

GHANA / JUDGMENT

GLOVER VRS. ADU-FORI (A6/16/20)

[2025] GHADC 13 (24 March 2025)

[2025] GHADC 13

COURT

District Court

CASE / FILE NUMBER

A6/16/20

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

CORAM: HER WORSHIP BIANCA GYAMERA-BEEKO, CHAIRPERSON, JOYCE BEKOE, MEMBER, AND MARIAN MOGTARI, MEMBER, SITTING AS THE FAMILY TRIBUNAL AT THE DISTRICT COURT MAMPONG-AKWAPIM ON 24TH DAY OF MARCH, 2025.

SUIT NO. A6/16/20 IN THE MATTER OF KWADWO NYAMESEM AND IN THE MATTER OF SECTIONS 43 & 45 OF THE CHILDREN'S ACT 1998 (ACT 459) AND IN THE MATTER OF AN APPLICATION FOR GRANT OF AN ORDER FOR GUARDIANSHIP AND CUSTODY OF KWADWO ANYAMESEM Applicant present. 1st Respondent's Attorney present. 2nd Respondent present. Edem Lithur holds Philip Jimanor's brief for the Applicant.

Introduction

JUDGMENT.

This is the unanimous decision of the Family Tribunal on a custody application that I have the honour of delivering in my capacity as Chair. Ordinarily, the Family Tribunal does not render such detailed judgments but given the expediciencies of this particular matter, the Family Tribunal decided to provided reasons for its decision. This application pertains to a child called Kwadwo Nyamesem and three mother figures seeking to be the figurative hand that rocks his cradle. It is regrettable that the proceedings have dragged on for so long (five years and 12 days to be precise) allowing emotions to take centre stage and unnecessarily complicate an already delicate situation. By way of background, on 12th March, 2020, by an originating motion on notice, the applicant in this matter instituted the present proceedings before this family tribunal, differently constituted, seeking an order for guardianship and custody of Kwadwo Nyamesem. The applicant is an author and an organisational psychologist by profession. She is resident at Berekuso and has been taking care of the child since February 2018. The 2nd respondent is the biological mother of the child in question who resides at Wenchi. The 1st respondent is aunt of the 2nd respondent and is resident in the United States of America. Jurisdiction The applicant has

invoked the jurisdiction of this court pursuant to sections 43 and 45 of the Children's Act 1998 (Act 560) and Section 18 of the Courts Act 1993 (Act 459). Section 18 of the Court's Act, 1993, one of the legal provisions pursuant to which the applicant has brought this application, specifically refers to the High Court. This court can therefore not entertain any applications pursuant to same. Fortunately for her, the applicant also relies on sections 43 and 45 of the Children's Act 1998 (Act 560). They state as follows: Section 43—Custody. A parent, family member or any person who is raising a child may apply to a Family Tribunal for custody of the child. Section 45—Considerations for Custody or Access.

- (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.
- (2) Subject to subsection (1) a Family Tribunal shall also consider—
 - (a) the age of the child;
 - (b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;
 - (c) the views of the child if the views have been independently given; (d) that it is desirable to keep siblings together;
 - (e) the need for continuity in the care and control of the child; and
 - (f) any other matter that the Family Tribunal may consider relevant. This court therefore has jurisdiction to determine this application but only as pertains to the issue of custody and the tribunal shall consequently limit itself accordingly. The Applicant's case According to the Applicant, a few years prior to February 2018, the applicant's mother had encountered the applicant's cousin, Angela Adu-Fori and the child. The applicant's mother inquired about the child's parentage and learnt that the child was the son of Angela's late brother, Asamoah and that his mother was mentally ill. The child had therefore been entrusted into the care of Angela. In January 2018, Angela and the child were involved in a gas explosion accident at their residence at Achimota in Accra. They sustained some injuries and were admitted to the Achimota Hospital in Accra. The child recovered quickly and discharged but he continued to stay with Angela at the hospital since she was yet to be discharged. The applicant's mother visited Angela and the child at the hospital and Angela confided in her that she lived alone with the child and that half of their home had been burnt down so she had no one and no place to take the child to while she was on admission. The applicant's mother offered to take the child home and care for him while Angela recovered, and Angela agreed. The applicant's mother handed the child over to the applicant when she got home as the applicant was living with her at Roman Ridge and the applicant's mother was old. Unfortunately, Angela never fully recovered and passed away a few weeks afterwards. At Angela's funeral, where the 1st respondent was present, the family asked applicant's mother if she was willing to continue caring for the child and she agreed but explained that it was the applicant who was taking care of the child since she was old. Applicant's mother informed the family that the applicant would require legal guardianship and the family agreed and pledged to support her through the legal process when the time came. Applicant enrolled the child in a

Montessori school and also got him a private tutor to help him catch up in school. Applicant also had concerns about the child's mental health so she had him examined by three psychologists. The child was diagnosed with Post-Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD). Applicant ensured that the child subsequently received therapy and at the time of the application, the child was doing much better. Applicant and the child bonded as family and applicant decided to apply for guardianship of the child. She began the process at the social welfare department at Accra. There, applicant was asked who the closest family member to the child was and she named the 1st respondent. 1st respondent told the social welfare officers she was the grandmother of the child contrary to what she had told the applicant's mother earlier on. The social welfare officers therefore decided to defer to the 1st respondent and even gave her the opportunity to apply to adopt the child. 1st respondent has however not applied for the adoption to date. Things began to go downhill from here with the 1st respondent changing the child's school without the consent of applicant, and 1st respondent forging a birth certificate for the child. The applicant therefore decided to make this application so that she can advocate for the child and care for him properly without disruption. On 6th June 2020, the Applicant's mother Abena Otu filed an affidavit in support of her daughter's application corroborating her narration of the facts. 1st respondent's case The respondent's case is that because the applicant put her on notice of the present application, she clearly and unambiguously admitted the 1st respondent's right over the child. She insists that the applicant is a distant relation to the child and therefore neither the applicant nor her mother can 'claim a better title or authority' over the child. She averred that she was the aunt of the child's mother and that the child's mother was mentally challenged. When the mother got pregnant, she took up the responsibility of taking care of her until she delivered the child. 8 months after the child was born, the mother returned to Wenchi where she has remained to date. 1st respondent's sister, Angela took care of the child after he was born while the 1st respondent continued to send money for his upkeep. 1st respondent also corroborated the narration of the events that led to the child living with the applicant and her mother. 1st applicant however averred that after the death of Angela, she made arrangements for somebody to take care of the child but the applicant's mother was unhappy with that arrangement so they agreed that the applicant's mother would continue to take care of the child but 1st respondent could have access whenever she was in the country. She also corroborated the fact that the applicant had been to the social welfare department and she, the 1st respondent had been contacted. She tendered a copy of the agreement reached there as exhibit PAT2. 2nd respondent's case The second respondent's case is simply that she is the biological mother of the child so she should be given custody of the child. She made her application on 24th June, 2022. Issue The issue for determination by this court is 1. In the best interest of the child, who should have custody of him? In the best interest of the child, who should have custody of him? The 2nd respondent, being the biological mother of the child, obviously has a better claim than any other party to these proceedings. Section 45(1) of the Children's Act 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”. In section 45(2), the law also states that “it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents”. However, the evidence before this court is that the 2nd respondent is mentally challenged and cannot care for a child. The evidence I refer to here include the averments of the applicant and the 1st respondent, a mental health assessment report on the 2nd respondent tendered by Dr. Josephine Agyeiwaa Stiles Darko, a Specialist Psychiatrist, and admitted into evidence on 10th March, 2025, and a Social Enquiry report filed on 25th April, 2024, tendered into evidence by Alice Ahenkorang on 10th March, 2025. The mental challenges of the 2nd respondent is the reason why the child has been in the care of other people to date. Indeed, the Social Enquiry report indicates that the 2nd respondent only wants to take the child and hand him over to the 1st respondent. I agree that the wishes of a parent regarding the care of their child must be given due consideration especially as against the views of a party who is not a parent. However, I am not convinced that this woman, who most likely cannot appreciate the nature of the present proceedings and who has not been considered fit by her family to take any decisions concerning her child has suddenly formed an opinion of her own that this court ought to attach serious weight to. I therefore find that the 2nd respondent is not a competent person to be awarded custody of the child. As stated above, section 43 of the Children’s Act states that a parent, family member or any person who is raising a child may apply to a Family Tribunal for custody of the child. It is therefore clear that any person at all involved in raising a child can apply for custody of that child. The 1st respondent has argued forcefully that the applicant is a distant relation of the child and therefore she cannot ‘claim a better title or authority’ to the child. Counsel for the 1st Respondent has in her written address made a passionate emotional appeal that the 1st Respondent is advanced in age and has no children of her own while the applicant is younger and can therefore have children of her own so the 1st respondent should not be denied the opportunity to enjoy the joys of motherhood. Respectfully, as sad as the 1st respondent’s circumstances are, the tangent that the 1st respondent has gone on suggests that she does not understand the nature of the present proceedings. The subject of the present proceedings is a child, a human being, not land or chattel. Frankly, in my opinion, while courts generally are at liberty to consider the question of who has ‘better authority or title’ customarily over a child as relevant in determining a custody application, I do not. Per my understanding of the law, the only people that the law recognises as having any right to custody are parents and this is reflected in the relevant provisions. Everyone else only gets custody if it is in the best interest of the child that they are awarded custody. The law is not concerned about the optics or the feelings of the parties. It’s sole consideration is what is best for the child. 1st respondent therefore does not have any special privileges or rights as regards custody of this child. The criteria set out in section 45 (2) regarding the award of custody as quoted above in summary are that the court must consider

1. The age of the child
2. The child should be kept with his parents unless he is being abused by them

3. The views of the child as to who should have custody of him
4. Siblings should be kept together
5. The need for continuity in the care and control of the child
6. Other matters the tribunal may consider relevant. The child did not not grow up with a sibling and it is therefore not necessary that the criteria requiring sibling to be kept together be considered. The requirement that the child be kept with a parent has also been dealt with. The relevant criteria for our purposes therefore are the age of the child, his views as to who should have custody of him, the need for continuity in care and control, and other matters the tribunal may consider relevant. The child is 10 years old and has lived with the Applicant since he was 4 years old. Presently, he has lived with her for about seven years. Per the Social Enquiry Report, the child's views are that he wants to continue living with the Applicant. This is captured in paragraph 8 of the report where it is stated as follows: Child seems well settled in his current abode. He told officers he wants to continue living with the respondent; he appeared uncomfortable at the mention of Patricia Adu Fori and does not want to live with her. The social enquiry report also establishes that the child is currently doing well under the care of the applicant. He is enrolled in a decent school and the applicant spares no effort in providing for his all-round development. The 1st respondent has not led any cogent evidence to challenge this finding by the social welfare office. The findings on the quality of care contained in the social enquiry report are corroborated by the findings of the Social Welfare Department in Accra. The relevant portion states as follows: The current caregiver (Boakyewaa Glover) has done a good job with the child in the past ten months, and she is prepared to continue caring for the child until the customary successor completes the adoption process and takes the child out of the jurisdiction. Indeed, but for the fact that the Applicant initiated adoption proceedings, the 1st respondent had made no move to come for the child. Even when the Social Welfare Department gave her the opportunity to adopt the child, she did not. I am therefore of the considered opinion that the 1st respondent's vehement opposition to the applicant's prayer for custody of the child is borne more out of the need to satisfy her desire to have a person she can point to as her own child rather than an honest exercise to save the child from the influence of a bad person. For what it is worth, I do not believe the Applicant is the evil, manipulative person the 1st respondent has tried so desperately to make her to be. The uncontroverted evidence before this court is that the Applicant has been nothing short of an angel to this child. Rather than branding her as evil, when her only crime has been to seek to legitimise the place of the child in her family, she should actually be commended. If we had more well-intentioned people like the applicant in our society, we would have fewer children roaming our streets. It is also with noting that the 1st Respondent has gone as far as kidnapping the child and has been convicted by a Circuit Court for same. While she may have had no bad intentions, it is clear that the 1st Respondent did not prioritise the best interest of the child because if she did, the possibility if the child being traumatised may have caused her to reconsider that course of action. Having considered all the evidence before the court including the conduct

of parties thus far in light of the criteria set out in section 45 (2) of the Children's Act, I am satisfied that it is in the best interest of the child that the Applicant be awarded custody of him, and I so order. I do however think that the 2nd respondent, his biological mother, ought to have access to the child at her request or at the request of the child. As suggested by the medical officer, this should be supervised. Consequently, the motion filed by the applicant on 12th March 2020 for custody of the child, Kwadwo Nyamesem, is granted with reasonable supervised access granted the 2nd respondent only. SGD. H/W BIANCA GYAMERA-BEEKO (CHAIR) SGD. JOYCE BEKOE (MEMBER) SGD. MARIAN MOGTARI (MEMBER)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/judgments/all/2025/?alphabet=g>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/boakyewaa-glover-custody-district-court-2025>

Prepared on 28 October 2026 · Esheria