

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON TUESDAY, 7TH DAY OF FEBRUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MR. WISDOM ATIASE AND MADAM PHILOMENA SACEY AS PANEL MEMBERS.

SUIT NO. A6/176/23

SUSANA DEBRAH
AVE MARIA-DANSOMAN
ACCRA

APPLICANT

VS.

TETTEH ODONKOR DEBRAH
RESPONDENT
DANSOMAN, ACCRA

Parties present

**Francis Doe-Glah Esq. for Andrew Vortia Esq. for the Applicant
Mac Numo-Boye Esq. for the Respondent**

RULING

This is a Ruling on an Application by the Applicant herein filed on 17th October 2022 for the maintenance of the child in issue. In her Affidavit in Support, the Applicant deposed that she is married to the Respondent and have a child named aged Two (2) years Eight (8) months. She deposed further that both parties are currently separated due to some misunderstanding and her family decided the Respondent rents a suitable accommodation for her and the child. She deposed again that the Respondent refused to rent an accommodation so she reported the matter to DOVVSU and during mediation at DOVVSU, the Respondent was asked to grant her access to their matrimonial home since he

had denied her access to the house. She deposed she is currently living in a rented place by her auntie and the Landlady has asked her to vacate the place and since she do not have any place to stay now, she now have to live with a friend at Ave maria Dansoman for the time being. She therefore prays for the following reliefs;

- i. An order directed at the Respondent to maintain the issue with an amount of Ghc1, 000.00 a month.
- ii. An order to rent a suitable accommodation for the Applicant and the Child herein
- iii. An order to pay school fees of the child, medical bills and other necessities of life as at when it falls due.
- iv. Any other order(s) as the necessary court may deem fit.

The Respondent's Case

The Respondent in his Affidavit in Opposition deposed that he has Three (3) biological children with the Applicant's child inclusive and Two (2) adopted children of his deceased brother. He deposed further that he is a civil servant and earns a net salary of Ghc3, 000.00 a month and uses same to take care of all the Five (5) children. He informed the court that he gave the Applicant an amount of Ghc2, 000.00 as part payment for her rent and yet the Applicant denied him access to the child even though he pays for fees and maintains the child. He continued that the Applicant refused to let the child attend the school that he paid school fees because the Applicant does not want him to speak to the child. He therefore prays for the following reliefs;

- i. An order directed to the Applicant to allow the Respondent to have access to the child on weekends, holidays and vacations.

- ii. That he pays Ghc300.00 to the Applicant for the upkeep of the child.

In a Supplementary Affidavit in Opposition filed on the 22nd November 2022, the Respondent prayed for custody of the child in issue with reasonable access to Applicant as the child is used to his other siblings and blend seemingly. He continued that his mother and Auntie who live in the house are more capable of taking care of the child with ease and that his experience with Applicant in the recent past is that, she spends all her time on her studies at school if not with a lecturer in the house and/or her cleaning business in town leaving little or no time to take care of the child as would be expected of a mother. He concluded by saying the Applicant does not support him financially in the payment of the children's school fees nor maintenance notwithstanding her earnings made on her business.

DETERMINATION

In view of the processes filled by the Applicant, the issues for determination are as follows;

In view of the evidence on record the issues for determination are;

- i. Whether or not the Respondent can have custody of the child.
- ii. Whether or not the Respondent is to provide all necessaries of life for the child in issue.

Analysis

The first issue is bothers on custody of the child as the Respondent prays for custody of the child. In determining which of the parents is best suited to have custody of the children, the court relies on the case of **Opoku-Owusu vs. Opoku-Owusu** [1973] 2 GLR 349, where Sarkodee J held that '*the Court's duty is to protect*

the children irrespective of the wishes of the parents. The evidence on record shows that the child is about Two (2) years Eight (8) months old and Section 45 of The Children's Act, 1998 (Act 560) provides in sub section 1 that '*a Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access*'. Indeed, in the case of **Bentsi-Enchill vs. Bentsi-Enchill** [1976] 2 GLR, the court held that '*the primary concern of the court is to ensure that there are appropriate safeguards for a child's general welfare, irrespective of the interests of the parents... Normally the mother should have the care and control of young or sickly children (particularly girls) or those who for some other reason need a mother's care*'.

The next issue bothers on the provision of the necessities of life of the child in issue. **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 mostly 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...*' It must be stated that the Respondent in an attempt to settle the issues between the parties, offered the Applicant an accommodation located in the outskirts of Accra. The Applicant however rejected the said building and gave reasons for her rejection including the fact that the location of the house is rather too far.

DECISION

Upon consideration of the Application, the evidence on record, the testimony of the both parties and pursuant to the provisions of the Children's Act 1998 (Act 560), the Court orders as follows;

- a. The Applicant shall have custody of the child and the Respondent shall have access at the last weekend of every month. He is to pick the child up on Fridays by 5pm and return the child to the Applicant by 2pm on Sundays. The Respondent shall also have access to the Child during the first half of every school vacations.
- b. The Respondent shall pay the child's school fees and other incidental school expenses and the Applicant shall pay for the school uniforms, school bags and school sandals.

- c. The Applicant shall register the child under National Health Insurance scheme and renew same when it expires. The Respondent shall pay all medical bills not covered by National Health Insurance Scheme.
- d. The Respondent shall maintain the child with an amount of Ghc600.00 and same is to be paid at the beginning of every month with effect from February 2023.
- e. The Court is unable to make orders at to accommodation as the evidence on record shows that the parties are still married. The Applicant is advised to take the offer made by the Respondent and the Respondent must ensure that the child lives in a decent accommodation.
- f. Parties are further advised to try to reconcile their differences and have effective communication in the best interest of the child.

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

I AGREE

I AGREE

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MR. WISDOM ATIASE
PANEL MEMBER

.....
MADAM PHILOMENA SACKY
PANEL MEMBER