



LEGAL NOTICE NO....

**THE CHILDREN ACT, 2022**  
(No. 29 of 2022)

**THE CHILDREN (FOSTER CARE) (PROCEDURE AND PRACTICE) RULES, 2023**

*Arrangement of Rules*

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**THE CHILDREN ACT, 2022**  
(No. 29 of 2022)

**IN EXERCISE** of the powers conferred by section 182 of the Children Act, 2022, the Chief Justice makes the following Rules—

**THE CHILDREN (FOSTER CARE PLACEMENT) (PROCEDURE AND PRACTICE) RULES, 2023**

**PART I—PRELIMINARY**

- Citation.                   **1.** These Rules may be cited as the Children (Foster Care) (Procedure and Practice) Rules, 2023.
- Interpretation.           **2.** In these Rules unless the context otherwise requires—
- No. 29 of 2022.           “Act” means the Children Act, 2022;
- “child” has the meaning assigned to it under section 2 of the Act;
- “Court” 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;
- “foster parent” has the meaning assigned to it under section 2 of the Act;
- “home” has the meaning assigned to it under section 2 of the Act;
- “Secretary” has the meaning assigned to it under section 2 of the Act;
- “summons” means an originating summons lodged in respect of an application under these Rules.
- Objective and principles of these Rules.                   **3.** (1) The objective of these Rules is to facilitate the just, expeditious and proportionate determination of applications relating to foster care under the Act.
- (2) The implementation of these Rules shall be guided by the following principles—

- (a) ensuring that the best interests of the child are upheld;
- (b) promoting the placement of the child in their own social-cultural environment;
- (c) facilitate the achievement of the objectives of foster care placement set out under section 170 of the Act.

Scope of application.

**4.** The Rule shall apply to the following matters relating to foster care placement under Part XIII of the Act—

- (a) placement of a child pursuant to an order of the Court;
- (b) applications for extension foster care placement for a period exceeding three years;
- (c) placement of a child in relation to whom a care order has been made by reason of having been found guilty of a criminal offence; and
- (d) applications for leave to remove a child in foster care from Kenya.

## **PART II – COMMENCEMENT OF FOSTER CARE PLACEMENT PROCEEDINGS**

### *Preliminaries*

Children eligible to be fostered.

**5.** Subject to section 171 and 172 of the Act, the following children are eligible to be placed under foster care—

- (a) a child in need of care and protection as provided under section 144 of the Act;
- (b) a child in situations of emergency;
- (c) a child who it has not been possible to facilitate their adoption;
- (d) a child whose adoption or other arrangements are pending and the prescribed timelines for the adoption or other arrangement has lapsed;
- (e) a child committed to a rehabilitation school or a charitable children’s institution by reason of a care order;

- (f) with the leave of court, a child in respect of whom a care order has been made reason of being convicted of a criminal offence.

Eligibility to undertake foster care arrangements.

**6.** A person shall not be entitled to undertake foster care arrangements unless the person—

- (a) in the case of an individual, meets the qualifications specified under section 174 of the Act; or
- (b) in the case of an institution, is registered and authorised in accordance with the Act to undertake foster care arrangements.

***Extension of foster care placement***

Extension of foster care placement.

**7.** (1) Pursuant to section 171(3) of the Act, where the Secretary is of the view that circumstances exist to justify an extension of foster care placement in respect of a child for a period exceeding three years, the Secretary shall apply to the Court for an order extending the foster care placement for such additional period as the Court may determine.

(2) An application under this rule shall be made by the Secretary on any of the grounds specified in section 171 (1) (b) of the Act.

(3) An application under this rule shall be made at least thirty days before the date on which the period of three years during which the child is placed in foster care lapses.

Application for extension of foster care placement.

**8.** An application for an order extending the period of foster care placement shall be made by originating summons in Form No. FCR1 set out in the Schedule accompanied by—

- (a) an affidavit setting out the factual circumstances and grounds on which the application is made;
- (b) a notice to enter appearance in Form No. FCR2 set out in the Schedule;
- (c) a report containing relevant information on—
  - (i) the circumstances leading to the foster care placement in question and the date on which the placement was made;
  - (ii) the date on which such placement ends and the reasons for extension;

- (iii) the Secretary’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;
  - (iv) a brief statement of the reasons why the Secretary recommends the extension of foster care placement; and
  - (v) any other matter which the Secretary considers necessary to support the application;
- (d) any other document concerning the child which may assist the Court in determining whether to make the order.

**PART III – SERVICE OF SUMMONS AND OTHER COURT PROCESSES**

Service of summons and other court process

**9.** (1) Unless otherwise ordered by the Court, the provisions of Order 5 of the Civil Procedure Rules shall apply to the service of the summons and other court process under these Rules.

(2) The summons shall be served on—

- (a) the foster parent; and
- (b) the institution(s) involved in the foster care arrangements in respect of the child.

Appearance.

**10.** Upon service of the documents under rule 10, the person served shall, within ten days of service, enter an appearance in Form No. FCR3 set out in the Schedule.

Reply to application.

**11.** A person who enters an appearance pursuant to rule 11 shall, within fourteen days of appearance, file an affidavit in reply to the application and serve on the applicant and on all persons named as party to the application.

Amendment of pleadings.

**12.** The provisions of Order 8 Rule 4 of the Civil Procedure Rules shall apply to amendment of the pleadings under these Rules.

**PART IV— PROVISIONS RELATING TO HEARING**

Attendance at hearing.

**13.** (1) A person served under rule 13 may appear before the Court to show cause why the application for extension of foster care placement may or may not be granted.

(2) Without prejudice to the generality of sub-rule (1), a children institution may be represented in the proceedings by a duly authorised officer of the institution .

(3) Unless otherwise directed by an order of the Court, the child to whom the application made in accordance with rule 4 relates shall attend the hearing of the application.

(4) Attendance at all hearings shall be limited to—

- (a) the parties to the application;
- (b) the advocates representing the parties;
- (c) witnesses testifying during the proceedings; and
- (d) any other person whom the Court considers to have a legitimate interest in the proceedings.

Consequences of non-attendance.

**14.** Where any party to the application made in accordance with rule 4 fails to attend at the hearing, the Court may proceed to hear and determine the application, or make such orders as it deems fit.

Procedure at hearing.

**15.** (1) A party to an application under these Rules may make an oral application for any order or relief from the Court in respect of the application or any other relevant matter.

(2) Where a party to the proceedings makes an oral application under sub-rule (1), 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.

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

- (a) the Secretary;
- (b) the foster parent; or
- (c) any other person the Court deems fit.

Procedure at hearing where the child is participating.

**16.** (1) Unless otherwise directed by the Court, the child to whom the foster care placement proceedings relates may not attend at the hearing.

(2) Where the child is above the age of ten years, and is able and willing to participate in the proceedings, the Court may –

- (a) provide the child an equal and inclusive opportunity to participate during the proceedings;
- (b) inform the child of the child’s rights and opportunity to participate in an age-appropriate manner;
- (c) explain to the child the process and procedure of the Court in simple language and manner that the child to understands to enable him or her to participate in the process;
- (d) ensure an enabling and safe environment for the child to participate in the process; and
- (e) take appropriate measures to promote child participation in the proceedings, including the appointment of an intermediary, an interpreter or other person to ensure the comfort, and provide for the special needs (if any), of the child.

(3) 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 may have an intermediary to support the child throughout his or her evidence; and
- (c) if necessary, the child’s evidence be given with the use of technology, including an audiovisual link or audio link.

Considerations in making an order.

**17.** In making a determination under these Rules, the Court shall take into account the matters specified under section 171(4) of the Act.

## **PART V — PROVISIONS RELATING TO ORDERS**

Orders of the Court.

**18.** Upon hearing the application under these Rules, the Court may—

- (a) allow the application and issue such appropriate orders as it deems fit; or



- (b) reject the application and make such other orders as it deems fit for the welfare of the child in accordance with section 134 of the Act.

Power to set aside, amend or vary orders.

**19.** (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.

(2) An application under sub rule (1) shall be by way of notice of motion supported by affidavit setting out the grounds on which the application is made and filed in the case where the extension orders were issued.

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

- (a) the Secretary;
- (b) foster parents; and
- (c) the children institution involved in the foster care placement.

(4) The Court shall determine an application under this rule and make such orders as it deems fit taking into consideration matters provided in section 171 (4) of the Act.

(5) Where the Court makes an order to set aside, amend or vary an order, the party in whose favour the order is given shall serve a copy of the order on all persons under sub-rule (3).

(6) Where the Court makes an order to set aside the terms of foster care placement, the Court may make such other orders in respect of parental responsibilities over the child as it thinks fit.

Power to amend or vary orders.

**20.** (1) The Court may, either on its own motion or upon an application, amend or vary an order issued under these Rules to correct any defect in the particulars contained therein.

(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.

(3) Where the Court makes an order to amend or vary an order, the party in whose favour the order is given shall serve a copy of the order on the Secretary, the foster parents and the children institution involved in the foster care placement.

(4) Where the Court makes an order to amend or vary orders the terms of foster care placement, the Court may make such other orders in respect of parental responsibilities over the child as it thinks fit.

Review.

**21.** (1) Any party to a proceeding under these Rules 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, 2010.

(2) The provisions of Order 45 of the Civil Procedure Rules, 2010 shall apply to the application and processing of applications for review.

Appeal

**22.** (1) An appeal against an order given under these Rules shall lie to the High Court.

(2) The notice of appeal made under sub rule (1) shall be served only on the persons who entered an appearance in the proceedings under these Rules.

#### **PART IV—MISCELLANEOUS PROVISIONS**

Time

**23.** The provisions of Order 50 of the Civil Procedure Rules, 2010 shall apply to time prescribed for the doing of any act or taking any proceedings under these Rules.

Procedure for execution of orders and decrees.

**24.** Any judgment or order given under these Rules shall be executed and enforced in accordance with the provisions of the Civil Procedure Rules, 2010.

Costs of applications.

**25.** The Court may make such orders as to costs as it deems just.

Ongoing proceedings.

**26.** Any proceedings relating to foster care placement pending in court before the coming into effect of these Rules shall be finalized in accordance with these Rules.

**SCHEDULE**

**FORMS**

**FORM FCR 1**

**(r. 5)**

IN THE MATTER OF

BETWEEN

\_\_\_\_\_

AND

\_\_\_\_\_

**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 .....

\_\_\_\_\_

*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.”*

*(Heading as in Form No FCR 1)*

**NOTICE OF APPEARANCE**

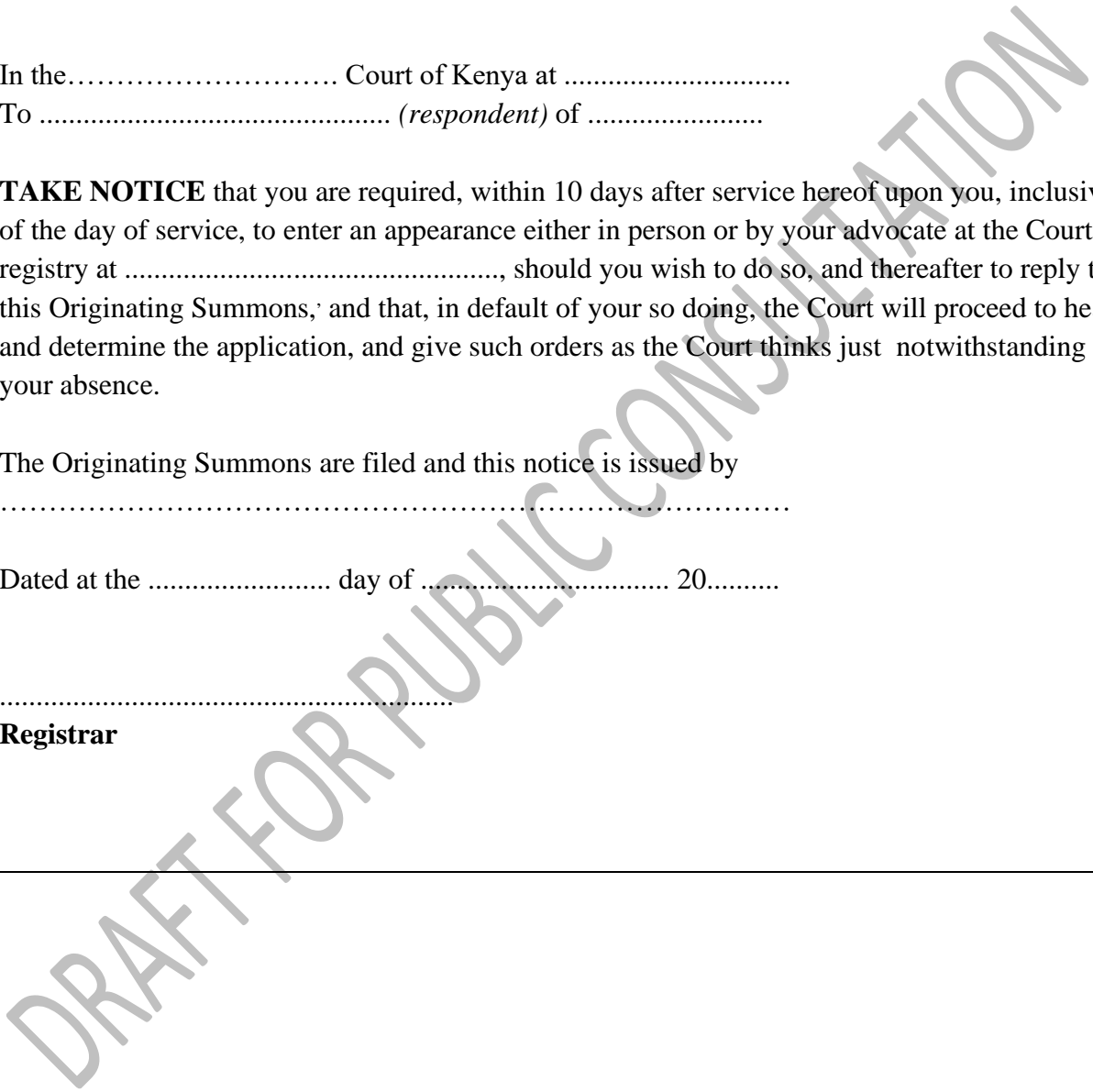
In the..... Court of Kenya at .....  
To ..... (*respondent*) of .....

**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**



*(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.....

\_\_\_\_\_

Made on the....., 2023.

**MARTHA KOOME,**  
**Chief Justice.**

DRAFT FOR PUBLIC CONSULTATION