

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

SUIT NO. A6/13/23

HARRIET SARBENG
WEIJA, ACCRA

APPLICANT

VS.

GEORGE AKWUAH INGO
TSE ADDO, ACCRA
RESPONDENT

Parties present.

No Legal Representation for both parties.

RULING

This is a Ruling on an Application filed on 24th June 2022 for the maintenance of the child in issue.

The Applicant's case

In her Affidavit in Support, the Applicant deposed that she was in a relationship with the Respondent which resulted in the birth of the child in issue who is aged one and half (1½) years old as at the time of filing the Application. She deposed among others that that the Respondent failed to adequately maintain the child, renew her rent and as a result, she is currently staying with her friend at Weija whilst the Respondent lives in a Three (3) bedroom apartment. She stated again that the Respondent stole her watch and sold it without her knowledge and

made her use all her business capital of Five thousand Ghana Cedis (Ghc5, 000.00) for housekeeping but Respondent has failed and/or refused to refund the said amount for her to continue with her business. She therefore prays for the following Orders.

1. An Order compelling the Respondent to enroll the child in school, maintain the child, his medical bills and rent an apartment for the child.
2. An Order compelling the Respondent to refund the Ghc10, 000.00 to Applicant, that being Applicant business capital she used on the Respondent so that she can start her business again.
3. Any order or orders this Honorable Court deem fit.

The Respondent's case

The Respondent in his Affidavit in Opposition filed on 22nd July 2022 admitted to having a relationship with the Applicant which resulted in the birth of the child in issue. He indicated that as at that time he was employed and he took absolute care of the Applicant and her other child as well as paid all her medical bills during pregnancy and child birth. He deposed that he made the Applicant to be in charge of his transport business but same was mismanaged by the Applicant resulting in a loss of his capital. He indicated further that he has been maintaining the child in issue through Mobile Money payments and therefore prays the Honorable court to dismiss Applicant's Application as all charges are false accusations.

DETERMINATION:

In view of the processes before the court, the issues for determination are therefore as follows;

1. Whether or not the court can compel the Respondent to adequately maintain the child with all necessities of life.
2. Whether or not the court can compel the Respondent to refund the Applicant's business capital in the sum of Ghc10, 000.00.

In making a determination on the issues before the court, the court is guided by Section 2 (1) of The Children's Act (1998) Act 560 states that '*...the best interest of the child shall be paramount in any matter concerning a child...*' and Section 2 (2) also provides that '*...the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child...*'. In arriving at a conclusion, the court was of the opinion that there is the need to independently investigate the claims of both parties and as such ordered for a Social Enquiry Report (SER).

The Social Enquiry Report

The SER as submitted by the Probation Officer, Mr. Emil Eli Laweh dated 14th of October 2022 made certain findings and conclusions including the fact that the Applicant and the child reside with a friend in a Two (2) bedroom apartment. The Applicant was a trader in cosmetics but is currently unemployed. The SER gathered that the parties met in 2018 and their relationship resulted in the birth of the child in issue in 2021. It was further gathered that the parties cohabited together at the Applicant's residence and also at the Respondent's residence respectively but due to irreconcilable differences the Respondent moved out to a different house at a different location. The SER indicated that the Respondent has

not maintained the child for over Three (3) months and the child is currently out of school because of school fees owed.

The Probation Officer indicated that the Respondent failed to make time to be interviewed and despite all efforts, including appointments booked by the Respondent himself for the interview were fruitless. The Probation Officer stated that it seems the Respondent is hiding something he does not want the Officer to discover. The Probation Officer indicated further that the Respondent has showed gross disrespect to the Officer and the Court at large by flouting the court proceedings despite being repeatedly contacted.

Analysis

The first issue for determination is **whether or not the court can compel the Respondent to adequately maintain the child with all necessities of life.**

Section 6 (1) of Act 560 provides on Parental duty and responsibility and states that *'...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 necessaries 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...*'

The second issue is **whether the court can compel the Respondent to refund the Applicant's business capital in the sum of Ghc10, 000.00**. Generally, the District Court has the following divisions; they are the general division which handles general matters at the District Court; the Family and Juvenile Court which handles criminal cases of children below Eighteen (18) years as well as family matters of maintenance of children, paternity, custody and access. This instant court therefore does not have the jurisdiction for debt recovery of money owed, especially when it has nothing to do with the child in issue. More so, the Applicant has failed to provide any evidence on how the Respondent became indebted to her up to the tune of Ghc10, 000.00. The Family Court is therefore unable to get the Respondent to pay of the said amount of Ghc10, 000.00 owed and the Applicant is at liberty to proceed to any District Court to seek redress with respect to the amount she claims is owed to her.

The court observes that the Respondent often absented himself from the court despite being aware of the court proceedings. The Probation Officer also indicated that the Respondent failed to make himself available for the interview needed to prepare the Social Enquiry Report (SER). It is therefore evident that the

Respondent has elected to ignore the court processes and it seems to suggest that he does not intend participating in the proceedings. The court will therefore proceed to determine the matter and is guided by the case of **Julius Sylvester Bortey Alabi vs Paresh and 2 Ors** (2018) GMJL where the learned **Judge Bright Mensah J**, stated as follows; *'...ordinarily, where a court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself the court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial.*

DECISION:

Upon consideration of the Application, the evidence before the Court, the testimony of both parties, the Social Enquiry Report and pursuant to the provisions of The Children's Act (1998) Act 560, the Court is satisfied that it will be in the best interest of the child to grant this instant Application and orders as follows;

1. The Applicant shall have custody of the child and the Respondent shall have reasonable access to the child during weekends fortnightly but upon due communication with the Applicant of the day and time.
2. The Respondent shall be responsible for the maintenance of the child with an amount of **Four Hundred Ghana Cedis (Ghc400.00)** monthly and same is to be paid into court within the first week of every month.

3. The Applicant shall enrol the child in a decent school with the consent of the Respondent and the Respondent shall pay the child's school fees, exercise books, textbooks and other incidental school expenses whilst the Applicant shall be responsible for school uniforms, bags and sandals of the child.
4. The Applicant shall register the children under the National Health Insurance Scheme (NHIS) and renew same when it expires. The Respondent shall be responsible for all the bills not covered under the NHIS which the Applicant shall present to him within a week of having incurred the expenditure. The Applicant shall ensure that the Medical Facility and Pharmacy she accesses shall be one that the Parties have agreed on except in emergency situations and she shall inform the Respondent as soon as it is practicable to do so.
5. The Applicant is to secure a single room, self-contained accommodation and shall seek the consent of the Respondent before settling on a particular accommodation. The Applicant is to pay Forty percent (40%) of the rent whilst the Respondent pays Sixty percent (60%) of the rent.
6. Cost of One Thousand Ghana Cedis (Ghc1, 000.00) awarded in favour of the Applicant.

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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**