

IN THE FAMILY AND JUVENILE COURT 'B', FORMER COMMERCIAL COURT BUILDING – ACCRA HELD ON MONDAY, THE 28<sup>TH</sup> DAY OF NOVEMBER 2022. BEFORE HER HONOUR MRS. MATILDA RIBEIRO, CIRCUIT COURT JUDGE, SITTING AS AN ADITIONAL MAGISTRATE WITH MADAM FELICIA COFIE, AND MR. RICHARD TEGBEY AS PANEL MEMBERS.

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Suit No: A6/101/23

PATRICIA NKANSAH ..... APPLICANT

CAPRICE

ACCRA

VERSUS

APPIAH BOATENG ..... RESPONDENT

TESANO POLICE DEPOT

ACCRA

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Applicant: Absent

Respondent: Present

### JUDGMENT

In a Maintenance application filed before the court on the 29<sup>th</sup> day of August 2022, Applicant prayed for:

1. An order for the Respondent to maintain the two children at a monthly amount of GHC2,000.00
2. An order directed at Respondent to pay for accommodation when it falls due.
3. An order directed at Respondent to pay the children's school fees and hospital bills and other orders this court may deem fit.

Also in her Supplementary Affidavit filed on the 30<sup>th</sup> day of September 2022, she prayed for an order compelling Respondent to reimburse her with an amount of GHC60,000.00 being school fees, maintenance and accommodation arrears. According to Applicant, she and Respondent were customarily married, and they have two children; a male aged five years (Lexis Kwasi Boateng) and a female aged four years (Alexigold Asiedua Boateng). She said Respondent shirked his responsibilities towards the issues after their birth. She stated further that Respondent has not been consistent in the maintenance of the issues and the payment of their school fees. She said she lodged a complaint at Tessano DOVVSU and Respondent was directed to pay the school fees and also maintain them but he only paid once and have since refused to maintain the issues despite several demands from the DOVVSU officials. She lamented that she has had to invest all her incomes into the issues' welfare and also had to borrow from family, friends and financial institutions in order to pay for their rent, school fees and maintenance. She annexed "Exhibit A" (loan repayment schedule for the sum of GHC15,000.00) and "Exhibit B series" being copies of school fees receipts for the issues in support of her case.

Respondent did not file a response to Applicant's case against him but indicated during proceedings on the 7<sup>th</sup> day of November 2022 that he cannot afford the demands by Applicant because of his financial position. He said he can afford GHC500.00 as monthly maintenance for the two issues and pay half of the rent. On school fees, he said he cannot afford same as the current fees is too high so he prayed the court to be allowed to change the issues' school to one that he can afford. He also objected to Applicant's claim for reimbursement of the sum of GHC60,000.00. According to him, he paid half of the Applicant's current rent of GHC8,400.00 expiring in November 2022. This assertion was not disputed by Applicant. He mentioned that his initial proposal to give Applicant GHC1,000.00 for the upkeep of the issues was to cover both monthly maintenance and school fees.

The parties were unable to settle the matter when they were referred to the ADR unit of the Court to explore amicable settlement of the matter. The court has to determine whether Applicant is entitled to the maintenance claim of GHC2,000.00 monthly, accommodation, school fees and medical care for the two issues.

Maintenance of children is explained by **section 47 of The Children’s Act, 1998 (Act 560)** to include *“a duty to supply the necessities 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 necessities 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.”*

The issues are the parties only children. Applicant is a nurse whereas Respondent is a police officer. Per the payslips provided by both parties, Applicant earns about GHC 2,062.12 gross pay with a net pay of GHC1,360.50 as of October 2022. Respondent’s pay slip for October 2022 shows a gross pay of GHC4,387.56 and a net pay of GHC2,247.27. The evidence before the court shows that both parties are heavily dependent on loans some of which go through their payroll and others direct from the bank. It is not clear what the parties use the monies for. Applicant alleged that she used it to pay the issues’ school fees and rent. She annexed ‘exhibit B Series’ being receipts of school fees paid by her. There is however no indication that the loan repayment schedule (Exhibit A) she attached was for the payment of the issues’ school fees and maintenance. During the pendency of this case before the court, Respondent

has contracted two additional loans and yet failed to provide for the upkeep of the issues. Asked what he uses the loan money for, he said he is responsible for his family in his hometown and that he is putting up a structure (building) for the uncle in his hometown. It seems to me that Respondent prioritizes his responsibilities towards his extended family more than the issues herein. The rising cost of living in Accra does not make it reasonable for a single parent to be solely responsible for the maintenance of two children considering the financial situation of the parties herein. The issues were enrolled in the current school by Applicant in January 2021. The school fees and feeding fee for both issues is GHC3,228 per term with a daily transportation cost of GHC24.00.

Considering the financial position of the parties, the court is convinced that it will be extremely difficult for them to maintain the issues in the current school, and they cannot continue taking loans. It is therefore ordered that the parties agree on a choice of school of a reasonable standard near Applicant's current residence and enrol the issues in at the beginning of the 2023 academic year. Respondent shall be responsible for all educational expenses of the two issues except school feeding fee which shall be paid by Applicant. If on the other hand the issues are enrolled in a government school, then Respondent shall pay for all educational expenses including school feeding fees. Respondent shall also support Applicant with GHC800.00 monthly for the maintenance of the two issues. This shall be paid into Court by the last day of each month effective September 2022. It is further ordered in line with the principle of joint parental responsibility that the parties shall share equally, the cost of accommodation for the benefit of the two issues and same shall apply to future rent renewals. Respondent shall pay for medical expenses not covered by NHIS and the Ghana Police Service's medical package for employees and their dependants. Applicant shall be responsible for other necessities of life for the issues. Respondent is urged to prioritise the welfare of the issues by fulfilling his obligations towards them under the Children's Act.

In terms of Applicant's claim for reimbursement of GHC60,000.00 being school fees, maintenance and accommodation arrears, Applicant failed to produce sufficient evidence in support of this claim. She said she spent GHC8,400.00 on rent. To this, Respondent's assertion that he paid half of the said amount was not disputed by Applicant. Respondent could not

produce evidence in support of his claim that he has been maintaining the issues save to say that he used to give Applicant money; sometimes GHC15.00 or more since applicant had at the time, not started receiving salary as a government employee. The fact remains that he has not been consistent in adequately meeting the maintenance needs of the issues. He however paid GHC1,500.00 as part payment of fees for the first term of the 2022 academic year after which he went back to the Domestic Violence and Victims Support Unit (DOVVSU) to tell them he cannot afford the fees. This was after Applicant lodged a complaint at DOVVSU and the parties were directed to share the school fees of the issues equally. The school fees receipts (Exhibit B series) amount to a total of GHC8,245.00 covering 2021 and 2022 academic years. This should be less the portion to be paid by Applicant for first term of 2022 which is GHC1,614 leaving us with GHC6,631.00. Respondent had a balance of GHC114.00 to be paid for that term to make up his half share. **Section 51(5) of Act 560** provides that *“A Family Tribunal may make an order for arrears of maintenance against any person liable to pay the maintenance.”* Given the circumstances of the case and given that Respondent informed Applicant he cannot afford the fees of the school she enrolled the issues in, but she still retained them there, the cost of the school fees arrears per receipts shall be shared equally between the parties. Being  $GHC6,631 - GHC114 = GHC 6517/2 = 3258.50$  each. Respondent shall then pay school fees arrears of  $3258.50 + 114 = 3,372.50$ .

The parties evidence as to Respondent’s maintenance or non-maintenance of the issues over the period the parties lived together with the issues and the period they have been separated is checkered. Whilst Respondent said they married in 2017 and separated in March 2021, Applicant said they have been separated for about four to five years now. She said they have not really lived together as she has been in and out of the marriage/matrimonial home because of Respondent’s inability to adequately provide for the family. It can however be deduced from the evidence that he has not been consistent in maintaining the issues. For instance, he has not given Applicant money for the maintenance of the issues since the case

started in September 2022 till date. He is therefore ordered to pay an assessed maintenance arrears of GHC 3,500.00. Making a total arrears of GHC 6,872.00 for school fees and monthly maintenance. She is not entitled to accommodation arrears since Respondent paid half of it.

The parties are advised to exercise some restraint in accessing loans as this goes to affect their available financial resources to meet the needs of the issues. They should also try and live within their means.

In summary, Respondent is to maintain the issues with GHC800.00 monthly effective November 2022. Payable into court by the last day of each month and subject to periodic review. He is to pay an assessed maintenance and school fees arrears of GHC6,872.00. Parties are to enrol the issues into a school of reasonable standard with fees within their means. Respondent shall be responsible for all educational expenses of the two issues except school feeding fee which shall be paid by Applicant. If on the other hand the issues are enrolled in a government school, then Respondent shall pay for all educational expenses including school feeding fees. Respondent shall pay for medical expenses not covered by NHIS and the Ghana Police Hospital's medical package for employees and their dependants. Applicant shall be responsible for other necessities of life for the issues.

**SGD.**

**H/H MATILDA RIBEIRO (MRS)**

**CIRCUIT COURT JUDGE**