

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Appeal: CA 23/2016**

**[2017] SCSC 643**

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**KERYL BRISTOL**  
Appellant

versus

**ABISON DE GEORGIO**  
Respondent

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Heard: 18<sup>th</sup> of July 2017

Counsel: Mr Frank Elizabeth for the Appellant - Absent  
Mrs Alexia Amesbury for the Respondent

Delivered: 18<sup>th</sup> of July 2017

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**JUDGMENT**

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Nunkoo J

**[1] BACKGROUND.**

The Appellant and the Respondent lived as husband and wife for about two to three years, possibly from 2006 to 2008. A child was born on 13 June 2007.

**[2]** The parties separated sometime in 2008.

- [3] The child lived with the mother since then. The parties had a set of arrangements regarding access and sharing time with the child, which worked well.
- [4] However, matters took a turn when in or around March 2016 the father decided to take the child along with him to Malta, his native country. The mother opposed this move and filed an application for custody and also sought an order that the child be not removed from Seychelles as she wanted the child to stay with her and grow together with her other two year old child born from a subsequent relationship with another man.
- [5] The application was made jointly by the appellant and her mother. In fact as per the application the mother would have custody and appellant's mother would retain care and control.
- [6] This application was resisted by the Respondent and ultimately after hearing the application the Family Tribunal granted custody to the Respondent.
- [7] It is important to note that at the time the application was made the Child was staying with the mother and from Thursday to Saturday with the father. The father would pick him from school on Thursdays and Fridays.

[8] THE DECISION OF THE FAMILY TRIBUNAL

On March, following application from Appellant, then Applicant, the Family Tribunal ordered that the child stayed with the mother from Monday to Friday and the Respondent to keep the child with him during weekends and to drop the child to school on Monday morning and further an order for non removal of the child from Seychelles; these orders date on 9 March 2016.

[9] After hearing the parties the Family Tribunal gave its judgment on 22August 2016.

[10] It ordered as follows:

Custody of Janerio DI Giorgio shall be granted to the father, Abison DI Giorgio.

Keryl Bristol, the mother shall have access to the child from Thursday evening to Saturday afternoon during the school term, as was the prior arrangement between the parties.

Access to the child during the school holidays shall be shared equally between the parties;

The child, Janerio DI Giorgio shall not be removed from the jurisdiction without an order

Immigration is to be notified of this order accordingly.

**[11]** It is important to consider what led the Family Tribunal to remove custody from the mother and grant it to the father:

**(a)** First, it had the benefit of going through the Social services report.

**(b)** Secondly, the Tribunal heard the parties.

**(c)** Thirdly, it had the benefit of hearing the child himself.

**[12]** THE ISSUE BEFORE THE COURT.

The issue can be summed as follows: Was due consideration given to the Social Services report by the Family Tribunal, and, if so, whether at the end of the day its decision to grant custody to the Respondent (father), against the recommendation of the Social Services was correct.

**[13]** Indeed the three grounds of appeal of the Appellant centre around the weight that ought to have been given to the Social Services report but which, it is contended by the appellant, was ignored.

**[14]** I will reproduce here the three grounds of appeal:

**[15]** **GROUND ONE**

The Chairperson of the Family Tribunal erred in law and in fact when she awarded custody of the minor child to the Respondent.

**[16] GROUND 2**

The Chairperson of the Family Tribunal erred when she disregarded recommendation of the Social Services, which recommended that the custody of the minor child should be given to the appellant.

**[17] GROUND 3**

The Chairperson of the Family Tribunal erred when she ignored the recommendation of the Social Services that it would not be in the interest of the minor child to separate him from his brother who is in the custody of the appellant.

On Ground 2 Learned Counsel has submitted that the Chairperson erred in her appreciation of the facts of this case when she states "...that the report has in my view omitted to take into account the fact that the child was prior to March 2016 residing four out of seven days with his father and that it was only when the applications were filed the tribunal that the living arrangement of the child was temporarily changed."

**[18]** This I presume is the error of fact referred to in the first ground of appeal.

**[19]** Learned Counsel's submission on this is that, this was clearly incorrect and there was no evidence before her to reach this conclusion.

**[20]** To the grounds and submissions of the Learned Counsel for Appellant, Learned for Respondent has replied by arguing that the Appellant has filed four(sic) grounds of appeal which the Respondent submits can be consolidated into one, and, that is the Family Tribunal has erred in granting custody to the Respondent.

**[21]** The learned Counsel for Respondent has submitted that when deciding matters pertaining to children the Family Tribunal has only one guiding principle and that is the best interest of the child.

- [22] Now it falls upon me to decide how far the recommendation of the Social Services is binding upon the Family Tribunal and to consider what would be the effect of the error on the fact alleged above.
- [23] First it is interesting to note that both parties are interested in the wellbeing and education of the child so that he grows to become a responsible citizen.
- [24] On this issue therefore the question is to decide where will the child have a better opportunity to achieve this. It is the view of the Social Services that the child should stay with the Appellant.
- [25] But the choice of the child is to stay with the Respondent. It is relevant to note also that we are dealing with a child who is ten years old and therefore sufficiently intelligent to decide where he would be more comfortable.
- [26] The record of the proceedings before the Family Tribunal clearly bear out that he is desirous to live with the father, ie the Respondent. I hold that the recommendation of the Social Services is not binding on the Family Tribunal in the light of the evidence from the child who clearly stated to the Tribunal in camera that he wished to stay with his father.
- [27] This court will not therefore interfere with the orders made by the Family Tribunal in its judgment dated 28 august 2016. Indeed these are upheld.
- [28] As regards the contention that a fair hearing was not afforded to the Appellant by the Family Tribunal I have perused the record and I fail to understand this as the appellant was present and was also represented by Counsel.
- [29] I therefore order that custody of the child be granted to the Respondent, and I also order that all the arrangements made by the Family Tribunal be maintained.
- [30] The parties are free to make further applications to the Tribunal in light of any change in circumstances after this judgment is delivered.
- [31] This appeal is therefore set aside. No order as to cost.

Signed, dated and delivered at Ile du Port on 18<sup>th</sup> of July 2017.

S Nunkoo  
Judge of the Supreme Court