

IN THE DISTRICT COURT HELD AT BAATSONAA ON FRIDAY THE 17TH NOVEMBER, 2023 BEFORE HER WORSHIP MABEL N. L. AHELE WITH MADAM CLARA SOWAH AND MR. ENOCH BAMPOE-ADDY, SITTING AS PENEL MEMBERS

SUIT NO. A6/01/2024

AKUA AFRA
KLAGON WATER WORKS
ACCRA

APPLICANT

VS.
PETER ABALO
KLAGON, ACCRA

RESPONDENT

PARTIES: APPLICANT PRESENT

RESPONDENT PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

1. On 15th August, 2023, the Applicant filed an application seeking the following reliefs;
 - a. A weekly remittance of GH¢ 300.00 for her two children, and*
 - b. A suitable accommodation*

It was Applicant's case that the Respondent has failed to maintain his two children, aged two (2) years and five (5) months ever since the Respondent left them.

The Respondent opposed to the reliefs sought by the Applicant and in his response before the tribunal gave reasons that he does not earn that much to be in the capacity to remit GH¢ 300.00 weekly towards the maintenance of the two children. He averred that, he sleeps in a kiosk himself because he does not earn much income and therefore to provide the Applicant and the two (2) children a suitable accommodation will be a challenge for him.

2. The Facts of the Case

The parties once co-habited for four (4) years. The Respondent only performed the customary knocking rites. They had two children and lived in a single room kiosk at Klagon, Accra with their two children. Later, the mother of the Respondent moved to live with them. Before the Respondent's mother moved in, Applicant was receiving from Respondent GH¢ 100.00 weekly. The GH¢ 100.00 remittance changed after Respondent's mother moved to stay with them. The relationship began to develop cracks as there were misunderstandings and quarrels between the parties. Respondent and his mother moved out of the kiosk and relocated leaving the Applicant and the two children.

3. Issues for determination

On the issue for maintenance of GH¢ 300.00 weekly, Respondent opposed to it claiming that he is not in the financial capacity to remit that much.

Upon enquiry, pursuant to **Section 37 of the Children's Act, 1998 (Act 560)**, which provides that the proceedings at a Family Tribunal shall be as informal as possible and by enquiry, it was found by the Tribunal that Respondent earns a gross sum of GH¢ 200.00 or GH¢ 250.00 a day from his '*wele*' (cow hide) business. According to the Respondent, out of the GH¢ 200.00 or GH¢ 250.00, he pays each of his three (3) apprentices GH¢ 50.00 a day and takes for himself GH¢ 100.00 as his daily income. Respondent added that, he does not work six (6) days in all the weeks. According to him, he does between three (3) days and six (6) days' work in a week, depending on the schedule of his employer. In effect, he is not engaged in all the days of the week to earn enough.

4. Among the recommendations made in the Social Enquiry Report filed on 15th September, 2023 and prepared by Probation Officer, Faustina Yaba were that;
 - i) that the Applicant be granted full custody of the first child,

- ii) that the Applicant should be awarded monthly maintenance of GH¢ 1,200.00
- iii) that the Respondent should be granted reasonable access to the children
- iv) that the Respondent shall provide all necessaries for both children, i.e. provision of decent accommodation, payment of school fees and payment of feeding fees
- v) Applicant shall be placed under probation and supervision by the Department of Social Welfare.

5. **Maintenance**

Under **Article 3(1) of the UN Convention on the Rights of the Child (CRC)**, the best interest of the child shall be primary in taking decisions that concerns the child. It provides;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of Law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

6. Section 2(1) and (2) of the Children’s Act, 1998 as Amended provides as follows;

2. Welfare principle

(1) The best interest of the child shall be paramount in any matter concerning a child.

(2) The best interest of the child shall be the primary consideration by any court, person, institution or body in any matter concerned with a child.

7. Section 49 of Act 560 provides;

49. Considerations for maintenance orders

When making a maintenance order, a family tribunal shall consider,

(a) the income and wealth of both parents of the child or of the person legally liable to maintain the child,

- (b) an impairment of the earning capacity of the person with a duty to maintain the child,*
- (c) the financial responsibility of that 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.*

8. The above stated Law enjoins the tribunal to consider the income and wealth of **both** parents when application for maintenance is brought before it. The Applicant is not employed whereas the Respondent is. The Respondent is earning between GH¢ 300.00 and GH¢ 600.00 a week depending on the days his service is required by his Employer. The Applicant prays for GH¢ 300.00 a week towards the maintenance of the two (2) children. Respondent in his Response upon enquiry by the tribunal indicated that he can afford to pay GH¢ 150.00 a week towards the maintenance of both children. From the evidence on record, it can be inferred that Respondent makes an average earning of GH¢ 400.00 a week. It will therefore be unfair to him if the weekly remittance of GH¢ 300. 00 as maintenance of both children sought by Applicant is granted.
9. **Section 47 of Act 560** imposes obligation on parents or any other person legally liable to maintain a child responsible for necessities of life, education, health and reasonable shelter for the child. Flowing from the Law under Section 47, both parents, i.e., the Applicant and the Respondent have equal responsibility to maintain the children. Although the Applicant is currently unemployed, the Law does not preclude her from the obligation imposed by Law. Therefore, considering the facts and circumstances, the Respondent is ordered to remit GH¢ 200.00 every week towards the maintenance of both children.

10. Suitable Accommodation

On the issue of a suitable accommodation, Respondent claimed he already had provided a kiosk for Applicant and the children. He added that, the kiosk that Applicant and their children were living in was built by him and that, he left to build a smaller one for himself and his mother.

Upon further enquiry, the tribunal found that Applicant has moved out of the kiosk given her by the Respondent and had rented out the kiosk claiming that it leaks whenever it rains. Upon a further enquiry by the Tribunal, it was disclosed that, Applicant used the proceeds from the rented kiosk to rent another kiosk which she is currently living in with her two (2) children.

11. A parent has a duty and responsibility imposed by Law to ensure that his or her child has a right to health, education and shelter. **See Section 6(2) of Act 560** as amended and therefore, it is imperative that both parents in this matter do not shirk their responsibility to their two (2) children. In so far as the Applicant seeks from the Respondent maintenance towards the children, it is equally the duty and responsibility of the Applicant to ensure the right to health, education and shelter for the children as imposed by Law. Although, the Applicant is currently not in employment, it behoves on her to endeavour to find some employment which will earn her some income to enable her render her part of responsibility towards the two (2) children.

12. Custody of the two Children

Since the Applicant did not seek in her reliefs custody of the children, both parents will have a shared custody of the children. It must be emphasized that the best interest of the children is paramount, as provided for under Section 2 of Act 560 as amended.

Again, the principle laid down in the case of **BRAUN v. MALLET [1975] 1 GLR 81-95** was that, *in questions of custody it was well-settled that the welfare and*

happiness of the infant was the paramount consideration. Therefore, the primary mandatory duty of this Tribunal is to be concern with the welfare and happiness of the two (2) children. That although the parents are living a separate lives, the children be allowed to grow, love and stay happy with each parents. Moreover, the Respondent prayed to the tribunal to allow the children, especially, the 2-year child to visit him on a regular basis. However, considering the ages of the children, 2 years and 5 months baby, the physical custody will be granted the Applicant with reasonable access to the Respondent.

13. Considering the facts and circumstances of the case, the totality of evidence on record and the S.E.R. vis a vis the Law on the welfare principle of a child, this Tribunal enters judgment that;

Maintenance

1. The Respondent shall remit GH¢ 200.00 every week towards the maintenance of the two (2) children, effect 1st November, 2023 and to be reviewed downwards anytime the Respondent is not capable to do the same job.

Accommodation

1. The Applicant shall use the proceeds from the rented kiosk provided by the Respondent to renew her new rent whenever it falls due.

Education

1. The Respondent shall pay the school fees for both children, pay feeding fees and buy school uniforms.
2. The Applicant shall buy bags, shoes, exercise books and other school related materials.

Medicals

1. The Respondent shall register both children on the National Health Insurance System
2. The Applicant shall renew the National Health Insurance cards upon expiration.
3. The Respondent shall pay the children's medical bills that are not covered by the National Health Insurance Scheme when they fall due.

Monitory and Supervision

Applicant shall be placed under probation and supervision by the Department of Social Welfare.

Costs

There shall be no order as to cost.

(SGD)

H/W MABEL N. L. AHELE

(MAGISTRATE)

17/11/2023

(SGD)

CLARA SOWAH

(PANEL MEMBER)

(SGD)

ENOCH BAMPOE-ADDY

(PANEL MEMBER)

