

“THE PEOPLE OF CAMEROON”
“IN THE NAME OF THE PEOPLE OF CAMEROON”
IN THE HIGH COURT OF MEZAM DIVISION
HOLDEN AT BAMENDA
BEFORE HER LORDSHIP JUSTICE MBUAGBAW JOSCELYN
WITH MME ASOH BEDWIN AS REGISTRAR IN ATTENDANCE
THIS FRIDAY THE 17TH DAY OF FEBRUARY 2013
SUIT NO.HCMB/358M/13

ACHA CLAUDETTE AKUM APPLICANT

AND

FRANKLIN TENENG AWA RESPONDENT

PARTIES: Applicant present

Respondent absent

APPEARANCES: Barrister Ajereboh Jespa for applicant present

Barrister Nchifor for respondent present

COURT NOTE: Ruling delivered

R U L I N G

This ruling is based on an application by way of motion on notice wherein applicant through counsel prayed the Court for the following orders:

- 1) An order for the applicant to maintain custody of the child named **NARVAN ANYAM AWA**, born on the **25/05/2009**,
- 2) An order for the respondent to hand over to the applicant the birth certificate of the child,
- 3) An order for the respondent to be contributing monthly allowance of 50.000 Frs. For the child’s up keep and education.

Applicant also prayed the court for such order or further orders as the Court may deem fit to make in the circumstances.

In support of the motion paper is a 19 paragraph affidavit and further affidavit of 12 paragraphs. At the hearing counsel for the applicant adopted and relied on all the paragraphs of the affidavit and further affidavit. In his oral submissions counsel for the applicant invoked the provision of section 47 of the CSRO and urged the court to grant their prayer.

In reaction to the application, counsel for the respondent submitted that they filed an 11 paragraph counter affidavit and a lone exhibit – exhibit “A”. Counsel for the respondent equally adopted and relied upon the paragraphs of the counter affidavit and lone exhibit. He urged the court to dismiss the application and grant custody of the child to the respondent.

In his deposition, counsel for the applicant also stated that the applicant and respondent got the above mentioned child(4 years old) out of wedlock and that the child has not been recognised by the respondent. That since the birth of the child, the child has been living peacefully with the applicant.

Counsel for the applicant also stated that the respondent is keeping the birth certificate of the child and this has been causing hardship on the applicant each time she wants to look for school admission for the child. He said the respondent who is currently in Yaoundé has no stable home and he is preparing to travel out of the country. That in the year 2012, respondent threatened not to take care of the child if applicant did not let the child stay with his brother, one pastor Mbuh Kennedy. That the child is in nursery 2 and part of his fees has not been paid.

Counsel for the applicant deposed further that the respondent wants to take the child and hand over to his brother pastor Mbuh Kennedy. He stated that applicant is a nurse by profession and has a comfortable family home wherein she has been living with the child. He said the applicant has never denied respondent access to the child and that no prejudice would be caused the respondent if her application is granted.

In his counter affidavit, counsel for the respondent admitted applicant's averments that they got the child out of wedlock and that the child was born on the 25/05/2009. He said while abroad, the respondent was taking care of applicant and their child. That through his brother pastor Mbuh Kennedy, he sent a monthly allowance of 60.000 Frs. For the upkeep of both applicant and the child.

Counsel for the respondent deposed further that the respondent has a stable home wherein the child was living comfortably with his elder brother pastor Mbuh Kennedy. That the applicant is unemployed and cannot adequately bring up their son Narvan Anyam Awa and that granting the orders sought will have an adverse effect on the respondent.

I have gone through the totality of all the evidence before this court. From the facts as presented by the parties, they got married traditionally in the year 2005. Their traditional marriage has not been legalised (registered) therefore in the eyes of the law the parties are not married. It is undisputed evidence that the said child who is 4 years old has been living with the mother (applicant) from birth. The case at hand is one in which the applicant who has had custody over this child from birth wants to maintain custody over the child while the respondent wants custody over the child to be granted to him.

It is a principle and infact law that when deciding on matter of custody, the paramount interest and welfare of the child should be the court's greatest consideration. The principle of paramount interest and welfare of the child was highlighted by Lord MacDermott in the case of JVC (1970) A.C. pg 688 where he said it is "*... a process whereby all the relevant facts, relationships, claims and wishes of parents, risk, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child's welfare...*"

There is a presumption of fact that the best interest of a baby are served by being with its mother. This was the decision arrived at by Lord Juancy in the case of Brixey V Lynas (1996) 2fl 499, 505 where he said "*... the advantage of a very young child being with its mother is consideration which*

must be taken into account in deciding where lies its best interest in custody proceedings in which the mother is involved. It is neither a presumption nor a principle but rather recognition of a widely held belief based on practical experience and the workings of nature ...”

It is undisputed evidence that the child has been with his mother (applicant) from birth. By the working of nature, mothers spends more time at home with their children than fathers. They prepare food for the children, bath them, wash their dresses and ensure their moral upbringing.

From the foregoing, I am of the considered opinion that the best interest if Narvan Anyam Awa (aged 4) will be better served if he remain in his mother’s custody.

In consequence thereof, the court rules as follows:

ORDERS

1. That applicant ACHA CLAUDETTE AKUM shall maintain custody of the child named NARVAN ANYAM AWA born 25/05/2009.
2. That respondent FRANKLINE TENENG AWA shall hand over to the applicant ACHA CLAUDETTE AKUM the birth certificate of NARVAN ANYAM AWA.
3. That respondent shall make a monthly allowance of 50.000 Frs. To the applicant for the upkeep and education of their child named NARVAN ANYAM AWA.
4. That respondent is accorded right of visit of the child.

REGISTRAR IN ATTENDANCE
ASOH BEDWIN

J U D G E
JUSTICE MBUAGBAW JOSCELYN