

IN THE FAMILY AND JUVENILE COURT 'B', FORMER COMMERCIAL COURT  
BUILDING – ACCRA HELD ON THURSDAY, THE 2<sup>ND</sup> DAY OF FEBRUARY 2023.  
BEFORE HER HONOUR MRS. MATILDA RIBEIRO, CIRCUIT COURT JUDGE,  
SITTING AS AN ADITIONAL MAGISTRATE WITH MR JOSEPH ATTIGAH, AND  
MADAM FELICIA COFIE AS PANEL MEMBERS.

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Suit No: A6/205/23

MARY ABLORH                   .....                   APPLICANT  
OF H/S NO. B418/11  
ODORKOR  
ACCRA

VERSUS

ISAAC AKPAN                   ....                   RESPONDENT  
OF H/S NO. B418/11  
ODORKOR  
ACCRA

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Applicant: Present

Respondent: Present

### JUDGMENT

Applicant is in Court praying for the understated reliefs as endorsed on her Affidavit in Support of her Maintenance and Custody application filed on the 4<sup>th</sup> day of November 2022.

1. Custody of the issues herein to Applicant, with reasonable access to the Respondent.
2. An order for Respondent to maintain the issues with an amount of GHC600.00 every month, subject to an upward review every year from date of judgment.

3. An order for the Respondent to pay medical bills and all educational expenses of the issues herein as and when they fall due.
4. An order directed at the Respondent to provide a suitable accommodation for the Applicant in favour of the issues herein.
5. Any other orders deemed fit by the Honourable Court.

The summary of Applicants case in support of the application for custody and maintenance filed on the 4<sup>th</sup> day of November 2022 is that respondent married her under customary law about seven years ago and they have two children aged seven (7) and four (4) years, male and female respectively. That Respondent drove her and the issues out of the matrimonial home due to some misunderstanding between the parties leaving them on the street without accommodation. She averred further that Respondent has failed to maintain the issues adequately even though he is actively working as a businessman. That she reported the matter at DOVVSU where she was referred to Legal Aid for assistance, hence the filing of the instant application.

Respondent did not file any response to Applicant's case but indicated orally when the parties first appeared before the Court on the 17<sup>th</sup> day of November 2022 that he has been providing the needs of the issues in terms of their schooling and feeding. That he asked Applicant to go and live with her family for some time due to several misunderstandings between them, but he later had to allow them back to the matrimonial home upon intervention by the police and seeing how the issues were crying. They have since been living together. In his response to Applicant's reliefs before the Court, he counterclaimed for custody of the issues but if on the other hand custody is granted to Applicant, then he is willing to maintain the issues with GHC300.00 monthly. He admitted responsibility for the issues education and medicals since he has already been doing so. On accommodation he indicated his willingness to provide accommodation for Applicant and the issues after the Christmas holidays (that is early 2023) when he expects improvement in his business.

Based on these responses by Respondent, the parties were referred to the Court Connected Alternative Dispute Resolution (CC-ADR) to explore amicable settlement of the matter in the

best interest of the issues, but they could not reach an agreement. For which reason, the matter was referred back to Court for determination. A Social Enquiry into the lives and background of the parties and issues was therefore ordered to assist the Court determine the matter in the best interest of the issues. The Court also made enquiries from the parties pursuant to **section 37 of the Children's Act 1998 (Act 560)** which provides that "*Proceedings at a Family Tribunal shall be as informal as possible and shall be by enquiry and not by adversarial procedures.*"

Since Respondent has admitted responsibility for the issue's education and medicals, the main issue for determination by this Court is in which of the parties' custody will the best interest of the issues be ensured? After which we determine other matters such as maintenance and accommodation.

From the evidence on the record, the court found as a fact that Respondent sent Applicant and the issues away and they slept in front of Applicant's friend's shop (an eatery) for about a month. He however accepted them back into the matrimonial home upon the intervention of the police. The issues are aged seven (7) years and four (4) years old male and female respectively and they attend a government school. The second issue, the girl child was defiled by a neighbour when she was two (2) years old. Though the parties live together with the issues, there is no cordial relationship between them and they do not live like husband and wife. There have not been any sexual relations between them for about a year and for years now, Applicant sleeps in the enclosed porch without adequate ventilation whilst Respondent sleeps in the chamber. The children sometimes sleep with Applicant in the porch and other times with Respondent. The parties have had several misunderstandings. It appears both parties have decided to go their separate ways and nothing will make them change their minds. The challenge however has to do with accommodation for Applicant and the issues. Before coming to Court, officers at DOVVSU, recommended that Respondent rents accommodation for Applicant and the issues but he has not been able to do so.

So which of the parties should be granted custody of the two issues? Respondent's reasons for asking for custody of the issues are that Applicant may extend the hatred she has for him to the children and maltreat them should they be placed in her custody. Also, the fear that Applicant will make people believe that she is singlehandedly providing the issues with their needs. He wants Applicant to go to her family house and leave the issues with him to take care of but from the evidence, he will not be able to adequately care for the issues. Collateral sources interviewed during the social enquiry confirmed that Respondent is a difficult person who does not fully provide for the needs of the children. He usually lives home very early to avoid giving the issues money for school and Applicant will then have to give the issues money for school. Where she does not have money for them, they end up not going to school. It was reported that the issue's school is less than five (5) minutes' walk from their home. They are however not regular in school, and their performance is average. The school also confirmed that the issues do not lack learning materials as same have been provided for and their educational levy of GHC10.00 paid by Respondent. They are supervised by Respondent's aunt when they return from school until the parties return home. Both issues preferred to be in the custody of Applicant. The probation officer made a note of the possibility of the issues having been brainwashed or influenced by the parties before the interview.

**Section 45(1) of Act 560** provides that *“(1) 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”*. **Section 45(2)(a) of Act 560** also enjoins this Court to consider the age of a child when making custody and access orders. The issues herein are obviously very young and considering the evidence on the record, it is the considered view of the Court that they will be better catered for by their mother, Applicant rather than Respondent. **Section 57 of Act 560** also provides that a non-custodial parent is entitled to have access to a child he or she is responsible for. Again, in the case of **Braun v. Mallet [1975] 1GLR 81** Azu Crabbe C.J. emphasised the natural right of a mother of a young child to its custody as against a reputed father and strangers.

On the issue of maintenance and others, **section 47 of Act 560** makes the parents or any other person legally liable to maintain a child responsible for providing necessities of life, education, health and reasonable shelter for the child. The parties being parents, have a duty to provide the issues with necessities of life, education, health and adequate shelter. Applicant wants Respondent to maintain the two issues with GHC600.00 monthly, pay the educational and medical expenses on the issues as and when they fall due and also provide suitable accommodation for them. Respondent admitted responsibility for the issues education, medicals and feeding because he claims he has already been doing so and promised to secure accommodation for them after December 2022.

Since this matter is now before this court for determination, the Court has to consider the circumstances of the parties vis a vis, the cost of living in Accra and the needs and rights of the issues under the Children's Act as provided under section 49 and make order that will ensure the welfare and best interest of the two issues (see Section 2 of Act 560).

From the evidence, Applicant used to sell indomie from 4pm to 12 midnight but she has been selling pure water for about four to five months now (three to four months as at December 2022) and closes by 3pm. She also assists someone prepare banku and kokonte at an eatery near her home. She said she earns about GHC400.00 a month but she could not provide any evidence in support of her earnings. Respondent hawks with carpets and doormats. He leaves home between 4:30am and 5:00am and returns home between 3:00pm and 4:00pm. He said he works at least thrice a week and earns about GHC100.00 anytime he goes to work. He has two rooms in the family house, but he has rented out one room and occupies the other with Applicant and the issues.

Respondent does not give Applicant money to cook because according to Respondent, Applicant does not appreciate anything he does so they mostly buy cooked food from the street. Respondent stated during enquiry that he gives each child GHC7.00 daily when going to school (GHC5.00 for feeding and GHC2.00 for classes fee). In the evenings, he buys food worth GHC7.00 for each child and also gives each child GHC1.50 to buy fried yam in the afternoons when they meet him at home upon their return from school. Same applies when

the issues are on vacation except that he gives them GHC5.00 each in the mornings when on vacation. From Respondent's own evidence, it means he spends not less than GHC28.00 on the issues daily when they go to school and GHC24.00 when they are on vacation. Giving an average total of not less than GHC780.00 monthly. The issues attend government school, so they do not pay school fees but a levy of GHC10.00 termly per child.

Having considered all the facts of this case, the evidence on the record vis a vis the law on the subject matter as discussed above, this Court in fulfilment of its duty to ensure the best interest of the two issues by placing paramountcy on their best interest and welfare (see **section 2 of the Children's Act 1998, (Act 560), Happee v. Happee [1974] 2 GLR 186, Beckley v. Beckley [1974] 1GLR 393, Opoku-Owusu v. Opoku-Owusu [1973] 2 G.L.R 349 and Asem v. Asem [1968] GLR**) orders as follows:

**Custody:** Custody of Bright Akpan (7years) and Abigail Akpan (4years) is granted to Applicant with bi-weekly weekend and half vacation period access to Respondent.

**Accommodation:** The parties are given up to 28<sup>th</sup> February 2023 to secure a single room accommodation for Applicant for the benefit of the issues, the cost of which shall be shared between the parties in the ratio 3:7. Applicant shall bear 30% of the cost whilst Respondent takes up the 70%. This ratio shall apply to future rent renewals until Applicant remarries. In order not to occasion a change in the issues school, it is advised that the said accommodation should be close to the issue's current school. Should there be the need for a change in the issues' school because of the alternative accommodation, then the parties shall identify a government school close to Applicant and the issues' new place of residence and enrol them.

**Maintenance:** Respondent shall maintain the issues with GHC600:00 monthly and in addition pay their classes fee. The monthly maintenance shall be paid into Court by the 2<sup>nd</sup> day of each month effective February 2023. Considering the nature of Respondent's job, he can make the payment weekly (that is GHC150.00) every Monday in which case it shall be by mobile money transfer direct from his account to that of Applicant for record purposes. The monthly maintenance is subject to periodic review.

**Education:** Respondent shall continue to provide for the issues' educational expenses including books, classes fees, uniforms, and school levy (since they do not pay school fees) whilst Applicant takes care of school feeding fees.

**Medicals:** Respondent shall pay for the cost of medical care not covered by the National Health Insurance Scheme whilst Applicant sees to it that the issues' National Health Insurance Scheme subscription are renewed upon their expiration.

Applicant shall provide for all other necessities of life for the issues whilst Respondent buys clothing for them on festive occasions.

**H/H MATILDA RIBEIRO (MRS)  
CIRCUIT COURT JUDGE**