

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON TUESDAY, 10TH DAY OF JANUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MR. RICHARD TEGBEY AND MADAM PHILOMENA SACKY AS PANEL MEMBERS.

SUIT NO. A6/167/23

QUEEN AMOAKO-ATTA
BURMA CAMP, ACCRA

APPLICANT

VS.

SOLOMON BOAKYE NTI
ACCRA

RESPONDENT

Parties present

No legal representation for both parties.

RULING

This is a Ruling on an Application filed on the 11th of October, 2022 for the maintenance of the Two (2) children of the parties.

The Applicant's Case

The Applicant deposed in her Affidavit in support that she is married to the Respondent and they have Two (2) aged Five (5) and Two (2) years respectively. The Applicant is a military personnel whilst the Respondent is a Fire Officer and both used to live as a couple at Burma Camp but the Respondent left home in January 2019 when the first child was about a year old and she was a month pregnant with the second child. She deposed further that for the past Three (3)

years, the Respondent has not been contributing towards the maintenance of the children neither does he know the school they attend and all efforts at getting him to do the needful have been futile. She therefore prays for the following;

1. An Order directed at the Defendant to maintain the children with Ghc1,000.00 a month.
2. An Order to pay the children's school fees, medical bills and other necessities of life as and when they fall due.
3. Any other Order(s) as the necessary court may deem fit.

The Respondent's Case

The Respondent in his Affidavit in Opposition filed on the 29th of December 2022 confirmed the marriage with the Applicant and the birth of the children. He denied vacating the marital home at Burma Camp and stated that it was the Respondent who put his belongings outside and asked him to leave, of which she further informed both families that she was no longer interested in the marriage. He deposed that the Applicant is very violent and has warned him not to come anywhere close to her and the children. She also blocked all channels of communication rendering incapable of having access to his children. He deposed further that the Applicant chose to enroll the children in a school that is beyond his financial capacity even though there are many schools in Burma Camp. He prayed for the following reliefs;

1. That he maintains the children with an amount of Ghc600.00 every month.
2. That he enrolls the children in a school that is within his financial capacity.
3. That the Applicant is ordered to grant him access to the children.
4. That the court gives any other order(s) as it may deem fit.

DETERMINATION

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

1. Whether or not the maintenance sum should be Ghc1, 000.00 or Ghc600.00.
2. Whether or not the Respondent can have access to the children.

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...*'.

Analysis

The first issue for determination is **Whether or not the maintenance sum should be Ghc1, 000.00 or Ghc600.00**. It must be emphasized that child maintenance is one of the fundamental rights granted every Ghanaian child under the customary and statutory laws of Ghana. **Article 28 of the 1992 Constitution** which is specifically devoted to the rights of children enjoins Parliament to enact laws that ensure that natural parents provide every one of their children, from conception till age Eighteen (18) at least. **The Children's Act, 1998 (Act 560)** is also meant to reform and consolidate the laws relating to children and to provide for the rights of the child of which the Act sets out a number of rights to ensure

the well-being of children. The duty of maintenance of children, which is specially dealt with in **Sections 47 – 60 of Act 560**, is a legal obligation, which is imposed on a parent and, in some instances, other persons who may be legally liable to maintain the child. Specifically, **Section 47 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'*.

In the case of **Abubakari vs Abubakari** (152 of 2005) [2005] GHACA 7 (18 May 2005); the Court held that; *'... the law is fairly well settled that it is the responsibility of both parents to cater for their infant children...'* and this position has been captured in Section 49 of Act 560 that *'a Family Tribunal shall consider the income and wealth of both parents of the child when making a maintenance order'*. The Respondent provided his bank statement which gave his salary as a Two Thousand Six Hundred and Fifty Seven Ghana Cedis (Ghc2, 657.00) but he pays the rent amount of Ghc865.00 monthly which is deducted from his salary every month. This therefore leaves the Respondent with an amount of Ghc1, 337.28 at the end of every month. The Applicant on the other hand, informed the court that she earns about Two Thousand Ghana Cedis (Ghc2, 000.00) as monthly salary.

The onus then lies on the Court to determine the maintenance sum, however, the amount demanded for by the Applicant appears unreasonable when compared to the amount the Respondent gets at the end of every month which stands at Ghc1, 337.28. It is trite that in making Maintenance Orders, the Court must consider the person from whom maintenance is claimed and whether he or she is able to afford the maintenance that is claimed. Thus, that person must have the means to pay the amount claimed and the MEANS TEST is such that the person

who is liable to pay maintenance must have the MEANS and the maintenance so claimed must be REASONABLE. It is therefore the duty of the Court to order a reasonable sum as monthly maintenance but same should be within the means of the Respondent, yet such an amount must also be sound and in consonance with present day economic realities.

The next issue for determination is **whether or not the Respondent can have access to the children**. The Court observes that the parties have a severed relationship and when this happens, the parties are unable to see eye to eye on what is best for the children regarding regular contact by the father. The mother would either blatantly refuse the father access or would place strict measures on when and how the father can see the children. When such a situation arise, as in this instant case, the option left for the children's biological father is to approach the Court for relief. It is important to state to both parties/parents that 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. Many people assume that mothers have greater child custody rights than fathers probably because mothers are perceived as the primary caretaker of children of the family whilst the father worked outside of the home and provided for the family. It must be emphasized there is no gender preference in custody and access laws and what the law recognizes is the child's best interest as the determinative factor. According to Author Despert, in the book, **Children of Divorce** (1962) '*... the best interest of the child doctrine cannot be applied within its historical and present spirit and purpose unless the law places both parents on equal footing...*' In fact, Article 18 of the United Nations Convention on the Rights of the Child (UNCRC), of which Ghana is a signatory, provides '*... that parents have a shared and core responsibility for the nurturing of their children...*'. The point being made is that no

one parent should feel or think that s/he has a higher right or responsibility of the child as against the other parents, both parents have equal rights and responsibilities over their children. The duty of the court is to make decisions using a case-by-case analysis of the facts surrounding custody and/or access and will then determine what sort of arrangement is in the child's best interests.

The Respondent, being the biological father of the children cannot, must not and should not be side-lined to the extent that it is the Applicant who solely takes decisions as far as the children are concerned. In fact, the Respondent informed the court that the Applicant solely changed the names of the children by adding names of her choice to the children's names, a situation which obviously bothers the Respondent. The children have a right to grow up knowing their father and this is buttressed by **Section 5 of Act 560** which provides that '*...no person shall deny a child the right to live with his parents and family....*' **Section 6(1) of Act 560** further provides that '*...no parent shall deprive a child his welfare whether –a) The parents of the child are married or not at the time of the child's birth; or b) The parents of the child continue to live together or not...'*. The Court is therefore of the opinion that it will be in the children's best interests to consider a time arrangement that provides for the children to have some substantial and significant time with the Respondent who is the biological father, so as to build a meaningful relationship with the children in accordance with their best interest.

DECISION:

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

1. The Applicant shall have custody of the children and the Respondent shall have reasonable access during the weekends fortnightly. The Respondent shall pick the children up on Saturdays by 9am and returns the children back to the Applicant by 5pm with effect from 14th January 2023.
2. The Respondent shall pay the maintenance sum of Six Hundred Ghana Cedis (Ghc600.00) monthly and same is to be paid into court within the first week of every month with effect from February 2023.
3. The Applicant shall register the child under the National Health Insurance Scheme (NHIS) and renew same when it expires. The Respondent shall pay all medical expenses not covered by the NHIS.
4. The parties shall enroll the children in a school within the Burma Camp and the Respondent shall bear all the incidental school expenses whilst the Applicant shall pay for school uniforms, bags and sandals.

OR IN THE ALTERNATIVE

The Applicant shall enroll the children in a private school of her choice and shall bear all the incidental school expenses whilst the Respondent shall pay for school uniforms, bags and sandals.

5. The Respondent is ordered to apply for a Birth Certificate for both children and indicate names that his prefers for same to be registered as the official names of the children.
6. Parties are advised to try to reconcile their differences to get back together as husband and wife in the best interest of the children.

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

I AGREE

I AGREE

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MR. RICHARD TEGBEY
PANEL MEMBER

MADAM PHILOMENA SACKY
PANEL MEMBER