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SURROGACY AND THE FAMILY IN GHANA

(Based on a Presentation by Adelaide Benneh Prempeh – Managing Partner, B&P Associates at an International Academy of Family Lawyers (IAFL) Conference in Marrakech December 2022)

In Ghana and other African countries, a celebration of a marriage is closely followed by the celebration of childbirth. Indeed, the expectation following marriage is quite often childbirth. Couples who do not satisfy such societal demands often bear the brunt of stigmatization, in a society where the presence of children in a marriage becomes

a determinant of the power and economic well-being of both men and women.¹

Owing to the societal value placed on childbearing, and the desire to have children, the reliance on Assisted Reproductive Technology (“ART”), particularly surrogacy has developed in recent years as a viable solution to ease the socio-cultural pressure and psychological distress that is often associated with infertility.

What is Assisted Reproductive Technology?

ART has been accepted as an alternative way to realize the quest for a child.² Ghanaian law provides the statutory definition of “Assisted Reproductive Birth” as follows:

“the use of modern technological advancements including fertility medication, artificial insemination and in vitro fertilization to cause reproduction and childbirth other than by orthodox means.”³

Standard types of ART are also reflected within the law; by virtue of the Registration of Births and Deaths Act, 2020 (Act 1027) ("the Act") to include: sperm and egg donation; In Vitro Fertilization (IVF); Surrogacy; intrauterine insemination; and gamete intrafallopian transfer.

The Legality of Surrogacy in Ghana

Under the Act, surrogacy refers to the situation where an embryo formed from an egg and sperm of persons other than a surrogate mother and the partner or husband of that surrogate mother is implanted into the surrogate mother or alternatively, a gamete from a person other than the partner or husband of a surrogate mother is introduced into the surrogate mother to fertilise the egg of that surrogate mother.⁴

Despite the absence of a clear legal and policy framework in Ghana addressing the issues that flow from surrogacy and ARTs in general, the passage of the Registration of Births and Deaths Act, 2020 (Act 1027), has provided surrogacy with statutory backing and recognition in Ghana.⁵

Procedural guidelines to be followed by parties to a surrogacy arrangement, namely the intended parent and the surrogate mother, have been introduced to guarantee legal recognition of the parental rights of the intended parents.

Pre-birth Parental Order

A pre-birth Parental Order may name an intended parent or a surrogate mother or both as the parent of a child yet to be born through surrogacy and confer parental rights on the persons named as legal parents of the child.⁶ An application for a pre-birth Parental Order must be brought before the High Court within twelve (12) weeks of introducing an embryo or gamete into the surrogate mother, and the birth of the child must occur within twenty-eight (28) weeks of the grant of the order by the High Court.⁷ In the absence of a pre-birth Parental Order, the Surrogate Mother will be named as the mother of the child with the associated parental rights.⁸ A copy of the pre-birth Parental Order naming the legal parents of the child shall be issued to the District Registrar of the district in which the child will be born; the Intended Parent; the Surrogate Mother; and the hospital where

the child is born, if the birth occurred at a hospital facility.⁹ The registration of the birth of the child shall then be undertaken by the District Registrar.¹⁰

Post-birth Parental Order / Substitute Parentage Order

In the event that a child is born through surrogacy without a pre-birth Parental Order from the High Court naming the legal parents of the child, an intended parent or the surrogate mother can apply to the High Court for a post-birth Parental Order or a Substitute Parentage Order.¹¹ Where a post-birth Parental Order is issued where there has been no form of registration pertaining to the birth arising from the surrogacy,¹² a substitute Parentage Order is issued where a birth record has already been entered into the registry.¹³ Such an Order requires the District Registrar of Births to strike out any record of the birth and cause a new record to be entered in accordance with the Order issued by the High Court.¹⁴ A post-birth Parental Order or a Substitute Parentage Order shall be lodged at the High Court at least twenty-eight (28) days after the birth of the child but not later than six (6) months after the birth of the child.¹⁵

It is important to note that the Post-Birth Parental Order or the Substitute Parentage Order is in substance an adoption application.¹⁶ The High Court upon satisfaction that there exists surrogacy shall issue a post- birth Parental Order or a Substitute Parentage Order naming the intended parent or surrogate mother as the legal parent of the child.¹⁷

Opportunities / Gaps in Ghana's Regulation of Surrogacy

The Act gives recognition to surrogacy and other ARTs but does not go far enough. Calls have been made for a more comprehensive legal framework permitting parties to a surrogacy arrangement to contract freely subject to clear, established guiding regulations and principles.

The Fertility Society of Ghana is a proponent of a Proposed Bill before Parliament- The Assisted Reproductive Technologies Bill 2021 ("the Bill"). When passed into law by Parliament, it will regulate the activities of fertility centres and agents running surrogacy services across the country. This will help to prevent unorthodox practices from being carried out to protect couples, surrogates, donors,

agents, health professionals and facilities offering these services in comparison with other jurisdictions.¹⁸

The passage of the Bill will present structure to the Ghanaian surrogacy legal regime owing to its key drafted provisions which reflect clarity, transparency and formality to the process of surrogacy arrangements. Most importantly, it proscribes sanctions for non-compliance with the statutory requirements of a surrogacy agreement.

With such a well laid-out framework, the immeasurable risk, and exploitation that relevant stakeholders to a surrogacy arrangement face can be avoided; particularly, vulnerable surrogate mothers.

1 Riessman, C. K. (2000). Stigma and everyday resistance practices: Childless women in South India. *Gender and Society*, 14(1), 111-821.

2 Kirkman, M., and Rosenthal, D. (2008). Representations of reproductive technology in women's narratives of infertility. *Women and Health*, 29(2), 17-36.

3 Registration of Births and Deaths Act, 2020 (Act 1027), Section 48.

4 Ibid.

5 Registration of Births and Deaths Act, 2020 (Act 1027), Section 22.

6 Ibid.

7 Ibid, Section 22(2).

8 Ibid, Section 22(4).

9 Ibid, Section 22(3).

10 Ibid, Section 22(7).

11 Ibid, Section 22(8).

12 Ibid, Section 48.

13 Ibid.

14 Ibid, Section 22(11).

15 Ibid, Section 22(10).

16 Ibid.

17 Ibid, Section 22(9).

18 Efiya Akese, 'Law on Surrogacy, sperm donation in the offing' (Graphic Online, 30 October 2021) <<https://www.graphic.com.gh/lifestyle/law-on-surrogacy-sperm-donation-in-the-offing.html>>last accessed 24/01/2023



SPOTLIGHT

IN-COUNTRY ADOPTION 101

Adoption is mostly defined as the voluntary acceptance of a child of another parent to be one's own. Legal adoption confers on an adopted child all the rights of a biological child. It also confers on the adopting parents, all the rights of a biological or birth parent.

Ghana's adoption laws have been amended following the passage of the Children's Amendment Act of 2016 (Act 937) ("the Act"). This new legislative

regime has introduced crucial reforms that promote and ensure that throughout the adoption process, the best interest and welfare of the child is upheld.

The Act has established the Central Adoption Authority ("the Authority") as a separate unit under the Ministry of Gender, Children and Social Protection (MoGCSP)¹⁹ with the mandate of conducting all adoptions in Ghana in a manner that promotes the well-being and best interest of the child.²⁰

When an adoption application is made, the

Authority conducts various checks in a bid to determine the adoptability of a child and the suitability of the prospective adoptive parent, with the aid of Child Study and Home Study Reports. While the Child Study Report determines the adoptability of the child to be adopted,²¹ the Home Study Report determines the eligibility and suitability of the applicant to adopt the child.²² The Authority then matches eligible and suitable prospective adoptive parents with an adoptable child based on these two reports.²³

Once a match is made, the child is placed with the prospective adoptive parent for a period of not less than one month under the supervision of the Department of Social Welfare ("the Department").²⁴ Subsequently, the Department prepares a post-placement report on the compatibility of the adoptive child with the prospective adoptive parent and members of the household.²⁵ The Child Study Report, the Home Study Report, and the Post Placement Report together constitute the Social Enquiry Report. This report is prepared by the Department once it is satisfied after placement that the child is adoptable by the applicant or a prospective adoptive parent and must be attached to the application for an adoption order.²⁶

The Department also provides psycho-social services and training to an adoptable child and an eligible prospective adoptive parent before and after the child is placed for adoption.²⁷

Further, an application for an adoption order shall only be made to the High Court, within the jurisdiction where the child resides.²⁸

The court shall only make an adoption order

once it is satisfied that, among other factors, a written report on the wishes of the child to be adopted has been considered (on condition that the child is capable of forming an opinion); the consent of the child to be adopted if the child is at least fourteen years old; and the adoption order is in the best interest of the child.

In the process of adoption, the overarching principle and consideration of the court is the best interest and welfare of the child. Financial and material considerations are secondary and shall not be a justification for placing or receiving a child in alternative care, but rather may signify the need to provide appropriate support for an appropriate family for the child.²⁹

¹⁹ Children's Amendment Act, 2016 (Act 937), Section 86P.

²⁰ Ibid, Section 86Q(a).

²¹ Ibid, Section 86D.

²² Ibid, Section 86E.

²³ Ibid, Section 86G(1).

²⁴ Ibid, Section 86G(2).

²⁵ Ibid, Section 86G(5).

²⁶ Ibid, Section 86G(6).

²⁷ Ibid, Section 86F.

²⁸ Ibid, Section 85.

²⁹ Ibid, Section 86(2).



BUSINESS UPDATES

Strict Enforcement by the Office of the Registrar of Companies

With effect from June 1, 2023, the Office of the Registrar of Companies (ORC) will enforce administrative penalties on companies and entities that fail to file annual returns and annual renewals. Full implementation of section 126(7) of the Companies Act, 2019 (Act 992) which imposes administrative charges will be enforced against the defaulting company and every officer of the company for each day the company defaults. Failure to comply with the statutory provision on

Annual Renewals of Partnerships registration and the Registration of Business Names as stated in the Incorporated Private Partnerships Act, 1962 (Act 152) and the Registration of Business Names Act, 1962 (Act 152) respectively will also attract penalties.

Conditional Approval: Transfer of Shares from Vodafone to Telecel Group

In January 2022, the National Communications Authority (NCA) received an application from Vodafone Ghana for the

transfer of 70% majority shares in Ghana Telecommunications Company Limited (Vodafone Ghana) from Vodafone International Holdings B.V. to the Telecel Group. However, The NCA has evaluated and granted conditional approval for the transfer of the shares, subject to a smooth transition as well as continuity of service delivery and improved choice for consumers and competition within the industry.

U-Turn on Import Values of General Goods and Home Delivery of Vehicles

The Ghana Revenue Authority (GRA) has announced a complete reversal of the 30% discount on Import Values of general goods and 10% discount on Home Delivery Value (HDV) of used vehicles effective 1st January 2023.

One Ghana Cedi Coin Upgraded

The Bank of Ghana has upgraded the GHS1 coin by the introduction of some enhanced security features. The existing and the upgraded GHS1 coin will co-circulate until the existing coin is gradually withdrawn.

Domestic Debt Exchange Program

On 4th December 2022, the Minister of Finance, Hon. Ken Ofori-Atta announced the government's plan to launch Ghana's Domestic Debt Exchange programme. The program, although launched on 5th December 2022 was later amended on 23rd December 2022 by the Amended and Restated Exchange Memorandum, inviting Eligible Holders to exchange approximately GHS137.3 billion of the domestic notes and bonds of the Republic, E.S.L.A. Plc and Daakye Trust Plc (the "Eligible Bonds") for a package of New Bonds to be issued by the Republic.

International Monetary Fund (IMF) Reaches Staff-Level Agreement on a \$3 billion, three years Extended Credit Facility with Ghana

IMF staff and the Ghanaian authorities in December 2022 reached staff-level agreement on economic policies and reforms to be supported by a new three-year arrangement under the Extended Credit Facility (ECF) of about US\$3 billion.

Launch of Ghana CARES Economic Enclave Project to Reduce Staple Foods Importation

The President of the Republic, Nana Akufo-Addo has launched the Economic Enclave Project (EEP) under the Ghana CARES program at Noyaa Akutso in Kasunya-Nyaphienya, in the Greater Accra Region. This involves a 10,000-acre mixed-use economic space that seeks to create a viable ecosystem for private sector to engage in commercial farming by significantly expanding Ghana's productive capacity in rice, tomato, maize, soya, vegetables, and poultry. About 105,000 direct and 95,000 indirect jobs are expected to be created by the EPP.

New Tax Appeals Board

Ghana's first-ever Independent Tax Appeals Board has been inaugurated. The 11-member board is chaired by Justice Lawrence Mensah, a retired Court of Appeal Judge. Until this inauguration, a taxpayer who was dissatisfied with a decision of the Commissioner-General on tax matters had to seek redress in the court. The appeals board provides an intermediate avenue for

the resolution of a tax dispute which taxpayers and the Ghana Revenue Authority could explore before resorting to litigation.

Daily Minimum Wage Increased

The National Tripartite Committee increased the minimum daily wage of GHS13.53 by 10% resulting in a new minimum of GHS 14.88. The increase is effective January 1, 2023.



Inauguration of Newly Built Court Edifices

The Chief Justice of the Republic of Ghana, Justice Kwasi Anin Yeboah has commissioned newly built court edifices in various regions to serve the justice needs of the citizens of Ghana. Of the lot, these include:

- **High Court in Nalerigu**

In November 2022, the Chief Justice inaugurated a High Court with additional responsibility as a child-friendly, gender-based violence Circuit court in Nalerigu. The child-friendly Circuit Court would be the first of its kind to handle cases of domestic and gender-based violence in the region.

- **District Court at Bonwire**

The Chief Justice, in January 2023

inaugurated a new District Court at Bonwire in the Ejisu Municipality of the Ashanti Region to ensure that quality justice is delivered to citizens at all levels.

- **District Court at Asofan**

The Chief Justice commissioned a District Court in Asofan, to serve the justice needs of the people of the Ga North Municipality and its environs.

- **Circuit Court at Achimota**

In December 2022, the Chief Justice commissioned a Circuit Court at Achimota, Accra to serve the justice needs of the people of the Okaikwei North Municipality and its environs.

Appointment of new Court of Appeal and Supreme Court Justices

In December 2022, His Excellency, Nana

Akufo-Addo swore in 15 new Justices of the Court of Appeal, namely Justice Gifty Agyei Addo (Mrs.), Justice Hafisata Amaleboba (Mrs.), Justice Jennifer Abena Dadzie, Justice Afia Serwah Asare-Botwe (Mrs.), Justice Professor (Mrs.) Olivia Anku-Tsedee, Justice Alex Owusu-Ofori, Justice Emmanuel Ankamah, Justice Jerome Noble-Nkrumah, Justice Samuel Obeng-Diawuo, Justice Kweku Tawiah Ackaah-Boafo, Justice Charles Edward Ekow Baiden, Justice Stephen Oppong, Mr. Patrick Kwamina Baiden, Mr. Christopher Archer and Dr. Ernest Owusu-Dapaah. These Justices comprise 10 men and 5 women.

The President has also appointed two new Justices of the Supreme Court - Justice Barbara Frances Ackah-Yensu and Justice Samuel Kwame Adu Asiedu who were both promoted from the Court of Appeal.



As of 27th February 2023, the Parliament of Ghana has enacted new laws including the following:

Value Added Tax (Amendment) Act, 2022 (Act 1082)

A key provision of the new law includes a provision for persons who import taxable goods but are not registered. Such a person is required to make, in addition to the penalty to be paid, an upfront payment of 12.5% of the customs value of the taxable goods. This person may recover the upfront payment made after the person registers

and files a return.

The Exemptions Act, 2022 (Act 1083)

This Act was passed to regulate the application of tax exemptions and to create an exemption regime for goods imported into the country. The law allows the Minister of Finance to grant industry-specific exemptions based on recommendations of a given sector minister with Cabinet's approval.

Revenue Administration (Amendment) Act, 2022 (Act 1086)

In accordance with the Act, the Commissioner General (CG) can establish a monitoring mechanism to verify the actual revenue that accrues to a taxpayer for the purpose of computing taxes due, and required to provide the CG or an authorized tax officer with physical access to the physical network node or infrastructure or system of that person at an equivalent point in the network or infrastructure or system where the system of the taxpayer is connected.

Electronic Transfer Levy (Amendment) Act, 2022 (Act 1089)

The Electronic Transfer Levy Act, 2022, Act 1075 is amended to review the E-levy rate downwards from 1.5% to 1%. Charging entities including Electronic money issuers, Payment service providers, Banks, Specialized deposit-taking institutions other financial institutions, are required to file a return in respect of the levy with the Commissioner-General (CG) in the manner and at the time and place determined by the CG and pay the levy that has been charged on electronic transfers within 24 hours after charging the amount.

Value Added Tax (Amendment) (NO. 2) Act, 2022 (Act 1087)

Act 1087 among other introductions has increased the VAT rate from 12.5% to 15% and is calculated on the value of the taxable supply of the goods or services or the value of the import.

WHO's WHO?



Justice Dennis Adjei is the newly elected Fellow of the Inns of Court at the Institute of Legal Studies for the 2022-2023 academic year.

The Institute of Advanced Legal Studies is clothed with the responsibility of promoting, facilitating, and disseminating results of advanced legal studies and research for the benefit of persons and institutions situated in the United Kingdom and beyond.

Justice Adjei is to conduct research on a given topic and submit a detailed report. His research will be based on the Right to Information, the protection of persons seeking information for the entrenchment of democracy, and the role played by the citizenry to hold governments accountable.

He will also play a consultative and advisory role to postgraduate research students working in similar fields of research and scholarship.

FIRM NEWS



B&P Associates launches its Podcast as Part of its Community Engagement Program

As part of B&P Associates' vision to give back to society, it has taken steps to start a podcast dubbed "Community First". This is

one leg of the Firm's Community Engagements aimed at helping make society a better place.

"Community First" was officially launched on Tuesday, 24th January 2023.

The podcast series seeks to discuss social and legal issues with the community including professionals from other fields who will bring on board their practical expertise while providing listeners with real-life examples.

Do not miss out on any of our monthly episodes.

Listen to our podcast on Apple Podcasts, Spotify, Google Podcasts, Anchor and YouTube.

Links to all episodes will be posted on our LinkedIn page: B&P Associates, Lawyers & Consultants.

Community First! - "Legal and Social Conversations with the Community".

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About B & P ASSOCIATES

B & P ASSOCIATES is ranked as a Legal 500 Europe, Middle East & Africa (EMEA) Leading Law firm. We are a Corporate and Commercial legal practice and consultancy, with an excellent reputation, based in heart of Accra. The Team is highly regarded for its cross-border legal expertise, responsiveness and commitment. We provide business-oriented legal advice across a range of sectors, to both local and international clients. For more information, visit us at www.bpaghana.com to learn more about what we do.

This publication may provide a summary of legal issues but is not intended to give specific legal advice. If you require legal advice, please speak to a qualified lawyer, which may include a qualified member of our legal team at B&P ASSOCIATES.



Legal and Social Conversations with the Community