

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON FRIDAY, 6<sup>TH</sup> DAY OF JANUARY 2023 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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SUIT NO. A6/64/2017

DIANA FIAZOMOR  
ASHOMANG  
ACCRA

APPLICANT

VS.

ERIC ADDO  
ASHOMANG  
ACCRA

RESPONDENT

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**Parties present**

**No legal representation for both parties.**

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## RULING

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This is a Ruling on an Application filed on the 2<sup>nd</sup> of February 2017 pursuant to a Motion to Relist Suit for further hearing filed by the Applicant on 21<sup>st</sup> October 2022.

### *The Applicant's case*

In her Affidavit in Support to the Application filed in 2017 deposed that she brought an action before the court for the maintenance of their two children in 2017 and Respondent was ordered to maintain her with Ghc350.00 a month. She

deposed further that as at 2017, she had one child with the Respondent but was Eight (8) months pregnant with their second child. The children are now aged seven and five years old respectively and is again Five (5) months pregnant. She stated that the Respondent has not been regular in honoring the children's maintenance, school fees and other necessities of life. She therefore prays for an order to compel the Respondent to maintain the children adequately and regularly.

### *The Respondent's Case*

The Respondent in his Affidavit in Opposition deposed among others that both parties were married at custom but the Applicant left the matrimonial home in 2016 of which he later sent an amount of Ghc250.00 to the Applicant for the maintenance of the child. The Applicant however informed him that she needs money for ante-natal clinic because she was Two (2) months pregnant when she was leaving the Respondent's house. He stated further that he disagreed with the Applicant and this resulted in him receiving an invitation from the Social Welfare Office in January 2017 where he later agreed to pay Ghc300.00 but the Applicant insisted on Ghc500.00. He insisted that he can maintain the child with Ghc300.00 monthly and with respect to medicals, the Applicant is a staff at the University of Ghana, Legon, as such the child is entitled to free medical care although he is also willing to procure a National Health Insurance Card for the child.

### **DETERMINATION**

In view of the processes before the court, the main issue for determination is whether or not the Respondent is entitled to maintain the children as well as the unborn child in issue. In making a determination on the issue 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 main issue for determination is whether or not the Respondent is entitled to maintain the children and the unborn child in issue. 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 necessities 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 informed the court that he is an Electrical Technician by profession but not a salaried worker. He stated further that he gets called once in a while for jobs and as such he can afford the amount of Eight Hundred Ghana Cedis (Ghc800.00) as maintenance for the children, he further pledged his readiness to take care of the Applicant's pregnancy.

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. 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 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**

In view of the Application, the testimony of the parties and pursuant to the provisions of the children's Act, 1998 Act 560, the court orders as follows;

1. Custody of the children shall remain with the Applicant and the Respondent shall have access to the children during the weekend fortnightly. The Respondent shall pick the children up on Fridays by 5pm and return the children back to the Applicant on Sundays by 4pm.
2. The Respondent shall pay an amount of Ghc800.00 monthly and same is to be paid via the Applicant's mobile money account.
3. The Respondent shall pay for the children's education including all incidental school expenses.

4. The Respondent is to assist the Applicant to put their current accommodation into a habitable condition on or before the 31<sup>st</sup> of January 2023.
5. The Respondent is to contribute an amount of Ghc600.00 towards the items required by the unborn child as well as antenatal and post natal expenses not covered by NHIS.
6. The Applicant shall register the children under the NHIS and renew same when it expires. The Respondent shall pay for all medical bills not covered by NHIS.

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

**I AGREE**

**I AGREE**

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**MADAM LOVEGRACE AHLIJAH**  
**PANEL MEMBER**

**MADAM REGINA TAGOE**  
**PANEL MEMBER**