

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON WEDNESDAY THE 12TH DAY OF OCTOBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MR WISDOM ATIASE AND MADAM FELICIA COFIE AS PANEL MEMBERS

SUIT NO. A6/99/21

SANDRA DONKOR
SUING PER HER LAWFUL ATTORNEY
WILLIAM OFOSU ABURAM
HSE/NO 2 NEAR YELLOW HOUSE
TANTRA HILL, ACCRA

APPLICANT

VS

RICHARD ARKO
SITE NO E/151
TIMBER MARKET, ASHAIMAN
RESPONDENT

Applicant's Lawful Attorney present
Asamoah Amoako Esq. for the Applicant
Emmanuel Kumadey Esq. for the Respondent

RULING

This is a Ruling on an Application by the Applicant herein filed on the 28th of October 2020 for the maintenance of the child in issue.

The Applicant's Case

In the Affidavit in Support deposed to by the Applicant's the Lawful Attorney on behalf of the Applicant, the parties gave birth to the child in issue in 2011 and that for about Five (5) years now, the Respondent has failed, refused and/or neglected to pay for the maintenance of the child. The Lawful Attorney further deposed that, any request and calls by the Applicant to the Respondent who is a businessman and gainfully employed to cater for his child have been ignored. It was further stated that the Applicant, who is resident in the United States with the child is now unemployed although was formerly a House Keeper. The Applicant concluded by praying for a monthly maintenance sum of Five Hundred and Ninety United States Dollars (US\$590.00) or its Cedi equivalent per month to the Applicant to maintain the child which includes his school fees, clothing, food and medical expenses as well as the payment of the accumulated debt of Thirty Thousand United States Dollars (US\$ 30,000.00) or its Cedi equivalent to the Applicant.

The Applicant filed a Supplementary Affidavit in Support on the 27th July 2022 and same was also deposed to by the Applicant's Lawful Attorney. The Affidavit indicated, among others that the Respondent has for some years refused to maintain his child and has therefore incurred an accumulated debt of Thirty Thousand United States Dollars (US\$30,000.00) in respect of maintenance. The Applicant further itemized the expenditure that resulted in an accumulated debt of US\$30,455.50 and the Lawful Attorney further deposed that the Applicant, during the period of the COVID 19 Pandemic, had accidentally misplaced most of the documents covering expenditure but was able to procure some and same were attached as Exhibits to the Supplementary Affidavit.

The Respondent's Case

The Respondent filed his Affidavit in Opposition on 23rd February 2021 and informed the Court that the Respondent initiated a similar action at the Family and Juvenile Court, Accra sometime in 2013 in Suit Number A6/755/2013 where the Court ordered the Respondent to pay Three Hundred Ghana (Ghc300.00) monthly towards the maintenance of the child into the Bank Account of the Applicant. The Respondent further deposed that on the 13th July 2018, he paid an amount of Ten thousand Ghana Cedis (Ghc10, 000.00) into the said account. The Respondent further deposed that subsequent to the said payment, he was involved in a vehicle accident hence his inability to pay maintenance for Two (2) years. He stated further that he is being advised by his Counsel and verily believe same to be true that since the relief being sought by the Applicant has already been granted on and the Applicant cannot make the same Application again and therefore prayed the Court to dismiss the Applicant's Application.

DETERMINATION

In view of all the processes so far filed by both parties as well as the evidence on record, the issues before the Court for determination are as follows;

- i. Whether or not the Respondent is in arrears of maintenance to the tune of Thirty Thousand United States Dollars (US\$30,000.00) towards the child in issue;**

- ii. Whether or not the Respondent is entitled to pay an amount of Five Hundred and Ninety United States Dollars (US\$590.00) or its Cedi equivalent as monthly maintenance towards the upkeep of the child.**

To make a determination on the first issue of **whether or not the Respondent is in arrears of maintenance to the tune of Thirty Thousand United States Dollars (US\$30,000.00) towards the child in issue**, there is the need to trace the history of the issue of maintenance between both parties. The instant Application was filed in October 2020 and the Affidavit indicated that as at October 2020, the Respondent's accumulated debt was US\$30,000.00 but the Applicant failed to substantiate further on how that amount was arrived at. The Supplementary Affidavit in Support filed on the 25th of July 2022, reiterated the fact that the Respondent owed arrears and further itemized the said expenses but also failed to indicate the specific period(s) within which the accumulated debt covered.

The Respondent in his Affidavit in opposition informed the Court that that sometime in 2013, the Applicant commenced a similar action in suit number A6/755/2013 where the Court ordered that the Respondent to pay Three Hundred Ghana Cedis (Ghc300.00) monthly towards the maintenance of the child in issue and same was to be paid into the Applicant's bank account. The Applicant despite the Court order proceeded to initiate a fresh action at this instant Court although differently constituted. When the matter came up for hearing on the 17th of March 2021, the Respondent admitted to owing arrears to the tune of Ghc25, 300.00 of which he had paid an amount of Ghc16, 000.00 leaving as outstanding balance of Ghc9, 200.00 as at March 2021. The Applicant never challenged these figures and the Court, differently constituted ordered the Respondent to pay up the outstanding amount of Ghc9, 200.00 by May 2021. On the 28th of April 2021, Counsel for the Applicant acknowledged the receipt of an amount of Ghc4,600.00 of which the Court again ordered the Respondent to pay an amount of Ghc1,600.00 by the 14th of August 2021 and on the 18th of August 2021, the Respondent produced the receipt of an amount of Ghc1,600.00. The

Court further ordered the Respondent to pay an amount of Ghc6, 000.00 within a month but it is not too clear what this amount represents because the Record shows that the Respondent as at March 2021 owed Ghc25, 300.00 and by August 2021 had paid off a total amount of Ghc22, 200.00. It can therefore be safely assumed that as at August 2021, the outstanding amount owed by the Respondent in respect of the Maintenance Orders of the Court as far back as 2013 stood at **Ghc3, 100.00**.

The matter then subsequently suffered series of adjournment but on the 6th of July 2022, Counsel for the Applicant eventually moved his Motion on Notice for Maintenance of the Child although same was filed on the 28th October 2020. In moving the Application, Counsel for the Applicant argued that the cause of the Application was that for the past Five (5) years, the Respondent has not taken care of the child who is in the U.S. and the mother is currently unemployed. He argued further that the exhibit attached indicates that the total maintenance amount of US\$90.00 per month for Five (5) years has accumulated to US\$30,000.00 and therefore prayed for an Order for the Respondent to pay this amount. Counsel for the Applicant concluded by informing the Court that the Applicant had wanted to provide the evidence of this amount but for ill-health and therefore prayed the Court to file a Supplementary Affidavit'. Upon filing the said Supplementary Affidavit, Counsel for the Applicant on the next adjourned date argued again that the issue at stake which constitutes the basis of the Application is the arrears of the equivalent of US\$30,000.00. He therefore asked the Court to make an order directing the Respondent to pay the accumulated debts and monthly maintenance owed the child.'

Counsel for the Respondent in opposing the Application argued that the action was before the Court in 2013 and the Respondent was ordered to pay Ghc300.00

and the accumulated arrears have been paid by the Respondent. He argued further that the expenses so far incurred is outside the order of the Court and the expenditure per the Supplementary Affidavit does not tally with the exhibits. Counsel for the Respondent argued again that the documents exhibited cannot form a basis for payments as there are no evidence and agreements. He concluded by emphasizing that the Application is unmeritorious and cloaked to vary the previous order of the Court and the Applicant ought to have applied for a Variation of the Court Orders.

To arrive at a logical conclusion as far as the first issue is concerned, the Court inquired from the Counsel for the Applicant the period of arrears for the claim for the said US\$30,000.00 of which Counsel informed the Court that it covered arrears from the year 2014 to the year 2020. If the Court is to rely on Counsel for the Applicant's own words juxtaposed with the Court's Order of 2013, it presupposes that the Respondent is in arrears of payment of Three Hundred Ghana Cedis per month for Seven (7) years (from 2014 to 2020) of which the total arrears owed as at the time of filing this instant Application will be Ghc25, 200.00. The evidence on record shows that the Respondent has so far paid a total amount of Ghc22, 200.00 and as such **the amount owed by the Respondent as arrears of maintenance from 2014 to 2020 is Ghc3, 000.00 and not US\$30,000.00 or its Cedis equivalent.**

The Court observes further that the Applicant per her Supplementary Affidavit itemized the expenses incurred on the child and paragraph 4 of the said Affidavit reads as follows; *'...in support of the accumulated debt of US\$30,000.00, the Applicant has listed the following...'*. The itemized expenditure includes medical bills, uniforms, laptop, mattress, shoes, internet bill, haircut, laundry, among others and the total stands at US\$30,455.50. The Court at this point is uncertain as to

what exactly Applicant's prayer before the Court is. This is because Counsel in moving his Motion said as follows '*...the total amount of US\$90.00 and for Five (5) years has accumulated to US\$30,000.00 and therefore pray for an order for the Respondent to pay this amount...*' If the Court, again, is to rely on Counsel for the Applicant's own words, then the accumulated amount owed the Applicant at US\$90.00 per month for Five (5) years will add up to US\$5,400.00 and not US\$30,000.00. Additionally, paragraph 5 of the Applicant's Affidavit in Support states '*...for about Five (5) years now, the Respondent has failed, refused and or neglected to pay for the maintenance of his Nine (9) years old child...*' yet, the Applicant failed to indicate the amount per month but totals the amount to be US\$30,000.00. Counsel for the Respondent argued that he said amount was not what the Court ordered, neither is it an outstanding accumulated balanced owed by the Respondent but covers monies unilaterally spent on the child by the Applicant. In her Supplementary Affidavit however, there is a list of items which are expenses incurred on the child and that appears to have been her prayer all along because she says little or nothing about the arrears of monthly maintenance.

Be that as it may, there is the need to determine whether the Applicant is justified in laying claims for the amount of US\$30, 455.50 as deposed to in the Supplementary Affidavit. In civil cases, the general rule is that the party who has a claim before the Court raises issues essential to the success of his claim and such a party assumes the onus of proof. The existence of accumulated debt is a fact that is governed by Sections 10 and 11 of the Evidence Act, 1975 (NRCD 323). Section 10 (1) of NRCD 323 provides that '*the burden of persuasion may require a party to raise a reasonable doubt concerning the existence or none-existence of a fact by a preponderance of the probabilities...*' Proof by preponderance of probabilities is

explained in Section 12(2) of NRCD 323 to mean '*...that degree of certainty of belief in the mind of the ... Court by which it is convinced that the existence of a fact is more probable than its non-existence*'. With regards to the burden of producing evidence, Section 11 of NRCD 323 also provides that '*...the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue*'. See the Supreme Court case of **George Akpass vs Ghana Commercial Bank Limited** (2021) DLSC 10768 at pages 9-10 per Amegatcher, JSC.

In a bid to introduce sufficient evidence to justify her claim for US\$30, 455.50, the Applicant provides a list of expenditure incurred on the child. This list, apart from duplicating certain items, is clearly a self-serving evidence and the probative value to be attached to the said list is nil. The Applicant however attached Six (6) different documents and marked them as Exhibits 'A Series' to support the list as well as substantiate her claims and it is the duty of the Court is to evaluate the evidence as against the Applicant's claim. A critical scrutiny of the exhibits however, reveals that all the documents attached covered expenditure incurred in the months of June, July, and August of the year 2022 and this is contrary to what the Applicant deposed to in her Affidavits so far filed as well as the arguments of Counsel. The Court is therefore of the opinion that the evidence adduced by the Applicant to justify the claims for the amount is not consistent with her claims before this Court. The Court however does not lose sight of the fact that the Applicant might have indeed incurred expenses on the child during the period but the question on the mind of the Court is whether the Applicant does inform, consult and/or agree with the Respondent, the child's biological father, before incurring the said expenses.

The next issue for determination before this Court is **whether or not the Respondent is entitled to pay an amount of Five Hundred and Ninety United States Dollars (US\$590.00) or its Cedi equivalent as monthly maintenance towards the upkeep of the child.** It is important to reiterate the fact that the Respondent was sometime in 2013 ordered by this same Court to pay maintenance of Three Hundred Cedis (Ghc300.00) monthly into the Applicant's Bank Account. The Court therefore agrees with Counsel for the Respondent's argument that the Applicant should have applied for a variation of the Court Order rather than institute a fresh action altogether. The Court will however proceed to make a determination on whether or not the Respondent should pay US\$590.00 as monthly maintenance towards the upkeep of the child in issue. Child maintenance is one of the fundamental rights granted every Ghanaian child under the customary and statutory laws of Ghana.

Article 28 of the 1992 Constitution which is specifically devoted to the rights of children enjoins Parliament to enact laws that ensure that natural parents provide every one of their children, from conception till age Eighteen (18) at least. **The Children's Act, 1998 (Act 560)** is also meant to reform and consolidate the laws relating to children and to provide for the rights of the child of which the Act sets out a number of rights to ensure the well-being of children. 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 necessaries of health, life, education and reasonable shelter for the child'*.

In the case of **Abubakari vs Abubakari** (152 of 2005) [2005] GHACA 7 (18 May 2005); the Court held that; *'... the law is fairly well settled that it is the responsibility of both parents to cater for their infant children...'* and this position has been captured in Section 49 of Act 560 that *'a Family Tribunal shall consider the income and wealth of both parents of the child when making a maintenance order'*. The Court therefore ordered the parties to file their Affidavit of Means and the Respondent deposed to the fact that he is a Wood Vendor and earns about One Thousand Two Hundred Ghana Cedis (Ghc1, 200.00) monthly. He deposed further that he has a total number of Seven (7) children including the child in issue and he spends his monthly earnings on the children. The Applicant's Affidavit of Means deposed to on her behalf by her Lawful Attorney also indicated that the Applicant works as House Help in the United States of America but her employment has not been stable due to the effect of COVID 19 on the levels of employment. The Affidavit further indicated that the Applicant earns an amount of US\$1,200.00 monthly but spends US\$700.00 on rent and the remaining amount takes care of the food, electricity and other utility bills such as telephone, internet and transport for both herself and the child.

The onus then lies on the Court to determine the maintenance sum, however, the amount demanded for by the Applicant appears unreasonable when compared to the amount the Respondent earns as deposed to in his Affidavit of Means. 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 the amount claimed 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 Applicant failed to establish the fact that the Respondent

has the means to pay the amount of US\$590.00 because in paragraph 6 of her Affidavit in Support, she only states as follows; *'...any request and calls by the Applicant to the Respondent who is a businessman and very gainfully employed has been ignored'*. It is therefore the duty of the Court to order a reasonable sum as monthly maintenance but same should be within the means of the Respondent, yet such an amount must also be sound and in consonance with present day economic realities.

DECISION:

Upon consideration of the Application and the evidence before the Court, the instant Application is dismissed but pursuant to the provisions of Act 560 and specifically in consideration of Section 2(1) of Act 560 which provides that *'the best interest of the child shall be paramount in any matter concerning a child'*, the Court makes the following Orders:

1. The Respondent shall be responsible for the maintenance of the child with an amount of **Four Hundred Ghana Cedis (Ghc400.00)** monthly with effect from October 2022 and same should be paid into Court within the first week of every month.
2. The Respondent shall pay **Fifty percent (50%)** of the child's school fees and incidental school expenses and the Applicant is to consult, inform and/or agree with the Respondent on any such expenses.

3. The Applicant must inform and seek the consent of the Respondent before incurring any other expenditure on the child and the Respondent must not unreasonably withhold the consent.
4. Any and all expenses incurred on the child towards the provisions of necessities of life shall be shared equally on a **Fifty-Fifty (50-50)** basis by both parties after due communication between both parties.
5. The Respondent is to pay off his arrears of **Ghc6, 900.00** being arrears from August 2021 till September 2022 within the next Six (6) months and same is to be paid into Court.

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

I AGREE

I AGREE

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MADAM FELICIA COFFIE
PANEL MEMBER

MR. WISDOM ATIASE
PANEL MEMBER