

IN THE DISTRICT COURT SITTING AS A FAMILY TRIBUNAL HELD AT WEIJA
ON FRIDAY THE 21ST DAY OF OCTOBER, 2022 BEFORE HER WORSHIP RUBY
NTIRI OPOKU (MRS.) DISTRICT MAGISTRATE (CHAIRMAN), GODFREY SAIM
JNR. AND GIFTY TEKPOR (MEMBERS OF THE PANEL)

SUIT NO. G/WJ/DG/A6/46/21

MARTHA PAINTSIL

APPLICANT

VRS

WILSON ADJEI

RESPONDENT

PLAINTIFF IS PRESENT AND SELF REPRESENTED

DEFENDANT IS PRESENT AND REPRESENTED BY JOHN AGBOTEY ESQ

JUDGMENT

The Applicant filed an application in this court on 22nd June 2022 for the following reliefs;

1. An order to compel defendant to rent an adequate and tenantable accommodation for the children
2. An order directed at defendant to maintain the children with the sum of GHC1,000.00 per month.
3. Any further orders as the Honourable Court may deem fit.

The respondent entered appearance through his lawyer on 18th June 2021 and filed an answer on 20th August 2021 and cross petitioned for the following reliefs;

- a. Custody of his biological daughter Abigail Adjei
- b. An order directed at applicant to pay the sum of GHC18,000.00 to the respondent for keeping and maintaining her daughter Beatrice Adjei for 11years.

The respondent filed an amended answer to the petition on 30th December 2021 and prayed for the dissolution of the customary law marriage between the parties as an additional relief to the one filed earlier by the respondent.

On 11th February 2022, the court referred parties to the Court Connected Alternative Dispute Resolution (CCADR) however parties were unable to settle and so the docket was brought back to the court for a determination of the matter.

On 25th March 22, the respondent filed a statement of defence and counterclaimed for custody of Abigail Adjei and payment of GHC18,000.00 being cost of maintenance of Beatrice Adjei for 11years.

On 4th April 2022, a notice of appointment of solicitor and a reply were filed by the applicant.

Pursuant to the orders of the court, the probation officer filed the Social Enquiry Report on 24th June 2022 for the consideration of the court.

THE CASE OF THE APPLICANT

At the hearing, the applicant informed the court that she was living with the respondent in Accra but because of the nature of her trading, she had to wake up at dawn to prepare food for her children and prepare them for school before setting off to work. It is the further case of the applicant that she pleaded with respondent to feed the children in her absence when day breaks and take them to school as he was self-employed but he refused. She added that the parties subsequently agreed that the child be sent to applicant's mother at Bawjiase so parties can visit her on weekends. Following the said agreement she took the child to Bawjiase but on her return the respondent enquired of his biological child after three days and insisted that she brings back the child to Accra. According to her, she informed the respondent that she will only bring the child to Accra

if he agrees to assist her in preparing the child for school but he refused and stated that if the child is not brought back to Accra, he will not maintain her.

Later her husband insisted that he had found a pregnancy test kit in her bag which generated a lot of misunderstanding between the parties which finally led to the breakdown of parties' relationship. Following the separation of the parties, respondent refused to maintain his daughter which culminated into the present suit.

RESPONDENT'S CASE

Respondent on the other hand informed the court that he got married to the applicant customarily but currently parties are separated. It is his further case that he wants custody of his child because if custody is granted to the applicant she will not be able to take care of her. According to him, applicant does not stay in one place and leaves the child in the custody of other people when she goes out. He added that since the applicant took the child to the village, she has grown lean and also he is not happy with the school the child has been enrolled in. He informed the court that the child has other siblings and that he wants her to attend the same school with them. It is the case of the respondent that if custody of the child is granted to applicant he will be unable to pay the child a visit as the parents of the applicants are at loggerheads with him.

At the end of the trial the issue that was set down for determination by the court was whether or not the Applicant should be granted custody of the issue of the marriage.

BURDEN OF PROOF

The law is trite that a party who asserts a fact assumes the responsibility of proving same. The burden of producing evidence as well as the burden of persuasion is therefore cast on that party and the standard required is provided for by virtue of sections 10, 11 and 12 of the Evidence Act, 1975 (NRCD 323)

In the case of **ABABIO V AKWASI IV [1994-1995] GBR 774**, Aikins JSC held that;

“The general principle of law is that it is the duty of a Plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the Plaintiff leads some evidence to prove his claim. If the Defendant succeeds in doing that, he wins, if not he loses on that particular issue.”

The courts have consistently held that on the award of custody of a child, the welfare of the child must be the paramount determining factor. This principle has been given statutory force by section 2 of the Children’s Act, 1998 (Act 560) which states:

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

The considerations for custody or access have been provided in Section 45 of Act 560 as follows;

A family tribunal shall consider the best interest of a child and the importance of a young child being with his mother when making an order for custody or access. Subject to subsection (1), the tribunal shall consider

- (a) the age of the child
- (b) that it is preferable for the child to be with his parents except where his rights are persistently abused by his parents
- (c) the views of the child if the views have been independently given
- (d) that it is desirable to keep siblings together
- (e) the need for continuity in the care and control of the child
- (f) Any other matter that the Family tribunal finds relevant.

In **DAABOA DAGARTI VRS DORNIPEA [1982-83] 1 GLR 594 CA**, It was held as follows;
“The general principle on which this public policy is founded is consideration of the welfare of the child which must be the paramount factor for determining who should have custody.”

From the totality of the evidence before this court and having considered the recommendations of the social enquiry report as well as the independent interview held with the child the subject matter of this dispute and sections 2 and 45 of the Children’s Act 1998 (Act 560), we find that it is in the best interest of the child, Abigail Adjei aged five years that custody is granted to the Applicant with reasonable access to Respondent for continuity in her care and control.

Respondent is ordered to maintain the child with the sum of GHC500.00 per month. Respondent is again ordered to pay the school fees and medical bills of the child as and when they fall due for payment. Respondent is ordered to enroll the child on the National Health Insurance Scheme (NHIS) and renew same on expiration. All medical bills that are not coverable by the NHIS shall be borne by the respondent. Respondent is again ordered to provide accommodation for the child until she attains age 18 or the applicant remarries whichever event occurs first.

Applicant is ordered to provide the outing and casual clothes of the child.

I make no order as to costs.

H/W RUBY NTIRI OPOKU

(DISTRICT MAGISTRATE/CHAIRMAN)

