

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER  
COMMERCIAL COURT BUILDING, ACCRA HELD ON TUESDAY THE 21<sup>ST</sup>  
DAY OF FEBRUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA  
ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH  
~~MADAM PHILOMENA SACEY AND MR. RICHARD TEGBEY AS PANEL~~  
MEMBERS.

SUIT NO. A6/286/23

MERCY ABA ACQUAH  
MAMPROBI, ACCRA

APPLICANT

VS.

HERMAN MAGNUS-GEORGE  
ABEKA, ACCRA

RESPONDENT

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Parties Present

No Legal Representations for Parties.

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### RULING

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This is a Ruling on an Application filed on 10<sup>th</sup> January 2023 for the Custody and maintenance of the children in issue.

#### *The Applicant's Case*

In her Affidavit in Support, she deposed that she was married to the Respondent and gave but to Two (2) children but is now separated due to series of misunderstandings. She deposed further that she initially left the children in the Respondent's family's house and when she went to visit them but discovered that the Respondent had travelled and left the children unattended to without informing her. She then took the children to her place but the Respondent

wanted to forcefully take the children from her. She therefore prays for the following Reliefs:

- i. An order by the Honourable Court to grant the Applicant formal custody of the children.
- ii. An order by the Honourable court directed at the Respondent to maintain his children at Ghc1, 200.00 a month, pay school fees and anything connected to school and all necessities of life towards the children.
- iii. An order to pay medical bills not covered by National Health Insurance Scheme and to register the children with the scheme and renew same when it expires.
- iv. An order to rent an alternative and decent accommodation for the children and the Applicant.
- v. Any other orders deemed fit by the Honourable court.

### **The Respondent's Case**

The Respondent in his Affidavit in opposition confirmed the separation and stated that it is mainly because of the Applicant's attitude towards his mother who takes care of the children when both of them are not around. He deposed that after the Applicant left home, he was the one taking care of the family, paying school fees, medical bills and any other expenses concerning children until the Applicant came to take them away without his consent. He further deposed that he is willing to take care of the children and therefore prays for the following reliefs;

- a) An order directed at the Applicant to bring back the children for him to continue taking care of them.

- b) Any other orders the court deems fit.

### **DETERMINATION**

In view of the processes filled by the Applicant, the issues for determination are as follows;

- i. Whether or not the Respondent should have custody of the children.
- ii. Whether or not the Respondent is to provide all necessities of life for the child in issue.

In making a determination on the issue 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...*'. In arriving at a conclusion, the court was of the opinion that there is the need to independently investigate the claims of both parties and as such ordered for a Social Enquiry Report (SER).

### **The Social Enquiry Report (SER)**

The SER as submitted by the Probation Officer, Mr. Emil Eli Laweh dated 10<sup>th</sup> of February, 2023 made certain findings and conclusions including the fact that the Applicant occupies a congested single room with the children at Chokor whilst the Respondent lives alone in a Chamber and hall with porch at Abeka in a Family House. The Applicant teaches in a Fashion School where she works from Mondays to Fridays and earns about Ghc2, 500.00 monthly. The Respondent is a farmer and has his farm at Ada where he makes a profit of about Ghc5, 000.00 at

the end of every farming season. The SER gathered that the Respondent stopped paying the children's school fees as well as their maintenance since the Applicant went for the children.

### **Analysis**

The first issue is bothers on custody of the children as both parties want custody of the children. In determining which of the parents is best suited to have custody of the children, the court relies on the case of **Opoku-Owusu vs. Opoku-Owusu** [1973] 2 GLR 349, where Sarkodee J held that *'the Court's duty is to protect the children irrespective of the wishes of the parents*. The evidence on record shows that both children are females and Section 45 of The Children's Act, 1998 (Act 560) provides in sub section 1 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'*. Indeed, in the case of **Bentsi-Enchill vs. Bentsi-Enchill** [1976] 2 GLR, the court held that *'the primary concern of the court is to ensure that there are appropriate safeguards for a child's general welfare, irrespective of the interests of the parents... Normally the mother should have the care and control of young or sickly children (particularly girls) or those who for some other reason need a mother's care'*.

The evidence on record shows that the Respondent being a farmer is spends a lot of time away from home during the farming season. In view of that the court is of the opinion that the children will be better off in the custody of the Applicant since she works as a teacher and closes by 2pm.

The next issue bothers on the provision of the necessities of life of the child in issue. **Section 6 (1) of Act 560** provides on Parental duty and responsibility and states that *'...no parent shall deprive a child his welfare whether the parents of the child*

*are married or not at the time of the child's birth; or the parents of the child continue to live together or not. Section 6(2) further provides that '...every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents'. To this end, Section 47(1) 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...' According to Justice Kwabena Asuman-Adu in the case of **Ernestina Ayensu Boateng Vs. Yaw Boateng** [2010] DLHC 5660, '... it is the responsibility of the Respondent as the father to maintain his children who have not attained age 18yrs or are in school ... it is his responsibility as a father to provide for his maintenance which should include food, shelter and clothing. He must also provide for his health and education. These payments should continue until he attains 18yrs of age or completes schooling, whichever comes last...'*

### **DECISION**

Upon consideration of the Application, the evidence on record, the testimony of the both parties and pursuant to the provisions of the Children's Act 1998 (Act 560), the Court orders as follows;

1. The Applicant shall have custody of the children and the Respondent shall have access to the children on the last weekend of every month with effect from March 2023. He is also to communicate and agree with the Applicant on time and date for the pickup and return of the children.
2. The Respondent shall pay an amount of Ghc600.00 towards the maintenance of the children and same should be paid within the first week of every month with effect from March 2023 into court.

3. The Applicant should register the children under National Health Insurance scheme and renew same when it expires. The Respondent shall pay all medical bills not covered by National Health Insurance Scheme.
4. The Respondent shall pay for the children's School fees and all the incidental school expenses whilst the Applicant shall pay for school uniforms, bags and sandals for the children.

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

**I AGREE**

**I AGREE**

.....  
**MR. RICHARD TEGBEY**  
**PANEL MEMBER**

.....  
**MADAM PHILOMENA SACKEY**  
**PANEL MEMBER**