

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT BUILDING- ACCRA HELD ON THURSDAY, THE 25<sup>TH</sup> DAY OF APRIL, 2023 BEFORE HER HONOUR MRS. MATILDA RIBEIRO, CIRCUIT COURT JUDGE, SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM REGINA TAGOE AND FELICIA COFIE AS PANEL MEMBERS

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SUIT NO...A6/304/23

**JANET KWAFO** ..... **APPLICANT**  
**MAMOBI**  
**ACCRA**

Versus

**OBODAI GODWIN** ..... **RESPONDENT**  
**MAMOBI**  
**ACCRA**

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Applicant: Present

Respondent: Absent

No legal representation for both parties.

### **JUDGMENT**

The parties herein are the biological parents of the child in issue Reginald Obodai aged three years (hereinafter referred to as “the issue”). Applicant is the mother and

Respondent, the father. Applicant filed a Maintenance and Custody Application on the 18<sup>th</sup> day of January 2023 and prayed for:

1. An order by the Honourable Court to grant custody of the child in issue to the Applicant with reasonable access to Respondent.
2. An order directed at the Respondent to maintain the child at GHC800.00 a month, pay school fees and anything connected to school.
3. An order for the Respondent to see to the medical needs of the child.
4. An order for the Respondent to reimburse the Applicant with a substantial amount as expenses incurred on the child since birth until date.
5. Any other order(s) that this Honourable Court may deem fit.

Applicant's case before the court is that since the breakdown of the party's relationship, the issue has been in her custody and Respondent has failed to maintain the child. That anytime the issue of maintenance comes up, Respondent rains insults on her. That Respondent maintained the issue with a total of GHC300 for the whole of 2022.

Respondent did not file a response but upon enquiry by the panel on the 31<sup>st</sup> day of January 2023 pursuant to **section 37 of the Children's Act 1998 (Act 560)**, he stated that he wants custody of the issue because the issue wants to be with his mother and that Applicant, and her mother are incapable of taking care of him. He also stated that he cannot afford the GHC800.00 maintenance for the issue because he is not working. That he only helps a friend in her shop. Asked how much he can afford, he said he is not even thinking of what he can afford because he believes when he is given custody, that will not be necessary. He stated later during the social enquiry that if Applicant refuses to give him custody of the child, then he would like to maintain him with GHC100.00 monthly and also change his school.

The parties were given the opportunity to settle the matter amicably by resort to the Court Connected Alternative Dispute Resolution (CC-ADR) mechanism, but they could not agree so the matter was referred back to Court for determination.

The issues that come up for determination by the Court from the reliefs sought by the parties are:

1. In which of the parties' custody will the best interest of the issue be ensured.
2. Whether or not Applicant is entitled to her claim for Applicant to maintain the issue with GHC800 a month, pay school fees and anything connected with school, and see to the medical needs of the issue.
3. Whether or not Applicant is entitled to her claim for Respondent to reimburse her with a substantial amount as expenses incurred on the child since birth until date.

In determining which of the parties is entitled to have custody of the two issues, the law enjoins this Court to consider the best interest and welfare of the issue. **Section 2(2) of the Children's Act 1998 (Act 560)** 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"*

This principle of law has been applied in cases like **Happee v Happee 1974 [2 GLR 186]**, **Attu v Attu [1984-86] 2 GLR 743**, and **Asem v. Asem [1969] CC 40, CA** by the courts in the determination of which of two parents should have custody of a child(ren) in issue.

How do we determine what is in the best interest of a child(ren)? **Section 45 of the Children's Act 1998 (Act 560)** which is the primary authority on the issue of child custody provides us with some guidelines. It states 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.***

(2) *Subject to subsection (1) a Family Tribunal shall also consider—*

(a) *the age of the child;*

(b) *that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;*

(c) *the views of the child if the views have been independently given;*

(d) *that it is desirable to keep siblings together;*

(e) *the need for continuity in the care and control of the child; and*

(f) *any other matter that the Family Tribunal may consider relevant”(emphasis supplied)*

The law is generally skewed in favour of the mother when it comes to custody of young children as provided by **section 45(1) of Act 560** supra and cases like **Braun v. Mallet [1975] 1GLR 81** and **Aikins v Aikins [1979] GLR 223**, where custody of very young children was awarded to the biological mothers because the court found that it was in their best interest to be taken care of by the mothers who are naturally endowed with the care of young children.

From the evidence on the record, the issue currently lives with Applicant’s mother because of the distance from her home to the issue’s school. Applicant visits the child every day and picks him up for the weekend. Applicant lives with her husband and their four months old baby girl in a single room with an open porch at Newtown whilst Respondent occupies a rented single room in his father’s family house at Mamobi. His parents, younger sister and nephew occupy two rooms in the same family house. Applicant’s mother, the father (who comes around on Wednesdays) and the child in issue

occupy a rented single room at Mamobi. Respondent and his mother have unfettered access to the issue. Both grandparents are willing to support the parties take care of the issue if granted custody. Applicant's husband is also ready and willing to help Applicant take care of the child when granted custody and that the issue is lovely, and he treats him as his son. It appears from the evidence on the record that the only reason why Respondent wants to have custody of the child in issue is his maintenance. He is afraid he might not be able to pay for maintenance as he is currently unable to maintain the issue adequately. The issue is very young, only three (3) years old.

On maintenance, Applicant is claiming monthly maintenance of GHC 800.00 from Respondent, that he pays school fees, and anything connected with school, and see to the medical needs of the issue. Respondent maintained that he cannot afford the claims by Applicant. That if custody is not granted to him then he can maintain the issue with GHC100.00 monthly. He also mentioned that the school fees at the school Applicant enrolled the issue in is too high, so he wants to change it to another school which is equally good as compared to his current school. The issue's school fees at the current school is GHC220.00 per term with feeding and classes fee of GHC7.00 per day and the fees at the school of equal standard where Respondent wants to enroll the issue was GHC150.00 with admission fees of GHC100.00 when he last checked. It is not clear as to when this last time was. Even if it is as recent as this term, the difference between the current school fees and the proposed one is not that much (It is about GHC1.00 per day) and should not warrant a change in school since Applicant has already paid the admission fee at the current school. This is way less than the school feeding and classes fee which works up to about GHC140 per month and GHC420 per term. However Applicant confirmed to the court during proceedings today that the school Respondent wants to enroll the issue in is at Pigfarm, close to her shop and also close to Respondent's residence. Since the issue lives with Applicant's mother during the week because of the

proximity to his school, the parties may consider enrolling the issue in the school proposed by Respondent since Applicant does not seem to have a problem with that.

**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.*” The parties herein being parents, therefore have a responsibility to provide or contribute towards the provision of necessaries of life for the issue including, health, education and adequate shelter.

**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*

Respondent is reported to be working as a salesman in a printing press (Enthroned Ventures, Newtown) between the hours of 8:00am and 8:00pm whilst Applicant is a hairdresser with her own shop and works between 9:30am and 7:00pm Monday to Sunday and rests when she feels tired. She said she earns between GHC50 to GHC 100.00 daily. Both parties could not produce any evidence in support of their earnings. The issue’s school confirmed that it is Applicant who enrolled the issue in school in 2022 and

paid school fee of GHC550.00. Also, that it is Applicant and her mother who have been bringing the issue in and out of school. The issue is Respondent's only child, whilst Applicant has another child she is responsible for. The parties have a joint responsibility to provide the needs of the issue. It is an error for a parent to shirk his responsibility for his/ her child on the other.

On Applicant's prayer for an order for the Respondent to reimburse the Applicant with a substantial amount as expenses incurred on the child since birth until date, no evidence was led in support of this claim. Applicant mentioned that Respondent has not maintained the issue since he was a year and seven months old. She stated further that Respondent maintained the issue with a total of GHC300.00 for the whole of the year 2022. Respondent however did not give any evidence on his maintenance of the issue in response to Applicant's allegations against her. Respondent's mother mentioned that Respondent used to maintain the issue, but she doesn't know if he has stopped and that she and her husband maintained the issue with GHC100 to GHC200.00 and foodstuffs once in a while. The parties separated sometime end of 2020. It appears Respondent has not been up to the task in the provision of the needs of the issue. Now that the parties are before the court, the court will ensure that he takes up his responsibilities towards the issue as provided by law. Applicant has done well by providing the needs of the issue as a parent. However considering the circumstances of the parties, the court is of the opinion that slapping Respondent with payment of arrears will only worsen his plight. The focus now should be on he taking up his responsibilities for the issue going forward. Accordingly, Applicant's claim for reimbursement is hereby refused.

Upon evaluating the evidence on the record including the SER, the law on child custody and child maintenance, the circumstances of the parties and the issue herein and having most importantly considered the welfare and best interest of the issue herein and the rather tender age of the issue enters judgment as follows:

**Custody:** Custody of the issue herein (Reginald Obodai) shall remain with Applicant the biological mother. The Court is of the considered view that it is necessary to ensure continuity in the care and control of the issue (**see section 45(2)(e) of Act 560**). The issue herein has at all material times, been under the care and custody of Applicant and her mother since the party's separation. The issue is very young, and the law prefers that young children are cared for by the mother unless there are strong reasons to the contrary (**see section 45(1) of Act 560**). Since the parties' separation, the issue has never lived with Respondent before. If custody is granted to Respondent, it is his mother who will care for the child and having considered the circumstances of the issue's current and proposed care givers, the court is of the considered view that his interest will be better ensured under the current arrangement. The Court sees no reason to disturb his otherwise stable growth and development. The Court sees Respondent's reasons for asking for custody of the three-year-old boy untenable and not in his best interest.

**Access:** Respondent being the biological father of the issue is entitled to have reasonable access to him in accordance with **sections 57 and 44 of Act 560**. He shall therefore have reasonable access to the issue as and when necessary. The current arrangement where Respondent has unfettered access to the issue as and when necessary, may continue.

**Monthly Maintenance:** Upon considering the economic circumstances of the parties, their responsibility for other children aside the issue, and the responsibility placed on parents by Act 560, it is hereby ordered that Respondent shall maintain the issue with GHC250.00 monthly effective January 2023 and this is subject to periodic review. Monthly maintenance shall be paid into Court or via mobile money direct from Respondent's account to that of Applicant.

**Education:** Respondent is at liberty to enroll the issue in the new school he proposed since Applicant has confirmed to the Court today that she is not opposed to same. This



was after she had visited the said school to confirm. Respondent shall be responsible for all the educational expenses for the issue whilst the parties share the cost of school feeding fees.

**Medicals:** Respondent shall be responsible for the cost of medical care for the issue not covered by the National Health Insurance Scheme (NHIS) whilst Applicant sees to the renewal of same when the subscription expires.

Applicant is not entitled to her claim for reimbursement of a substantial sum of expenses incurred on the issue from birth for the reasons given above.

The parties are to note that orders affecting children are subject to variations depending on the circumstances at any point in time in order to secure the best interest of the child in issue. They are both advised to priorities the welfare and best interest of the issue at all times. Respondent is further advised to get something more doing, an additional source of income in order to beef up his earnings to be able to take up his responsibilities towards the child in issue.

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