

**IN THE DISTRICT COURT '1' BEFORE HIS HONOUR JAMES K. BOTAH  
ESQ. WITH HIM NANA KODWO ADDAE II AND MUSTAPHA ARYEE  
OKINE AS PANEL MEMBERS SITTING ON THURSDAY THE 13<sup>TH</sup> OF  
APRIL 2023 AS AN ADDITIONAL MAGISTRATE**

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**SUIT NO. A6/30/2022**

**VIDA PRAH - APPLICANT**

**VRS**

**ISAAC HAGAN - RESPONDENT**

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**Applicant - Present**

**Respondent - Absent**

**Francis Boa-Essilfie for Applicant - Absent**

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**JUDGMENT**

On 26<sup>th</sup> April 2022 the Applicant brought before us an application for custody of the two (2) issues between the parties namely; Henry Hagan aged 15 and Esi Hagan aged 12. The Applicant prayed for an amount of GH¢800.00 per month as maintenance for the children and a further order for the Respondent to cater for the children.

The Respondent filed a response on 30<sup>th</sup> May 2022 and prayed for custody of Esi Hagan.

**APPLICANT'S CASE**

Applicant testified that the parties are the biological parents of the two (2) children mentioned above. According to Applicant Henry Hagan is in her custody in Cape Coast whilst Esi Hagan is in the custody of the Respondent in Tema.

Applicant narrated to the court that initially the children were under her custody. However, because she wanted to learn a trade she left the children in the custody of the Respondent at Mankessim and then came to Cape Coast to learn a trade. After finishing learning the trade she went for the children but the Respondent gave her only Henry. She said Henry has been with her for eleven (11) years and Esi has been with Respondent for twelve (12) years. Applicant said she has no access to Esi. Applicant prayed for custody of the two (2) children as well as the grant of her other reliefs.

### **RESPONDENT'S CASE**

Respondent testified that he is a salesman with Trobo Farms at Tema.

Respondent said that the parties were in a relationship which produced the two children.

He confirmed that Henry is in the custody of the Applicant and further that Esi has been in his custody for eleven (11) years now at Tema. According to Respondent he is now married and has a child with his wife.

Respondent informed that court that the Applicant left the two children with him at Mankessim to go and learn a trade. According to Respondent after a period of Four (4) years, he told the Applicant that he wanted to travel and so he brought the male child to the Applicant's family house and gave him to the Applicant.

Respondent told the court that he is opposed to the Applicant having custody of Esi. He said Esi has been with him for a considerable period of time.

### **ISSUES FOR DETERMINATION**

Whether or not custody of the two (2) children should be granted to the Applicant.

Section 2 of the Children's Act 1998 (Act 560) provides that the best interest of the child shall be paramount in any matter concerning a child.

This is generally referred to as the welfare principle. The provision commands any court, person, institution or body to take the welfare principle into consideration in any matter concerned with a child. The provision is anchored in

case law. In Antwi v. Antwi [1962] 1 GLR 321-324 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.”*

The facts of the case before us are straightforward but peculiar. Per the evidence Henry Hagan aged 15 years has been with the Applicant for eleven (11) years whilst Esi Hagan aged twelve (12) years has lived with the Respondent for twelve (12) years.

Section 45 (1) (d) of Act 560 states that it is desirable to keep siblings together when making an order for child custody. The law is looking at a situation where young siblings are living together under the custody of one of the parents and frowns upon any order or decision of a Family Tribunal that will separate the children from growing and interacting together. In the instant case before us the two children are living separately under their parents. They are schooling in separate environments and they have become accustomed to their new environments. In the case of In re Dankwa [1961] 1 GLR 352 the court presided by Ollenu J (as he then was) declined to grant custody of a child to her mother. The learned Justice observed as follows:

*“In the instant case, the child was taken when she was only two (2) years. She has now adopted 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.”*

In Ansah v. Ansah [1982-1983] GLR 1127-1133 Owusu-Addo J. also 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 declining 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 (2) judicial authorities have espoused a new principle in the determination of child custody application namely the environmental principle. We are bound to consider this principle and all other relevant statutory provisions as well as the Social Enquiry Report which we ordered to be made and filed in order to come to a decision that is in the best interest and welfare of the children.

The recommendations of the Social Enquiry Report (S.E.R) are that the custody of the two (2) children should be granted to the Applicant. The SER made the recommendation on the premise that the Respondent has left the custody of Esi Hagan to his former boss.

The following cross-examination of the Respondent by the Family Tribunal is worthy of note:

Q. You told the court that you have custody of Esi Hagan. Not so?

A. Yes

Q. Where exactly do you live in Tema?

A. Community 10, Tema

Q. Did you take the Social Welfare Officials to your place at Tema?

A. Yes.

Q. The SER says that you have given the child to your former boss. What do you say to that?

A. That is not true. I stay in the same house with her. I go to work and stay there for a week and then returns to Tema.

Q. Within the period that you are away, who takes care of the child?

A. My ex-boss' wife.

Q. Do you live in the same house with the child in your former boss' house?

A. Yes

Q. Who takes the child to school when you are away?

A. She is grown and goes to school by herself.

Having examined the Respondent through the above cross-examination, we do not think that the Respondent has ceded custody of Esi Hagan to his former boss as alleged by the SER. We believe that the Respondent has control over Esi Hagan. Accordingly, we hereby depart from the recommendations of the SER.

Evaluating the evidence as a whole and applying all the relevant laws relating to child custody, we are of the firm conviction that it will not serve the best interest of Esi Hagan if this Family Tribunal grant her custody to the Applicant. Esi Hagan is schooling in Tema. She has made friends with her school mates and has adapted to her living and school environments. Besides she has lived with her father the Respondent for twelve (12) solid years. It will not serve her best interest to uproot her from her present acclimatized environment at Tema and plant her to start afresh in a new school and living environment here in Cape Coast as the Applicant want the court to do.

For all the above reasons, the Application for custody of all the two children is declined the Applicant. The Applicant is to continue to retain custody of Henry Hagan aged 15 years whilst the Respondent continues to keep custody of Esi Hagan aged 12 years. Each of the parties is granted reasonable access to the child under their custody to be restricted to weekends and during school holidays.

The parties are encouraged to help the children bond together as siblings anytime they exercise their rights of access over the children.

**JAMES KOJOH BOTAH ESQ.  
(CIRCUIT COURT JUDGE)**

**NANA KODWO ADDAE II  
(MEMBER)**

**MUSTAPHA ARYEE OKINE  
(MEMBER)**