

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,  
DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS  
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'  
COLLEGE, ACCRA ON 22<sup>ND</sup> NOVEMBER 2023.

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C/C NO. B15/804/2021

THE REPUBLIC  
VRS  
SAMUEL QUAYE

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## JUDGMENT

### Introduction

The Accused person herein, Samuel Quaye, was charged with two counts of failing to supply basic necessities of health, life, education and reasonable shelter for a child contrary to Sections 47(1) and 59(b) of the Children's Act 1998 (Act 560) per charge sheet filed on 15<sup>th</sup> June 2020. He pleaded not guilty to the charges after they were read out and explained to him in the Ga language on 16<sup>th</sup> December 2020 hence it became incumbent on the Prosecution to prove the guilt of the Accused Person beyond reasonable doubt due to the Constitutional presumption of innocence enuring to the benefit of the Accused Person. A prima facie case was held to have been made out at the close of Prosecution's case and the Accused Person was permitted to put in his defence.

### Facts Presented by Prosecution

According to the facts of the case, the Complainant, a 44-year-old food vendor is an ex-girlfriend of the Accused Person, a 53-year old driver. They have three children together with two of them (twins) being minors of 17 years old. The Accused Person is alleged to have failed to maintain the children in the year 2016 and a complaint was lodged with the Family and Juvenile Court, Accra.

The facts further indicated that the Family and Juvenile Court, Accra on 21<sup>st</sup> October 2019 ordered the Accused Person to maintain the children monthly at GH¢600.00 and provide them with other necessities of health, life, education and accommodation but he failed to do so and was thus referred to DOVVSU and subsequently arrested and arraigned before this Court.

### Issue

The main issue this Court has to resolve is whether or not the Prosecution through its evidence adduced in the trial has been able to successfully prove beyond reasonable doubt the offence/charge preferred against the Accused Person, that is, if indeed the Accused Person has failed to supply the basic necessities of health, life, education and reasonable shelter for Judith Quaye and Edith Quaye.

### Applicable Law

It is trite law that the burden on the prosecution to prove the guilt of an accused person is relatively higher. It is proof beyond reasonable doubt. **Section 11(2) of the Evidence Act 1975 NRCD 323** provides that *in a criminal action the burden of producing evidence, when it is on the prosecution as to any act which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.*

On all the evidence adduced, the prosecution must satisfy this burden of proof beyond reasonable doubt. Indeed, proof beyond reasonable doubt is far above proof on the preponderance of probabilities. In **Oteng v The State [1966] GLR 352 at 354**, the Supreme Court took the view that in a criminal case the prosecution cannot obtain a conviction upon mere probabilities. That is not to say proof beyond reasonable doubt means proof beyond every shadow of doubt or proof beyond every possibility. See **Miller v Minister of Pensions [1947] 2 All ER 372**.

An Accused Person is presumed innocent until he is proved guilty or has pleaded guilty as provided in **Article 19 (2) (c) of the 1992 Constitution**. The burden on an accused person is only to raise reasonable doubts as to his guilt. **Section 11(3) of NRCD 323** states it succinctly thus: *in a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.*

The Prosecution therefore had the burden in the course of the trial to prove beyond reasonable doubt the existence of the ingredients of the offence from the evidence led by its witnesses. The proof of any of the ingredients must not be based on the preponderance of probabilities but on proof beyond reasonable doubt.

**Section 13(1) of the Evidence Act, 1975 (NRCD 323)** states:

*“In any civil or criminal action the burden of persuasion as to the commission by a party of crime which is directly in issue requires proof beyond reasonable doubt.”*

The burden of proof remains throughout on the prosecution. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted. See: **Commissioner of Police v. Isaac Antwi [1961] GLR 408**. The Supreme

Court has held in the case of **Donkor v The State [1964] GLR598** that the failure by the Prosecution to discharge the burden of proof should lead to the acquittal of the accused.

#### Evaluation of Evidence Adduced and Findings of Fact

The Prosecution in its bid to discharge the burden imposed on it called two witnesses; the Complainant and the Investigator. The first witness, Abigail Aku Allotey (PW 1), a food vendor, who said she was a former girlfriend of the Accused Person testified that she lived with her mother and children. According to her, she has three children with the Accused Person; Florence Quaye aged 20 years, Judith Quaye aged 17 years (student) and Edith Quaye aged 17 years (student).

Her evidence was that the Accused Person who used to provide for the children's upkeep, stopped providing for them about four years ago and she therefore had to singlehandedly take care of their needs. She testified that she sought redress at the Family and Juvenile Court, Accra and the Court gave an order on 21<sup>st</sup> October 2019 for the Accused Person to remit the two children with GH¢600.00 each month from September 2019, pay the children's school fees and cost of books but he had only paid GH¢500.00 out of the GH¢7,219.00 he owed.

PW/Inspector Fidelia Folivie (PW 2)'s evidence was that on 14<sup>th</sup> January 2020, the present complaint against the Accused Person for which he has been arraigned was referred to her for investigations and she obtained statements from the Complainant and witness. She stated that she arrested the Accused Person on 28<sup>th</sup> January 2020 and obtained a caution statement from him. PW 2's testimony was that the Accused Person upon being paraded before the Unit Commander indicated that he had been sick and had not been working regularly, resulting in his inability to maintain the children.

She stated that her investigations revealed that the Accused Person per a Court Order was to be remitting the children an amount of GH¢ 600.00 monthly from September 2019, to

pay their school fees and cost of books, uniforms, material, renew the children's National Health Insurance card when due, pay their medical bills not covered by the health insurance card and secure a suitable accommodation for the children, but Accused Person had failed to do to these. She consequently charged the Accused Person with the offence of failing to supply the basic necessities of health, life, education and reasonable shelter for a child and obtained a charge statement from him wherein he relied on his earlier statement given to the Police.

In his defence, the Accused Person testified that he fell ill about 6 years ago and since he was unfit to continue his driving occupation and had also taken a loan and had to repay, he had an agreement for someone to work with his vehicle and the sales made to the lender. According to the Accused Person, the children were initially with him until they later left but they occasionally came to him and he gave them either GH¢ 10.00 or GH¢ 15.00 when they came over when he could afford or he sometimes asked his older children to give them money when he did not have money.

The Accused Person denied not looking after the children and stated that when they were in the Senior High School, he sent them whatever they needed whenever he went to visit and he sent them the books they needed or sent them money to buy them. He added that he took care of the children to the best of his ability. He tendered some receipts of payment as Exhibit 1 series, payment receipt from University of Ghana as Exhibits '2' and '2A', Prospectuses as Exhibits '3' and '3A', handwritten list of items as Exhibit '4'. He stated that he was not well and the children do not come to him when he calls them.

The Accused Person called his sister, Mary Tsotso Quaye as his witness. Her evidence was that she lived with the Accused Person and the children and whenever he was going to work, he left money with her for their upkeep and on days when the children were with PW1, Accused Person gave the money to her (DW1) to be given to PW1. According to

DW1, she went with the Accused Person to buy items listed on the children's prospectus and when it was time for the children to go to school, the Accused Person rented two vehicles; one to convey Accused and one of the children to Kwahu and the other to convey the other child and PW1 to a different place. She added that during PTA meetings, the Accused Person gave her money to purchase foodstuffs to prepare food to be sent to the child and it was not true that the Accused Person did not provide the basic needs of his daughter.

The relevant sections under which the Accused Person has been charged state as follows:

***Section 47—Duty to Maintain a Child.***

*(1) 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 59—Offences Under this Part.***

*Any person who—*

*(b) fails to supply the necessaries of health, life, education, and reasonable shelter for a child when legally liable to do so contrary to section 47..... commits an offence and is liable on summary conviction to fine not exceeding ₵2 million or a term of imprisonment not exceeding six months or to both.*

From these sections, the main factors for the Court to consider are whether or not the Accused Person is legally liable to maintain the two children, Edith and Judith, or contribute towards their maintenance and if answered in the positive, whether or not the Accused person has failed to supply the necessaries of health, life, education and reasonable shelter for the children.

From the undisputed facts and evidence, the Accused Person is the father of the two children, Edith Quaye and Judith Quaye who at the time of commencement of the case were minors. According to **Section 124 of Act 560**, a 'parent' means natural parent and includes a person acting in whatever way as parent. Accused Person is the natural father of Judith and Edith. He is thus captured within the 'parent' used in Section 47(1) of Act 560. Aside that, as a parent, he is under an obligation, and consequently, legally liable to see to the welfare of his children such as in the area of their feeding, education, health, amongst others. The first leg having been satisfied, the Court moves on to the next hurdle which must be crossed by the Prosecution, viz, whether or not there has been a failure on the part of the Accused Person to supply the necessities of health, life, education and reasonable shelter for the children.

From the evidence on record of PW1, the Accused Person was dutifully seeing to the children's upkeep until he stopped doing that some years ago. There is no denying the fact that the Accused Person was consequently hauled before the Family and Juvenile Court for him to be made to maintain the children and provide accommodation for them. In Exhibit 'E', the judgment of the Family and Juvenile Court of 14<sup>th</sup> July 2020, the Court's final orders included the following:

- The Accused Person herein was to pay arrears of maintenance by end of December 2020.
- He was to maintain the children weekly at GH¢ 100.00 [and not GH¢ 600.00 monthly as alleged by Prosecution] from 20<sup>th</sup> July 2020, pay their school fees directly to the school, their books and transport cost and pay their medical bills not covered by the National Health Insurance card.
- The Complainant was to pay the children's feeding fees, buy their school uniforms, shoes and school related materials.

- Both parties were to be responsible for the children's day-to-day clothing and the Accused Person was to buy clothing and shoes for them on special occasions.

The relief for accommodation failed because the Court found that the Complainant herself moved out of the house due to petty quarrels and why she took the children from their known environment of a self-contained chamber and hall and send them to a single room shared by herself and her mother could not be fathomed by the Family Tribunal. She was ordered to go back or send the children back but she refused. In this Court, the Accused Person bemoaned the fact that the children had been taken away by the Complainant and that he wanted them to be with him. I do not find that the Accused Person has failed to provide the children with accommodation or reasonable shelter since he has always been ready to accommodate them but for the entrenched stance of the Complainant to keep them to herself.

I move on to consider if there has been a failure on the part of the Accused Person to supply the children the basic necessities of health, life and education. From the evidence on record, the Accused person since the institution of the case at the Family and Juvenile Court through to this case had alleged that he was ill and was therefore not working. It seems this has been the trump card of the Accused Person since September 2019 but no evidence of whatever medical condition or illness was furnished the Court to substantiate his claim. There was however no challenge on record that the Accused Person himself was not working. However, the evidence supports the fact that he has a commercial vehicle which has been working for him. He confirmed to the Court on 10<sup>th</sup> May 2023 that his vehicle was in operation and sales were made from its use.

From the evidence, the Accused Person supported the children when they were in the Senior High School by purchasing their items needed for school. This was corroborated by DW1 who testified that she went with the Accused Person on different occasions to



purchase items needed by the children for school as had been listed on their respective prospectuses (Exhibit '3' and '3A'). This vital piece of evidence remained uncontroverted. Again, the evidence on record that the Accused Person had to engage two vehicles to enable them send the children to school and the fact that the Accused Person was sending the children what they needed in school was not subjected to any form of rigorous cross examination to dispute his assertions. The Complainant under cross examination also admitted that the Accused Person contributed GH¢1,000 when the children gained admission.

From the evidence as I have it on record, the Accused Person obviously has not been making payments as ordered by the Family and Juvenile Court and in fact, what he provides is inadequate. The Accused Person provided evidence of some payments towards maintenance of the children he had made (Exhibit 1 series) as well as receipts of payments he made towards the children's academic fees at the University of Ghana. It is not in dispute that the amount of monies paid by the Accused Person fall woefully beneath what he was ordered to pay by the Family and Juvenile Court. He is for instance to be responsible for payment of the school fees but he has paid just a small fraction.

This does not detract from the fact that there has not been a failure on his part to make some provisions for the children in terms of their maintenance and education, little though it may be or even insignificant though it might seem, considering his earning capacity. No evidence was proffered to show that the Accused Person makes so much money and is deliberately not taking care of the children. What Prosecution does not have to lose sight of is the fact that under our criminal jurisprudence, the burden of proof on Prosecution is a higher one and an Accused Person only has to raise reasonable doubts, nothing more. The defence of the Accused has created reasonable doubts in the mind of the Court which enures to his benefit.

## Conclusion

There is a remedy for the Complainant to claim whatever arrears have arisen from the judgment of the Family and Juvenile Court if she so desires by taking steps towards execution in respect of that judgment, if the Accused Person is not a man of straw and she can successfully get whatever monies are outstanding to be paid by him. I am unable to come to a conclusion that the Accused Person has been found guilty of the offence he has been charged with since Prosecution has not satisfied the burden of proof it has to discharge, in the candid opinion of the Court. The irresistible conclusion therefore is that the Court finds the Accused Person not guilty of the two counts of failing to supply basic necessities of health, life, education and reasonable shelter for a child contrary to Sections 47(1) and 59(b) of the Children's Act 1998 (Act 560). Accordingly, the Accused Person is acquitted and discharged on both counts.

**[SGD]**  
**AMA ADOMAKO-KWAKYE (MS.)**  
**(MAGISTRATE)**