

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT
BUILDING- ACCRA HELD ON MONDAY, THE 6TH DAY OF FEBRUARY, 2023.
BEFORE HER HONOUR MRS. MATILDA RIBIERO, JUDGE, SITTING AS AN
ADDITIONAL MAGISTRATE WITH MADAM FELICIA COFIE AND
MR. RICHARD TEBEY AS PANEL MEMBERS

SUIT NO...A6/190/23

NAFISSA ALHASSAN APPLICANT
ALHAJI TABORA
ACCRA

Versus

YUSIF SOMAILA RESPONDENT
ALHAJI TABORA - ACCRA

Parties: Present

No legal representatives for both parties.

JUDGMENT

Applicant's claim as endorsed on the affidavit in support of her Maintenance and Custody application filed on the 21st day of October, 2022 is for;

1. An order granting custody of the issue herein to her with reasonable access to the Respondent.
2. An order for the Respondent to maintain the issue with an amount of GHC 760.00 monthly subject to a 20% yearly review from the date of judgment.

3. An order directed at the Respondent to pay all the educational expenses of the issue herein as and when it falls due until the issue attains a first degree or attains any professional qualification he may choose to undertake after his secondary education.
4. An order directed at the Respondent to pay the major medical expenses including the cost of all postnatal visits of the issue herein as and when they fall due.
5. Any other order(s) as the court may deem fit.

The summary of Applicant's case in support of her Custody & Maintenance application filed on October 21st, 2022 is that Respondent married her under Islamic Law for about seven (7) years out of which they were blessed with the child in issue namely; Saudatu Yusif – who was seven (7) months old as at the time the application was filed. That they divorced on the 29th day of July, 2022 with the help of their respective families on grounds that Respondent refused to pay her medical bills and cater for her during pregnancy. That all costs of her antenatal visits were shouldered by her parents. That since the birth of the issue, Respondent has refused to adequately maintain the issue. That he maintained her with two hundred Ghana cedis (GHC200.00) on two occasions.

Respondent later reported Applicant to the Social Welfare office in Accra with the complaint that he was being denied access to the issue. Measures were put in place at the Social Welfare office for respondent to maintain the issue with GHC300.00 but he failed to comply. Following which she was referred to Legal Aid Commission, Accra for the necessary legal advice and assistance and subsequently, the filing of this instant application.

In Respondent's response to Applicant's application filed on the 9th day of December, 2022, he vehemently objected to the reliefs sought by Applicant with the exception of relief one (1) which he admitted in part; that temporary custody be granted to Applicant with reasonable access to him. Asked what he meant by temporary custody, he said he would like to recover custody when the issue is seven (7) years old. He also admitted responsibility for the issue's education (relief 3) save that he wants to enroll the issue in a school of his choice. He also prayed for Applicant and her family to be restrained from travelling with the issue out of the

jurisdiction without his consent and alleged that Applicant and the family are fond of moving the issue from one place to the other. According to him, he named the issue according to their custom and after three months, he asked Applicant to return to her matrimonial home with the child, but Applicant refused to go back, rather Applicant informed him that she is no longer interested in the marriage and that her family has dissolved the marriage. He averred further that his inability to visit the issue was not deliberate but because Applicant's father had warned him not to step foot in their house, which prevented him from visiting his child.

The parties could not agree on the reliefs before the Court when they were referred to explore amicable settlement of the matter through the Court Connected-Alternative Dispute Resolution (ADR), and the matter was referred back to court for determination. The Court has to determine whether Respondent is entitled to have access to the issue and also whether Applicant is entitled to the maintenance reliefs she seeks for the issue.

On custody and access, **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 issue herein is obviously very young and considering the evidence on the record, it is the considered view of the Court that she will be better catered for by her mother, Applicant rather than Respondent. Again, in the case of **Braun v. Mallet [1975] 1GLR 81** Azu Crabbe C.J. emphasized the natural right of a mother of a young child to its custody as against a reputed father and strangers. **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. It must be noted here that a parent's right to have custody of a child is not determined merely upon the attainment of a certain age as intimated by Respondent. Though age is one of the factors to be considered by the Court in its determination as stated under **section 45 of Act 560 supra**. Same was explained to Respondent and he understood same.

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, therefore have a duty to provide the child in issue with the necessities of life, education, health and adequate shelter. Applicant wants Respondent to maintain the issue with GHC 760.00 monthly subject to a 20% yearly review from the date of judgment, pay all the educational expenses of the issue herein as and when they fall due until the issue attains a first degree or attains any professional qualification she may choose to undertake after her secondary education, and an order directed at the Respondent to pay the major medical expenses including the cost of all postnatal visits of the issue herein as and when they fall due. Respondent on the other hand said he can maintain the issue with GHC300.00 monthly, enrol the issue in a school he can afford and pay the educational expenses, cost of medical care of the issue upon being notified of the ill health of the issue and for the Applicant to seek medical care for the issue at the Lapas Community Hospital.

From the evidence, Applicant was an apprentice but currently unemployed whilst Respondent is a butcher. The child in issue (11 months old) is the only child of the parties. They are currently divorced and both parties live with their respective families. Respondent does not have reasonable access to the issue, and he has not maintained her adequately.

Having heard the parties herein and having also considered the evidence on the record, the circumstances of the parties who divorced in July 2022 (three months after the birth of the child in issue, now aged about 11 months), the rather tender age and needs of the issue, the best interest of the child in issue vis a vis the law on custody and maintenance of children as provided under sections 2, 43, 45, 47 and 49 of the children's Act 1998 (Act 560), the court enters judgment as follows:

CUSTODY:

Custody of the child in issue (SAUDATU YUSIF) is granted to Applicant the mother in accordance with section 45(1) of Act 560 which provides that it is important that young

children are cared for by the mother. Respondent shall have reasonable access to the child. Applicant and her family shall allow Respondent reasonable access to the issue.

HEALTH: Since the child is still very young and in the custody of Applicant, Applicant shall ensure that she registers the child with the NHIS within 7 days from today and renew the subscription when it expires. Respondent shall be responsible for the costs of medical care not covered by the NHIS upon he being notified of the ill health of the child. Preferably at the Lapaz Community Clinic as demanded by Respondent.

BIRTH REGISTRATION: The parties shall comply with their parental duties under section 4 of Act 560 and register the birth and name of the child at the Birth's registry within one month from today.

EDUCATION:

The parties shall enroll the issue in a school when she is of school going age. They shall both agree on a school within their means and of reasonable standard and enroll the issue in. Respondent shall bear the cost of school fees, books and school feeding fees whilst Applicant pays for uniforms and all other educational materials and needs as and when required.

MAINTENANCE: Respondent shall maintain the issue with GHC400.00 monthly effective January, 2023. Same shall be paid into court or via mobile money direct from his account to that of Applicant for records purposes. This is subject to review periodically.

Both parties are restrained from travelling outside the country with the issue without notice to the other.

Applicant is also advised not to rely on Respondent for all the maintenance needs of the issue as she purported to do but to also support by resort to other alternative and economical means of meeting the maintenance needs of the issue. For example, using cloth napkins if they cannot afford diapers and preparing local beverages for the issue instead of buying Cerelac since she is currently not working.

SGD.

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