

IN EXERCISE of the powers conferred by section 218 of the Children Act, 2020 the Chief Justice makes the following Rules:

The Adoption Rules

Arrangement of Rules

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| PART I - PRELIMINARY | |
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| Citation and Commencement | 1. These Rules may be cited as The Adoption Rules, 2020 and shall come into force on such date as the Chief Justice may, by notice in the Gazette, appoint. |
| Interpretation | <p>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 –</p> <p>“Act” means the Children Act, 2020;</p> <p>“adoption society” means a duly registered society accredited and licensed pursuant to section 210(5) of the Act;</p> <p>“authorised officer” has the meaning assigned to it under section 2 of the Act;</p> <p>"applicant" includes two or more joint applicants;</p> <p>“child “ has the meaning assigned to it under Article 260 of the Constitution;</p> <p>“Council” has the meaning assigned to it under section 2 of the Act;</p> <p>“Court” means High Court established under Article 165 of the Constitution;</p> <p>“Director” has the meaning assigned to it under section 2 of the Act;</p> <p>“guardian” has the meaning assigned to it under section 2 of the Act;</p> <p>“guardian <i>ad litem</i>” means a guardian duly appointed pursuant to</p> |

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| | <p>section 191 of the Act;</p> <p>"Registrar" means the Registrar of the High Court, and includes a Deputy Registrar;</p> <p>"Register" means the Adopted Children Register maintained pursuant to section 202 (1) of the Act;</p> <p>"National Adoption Committee" has the meaning assigned to it under section 2 of the Act;</p> <p>"Summons" means an Originating Summons filed under these Rules;</p> |
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| Overriding Objectives | <p>3. (1) The overriding objectives of these Rules is to facilitate the just, expeditious, proportionate and affordable determination of adoption proceedings 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> |
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| | PART II – COMMENCEMENT OF PROCEEDINGS |
| Who May Apply to Adopt a Child | <p>4. (1) A person contemplated in section 189 (1) of the Act may lodge an application for the adoption of a child.</p> <p>(2) The application contemplated in sub-rule (1) shall be lodged with the Registrar in the Court within the local limits of the jurisdiction in which the child ordinarily resides.</p> |
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| Form of Application | <p>5. (1) Proceedings for an adoption order shall be commenced by Originating Summons in Form No. AR1 accompanied by the following documents:</p> <p>(a) a statement in Form No. AR2, which shall be verified by an</p> |

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| | <p>affidavit in Form No. AR3;</p> <p>(b) an affidavit of fitness of the proposed guardian <i>ad litem</i>, which shall disclose –</p> <p>(i) evidence that the applicant is physically, psychologically, emotionally and financially suitable to adopt the child; and</p> <p>(ii) the child’s social, medical and family history provided by the biological parents of the child or any other person as the Court may direct, unless the applicant shows to the satisfaction of the Court that they have been unable to secure the history from the biological parents of the child or from any other person;</p> <p>(iii) information respecting the social, medical and family history of the applicant;</p> <p>(iv) information respecting the reason the child is to be placed for adoption with the applicant; and</p> <p>(v) that the proposed guardian has no interest adverse to those of the child:</p> <p>Provided that no such affidavit shall be required in any case where the proposed guardian is an adoption society;</p> <p>(c) the consent in writing of the guardian <i>ad litem</i> to act as such;</p> <p>(d) the consent in writing of any person, having parental rights or responsibilities over the child, to the making of an adoption order, in Form No. AR4;</p> <p>(e) a report made by a duly accredited and licensed adoption society by which the adoption is recommended:</p> <p>Provided that the Court shall dispense with the report referred to in this clause where the application for an adoption order is made by a relative of the child pursuant to section 195(1) of the Act;</p> |
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| | <p>(f) such other affidavit or document as may be required in any particular case; and</p> <p>(g) a Notice to Enter Appearance in Form No. AR5.</p> <p>(2) In the case of an application for inter-country adoption pursuant to section 193 of the Act, the applicant shall, in addition to the documents specified in sub-rule (1), lodge –</p> <p>(a) the consents specified in section 189(8) of the Act;</p> <p>(b) written confirmation from competent authorities of the matters specified in section 193 (a) and (c) of the Act;</p> <p>(c) written authority and recommendation by a competent governmental authority or court of competent jurisdiction in respect of the matters specified in section 193 (d); and</p> <p>(d) evidence that the applicant has been resident in Kenya for a period of at least six months immediately prior to the application, or has fostered the child for at least three years under the supervision of an authorised officer.</p> <p>(3) Where the application is made for the adoption of siblings by the same applicant, one record of proceedings shall be maintained.</p> |
| Confidentiality of Applicant's Identity | <p>6. (1) If a person wishing to apply for an adoption order under these Rules desires that their identity be kept confidential, they may, before taking out an Originating Summons, apply to the Registrar for a serial number to be assigned to them for the purposes of the proposed application, and such a number shall be assigned to them accordingly.</p> <p>(2) An adoption society may apply to the Registrar for a serial number to be assigned to it for the purposes of a proposed application without giving the name of the proposed applicant, and such a number shall be assigned to it accordingly.</p> |

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| | <p>(3) Unless it is shown to the satisfaction of the Court that the applicant does not desire their identity to be kept confidential, or the Court is considering an application to dispense with the consent of any person whose consent is required and is satisfied that disclosure to such person of the identity of the applicant is necessary in the interest of justice, the proceedings shall be conducted with a view to securing, so far as possible, that he or she is not seen by or make known to any person (other than the spouse of the applicant) whose consent to the order is required.</p> |
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| Service of Summons and Other Court Process | <p>7. The Summons and other court process shall, unless otherwise ordered by the Court, be served in accordance with Order 5 of the Civil Procedure Rules on –</p> <p>(a) persons whose consent to the making of the order is required by section 189 (8) of the Act; and</p> <p>(b) an adoption society by whom arrangements for the adoption have been made.</p> |
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| Form of Appearance | <p>8. Upon service of the Summons in accordance with rule 7, the person served shall enter an appearance in Form No. AR 6 within ten days of service.</p> |
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| Consent to Making of an Adoption Order | <p>9. (1) Without prejudice to the generality of rule 5(1) (d), a person whose consent to the making of an adoption order as required under section 189(8) of the Act may, pursuant to section 190 (7) (a) and (b) either –</p> <p>(a) attend court at the adoption proceedings for the purpose of giving oral evidence in relation to their consent; or</p> <p>(b) deliver to the Court a declaration in Form No. AR4 made on oath and attested by a Commissioner for Oaths or judicial officer confirming the deponent’s consent in that regard.</p> <p>(2) Where the document signifying consent is made outside Kenya, the same shall be admissible in evidence only if it meets the</p> |

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| | requirements prescribed in section 190 (8) of the Act. |
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| Withdrawal of Consent | <p>10. (1) A parent, guardian, child or other person who has given their consent to the making of an adoption order may withdraw their consent at any time prior to the making of the adoption order pursuant to section 190 (6) of the Act either –</p> <p>(a) orally in court; or</p> <p>(b) by affidavit setting out the reasons for withdrawal.</p> <p>(2) A person who wishes to withdraw their consent to the making of an adoption order shall do so not later than sixty days from the date of signing the consent.</p> |
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| Power of Court to Dispense with Consent | <p>11. (1) The Court may dispense with the consent of any person specified in section 189 (8) of the Act on application on any of the grounds specified in section 190 (1) of the Act.</p> <p>(2) An application to dispense with consent shall be by way of Notice of Motion in Form No. AR 7 supported by an affidavit deposing to the facts on which the applicant intends to rely in support of the application.</p> <p>(3) Without prejudice to the generality of sub-rule (2) an application under this rule may be made pursuant to section 190(4) of the Act on the ground that the consent required by section 189 (8) of the Act has been unreasonably withheld.</p> <p>(4) An application made under this rule shall be served on the person whose consent it is desired to be dispensed with, unless it is shown to the satisfaction of the Court that such person cannot be found.</p> |
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| Appointment of Guardian <i>Ad Litem</i> | <p>12. (1) An application for the appointment of a guardian <i>ad litem</i> pursuant to section 191 (1) shall be made <i>ex parte</i> before any further step is taken in the proceeding.</p> <p>(2) An application under this rule shall be by way of Notice of Motion</p> |

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| | <p>supported by –</p> <p>(a) an Affidavit of Consent sworn by the proposed guardian <i>ad litem</i>; and</p> <p>(b) an Affidavit of Fitness sworn by someone vouching to the proposed guardian <i>ad litem's</i> character and suitability to be appointed in that capacity.</p> <p>(3) The Affidavit of Fitness referred to in sub-rule (2) (b) may be dispensed with where the proposed guardian <i>ad litem</i> has been duly vetted, approved and registered by the National Adoption Committee pursuant to section 186 (7) (e) of the Act.</p> |
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| <p>Duties of Guardian <i>Ad Litem</i></p> | <p>13. (1) In addition to the statutory duties prescribed in section 191 (2) of the Act, it shall be the duty of the guardian <i>ad litem</i> to investigate as fully as possible all circumstances relevant to the proposed adoption with a view to safeguarding the interests of the child, and to report to the court in writing on the following matters, namely –</p> <p>(a) whether the matters alleged in the applicant’s statement in Form No. AR2 are true;</p> <p>(b) in the case of an application by one of two spouses –</p> <p>(i) whether the other spouse consents to the application; and</p> <p>(ii) why they are not joined in the application;</p> <p>(c) whether the means of the applicant enable them to maintain and bring up the child suitably, including by the provision of a proper education;</p> <p>(d) whether the applicant understands that an adoption order is irrevocable, and that the order will make them responsible for the maintenance and upbringing of the child;</p> |

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| | <p>(e) who the parents of the child are;</p> <p>(f) who is liable to contribute to the support of the child;</p> <p>(g) whether the child has any right to or interest in property;</p> <p>(h) whether the child (if of an age to understand the effect of an adoption order, and knowing that they are not the child of the applicant) wishes the order to be made;</p> <p>(i) whether the guardian <i>ad litem</i> considers it desirable that any special terms or conditions be imposed in the adoption order;</p> <p>(j) what relatives (if any) the child has, whether they have been informed of the proposed adoption, and whether any of them has offered and is able to provide a suitable home for the child; and</p> <p>(k) whether the proposed adoption will be in the best interest of the child.</p> <p>(2) In addition to the matters specified in sub-rule (1), the guardian <i>ad litem</i> shall attach to their report a certified copy of the child's certificate of birth or, if the child has been previously adopted, a certified copy of the relevant entry in the Register.</p> |
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| Confidentiality of Guardian's Report | <p>14. (1) The guardian <i>ad litem</i> and, where a body of persons is appointed guardian <i>ad litem</i>, an officer or agent of that body shall treat all information obtained in the investigation or otherwise in relation to the matter as confidential, and shall not divulge any part of it to any person save as may be necessary for the proper execution of their duty under the Act and the Rules.</p> <p>(2) The report referred to in sub-rule (1) shall be made by the guardian <i>ad litem</i> or its officer or agent personally and in their own words and, unless the Court otherwise directs, shall not be disclosed to any person other than the applicant or their advocate, or the</p> |

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| | adoption society (if any) acting on behalf of the applicant. |
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| Custody Pending Determination of the Application | <p>15. (1) The applicant may apply for custody of the child pending final determination of the application for an adoption order by way of Notice of Motion in Form No. AR8 supported by affidavit in form No. AR9.</p> <p>(2) The application made under this rule shall be served on –</p> <p>(a) persons whose consent for the making of the order is required and whose consent has neither been given nor dispensed with pursuant to section 190 (1) of the Act;</p> <p>(b) the adoption society by whom arrangements for the adoption have been made; and</p> <p>(c) the guardian <i>ad litem</i>.</p> |
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| Amendment of Pleadings | 16. Order 8 Rule 4 of the Civil Procedure Rules shall apply to amendment of the originating process under these Rules. |
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| | PART III – PRE - HEARING CONFERENCE, HEARING AND ORDERS |
| Court to Verify Compliance with Formal Requirements | <p>17. (1) With a view to furthering expeditious disposal of the application, the Court shall, within thirty days after the matters specified in Part II have been dealt with, convene a pre-hearing conference to, among other things –</p> <p>(a) gather information relating to, and receive the adoption society's report filed pursuant to section 188 (2) (b) of the Act on, the matters specified in sub-section (3);</p> <p>(b) determine who has to be notified of the application for adoption;</p> |

(c) verify compliance with the requirements as to the form of application and requisite consents;

(d) verify the identity of the applicant and the veracity of the documents filed in support of the application;

(e) determine who has the right to appear and attend at the hearing;

(f) deal with and dispose of all or any pending interlocutory applications made in the proceeding;

(g) verify compliance with interlocutory orders (if any) made in the proceeding;

(h) if necessary, give directions in respect of –

(i) the legal representation of the applicant, parent or child to whom the proceedings relate;

(ii) reports by the adoption society, the National Adoption Committee and the Director;

(iii) submission of documents in support of the application;

(iv) the attendance of other persons at the hearing;

(v) exchange of reports and documents; and

(vi) any other matter relating to the adoption of the child; and

(i) give such further or other orders and directions as the Court thinks fit.

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| | (2) The attendance of the child at the pre-hearing conference may be dispensed with. |
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| Form of Hearing Notice and Persons to be Served | <p>18. Notice of hearing of the application for adoption shall be in Form No. AR10, and shall be served on –</p> <p>(a) all persons referred to in rule 15(2) (a), (b) and (c); and</p> <p>(b) all persons who have entered an appearance to the Summons.</p> |
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| Attendance at Hearing | <p>19. (1) On the hearing of the application, a person on whom notice is required to be served under rule 18 may appear before the Judge to show cause why an adoption order should not be made.</p> <p>(2) Without prejudice to the generality of sub-rule (1), an adoption society may be represented by an officer of the society duly authorised in that behalf.</p> <p>(3) Unless otherwise directed by an order of the Court, the applicant and a child reported on by the guardian <i>ad litem</i> as required under rule 13(1) (h) shall attend at the hearing of the application for adoption.</p> |
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| Consequences of Non-Attendance at Hearing | 20. 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 directions as the Court may think just, their absence notwithstanding. |
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| Procedure at Hearing | <p>21. On the hearing of the application for an adoption order, the Court may –</p> <p>(a) make such orders as it thinks fit, including an interim order in respect of an interlocutory application pending determination; or</p> |

(b) adjourn the hearing on such terms as the Court may direct.

(2) Where the application proceeds to hearing, the Court shall examine and consider the following, and other relevant documents lodged in support of the application:

(a) a certified copy of the certificate, notification or other document recording the birth of the child;

(b) a certified copy of the applicant's document of identity or passport;

(c) where applicable, a certified copy of the applicant's certificate of marriage;

(d) where applicable, a certified copy of a divorce decree or certificate of death of the applicant's spouse;

(e) in a case where the child is believed to have been abandoned, an advertisement published in at least two newspapers of daily circulation in the area where the child was found, calling upon any person to claim responsibility for the child;

(f) where applicable, an affidavit by an authorised officer, or by a duly authorised representative of an adoption society or charitable children's institution where the child alleged to be abandoned is accommodated, setting out the steps taken to trace the parent or guardian of the child;

(g) where applicable, certified copy of the certificate of death of a parent of an orphaned child;

(h) where applicable, the court order placing the child in the care and custody of the applicant;

(i) the report of the adoption society by who the making of an

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| <p>adoption order is recommended;</p> <p>(j) where applicable –</p> <p>(i) report or reports of such professionals as the Court may direct, including a special needs assessment report, a report by a psychologist or other medical practitioners;</p> <p>(ii) consent of the child;</p> <p>(iii) consent of the parent or guardian of the child, or other person who is liable by virtue of an order or agreement to contribute to the maintenance of the child, as the case may be;</p> <p>(v) the court order (if any) given in determination of an application to dispense with the consent of any person, or to withdraw such consent as may have been given to the making of an adoption order; and</p> <p>(vi) written response of a person who has been directed to show cause why the Court should not dispense with their consent.</p> <p>(3) In considering the application, the Court shall have regard to all the relevant factors, and record a finding as to whether –</p> <p>(a) the child is available for adoption as required by section 186 (7) (i) of the Act;</p> <p>(b) the applicant is a fit person to be entrusted with the full parental responsibility and rights in respect of the child as required by section 189 (2) and (6) of the Act;</p> <p>(c) the applicant is more than twenty-one years older than the child as required by section 189 (2) (b) of the Act;</p> <p>(d) the applicant was properly assessed by the Director and the adoption society, by whom the making of the adoption order is</p> |
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| | <p>recommended, for compliance with section 188 (2) (b) of the Act;</p> <p>(iv) the religious and cultural background, and preferences of the child, the child’s parents and the applicant, have been taken into account as required by section 190 (4) of the Act;</p> <p>(vi) all reasonable preferences expressed by a parent, guardian or other person who is liable by virtue of an order of a competent jurisdiction or agreement to contribute to the maintenance of the child as expressed in their consent have been considered; and</p> <p>(viii) the proposed adoption is in the best interest of the child.</p> |
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| <p>Power of Court under Section 189(7)</p> | <p>22. (1) Upon hearing the application, the Court may either –</p> <p>(a) allow the application and make an adoption order; or</p> <p>(b) at its sole discretion, decline to make an adoption order in favour of the applicant where the Court is of the considered view that –</p> <p>(i) the applicant is incapable of assuming, 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 adoption order be made in favour of the applicant.</p> <p>(2) Where the Court declines to make an adoption order, the Court may make such orders in respect of parental responsibilities over the child as it thinks fit.</p> |
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| <p>Power of Court in Subsequent Applications</p> | <p>23. (1) Where the Court dismisses an application for an adoption order, no further application for an adoption order shall be filed with the Court by or on behalf of the applicant until the expiration of a period of not less than two years after the date of the dismissal of the</p> |

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| | <p>application.</p> <p>(2) Notwithstanding sub-rule (1), an application for an adoption order may be filed with leave of the Court, within the two-year period prescribed in sub-rule (1) if it is shown to the satisfaction of the Court that the reasons for dismissal of the previous application no longer exist.</p> <p>(3) A subsequent application for an adoption order under this rule shall be made in accordance with these Rules.</p> |
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| Form and Transmission of an Adoption Order | <p>24. (1) Where the Court makes an adoption order, the Registrar shall draw the order in Form No. AR11 and transmit a certified copy of the order to the Registrar-General within thirty days from the date on which the order was made.</p> <p>(2) Without prejudice to the generality of sub-rule (1), a kinship adoption order made pursuant to section 195 of the Act shall be in Form No.AR11 with necessary modifications to disclose the relationship between the adopter and the adopted child.</p> <p>(2) Upon receipt of the order referred to in sub-rule (1) the Registrar-General shall make an entry in the Register.</p> |
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| Power of Court to Set Aside an Adoption Order | <p>25. (1) A person may apply to the Court to quash an adoption order pursuant to section 201(3) of the Act where it is shown to the satisfaction of the Court that –</p> <p>(a) the adopting parent or parents have been guilty of willful neglect to maintain the child;</p> <p>(b) the adopting parent or parents have subjected the child to cruelty or other form of child abuse;</p> <p>(c) the adopting parent or parents have habitually treated the child in such a manner as to endanger the child’s life or wellbeing; or</p> |

(d) the adoption order was procured by fraud, in which case it may be set aside only if it is in the best interest of the adopted child.

(2) An application to quash an adoption order shall be by way of Notice of Motion, supported by affidavit setting out the grounds on which the application is made.

(3) An application under this rule shall be served by the applicant on –

(a) the adopting parent or parents, if the adopting parent is not the applicant;

(b) the adopted child, if the child is of twelve years of age or older, and is not the applicant;

(c) the person who was the guardian of the child immediately before the adoption order was made, if the guardian is not the applicant;

(d) the adoption society by whom the adoption was arranged, if the society is not the applicant; and

(e) any other person who, in the opinion of the Court, should be served.

(4) Where the adoption order is quashed, 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).

(5) Where an adoption order is quashed –

(a) the child ceases to be the child of the adopting parent;

(b) the adopting parent ceases to be the parent and guardian of the child;

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| | <p>(c) the relationships between the child and all persons as they were immediately before the adoption order was made are re-established;</p> <p>(d) unless the Court orders otherwise, the person who was the guardian of the child immediately prior to the making of the adoption order is the guardian of the child; and</p> <p>(e) unless the Court orders otherwise –</p> <p>(i) the child’s given name (if any) is the given name before the adoption order was made; and</p> <p>(ii) the child’s surname is the surname the child had before the adoption order was made.</p> <p>(6) The Registrar shall transmit the order quashing an adoption order to the Registrar-General, who shall make an entry in the Register to the effect that the adoption order has been quashed, and specifying the date on which the subsequent order was made.</p> |
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| <p>Procedure where Inter-Country Adoption Order is Quashed</p> | <p>26. (1) Where an inter-country adoption order is quashed on application under rule 25, the National Adoption Committee shall write to the Central Adoption Authority of the country to which the child has relocated requesting cooperation for the return of the child to Kenya.</p> <p>(2) The written request for cooperation contemplated in sub-rule (1) shall –</p> <p>(a) be accompanied by a certified order of the Court setting aside the inter-country adoption order; and</p> <p>(b) stipulate in specific terms, including the time when and the place where the child shall be handed over to an identified representative</p> |

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| | <p>of the National Adoption Committee.</p> <p>(3) The National Adoption Committee shall appoint a fit person as an escort to accompany a child on his or her return to Kenya.</p> <p>(4) The child shall be brought before the Court which determined the adoption application within two working days after return of the child to Kenya.</p> <p>(5) On presentation of the child before court, the Court shall –</p> <p>(a) determine whether it would be in the best interest of the child to be placed in a place of safety or other alternative care; or</p> <p>(b) order an investigation by the Director to determine whether the child is in need of care and protection in accordance with section 147(11) of the Act; or</p> <p>(c) make any other order and give such directions as the Court considers to be in the best interest of the child.</p> <p>(6) The costs related to the return of the child, including the costs of the person appointed to escort the child, shall be paid for out of funds made available for this purpose by the Council.</p> |
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| <p>Power to Vary an Adoption Order</p> | <p>27. (1) The Court may vary an adoption order made under the Act, on the application of the adopting parent pursuant to section 201(1) of the Act, on such terms as the Court may direct.</p> <p>(2) An application under this rule shall be made by way of Notice of Motion supported by affidavit setting out the grounds on which the application is made.</p> <p>(3) An order of the Court varying an adoption order shall be transmitted by the Registrar to the Registrar-General accompanied by a notice specifying –</p> |

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| | <p>(a) the date on which the adoption order was made;</p> <p>(b) the names of the adopter;</p> <p>(c) the names of the adopted child or children; and</p> <p>(d) the particulars of variations to be made in the order.</p> |
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| | PART IV – INTER-COUNTRY ADOPTIONS |
| Application of Parts II and III to this Part | 28. Parts II and III of these Rules shall apply to this Part with necessary modifications subject, however, to the Rules made under this Part. |
| | |
| Documents Required in Support of an Inter-Country Adoption | <p>29. (1) In addition to the court order and consent required by section 189(8), an applicant for an inter-country adoption shall lodge with the Court the report contemplated in section 188(2), (b) of the Act, which shall be accompanied by or, as the case may be, include –</p> <p>(a) notarized copies of the applicant’s documents of identity;</p> <p>(b) information that the persons whose consent is necessary for adoption, have been counseled as may be necessary and duly informed of the effects of their consent and, in particular, whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;</p> <p>(c) a medical history and report of the applicant’s health status issued by a medical practitioner duly registered in Kenya;</p> <p>(d) a clearance certificate from a law enforcement agency in the applicant’s country of residence;</p> <p>(e) proof of citizenship and permanent residence in the country</p> |

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| | <p>referred to in clause (c);</p> <p>(f) the applicant's ethnic, religious and cultural background;</p> <p>(g) particulars of the members of the applicant's immediate family;</p> <p>(h) information on the character of the applicant;</p> <p>(i) details of the attitude of the members of applicant's immediate family (if any) towards the proposed adoption;</p> <p>(j) where applicable, plans for the integration of the child with its siblings, and with the approval of the National Adoption Committee;</p> <p>(k) plans for the relocation of the child from Kenya to the applicant's country of residence, and documentary evidence that the child will be authorised to enter and reside permanently in that country ;</p> <p>(l) reasons why the applicant wishes to adopt a child; and</p> <p>(m) whether the adoption is in the best interest of the child.</p> <p>(2) With regard to the child, the report required by section 188(2) (b) of the Act shall be accompanied by or, as the case may be, include –</p> <p>(a) a certified copy of the child's certificate of birth and information on the identity of the child and, where such certificate or information are not available –</p> <p>(i) a sworn statement by a duly authorised officer of the adoption society recommending the adoption attesting to the lack of such certificate or information; and</p> <p>(ii) accompanied by proof of application for a certificate of birth;</p> |
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| | <p>(b) details regarding the child’s language, culture, race and religion;</p> <p>(c) a medical report confirming the health status of the child and, where applicable, a description of any special needs of the child;</p> <p>(d) if known, information about the child’s biological parents, including –</p> <p>(i) a description of the counselling they have received and duly informed of the effects of the adoption and, in particular, that the adoption will result in the termination of their relationship with the child;</p> <p>(ii) whether they have consented to the adoption; and</p> <p>(iii) if their consent is not required, or has otherwise been dispensed with, the reason why it was not required or why it was dispensed with;</p> <p>(e) where applicable, information regarding the child’s sibling or siblings;</p> <p>(f) comprehensive information regarding the efforts that have been made to provide alternative home-based care in Kenya;</p> <p>(g) where the child is capable of forming their own view, the views of the child concerning the adoption;</p> <p>(h) if the child is above the age of ten, the child’s written consent, which shall be annexed to the report; and</p> <p>(i) whether the proposed placement is in the best interest of the child.</p> <p>(3) Where more than one applicant applies jointly for the adoption of a child, the information specified in sub-rule (1) shall be provided in respect of each applicant.</p> |
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| | PART V - MISCELLANEOUS AND GENERAL PROVISIONS |
| | |
| Time | 30. 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. |
| | |
| Attestation of Documents | <p>31. (1) For the purposes of Part XII of the Act and these Rules, a document shall be sufficiently attested –</p> <p>(a) if it is executed in Kenya, it is attested by a magistrate, Registrar or a Commissioner for Oaths;</p> <p>(b) if executed in any Commonwealth country, it is attested by a person for the time being authorised by law in that place to administer an oath for any judicial or other legal purposes; and</p> <p>(c) if it is executed in any country outside the Commonwealth, it is attested by a consular officer of Kenya or, if there is none, by a person duly designated as Notary Public or its equivalent under the law of that county.</p> <p>(2) A document executed in accordance with this rule shall be admissible without further proof of execution.</p> |
| | |
| Forms | <p>32. (1) 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> |

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| | <p>(a) the forms prescribed by these Rules; or</p> <p>(b) the forms prescribed under the Civil Procedure Rules.</p> |
| | |
| Confidentiality of Records and Information | <p>33. (1) Documents filed in court relating to adoption proceedings under these Rules shall be confidential, and shall be treated as such in accordance with section 213 of the Act.</p> <p>(2) No copy of any order may be given to or served on any person other than the applicant or the Registrar-General and, subject to these Rules, no copy of any proceeding or any other document may be given to any person unless the Court otherwise directs.</p> |
| | |
| Appeal Against Adoption Order | <p>34. (1) An appeal against an adoption order or an order relating to parental responsibility over a child made under the Act shall lie to the Court of Appeal in accordance with section 200 of the Act.</p> <p>(2) The notice of appeal shall be served only on the persons who entered an appearance in the adoption proceeding.</p> |
| | |
| Costs | <p>35. Notwithstanding anything contained in these Rules or any written law, the Court may make such orders as to costs as it thinks just.</p> |
| | |
| Bond | <p>36. Where any person is required under Part XIV of the Act to enter into a bond, such bond shall be in Form No. AR12.</p> |
| | |
| Transitional Provisions | <p>37. 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> |

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| | <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> <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.</p> |
| | |
| Repeal of Adoption Rules, (1972) Revised 1978 | 38. The Adoption Rules, (1972) Revised 1978 are hereby repealed. |

Schedule

Forms

Rule 5(1)

FORM No AR 1

ORIGINATING SUMMONS ON APPLICATION FOR AN ADOPTION ORDER

In the..... Court at.....

Adoption Cause No. of 20.....

Let of within 10 days of service on him or her enter an appearance to this Summons which is issued on the application of of..... (or, under the serial number) for an order -

(1) That of..... be appointed guardian *ad litem* in this cause.

(2) That the applicant(s) be authorized to adopt child (enter the forenames only of the child in accordance with the birth certificate).

Dated this day of 20.....

.....
Registrar

This summons was taken out by the applicant personally/the..... Adoption Society of on behalf of the applicant/..... advocate for the applicant.

Note:

If the person served does not enter an appearance within the time above mentioned the application will be dealt with without further reference to him unless that person is -

- (a) an adoption society which has made arrangements for the adoption; or
- (b) a person whose consent to the adoption is required but has not been given, and in either of the latter cases notice of further proceedings in the application will be served in accordance with rules 11(4), 15(2), or 18 of the Adoption Rules.

Rule 5(1) (a)

FORM No AR 2

(Heading as in Form No AR 1)

STATEMENT IN SUPPORT OF AN APPLICATION FOR AN ADOPTION ORDER

1. I/We, the undersigned, wish to adopt AB child of the sex born on the.....
2. My/Our full name(s) is/are.....
3. My/Our occupation(s) is/are.....
4. My/Our date(s) of birth is/are.....
5. I/We reside at.....
6. I/We am/are of nationality and ofrace.
7. I/We have resided in Kenya since.....
8. I/We intend to continue to reside in Kenya indefinitely/until.....
9. I am married/a widow/a widower/a divorcee/married to ED of..... /We are married to each other and are the persons to whom the attached marriage certificate (or

other evidence of marriage) relates. My/Our marriage is/is not polygamous or such as may lawfully become polygamous.

10. I/We am/are of the religion.

11. The child was received into my/our care and possession on and has been continuously in my/our care and possession since that date.

12. The child is of nationality and of..... race.

13. The child is of the religion.

14. I/We have not received or agreed to receive, and no person has made or given or agreed to make or give to me/us, any payment or reward in consideration of the adoption.

15. I/We have not made any previous application for an adoption order in respect of the same child, except (give details).....

16. I/We desire that my/our identity should be kept confidential.

17. I/We am/are related to the child as follows:

18. If an adoption order is made, it is proposed that the child be known as.....

19. No previous application has been made relating to the adoption of the child (or as the case may be).

Rule 5(1) (a)

FORM No AR 3

(Heading as in Form No AR 1

AFFIDAVIT IN SUPPORT OF APPLICATION

I, of make oath and state: -

1. I am the applicant herein.

2. The facts stated in paragraphs of my statement herein dated the day of 20..... are true.

3. The facts stated in paragraphs of my said statement are true to the best of my knowledge, information and belief.

SWORN at..... this day of 20.....etc.

Notes:

Throughout this Form, in the case of a joint application, substitute the plural.

Rule 5(1) (d)

FORM No AR 4

CONSENT TO AN ADOPTION ORDER IN RESPECT OF A CHILD NAMED A.B. (1)

Whereas an application is to be made (by CD and ED) (2) or (under the serial number (Whereas the said AB (hereinafter called the child) is not less than six weeks old, having been born in on the day of 20.....) (3)

I the undersigned of being the mother of the child/the father of the child/a guardian of the child/the parent of the mother of the child (in a case where the mother of the child is unmarried and under the age of 18) / person liable by virtue of an order or agreement to contribute to the maintenance of the child/the spouse of CD, hereby state as follows -

(1) I understand that the effect of an adoption order will be to deprive me permanently of the rights of a parent/guardian and in particular I understand that, if an order is made, I shall have no right to see or get in touch with the child or have him/her returned to me;

(2) I understand that when the application for an adoption order is heard by the Court, this document may be used as evidence of my consent to the making of the order;

(3) I consent to the making of an adoption order (on condition that the religious persuasion in which the child is brought up is (4)

.....

(Signature)

Signed at.....on theday of, 20....., by the said..... (who satisfied me that she fully understood the foregoing statement) (3)

Before _____ me..... (Signature)
of.....
(address)..... (description)

Notes:

(1) Insert name as known to consenting party.

(2) Where the name of applicant is not known to the consenting party, and serial number has been obtained for the application under rule 6, complete the entry contained in second brackets.

(3) Delete the words in brackets except where the consenting party is the mother of child.

(4) Delete the words in brackets if no condition as to religious upbringing is to be imposed.

Rule 8

Form No AR 6

(Heading as in Form No AR 1)

MEMORANDUM OF APPEARANCE

ENTER an **APPEARANCE** (in person) ⁽¹⁾ for the Respondent herein whose address for service for the purposes of this cause shall be
.....
.....
.....

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

(Signed)

Respondent /Advocates for the Respondent ⁽²⁾

***Notes---**

1. Delete whichever is not applicable
2. If such is the case
3. As the case may be

Rule No 11 (2)

FORM No AR 7

APPLICATION FOR AN ORDER DISPENSING WITH CONSENT

(Heading as in Form No AR 1)

To:

TAKE NOTICE that an application will be made to theon the day of 20..... at o'clock for an order dispensing with your consent to the adoption order being made.

The grounds on which the application will be made are that the cause falls within the following provisions of section 190 of the Act, that is to say

.....

A statement of the facts on which the applicant intends to rely in support of the application accompanies this summons.

If you do not appear to answer to this summons at the time and place stated above the application will be determined in your absence.

Applicant/

Adoption Society acting for the Applicant/

Advocate for the Applicant.

Rule 15 (1)

Form No AR 8

APPLICATION FOR RETENTION OF CUSTODY OF THE CHILD PENDING FINAL DISPOSAL OF THE APPLICATION

(Heading as in Form No AR 1)

To:

TAKE NOTICE that an application will be made to the at the courton..... the day of, 20..... ato'clock for an order that the applicant(s) may be granted custody of the child..... until the disposal of the application for adoption.

You may appear at the time and place stated above to show cause why the application for custody should not be granted.

Applicant /

Adoption Society acting for the Applicant /

Advocate for the Applicant.

Rule No 15 (1)

FORM No AR 9

(Heading as in Form No AR 1)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR CUSTODY PENDING DISPOSAL

I.of make oath and state -

(1) I am the applicant herein.

(2) The child who is the subject of my application for adoption has been lawfully in my care since.....

(3) The circumstances in which the child came into my care are as follows -
.....
.....

(4) I request that this Court grant me custody of the child..... until such time as my application to adopt him/her is finally disposed of.

ADOPTION ORDER

(Heading as in Form No AR 1)

An application having been made by CD by occupation a resident at and ED his wife (hereinafter called the applicant/applicants) for an order under the Act authorizing him/her/them to adopt AB child, the child/adopted child of FB/FB and GB.

And the said AB (hereinafter called the child) being of the..... sex and never having been married;

And the applicant/one of the applicants having attained the age of twenty-five years and being at least twenty-one years older than the child; Having attained the age of twenty-one years and being a relative of the child within the meaning of the Act; Being the mother/father of the child;

(And the names by which the child is to be known being FD) (1);

(And it having been proved to the satisfaction of the Court that the child is identical with AB, to whom an entry numbered and made on the 20 in the County of..... relates) And the (probable) (2) date and place of birth of the child appearing to be the day of at;

(And the child having been previously the subject of an adoption order dated theday of20.... of which particulars are entered in the Adopted Children Register) (3)

IT IS HEREBY ORDERED that the applicant/applicants be authorized to adopt the child;

And it is directed that the Registrar-General shall make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this Order;

(And it is further directed that the Registrar-General shall cause the said entry in the Register of Births to be marked with the word "Adopted");

(And it is further directed that the Registrar-General shall cause the previous entry in the Adopted Children Register relating to the child to be marked with the word "readopted");

(And it is further directed that the applicant shall comply with the following terms and conditions referred to in section 196 (2) of the Act, that is to say).

SCHEDULE

| Date and place of birth of the child (4) | Name of the child (5) | Sex of the child | Name and surname Address and occupation of adopter or adopters | Date of adoption order and Court by which made |
|--|-----------------------|------------------|--|--|
|--|-----------------------|------------------|--|--|

Notes:

- (1) Delete where there is no change of name.
- (2) Delete "probable" where the precise date of the child's birth is proved.
- (3) Delete except where the child has been previously adopted.
- (4) Where a probable date and place of birth are specified in the body of the order, enter that date and place without qualification.
- (5) Enter only the names by which the child is to be known.

Rule No 36

FORM AR 12

(Heading as in Form No AR 1)

BOND

BY THIS BOND, I/We the person(s) in whose favour an adoption order relating to the child was made by the Court on the day of 20..... acknowledge myself/ourselves to be firmly bound to do the several things set out hereunder in pursuance of the direction of the Court made under section 196 (2) of the Act.

(set out the conditions)

.....

And I/We understand that should I/We fail to undertake any of the obligations of this bond such failure will constitute contempt of court and be punishable as such.

Dated this day of 20.....

Signed, sealed and delivered
by the above named
.....

in the presence of
.....