

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 3330 OF 2003

BETWEEN

KIMO IFETAYO

Applicant

AND

LYNHURST DE FOUR

Respondent

**BEFORE THE HONOURABLE MADAM JUSTICE A. TIWARY-REDDY**

*Appearances:*

Mrs. L. Seebaran-Suite for the Applicant

Mr. Gilbert Peterson S.C. and Ms. Gretel Baird for the Respondent

**REASONS FOR DECISION**

By Originating Summons filed on 28.11.03 the Applicant sought, inter alia, periodical and lump sum payments for the child Ikechukwu Ifetayo born 28.10.99 (the child). On 25.3.04 the Respondent agreed as an interim order to pay to the Applicant the monthly sum of \$2,500.00 for the maintenance of the child. Ms. Baird submitted that Mrs. Suite had accepted this sum as being reasonable for the child's maintenance. Mrs. Suite vehemently denied this. I did not accept that Mrs. Suite had agreed that this sum was reasonable.

The parties had lived together from 1988 to 2003 in a cohabitational relationship and there is one child of this relationship. The application for child maintenance was brought under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 (the Family Law Act). The

Applicant had also sought property adjustment orders and periodical and lump sum payments in respect of herself. Happily the parties were able to resolve these matters by consent. On 15.6.05 a consent order was entered wherein the Respondent agreed, inter alia, to pay to the Applicant a lump sum of two million dollars in settlement of her claims to property adjustment/lump sum arising out of the breakdown of the parties' co-habitational relationship.

Both parties had substantial assets. The Applicant would have received a lump sum of \$2 million from the Respondent and had \$600,000.00 in the Unit Trust of Trinidad and Tobago but she needed to house herself and her child. She was a business woman. While the parties co-habited they operated two successful businesses. Since the break-up her income fluctuated.

The Respondent owed three items of real estate, namely:

- a) 137 Sandyways valued \$3.6 million
- b) 4 Parcels of land at Fairways valued \$4 million
- c) Property at Andalucia valued \$2.6 million

The three properties were together valued \$10.2 million. However Ms. Baird submitted that the equity in the real property is valued \$7 million. The Applicant did not challenge this. The Respondent also had \$2.3 million in liquid cash and \$1.3 million placed in CLICO making a total of \$3.6 million. He also owned both businesses U-Too and TipToe but did not provide any valuations of same. Neither did he provide any evidence of his income and expenses.

The Applicant deposed that the household expenses for the child and herself were \$11,145.00. She sought one third of this sum for the child, that is \$3,715.00. The Applicant expected to obtain housing with a monthly mortgage payment of \$10,000.00, one third of which would be attributed to shelter for the child. Having regard to the standard of living enjoyed by the

parties it was expected that the child would continue to enjoy vacations abroad. Further, the direct expenses of the child amounted to \$2,325.00.

The additional monthly expenses for the child were:

1.	Increase in school fees $712.50 - 450.00$	\$262.50
2.	Chess lessons $380 \times 3 \div 12$	\$ 95.00
3.	Babysitting	\$2,000.00
4.	Overnight babysitting costs	\$300.00
5.	Summer camp $2000 \div 12$	\$166.00
6.	Cost of housing $10,000 \div 3$	\$3333.00
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		\$6,156.50

Thus, according to the Applicant the total monthly cost of maintaining the child was \$12,196.50 made up as follows:

a)	Household Expenses	\$3,715.00
b)	Direct Expenses	\$2,325.00
c)	Additional Expenses	\$6,156.50
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		\$12,196.50
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Mrs. Suite submitted that the Applicant was seeking a global monthly sum because she had had difficulty in the past in having the Respondent contribute

to the child's expenses. Accordingly the Applicant was seeking a monthly sum of \$10,000.00 to be paid by standing order. Mrs. Suite also noted that at paragraph 32 of the Respondent's affidavit he had stated:

"I've always provided for Ike's needs and I am committed to doing so in the future."

However the Respondent did not honour this promise regarding the child.

Ms. Baird did not seriously challenge the foregoing expenses save for that relating to housing, foreign vacations and baby-sitting. She submitted that there was no need for an over-night baby-sitter as the Respondent was prepared to look after the child upon 24 hours' notice. However she insisted that section 19 of the Family Law Act made no reference to standard of living.

The direct expenses of \$2,325.00 which Ms. Baird did not accept included school fees of \$1,800.00 per term or \$450.00 per month. The Respondent insisted that he did not consent to the child attending St. Andrews School and said that he had proposed other schools. Having reviewed the affidavits I find that there is no evidence that he seriously followed up with details of the cost and benefits of attending any of the other schools. I do not believe to date there has been any serious effort by the Respondent to have the child attend any other school. Ms Baird had also asked the court to consider the Respondent's future obligations re university education. However no such application was before me and I only considered maintenance until completion of secondary education.

Ms. Baird submitted that her final instruction was that the Respondent was only prepared to pay \$2,500.00 per month for the child's support. Further it was not reasonable for the Applicant to ask for \$10,000.00 out of a total sum of \$12,000.00.

In making an award of maintenance a court must consider the following factors set out in section 19 of the Family Law Act:

- (a) the income, earning capacity, property and other financial resources which each parent of the minor has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each parent of the minor has or is likely or have in the foreseeable future;
- (c) the financial needs of the minor;
- (d) the income, earning capacity (if any), property and other financial resources of the minor;
- (e) any physical or mental disability of the minor.

Having reviewed the affidavits and considered the submissions of both attorneys as well as the factors set out in section 19 above, I find that the following is a list of the expenses relating to the maintenance of the child.

Direct expenses	\$2,325.00
Increased school fees	262.50
Chess	95.00
Summer Camp	166.00
Baby Sitting	\$2,000.00
Extra Babysitting	150.00
Food	\$1,200.00
Housing	\$2,500.00
Utilities/Transport	600.00

	Vacation	750.00
		_____
Total		\$10,048.00
		_____

The Applicant was seeking \$10,000 per month. The Respondent offered \$2,500.00 although Ms. Baird agreed to several of the above items. In all the circumstances, I felt that an award of \$7,500.00 would meet the justice of the case.

I therefore made the following orders:

1. The Respondent do pay to the Applicant the monthly sum of \$7,500.00 for the maintenance of the child Ikechukwu Ifetayo born 28.10.99 with effect from 1.7.05 and continuing on the 1<sup>st</sup> day of each succeeding month until the said child attains 18 or completes secondary education.
2. The said moneys are to be deposited into the Applicant's bank account #931 711 5997 at West Mall Branch of RBTT .
3. The Respondent is directed to give instructions to a bank of his choice for the payment of the monies at (1) above by standing order within 30 days thereof.
4. No order as to costs.

Dated this 11<sup>th</sup> day of April, 2006

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Amrika Tiwary-Reddy  
Judge.