

2020-HC-DEM-CIV-FD-836

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
FAMILY, DIVORCE AND MATRIMONIAL JURISDICTION  
FAMILY DIVISION

Petition N0. FD-836.

BETWEEN:-

ADRIAN COSMOW ANTHONY INNISS

Petitioner

-and-

DIANA RAQUEL INNISS Nee TODD

Respondent

*YONDESSA WELCOME-MERCURIUS, Counsel for the Petitioner*

*TREVONA WEEKES, Counsel for the Respondent*

**DECISION**

**DATED THE 30<sup>TH</sup> DAY OF AUGUST, 2022.**

1. The Applicant and the Respondent were in a relationship for two years prior to their marriage on the 17<sup>th</sup> day of June, 2017, and there is one child born of their union, namely ANAIAH ADRIANNA INNISS, who was born on the 16<sup>th</sup> day of September, 2016.
2. As a result of irreconcilable differences between the parties, they ended their relationship during the year 2020, and on the 3<sup>rd</sup> December, 2020, the Applicant caused Application for Financial Relief to be instituted, seeking the Court determination whether she is entitled, upon the evidence adduced, to the following:

- (a) Maintenance for the Applicant in the sum of \$15,000.00 per month, until she either remarries or dies.
- (b) Maintenance for the minor child ANAIAH ADRIANNA INNISS born on the 6<sup>th</sup> September, 2016
- (c) Maintenance for the minor JAAZIAH JEREMIAH WASHINGTON, born to the Applicant on the 12<sup>th</sup> July, 2013, and whom she contends was two year old when she and the Respondent entered into the relationship, and who the Respondent treated as a child of the family.

#### THE APPLICANT'S CASE

3. The Applicant Diana Raquel Inniss claim for Maintenance for self and the minors is premised on the fact that at the commencement of the marriage, she was employed at the Georgetown Public Hospital, where she was required to work the shift system. This however did not meet with the approval of the Petitioner, who constantly expressed concern for the safety of the Applicant, who had to travel alone whenever she worked the night shifts, and further that it was difficult for him to communicate with the Applicant during the said night shifts.  
  
The Applicant resigned her job, after she was issued an ultimatum by the Respondent that she would have to choose between her job or the marriage.
4. Thereafter and initially, the Respondent, who was at the time, residing in the United States of America, would consistently transmit the sum

of \$10,000.00 (ten thousand dollars) weekly, for the maintenance and upkeep of the Applicant and the two minors. This he did for about eight (8) months, then without any explanation, he began to do so sporadically , causing the Applicant to experience severe financial difficulties in the maintenance and upkeep of the children. She eventually sought and secured employment with Qualfon, and was able to work from the comfort of her home.

5. The Applicant contends that the salary received from her employment with Qualfon was quite insufficient, as her monthly expenses far exceeded her Income of \$55,900.00 (fifty five thousand, nine hundred dollars) per month, and because of the Respondent's failure to adequately maintain her and the children, she was forced to seek assistance from parents.
6. The Applicant insists that contrary to the denial of the Respondent, he always treated the minor Jaaziah as his son and a child of the family. At the commencement of the relationship between the parties, the minor was two years old, and because of the love shown to him by the Respondent and the bond between them, the child always recognized the Respondent as his father, and referred to him a "Daddy". Moreover, the Respondent's family and friends also referred to and identified with the minor as the Respondent's son. In support of her contention, the Applicant submitted exhibits to this court, evidencing text messages from the Respondent referring to the minor as his son,

and stating his love for him. So did members of the Respondent's family and the Respondent's friends.

7. The Applicant further argued, that it was at the instance of the Respondent, that the minor Jaaziah began to attend school in the village of Cane Grove, instead of Georgetown, where the Applicant then worked and it was the Respondent who purchased and shipped all of the school material needed by the minor.
8. The Respondent also would also post barrels, boxes and packages for the Applicant and the two minors, since at the then time, the Applicant was unemployed, at the request and urging of the Respondent.
9. The Applicant is adamant that Respondent also demanded that she ceased accepting any assistance or maintenance from the father of the minor Jaaziah, as this he felt would enable the Applicant to persuade the father of Jaaziah to consent to sole custody of the minor to the Applicant, and thus make simple the filing of the Immigration Petition by the Respondent for the Applicant and the minor Jaaziah.
10. The Applicant also contends, that whenever the Respondent travelled to Guyana to visit with her and the children, she would leave the home of her parents and secure accommodation in an Apartment, for the month, where herself and the minors would enjoy quality time with the Respondent.
11. The Applicant has submitted the expenses incurred by herself, and for the two minors, which amounts to the sums of 44, 200.00 per month

and 40,000 for medical, dental and optical attention (Biennially), and the sum of 86,000.00 per month, and 26,000.00 per annum for School Books, and Medical and dental costs.

## **THE RESPONDENT'S CASE**

12. The Respondent Adrian Inniss categorically denies ever treating the minor Jaaziah as a child of the family, and contended that he never made any commitment to maintain the minor, since in view the father of the minor was capable of so doing. He argued, that always 'chastised' the Applicant for not demanding more from the said gentleman, and would advise her to file summons for maintenance against the father of Jaaziah.
13. The Respondent further contradicted the Applicant's story by stating that since the marriage the parties never lived together or maintained a household together. Whenever he visited Guyana, he would remain in Georgetown, where the Applicant would visit him with only the minor Anaiah and whenever the Respondent visited the Applicant at her parents home in Anns Grove, he would only remain there for about half an hour to an hour and leave. He argued that there was no real bonding between himself and the minor Jaaziah.
14. The Respondent agreed that he did send barrels and money to the Applicant, but that was before he began to experience financial difficulties. Therefore there was never a case of neglect on his part. He

also never engaged in any decision making regarding the minor and even though he may have sent a piece or two pieces of clothing for the minor Jaaziah whenever he sent barrels to the Applicant, this gesture was only because he was a giving person, and had nothing to do with him assuming responsibility for the welfare of the minor.

15. The Respondent categorically denied requesting that the Applicant cease working, or gave any ultimatum between work and marriage. He however acknowledged that upon resigning her job, he did inform the Applicant that it would be alright, since he would send her monies.

16. The Respondent maintained that he is not willing to maintain the minor Jaaziah, and he is incapable of paying the sums sought as maintenance for the Applicant and the minor Anaiah, as a result of the economic decline caused by the Covid Pandemic, his wages were reduced, and his monthly expenses amounts to \$21,763.22 USD/352,644 GYD.

17. The Respondent therefore states that he is only able to maintain the minor Anaiah in the sum of \$6,000.00 G\$ per week, and is incapable of paying maintenance for the Applicant, and not willing to maintain the minor Jaaziah.

## **THE LAW**

Section 14 (1) of the Matrimonial Causes Act Chapter 45:02 provides that:

“ the court if it thinks fit, on any decree for dissolution or nullity of marriage, may order that the husband shall to the satisfaction of the Court,

secure to the wife that gross sum of money or that annual; sum of money for a term not exceeding her life which, having regard to her fortune (if any) to the ability of the husband, and to the conduct of the parties, it deems reasonable, and for that purpose may refer the matter to the registrar to settle and approve of a proper deed or instrument to be executed by all necessary parties, and the Court, if it thinks fit may suspend pronouncement of its decree until that deed has been duly executed.”

(2) In that case the Court, if it thinks fit, may make an order On the husband for payment to the wife, during their joint lives of any monthly or weekly sum for her maintenance and support the Court thinks reasonable, and that order may be made either in addition to or instead of an order under the preceding section...”

Also in the case **J. V. J. 1955 ALL E.R. ,P 85**, In addressing the issue of maintenance to be paid by the husband to his spouse, the Court held that “ in determining what sum was reasonable for the husband to pay to the wife,.....’ the Court must take into account the three factors, that is; the fortune, if any, of the wife, the ability of her husband, and the conduct of the parties.

The Case of **Chichester -v- Chichester (1936) 1 All E.R. 271**, was also examined and applied.

Also in the Case of Marryshow -v- Marryshow (1963) 6 W.I.R., 141, the Trinidad Court of Appeal, in a claim for maintenance, posited that the jurisdiction of the High Court in relation to matrimonial causes and matters, is the jurisdiction which has been vested in and was exercisable by the High Court of Justices in England, which mirrors the Laws of Guyana Chapter 45:02) as it relates to Maintenance, as regards the jurisdiction to secure a gross or annual sum to a wife, or to direct the making of periodic payments to her.

The Court held that “ the Act obliges a judge, when exercising his discretion, to have regard to the wife’s fortune (if any), the ability of her husband and the conduct of the parties.

In addressing the matter at Bar, the Court noted that with respect to the fortune of the Spouse ( if any) the Applicant appeared quite honest in her evidence, concerning her employment, and the reason for her leaving, upon the request and demands of the Respondent.

Though the Respondent denied giving the Applicant an ultimatum between her job and the marriage, he however agreed that he did inform the Respondent that her being at home may be in the best interest of the minor Anaiah.

The Applicant stated, and it was not disputed, that her current income is the sum of \$55,000.00 ( fifty five thousand nine hundred dollars). Though she resided with her parents, she was the caregiver and responsible for the



maintenance and upkeep of the two minor children, and also contributed to the utilities in the home in which she resided.

It was also not disputed that the minor Anaiah suffers from Sickle Cell illness, and usually receives extra medical attention and care.

The Respondent confirmed that he did transmit the weekly sum of \$10,000.00 to the Applicant, together with barrels or boxes of clothing and other items.

The Respondent's story regarding the Minor Jaaziah however was quite incredible, and unacceptable to this Court, since the child was a 2 year old infant when the parties began their relationship, and though the Respondent was emphatic that he shared no bond whatsoever with the child, the social media exhibits submitted to the Court by the Applicant, established and confirmed that the Respondent's communicating with the Applicant regarding the minor was nothing but loving, if not fatherly.

He failed to contradict the Applicant's story in any material way, or to explain the whereabouts of the minor, whenever he visited Guyana and was in the company of the Applicant and the minor Anaiah. Neither did he deny or address the social media exhibits submitted to this Court.

The Custody, Guardianship and Maintenance Act N0. 5 of 2011, Laws of Guyana, at Part VI (Maintenance) Section 47 (1) provides as follows:-

“ a person has an obligation to the extent of the persons capabilities to maintain:-

- (a) The person's own child.
- (b) Each child of the person's spouse, where such child-
  - (i) Was born prior to the marriage; and
  - (ii) Resides with them as a member of the family
- (c) A child who is treated as a child of the family.

Section 49 (1) of the said Act, states that : Upon an application made by or on behalf of a child, the court may:

- (a) Make an order, including an interim order, and may impose terms, conditions or restrictions in connection with the order or interim order as the Court thinks fit and Just.
- (b) Make an order requiring the person liable to maintain the child-
  - (i) To make to the applicant for the benefit of the child; or
  - (ii) To make to the child

Such lump sum or periodical payment, for such terms, as may be specified in the order.

### **The Respondent's Ability to pay maintenance**

In his contention regarding his ability to pay maintenance, the Respondent failed to satisfy the Court that his income had changed drastically in a diminishing manner.

He argued that, as a result of the Covid pandemic, since the year 2022, as a Driver, he received a lesser income, that is \$200.00 USD per week.. He however

confirmed that he worked flexible hours. However, he submitted his monthly expenses which incredibly showed expenditure in the sum of USD\$21, 763.22.

Though the Respondent denied emphatically the Applicant's contentions that he worked for G\$28,000.00 per day or \$USD 140.00 per day. He however gave no explanation regarding the stark contrast between the stated income of USD 800.00 per month and the expenditure of USD 21,763.22. per month by the Respondent.

### **The Parties Conduct**

Neither Party assisted the Court with respect to the Conduct of each other, which may have resulted in the breakdown in the relationship and the marriage.

Though the Respondent/Petitioner alleged that the Applicant/Respondent was abusive and called him derogatory names. He nonetheless acknowledged that the arguments between the parties arosed as a result of "Petty" issues. There was no specific incident pointing to the gross conduct or negligence of the Respondent or by the Applicant.

Consequently, this court finds as follows:-

- (a) That the minor Jaaziah Washington was treated and regarded by the Respondent as child of the family, and therefore entitled to maintenance by the Respondent.
- (b) That the Applicant is entitled to maintenance from the Respondent for herself and the minor Anaiah Inniss
- (c) That the marriage between the parties have broken down irretrievably.

In view of the foregoing, the Court hereby orders that the Respondent Adrian Inniss do pay to the Applicant the sum of \$40,000.00 (Guyana) dollars per month for the maintenance of the minors Jaaziah Washington and Anaiiah Inniss, with effect from the 1<sup>st</sup> day of September, 2022.

It is further Ordered that the Respondent do pay to the Applicant the sum of \$20,000.00 ( twenty thousand dollars) per month, from the 1<sup>st</sup> of September, 2022, until she either remarries or sooner dies.

There being no Answer or Cross Petition filed by or on behalf of the Respondent, the Court hereby Grants a Decree Nisi on the Grounds of Malicious Desertion.

No order as to Costs.

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**Hon Sandra Kurtzious  
Puisne Judge.**