

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON FRIDAY THE 12TH DAY OF DECEMBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMENA SACEY AND MADAM LOVEGRACE AHLIJAH AS PANEL MEMBERS.

SUIT NO. A6/177/23

MARY ATTA
FADAMA, ACCRA

APPLICANT

VS.

ALIDU GYENI
KWANSI-TECHIMAN,
BONO-EAST
RESPONDENT

RULING

This is a Ruling on an Application filed on the 17th of October 2022 for the maintenance of the children in issue.

The Applicant's Case

The Applicant in her Affidavit in Support deposed to the fact that she was married to the Respondent and they had Two (2) children although she has a Twenty-Seven (27) year old daughter from a previous relationship. She deposed further that she relocated to Accra with the children in 2020 of which she fell sick and had to undergo Two (2) surgeries but the Respondent never supported her with the medical expenses. She stated that since she relocated to Accra, the Respondent has totally abandoned her and the Two (2) children but only sent an amount of Four Hundred Ghana Cedis (Ghc400.00) through his sister. She again

stated that it has been her elder daughter who has been taking care of her and the children including the payment of rent. She therefore prays the court for the following;

- a) An Order for the Respondent to maintain the children with Ghc1, 000.00 per month and also pay for their medical expenses.
- b) An Order by the Court for the Respondent to pay the school fees of the children.
- c) An Order for the Respondent to renew the rent accommodation for the Respondent and the children.
- d) An Order for the Respondent to refund an amount of Ghc7,500.00 belonging to my daughter being cost of rent and a further refund of an amount of Ghc8,000.00 being maintenance cost between 2020 and 2022 for the children.
- e) Any other Order(s) that the court may deem fit.

The Respondent's Case

The Respondent in his Affidavit in Support as deposed to on his behalf by Shaibu Musah prayed for the suit to be dismissed on the basis that the Respondent lives outside the jurisdiction but same was dismissed.

DETERMINATION

In view of the processes before the court, the issues were as follows;

1. Whether or not the court can order the Respondent to pay an amount of Ghc1, 000.00 as maintenance of the children.

2. Whether or not the Respondent should refund an amount of Ghc7, 500.00 being cost of rent and Ghc8, 000.00 being maintenance arrears for the children.

In making a determination on the issues before the court, the court is guided by Section 2 (1) of The Children's Act (1998) Act 560 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...*'.

Analysis

The first issue is **whether or not the court can order the Respondent to pay an amount of Ghc1, 000.00 as monthly maintenance of the children.** The duty of the court is to get the Respondent to adequately maintain his children. 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 necessaries of health, life, education and reasonable shelter for the child*'. Section 49 (a) of Act 560 provides among others that '*the Family Tribunal shall consider the income and wealth of both parents of the child or the person legally liable to maintain the child*'. It is therefore trite that in making Maintenance Orders, the court must consider the person from whom maintenance is claimed and he or she should be 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.

The record shows that the Respondent is a peasant farmer and therefore does not seem to have a regular source of income so that the amount of One Thousand Ghana Cedis (Ghc1, 000.00) being claimed by the Applicant as monthly maintenance appears unreasonable. The Applicant however is at liberty to subsequently apply for a review of the maintenance sum in so far she is able to convince the court that the Respondent's financial circumstances have changed.

The second issue is **whether or not the Respondent should refund an amount of Ghc7, 500.00 being cost of rent and Ghc8, 000.00 being maintenance arrears for the children.** Generally, the District Court has the following divisions; they are the general division which handles general matters at the District Court; the Family and Juvenile Court which handles criminal cases of children below Eighteen (18) years as well as family matters of maintenance of children, paternity, custody and access. The Family Court is therefore unable to get the Respondent to pay of the said amount of Ghc7, 500.00 owed to her and her other daughter. The Applicant is at liberty to proceed to any District Court to claim same as this instant court is not seized with such jurisdiction. Additionally, the Applicant has failed to provide any evidence on how the Respondent became indebted to her up to the tune of Ghc8, 000.00.

DECISION:

Upon consideration of the Application, the evidence before the Court and pursuant to the provisions of the Children's Act (1998) Act 560, the Court in the best interest of the children orders as follows;

1. The Applicant shall have custody of the children and the Respondent shall have access to the children during school vacation and the Respondent shall pay all the traveling expenses of the children to and from Accra.
2. The Respondent shall pay all the incidental school expenses of the children as they attend a government school. The Applicant shall be responsible for school uniforms, bags and sandals of the children.
3. The Respondent shall maintain the children with an amount of Three Hundred Ghana Cedis (Ghc300.00) monthly and same is to be paid via the Respondent's Mobile Money Account within the first week of every month with effect from January 2023. The Respondent must also regularly send foodstuffs and/or farm produce to the children through his sister or any other convenient means.
4. The Applicant shall be responsible shall register the children under the National Health Insurance Scheme (NHIS) and the Respondent shall pay for all medical bills not covered by NHIS.
5. The court is unable to make orders as to accommodation as the evidence on record shows that the parties are still married.

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

I AGREE

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**MADAM PHILOMENA SACKEY
PANEL MEMBER**

I AGREE

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**MADAM LOVEGRACE AHLIJAH
PANEL MEMBER**