

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON WEDNESDAY THE 17TH DAY OF OCTOBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMENA SACEY AND MADAM LOVEGRACE AHALIJA AS PANEL MEMBERS

SUIT NO. A6/102/23

LYDIA ADJOA KUSI
NORTH KANESHIE, ACCRA

APPLICANT

VS

KHALID LARRY ABDULAI
NEW-TOWN FIVE-FIVE, ACCRA
RESPONDENT

Parties present

No legal representation for both parties.

RULING

This is a Ruling on an Application filed for the maintenance of the Seven (7) year old daughter of both parties.

Applicant's case

The Applicant in her Affidavit filed on the 29th August, 2022 deposed to the facts that the Respondent has been very adamant in respect of his daughter's maintenance, upkeep and needs irrespective of consistent demands of same from her and his family circles. She deposed further that with the Respondent's

current attitude, he will not maintain his biological daughter unless compelled by the Honourable court to do so. She therefore prayed for the following;

1. An Order for the Respondent to maintain his biological child at Ghc600.00 a month, pay school fees and any other thing concerning her schooling.
2. An order to pay medical bills not covered by the NHIS.
3. Any other order(s) deemed fit by the Honourable Court.

The Respondent's Case

The Respondent on the 9th of September 2022 filed an Affidavit in Opposition and deposed to facts that he has been maintaining his daughter regularly since she was born including paying for all her educational needs including school fees, medical bills as well as paying Ghc100.00 weekly for the child's upkeep. He further prayed for custody of the child because the Applicant has another child with another man and she has the attitude of leaving the child in the hands of her family members. He concluded by praying for custody of the child because he is capable of taking care of the child.

DETERMINATION

The parties were referred to the Court Connected Alternative Dispute Resolution (ADR) Center to attempt an amicable resolution of their dispute but the Mediator wrote to inform the court that the parties could not agree on the reliefs sought by the Applicant and therefore referred the case back to court. Thus the issues for determination are as follows:

- (a) Whether or not the Respondent can have custody of the child.

(b) Whether or not the Respondent pays Ghc600.00 towards the upkeep of the child.

Analysis

In making a determination on the issues above, the court is guided by Section 2 (1) of Act 560 (supra) which states that *'the best interest of the child shall be paramount in any matter concerning a child'* and Section 2 (2) also provides that *'the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child'*. The first issue for determination is **whether or not the Respondent can have custody of the child.**

It was held in **Asem vs. Asem** [1968] GLR 1146 that *"the court was obliged by statute in deciding a question of custody to have regard to the welfare of the infant as its first and paramount consideration. The crucial question for decision in the instant case was therefore which of the parents was better suited to be entrusted with the upbringing of the child"*. The onus therefore lies on the court to determine whether granting custody to the Applicant will be in the best interest of the child. It is trite that in custody cases, there is no prima facie right to the custody of the child in either parent, but the court shall determine solely which parent is for the best interest of the child, and what will best promote its welfare and happiness. At Common Law, the father was generally entitled as a matter of right to custody of his minor children, but later the law generally gave the mother preference.

Today, the law recognizes the child's best interest as the determinative factor and this is also referred to as the Welfare Principle as posited by the Children's Act, 1998 (Act 560). The Welfare Principle implies that the Court determines what would be best for the child despite both parents' good intentions and competing

wishes. In considering custody, **Section 45(1) of Act 560** provides 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*'. The evidence on record shows that the child is a Seven (7) year old girl and there is the need for her to have a stable, safe and secure attachments to both parents but the law posits that it will be in the best interest of children of that age to be with their mother. In the case of **Opoku-Owusu vs. Opoku-Owusu** [1973] 2 GLR 349, Sarkodee J held that '*the Court's duty is to protect the children irrespective of the wishes of the parents. In the normal course, the mother should have the care and control of very young children...*'

The next issue for determination is **whether or not the Respondent pays Ghc600.00 as maintenance sum towards the upkeep of the child**. Child maintenance is one of the fundamental rights granted every Ghanaian child under the customary and statutory laws of Ghana. The duty of maintenance of children, which is specially dealt with in **Sections 47 – 60 of Act 560**, is a legal obligation, which is imposed on a parent and, in some instances, other persons who may be legally liable to maintain the child. Specifically, **Section 47 of Act 560** states that '*a parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child*'. The court therefore inquired from the parties the nature of their various monthly earnings and the Respondent informed the court that he is a Real Estate Developer and earns about One Thousand Ghana Cedis (Ghc1, 000.00) a month. The Applicant also informed the court that she is a Caterer and earns about Two Hundred Ghana Cedis (Ghc200.00) a month as profit. The Respondent however further informed

the court that he has Six (6) children in total including the child in issue and he is responsible for the upkeep of all his children.

The onus then lies on the court to determine the appropriate maintenance sum and it is trite that in making Maintenance Orders, the court must consider the person from whom maintenance is claimed and whether he or she is able to afford the maintenance that is claimed. Thus, that person must have the means to pay and the means test is such that the person who is liable to pay maintenance must have the MEANS and the maintenance so claimed must be REASONABLE. Consequently, the amount of Ghc600.00 being claimed by the Applicant as monthly maintenance towards the upkeep of the child appears unreasonable when compared with the fact that the Respondent earns about Ghc1, 000.00 a month and has Five (5) other children to take care of.

Additionally, the parties raised certain issues when the matter came up for hearing and these include the Respondent informing the court that the Applicant has refused to disclose her location for him to have access to the child of which the Applicant also informed the court that the Respondent has the habit of leaving the child in the hands of other persons apart from himself and whenever he has access, the Respondent will rather allow someone to return the child to her. The court shall in the best interest of the child make orders the address the issues aforementioned.

DECISION:

Upon consideration of the Application, the evidence before the Court and pursuant to the provisions of Act 560, the Court is satisfied that it will be in the

best interest of the child to grant this instant Application and makes the following Orders;

1. The Applicant shall immediately make her place of abode known to the Respondent for him to know where his biological child stays.
2. The Applicant shall continue to have custody of the child and the Respondent shall have weekend access to the child. The Parties are to agree on what days during the weekend and the time convenient for both of them for the Respondent to pick the child up personally and return her to the Applicant personally.
3. The Respondent is to pay the child's school fees, textbooks, exercise books and all other incidental school expenses whilst the Respondent is to pay for the feeding fees and school uniforms of the child.
4. The Applicant is to register the child under the National Health Insurance Scheme (NHIS) and renew same when it expires and the Respondent is to pay for medical bills not covered by the NHIS.
5. The Respondent is to maintain the child with an amount of Ghc400.00 as monthly maintenance and same should be paid into court.

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H/H HALIMAH EL-ALAWA ABDUL-BAASIT.
PRESIDING JUDGE

I AGREE

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**MADAM PHILOMENA SACKY
AHALIYAH
PANEL MEMBER**

I AGREE

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**MADAM LOVEGRACE
PANEL MEMBER**