

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON TUESDAY THE 9<sup>TH</sup> DAY OF DECEMBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM LOVEGRACE AHLIJAH AND MADAM REGINA TAGOE AS PANEL MEMBERS.

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A6/128 /23  
ESTHER EZIHE  
KWAME NKRUMAH CIRCLE  
ACCRA

SUIT NO.

APPLICANT

VS.

DAVID ABERE  
ALAJO, ACCRA  
RESPONDENT

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**Parties Present**

**No Legal Representations for Parties.**

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## **RULING**

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This is a Ruling on an Application by the Applicant herein filed on 16<sup>th</sup> September 2022 for Custody and maintenance of the children in issue.

### ***The Applicant's Case***

In her Affidavit in Support, the Applicant deposed that she was customarily married to the Respondent in Nigeria and had Three (3) children out of the marriage. After the birth of the first Two (2) children, the Respondent regularly maintained the children but decided to travel to Indonesia and then stopped maintaining the children. She deposed further that she complained to the

Respondent but he refused to do anything concerning maintenance of which she also decided to relocate to Ghana for greener pastures. She stated that she lived at Alajo together with the Respondent when he returned from Indonesia and that resulted in the birth to their third child. She stated again that the Respondent failed to regularly maintain the children and also physically abused her. She deposed further that, the Respondent has failed to enroll the children in school and also does not pay for their medical bills when it falls due. She therefore prayed for the following reliefs;

1. An Order granting custody of the issues herein to the Applicant with reasonable access to the Respondent.
2. An Order for the Respondent to maintain the issues with One Thousand Two Hundred Ghana Cedis (Ghc1, 200.00) monthly.
3. An Order directed at the Respondent to pay for the medical bills of the issues as and when they fall due.
4. An Order directed at the Respondent to enroll the issues into school and pay for all their educational expenses as and when they fall due.
5. An Order directed at the Respondent to rent a suitable accommodation for the Applicant in favour of the issues.
6. Any other order(s) as the Court may deem fit.

### *The Respondent's Case*

The Respondent was ordered to file his Affidavit in Opposition but he failed to do so.

## DETERMINATION

In view of all the process so far filed, the issues for determination is

- (1) **Whether or not the Applicant can have custody of the child with reasonable access to the Respondent.**
- (2) **Whether or not the Respondent can be ordered to provide the necessities of life for the children.**

The court however ordered for a Social Enquiry Report (SER) to be prepared to guide the court in taking a decisions in the best interest of the children

### **The Social Enquiry Report (SER)**

The SER as submitted by the Probation Officer, Mr. Emil Eli Laweh on the 9<sup>th</sup> of December 2022 made certain findings and conclusions including the fact that the Applicant lives at Avenor with Two (2) out of the three children who are subject of this report in a Kiosk. There are about Four (4) other tenants who also live in Kiosks. The Applicant sells secondhand bags at circle and earns about Nine Hundred and Sixty Ghana Cedis (GH¢960.00) per month. The Respondent, on the other hand, lives at Alajo with his younger brother in a single room with porch. The Respondent also sells secondhand ladies jeans at Lapaz and earns about Four Hundred Ghana Cedis (GH¢400.00) monthly. The SER gathered that the parties met in 2008 in Lagos-Nigeria, got marriage in 2010 but the Respondent relocated to Ghana for greener pastures and the Applicant joined him in 2012. The Respondent later travelled to Indonesia in 2018 for greener pastures but plans could not work out for him and was back in Ghana in 2020.

He joined the Applicant and the children at Alajo who later left the matrimonial home in July 2020 to Circle where she lives now in a Kiosk with the children.

The parties' second child is currently in Nigeria and being taken care of by Applicant's mother because the Applicant says the burden will be too much for her. The Respondent has not maintained the children since their separation in 2020 and all the three children are presently not in school. The SER further gathered that the living conditions of Applicant and the two children at Avenor is poor and needs urgent attention as the room is small and lacks ventilation. The Applicant buys all the daily meals of the children and the Probation Officer was of the opinion that buying food from the roadside on a daily basis is not healthy for the children.

### *Analysis*

The first issue is **whether or not the Applicant can have custody of the child with reasonable access to the Respondent.**

In custody cases, there is no prima facie right to the custody of the child in either parent, but the court shall determine solely which parent is for the best interest of the child, and what will best promote its welfare and happiness. **At common law the father was generally entitled as a matter of right to custody of his minor children, but later the law generally gave the mother preference. Today, the law recognizes the child's best interest as the determinative factor and this is also referred to as the Welfare Principle as posited by Act 560 stated supra. The**

**Welfare Principle implies that the Court determines what would be best for the child despite both parents' good intentions and competing wishes.**

Per the evidence on record, the Respondent is not insisting on having custody of the children in issue but rather wants the Applicant to return to the matrimonial home. The Applicant however claims that the Respondent has been abusing her physically to the extent that she does not want to go back to the matrimonial home. This instant court does not have jurisdiction to make pronouncement on matrimonial matters and as such will make a determination on custody and access of the children herein.

The next issue is **whether or not the Respondent can be ordered to provide the necessities of life for the children** and **Section 6 (1) of Act 560** provides on Parental duty and responsibility as follows; *'...no parent shall deprive a child his welfare whether the parents of the child are married or not at the time of the child's birth; or the parents of the child continue to live together or not. Section 6(2) further provides that '...every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents'. The effect of the above mentioned section is that mothers and most fathers have legal rights and responsibilities as a parent and this can be described as 'parental responsibility'. So that once an individual(s) have parental responsibility, the most important roles are to provide a home for the child as well as protect and maintain the child. Other responsibilities are disciplining the child, choosing and providing for the child's education and agreeing to the child's medical treatment, among others. To this end, Section 47(1) of Act 560 states that '... 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 necessities of health, life, education and reasonable shelter for the child...'* According to **Justice Kwabena**

**Asuman-Adu** in the case of ERNESTINA AYENSU BOATENG vs. YAW BOATENG [2010] DLHC 5660, '*... it is the responsibility of the Respondent as the father to maintain his children who have not attained age 18yrs or are in school ... it is his responsibility as a father to provide for his maintenance which should include food, shelter and clothing. He must also provide for his health and education. These payments should continue until he attains 18yrs of age or completes schooling, whichever comes last...*'. Thus, the Respondent, being the biological father of the children in issue must provide all the necessaries of life for the said children.

**DECISION:**

Upon consideration of the Application, the Social Enquiry Report, the Testimony of both parties and pursuant to provisions of the children's act, 1998 (Act 560), the court grants the instant Application and makes the further orders;

- a) The Applicant shall have custody of the children and the Respondent shall have reasonable access during weekends but fortnightly.
- b) The Respondent shall maintain the children with Six Hundred Ghana Cedis (Ghc600.00) monthly and same is to be paid into court within the first week of every month.
- c) The Applicant shall Register the children under the National Health Insurance Scheme (NHIS) and renew same when it expires. The Respondent shall pay for all medical bills not covered by NHIS.

- d) The parties shall enroll the children in any government school by the next academic year. Respondent shall pay for all incidental school expenses and the Applicant shall pay for school uniforms, school bags and sandals.
  
- e) There will be no order on accommodation as the parties are still married. Parties are however advised to put aside their differences and reconcile in the best interest of their children.

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**H/H HALIMAH EL-ALAWA ABDUL-BAASIT.**  
**PRESIDING JUDGE**

**I AGREE**

**I AGREE**

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**MADAM LOVE GRACE AHLIJAH  
TAGOE  
PANEL MEMBER**

**MADAM REGINA  
PANEL MEMBER**