

2. An order for Respondent to allow Applicant to stay in the house to take care of the children.
3. An order for the Respondent to maintain the issues of the marriage with GHC 3,000.00 every month.
4. An order for the Respondent to pay school fees and medical bills of the issues of the marriage as and when they fall due.

Applicant's case as contained in her affidavit in support of her application, supplementary affidavit in support and as gathered in the course of proceedings is that she is married to Respondent under Mohammedan Law and they have been blessed with the five children in issue, Antoa Abubakari and Binbu Abubakari (twins) aged thirteen years, Hadia Abubakari aged four years, Iklass Abubakari aged three years and Hera Abubakari aged nine months at the time of filing the application. She said that with her support (both financial and in kind), the parties were able to build and secure a nine-bedroom house. After they moved into the house, they had a misunderstanding and respondent took the first four children to an unknown place on the 26th day of April 2022 and sent her to her hometown to divorce her. That upon deliberations between the two families she was asked to apologise to Respondent which she did. Upon her return to the matrimonial home Respondent said he was still bitter and could no longer stay with her under the same roof, so he sacked her. She said she reported the matter to the Domestic Violence and Victims Support Unit (DOVVSU) but Respondent did not cooperate with their recommendations, so she was advised to take the matter to Court hence the instant application. That at the time of filing the application, she did not know where the four children were, and she had been perching with the baby at her uncle's place. According to her, she is still married to Respondent and so she has the right to live in the matrimonial home with the children. Applicant in her Supplementary Affidavit filed on the 5th day of August 2022 denied Respondent's assertion that the elders directed them to separate. She said she does not want the issues to be separated, she wants them to grow up together in the matrimonial home because they are used to that environment. She added that Respondent could abandon them and not continue to pay rent when due if he should be made to rent a place for them.

Respondent filed an Affidavit in Opposition on the 28th day of July 2022 and counterclaimed as follows;

1. That custody of the first two children of the marriage be granted to him with reasonable access to Applicant.
2. That custody of the last three children of the marriage be granted to the Applicant with reasonable access to him.
3. A consequential order for him to pay an amount of GHC1,500.00 as monthly stipend for the three issues who will be in the custody of the Applicant.
4. That he continuous to pay the school fees and medical bills of all the issues who are of school going age.
5. That the Applicant moves into a two-bedroom house that he is willing to rent for her.

In the alternative or where Applicant is not agreeable to the above, he prayed for;

6. An order for a social enquiry to be conducted by the Court into the current living situation of the issues of the marriage.
7. Any other order this Court may deem fit.

His case as contained in the affidavit in opposition is that he did not eject Applicant from the matrimonial home. That they separated upon the instructions of elders of both families in line with the tradition of the Wala tribe which they both belong to. That Applicant was asked to move into their family home in Wa whilst attempts at resolution of their marital dispute was made but Applicant returned to Accra without notice to her and in defiance of the directives of the elders. He alleged that he has been solely responsible for the general maintenance of the issues of the marriage as well as the payment of their school fees and medical bills. He said Applicant is very much aware of the whereabouts of the issues as they have been with him at all material times, and he has never denied Applicant access to them. That the issue's occasionally go and visit his sister and the husband who also happen to be Applicant's brother at East Legon Hills, and Applicant is very much aware. He stated finally that the differences between the parties are unresolvable and as such he cannot live with Applicant in his house. Wherefore he prayed for the above stated reliefs.

The parties were referred to the Alternative Dispute Resolution (CC-ADR) unit of the Court to explore amicable resolution of the matter, but they could not agree on who should have custody of the issues of the marriage, so the matter was referred back to Court for determination. Whilst the case was pending before the court, Respondent returned the third and fourth children to Applicant at her uncle's place at the Flag Staff House, so he was ordered to maintain the three issues who were with Applicant with GHC1,500.00 as proposed by him in his Affidavit in Opposition pending the final determination of the matter.

A Social Enquiry Report (SER) was ordered by the court on the 1st day of September, 2022 to assist in the determination of the matter. It must be stated here that Respondent did not make himself available for the SER even though he requested for same in his Affidavit in Opposition. On the return date for the consideration of the SER, counsel for Respondent informed the Court that his client is willing to give all the children to Applicant, rent an accommodation for them and maintain them with GHC2,000 monthly. This was confirmed by the SER which stated further that he had also expressed his desire to have access to the issues on all weekends so the issues could attend Islamic school (Makaranta). The parties therefore agreed to file Terms of Settlement for adoption by the court. This however did not see the day of light as the Court was informed by counsel for Applicant on the 27th day of October 2022 that settlement had broken down because Respondent had changed his mind about renting a place for Applicant and the issues. This therefore threw the matter back into the courts of the Court for determination.

The Court therefore has to determine in which of the parties' custody the issues should be placed in and then the other matters as pertain to the maintenance of the issues. In doing so, this Court is guided by **section 2 (2) of The Children's Act 1998 (Act 560)** which 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"*. This legal provision has been applied in a number of decided cases including **Ansah v. Ansah [1982-83] GLR 1127** where it was opined that *"the Court's duty was to make an order which was reasonable for the benefit of the children"*.

It is in the best interest of the issues for them to live with both parties as they used to (see section 5 and 45(2)(b) of Act 560) but the parents in this case have been separated for about eight (8) months now. Though it will be best for the parties to resolve their differences and live together for the sake of the children, this Court cannot force them to do so as doing so may be an infringement on their human rights. For as long as the parties remain separated, the court has to determine which of them should have custody of the issues of the marriage.

The SER confirmed that, the parties lived together with all the children until the parties had a misunderstanding in April 2022. Respondent took the first four children to his sister at Santor and enrolled the two boys in a new school (Hydeson School) whilst the two girls stayed at home. Respondent later returned the two girls to applicant and enrolled them back into their former school, the Mothercare School. Applicant and the three children were perching in the home (a two-bedroom flat) of her uncle together with his wife, their four children and a house help. They however spent most of their time in the Mosque because they were not comfortable in the uncle's home. Applicant however informed the Court at the last sitting on the 27th day of October 2022 that she has relocated with the issues to live in a hostel the parties previously lived in, but the owner had come and they have to move out.

The evidence also shows that Respondent unlike Applicant, is a very busy person and will not have the time to care for the issues if custody is granted to him. Upon the parties' separation, Respondent took the four issues to live with his sister at East Legon. He however told the Court that he lives with the issues in the matrimonial home. This obviously is an untruth. I refer to the dictum of Justice Sarkodee in the case of **Aikins v. Aikins [1979] GLR 223** where he stated that the Court "*will not grant custody to a parent whose purpose is to deliver the children to another*". He went ahead and granted custody of the three children of that marriage to the mother as he was of the view that "*to deprive them of the love and attention of their mother would upset them emotionally*" having considered the circumstances of that case.

The opinion of the issues herein cannot be ignored by this Court in the determination of this matter as stated under **section 11 of the Children's Act 1998 (Act 560)** that, "*No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to*

participate in decisions which affect his well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child.” This is emphasised by section 45(2) (c) of Act 560 which also provides that a *family tribunal shall consider the views of the child if the views have been independently given.”*

The opinion of the issues was sought during the social enquiry. The first three issues are reported to have expressed their desire to be in the custody of Applicant and live in the matrimonial home. The fourth child however refused to talk. The issues are aged thirteen (13 - the twins), four (4), three (3) and one (1) year old. The Court is of the considered view that the views of the issues were independently given especially that of the first two issues who were in the custody of Respondent’s sister at the time of the enquiry. It was again held in the case of **Opoku-Owusu v. Opoku-Owusu [1973] 2GLR 349** that *“it is desirable to keep brothers and sisters together and not to split them up.* The Court stated further that *“the Court’s duty is to protect the children irrespective of the wishes of the parents. A separation will disturb their progress and may affect them emotionally”*. This is also emphasised by **section 45(2)(d) of Act 560** that *“it is desirable to keep siblings together;”* These children have lived together all their lives except during this period of separation when Respondent took some of them to live with his sister. Having considered all the circumstances of the case and the evidence on the record, the Court holds that it will be in the best interest of the issues if they are placed in the care and custody of Applicant their mother having also considered **section 45 of Act 560** which provides that, *“(1) 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.*

(2) Subject to subsection (1) a Family Tribunal shall also consider —

(a) the age of the child;

(b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;

(c) the views of the child if the views have been independently given;

(d) that it is desirable to keep siblings together;

(e) the need for continuity in the care and control of the child; and

(f) any other matter that the Family Tribunal may consider relevant”

Custody of all five issues is therefore granted to Applicant the biological mother. Respondent shall have bi-weekly weekend access and half of the issues’ school vacation period except for the last issue who is only one year old and still breast feeding. Respondent can have visitation access to her with the right to step out with her for a maximum of about three hours until she is about three years old.

We now move on to determine other matters which bother on the issues’ maintenance. Maintenance of children is explained by **section 47 of Act 560** to include “a duty to supply the necessaries of health, life, education and reasonable shelter for the child”

so, it is not limited to only a monthly stipend. Both parties being parents of the issues, have a responsibility to ensure that the issues are adequately maintained when it comes to their health, education, accommodation, and necessaries of life (see section 47 of Act 560). In the determination of the levels of responsibility of both parties, recourse must be had to their relative means and circumstances as provided under **section 49 of Act 560** that,

“A Family Tribunal shall consider the following when making a maintenance order —

(a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;

(b) any impairment of the earning capacity of the person with a duty to maintain the child;

(c) the financial responsibility of the person with respect to the maintenance of other children;

(d) the cost of living in the area where the child is resident;

(e) the rights of the child under this Act; and

(f) any other matter which the Family Tribunal considers relevant.”

From the evidence, Respondent is a Surveyor whilst Applicant supplies groundnut paste from the Northern parts of Ghana to eateries and canteens in Accra. Applicant is reported to have said that she earns about GHC5,000.00 a month though she did not produce any evidence in support of same. Respondent on the other hand did not produce any evidence of his earnings. He did not even give an indication of his earnings and he did not also make himself available for the SER. Respondent however averred that he has solely been providing all the needs of the issues including their school fees, medicals and general maintenance. This fact has not been disputed by Applicant save for her insistence that she provided financial support to Respondent in building and securing the matrimonial home. Applicant is claiming monthly maintenance of GHC3,000.00 for the maintenance of all five issues. Respondent was willing to maintain the last three issues with GHC1,500.00 monthly and this was actually accepted by the Court as an interim maintenance order on the 11th day of August 2022. So, for all five (5) issues, how much will be reasonable considering the current cost of living in Accra? Having considered the earning capacities of the parties' vis a vis the needs of the issues and the law on the determination of maintenance, Respondent is ordered to support Applicant in the maintenance of the issues with an amount of GHC2,500.00 monthly. This shall be paid either through Court or into the bank account of Applicant held with GCB Bank, Trade Fair branch. Applicant to provide the bank account number to Respondent to facilitate the payment of monthly maintenance.

On accommodation, the parties were living in a nine-bedroom storey house with all the issues. Applicant informed the court at the last sitting that they are currently homeless, and the issues have also been sacked from school. This is certainly not in the best interest of the issues. Applicant and the issues want to be allowed to live in the matrimonial home. Respondent however maintains that he cannot live with Applicant in the matrimonial home. He proposed in his affidavit in opposition to rent a two-bedroom apartment for Applicant and the last three issues. Applicant has tried to invite the court to make declarations on the parties' marriage and matrimonial home, but the Court will refuse this invitation as these matters are not within the jurisdiction of this Court per **section 50 of the Courts Act 1993 (Act 459) as amended by Act 620 and section 35 of Act 560**. The Court however has

jurisdiction to make orders regarding adequate shelter for the issues (see section 47 of Act 560). Now considering the standard of living that the children have been exposed to, and the fact that custody of all five issues have been granted to Applicant, Respondent is ordered to rent a three-bedroom self-contained facility near the issues' school for the issues and Applicant for the benefit of the issues. Same should be done not later than 4 weeks from today. Respondent has agreed to secure temporary accommodation for Applicant and the issues which for now will be the hostel where they are currently being hosted whilst he makes arrangement to secure a permanent accommodation for them. The parties shall agree on the choice of accommodation. Respondent shall be responsible for the rent payment for the facility and future rent renewals. If he however finds it expedient to accommodate the issues and Applicant within their nine-bedroom storey house, then he is at liberty to do so. Respondent shall continue to take care of educational expenses of the issues as he has been doing. The cost of medical care not covered by the National Health Insurance Scheme (NHIS) as and when necessary, shall also be the responsibility of Respondent, with the necessary support from Applicant. Applicant shall be responsible for all other necessities of life of the issues.

Parties are advised to relate cordially with each other for the sake of the issues. They should not allow their estranged relationship to affect the welfare and best interest of the issues as is already happening. Better still, they may consider burying their differences and live peaceably together.

SGD

H/H MATILDA RIBEIRO (MRS)

CIRCUIT COURT JUDGE