

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON TUESDAY THE 14<sup>TH</sup> DAY OF DECEMBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM FELICIA COFFIE AND MR. WISDOM ATIASE AS PANEL MEMBERS.

---

SUIT NO.: A6/77 /2022

GODWIN MENSAH KLUTSE  
DANSOMAN, ACCRA

APPLICANT

VS.

ELIZABETH TUOTA AH  
LATERBIOKORSHIE, ACCRA  
RESPONDENT

**Parties Present**

**Alfred Buodu Esq. for the Applicant.**

**Vanessa Appiagye Esq. for Patricia Ackah-Mensah Esq. for the Respondent.**

**RULING**

This is a Ruling on an Application filed on the 8<sup>th</sup> of September 2021 for Access of the child in issue.

**The Applicant's Case**

The Applicant in his Affidavit in Support deposed that he cohabited with the Respondent for some years resulting in the birth of the child in issue who is Nine (9) years old. He stated further that they separated for the past Three (3) years due to irreconcilable differences and he had to vacate the house in which they all

lived. He continued that upon separation, the Respondent used to initially bring the child to his shop which was closer to the house for the child's feeding fees but subsequently stopped. He concluded by stating that all efforts at having access to the child to build a strong father and son relationship have been abortive even though he constantly maintains the child. He therefore prays for the following reliefs;

1. An Order to have access to the child.
2. An Order to pay maintenance of Ghc300.00 into court.
3. Any other Order(s) deemed fit by the Honorable Court.

### **The Respondent's Case**

The Respondent in her Affidavit in Opposition filed on the 5<sup>th</sup> of October 2021 admitted to cohabiting with the Applicant together with an older son and the child in issue. She indicated that the Applicant was physically and emotionally abusive towards her and her older son to the extent that she had to lodge a complaint at the Dansoman Police Station against the Applicant. She stated that when the Applicant packed out of the house, he went along with all the house essentials such as furniture, refrigerator, cooking utensils with the rent of the house being due but the Applicant left her and the children to their fate. She stated further that she solely had to bear the burden of gathering funds to cater for the child's school fees and other related fees. She continued that the Applicant has not been consistent with maintenance even though he promised to pay an amount of Ghc400.00 monthly. She deposed further that with respect to the Applicant's prayer for access, the child in issue does not feel comfortable and safe around the Applicant because of the abusive and violent nature of the

Applicant that the child witnessed. She concluded by stating that per her Daagati custom, the child of a man and a woman is deemed to be the child of the woman only until the necessary marriage rites are performed by the man. She therefore prayed for the following reliefs;

1. An Order granting the Respondent custody of the child with supervised access to the Applicant and subject to the payment of maintenance, rent and other costs stated below.
  
2. 

i. school fees	-	Ghc70.00 per term
ii. Extra classes fees	-	Ghc140.00 per term
iii. Home Tuition	-	Ghc70.00 per month
  
3. An amount of Ghc600.00 per month as maintenance for the child.
  
4. Monthly rent of Ghc300.00 since June 2020.

## **DETERMINATION**

In view of the processes so far filed by both parties and the evidence on record, the issues for determination are as follows;

1. Whether or not the Applicant can have access to the child.
  
2. Whether or not per the Respondent's Dagaati custom, the child is deemed to be the child of the mother only unless the father performs the marriage rites.

The court in the best interest of the child however ordered for a Social Enquiry Report (SER) to be prepared to guide the court in taking a decision as far as access to the child is concerned.

### *The Social Enquiry Report (SER)*

The SER as submitted by the Probation Officer, Madam Mavis Gbate on the 12<sup>th</sup> of January 2022 made certain findings and conclusions including the fact that the Applicant lives at Dansoman with his wife and a child who is a year old. He works as a designer in his own shop where he earns about One Thousand Ghana Cedis (Ghc1, 000.00) monthly. The Respondent occupies a Two (2) bedroom self-contained house with her Two (2) sons (including the child in issue) and works as a teacher in a government school. The Probation Officer however indicated that she was unable to visit the Respondent's home because she refused to pick her calls and also gave certain wrong information. The Probation Officer again observed that the child appeared to have been told what to say when she interviewed the child. The SER again gathered that the Respondent is a Teacher at the school in which the child attends and as such teachers who have their children in the school do not pay levies save for extra classes since it is a personal arrangement between parents and teachers.

### *Analysis*

The court on the 26<sup>th</sup> of January 2022, pending the final determination and in the interim, ordered the Respondent to have weekend access to the child in issue. The court however observed a strained relationship between the Applicant and the child of which on the 30<sup>th</sup> of March, 2022, the parties were referred to a Psychologist at the Korle Bu Teaching Hospital for counselling. A Psychological Report, received on the 28<sup>th</sup> of June 2022 and cosigned by Lilian Ohene, a Clinical Psychologist and Professor Angela Ofori-Atta, the Head of Department

concluded that based on information gathered from the interviews, observation, and the psychological test, the relationship between the parties is strained post separation. The Report stated further that the Applicant's way of handling the situation by giving the child too much details about what transpired between her and the Applicant is affecting the child's behavior negatively and as such the child has developed a negative reaction towards his father.

The import is that, the Respondent has over the years consciously and/or unconsciously done or said things that poisoned the mind the child unfairly against the Applicant. This has been termed as 'parental alienation' and often typically occurs after a divorce or separation when such parents bash each other in hopes of garnering favor with their child during a custody dispute. At some point, the child becomes so exposed to the bashing, blame and ill-will from one parent toward another that the child becomes disenchanted with the other parent; the relationship begins to break down, sometimes, irreparably. Authorities have indicated that such situation is injurious to all involved but it is the emotionally healthier parent that is rejected, whereas the alienating parent thinks it acceptable to use the child as a form of punishment for the other parent, and it has been characterized as a form of abuse toward both parent and child.

The signs that parental alienation occurred or is occurring includes when a parent regularly interferes with communication between the child and the other parent; makes false allegations of abuse against the other parent and involves the child in these allegations; regularly engineers situations so that the child is 'unavailable' to spend time with the other parent; creates an intense fear by the child of spending time with the other parent when no previous fear existed; makes negative remarks about the other parent; coerces, entices or manipulates

the child into rejecting the other parent; among others. The evidence on record, including the Report of the Clinical Psychologists, the testimony and demeanor of both parties as well as the Social Enquiry Report all show that the Respondent has made a conscious effort at alienating the Applicant from the life of the child in issue. Parental alienation can be extremely destructive to the mental health of a child particularly when continued over an extended period of time and it seems to suggest that the Respondent has been manipulating the child to the extent that if left unchecked, the relationship between the child and Applicant can be irreparably damaged. It is therefore not surprising that the Clinical Psychologists recommended that the parties may require conjoint psychotherapy to help manage their differences and help make decisions in the best interest of the child. It was further recommended that the child in issue may require psychotherapy (Behavior Modification) to help reverse maladaptive behaviors learnt.

Despite the actions and inactions of the Respondent, in making a determination on the issues before the court, the court is guided by Section 2 (1) of The Children's Act (1998) Act 560 which states that '*...the best interest of the child shall be paramount in any matter concerning a child...*' and Section 2 (2) also provides that '*...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...*'. Thus, the first issue for determination **whether or not the Applicant can have access to the child in issue**. The Respondent herein is the biological father of the child in issue as there is nothing on record to suggest otherwise and **Section 44 of Act 560 provides** that '*A parent, family member or any person who has been caring for a child may apply to a Family Tribunal for periodic access to the child*'. Respondent therefore has all the rights of a biological father over the son including access. Generally, when there

is enough evidence to show that one parent is alienating the child from their other parent, the Court would typically rule that it is not in the best interest of the child to remain in the care of a parent who is manipulating them. In most cases, the court in the best interest of the child may have to extract the child from such a toxic situation so as to reestablish the bond with the other parent. In the United States case of **Katherine Milne vs. Robert Goldenberg** 51 A.3d 161, N.J. (2012) the Court held that *'...when the actions of such a parent deprive the child of the kind of relationship with the other parent that is deemed to be in the child's best interests, removing the child from the custody of the uncooperative parent may well be appropriate as a remedy of last resort...'*

However, in view of **Section 45(1) of Act 560** which states that *'...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'*. The evidence on record shows that the child is now Ten (10) years old and it is arguable that the child appears too young to be separated from his mother especially when the evidence shows that the child has always been in the custody of the mother. The court is therefore of the opinion that there is the need for a gradual reunification of both father and son so that the child does not become emotionally upset in addition to the present psychological trauma the Respondent has put the child into. Additionally, **Section 45 (2) (e) of Act 560** also emphasizes on *'... the need for continuity in the care and control of the child...'* and as such the court is reluctant to change the status quo as far as custody is concerned. In the circumstances, the onus lies on the Applicant to take several steps in trying to win the child over and rebuild a father-child relationship such as spending time with the child, showing him love and care, being rational, reasonable and patient with the child, having healthy conversations with the child, among others.

The next issue for determination is **whether or not per the Respondent's Dagaati custom, the child is deemed to be the child of the mother only unless the father performs the marriage rites.** It appears the cultural beliefs of the Respondent is what has pushed her into trying to totally exclude the Applicant from the life of the child in issue. It is the Respondent's case, as deposed to in her Affidavit in Opposition that in so far as the Applicant has not customarily married her, then the child in issue belongs to her alone. It seems therefore to suggest that as far as the Respondent is concerned, unless and until the customary requirement of marriage is performed by the Applicant, he cannot have access to the child. To be able to make a determination on this issue, there is the need to appreciate the laws of this country as stated in *Article 11 of the 1992 Constitution* that; *The laws of Ghana shall comprise the Constitution; enactments made by or under the authority of the Parliament established by this Constitution; any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution; the existing law; and the common law. Article 11(2) states that '...the common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. Article 11 (3) further provides that '... "Customary law" means the rules of law, which by custom are applicable to particular communities in Ghana...'*

In view of the above constitutional provision, it is obvious that Ghana operates a plural legal system, a situation in which two or more legal systems co-exist in the same social field and in Ghana, this is revealed in the existence of customary law and statute law rules sometimes on the same subject. Authorities have stated that since Ghana attained Republican status, the customary laws of various communities have been treated as part of the laws of the country and the only



test for their validity is whether they fulfil those conditions which come under the general law of the land including the Constitution and not contrary to national aspirations or public policy. In this instance, the Respondent's position is that the Applicant has failed to satisfy the customary requirements of performing marriage rites for him to be able to 'father' the child. In the case of **Yaotey v. Quaye** [1961] GLR 573-584, the court held that '*... at the foundation of every informal customary marriage was the agreement by the parties themselves to live as man and wife. Consequently, a man could not be hoodwinked into marrying a woman with whom he had no intentions of sharing matrimonial union...*'

It is trite that because the laws of Ghana were fashioned out of the English pattern and the result has been that our laws in the various statutes exist side by side with the rules of customary law. This, over the years, has resulted in a clash between the customary law and the law on the statute books or the laws applied by the courts. Authorities have stated that custom is the outcome of generations of experience under conditions which can hardly be fully appreciated and one must always be cautious in making judgments about customs. It may therefore be argued that the Respondent's custom passes the repugnancy test as provided in the Courts Act, 1993 (Act 459). It is beneficial for society to continue to uphold Ghanaian family values and reward persons who have children within a marriage. The act of conceiving a child out of wedlock should not be encouraged by allowing the father bypass well laid down customary rites. In the case of **Saakyi Mami v Dede Paulina** [2005 -2006] SCGLR 1116, Brobbey JSC stated that '*...when making decisions concerning whether a customary practice should be applied by a court, the court should bear in mind the core values of the Ghanaian society*'.

On the flip side, however, the court ponders over a custom that essentially expels the father totally from the life of child just because he failed to marry the mother

of this child. The said custom further alienates or denies the father of any and all rights to his child as well as refuse the father access to or custody of the child until he has performed marriage rites. This court is of the opinion that the said custom appears to be in contrast with the welfare principle, why should an innocent child be made to suffer or pay for the indiscretion exercised by his parents? It must be emphasized that the Welfare Principle as posited by the Children's Act, 1998 (Act 560) and to a large extent, the best interest of the child supersedes all other positions and denying the Applicant access to his child violates every principle relating to the welfare of the child. The Welfare Principle is ingrained in our laws and in the hierarchy of the laws of Ghana, particularly, in their descending order, customary practices and beliefs are subservient to Acts of Parliament as stated in the Article 11 (4) of the Constitution.

#### **DECISION:**

Upon consideration of the Application, the evidence before the Court, the testimony of both parties, the Social Enquiry Report and pursuant to the provisions of The Children's Act (1998) Act 560, the Court is satisfied that it will be in the best interest of the child to grant this instant Application and orders as follows;

1. The Respondent shall have custody of the child and the Applicant shall have reasonable access as follows;
  - (i) the Applicant, every fortnight, shall pick the child up from school every Friday and return the child to school on Mondays with effect from the next academic year in January 2023;

- (ii) the Applicant shall have access to the child during school midterm holidays and he is to pick the child up from school on the last day before the commencement of the mid-term and return the child to school on the next school day;
  - (iii) the Applicant shall have access to the child during half of his school vacations.
2. The Respondent shall maintain the child with an amount of **Three Hundred Ghana Cedis (Ghc300.00)** monthly and same is to be paid into court within the last week of every month with effect from January 2023.
  3. The Applicant shall pay all the incidental school expenses of the child and the Respondent shall bear the cost of school uniforms, bags and sandals of the child.
  4. The Respondent shall register the child under the National Health Insurance Scheme (NHIS) and renew same when it expires. The Applicant shall be responsible for all the bills not covered under the NHIS.
  5. The Applicant shall be responsible for the further psychotherapy of the child as recommended by the Clinical Psychologist to help reverse maladaptive behaviors learnt and the Respondent shall under no circumstance(s) prevent or frustrate the process.
  6. In view of the Respondent's testimony that she intends marrying any time soon, there shall be no orders on accommodation.

7. The Applicant is to pay off his maintenance arrears of Ghc1, 800.00 and same must be paid into court by on or before the 31<sup>st</sup> of January 2023.
8. Parties are advised to maintain a cordial relationship and ensure a healthy atmosphere between them in the best interest of the child so as to allow a healing process for the child psychologically.

.....  
**H/H HALIMAH EL-ALAWA ABDUL-BAASIT.**  
**PRESIDING JUDGE**

**I AGREE**

**I AGREE**

.....

.....

**MADAM PHILOMENA SACKKEY**  
**DANQUAH**  
**PANEL MEMBER**

**MADAM VIDA**  
**PANEL MEMBER**