

**IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD IN TEMA ON TUESDAY THE 18TH DAY OF JULY 2023 BEFORE
HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)**

Time: 10:25 am

SUIT NO: E5/11/2020

EBENEZER ARTHUR ... PETITIONER

VRS

DIANA ARTHUR ... RESPONDENT

PARTIES:

Petitioner -Present

Respondent- Present.

LEGAL REPRESENTATION

Mr. Paa Joy Akuamoah Boateng for the Petitioner -Present.

Ms. Afua Adobea Adow holding brief of Ms. Dora Bawaa Asamoah for the
Respondent – Present.

JUDGMENT

Petitioner herein, Ebenezer Arthur, per an amended Petition on filed on the 23rd of November, 2020 prays for the following reliefs:

- i) That the marriage between the parties be dissolved.*
- ii) Equitable distribution of all the marital properties particularly the two (2) five-bedroomed buildings located at Celebrity Hills, Tema and the adjoining land.*
- iii) Settlement of the Hyundai Elantra on the Respondent.*
- iv) Financial compensation of Twenty Thousand Ghana Cedis (GH¢20,000.00) to the Respondent.*
- v) Custody of the Children to the Respondent with reasonable access to the Petitioner including weekends from Friday evenings to Sunday evenings as well as Holidays.*
- vi) Monthly allowance of One Thousand Five Hundred Ghana Cedis (GH¢1,500.00) to the Respondent for the daily upkeep of the children.*
- vii) Any other reliefs that the Court deems fit under the circumstance.*

In an Amended Answer to Petition filed on the 22nd of January, 2021, Respondent Diana Arthur cross-petitioned as follows:

- a) An order that the marriage between the parties be dissolved.*
- b) An order that custody of the issues of the marriage be granted to the Respondent with access to the Petitioner to visit them every Saturday between the hours of 6:00 am and 6:00 pm.*
- c) An order that the Petitioner maintain the issues of the marriage with Five Thousand Ghana Cedis (GH¢5,000.00) every month and in addition pay their school fees, medical bills and recreational needs as and when they fall due.*
- d) An order that the Respondent be settled with the Matrimonial home where the issues of the marriage are now most comfortable with. Fifty percent (50%)*

share in the landed properties situate at TDC and Prampram and the Hyundai Elantra Respondent already uses as property settlement.

- e) An order that the Petitioner pays to the Respondent Two Hundred Thousand Ghana Cedis (GH¢200,000.00) as financial settlement.*
- f) Any other order that the Honourable Court deems fit.*

Petitioner's case

Petitioner Ebenezer Arthur describes himself as the Head Pastor of Agape Restoration Ministries, a New Testament Charismatic Church at Community 19, Tema.

The parties got married on 21st August, 2010 at the Maranatha Ministries at Nungua and there are three (3) issues of the marriage.

Petitioner contends that from the very beginning of the marriages, there have been irreconcilable differences which all efforts to resolve have proved futile.

It is Petitioner's assertion that Respondent's consistent unreasonable behavior has subjected Petitioner to much anxiety, distress and embarrassment. Petitioner describes Respondent as very disrespectful towards him and at the least provocation she uses very abusive and condescending statement against him, amidst calling him "male prostitute", "house boy", "fake Pastor" amongst others and sometimes in front of the Petitioner's congregation and the children of the marriage.

It is Petitioner's contention that Respondent consistently extorts money from the church through its finance ministry amidst insults and warnings. Petitioner further contends that sometime in 2016, Respondent removed her wedding ring and demanded that Petitioner uses it to marry another woman.

It is Petitioner's case that for a long time the parties have not had sexual intercourse.

Petitioner contends that parties acquired two (2) plots of land at Celebrity Hills on which their matrimonial home which is a duplex of two (5) bedroom houses are built on one of the plots leaving almost one plot of land behind the duplex. Petitioner contends that Respondent always insist that the land belongs to her so he should remove his “stupid building” off her land.

It is Petitioner’s case that he purchased a Hyundai Elantra vehicle and allowed Respondent to use in order to facilitate her movement but Respondent sold same without his knowledge and purchased another Elantra for which Petitioner has bought a new engine to replace its weak one.

Respondent’s Case

Respondent, Diana Arthur in her Witness Statement and the Amended Answer to Petition denied most of the averment of the Petitioner.

She claims Petitioner has no respect for her family and has amorous relationships with several of the female members of the congregation. Respondent contends that Petitioner does not take care of the family and that the parties have not had sexual relationship for years. It is Respondent’s case that the land which houses the church belongs to her extended family and this issue is even a pending issue in Court.

Respondent is alleging that Petitioner fraudulently registered the said family land in the name of the church. It is her (Respondent’s) case that the two (2) plots of land which the duplex is situate belongs to her father who gave one (1) plot to the couple and the other to Respondent’s siblings.

She is therefore contending that the remaining plot is therefore not the property of the couple but rather her siblings.

During the trial, the Petitioner tended in *Exhibit "A" series* as ownership of the current church house and land. *Exhibit "B"* as the marriage certificate. *Exhibit "C"* is Photography of Respondent's food joint. *Exhibit "D"* is Photography of Respondent and siblings abusing him.

The issues for determination are as follows:

- a) Whether the ordinance marriage celebrated between the parties had broken down beyond reconciliation.*
- b) Whether any of the properties referred to in the proceedings is a matrimonial property and if so, how is to be distributed.*

In respect of these two (2) issues, parties tendered their Witness Statements and relied on same as their evidence-in-chief. Petitioner tendered *Exhibit A series (Exhibit A-A11)*. These are the church's ownership of its current church house and land.

Exhibit B is the marriage certificates of parties.

Exhibit C is Photograph of Respondent's food joint and Exhibit D is a Photograph of the alleged abuses against Petitioner by Respondent and her siblings.

Exhibit E series are also photographs of an alleged assault of Petitioner.

Exhibit F series are photographs of alleged "juju" being planted on the grounds of the church.

Exhibit G series are electricity and water bills in the names of both parties in respect of the complex house.

On her part Respondent tendered *Exhibit 1 series* which are the copies of the church document showing that both parties are Directors of the said church.

Exhibit 2 tendered by Respondent is showing Petitioner's empty wardrobe.

Exhibit 3 series are videos of Petitioner taken by Respondent.

Exhibit 4 is a copy of a receipt for the purchase of TDC serviced plot and Exhibit 5 series are copies of photographs of land purported to be situate at Prampram.

In addressing the issue of whether or not the marriage between parties herein has broken down beyond reconciliation, I will refer to **Section 2 (1) of the Matrimonial Causes Act (Act 367)** which provides:

2)Proof of breakdown of marriage:

1) For the purpose of showing that the marriage has broken down beyond reconciliation, the Petitioner shall satisfy the Court of one or more of the following facts:

a) That the Respondent has committed adultery and that by reason of such adultery, the Petitioner finds it intolerable to live with the Respondent or

b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent or

c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition or

d) That the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the

presentation of the Petition and the Respondent consents to the grant of a decree of divorce provided that such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal or

e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition or

f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

For a petition for divorce to be granted, the Petitioner is to satisfy the Court with proof of one or more of the conditions in the afore-mentioned provision.

In the instant Petition, the undisputed fact is that either party are alleging unreasonable behaviour on the part of the other.

Parties per their evidence proved to Court that they have not had any sexual intercourse for a period exceeding two (2) years and that both parties contend that their marriage has broken down beyond reconciliation, are both seeking dissolution of the marriage.

Again, from the evidence adduced, attempts at resolving the differences between parties have proved futile.

For these reasons, I do not have any iota of doubt that indeed the marriage between parties herein: Ebenezer Arthur- Petitioner and Diana Arthur- Respondent which was celebrated on the 21st of August, 2010 at the Maranatha Ministries at Nungua has broken down beyond reconciliation and same is dissolved.

In respect of the ancillary reliefs, Petitioner asserts that the properties in contention here are a duplex of (2) five-bedroom houses (in each unit) situate on the portion of the two plots of lands.

Respondent maintained that though she and Petitioner own these properties, the land on which the duplex is built belonged to her father.

She however did not tender any document to substantiate this. It is instructive to note that *Exhibit G series* which are utilities in respect of the property are in the joint names of the couple.

I will refer to **Aboagye vrs. Asian Civil Appeal No. 14/10/2016 dated 24th October, 2018 where Pwamang JSC** opined thus:

“the settled principle of the law of evidence is that where oral evidence conflicts with documentary evidence which is authentic, then the documentary evidence ought to be preferred over and about the oral evidence”.

Thus, it is my considered opinion that the duplex five-bedrooms (unit) belongs to both parties.

Having said that, authorities abound in support of properties being declared as jointly owned and ought to be distributed equitably.

I will also refer to **Article 22(2) and 3(a) & (b) of the 1992 Constitution which provides as follows:**

2) Parliament shall as soon as practicable with the coming into force of this constitution enact legislation regulating the property rights of spouses.

3) With a view to achieving the full realization of the rights referred to clause (2) of this article.

a) Spouses shall have equal access to property acquired during marriage.

b) Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon the dissolution of the marriage”.

In respect of the other reliefs sought; there is no contention as to who should be granted custody.

Both parties have agreed that Respondent should have custody of the children of the marriage with reasonable access given to the Petitioner.

Respondent is asking for Maintenance order of Five Thousand Ghana Cedis (GH¢5,000.00) which I will grant with some modification considering the fact that the Petitioner is to be responsible for the children’s school fees as well as their medical expenses in accordance with the provisions governing the welfare of children.

An order for the Respondent to be settled with the Hyundai Electra vehicle which both parties both agree.

Respondent in her cross petition is praying for an Order for 50% share of landed property situate at TDC and Prampram but was unable to lead cogent evidence in respect of those. I will therefore not grant this relief in the cross petition.

Respondent is also praying for Financial Settlement of Twenty Thousand Ghana Cedis (GH¢20,000.00) which she has not been able to prove the means of the Petitioner. I will however grant this relief with some modification.

Thus having addressed these ancillary reliefs being fortified with the provisions and the principles in the authorities cited above, I will go ahead and make orders in respect of the reliefs sought by parties which evidence have been adduced in this Court.

After analyzing all the evidence adduced, I am of the considered opinion that the marriage between parties herein, Ebenezer Arthur Petitioner and Diana Arthur, Respondent which was celebrated at the Maranatha Ministries at Nungua on 21st of August 2010 has broken down beyond reconciliation and I hereby declare and decree the said marriage dissolved.

I also make the following orders in respect of the ancillary reliefs as follows:

(a) On the distribution of the marital properties which is the two 5 bedroom building located at the Celebrity Hills, Tema and its adjoining bare land, I make an order that the one with the library is settled on the Respondent and the other one on the Petitioner.

b) The Hyundai Elantra vehicle is settled on the Respondent

(c) Custody of the Children of the marriage is granted to the Respondent with reasonable access to the Petitioner including weekends as well as holidays.

(d) Monthly maintenance of Three Thousand Ghana Cedis (GH¢3,000.00) to the Respondent for the upkeep of the children.

(e) Petitioner is to pay the school fees of the children and bear their medical cost as and when the need arises.

(f) Petitioner is to settle the Respondent with Twenty Thousand Ghana Cedis (GH¢20,000.00) by way of financial settlement to be paid by 31st of December 2023.

There is no order as to cost.

R.A.A.