

IN THE CIRCUIT COURT 1 ADENTA, HELD ON 8<sup>TH</sup> DECEMBER 2023 BEFORE  
HER HONOR ANGELA ATTACHIE CIRCUIT COURT JUDGE.

ABIGAIL BEMPONGMAA FREMPONG

V

ROMEO TETTEH

## JUDGMENT

This is an application for custody case which was filed as far back as 29<sup>th</sup> July 2021. Applicant per her affidavit in support of the application stated the child Mausina Tettey has always been in her custody until the father, the respondent herein came for him child on 10<sup>th</sup> July 2021 to celebrate his birthday and refused to return the child to the applicant since then. It will not serve the child well to remain in the custody of the father who keeps introducing him to various women as step mothers as the respondent has married and divorced four (4) times after the divorce from the applicant herein. There is no supervision whatsoever in the house as the children are allowed to access the internet without any restrictions. The child subject of this application ones informed the applicant he has been watching pornographic film with his step sister called wisher. Applicant also has cause to believe the respondent is introducing the child to occultic activities which the child himself comes to narrate to the applicant. The respondent is also involved in a chieftaincy dispute in his Yilo Krobo town which has endangered his life severally. On one occasion the child was attacked and it had to take the body guards of the respondent to whisk the child away to a hotel in town. Respondent himself has had to stay in the palace for months with police protection.

After several applications back and forth and appeals, the respondent filed his affidavit in opposition to the suit on 28<sup>th</sup> 6/22. Respondent denied all the allegations

levelled against him by the applicant insisting he has lived up to his responsibilities as a father. He stated that he is happily married and his wife has been a mother figure to the child and takes good care of the child. At the time the respondent went for the child, the petitioner was a full time student at Legon and so left the child in the care of her mother at Anyinam. Respondent after taking custody of the child into to enroll him at Association International School. He has adapted to the new school environment and progressing steadily with his academic work. Respondent states that he exercised his legal writes to take charge of his son who had been left in the care of the grandmother.

Petitioner filed a supplementary affidavit in support of her application on 01/7/22 which was basically a reply to the averments of the respondent in opposition to the application. She insisted the respondent knew she was going to start her MPHIL and was always aware the child was with his grandmother at Anyinam. She added that contrary to the assertions of the respondent that when he went for the child he was ill as such had to take the child to the hospital, applicant insist that she informed the respondent the child was unless and asked him to continue with the child's medication. Applicant further prayed

Petitioner went on to file a witness statement dated 0/08/22 and 22/08/23 repeating the averments in support of her application and further alleging respondent went on to marry two women after her divorce with him. She further prayed for the following:

1. Monthly maintenance of Gh¢ 1,200.00.
2. That the parties equally share the educational expenses of the child
3. That the parties equally share the medical expenses of the child.

The following issues were therefore identified:

1. Whether or not custody of the child should be granted 5to the applicant of the respondent.

2. Whether or not the respondent should maintain the child at Gh¢ 1,200.00 per month.
3. Whether or not school fees and medical bills should be split between the applicant and the respondent.

On the first issue, it has been provided by **section 45 of the Children's Act, 1998**:

*“ 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.”*

This provision makes it almost automatic that a child should be allowed to grow up within the mother. That notwithstanding, where there are proven circumstances that make it unsafe or not in the best interest of the child to live with the mother, the court can vary same.

At all times, it is the paramount interest of the child that is considered. The evidence led before the court shows the applicant and the respondent were once married. After they got divorced, the applicant had custody of the child and was taking care of him with the help of her mother until the respondent under the pretext of organizing a birthday party of the child came for the child and refused to return him to the mother. The respondent explained he was only exercising his lawful right as a father since the child was left in the care of his grandmother. Respondent has not been able to state why the applicant is unfit to have custody of the child. Respondent made allegations of the applicant leaving the child in the care of her mother when she left for school but the evidence shows the applicant is no longer in school as such would not have issues with taking care of her child. The respondent filed his witness statement but dialed to appear before the court to tender same in evidence. The court therefore has no evidence from the respondent.

A social Enquiry was ordered and the report was made available to the court and filed 19/9/22. The report reveals the applicant is a teacher at a Nursing and midwifery school, who lives in a two bedroom self-contained apartment at Old Estate Koforidua.

The children has a room, well-furnished to himself even though he mostly sleeps in the mother's room.

The respondent on the other is a procurement officer and the paramount Chief of Yilo Krobo Traditional Area. He lives in a six bedroom apartment at Kas Valley Estate at Oyibi in Greater Accra Region. He lives with his wife, a driver, a niece and two house helps with a number of cars. The child has a room which is also well furnished.

The child was also interviewed and he stated that when he is with the respondent, his half-sister causes a lot of trouble for him where he ends up being beaten by the respondent. He stated his father forces him to do things against his will. On an occasion, he was forced to bath in a tub full of oil without cleaning up the oil after bathing same. He however enjoys travelling with the respondent outside of the country and he has access to Netflix unlike at the residence of the applicant. He however will chose to live with the mother as opposed to live with the father since with his mum, he avoids all the trouble he faces at the respondent's house.

Custody of the child is hereby granted to the applicant with access to the respondent half of every school vacation given that the applicant and the respondent live in two different cities and the possibility of the child spending weekends with the respondent will be too hectic for the child.

On the second issue, **section 47(1) of Act 560**, provides as follows:

*"A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child.."*

**Section 51** also provides that:

*" A family tribunal may award maintenance to the mother of a child whether or not she is married to the father where the father has been identified..."*

In **Braun v. Mallet (1975) 1 GLR 81**, the Court held in an application for custody that:

*“ The mother must have custody of the child. It would be wrong to take the child away from the German environment with which he was familiar, or from the tender affection of his mother, the plaintiff.”*

The evidence shows the parents of the child are no longer married and living separate lives with the respondent having married someone else. It is therefore necessary that orders are made to ensure the child is well taken care of despite the separation of his parents. The court taking into consideration the standard of living of the respondent as per the social enquiry report awards maintenance of Gh¢ 1,000.00 to be paid by the respondent to the applicant each month for the upkeep of the child.

On the third issue, the child has a right to good education and to medical care. Since the applicant is in the health field, she can safely take care of the medical bills of the child. Respondent as the father of the child will therefore be responsible for the full educational needs of the child until he graduates from the tertiary institution.

It has been held the duty to care for a child is the duty of both parents. Both parties are therefore to share the responsibility for the upkeep of the child. See the decision in DONKOR V. ANKRAH 2003 2005 2 GLR 125, 140-141, Supreme Court per Dotse JSC held where the court held that

*“Where both parents of a child are earning income, it must be the joint responsibility of both parents to maintain the child. The tendency for women to look up to only men for the upkeep of children is gone.”*

No orders as to cost.

HER HONOR ANGELA ATTACHIE  
CIRCUIT COURT JUDGE.