

IN EXERCISE of the powers conferred by section 33 (1) of the Children Act, 2020
the Chief Justice makes the following Rules:

Parental Responsibilities (Practice and Procedure) Rules, 2020

Arrangement of Rules

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PART I - PRELIMINARY	
Citation and Commencement	1. These Rules may be cited as the Parental Responsibilities (Practice and Procedure) Rules, 2020 and shall come into force on such date as the Chief Justice may, by notice in the Gazette, appoint.
Interpretation	2. In these Rules, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise requires – “Act” means the Children Act, 2020; “child “ has the meaning assigned to it under Article 260 of the Constitution;

	<p>“Court” has the meaning assigned to it under section 2 of the Act;</p> <p>“Director” has the meaning assigned to it under section 2 of the Act;</p> <p>“parental responsibility” has the meaning assigned to it under section 29(1) of the Act;</p> <p>“Summons” means Originating Summons by which an application is made under these Rules.</p>
Overriding Objectives	<p>3. (1) The overriding objectives of these Rules is to facilitate the just, expeditious, proportionate and affordable determination of applications relating to parental responsibilities under the Act or any other written law, and without undue regard to technicalities of procedure.</p> <p>(2) The Court shall, in exercise of its powers under the Act or the interpretation of any of its provisions, give effect to the spirit and principles of the Constitution, and the overriding objectives specified in sub-rule (1).</p>
	PART II – APPLICATION FOR ORDERS RELATING TO PARENTAL RESPONSIBILITY
Who May Apply	<p>4. An application for an order of the Court relating to parental responsibility pursuant to Part III of the Act may be made by or against any of the following persons -</p>

	<p>(a) a parent or guardian of the child to whom the order relates;</p> <p>(b) a foster parent;</p> <p>(c) the Director;</p> <p>(d) a child or foster child, if they are above the age of ten years;</p> <p>(e) a relative of the child;</p> <p>(f) a person who has parental responsibility over the child; or</p> <p>(g) a person who is party to a parental responsibility agreement relating to the child.</p>
Form of Application	<p>5. An application for an order under these Rules shall be commenced by Originating Summons in Form No. PR1 set out in the Schedule, accompanied by the following documents:</p> <p>(a) an affidavit in support of the application, setting out the factual circumstances and the grounds on which the application is made;</p> <p>(b) a Notice to Enter Appearance in Form No. PR2 set out in the Schedule;</p> <p>(c) a Parental Responsibility Agreement (if any) entered into in respect of the child to whom the application relates; and</p> <p>(d) where the application is made by the Director, the</p>

	<p>Director's report containing information on –</p> <p>(i) the reasons for which the Director considers the child to be in need of care and protection;</p> <p>(ii) if the child is in foster care, the circumstances leading to the foster care placement, the terms of the foster care placement order, and the date on which the order was made;</p> <p>(iii) the Director's findings on the assessment of the child, conducted not more than three months prior to the date on which the application is made; and</p> <p>(iv) any other matter which the Director considers necessary to support the application.</p>
<p>Service of Summons and other Court Process</p>	<p>6. (1) The Summons and other court process shall, unless otherwise directed by the Court, be served in accordance with Order 5 of the Civil Procedure Rules.</p> <p>(2) Upon service of the Summons in accordance with sub-rule (1), the persons served shall enter an appearance in Form No. PR3 within ten days of service.</p>
<p>Procedure on Extension of Parental Responsibility</p>	<p>7. (1) If not made by the parent or the person who has parental responsibility over the child to whom the application relates, an application for an order for extension of parental responsibility pursuant to section 32(1) of the Act shall –</p> <p>(a) be supported by an affidavit deposing to the reasons for the order sought; and</p>

	<p>(b) be served on the parent or other person for the time being having parental responsibility over the child.</p> <p>(2) Where the Court of its own motion, and for good cause, considers it appropriate to make an order extending parental responsibility over a child beyond the child's eighteenth birthday, the Court shall cause a notice to be served on the parent or other person who for the time being has parental responsibility over the child, whereupon the Court shall hear and consider the views of the parent or person so notified before making its order in that regard.</p> <p>(3) Where an application under this rule is made by the child, the child shall be referred to in such manner as the Court directs.</p> <p>(4) Where an application made under sub-rule (3) is contested by the parent or other person for the time being having parental responsibility over the child, the child shall be entitled to legal representation in accordance with the Legal Aid Act.</p>
<p>Appointment of Guardian Ad Litem in Certain Cases</p>	<p>8. Where an application is made pursuant to section 31(3) of the Act relating to a Parental Responsibility Agreement before the child to whom the agreement relates attains the age of eighteen years –</p> <p>(a) the Court shall appoint a guardian ad litem for the purposes of the proceedings in question, and the guardian ad litem shall be served with the application; and</p> <p>(b) the guardian ad litem shall be such person as, in the opinion of the Court, is capable of protecting the interests of the child</p>

	in the proceedings.
Reply to Summons	<p>9. A person who enters an appearance pursuant to rule 6(2) may, within fourteen days of appearance –</p> <p>(a) file and serve on the applicant, and on all persons named as party to the proceeding, their response to the Summons setting out the grounds on which they support or oppose the application; or</p> <p>(b) file and serve on the applicant, and on all persons named as party to the proceeding, an affidavit in reply to the Summons containing a statement of the facts on which they support or oppose the application.</p>
Amendment of Pleadings	10. Order 8 Rule 4 of the Civil Procedure Rules shall apply to amendment of the originating process under these Rules.
	PART III – HEARING AND ORDERS
Attendance at Hearing	<p>11. (1) On the date fixed for hearing of the application, a person on whom notice is required to be served under rule 6(1) may appear before the Court to show cause why the application should not be granted.</p> <p>(2) Unless otherwise directed by an order of the Court, the child to whom the application relates shall attend at the hearing of the application.</p>
Consequences of Non-Attendance	12. If a person served does not attend at the hearing, the Court may proceed to hear and determine the application, and make such orders, and give such directions, as the Court may think

	just, their absence notwithstanding.
Procedure at Hearing	<p>13. (1) Where the child to whom the application relates is above the age of ten years, and is able and willing to participate in the proceeding, the Court shall –</p> <p>(a) provide the child an equal and inclusive opportunity to participate during the proceedings;</p> <p>(b) inform the child of their rights and opportunity to participate in an age-appropriate manner;</p> <p>(c) explain to the child the process and procedure of the Court in simple language and terms in order for the child to understand and actively participate in the process;</p> <p>(d) deal with the child in a transparent, honest and respectful manner;</p> <p>(e) ensure an informal, child-friendly, enabling and secure environment;</p> <p>(f) take appropriate measures to promote child participation in the proceedings, including the appointment, with the consent of the child, of an intermediary, interpreter or other person to ensure the comfort of the child; and</p> <p>(g) allocate sufficient time for the hearing, taking into consideration that the child needs to rest when tired as well as time to eat and refresh.</p>

(2) The Court may make orders or give directions on how the child is to give evidence, including –

(a) that a person be excluded from the courtroom while the child gives evidence;

(b) that the child have a person nearby throughout the child's evidence to support the child; and

(c) that the child's evidence be given with the use of technology, including an audio link or audiovisual link.

(3) A party to a proceeding under these Rules may make an interlocutory application orally for any order or relief the Court may make or grant on a written application.

(4) Where a party to the proceedings makes an oral application under sub-rule (3), the Court may –

(a) allow the application to proceed orally, in a way and on such conditions as the Court considers appropriate; or

(b) direct the party to make the application in writing.

(5) The Court may, at any time during the proceedings, request an oral report from –

(a) the Director;

	<p>(b) a parent or guardian of the child; or</p> <p>(c) any other person involved in the proceedings.</p> <p>(6) Attendance at all hearings shall be limited to the parties, counsel, witnesses while testifying, and other persons whom the Court considers to have a legitimate interest in the proceedings.</p> <p>(7) Other than court orders, all records of proceedings relating to parental responsibility are confidential, and shall not be disclosed to persons who are not party to the proceeding, unless the Court, by order in writing, permits the examination by other persons of such records.</p>
<p>Orders which the Court May Make</p>	<p>14. (1) Upon hearing the application, the Court may –</p> <p>(a) allow the application and make such orders relating to the parental responsibilities over a child, as the Court thinks just, including –</p> <p>(i) any one or more of the orders specified in section 137 of the Act;</p> <p>(ii) an order vesting the legal custody of a child in the applicant or applicants pursuant to section 107(1) of the Act;</p> <p>(iii) an order for the maintenance of a child by any person party to the proceedings pursuant to section 114 of the Act, on such</p>

	<p>terms as the Court may direct;</p> <p>(iv) an order relating to the management, application or preservation of the property of a child;</p> <p>(v) an interim order pending final determination of an application made under these Rules;</p> <p>(vi) an order varying, revoking or setting aside an order specified in this paragraph;</p> <p>(vii) an order as to costs in the cause; or</p> <p>(viii) any other order which the Court considers just; or</p> <p>(b) dismiss the application and make such orders as the Court thinks just.</p> <p>(2) Where the Court dismisses the application and declines to grant the orders sought in the Summons, the Court may make such other orders in respect of parental responsibilities over the child as it thinks fit.</p>
<p>Procedure on Transmission of Parental Responsibility</p>	<p>15. (1) Where the Court makes an order under section 31(3) (b) and (d) of the Act relating to transmission of parental responsibility, the order shall be served on any known relative of the child within ten days from the date on which the order is made.</p> <p>(2) Upon service of the order referred to In sub-rule (1), the</p>

	<p>person served may, within ten days of service, apply to the Court to set aside or vary the order.</p> <p>(3) Where an application under section 31(4) of the Act is made by a surviving mother or father of the child, it shall be served on the testamentary guardian (if any) and, if made by the relatives of the deceased mother or father of the child, on the surviving mother or father of the child, as the case may be.</p>
<p>Setting Aside, Amendment or Variation of Orders</p>	<p>16. (1) A person may, at any time, apply to the Court to set aside, amend or vary an order made under these Rules.</p> <p>(2) An application under this Rules shall be by Notice of Motion supported by affidavit setting out the grounds on which the application is made.</p> <p>(3) The applicant shall serve the application made under this rule on –</p> <p>(a) the Director, where the Director is named as party to the proceedings;</p> <p>(b) the parent or guardian of the child;</p> <p>(c) the child, where the child is above the age of ten years; and</p> <p>(d) any other person who, in the opinion of the Court, should be served.</p> <p>(4) Where an order is set aside, amended or varied, the</p>

	<p>applicant in whose favour the order is given shall serve a copy of the order on all persons required to be served pursuant to sub-rule (3).</p> <p>(5) Where an order is set aside, amended or varied on application under these Rules, the Court may make such orders in respect of parental responsibilities over the child as it thinks fit.</p>
	PART IV – MISCELLANEOUS PROVISIONS
Time	17. Order 50 of the Civil Procedure Rules shall apply to time prescribed for the doing of any act or taking any proceedings under these Rules.
Forms	<p>18. (1) The forms to be used in proceedings under these Rules are those set out in the Schedule to these Rules, with such modifications as are necessary to meet the circumstances of each case.</p> <p>(2) Failure to strictly comply with the forms prescribed under these Rules shall not of itself prejudice or invalidate the proceedings.</p> <p>(3). Where no specific form is prescribed by these Rules for any particular purpose, the parties may devise an appropriate form using, as a guide –</p> <p>(a) the forms prescribed by these Rules; or</p> <p>(b) the forms prescribed under the Civil Procedure Rules.</p>

Appeal or Review	<p>19. (1) An appeal against an order relating to parental responsibility over the child made under these Rules shall lie to the High Court.</p> <p>(2) The notice of appeal shall be served only on the persons who entered an appearance in the proceedings under these Rules.</p> <p>(3) Without prejudice to the generality of sub-rule (1), a party aggrieved by an order of the Court made under these Rules may apply for review in accordance with Order 45 of the Civil Procedure Rules.</p>
Execution and Enforcement of Orders	<p>20. A judgment or order given by the Court under these Rules shall be executed and enforced in the same manner as provided under Order 22 of the Civil Procedure Rules.</p>
Costs	<p>21. Notwithstanding anything contained in these Rules or any written law, the Court may make such orders as to costs as it thinks just.</p>
Transitional Provisions	<p>22. In all proceedings pending in court at the time of coming into force of these Rules, the provisions of these Rules shall thereafter apply, but without prejudice to the validity of anything previously done:</p> <p>Provided that –</p> <p>(a) if and so far as it is impracticable in any such proceedings to apply the provisions of these Rules, the practice and procedure heretofore obtaining shall be followed; and</p>

	(b) in any case of difficulty or doubt, the Judge or Registrar (as the case may be) may informally give directions as to the procedure to be adopted.
Repeal	23. (1) The Children (Practice and Procedure Parental Responsibility) Regulations, 2002 are hereby repealed. (2) The General Rules and Regulations, 2002 are hereby repealed.

Rule 5

Form No. PR 1

IN THE MATTER OF

BETWEEN

AND

ORIGINATING SUMMONS

LET of
..... within ten (10) days after service of
this Summons, inclusive of the day of such service upon him/her cause an
appearance to be entered to this Summons, which is issued upon the application
of for ORDERS:

- 1.
- 2.

WHICH APPLICATION is supported by the affidavit of and premised on the grounds provided in the attached affidavit and further grounds to be adduced at the hearing of this application.

Dated at this day 20

Signature

“If any party served does not appear at the time and place above-mentioned, such orders may be made and proceedings taken as the court may think just and expedient.”

Rule 5 (b)

Form No. PR 2

(Heading as in Form 1)

NOTICE OF APPEARANCE

In the Court of Kenya at
.....

To (respondent) of
.....

TAKE NOTICE that you are required, within 10 days after service hereof upon you, inclusive of the day of such service, to enter an appearance either in person or by an advocate at the court registry at, should you think fit so to do, and thereafter to reply to this Originating Summons, and that, in

default of your so doing, the Court will proceed to hear the application and pronounce judgment, your absence notwithstanding.

The Originating Summons are filed and this notice is issued by

Dated at the day of 20.....

.....
Registrar

Rule 6 (2)

Form No. PR 3

(Heading as in Form 1)

MEMORANDUM OF APPEARANCE

ENTER an **APPEARANCE** (in person) for
..... the Respondent herein whose
address for service for the purposes of this case shall be
.....
.....
.....
.....

Dated at this day of 20.....

(Signed)