

**IN THE DISTRICT FAMILY TRIBUNAL NYANKUMASI AHENKRO ON**  
**WEDNESDAY 14<sup>TH</sup> JUNE, 2023. BEFORE HIS WORSHIP PETER ANONGDARE**  
**DISTRICT MAGISTRATE.**

A6/06/2023

**BEATRICE DEBRAH**

**OF ASSIN ANYINABRIM**

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**PETITIONER**

**VRS**

**EMMANUEL TEYE**

**OF ASSIN ANYINABRIM**

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**RESPONDENT**

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1. HIS WORSHIP PETER ANONGDARE (MAGISTRATE)
2. MR GARTH OPPONG KWAKYE (PANNEL MEMBER)
3. MR ISAAC MENSAH ( PANNEL MEMBER)

**JUDGEMENT**

The applicant applied for custody and maintenance of the three children of the parties.

The parties were married for twenty two years and divorced in 2019. The children are:

- 1) Florence Dede: 18 years
- 2) Ransford Lartey: 13 years and
- 3) Selina Teye: 10 years

The respondent in his response claimed a restoration of custody of the children to him.

The case of the applicant is that, after their divorce she moved out of the matrimonial home. But that she took the third born along to live with her. The applicant said the other two children lived with their father but came to her to take their meals. According to the applicant the respondent once refused to pay medical bills of their first child. The applicant stressed that she had actually called to tell the respondent the child was admitted at the hospital. But the respondent refused to pay the bills.

The applicant added that the first child came to live with her in 2020. And the second also came to live with her in 2021. According to the applicant the respondent then filed a complaint at the Department of Social Welfare. And that the Social Welfare gave custody of the children to the Applicant herein. The respondent was to pay: a monthly maintenance of GH¢500.00, 70% of medical bills of the children, full payment of school fees and other expenses. The applicant claimed the respondent cannot take good care of the children. That is because the relationship between the respondent's wife and the children is bad. That the woman and the children do not communicate.

And that means that she does not love the children. The applicant claimed the respondent refused to pay the maintenance. Hence the Social Welfare Department advised her to come to court.

The respondent in his response to the application for custody claimed custody of the children, the respondent said he had claimed custody at the Social Welfare because the applicant had left the children with the applicant's sister. The respondent added that he then applied to the Social Welfare Department to have custody of the children. But the Department asked him to pay a monthly maintenance of GH¢500.00 to which he told the Department he could not pay.

The respondent added that he has been taking care of the children. So he wants them to come and live with him. And that he has no problem with the applicant having access to the children. The main issue for determination was whether or not custody should be granted to the applicant.

Section 45(1) of the Children's Act, 1998 (Act 560) 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. Section 45(2) emphasizes the fact that the tribunal should also consider: the age of the child; that

it is preferable for a child to be with the parents except if his rights are persistently being abused.

In the first place the applicant contended that she left the matrimonial home with the last child and the others later joined her. The respondent did not contest this. This is suggestive of the fact that the first and second were not influenced in any way to move to their mother. It will thus appear to the tribunal as we discussed and agreed that the children felt more comfortable living with their mother.

As stated above the applicant said the respondent's wife does not communicate with the children, the persons at the centre of the matter. The respondent denied the contention that his new wife did not communicate with the children. This thus becomes the word of the applicant against the word of the respondent. On the other hand the respondent argument is that he applied for custody because the applicant left the children with their aunt. But the applicant contended that she travelled once in that year and left the children with her sister.

In considering who is in a better position to take care of the children and promote their interest, the tribunal considered the social enquiry report compiled by the Probation Officer upon the order of this tribunal.

The report observed that the children currently feel secured and comfortable living with the applicant who had custody. And that the children seem to be under close supervision and guidance.

In addition, the finding of the enquiry is that the applicant has the capacity to take care of the children with the support of the respondent. The recommendation contained in the report is that custody of the children be granted to the applicant and reasonable access as the court may determine be granted to the respondent. The tribunal having examined the social enquiry report and the findings therein accept the recommendations of the report considering the reasons below.

- 1) If the children are secured living with the applicant then it will be in their best interest that they continue to live with the applicant.
- 2) The tribunal was also persuaded by the fact that the last two children are too young who cannot do anything on their own.

Upon deliberations, the Panel concluded that it was only proper that the children continue to live with their mother (applicant) where they felt secured since the respondent did not convince the tribunal that the children will be save in the hands of his new wife. At least the respondent could have called the new wife as a witness to help persuade the tribunal that their home was a better and secured environment for the children especially when the children have lived with the respondent and the new wife before.

In light of the above reasons, the tribunal made the following orders;

- 1) Custody of the three children is granted to the applicant.
- 2) The respondent is granted reasonable access to the extent that the children will spend school vacation with the respondent. The children can also spend the weekend twice in a month with the respondent if he so wishes.
- 3) The respondent is ordered to pay monthly maintenance of GH¢500.00 subject to review. It must be noted that the first child is 18 years and has just completed Senior High School but is still under the control of the parents though she lives with the applicant. It is expected that she will continue her education or learn a trade. So the tribunal decided to include her in respect of the custody and maintenance to enable her be with the applicant for the purposes of guidance to complete her next educational level or the trade she may learn.

The inclusion of the first child is however subject to review in the sense that if she decides to go and live with the respondent any of the parties can apply to the court for a variation of the monthly maintenance.

- 4) It is further ordered that the respondent shall pay 70% of medical bills for the three children while the applicant shall pay 30%.
- 5) It is also ordered that as and when the need arises the respondent shall provide clothing for the children as well as educational needs.

**SGD**

1. **HIS WORSHIP PETER ANONGDARE**
2. **MR GARTH OPPONG KWAKYE**
3. **MR ISAAC MENSAH**