

**IN THE SUPERIOR COURT OF JUDICATURE
ON WEDNESDAY, THE 30TH DAY OF AUGUST, 2012 BEFORE HIS
LORDSHIP JUSTICE EDWARD AMOAKO ASANTE.**

SUIT NO. AP.114/2012

THE REPUBLIC

VERSUS:

**THE DISTRICT & JUVENILE COURT
FAMILY TRIBUNAL "A"**

- RESPONDENT

**EXPARTE: JULIET OSABUTEY-TORRES
JAMES TORRES**

- APPLICANT

- INTERESTED PARTY

APPLICANT PRESENT

INTERESTED PARTY PRESENT

NAA ODOFOLEY NORTEY FOR APPLICANT PRESENT

FRANCIS YALLEY FOR THE INTERESTED PARTY PRESENT

RULING

This is an application by the Applicant herein praying for an order of certiorari to quash the decision of the Family Tribunal "A" denying the Applicant the right to cross-examine the social Welfare Officer who conducted and wrote the Social Enquiry Report and a prohibition to stop the Family Tribunal "A" from further dealing with the matter entitled "JAMES TORRES VRS. JULIET OSABUTEY-TORRES".

The basis of the application as alleged by the Applicant is that the interested party herein, who is the Applicant in an application for custody before the Family Tribunal sought to take custody for their two children who had all the time being under the care of his wife, who is the Respondent in that case and the Applicant herein. It is the Applicant's case that when the matter came on for hearing, the Family Tribunal Panel heard unsworn statements from both parties and proceeded to order the Social Welfare Officer to undertake an investigation and produce a Social Enquiry Report to the Tribunal. The Applicant averred further that when the report was produced, her counsel requested the court to permit counsel cross-examine the Social Welfare Office on his report but the presiding magistrate refused to permit her counsel to do so. She again stated that a new presiding magistrate was brought to the Tribunal and she also disallowed the cross-examination. In arguing the motion, counsel for the Applicant submitted that the Tribunal is enjoined by law to take evidence like all courts but in this case it did not take sworn evidence from the parties, neither were they permitted to cross-examine each other in their respective statements. Secondly, she contended that the practice where court experts/witnesses submit reports and are cross-examined by the parties was not adhered to by the Tribunal. She submitted finally that since the Tribunal had evinced by its conduct to do injustice in the matter, the court would enhance the rule of law by quashing the proceedings before the said Family Tribunal, prohibit it from further hearing the matter and then refer the matter to the Chief Justice to enable her transfer it to another Family Tribunal for hearing.

The counsel for the interested party opposed the application and stated that the facts as narrated do not warrant the grant of certiorari. He contended that even when the new magistrate was brought to the court, as per the attached proceedings, he proposed that the old proceedings be adopted together with the Social Welfare Officer's report and requested that the officer be cross-examined, but the Respondent's counsel objected to it. He also maintained that there is nothing suspicious about the conduct of the magistrate/the panel that warrants the court order to prohibit the Tribunal from hearing the case. He rather submitted that, the application is only intended to delay the trial so as to frustrate Applicant/Respondent whose visa has few days to expire.

From the total evidence before me it is certain that the Family Tribunal took unsworn statements from the parties based upon which it formed an opinion and commissioned the Social Welfare Officer to undertake an investigation and submit a report, which he did. In my view, the Family Tribunal in its adjudication function must take evidence of parties and permit them to cross-examine each other and call their witness, if any. In my view the conduct of the proceedings by the Family Tribunal as established by the facts herein is in contravention of the normal norms of adjudication, I think that this will lead to a travesty of justice. I think that on this score alone, certiorari will lie to quash the proceedings.

I therefore call in the entire proceedings and decisions of the Family Tribunal in this case and quash same. The proceedings are hereby quashed. Consequently, as prayed by the counsel for the Applicant she wants the said Family Tribunal to be prohibited from further hearing the matter on grounds that she does not expect any fairness from the Tribunal in the light of its conduct in the matter. In the interest of justice, I think it is only fair that an entirely new panel be made to adjudicate this case. I therefore prohibit the said Family Tribunal "A", Accra from hearing the matter. ***I order the***

Registrar of the said Family Tribunal to place the case file before her Ladyship the Chief Justice for it to be transferred to another Family Tribunal for fresh hearing.

(SGD) EDWARD AMOAKO ASANTE
JUSTICE OF THE HIGH COURT