

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT BUILDING - ACCRA HELD ON MONDAY THE 3<sup>RD</sup> DAY OF JULY, 2023, BEFORE HER WORSHIP MAAME YAA AMOAKOA KUSI-MENSAH ESQ. MAGISTRATE, SITTING WITH MADAM FELICIA COFIE AND MR. RICHARD TEGBEY AS PANEL MEMBERS

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SUIT NO.: A6/231/2023

COMFORT OKINE - APPLICANT  
H/NO. AM 1436 ANUM CIR  
CHORKOR, ACCRA  
DIGITAL ADDRESS: GA-410-1493

VRS.

SAMPSON NARTEY - RESPONDENT  
EY 5 KAKATSOFA STREET  
NORTH KANESHIE, ACCRA  
DIGITAL ADDRESS: GA-258-2718

----- Applicant:

Present

Respondent: Present

No Legal Representation for both parties

### JUDGMENT

#### BACKGROUND

The parties herein are the biological parents of the two children in issue, namely; Child J (male aged 6 years) and Child P (female aged 3 years) (hereinafter referred to as 'the issues'). The children were the product of an amorous relationship between the parties who were never married. Applicant lives at Chorkor, a suburb of Accra whilst Respondent lives at North Kaneshie

also a suburb of Accra. On 25<sup>th</sup> November, 2022, Applicant invoked the jurisdiction of this Court by mounting a maintenance and custody application under Order 32 rule 2 of the District Court Rules, 2009 (C.I 59) and prayed this court for the following reliefs:

1. An order granting custody of the issues herein to the Applicant with reasonable access to Respondent.
2. An order for the Respondent to maintain the issues with the amount of Eight Hundred Ghana Cedis (GHS 8,000.00) (sic) per month subject to a yearly review from the date of judgment.
3. An order directed at the Respondent to pay for the medical bills and educational expenses of the issues as and when they fall due.
4. Any other Order(s) this Honorable (sic) Court may deem fit.

In his response filed on 9<sup>th</sup> December, 2022, Respondent objected to the grant of all of Applicant's reliefs, with the exception of the first relief, and prayed the Court for "an order to strike out the Applicant's claim as its without merit".

After an unsuccessful attempt for amicable resolution of the instant action at Court-connected ADR, the matter was referred back to this Court for determination.

### **APPLICANT'S CASE**

The gravamen of Applicant's case before the Court as contained in her 19 paragraph affidavit in support of her application for maintenance and custody is that sometime in 2013, the parties began an amorous relationship out of which the two issues were born. According to her, Respondent had adequately maintained the issues while they were living together at Panbros

Klefe, Dansoman Last Stop, Accra. However, due to several instances of assault Respondent committed against her, she vacated the home she shared with Respondent in March 2019 and relocated to her family house in Chorkor.

Applicant further stated that sometime in September 2019 Respondent came to her family house and requested that she and the issues move back into his residence at Panbros Klefe, Dansoman Last Stop and she agreed on the condition that Respondent performs the necessary Ga marital customary rites. She states that Respondent failed to perform the requisite marital customary rites and thus she also did not relocate. Applicant adds further that owing to this fact, Respondent then refused to maintain the issues between them in spite of several demands made by her for Respondent to do so. Applicant adds also to the above the complaint that Respondent has failed to name the last issue of the relationship and further that Respondent has tried on several occasions to obtain custody of the first issue of the marriage. Subsequently, sometime in 2021 Applicant reported the matter to the Department of Social Welfare and Community Development around the Bukom arena where Respondent was directed to maintain the issues with Four Hundred Ghana Cedis (GHS 400) a month as well as perform the naming rites of the last issue of the relationship. Applicant states that Respondent has failed to comply with the directives of the Department of Social Welfare and Community Development and further that since March 2021, Respondent has failed and/or refused to maintain the issues between them.

### **RESPONDENT'S CASE**

Respondent is opposed to the reliefs being sought by Applicant save the first relief sought by Applicant and this is contained in his Affidavit in Opposition filed on 9<sup>th</sup> December, 2022. According to him, Applicant left the home they were cohabiting of her own volition and took with her the two issues herein to go and live at her family house in Chorkor. Respondent further denied ever assaulting Applicant and stated that he has already been maintaining the

issues adequately and this included enrolling the children in school, paying the medical bills and all other necessities of life. With respect to the naming of the second issue, Respondent indicated that the parents of Applicant demanded Two Thousand Ghana cedis (GHC 2000) as compensation which he was unable to afford due to his *"precarious financial position"* (as stated in Paragraph 11 of affidavit in opposition). Respondent states additionally that he did not attempt to take custody of the first issue but rather discussed the idea of relocating first issue to his sister in Koforidua and not to have forceful custody of the child in issue. With reference to the report made by Applicant to Social Welfare and the directives given by the Social Welfare, Respondent avers that he informed the officials that he is out of business and could not afford such an amount but he remitted Two Hundred Ghana cedis (GHC 200) on two occasions and had later been remitting *"between Fifty Ghana Cedis (GHC 50) and One Hundred Ghana Cedis (GHC 100) at times"* (as stated in Paragraph 10 of affidavit in opposition). Respondent, who works as a book-binder, further indicated that due to the high cost of printing materials jobs had not been running adequately and hence he could not afford the maintenance of Eight Hundred Ghana Cedis (GHC 800) being demanded from Applicant. From Respondent's affidavit it was unclear whether he sought for custody of the children in issue or not since from paragraphs 16 and 21 Respondent objected to Applicant's relief of custody. However, this was in conflict with paragraphs 15, 16 and 18 of Respondent's affidavit in opposition where he indicated that he had no objection to the grant of custody to Applicant. Ultimately, Respondent prayed that the application be struck out as being without merit.

## ISSUES

**Custody and Access:** Although there appeared to be some inconsistency on the issue of custody, Respondent stated categorically before this Court that **custody was not in issue** when he was questioned by the Court on the subject. This can be found from the record of proceedings dated 30<sup>th</sup> January, 2023. In

light of this, the Court did not go into the merits of the issue of custody and will summarily grant the first relief stated in Applicant's application. Custody of the two issues is thereby granted to Applicant with reasonable access to Respondent. In particular, Respondent shall have bi-weekly weekend access to the issues (i.e. from Friday after school to 5pm on Sunday) plus half of their school vacation periods to enable them bond and spend time together. Parties shall also share access to the issues on public holidays equally.

**Maintenance and Accommodation:** The main issue for determination by the Court is with regard to the maintenance of the issues. In doing so, the court has to consider all the circumstances of the case and make a determination based on what will inure to the **benefit or best interest of the child** as provided for under **Article 28 of the 1992 Constitution** and **section 2 of The Children's Act, 1998 (Act 560)**. More particularly, **section 47 of Act 560** makes the parents or any other person legally liable to maintain a child responsible for providing necessities of life, education, health and reasonable shelter for the child. **Section 49 of Act 560** further outlines the considerations a court must bear in mind when making these maintenance orders. The said section 49 provides as follows:

*"When making a maintenance order, a family tribunal shall consider,*

*(a) the income and wealth of both parents of the child or of the person legally liable to maintain the child,*

*(b) an impairment of the earning capacity of the person with a duty to maintain the child,*

*(c) the financial responsibility of that person with respect to the maintenance of other children,*

*(d) the cost of living in the area where the child is resident,*

*(e) the rights of the child under this Act, and*

*(f) any other matter which the family tribunal considers relevant.”*

On monthly maintenance, Applicant prayed for maintenance of Eight Hundred Ghana Cedis (GHC 800). She stated on her application and during proceedings that she is a petty trader who sells slippers in front of her family home in Chorkor. She gave an indication of her earnings as being Two Hundred Ghana Cedis (GHC 200) on the Maintenance and Custody application form although she did not indicate whether this was monthly, weekly or daily earnings. During proceedings on 5<sup>th</sup> June, 2023 she stated that she earns about Thirty (GHC30.00) or Forty Ghana Cedis (GHC40.00) a day and also stated that she has no other children apart from the children in issue herein.

According to Respondent, he does not have a stable income. He works as a book-binder and indicated that the work is seasonal and that he works with someone. When questioned on how much he earns or spends on himself a day, he indicated that he *“manages with Ten (GHC 10) or Fifteen Ghana Cedis (GHC 15)”* daily. He also stated that he pays the fees of the children and that he has mostly been remitting the maintenance for the children in cash. He indicated that he is cohabiting with a new girlfriend and has one child with her when he was further probed by this Court (see proceedings dated 5<sup>th</sup> June, 2023).

Unfortunately, although the court directed that parties provide evidence of the expenditure they both claim they spend on the children in terms of the payment of school fees and maintenance costs, neither of the parties were able to provide sufficient evidence of their expenditure by way of school fees

receipts, account statements or any other documentation in support of their claims. Although Applicant filed her Mobile money (MoMo) account statement on 17<sup>th</sup> April, 2023 the Court did not find it helpful in substantiating any of her claims as it relates to her current and ongoing expenditure because the period of the account statement is spread over January to December 2021 while the application for maintenance was filed nearing the end of 2022 (i.e. 25<sup>th</sup> November 2022). Furthermore, the account did not even contain any evidence of payments of fees or anything related to the children in issue over that period. In fact, the account mostly constituted transfers of relatively low amounts and the highest amount reflected in Applicant's statement during the entire span under consideration (i.e. January to December 2021), hovered just over Three Hundred Ghana Cedis (GHC 300), an amount not even up to the school fees of Four Hundred Ghana Cedis (GHC 400) stated on Applicant's form as being the fees payable per term. Respondent on his part did not even file anything at all.

This Court was therefore compelled to mostly rely on the facts and evidence the Court was able to gather by way of enquiry during proceedings. Based therefore on the facts and evidence before the Court, the Court is of the view that a maintenance of Five Hundred Ghana Cedis (GHC 500) a month should be remitted by Respondent to Applicant. This amounts to Two Hundred and Fifty Ghana Cedis (GHC 250) per child. We believe this is fair for now haven taken into consideration the ages of the children in issue, the rising costs of living in Accra, the current income of the parties and the fact that Respondent also has a one and half year old child with his new girlfriend in accordance with section 49 of Act 560. The monthly maintenance stated is subject to periodic review upon application by Applicant in line with section 55 of Act 560. The maintenance of GHC 500.00 should be paid directly from Respondent's mobile money account to that of Applicant or into court by the 5<sup>th</sup> of each month effective from July, 2023. Applicant shall provide all other

necessaries of life of the issue. This is in line with the principle of joint parental responsibility.

Accommodation did not seem to be in issue as the Applicant is living in her family house in Chorkor with the children. There was further no expression of dissatisfaction by Applicant with her living arrangements nor was there any indication of inadequacy of same. The Court will therefore not make any determination on same.

**Medicals:** In line with section 2(2) of Act 560 which authorizes this Court to make relevant orders to secure the welfare and best interest of the issues, as well as bearing in mind the right of a child to medical care, it is hereby ordered that the cost of medical care for the issues not covered by the National Health Insurance Scheme (NHIS) shall be shared equally between the parties. Respondent shall see to the renewal of the NHIS subscription when it expires.

**Education:** Respondent himself stated that he pays for the educational expenses of the children although he failed to provide evidence of same and also stated that he had no receipts to show such payments when questioned by this Court in respect of same. The Court will therefore hold that Respondent shall continue to be responsible for all educational expenses and this is to include cost of textbooks, transportation to and from school for the issues, and extra classes where necessary, while Applicant shall be responsible for the issues daily school feeding fee, the children's uniforms, exercise books and other stationery in line with the principle of joint parental responsibility.

**Naming of the 2<sup>nd</sup> issue:** This was a peripheral issue that cropped up from the parties' affidavits although this was not categorically claimed as a relief by Applicant. A child has a right to a name and it is the duty of the parents to

name the child (see **sections 4 and 6** of the Children's Act, 1998 (Act 560)). Applicant states that her family named the 2<sup>nd</sup> child using the family surname but she later registered the child with the surname of Respondent when she was enrolling the child in school in order for both issues to have the same surname. Respondent also admits that he did not name the 2<sup>nd</sup> issue when she was born, however when he wanted to do so, Applicant's family demanded Two Thousand Ghana cedis (GHC 2000) from him as compensation which amount he could not raise. This Court does not think that it is proper for a child to have multiple names as this could raise issues of identity fraud for the child in the future. Parties are therefore ordered to take steps to have the child named properly in accordance with the appropriate customary rites and to further take steps to have the name of the 2<sup>nd</sup> issue brought in conformity with legal procedures regarding naming.

No order as to costs.

**MAAME YAA A. KUSI-MENSAH ESQ (MS.)**

**(Presiding District Magistrate)**