

IN THE FAMILY TRIBUNAL '1' CAPE COAST BEFORE HIS HONOUR JAMES KOJOH BOTAH ESQ, WITH HIM NANA KODWO ADDAE II & MUSTAPHA ARYEE OKINE SITTING ON THURSDAY THE 26TH OF JANUARY, 2023.
AS AN ADITIONAL MAGISTRATE.

SUIT NO: A6/18/2023

PATIENCE MILLIU

- APPLICANT

VRS

PATRICK SAAME

-RESPONDENT

PARTIES PRESENT

JUDGMENT

On 16th August 2022 the applicant brought before us an application for custody of the three issues between the parties namely Patrina Saanme aged 8; Petra Saame aged 5 and Patrick Saame aged 2.

The respondent is opposed to the grant of custody of the children to the applicant.

CASE OF THE APPLICANT

The Applicant stated in her witness statement filed on 8th September 2022 that the respondent is her husband. The parties have three (3) issues as named above. According to the applicant at the time of their marriage she lived and worked in Ho whilst the respondent resided and worked in Cape Coast. The parties paid visits to each other from their respective places of abode and agreed that anytime the applicant brought forth a child and the child was two (2) years old the child should

be brought to Cape Coast to stay with the respondent. This arrangement was applied to all the three (3) children of the marriage.

Applicant told the court that in 2021 she got transferred from Ho to Cape Coast to join the respondent as husband and wife. As a result of several irreconcilable differences between the parties, the applicant packed out of the matrimonial home on 27th June 2022 and took up residence at Kakumdo, Cape Coast.

The applicant is praying for custody of the children on the ground that she is their biological mother.

CASE OF THE RESPONDENT

The respondent admitted that after their marriage the applicant stayed and worked in Ho whilst he lived in Cape Coast and worked there. Respondent also admitted that once the children were weaned off breast milk the applicant brought them to him in Cape Coast.

Respondent told the court that the children are presently in his custody and he has been taking care of them. Respondent admits that the parties have had many irreconcilable differences. According to respondent, applicant voluntarily packed out of the matrimonial home without his knowledge. Respondent prays the court to grant him custody of the children. According to him the children have been with him for a long time and they are happy to stay with him.

ISSUE FOR DETERMINATION

Whether or not the custody of the three (3) children should be granted to the Applicant or the respondent.

Section 2 of the Children's Act 1998 (Act 560) provides as follows:

"2(1) The best interest of the child shall be paramount in any matter concerning the child.

(2)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 45(1) of Act 560 also provides as follows:

“45(1) 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.”

In considering whether or not to grant custody of the children to the applicant or the respondent the law requires us to take into account the best interest and welfare of the children first and foremost. This position of the law on child custody is further strengthened by the case of Antwi v. Antwi [1962] 1GLR 321-324 where Apaloo J (as he then was) held that:

“In considering orders for the custody of children, the welfare of the children must be the paramount consideration.”

Apart from the Welfare Principle the law also enjoins us to look at the ages of the children. Thus if the child is young and tender in age the law lays importance on granting custody to the mother. The law is however silent on what age of a child constitutes young or tender. In other words there is no specific age for which one can say that the child is young or tender in years. So the requirement to grant young or tender children to the custody of their mother will be subject to the evidence on record and other Judicial decisions of the court. In the case of In re Dankwa [1961] 1GLR 352 the court refused to grant custody of a child to her mother. Ollenu J. (as he then was) observed as follows:

“In the instant case, the child was taken when she was only two (2) years. She has now adapted herself to her new environment and is happy. It will not be in her interest to subject her to another change of environment, associations etc. by making the order sought.”

Similarly in the case of Ansah v. Ansah [1982-1983] GLR 1127-1133 Owusu-Addo J. observed as follows:

“On the question of the wife’s application for custody of the two children, the court’s duty was to make an order which was reasonable for the benefit of the children. In deciding what was in the best interest of the children, the conduct of the parents, the patterns of life set up for the children since co-habitation ceased between the wife and husband were important matters to be taken into consideration.”

The above two cases have further developed the law on child custody to include the environmental principle. The court is enjoined to also consider the present living environment of a child when making an order for child custody.

There are three (3) children here whose custody are in issue. We are further enjoined by section 45 (2)(d) of Act 560 which provides that it is desirable to keep siblings together. We believe that the rationale of this law is to enable siblings interact and grow up together instead of separating them.

In making a determination as to custody of the children we shall also take into consideration the Social Enquiry Report which this Family Tribunal ordered for and which was filed on 7/12/22.

According to the evidence on record the parties due to work schedules lived in different places, namely Cape Coast for the respondent and Ho for the applicant. Per the arrangement between them, the applicant brought up the issues of the marriage to live with the respondent in Cape Coast anytime they were two (2) years old. The applicant paid visits to the respondent in Cape Coast and later joined the respondent on transfer in 2020 where they lived together as husband and wife with the children at the respondent’s residence at Eyifua Cape Coast. It can be perceived from the evidence on record that the children have lived for a considerable period of time with their father the respondent more than with their mother the applicant. The

respondent has enrolled the children in school and is fully responsible for their care and upkeep. The children are very familiar with their home and school environment.

It is the opinion of this Family Tribunal taking into consideration all the relevant laws that the best interest and welfare of the children will be realised and better served if their custody is given to the respondent rather than to the applicant. We are aware that the third child is very tender in age being just two (2) years old. Considering his age it would have been preferable to give his custody to the applicant. However, we are guided by the law that young siblings must stay and develop together and must not be separated. For the above reasons, custody of all the three children of the marriage between the parties are hereby granted to the respondent. The applicant is granted reasonable access to the children at weekends and during school holidays. There will be order as to costs.

(SGD)

H/H JAMES K. BOTAH, ESQ

(CIRCUIT COURT JUDGE)

(SGD)

NANA KODWO ADDAE II

(MEMBER)

(SGD)

MUSTAPHA ARYEE OKINE

(MEMBER)