

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY
THE 20TH DAY OF OCTOBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO:C4/24/2023

BETWEEN

ESTHER BARKEY AMOAKO-ATTA

GK-0249-8775

GOLF-CITY

TEMA

...

PETITIONER/APPLICANT

AND

ABEKA ABEKAH

MEDIE, GWAGWA

NSAWAM ROAD

ACCRA

...

RESPONDENT/RESPONDENT

PARTIES: PETITIONER/APPLICANT PRESENT

RESPONDENT/RESPONDENT PRESENT

COUNSEL: WILHEMINA OSEI-OWUSU ESQ. FOR PETITIONER/APPLICANT

ABSENT

*FRANCIS OSEI-BONSU ESQ. WITH BARIMAH NTIAMOAH ESQ. FOR
RESPONDENT/RESPONDENT PRESENT*

RULING

This is an application filed on 16th June, 2023 by Counsel for the Petitioner/Applicant (hereinafter referred to as Applicant) for interim orders. Counsel for Applicant prays for an order for the interim custody of the issues and maintenance from Respondent/ Respondent (hereinafter referred to as the Respondent) pending the final determination of this suit.

Applicant says that there are two issues to the marriage aged 2 years and 1 year. According to her, since August 2019 when the parties got married, it was only in February, 2023 that Respondent started giving her monthly upkeep of either GH¢400 or GH¢500 for food for the issues with the excuse

that he did not have money. She says that Respondent knew that she was only a contract employee working at Blue Skies and so her salary was not enough to cater for the 2 children and herself as she has no other source of income. She says that the Respondent forbade her from taking on extra jobs and attached as *Exhibit EBAA1* photographs of WhatsApp chats between herself and Respondent. She says that for some time now, she has had to survive on financial support from her family in addition to her monthly salary. She says that prior to filing the instant Petition, she was living in a rented 2 bedroom apartment with a hall at Gwagwa, Nsawam road which was paid for by Respondent but due to his abusive utterances and threats she was forced to move out with the children and she now stays in her father's house because she does not have money to rent a decent place for the children. She attached as Exhibit EBAA2 a copy of her pay slip. She particularized the monthly outgoings for herself and the issues as follows:

1. "Rent - GH¢500
2. Foodstuffs, groceries, diapers, etc - GH¢2,000
3. Transportation - GH¢600
4. Electricity - GH¢150
5. Maintenance for myself (grooming, healthcare, etc) - GH¢1,000"

She says that with a monthly maintenance of GH¢2,000.00 she would be able to rent a place and maintain herself and the children. She says Respondent is gainfully employed as an Internal Auditor at Blue Skies Product Ghana Ltd. and can afford the monthly upkeep of GH¢2,000.00 but has deliberately refused to give more than GH¢500.00 as upkeep for the issues. She says that on several occasions she has asked Respondent for an increment, but he has stated that he would not give any more because he does not have money. According to her, Respondent has the resources to provide for her maintenance but would not do so unless compelled by the Court. She therefore prays that Respondent is ordered to give her GH¢2,000.00 every month for her upkeep and that of the children or in the alternative he should be ordered to provide her and the children with a decent accommodation and GH¢1,500.00 as upkeep. She therefore prays for interim orders as follows:

- a. "Custody of Senadza Abeka Wala Abekah and Nyameye Boawolo Abekah be granted to the Petitioner with reasonable access to the Respondent who may have access to the children every other weekend by picking them up on Saturday morning at 8am at my

father's house and returning them on Sunday afternoon at 3pm to my father's house in Tema.

- b. Pay a monthly allowance of GH¢2,000 as maintenance to the Petitioner's Mobile Money account number and pay children's school fees and medical bills.
- c. In the alternative the Respondent should be ordered to provide me and the children with a decent accommodation and GH¢1,500 as upkeep.
- d. The GH¢2,000 for my upkeep should be calculated to be paid from January this year till the final determination of the matter."

Respondent filed an Affidavit in opposition 7th August, 2023. He contends that he has been giving Applicant maintenance of GH¢500 every month since the inception of their marriage in 2019 and has in addition to that been taking care of all the bills and rent and the children's school fees. He states that it is not true that Applicant has no other source of income as aside from her salary job at Blue Skies she runs a school's canteen which gives her extra income. He says that in addition, Applicant runs a business entity named FIRSTSET Ventures which supplies Blue Skies Company foodstuffs for the kitchen from which she makes additional income. He attached as Exhibit AA1 a copy of a Quotation/Invoice of foodstuff supplied by the said FIRSTSET Ventures to Blue Skies for the month of July, 2023. He states that for whatever reason Applicant vacated the rented matrimonial home a Gaogao near Medie and is now resident at her father's house at Tema with the issues of the marriage. He says that he has not driven out the Applicant and he cannot drive out his own children when he has a permanent abode for all of them, and it is bad that Applicant is creating a bad picture as if his children are homeless which is not the case. According to him, their first child was with Applicant's aunty at Amasaman and schooling at Amasaman, but Applicant took them both to Tema. He states that every month he remits GH¢1,000 for the upkeep of his children; GH¢500 went to Applicant's aunty at Amasaman for the upkeep of the first issue and another GH¢500 went to Applicant.

He says that he cannot afford a monthly maintenance of GH¢2000 as demanded by Applicant because his monthly salary is about GH¢4,800 out of which he pays his car loan, rent, the children's school fees and maintenance, extended family commitments as well as his career progression. He attached as Exhibits AA2 and AA3 copies of his payslips. He says that he has a decent accommodation at Gaogoa near Medie where he

lives and went in for purposely for his family and cannot afford another accommodation elsewhere at a cost. He says that he is not opposed to the Applicant having custody of the issues as she has taken both of them to live in her father's house at Tema. He says that he can afford a monthly upkeep of GH¢1000 for his children aside the school fees, clothing and medical bills. He says that the Applicant should be made to support with the rest.

Section 19 of the **MATRIMONIAL CAUSES ACT 1971, ACT 367** provides as follows:

“Financial provision for spouse

The Court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but an order for maintenance pending suit or financial provision shall not be made until the Court has considered the standard of living of the parties and their circumstances.”

The law thus permits the court to make orders in respect of maintenance pending suit. The condition precedent however is that the court must consider the standard of living of the parties and their circumstances. From the evidence before me, it is apparent that both parties are gainfully employed. Applicant claims that her sole source of income is her salary as a cook, evidence of which she attached to her affidavit in support as *Exhibit EBAA2*. From *Exhibit EBAA2*, the net pay of Applicant is Three Thousand One Hundred and Six Ghana Cedis and Fifty-Seven Pesewas (GH¢3,106.57). Respondent on the other hand stated that his salary is about GH¢4,800.00 and out of this amount he pays a car loan, rent, the children's school fees and maintenance, his career progression and extended family commitments. His payslip was tendered as *Exhibit AA2* and it shows that Respondent's net salary is Four Thousand Eight Hundred and Sixty Eight Ghana Cedis and Five Pesewas (GH¢4,868.05). Respondent also tendered *Exhibit AA3* which indicates that Respondent has taken a loan of Thirty-Five Thousand, Nine Hundred Ghana Cedis (GH¢35,900.00) from the Standard Chartered Bank of which he pays monthly with the last installment due on 23rd February, 2026.

Though Applicant has claimed that her only source of income is her salary, Respondent attached to his affidavit in opposition *Exhibit AA1* an invoice of a business which he states belongs to Applicant from which Respondent claims that Applicant earns extra income. I find it quite curious how it is that Applicant states that she has no money to rent a place so she stays

with her father in his house yet in particularizing her monthly outgoings, Applicant claims to spend Five Hundred Ghana Cedis (GH¢500.00) on rent. I consider that the issues as regards the standard of living of the parties are issues which ought to be determined at trial, that notwithstanding, prima facie having regard to the evidence so far adduced before me, I am unable to find that the standard of living of Respondent and his circumstances warrant an order for maintenance pending suit of Two Thousand Ghana Cedis (GH¢2,000.00) to Applicant. Accordingly, the status quo is to remain, Respondent is to continue paying One Thousand Ghana Cedis (GH¢1,000.00) as maintenance to Applicant.

By paragraph 14 of Respondent's affidavit in opposition, he indicates that he is not opposed to Applicant having custody of the issues as she has already taken them away to live with her at her father's house therefore, interim custody of the issues is granted to Applicant with reasonable access to Respondent, details as to reasonable access are to be agreed between the Parties.

The issue of rental of accommodation by Respondent is an issue which needs to be determined at trial through the adduction of evidence as Respondent claims that he did not drive Applicant out of the matrimonial home, yet Applicant has alleged that she was forced to move out due to Respondent's abusive utterances and threats. A grant of relief "c" in the affidavit in support would in effect mean a determination of the said issue arising. Again, the issue of arrears of maintenance could not stand as an interim relief as the grant of such a relief again could only be made after evidence has been led on same. It is trite learning that ordinarily, it will be unjust to use an interim application to dispose of a substantive case.

***See. IN RE BOB KWAME AND CO; GYINGYI V. BERNARD [1989-90]1 GLR 87,
MENSAH V. GHANA FOOTBALL ASSOCIATION [1989-90] 1 GLR 1, SC.***

On this basis, the application is partly granted on the terms stated herein.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**

