st Defendant to go through a trial by ordeal method to prove her innocence or otherwise but few days later Plaintiff sent a delegation to inform Defendants' family that he is not interested in consulting the traditional priest because such an act is against his belief as a muslim. 2nd Defendant says that after 1st Defendant finally came home with the two children she (2nd Defendant) informed Plaintiff personally that if he was not interested in consulting the traditional priest then he should come for his wife and children and use any other means in line with his Islamic belief to establish the truth or otherwise of the allegation leveled against 1st Defendant but Plaintiff never acted on her advice.

10. 1st Defendant says that she loves her children and had always stayed with them and that she travelled to Accra recently to work and get some money to support herself and the children. 1st Defendant says that she is the biological mother of the children and is healthy and also of sound mind and therefore can work to support and take care of the children with the help of Plaintiff. 1st Defendant further says that she still loves her husband and is willing to go back to her matrimonial home if Plaintiff will rescind his entrenched position of not wanting her as wife anymore. 1st Defendant says that it was Plaintiff who asked her to leave his house, and as such she cannot also leave her children under the care of Plaintiff's 1st wife since the children are young but would rather prefer that the children stay with her while plaintiff assist in taking care of the children (that is if Plaintiff still does not want her as his wife). She therefore counterclaimed for the above stated reliefs.

Issues for Determination

11. The issues for determination in this matter are:

- a. Whether or not Plaintiff or 1st Defendant should be granted custody of the children in issue.
- b. Whether or not Plaintiff is entitled to buy a Sewing Machine for the 1st Defendant.

Evaluation of Evidence and Analysis of the Issues

12. The first issue for determination is whether or not Plaintiff or 1st Defendant should be granted custody of the children in issue. From the evidence, the court found as a fact that the marriage between plaintiff and 1st Defendant is blessed with three children. They are Issah Razak Aged 14 years, Faizatu Razak 11 years and Jumin Razak 7 years. The court also found as a fact that due to some misunderstanding between the Plaintiff and 1st Defendant, they separated and have been living separately for sometime now. From the evidence, Issah is in JHS 3 and currently living with his mother. Faizatu and Jumin are in Primary School and currently living with their father.

13. Before we proceed to deal with the issue of whether or not Plaintiff or 1st Defendant should be granted custody of the children in issue, it bears reminding that regarding issues concerning children, the Court must seek solely what is in the paramount interest of the child. **Section 2 of the Children's Act, 1998 (Act 560)** provides that:

[t]he best interest of the child shall be paramount in any matter concerning a child. 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.

Section 2 of the Children's Act is based on Article 3(1) of the **Convention on the Rights of the Child (adopted by the General Assembly Resolution 44/25 of 20th November, 1989 and entry into force on 2nd September 1990)** which provides that,

[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

authorities or legislative bodies, the best interests of the child shall be a primary consideration.

14. Also, **section 5 of the children’s Act 1998 (Act 560)** on Right to Grow up with Parents, provides that:

*“No person shall deny a child the **right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would—lead to significant harm to the child; or subject the child to serious abuse; or not be in the best interest of the child.**”*

15. The **United Nations Committee on the Rights of the Child in its General Comment No. 14 (2013)** on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) elucidates the concept which is said to be three-fold: Firstly, it is considered a substantive right in the sense that the child has a right “to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.” Secondly, it is considered as “[a] fundamental, interpretative legal principle” in the sense that “[i]f a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen;” and thirdly, it is “[a] rule of procedure” such that “[w]henver a decision is to be made that will affect a specific child, an

identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account.”

16. Being guided by the authorities above, the question for the panel is whether it would be in the best interest of the children in issue to grant custody of them to the Plaintiff or 1st Defendant. To resolve this issue, the panel is mandated by section 45 of the Children’s Act, 1998 (Act 560), to—as a matter of paramount importance—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. To achieve this end the panel is mandated to 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.”

17. The starting point according to section 45 above is that considering the ages of the children in issue, ordinarily, they ought to be with the 1st Defendant. However, that is a prima facie conclusion sustainable only when the other factors or parameters contained in section 45 inure to the presumption in favour of 1st Defendant. The assessment of all the factors to determine what would be in the

paramount interest of a child involves the exercise of judicial discretion after all the relevant factors have been considered: see: *Re F (an infant)* [1969] 2 All ER 766; *Attu v Attu* [1984-86] 2 GLR 743; and *Young v Young* [1993] 4 S.C.R 3 at para 71 per *L'Heureux-Dubé J*

18. The determination as to who should have custody of a child is merely an answer to the question: "what should be the best interest of the child"? It does not in any way terminate parental duties owed by the parent against whom the order is made: see *Re W (Minors) (Residence Order)* [1992] 2 F.C.R 461 at 465 per *Butler-Sloss LJ*.
19. In the instant case, Plaintiff argues that 1st Defendant is always unavailable leaving the children in the custody of 2nd Defendant who cannot bring them up properly. Plaintiff states that his investigations also revealed that 1st Defendant is currently residing in Tamale, leaving the children with her mother, 2nd Defendant at Bongo – Soe. It is the Plaintiff's case that being the biological father of the children and a trader, he is in the right position to provide and give the children proper upbringing. It is also the Plaintiff's case that the children are very young and needs to be taken from their grandmother (2nd Defendant herein). On the other hand, 1st Defendant says that she loves her children and had always stayed with them and that she travelled to Accra recently to work and get some money to support herself and the children. It is the 1st Defendant's case that she is the biological mother of the children and is healthy and also of sound mind and therefore can work to support and take care of the children with the help of Plaintiff.

20. From the evidence, the Court also found that the Plaintiff is a trader or business man while the 1st Defendant is unemployed, even though 1st Defendant claims she is a Seamstress. Faizatu Razak aged 11 years and Jumin Razak aged 7 years are currently living with their father and are happy as gathered from the independent interview the panel had with them. This court is therefore of the view that it will be in their best interest to maintain the *status quo* and accordingly, their best interest is for them to live with their father, Plaintiff. The panel also independently interviewed Issah Razak who is 14 years and in JHS 3 and a male. From the interview or the panel's interaction with Issah the court found that he has been living with his mother for sometime now and he is also happy. This court is of the view that it is better to maintain the *status quo* and allow him to stay with his mother, 1st Defendant. After attaining the age of 18 years, he can decide to live with any of his parents.

21. For the forgoing reasons, this court is of the view that the best interest of Faizatu Razak 11 aged years and Jumin Razak aged 7 years is for them to live with the Plaintiff while Issah Razak aged 14 years is to live with the 1st Defendant, his biological mother. This decision is arrived at after thorough consideration of the evidence on record in accordance with the best interest of the children in issue and in accordance with the authorities mentioned *supra*. Thus, custody of Faizatu Razak aged 11 years and Jumin Razak aged 7 years is hereby granted to the Plaintiff while custody of Issah Razak aged 14 years is granted to the 1st Defendant, the biological mother. Besides, to ensure compliance with the dictates of **section 5 of the Children's Act, 1998 (Act 560)** which grants children the right to grow with their natural parents, we hereby grant access to Faizatu Razak aged 11 years and Jumin Razak aged 7 years by 1st Defendant who shall accordingly

have the right to live with them not later than one (1) day into their vacation except that 1st Defendant shall return the children to the Plaintiff not later than one (1) clear day before school reopens. We also grant access to Issah Razak by Plaintiff.

22. The next issue to consider is whether or not Plaintiff is entitled to buy a sewing machine for the 1st Defendant. From the evidence 1st defendant claims she is a Seamstress and is willing to take care of the children with the support of the Plaintiff but she is not having a sewing machine. This court is of the view that when 1st defendant is working it will be easier for her to share the burden of taking care of the children. It will therefore be appropriate considering the peculiar nature of this case for the Plaintiff to buy a sewing machine for 1st Defendant. This is to help the 1st Defendant to operate her trade as a Seamstress and assist Plaintiff in paying educational and medical expenses of the Children.

23. Finally, the parties are encouraged to communicate to enable them take good care of the children together. 1st Defendant claims she is not having a phone and the Plaintiff is hereby ordered to buy a phone for 1st Defendant. The phone will assist the 1st Defendant to communicate regularly with the Plaintiff for the purpose of taking care of the children together.

Conclusion

24. Having examined the whole evidence adduced at the trial in accordance with above-mentioned authorities as well as in the full consideration of the welfare of the children in issue, we have decided as follows that:

- a. We grant custody of Faizatu Razak aged 11 years and Jumin Razak aged 7 years to the Plaintiff subject to the right of the 1st Defendant to have access to them whiles custody of Issah Razak aged 14 years is granted to the 1st Defendant subject to the right of the Plaintiff to have access to him.
- b. The Plaintiff shall be responsible for educational and medical expenses of the children. The 1st Defendant shall also support the Plaintiff as much as she can in paying these expenses. The Plaintiff shall ensure that the children further their education even up to the University. The parties are also encouraged to communicate to enable them take good care of the children together.
- c. The Plaintiff shall pay maintenance allowance in the sum of three hundred Ghana Cedis (**GHC300.00**) monthly to the 1st Defendant for upkeep of Issah Razak. This order is effective February 2025 and it shall be paid on the 30th day of each month except in February it shall be paid on 28th or 29th as the case may be.
- d. The Plaintiff shall buy a Sewing Machine and a phone for the 1st Defendant.

(SGD.)

**H/W MAWUKOENYA NUTEKPOR
(CHAIRPERSON)**

(SGD.)

MR. PIUS NGAARA (PANEL MEMBER)

(SGD.)

MR. JOHN AZAM (PANEL MEMBER)

(SGD.)

POGNABA CHRISTIANA NGEH (PANEL MEMBER)