

THE LAW OF MARRIAGE (MATRIMONIAL PROCEEDINGS) RULES

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THE
LAW OF MARRIAGE (MATRIMONIAL PROCEEDINGS) RULES
(Section 162(1))

G.Ns.
Nos. **136 of 1971**

107 of 1984

392 of 1987

224 of 1994

112 of 1996

246 of 1997

PART I
PRELIMINARY PROVISIONS (rules 1-2)

1. Citation

These Rules may be cited as the Law of Marriage (Matrimonial Proceedings) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Act” means the Law of Marriage Act *;

“matrimonial proceedings” means proceedings—

- (a) on an objection under section 20 of the Act;
- (b) for divorce, separation or annulment;
- (c) for maintenance of a spouse;
- (d) for custody or maintenance of children of the marriage;
- (e) for a declaratory decree under section 94 of the Act;

“pleading” means a petition, an answer or a reply;

“prescribed” means, in relation to forms, means the forms prescribed in the First schedule to these Rules and in relation to fees, means the fees prescribed in the Second Schedule to these Rules;

“Registrar” means—

(a) where matrimonial proceedings are instituted in the High Court, the Registrar of the High Court, and includes a District Registrar of the High Court;

(b) where matrimonial proceedings are instituted in a subordinate court, the magistrate having jurisdiction over that court;

“subordinate court” means a court of a Resident Magistrate or a District Magistrate but does not include a primary court.

PART II

GENERAL PROVISIONS (rules 3-14)

3. Use of forms in First Schedule

The forms in the First Schedule to these Rules (or the Kiswahili versions thereof) where applicable, and where they are not applicable, forms of like character, with such variations as circumstances may require, shall be used.

4. Title of proceedings

(1) All pleadings and other documents filed in a court for the purpose of or in connection with any Form 1 matrimonial proceeding shall be entitled “Matrimonial Cause” with the name of the court and the matter to which it relates. Numbers and dates may be denoted by figures.

(2) The first pleading or document in any matrimonial proceeding shall have a distinctive number assigned to it by the Registrar and all subsequent pleadings and documents in the same proceeding shall bear the same number.

5. Notices to be in writing

All notices required by the Act or these Rules shall be in writing unless otherwise provided in the Act or these Rules or the court in any particular case orders otherwise.

6. Process to be sealed

All summons, petitions, notices, orders, warrants and other process issued by the court shall be sealed.

7. Service

Service of any summons, petition, notice, warrant or other process issued by a court and required to be served on any party, shall be by personal service:

Provided that the court may in any case grant leave for substituted service in such manner as it may direct.

8. Chamber applications and summons

Where any matrimonial proceeding is required by the Act or these Rules to be commenced by a chamber application or where any application is required by these Rules to be made by a chamber summons, the chamber summons shall be in the prescribed form.

9. Notice of chamber summons Form 3

(1) Where an application made by a chamber summons is of such a nature that it affects, or any decision made by the court on such summons is likely to affect, any person other than the person making the application, a notice of the application and a copy of the affidavit filed in support thereof shall be served upon the person so affected or likely to be affected.

(2) Every notice under paragraph (1) shall be in the prescribed form.

(3) Where under these Rules or by order of the court, a notice of application made by a chamber summons is required to be served on any person then, unless the court otherwise directs, such copy together with a copy of any affidavit filed in support of the application, shall be served on such person not later than eight days before the date fixed for the hearing of the application, and such person shall have the right to file a counter-affidavit and appear and be heard at the hearing of the application.

(4) Where a respondent intends to use affidavits in opposition to an application made by a chamber summons, he shall deliver a copy of every such affidavit to the applicant not less than two days before the day appointed for the hearing of the chamber summons.

10. Filing of affidavits

Every application to be used in support or opposition of any affidavit made by a chamber summons shall, unless the court otherwise directs, be filed with the Registrar not later than the day before the day appointed for the hearing of the application.

11. Hearing of chamber summons

Every chamber summons shall, unless the court otherwise directs, be heard in chambers.

12. Record of court

All pleadings, affidavits and other documents relating to any matrimonial proceeding, together with the record of evidence taken in such proceeding and the decision of the court, shall remain on record in the court so as to form a complete record of such matrimonial proceeding, and they shall not be removed for any purpose except by an officer of the court or on a special direction of the court.

13. Office copies

Office copies of pleadings, affidavits, records of evidence, judgments and other decisions in a matrimonial proceeding, shall be supplied by a Registrar to any person applying therefor and paying the prescribed fee.

14. Search

A search of any record shall be granted to any person applying for same and paying the prescribed fee:

Provided that a search shall be granted only between the hours of 8.30 a.m. and 11.30 a.m. on weekdays and between the hours of 9.00 a.m. and 11.00 a.m. on Saturdays.

PART III

PROCEEDINGS ON A NOTICE OF OBJECTION (rules 15-16)

15. Court to issue summons Form 4

(1) Where a notice of objection has been transmitted to a court in accordance with the provisions subsection (1) as section 21 of the Act, the Registrar shall open a matrimonial cause file in relation to such notice and shall place the notice in such file.

(2) Where the court is satisfied that the grounds of objection stated in the notice of objection are not such as to confer jurisdiction upon the court, the court may, after giving the person making the objection opportunity of being heard, dismiss the objection or refer it to the Board.

(3) Where the court is satisfied that the grounds of objection stated in the notice of objection are such as to confer jurisdiction upon the court to determine the objection, the court shall direct the Registrar to issue a summons for appearance in the prescribed form to the person making the objection as well as to the intended husband of such person.

(4) Where the court is of the opinion that the person with whom the man intends to contract a marriage should be given an opportunity of being heard, a summons for the appearance of such person shall be issued by the Registrar.

16. Determination of objection

On the date appointed for the hearing of an objection under this Part, the court shall proceed to hear and determine the objection and shall in that respect have all the powers which the court has in relation to any matrimonial proceeding commenced by a petition, and the provisions of these Rules which relate to the hearing and determination of a matrimonial proceeding commenced by a petition shall, in so far as they may be applicable, apply to proceedings on an objection under this Part as if the person making the objection were a petitioner, the husband were a respondent and the person with whom the husband intends to contract a marriage, were a co-respondent.

PART IV

DIVORCE AND SEPARATION (rules 17-29)

17. Application for leave to present an petition for divorce within two years

(1) An application for leave to present a petition for divorce before two years have passed since the date of the marriage shall be by chamber summons.

(2) There shall be filed in support of the application an affidavit by the applicant stating the grounds for application, the grounds on which the applicant will rely to prove that the marriage has irreparably broken down, whether the matter has been referred to a Board, and if so, the decision of the Board, whether there are any children of the marriage, and if so, the names, age and sex of the children and where and with whom the children are residing.

(3) A copy of the application shall, unless the court otherwise directs, be served upon the other spouse.

(4) When all the affidavits have been filed or where the other spouse has not entered appearance, the Registrar shall give the parties a notice of the date and time of the hearing of the application.

(5) The court shall proceed to dispose of an application under this rule in the same manner and shall have, in that respect the same powers as it has in relation to an application made under the Civil Procedure Code *.

18. Petitions

(1) Every petition shall state in addition to the facts required to be stated therein by section 106 of the Act—

(a) the full names of the petitioner and his address for service;

(b) the full names and address of the respondent and of every co respondent.

(2) Every petition shall be signed by the petitioner and shall contain a statement by the petitioner verifying the facts of which he has personal cognizance and of the facts which he believes to be true by reason of any information in his possession or otherwise.

19. Petition for divorce or separation

(1) Where a petition for divorce or separation is presented the court shall, if it is satisfied that the petition does not comply with the provisions of section 106 of the Act or of the provisions of rule 18, reject the petition.

(2) Where the court is satisfied that the petition complies with the provisions of section 106 of the Act and of rule 18, the court shall admit the petition and direct that a notice of the petition together with a copy of the petition be served upon the respondent and the co-respondent, if any.

20. Notice of petition Form 5

Every notice of petition required to be served on a respondent or a co respondent, shall be in the prescribed form.

21. Service of notice Forms 5 and 6

(1) The petition shall not proceed to hearing unless the respondent and every co-respondent (if any) has entered an appearance or unless the court is satisfied by an affidavit or otherwise that the respondent and every co-respondent (if any) has been served with a notice of petition.

(2) After service of the petition has been effected, a certificate of service in the prescribed form shall be filed.

22. Appearance

An appearance shall be entered by a respondent or co-respondent by appearing in person or through an advocate before the Registrar, on the dates specified in the notice of petition.

23. Other pleadings

(1) Where a respondent enters an appearance and advises the Registrar that he intends to resist the petition, the Registrar shall allow the respondent or, as the case may be, the co-respondent, such time, not being less than two weeks or more than six weeks, in which the respondent or, as the case may be, the co-respondent, may file an answer.

(2) Where the Registrar allows time to the respondent or the co-respondent to file an answer he may, on application made by the petitioner, allow the petitioner reasonable time to file a reply to the answer.

(3) Every answer shall contain a concise statement of facts upon which the respondent, or as the case may be, the co-respondent, will rely for his defence.

(4) It shall not be sufficient for a respondent or a co-respondent in his answer to admit generally the grounds alleged by the petitioner, but the respondent or, as the case may be, the co-respondent, must deal specifically with each allegation of fact of which he does not admit the truth.

(5) Every reply must contain a concise statement of facts upon which the petitioner will rely to counter the allegations made in the answer.

(6) Every answer and every reply must be signed by the person on whose behalf it is lodged and must contain a statement by such person verifying the facts alleged in

the answer or, as the case may be, the reply, of which he has personal cognizance and the facts which he believes to be true by reason of any information in his possession or otherwise.

(7) A copy of every answer and of every reply filed in any matrimonial proceeding shall be served on each of the other parties to the proceeding.

24. Amendment of pleadings

The court may, if sufficient cause is shown, allow any party at any time before the conclusion of the trial of a petition to amend his pleading, subject to such order as to costs as the court may think fit to make.

25. Pleadings out of time

Where a party has failed to file any pleading within the time allowed therefor by the Registrar, the court may on application made by such party grant leave for the pleading to be filed out of time.

26. Particulars

(1) Any party may by letter require any other party to furnish particulars of any allegation or other matter pleaded, and if such other party fails to furnish such particulars within a reasonable time, the party requiring the particulars may apply to the court for an order that particulars be given.

(2) All particulars, whether given in pursuance of an order or otherwise, shall be filed together with an affidavit in support thereof within eight days of being furnished to the party requiring them.

27. Discovery

(1) A party to a matrimonial proceeding may by leave of the court, deliver interrogatories in writing for the examination of any opposite party.

(2) Interrogatories shall, unless the court otherwise directs, be answered by affidavit.

(3) A party to a matrimonial proceeding may apply for an order for discovery of documents by an opposite party and such opposite party may be ordered to make such general or limited discovery on oath as the court may think fit.

28. Non-appearance of parties

(1) The provisions of Order IX of the Civil Procedure Code *, which relate to the consequences of non-appearance of parties to a suit shall apply mutatis mutandis to the

non-appearance of any party to a matrimonial proceeding on the day fixed for the entering of an appearance or on any day on which the petition is called on for hearing:

Provided that in no case shall a court pass a decree in favour of the petitioner for the reliefs suggested by him by reason only of the non-appearance of the respondent or co-respondent, and in every such case the court shall proceed to hear the petition ex parte and determine the issue involved on the basis of the evidence adduced by the petitioner.

(2) In any case in which a decree is passed ex parte against a respondent or a co-respondent, he may, at any time before the expiry of forty-five days from the date of the decree, apply to the court by which the decree was passed for an order to set it aside; and if he satisfies the court that notice of petition was not duly served upon him or that he was prevented by any sufficient cause from entering an appearance or from appearing on any subsequent date when the petition was called on for hearing, the court shall make an order setting aside the decree against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the hearing of the petition:

Provided that where a decree was passed ex parte both against the respondent and the co-respondent, and the application is made by the co-respondent only for the setting aside of the decree, the court may, if it is of the opinion that the decree is of such a nature that it cannot be set aside as against the co-respondent only, order that the decree be set aside as against the respondent as well.

(3) No decree shall be set aside on any application made under paragraph (2) unless notice thereof has been served on the petitioner.

(4) Notwithstanding the provisions of this rule, where a co-respondent fails to enter an appearance or to appear on the day on which the petition is called on for hearing, the court shall not pass any decree ex parte against the co-respondent until after the hearing of the petition as against the respondent.

29. Hearing

(1) When all the pleadings in a matrimonial proceeding have been filed, the Registrar shall fix a date for the trial of the petition.

(2) The court shall proceed to try a petition in the same manner as if it were a suit under the Civil Procedure Code *, and the provisions of that Code which relate to examination of parties, production, impounding and return of documents, settlement of issues, summoning an attendance of witnesses, adjournments, hearing of the suits and examination of witnesses, affidavits, judgments and decrees shall apply *mutatis mutandis* to a trial of a petition.

PART V

ANNULMENT (rules 30-31)

30. Petition for annulment

Every petition for annulment shall comply with the provisions section 96 of the Act and shall contain–

- (a) the names and address of the party making the petition;
- (b) the names and address of the respondent;
- (c) particulars and the date of the marriage sought to be annulled;
- (d) the names, ages and sex of the children (if any) of the marriage;
- (e) particulars of the facts giving the court jurisdiction;
- (f) a statement of the principal allegations on which the petition is founded;
- (g) where the petitioner has been guilty of any marital misconduct, an admission of such misconduct;
- (h) the terms of any agreement regarding maintenance or division of any assets acquired through the joint efforts of the parties or, where no such agreement has been reached, the petitioner's proposals; and
- (i) particulars of the reliefs sought.

31. Procedure on petition for annulment

The provisions of Part IV which regulate the procedure on and determination of a petition for divorce or separation shall, so far as they may be applicable, apply to a petition for annulment.

PART VI

APPLICATION FOR MAINTENANCE, CUSTODY, ETC. (rules 32-33)

32. Application for maintenance etc., to be by chamber summons

(1) Every application for maintenance (whether for maintenance of a party to a marriage or the children of the marriage) or for the custody of the children of the marriage shall be by a chamber summons supported by affidavit.

(2) Where any matrimonial proceeding is not by the Act or these Rules required to be instituted by a petition, the proceeding shall be instituted by a chamber summons supported by an affidavit.

33. Procedure on application

(1) Where a matrimonial proceeding has been on application instituted by a chamber summons supported by an affidavit and all affidavits and counter-affidavits have been filed, the Registrar shall fix a date for the hearing of the application.

(2) On the date appointed for the hearing of an application, the court shall proceed to hear and determine the application and shall, in that respect, have all the powers which the court has in relation to any matrimonial proceeding commenced by a petition, and the provisions of these Rules which relate to the hearing and determination of a matrimonial proceeding commenced by a petition, shall in so far as they may be applicable, apply to proceedings on an application under this Part as if the person making the application were a petitioner, the person against whom any relief is sought were a respondent, and any other person likely to be affected by any decision of the court made on such application, were a co-respondent.

PART VII

EXECUTION OF DECREES (rules 34-35)

34. Decrees for payment of money or for delivery

Where in any matrimonial proceeding, the court has passed a decree for the payment of any money, whether periodically or otherwise, or for the delivery of any property, such decree may be executed in the same manner as a similar decree passed in any civil suit under the Civil Procedure Code *, and the provisions of the Civil Procedure Code, relating to the execution of such decrees shall apply mutatis mutandis to a decree for payment of money or delivery of property passed in any matrimonial proceedings.

35. Custody of children

(1) Where by a decree passed in any matrimonial proceeding, the court has awarded the custody of any child of the marriage to any party, the court may on application of such party, issue an injunction against any other party to such proceeding or against any other person, ordering such person to refrain from interfering in any way with the exercise of lawful rights by the person to whom the custody of a child was granted and may enforce compliance with such order by imprisonment and detention in a civil prison of the person against whom the order is made and who fails to comply with the order.

(2) The provisions of the Civil Procedure Code * which relate to arrest and detention in a civil prison of any judgement debtor shall apply mutatis mutandis to arrest and detention in a civil prison under this rule.

PART VIII

APPEALS (rules 36-38)

36. Interpretation

In this Part “subordinate court” includes a primary court.

37. Memorandum of appeal

(1) An appeal to the High Court under section 80 of the Act shall be commenced by a memorandum of appeal filed in the subordinate court which made or passed the decision, order or decree appealed against.

(2) Every memorandum of appeal shall be either in Kiswahili or in English and shall state briefly the grounds of objection to the decision, order or decree appealed against.

(3) Upon the receipt of the memorandum of appeal, the subordinate court shall transmit to the High Court, the memorandum of appeal together with the complete record of the matrimonial proceeding to which the appeal relates.

(4) The High Court shall not reject or refuse to entertain any memorandum of appeal by reason only of any defect in the form of the memorandum but shall admit every memorandum of appeal.

38. Procedure after admission of appeal

The provisions of rules 9 to 37 (inclusive) of Order XXXIX of the Civil Procedure Code *, shall apply mutatis mutandis to an appeal to which this Part applies:

Provided that–

(a) where a respondent wishes to take any cross-objection to the decree, he may do so without being required to file a memorandum of such cross-objection;

(b) in determining any appeal, the court shall not be confined to the grounds of objection raised in the memorandum of appeal but may, after giving the parties an opportunity of being heard thereupon, decide the appeal on any ground not raised in the memorandum of appeal; and

(c) the High Court shall decide every appeal according to substantial justice without undue regard to technicalities of procedure and without undue delay.

PART IX

REFERENCE TO HIGH COURT (rules 39-44)

39. Construction

In this Part a Magistrate includes a Primary Court Magistrate.

40. Procedure on case stated

Where, before or on the hearing of a matrimonial proceeding by a magistrate, any question of law or usage having the force of law arises on which the magistrate entertains a reasonable doubt the court may, either on its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement with its own opinion on the point for the decision of the High Court.

41. Stay of proceedings pending reference to High Court

The magistrate may either stay the proceeding or proceed with the case notwithstanding a reference to the High Court under rule 40 and may pass a decree or make an order contingent upon a decision of the High Court on the point referred:

Provided that no decree or order passed or made by the magistrate shall be executed until the receipt of a copy of the judgment of the High Court on the point referred to the High Court.

42. Judgment of High Court

The High Court, after hearing the parties, if they appear and desire to be heard, shall decide the point referred to it under rule 40 and shall transmit a copy of its judgment under the signature of the Registrar to the court by which the reference was made; and such court shall on receipt thereof proceed to dispose of the case in conformity with the decision of the High Court.

43. Costs where case stated

The costs, if any, consequent on a reference for the decision of the High Court under rule 40 shall be costs in the cause.

44. Power to alter, etc., decree of court making reference

Where a case is stated to the High Court under rule 40, the High Court may return the case for decree of amendment, and may alter, cancel or set aside any Court or order which the court stating the case has making passed or made in the case and may make such orders reference as it thinks fit.

PART X

MISCELLANEOUS PROVISIONS (rules 45-48)

45. Costs

In any matrimonial proceedings, the court shall have the same power to award costs as it has in any other civil proceedings to which the Civil Procedure Code * applies.

46. Court may award reduced costs

Where in any matrimonial proceeding commenced award in the High Court, the court is of the opinion that reduced such proceeding could have been more expeditiously costs dealt with by a subordinate court, the court may direct that the costs payable to any party shall be assessed as if the proceeding had been commenced and determined by a subordinate court, and where such order is made, the party entitled to recover any court fees paid by him shall be entitled to recover only such amount of the court fees as would have been paid by him had he commenced the proceeding in a subordinate court.

47. Fees

The fees specified in the Second Schedule hereto shall be levied in respect of the several matters and proceedings mentioned therein.

48. Remission of fees

(1) The court may for reasons of poverty or other good cause remit in whole or in part the fees or any of the fees payable under these Rules.

(2) Application for remission of fees under this Rule may be either orally to the court or by an ex parte chamber summons supported by an affidavit.

(3) No fee shall be payable on an application under this rule.

FIRST SCHEDULE

FORMS

FORM 1

TITLE OF PROCEEDINGS

IN THE COURT OF

MATRIMONIAL CAUSE NO. OF 20.....

PETITIONER

or (where appropriate)

APPLICANT

(State the names of the Petitioner) or (where appropriate) Applicant

RESPONDENT

(State the names of the respondent, if any)

CO -

RESPONDENT

(State the names of the co-respondent, if any)

FORM 2

CHAMBER SUMMONS

(Title as in Form 1)

LET

ALL THE PARTIES to the above proceeding appear before a Judge (or a Magistrate) in chamber on the day of 20..... at o'clock in the forenoon for the hearing of an application by the above named for the following orders:

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

This summons was taken out by and is supported by the affidavit/s of.....

Dated at this Day of 20.....

.....

Registrar

FORM 3

NOTICE OF CHAMBER SUMMONS

(Title as in Form 1)

To:

.....

.....

.....

Take notice that chamber summons, a copy of which together with a copy of the affidavit/s filed in support thereof, has been lodged in this court and will be heard on the day and time specified therein. Parties may enter appearance either personally or through advocates.

Dated at this Day of 20.....

.....

Registrar

FORM 4

**NOTICE OF APPEARANCE IN PROCEEDINGS ON A
NOTICE OF OBJECTION**

(Title as in Form 1)

To:

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

(Name and address of person making objection)

And

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

(Name and address of the intended husband)

And

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

(Name and address of the intended wife)

Whereas an objection has been made by.....

To the proposed other marriage which.....

Wishes to contract with.....

Take notice that the above objection will be heard by court on the
..... day of 20..... at when all the persons to whom this
notice is addressed are required to attend.

.....

Registrar

NOTICE OF PETITION

(Title as in Form 1)

Whereas a petition, a copy of which has been presented to this court by the above-named petitioner, will be mentioned before the Registrar (or Magistrate) on the day of 20..... at o'clock in the forenoon:

Take Notice that all parties to the petition are hereby required to attend before the Registrar (or Magistrate) on the said day at the said time and that in the event of default by any party to enter appearance, the petition shall be proceeded with in accordance with the provisions of the Law of Marriage (Matrimonial Proceedings) Rules.

Dated at this Day of 20.....

.....

Registrar