



**REPUBLIC OF KENYA**

**IN THE KADHIS COURT AT HOLA**

**DIVORCE CASE NO. 3 OF 2018**

**LGN.....APPLICANT**

**VERSUS**

**M B.....RESPONDENT**

**JUDGEMENT**

This divorce matter was filed on 5<sup>th</sup> February, 2018 the applicant prayed for:

- 1- Dissolution of marriage.
- 2- Custody of the child.
- 3- Past maintenance.

On hearing, the plaintiff claims that, her life with the respondent has never been a bed of roses as he has been very cruel, abusive, assaulting and threatening her, this caused her to leave her matrimonial home to her parents for over six months. The respondent failed to provide maintenance and communicate with the applicant. The applicant's father has been providing maintenance for his daughter for all that time. The marriage is blessed with one daughter who is now 21/2 years of age. The respondent took the daughter from the applicant by force without mutual agreement between them. To support the Issue the applicant availed 2 witnesses namely Bati Tuka and Ismail.

They testified that, as elders they tried to settle the dispute but they failed.

Upon cross-examination by the court the applicant said she can't stay with the applicant as couples in harmony.

On the other hand the respondent denied all applicants allegation saying that there was a woman behind this problem who insight her to break her marriage. He also claimed that she associates very much with his friends in his absence which is against his will. He availed one witness namely Wario who in his testifying said that the respondent disserted her matrimonial home, he tried by the help of elders to solve the dispute but their effort bore no fruit.

The respondent asked the court to convince the applicant to come back to her matrimonial home.

I have noted the issue clearly and I found that the respondent allowed his friends in his house at his absence and also permitted his wife to prepare food for them.

The court has directed the parties to go for ADR within 10 days but the chance did not bear fruit.

Upon hearing both parties herein and the witness availed in court by the both parties, the matters to be determined are:

- a) Is the honorable court entitled to dissolve the marriage as per plaintiff's prayers?
- b) Custody of the daughter.
- (c) Is the applicant entitled to previous maintenance ?

Returning to issue (a) whether this court can dissolve the marriage as per plaintiff's prayers? It is clear to this court that from the view of the evidence adduced by the applicant it is evident that this marriage is not worthily according to the Holy Quran and the Hadith of prophet

