

IN EXERCISE of the powers conferred by section 184 of the Children Act, 2020 the Chief Justice makes the following Rules:

The Children (Foster Care Placement) Rules, 2020

Arrangement of Rules

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	<b>PART I - PRELIMINARY</b>
Citation and Commencement	1. These Rules may be cited as The Children (Foster Care Placement) 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;  “ Court” has the meaning assigned to it under section 2 of the Act.  “Director” has the meaning assigned to it under section 2 of the Act;  “foster care placement” has the meaning assigned to it under section 2 of the Act;

	<p>“foster parent” has the meaning assigned to it under section 2 of the Act;</p> <p>“home” has the meaning assigned to it under section 2 of the Act;</p> <p>“Summons” means Originating Summons by which an application is made under these Rules;</p>
<p>Overriding Objectives</p>	<p>3. (1) In addition to the overriding objectives of foster care placement set out in section 172 (1) of the Act, the overriding objectives of these Rules is to facilitate the just, expeditious, proportionate and affordable determination of applications relating to foster care placement 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, seek to give effect to the spirit and principles of the Constitution, and the overriding objectives specified in sub-rule (1).</p>
	<p><b>PART II – APPLICATIONS RELATING TO FOSTER CARE PLACEMENT</b></p>
<p>Person by Whom Application May Be Made</p>	<p>4. (1) Where the Director is of the view that circumstances exist to justify extension of foster care placement in respect of a child for a period exceeding three years, the Director may apply to the Court for an order extending the foster care placement for such additional period as the Court may determine.</p> <p>(2) An application under this rule may be made on any of the grounds specified in section 173 (1) (b) of the Act, or on any other ground which the Court may consider reasonable in the circumstances.</p>

	<p>(3) An application under this rule shall be made at any time before the date on which the period of three years during which the child is placed in foster care lapses.</p>
<p>Form of Application</p>	<p>5. An application for an order under these Rules shall be commenced by Originating Summons in Form No. FCR1 set out in the Schedule, accompanied by -</p> <p>(a) an affidavit setting out the factual circumstances and grounds on which the application is made;</p> <p>(b) a Notice to Enter Appearance in Form No. FCR2.</p> <p>(c) the Director’s report containing relevant information on –</p> <p>(i) the circumstances leading to the foster care placement in issue, and the date on which the placement was made;</p> <p>(ii) the date on which such placement was last extended, and the reasons for extension;</p> <p>(iii) the Director’s findings on the assessment of the child, the foster parent and the foster home, conducted not more than three months prior to the date on which the application is made;</p> <p>(iv) any other matter which the Director considers necessary to support the application; and</p>

	<p>(v) a brief statement of the reasons why the Director recommends further extension of foster care placement; and</p> <p>(c) any other document concerning the child which may assist the Court in determining whether to make the order.</p>
Service of Summons and other Court Process	<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 on –</p> <p>(a) the parent or guardian of the child;</p> <p>(b) the foster parent; and</p> <p>(c) the institution(s) involved in the foster care arrangements in respect of the child.</p> <p>(2) Upon service of the Summons in accordance with sub-rule (1), the person served shall enter an appearance in Form No. FCR3 within ten days of service.</p>
Persons Appearing may Reply to Summons	<p>7. 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 Director their response to the Summons setting out the grounds on which they oppose the application; or</p>

	(b) file and serve on the Director an affidavit in reply to the Summons containing a statement of the facts on which they oppose the application.
Amendment of Pleadings	8. Order 8 Rule 4 of the Civil Procedure Rules shall apply to amendment of the originating process under these Rules.
	<b>PART III – HEARING AND ORDERS</b>
Attendance at Hearing	<p>9. (1) On the 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) Without prejudice to the generality of sub-rule (1), a children institution may be represented by an officer of the institution duly authorised in that behalf.</p> <p>(3) 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	10. Where 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>11. (1) Where the child 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 the child's 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 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 safe environment;</p> <p>(f) take measures to promote child participation in the proceedings, including the appointment of an intermediary, an 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> <p>(2) The Court may make orders or give directions on how the child is to give evidence, including –</p> <p>(a) that a person be excluded from the courtroom while the child gives evidence;</p> <p>(b) that the child have a person nearby throughout the child's evidence to support the child; and</p>
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	<p>(c) that the child’s evidence be given with the use of technology, including an audiovisual link or audio link.</p> <p>(3) A party to a proceeding under these Rules may make an oral application for any order or relief the Court may make or grant on a written application.</p> <p>(4) Where a party to the proceedings makes an oral application under sub-rule (3), the Court may –</p> <p>(a) allow the application to proceed orally, in a way and on such conditions as the Court considers appropriate; or</p> <p>(b) direct the party to make the application in writing.</p> <p>(5) The Court may, at any time during the proceedings, request an oral report from –</p> <p>(a) the Director;</p> <p>(b) the foster parent;</p> <p>(c) the parent or guardian of the child; or</p> <p>(d) any other person involved in the proceedings.</p>
Orders which the Court May Make	12. (1) Upon hearing the application, the Court may –

	<p>(a) allow the application and make such orders as the Court thinks just; or</p> <p>(b) at its sole discretion, decline to make any order extending the period for which the child shall remain in foster care where the Court is of the view that -</p> <p>(i) the foster parent is incapable of resuming, and effectively discharging, the responsibility of a parent towards the child; or</p> <p>(ii) it is not in the best interest of the child that an order be made to extend the period of foster care placement.</p> <p>(2) Where the Court declines to make the order 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>Power of Court to Set Aside, Amend or Vary Orders</p>	<p>13. (1) Any person may, at any time before the expiry of the extended period, apply to the Court to set aside, amend or vary an order made under these Rules extending the period during which a child shall remain in foster care.</p> <p>(2) An application under this rule shall be by way of Notice of Motion supported by affidavit setting out the grounds on which the application is made.</p> <p>(3) An application under this rule shall be served by the applicant on –</p> <p>(a) the Director;;</p>

	<p>(b) the parent or guardian of the child;</p> <p>(c) the child, where the child is over the age of ten years;</p> <p>(d) the children institution involved in the foster care placement, if the institution is not the applicant; and</p> <p>(e) any other person who, in the opinion of the Court, should be served.</p> <p>(4) Where the order is set aside, amended or varied, the applicant in whose favour the order is given shall serve a copy of the order on all persons required to be served in accordance with sub-rule (3).</p> <p>(5) Where an order is set aside, amended or varied on application under these Rules, with the effect of terminating or varying the terms of foster care placement, the Court may make such orders in respect of parental responsibilities over the child as it thinks fit.</p>
	<b>PART IV – MISCELLANEOUS PROVISIONS</b>
Time	14. 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	15. (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>(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>16. (1) An appeal against an order extending the period during which a child shall remain in foster care, or 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>
Costs	<p>17. Notwithstanding anything contained in these Rules or any written law, the Court may make such orders as to costs as it thinks just.</p>
	<p><i>Rule 5</i></p> <p>Form No. FCR 1</p>

IN THE MATTER OF

BETWEEN

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AND

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**ORIGINATING SUMMONS**

**LET**.....  
..... of ..... within  
ten days (10) 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 .....

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Signature

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

Rule 5 (b)

Form No. FCR 2

(Heading as in Form No FCR 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 service, to enter an appearance either in person or by your advocate at the Court registry at ....., should you wish to do so, and thereafter to reply to this Originating Summons, and that, in default of your so doing, the Court will proceed to hear and determine the application, and give such orders as the Court thinks just notwithstanding your absence.

The Originating Summons are filed and this notice is issued by .....

Dated at the ..... day of ..... 20.....

.....

**Registrar**

Rule 6(2)

Form No. FCR 3

(Heading as in Form No FCR 1)

**MEMORANDUM OF APPEARANCE**

**ENTER** an **APPEARANCE** (in person) for  
..... the Respondent  
herein, whose address for service for the purpose of this cause is

.....  
.....  
.....  
.....  
.....

Dated at ..... this ..... day of ..... 20.....

\_\_\_\_\_

(Signed)