

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT
BUILDING- ACCRA HELD ON THURSDAY, THE 17TH DAY OF APRIL, 2023.
BEFORE HER HONOUR MRS. MATILDA RIBEIRO, CIRCUIT COURT JUDGE,
SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM **GIFTY OKAI**
AND MADAM PHILOMINA SACKY AS PANEL MEMBERS

SUIT NO...A6/73/23

HILDA GAD APPLICANT
BUBUASHIE ACCRA

Versus

DANIEL AFRIYIE YEMPEW RESPONDENT
ACCRA CENTRAL

Applicant: Present

Respondent: Present

No legal representation for both parties.

JUDGMENT

Applicant's case before the court is for Respondent to be ordered
to.....

She alleges that Respondent has shirked his responsibilities towards the child in issue. That for the past four and a half years, she has been solely responsible for the provision of all maintenance needs of the issue. She said things are very difficult for her now as she is unable to adequately provides the needs of the issue. And that, the issue has been home since the beginning of the 2023 academic year in January. Applicant however indicated that Respondent was indeed taking care of the issue but stopped about 2years before the genotype issue.

According to Respondent he accepted responsibility for the child in issue and was maintaining him adequately until some laboratory tests conducted on the issue showed that he was of the genotype SS whilst the Respondent was AS and Applicant AA which according to him, made it medically impossible for the child in issue to be his. According to him the explanations by the doctors made him to doubt the paternity of the child. Hence, he developed cold feet towards him, and he did not maintain him adequately. He also requested to be allowed to explore settlement through the court Connected Alternative Dispute Resolution (ADR) mechanism. Though Applicant was opposed to same, the court deemed it necessary and in the best interest of the issue for the parties to explore amicable settlement. But before making any such order, it was necessary to determine the paternity of the child in issue first. An order for DNA test was therefore made to ascertain the paternity of the issue. The DNA test results dated 12th December 2022, and presented to the parties on the 12th December 2022 confirmed Respondent as the father of the issue with the conclusion that:

1. Daniel Afriyie Yempew is NOT EXCLUDED as the biological father of Daniel KwesiA friyie Yempew.
2. The probability of Daniel Afriyie Yempew being the biological father of Daniel Kwesi Afriyie Yempew is 99.99998%.

Following which Respondent was declared the biological father of the issue on the 16th day of January 2023 and ordered to take responsibility for the issue as a father and the parties were referred to ADR to explore amicable settlement of the matter. The first attempt at amicable settlement was not successful but upon the second attempt at ADR, they were able to agree on some of the issues so a partial ADR Terms of Agreement was executed and placed before the court for adoption.

The agreed terms of agreement were as follows:

Custody: That Applicant shall have custody of the child.

Access: That Respondent shall have visitation access to the child on weekends.

Education: That Respondent shall pay the child's school fees, cost of textbooks, exercise books and school feeding fees. That Applicant shall pay for extra classes and other materials. Parties shall also share the cost of school uniform.

Health: That Applicant shall renew the child's health insurance anytime it falls due. That Respondent shall pay medical bills not covered by health insurance.

They could however not agree on child maintenance and accommodation and same were referred back to the Court for determination.

The issue for determination is whether or not Applicant is entitled to her maintenance claim of GHC1,000.00 monthly, accommodation and maintenance arrears of GHC 36,000 being maintenance arrears of GHC20,000, clothing GHC3,700, school fees of GHC10,500 and medicals of GHC1,700.00.

Section 47 of the Children's Act 1998 (Act 560) explains a person's duty to maintain a child as *"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 of Act 560 states the following factors to be considered by the Court in determining a child 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

On the 12th day of September, 2023 an interim maintenance order of GHC350.00 monthly effective September, 2023 was made against Respondent pending the final determination of the case. As at 20th February 2023, Respondent had paid only GHC350 in October and GHC 400 in January 2023.

On the 28th day of March 2023, Respondent filed a Notification of My Resignation from Akoa Beverages Ghana Limited and a Copy of My Pay slip. He attached to this his pay slips for December 2022, January 2023 and February 2023. Per the pay slips he was earning about GHC4,514.87 in December 2022 and GHC1,260.52 for January and February 2023. Also attached was a letter headed **Receipt of Resignation Notice** dated 24th March 2021 purporting to acknowledge a notice of resignation by Respondent **effective 28th February 2023**. This letter was not on any company official headed paper. The letter which seeks to acknowledge receipt of resignation effective 28th February 2023 is dated 24th March 2023 and was filed in the registry of this Court on the 28th March 2023 after the matter had been adjourned to 3rd April 2023 for judgment at the instance of Respondent. Interestingly on the 13th March 2023 when the matter was being adjourned

for determination of the outstanding issues Respondent pleaded with the Court to adjourn it to a date in April instead of March because of his job and the fact that he has to be in management meetings on Monday and having come to court that day, it will be difficult for him to come to court again in the month of March. This document filed by the Respondent is therefore not tenable. As far as the record is concerned, he is working as a Sales Officer whilst Applicant works as caterer. They both have a child each aside the child in issue. As parents, they both have a responsibility towards the maintenance of their children. Having considered the circumstances of the parties, the cost of living in Accra and the needs of the child, Respondent is ordered to support the maintenance of the issue with **GHC350/400.00** monthly effective April 2023. This is subject to periodic review. The interim maintenance order of GHC350.00 made on 12th September 2022 lapses in March 2023.

On Applicant's prayer for Respondent to provide her and the issue with accommodation, Respondent said his finances cannot support such a claim. Asked how she was managing accommodation before coming to Court, she said she used to live with the mother in the family house, so she was not paying rent but where they are now, they paid GHC1,000.00 a month and her siblings supported them in securing the said accommodation. She however failed to provide any evidence in support of same. She lives with the mother, the issue and another child from a previous relationship whose father she claims is late. As seen under **section 47 of Act 560**, the parties and for that matter, Respondent has a responsibility to provide accommodation for the issue and not Applicant's mother and her son from a previous relationship. The facility Applicant **occupies is a** **apartment** and Respondent cannot be expected to bear the responsibility for same alone. It is hereby ordered that the parties shall share the cost of a chamber and hall accommodation equally for the benefit of the issue. **Since they have already rented the**

current facility, Respondent shall pay the equivalent of 25% of the cost for the benefit of the issue.

On Applicant's claim for maintenance, school fees, clothing and medical arrears of GHC36,000, it is provided under section 51(5) of Act 560 that "A Family Tribunal may make an order for arrears of maintenance against any person liable to pay the maintenance". Respondent submitted his mobile money (MOMO) transaction history from MTN which confirmed that Respondent transferred monies to Applicant from 2018 to 2019 which he says were for the maintenance of the issue. There were however no payments to Applicant for most part of 2020 till sometime November 2020 when he sent GHC305.00, then GHC 100.00 in December 2020, GHC200.00 in January 2021, GHC500.00 in May 2021 then GHC680.00 in September 2021 which both parties confirm was reimbursement for medical expenses on the issue

As earlier mentioned, the evidence shows mobile money payments to Applicant in the later part of 2020 and some part of 2021. When asked what these payments were for, Respondent said they were for both maintenance and school fees. Applicant on the other hand said Respondent never informed her of monies sent to her though it appears he has sent monies to her. And that, friends and family also send her money at times, so she didn't know they were from Respondent. This is the same person who has maintained that Respondent has not maintained the child for about four and a half years now (that will be since 2019). This was after she had seen the MOMO account history submitted by Respondent showing transfers of varying amounts in 2019, 2020 and 2021. Respondent also maintained that some monies were given to Applicant in direct cash though Applicant has denied same. Applicant has failed to establish her claim that respondent has failed to provide the maintenance needs of the issue for about four and a half years

now for which reason she should be granted her prayer for maintenance arrears of GHC 20,400.00 and the basis for same.

Section 11(4) of the Evidence Act provides that *“In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.”*

Respondent however alleged upon enquiry that it was in 2021 that he stopped the medical care the issue was benefiting from his employers. Applicant also confirmed that it was in 2021 that the issue was cut off from the medical insurance care. That the last payment of GHC 680 was for medicals. She has however not submitted any medical care receipts even though she is claiming arrears of medical care in the sum of GHC 1,700.00. Neither did she lead evidence to establish the medical arrears of GHC1,700.00. In any case, if indeed she spent that much on the issue from mid 2021 when Respondent stopped the medical care till the filing of the supplementary affidavit on 11th October 2022, it is the considered view of the court that Applicant should be made to take up that cost as the mother. She is therefore not entitled to same.

On the clothing claim of GHC3,700.00, Applicant confirmed that Respondent used to buy clothes from a colleague abroad for the issue so if he failed to do so for a period and she had to do it, I believe it is only fair and reasonable that she bears that cost especially when she could not lead any evidence in support of same. On school fees arrears, she produced receipts to the tune of GHC 3,156.00 from 2021 to 2022. She also submitted receipts for the period 2018 to 2019 over which period Respondent was maintaining the issue. Respondent has maintained that he was maintaining the issue until the genotype issue came up and since the MOMO transaction history confirms that Respondent was sending varying amounts to Applicant over the period 2018 and 2019, it may only be reasonable to conclude that he also paid the school fees for that period since Applicant had confirmed

that Respondent took care of the child until genotype issue. Respondent has maintained that the monies he sent to Applicant were for the issue's school fees and maintenance whilst medicals were taken care of by his employers. The only challenge here is that it is not clear when the genotype issue came up as the parties did not produce any evidence in support of same.. According to Applicant, Respondent stopped maintaining the issue in February 2018 when the genotype issue came up and that it has been about 4 and a half years now since he stopped maintaining the child and he has left all the responsibility on her. Respondent also maintained that though he cannot remember exactly when the genotype issue came up, it was sometime in 2020. Considering the evidence on the record, that is Respondent's Mobile Money (MOMO) account statement filed on 10th March 2021 (Exhibit A) there were payments to Applicant from sometime September 2018 through 2019 to January 2020 (though not consistent). After which there was a pause until November 2020, then December 2020, January 2021 and May 2021. So Respondent's story as to when he stopped maintaining the issue is more probable than that of Applicant. He admitted not maintaining the issue adequately after the genotype issue. Having considered the case of the parties and the evidence on the record, it is hereby ordered that Respondent shall pay maintenance arrears at a rate of GHC200.00 monthly for an approximate period of two (2) years being GHC4,800.00 (200*24).

CONCLUSIONS: In addition to the consent judgment of the court, the court hereby enters judgement in respect of the outstanding issues as follows:

Maintenance: Respondent shall maintain the issue with **GHC350/400** monthly effective April 2023 and this is subject to periodic review. The interim maintenance order of GHC350.00 made on 12th September 2022 lapses in March 2023.

Accommodation: The parties shall share the cost of a chamber and hall accommodation with basic amenities for the benefit of the issue equally when the current rent expires.

Since they have already rented the current facility, Respondent shall pay the equivalent of 25% of the cost for the benefit of the issue.

Maintenance, School fees and Medical arrears: Respondent shall pay maintenance arrears of a total of GHC 7,956.00 made up of GHC4,800 for maintenance and GHC3,156.00 for school fees.

**H/H MRS. MATILDA RIBEIRO
CIRCUIT COURT JUDGE**