



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE CHILDREN (GUARDIANSHIP) (PRACTICE AND PROCEDURE) RULES, 2024

NO. 159 OF 2024

Revised and published by the National Council for Law Reporting
with the authority of the Attorney-General as gazetted by the Government Printer

www.kenyalaw.org

Kenya

Children Act

The Children (Guardianship) (Practice and Procedure) Rules, 2024

Legal Notice 159 of 2024

Legislation as at 18 October 2024

By [Kenya Law](#) and [Laws.Africa](#). Share widely and freely.

www.kenyalaw.org | info@kenyalaw.org

FRBR URI: /akn/ke/act/ln/2024/159/eng@2024-10-18

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution NonCommercial ShareAlike 4.0 License ([CC BY-NC-SA 4.0](#)). This license enables reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms. CC BY-NC-SA includes the following elements:

- BY: credit must be given to the creator.
- NC: Only noncommercial uses of the work are permitted.
- SA: Adaptations must be shared under the same terms.

Share widely and freely.

The Children (Guardianship) (Practice and Procedure) Rules, 2024 (Legal Notice 159 of 2024)
Contents

Part – PRELIMINARY PROVISIONS 1

- 1. Citation 1
- 2. Interpretation 1
- 3. Objective and principles of these Rules 1
- 4. Application of Rules 1

Part II – APPOINTMENT OF A GUARDIAN 2

- 5. Eligibility of a child for guardianship 2
- 6. Qualifications for appointment as guardian 2
- 7. Appointment of a guardian by the Court 3
- 8. Purpose for which a guardian may be appointed 3
- 9. Modes of appointment of guardian 3
- 10. Exercise of joint guardianship 3

Part III – TESTAMENTARY GUARDIANSHIP 4

- 11. Who may appoint a testamentary guardian 4
- 12. Testamentary guardianship by will 4
- 13. Testamentary guardianship by deed 4
- 14. Amendment of testamentary instruments 5
- 15. Subsequent testamentary instruments 5
- 16. Requirement to register certain instruments 5
- 17. Procedure on registration of instruments 6
- 18. Custody of testamentary instruments and register 6
- 19. Revocation of appointment of a testamentary guardian 6
- 20. Direction where a subsequent appointment is made by Court 7
- 21. Notice of revocation and fresh appointment of guardian 7
- 22. Procedure where the Court revokes a testamentary instrument 8
- 23. Assumption of guardianship by a testamentary guardian 8
- 24. Determination of validity or enforcement of a testamentary instrument 8
- 25. Applications under this Part 8

Part IV – APPLICATIONS RELATING TO GUARDIANSHIP 9

- 26. Application for appointment as guardian 9
- 27. Contents of the affidavit 9
- 28. Application for leave to remove a child from Kenya 10
- 29. Provisions governing filing of other applications 11
- 30. Requirement for leave of Court 11

31. Summons to be accompanied by notice to enter appearance	11
32. Recourse where other proceedings are before another court	12
Part V – SERVICE OF COURT PROCESS AND PRE-HEARING PROCEEDINGS	12
33. Service of court process	12
34. Secretary to be party	12
35. Service of notice to enter appearance	12
36. Service where application is made in other proceedings	12
37. Who may serve	13
38. Appearance	13
39. Form of reply to the originating summons	13
40. Reply to applications	13
41. Amendment of pleadings	13
42. Close of pleadings	13
Part VI – PROVISIONS RELATING TO HEARING	13
43 Pre-trial conference	13
44. Matters to be handled at the pre-trial conference	13
45. Hearing notice	14
46. Attendance at hearing	14
47. Consequences of non-attendance	14
48. Oral application	15
49. Procedure at hearing where the child is participating	15
50. Proceedings to be conducted expeditiously	15
51. Period for hearing of applications	16
52. Court to give directions on hearing of applications	16
53. Provisions governing hearing of applications	16
Part VII – APPOINTMENT OF A GUARDIAN IN RESPECT OF THE ESTATE OF A CHILD	16
54. Appointment of a guardian of the child’s estate	16
55. Duties of a guardian of the child’s estate	16
56. Powers of a guardian of the child’s estate	17
57. Guardian to execute a bond	17
58. Guardian not to spend more than child’s annual income	17
59. Consequences for misappropriation and misapplication of child’s estate	18
60. Orders where money is payable to a child under a decree of court	18
Part VIII – PROVISIONS RELATING TO ORDERS	18
61. Consideration by Court before issuing a guardianship order	18

62. Orders that the Court may issue	19
63. Nature of guardianship orders	19
64. Duration of orders	19
65. Setting aside, amendment or variation of orders by Court	19
66. Power to correct defects in the order	20
67. Execution of orders and decrees	20
Part IX – PROCEDURE AFTER ISSUANCE OF GUARDIANSHIP ORDERS	20
68. Dispute between guardians	20
69. Failure or inability to act by appointed guardian	20
70. Form of disclaimer of appointment	21
71. Disclaimer of appointment to be filed in Court	21
72. Directions upon filing of disclaimer of appointment	21
73. When disclaimer can take effect	21
74. Extension of guardianship beyond the child's eighteenth birthday	22
75. Who may apply for extension of guardianship	22
76. Orders of Court upon application for extension of guardianship	22
77. Power of Court to vary, revoke extension orders	22
78. Grounds for termination of guardianship	23
79. Secretary to set down case for mention where guardian dies	23
80. Consequences of termination of guardianship	23
Part X – MISCELLANEOUS PROVISIONS	23
81. Review	23
82. Appeal	23
83. Time	24
84. Form of interlocutory applications	24
85. Execution	24
86. Restriction on charging of fees	24
87. Confidentiality of proceedings	24
88. Costs	24
89. Ongoing proceedings	24
90. Revocation	25
91. Revocation	25
SCHEDULE	25

CHILDREN ACT
THE CHILDREN (GUARDIANSHIP)
(PRACTICE AND PROCEDURE) RULES, 2024
LEGAL NOTICE 159 OF 2024

Published in Kenya Gazette Vol. CXXVI—No. 172 on 18 October 2024

Commenced on 4 October 2024

Note: KGS publication Date

Part – PRELIMINARY PROVISIONS

1. Citation

These Rules may be cited as the Children (Guardianship) (Practice and Procedure) Rules, 2024.

2. Interpretation

In these Rules, unless the context otherwise requires—

“instrument of revocation” means any subsequent instrument; or a subsequent deed, will, or codicil that revokes the appointment of a testamentary guardian made in an earlier testamentary instrument;

“intermediary” means a person authorized by the Court on account of experience or expertise to facilitate trial or give evidence on behalf of a child;

“summons” means an originating summons made under these Rules; and

“testamentary instrument” means a deed, will, subsequent will, or codicil, or a clause in a will, subsequent will, or codicil appointing a testamentary guardian.

3. Objective and principles of these Rules

- (1) The objective of these Rules is to facilitate the just, expeditious and proportionate determination of applications relating to guardianship under the Act.
- (2) The implementation of these Rules shall be guided by the following principles—
 - (a) ensuring that the best interest of the child principle is upheld;
 - (b) promoting the placement of the child in the child’s own social-cultural environment;
 - (c) ensuring the realization of the objectives and principles set out in section 12 of the Act.
- (3) Nothing in these Rules shall preclude the Court from exercising any power or issuing any orders or directions which may be just and fit having regard to the best interests of the child.

4. Application of Rules

These Rules shall apply to the following matters relating to the practice and procedure in guardianship proceedings—

- (a) the appointment of a guardian by the Court in respect of a child, a child’s estate, or both;
- (b) testamentary guardianship;

- (c) submission of accounts and inventory in respect of a child's estate as provided for under section 122(9)(d) of the Act;
- (d) termination of guardianship; and
- (e) for applications—
 - (i) by a surviving parent under section 34(3) of the Act for the revocation of appointment of a testamentary guardian;
 - (ii) by relatives of a deceased parent under section 34(5) of the Act;
 - (iii) by a guardian under section 122(4) of the Act for leave to remove the child from Kenya;
 - (iv) contemplated under section 123(3) of the Act to determine whether a surviving parent is fit to act as a guardian of the child;
 - (v) by a surviving parent or testamentary guardian under section 124(5) of the Act;
 - (vi) by a surviving parent or guardian for orders under section 124(8) of the Act;
 - (vii) under section 127 of the Act for the extension of appointment of guardian beyond the child's eighteenth birthday;
 - (viii) made by a joint guardian or surviving parent under section 129(1) of the Act;
 - (ix) by the persons listed under section 129(2) of the Act, for the Court's directions or for determination of any matter affecting the welfare of the child;
 - (x) to determine the validity of a testamentary instrument;
 - (xi) for orders to redress neglect or misapplication of assets by guardian of a child's estate; or
- (f) for any other procedural matter relating to guardianship that is envisaged under the Act and these Rules.

Part II – APPOINTMENT OF A GUARDIAN

5. Eligibility of a child for guardianship

Pursuant to Part X of the Act, any child is eligible to be placed under guardianship if the child is a resident of Kenya, whether or not the child was born in Kenya or is a Kenyan citizen.

6. Qualifications for appointment as guardian

- (1) Subject to subrule (2), a person qualifies to be appointed as a guardian if that person—
 - (a) is a Kenyan citizen;
 - (b) is a fit person as defined under section 2 of the Act;
 - (c) is not a person with mental illness as determined under the Mental Health Act ([Cap. 248](#)); and
 - (d) has not been convicted of any of the offences specified in the Third Schedule to the Act or similar offences.
- (2) A person shall not be appointed to be the sole guardian of a child if the person is not a relative of the child, unless exceptional circumstances exist to justify such appointment, having regard to the welfare and best interests of the child.

7. Appointment of a guardian by the Court

A guardian may be appointed by the Court—

- (a) upon application in the specified form as envisaged under section 122 of the Act;
- (b) under sections 34(3) and 124(5) of the Act where the appointment of a testamentary guardian is revoked or declined;
- (c) under section 123(1) and (2) of the Act, to act jointly with a surviving parent where no testamentary guardian was appointed by the deceased parent; or where the testamentary guardian so appointed is dead, has been found unfit to act as guardian, or has refused to act;
- (d) under sections 34(5) and 123(3) of the Act where the surviving parent is found to be unfit to act as the guardian of the child;
- (e) under section 125 of the Act in respect of a child whose guardian or parents have died or cannot be found and the child has no guardian or other person exercising parental responsibility over the child;
- (f) in respect of a child to whom the provisions of section 121 of the Act apply;
- (g) in respect of a child who is in need of care and protection as provided for under section 144 of the Act;
- (h) at the time of making an adoption order in a domestic or inter-country adoption as provided for under section 195 of the Act;
- (i) in respect of a child found in situations of emergency; or
- (j) where any other sufficient grounds exist that necessitate the appointment of a guardian in respect of the child, having regard to the child's best interest.

8. Purpose for which a guardian may be appointed

A guardian may be appointed in respect of—

- (a) the person of the child;
- (b) the estate of a child or the estate to which the child is a beneficiary; or
- (c) both the person and the estate of the child.

9. Modes of appointment of guardian

A guardian may be appointed—

- (a) by the Court as provided for under rule 8;
- (b) by the Court as a customary guardian pursuant to rules made under section 126 of the Act;
- (c) as a testamentary guardian through a testamentary instrument made by a parent or a guardian of the child.

10. Exercise of joint guardianship

(1) Joint guardianship under these Rules may be exercised in any of the following circumstances—

- (a) where more than one guardian is validly appointed to exercise guardianship over the same child;
- (b) where the Court appoints a guardian to act jointly with a surviving parent in circumstances envisaged under sections 34 and 123 of the Act; or

- (c) where another person is authorized by the Court to act jointly with the guardian of the child.
- (2) A testamentary guardian shall act jointly with the surviving parent of the child during the lifetime of the parent unless the surviving parent's objection to the guardian's appointment is upheld by the Court.

Part III – TESTAMENTARY GUARDIANSHIP

11. Who may appoint a testamentary guardian

A testamentary guardian may be appointed by a parent or guardian of the child in accordance with section 124 of the Act.

12. Testamentary guardianship by will

- (1) A parent or guardian of a child may make a will appointing any person to be the guardian of the child in the event of such parent's or guardian's death.
- (2) The appointment of a testamentary guardian under subrule (1) may otherwise be made under a clause in a will or codicil made pursuant to the provisions of the Law of Succession Act.
- (3) The making, execution, and attestation of wills or codicils contemplated under this rule shall be in accordance with the law relating to testamentary instruments.

13. Testamentary guardianship by deed

- (1) A parent or guardian of a child may make a deed appointing any person to be the guardian of the child in the event of such parent's or guardian's death.
- (2) A deed under this rule shall—
 - (a) be in writing;
 - (b) be dated and signed by the person making the appointment in the presence of two competent witnesses;
 - (c) bear the name and signature of the person making the appointment;
 - (d) bear the names and signatures of the witnesses attesting to the signature of, and at the direction of the person making the appointment;
 - (e) contain the details of the child and of the person appointed as testamentary guardian;
 - (f) indicate the place where the deed was made;
 - (g) express a clear intention to appoint a testamentary guardian for the child upon the death of the person making the appointment;
 - (h) indicate whether there has been previous appointment of a guardian in respect of the same child, and whether or not the appointment revokes a previous appointment, if any;
 - (i) contain a clause indicating that the person appointed as testamentary guardian has accepted the appointment;
 - (j) be made at the time when the appointing guardian or parent is competent to make the deed;
 - (k) indicate whether there is any surviving parent or guardian of the child other than the person making the deed.
- (3) The provisions in subrule (2) relating to execution and attestation shall apply to the procedure on amendment of a deed made under these Rules.

14. Amendment of testamentary instruments

- (1) Subject to the provisions in subrules (2) and (3), an instrument appointing a testamentary guardian may be amended by the maker at any time whether before or after its registration as required under rule 18.
- (2) The amendment of a will or codicil appointing a testamentary guardian shall be governed by the law relating to testamentary instruments.
- (3) The provisions of rule 14 relating to the procedure for the making of a deed shall apply to the procedure on amendment of deeds under these Rules.

15. Subsequent testamentary instruments

- (1) A parent or guardian who has made a testamentary instrument under these Rules may make a subsequent instrument appointing another person either as an additional testamentary guardian, or replacing the guardian initially appointed.
- (2) A subsequent testamentary instrument appointing a different person as testamentary guardian may be made—
 - (a) where the person appointed—
 - (i) predeceases the appointing parent or guardian; or
 - (ii) becomes incapable of discharging the duties of a guardian; or
 - (b) where the testamentary instrument earlier made has been revoked.
- (3) Subject to the provisions of the law governing testamentary instruments, a subsequent testamentary instrument made under this rule whose purpose, either by express provision or by necessary implication, is to appoint an additional guardian shall not be deemed to have revoked the initial testamentary instrument.
- (4) The subsequent testamentary instrument shall contain a reference to the earlier instrument, as well as a statement indicating if the latter appointment revokes the appointment made in the testamentary instrument earlier made.
- (5) The form, validity, and procedure for the making of an instrument under this rule shall be governed by the same provisions in these Rules governing the making of testamentary instruments.

16. Requirement to register certain instruments

- (1) Notwithstanding that an instrument creating a testamentary guardianship has been or is required to be registered pursuant to any other written law, any testamentary instrument made under these Rules shall be presented to the Court for registration within thirty days of its execution.
- (2) Where after registration, the parent or guardian makes a subsequent testamentary instrument as contemplated under rule 16(1), the latter appointment shall not take effect until after the registration of the subsequent instrument in accordance with the provisions of rule 18.
- (3) A parent or guardian who revokes a testamentary instrument after its registration shall, within fourteen days of its execution present the instrument of revocation for registration as provided for under rule 18.
- (4) Where after registration a testamentary instrument is amended pursuant to the provisions of rule 15, the amended instrument shall be presented for registration within fourteen days of its execution.
- (5) The Court may for sufficient reason extend the period provided for registration of instruments under this rule.

17. Procedure on registration of instruments

- (1) Instruments for which registration is required under this Part shall be presented for registration at the nearest Court registry where the child ordinarily resides.
- (2) An amended instrument prepared as contemplated under rule 15, any subsequent instrument made in accordance with rule 16, and any instrument of revocation made pursuant to rule 20 shall be presented for registration at the Court registry where the initial testamentary instrument was registered.
- (3) The instrument shall be presented in person by the guardian or parent who made the instrument or by his or her advocate.
- (4) Where the guardian or parent who made the appointment dies before registering the testamentary instrument or any of the instruments listed at subrule (2), the instrument may be presented for registration either by the deceased guardian's or parent's advocate having custody of the instrument; or by the appointed testamentary guardian, surviving guardian, or surviving parent within thirty days of the death of the maker.
- (5) The person presenting any instrument for registration under this Part shall tender the original and its photocopy for certification by the Court:

Provided that the Court may, where it is in the best interest of the child, dispense with the production of the original instrument if it is shown that the original instrument cannot be traced.

- (6) The Court shall, after certification, endorse upon, serialise and retain the certified copy in safe custody.

18. Custody of testamentary instruments and register

- (1) The Court shall maintain a register in the Form No. GR1 set out in the Schedule wherein shall be entered details of instruments presented for registration under this Part.
- (2) The Court shall designate a suitable officer to oversee the registration of instruments under this Part, as well as the safe custody of the instruments presented for registration and the register maintained under subrule (1).
- (3) All instruments presented for registration under this Part, as well as the register maintained at subrule (1) shall be kept confidential and shall not be disclosed to anyone without the leave of Court.
- (4) Where more than one instrument envisaged under this Part relating to the same child or siblings are registered, the instruments shall be kept in one folder.
- (5) Subject to subrule (4), the instruments presented for registration under this Part shall be arranged in the order of serialisation and shall be sorted in accordance with the year in which they were registered.

19. Revocation of appointment of a testamentary guardian

- (1) The appointment of a guardian by the Court under section 122 of the Act shall revoke any earlier appointment including an appointment made in an unrevoked testamentary instrument, unless, either by express provision or by necessary implication, it can be construed that the purpose of the latter appointment was to appoint an additional guardian.
- (2) The appointment of a testamentary guardian shall, subject to the provisions of the law relating to testamentary instruments, be deemed revoked where the parent or guardian makes a subsequent instrument appointing a different person as guardian, unless the subsequent instrument contains an express provision to the effect that the purpose of the latter appointment was to appoint an

additional guardian; or unless the Court upon application determines that by necessary implication, the latter appointment was to appoint an additional guardian.

- (3) A deed appointing a testamentary guardian may be revoked by an instrument of revocation made in accordance with the provisions of section 128(2) of the Act.
- (4) A will or codicil, or a clause in a will or codicil, appointing a testamentary guardian may be revoked in accordance with the provisions of the Law of Succession Act ([Cap. 160](#)) relating to revocation of testamentary instruments, and pursuant thereto, the appointment made thereunder shall stand revoked.
- (5) Notwithstanding the foregoing provisions, the appointment of a testamentary guardian shall stand revoked where the testamentary instrument by which the appointment was made is otherwise revoked or becomes invalidated by operation of the law, or where it becomes inoperative for the reason that the appointed guardian or child has pre-deceased the appointing guardian or parent.
- (6) A testamentary instrument may, upon application be revoked by the Court where—
 - (a) the validity of the instrument is brought to question;
 - (b) the testamentary guardian appointed under the instrument is dead or has refused to act, or has become incapable of assuming the role of a guardian of the child; or
 - (c) any other sufficient cause exists.
- (7) An application such as is envisaged under subrule (6) may only be filed in Court where the invalidity arises after assumption of testamentary guardianship; or if the appointing parent or guardian is still alive, by the other parent or guardian (if any) not being the one making the appointment.
- (8) A parent or guardian who has appointed a testamentary guardian under these Rules may, subject to the provisions of the law relating to testamentary instruments and without recourse to Court, revoke the testamentary instrument if—
 - (a) the appointed testamentary guardian—
 - (i) has indicated his or her unwillingness to assume the responsibility of guardian upon the death of the appointing guardian or parent; or
 - (ii) has become incapable or is unlikely to effectively discharge the responsibilities of a testamentary guardian; or
 - (b) any other sufficient reason exists.
- (9) The provisions of rule 22(1), (2) and (3) shall apply where the revocation envisaged under subrule (8) hereof is made after the registration of the testamentary instrument.

20. Direction where a subsequent appointment is made by Court

Where the appointment of a testamentary guardian is revoked by subsequent appointment of a different person as guardian by the Court, the Court shall direct that an entry be made to that effect in the register kept under the provisions of rule 19(1).

21. Notice of revocation and fresh appointment of guardian

- (1) An appointing parent or guardian, or the person appointed as testamentary guardian shall, where the testamentary instrument is otherwise revoked or invalidated as envisaged under rule 20(5) prepare and file a notice of revocation at the Court registry where the instrument was registered.
- (2) The notice of revocation shall be in Form No. GR2 set out in the Schedule.
- (3) The appointing parent or guardian may prepare and register a subsequent testamentary instrument upon lodging the notice of revocation under subrule (1).

- (4) Where no fresh testamentary instrument as envisaged under subrule (2) is filed, the Court shall, upon the lapse of three months after the registration of the notice of revocation summon the appointing parent or guardian and the testamentary guardian, and enquire on the suitability and willingness of the parties to proceed with the arrangement to establish testamentary guardianship.
- (5) Where the revocation or invalidation under rule 20(5) occurs after the assumption of guardianship, the testamentary guardian, Secretary, or other person may apply to Court to have a fit person appointed as guardian of the child.
- (6) An otherwise fit person appointed as a testamentary guardian under an instrument that is revoked or invalidated as envisaged under subrule (4) shall continue to act as guardian of the child until a fresh appointment is made by the Court.

22. Procedure where the Court revokes a testamentary instrument

Where the Court revokes a testamentary instrument pursuant to the provisions of rule 20(6), it shall direct that an entry be made to that effect in the register kept under the provisions of rule 19(1) and—

- (a) where the revocation is made before the death of the appointing parent or guardian, the Court may direct the appointing parent or guardian to make and register a fresh testamentary instrument within the period specified; or
- (b) in the case where the revocation is made after the death of the appointing parent or guardian, the Court shall direct that a fit person be appointed as a guardian or issue directions for the welfare of the child.

23. Assumption of guardianship by a testamentary guardian

- (1) A testamentary guardian appointed under a testamentary instrument that has been duly registered by the Court under these Rules shall assume the role of a guardian of the child immediately upon the death of the appointing parent or guardian.
- (2) Notwithstanding the provisions of subrule (1), a testamentary guardian shall assume the role of guardian of the child immediately upon the death of the surviving parent, or appointing parent or guardian in cases where there is no other person exercising parental responsibility over the child.
- (3) Where a testamentary guardian appointed under a will or deed that has not been registered pursuant to these Rules assumes the role of guardian under subrule (2), the testamentary guardian shall present a certified copy of the will or deed for registration within thirty days from the date of assumption of the role of guardian.

24. Determination of validity or enforcement of a testamentary instrument

- (1) Where a question arises as to the validity or the enforcement of a testamentary instrument, the Court shall determine the question having regard to the best interests of the child.
- (2) Any question relating to the validity of a will or codicil appointing a testamentary guardian shall be determined in accordance with the provisions of the law relating to testamentary instruments.

25. Applications under this Part

- (1) Applications under this Part, other than applications to revoke or determine the validity of testamentary instrument, shall be by way of notice of motion in Form No. GR3 set out in the Schedule supported by an affidavit setting out the factual circumstances and grounds upon which the application made.
- (2) The application shall be registered as a “Children’s Miscellaneous Application,” unless where there are existing proceedings before the Court relating to the same child, in which case the application shall be filed in the pending proceedings.

Part IV – APPLICATIONS RELATING TO GUARDIANSHIP

26. Application for appointment as guardian

An application for the appointment of a guardian by the Court shall be made—

- (a) where there are other pending or previous proceedings before the Court relating to the child—
 - (i) by a notice of motion application filed in the pending or previous proceedings in the Form No. GR3 set out in the Schedule;
 - (ii) supported by an affidavit in the Form No. GR4 set out in the Schedule stating the factual circumstances and grounds on which the application is made;
- (b) where the child is a ward of the Court—
 - (i) by a notice of motion application made in the same proceedings in the Form No. GR3 set out in the Schedule;
 - (ii) supported by an affidavit in the Form No. GR4 set out in the Schedule stating the factual circumstances and grounds on which the application is made;
- (c) in any other case—
 - (i) by way of originating summons in the Form No. GR5 set out in the Schedule;
 - (ii) supported by an affidavit in the Form No. GR4 set out in the Schedule stating the factual circumstances and grounds upon which the application is made.

27. Contents of the affidavit

- (1) An affidavit in support of an application made in accordance with rule 27 shall contain—
 - (a) a statement indicating whether the guardianship relates to—
 - (i) the child only; in which case the applicant shall also file an affidavit of fitness substantially in the Form No. GR6 set out in the Schedule;
 - (ii) the estate to which the child is a beneficiary, or the estate of the child; in which case the application shall also be accompanied by a verifying affidavit substantially in the Form No. GR7 set out in the Schedule; or
 - (iii) both the child and the estate of the child; in which case the application shall be accompanied by affidavit of fitness of the applicant as well as a verifying affidavit in the specified form;
 - (b) the name and a statement indicating whether the child is male, female or intersex, and where the guardian intends to reside with the child;
 - (c) the last known address of a parent of the child, stating whether or not the parent is still alive, and whether the parental responsibility of the parent has been terminated;
 - (d) where the child does not reside with any of the child's parents, the name and address of the person having actual custody of the child;
 - (e) a statement describing the reasons why the guardianship is sought;
 - (f) the identification of the places where the child has lived in the three years preceding the application, or since birth if the child is younger than three years of age, and where available, the names and current addresses of the persons with whom the child lived during that period;

- (g) a description of past or current proceedings involving the child, if any;
 - (h) the name, and contact details of the applicant;
 - (i) information relating to the applicant's relationship with the child, if at all;
 - (j) where the application is for the appointment of a guardian over the estate to which the child is a beneficiary or in respect to the estate of the child—
 - (i) a description of, and estimated value of the assets comprising the entire estate;
 - (ii) a description of, and estimated value of the assets that the child is beneficially entitled to;
 - (iii) the name and address of the administrator of the estate;
 - (iv) information regarding the other beneficiaries of the estate, if any;
 - (v) information regarding the status of the succession proceedings relating to the estate where the child is a beneficiary;
 - (vi) a description of any anticipated periodic payment for the child, including contributions towards the maintenance of the child, and social welfare benefits;
 - (k) a statement affirming that the proposed guardian and any other person who may significantly affect the child's welfare has consented to the appointment; and
 - (l) a statement that the appointment of the applicant as an interim guardian is required to protect the welfare and the best interests of the child.
- (2) Where the application is made jointly by more than one person, each applicant shall swear a separate affidavit of fitness.

28. Application for leave to remove a child from Kenya

- (1) A guardian who is not the father or mother of a child shall not remove the child from Kenya without obtaining the leave of the Court.
- (2) An application for leave of the Court under subrule (1) shall be made—
- (a) where there are other pending or previous or proceedings before the Court relating to the child—
 - (i) by a notice of motion application filed in the pending or previous proceedings in Form No. GR3 set out in the Schedule;
 - (ii) supported by an affidavit in Form No. GR4 set out in the Schedule stating the factual circumstances and grounds on which the application is made;
 - (b) where the child is a ward of the Court—
 - (i) by a notice of motion application made in the same proceedings in Form No. GR3 set out in the Schedule;
 - (ii) supported by an affidavit in Form No. GR4 set out in the Schedule stating the factual circumstances and grounds on which the application is made;
 - (c) in any other case—
 - (i) by way of originating summons in Form No. GR5 set out in the Schedule;
 - (ii) supported by an affidavit in Form No. GR4 set out in the Schedule stating the factual circumstances and grounds on which the application is made.

- (3) The grant of leave under this rule shall be at the discretion of the Court having regard to—
 - (a) the urgent needs of the child at the time that the application is made;
 - (b) the need to protect the child from child trafficking and other harmful practices; and
 - (c) the best interests of the child.
- (4) Where the Court grants leave under this rule, it shall impose such conditions or restrictions as it considers appropriate.
- (5) Where a guardian removes a child out of jurisdiction of the republic of Kenya pursuant to leave granted under this rule, the guardian shall produce the child to the Court upon return.

29. Provisions governing filing of other applications

The provisions of rule 29(2) shall apply *mutatis mutandis* to the procedure for an application—

- (a) by a surviving parent under section 34(3) of the Act for the revocation of appointment of a testamentary guardian;
- (b) by relatives of a deceased parent under section 34(5) of the Act;
- (c) under section 123(3) of the Act to determine whether a surviving parent is fit to act as a guardian of the child;
- (d) under section 124(5) of the Act made by a surviving parent objecting to joint guardianship with a testamentary guardian;
- (e) under section 124(5) of the Act by a testamentary guardian for consideration of the fitness of the surviving parent to have legal custody of the child;
- (f) by the surviving parent or guardian for an order under section 124(8) of the Act;
- (g) under section 127 of the Act for the extension of appointment of a guardian after the child attains the age of eighteen years;
- (h) by a joint guardian or surviving parent under section 129(1) of the Act;
- (i) by the persons listed under section 129(2) of the Act, for the Court's directions or for determination of any matter affecting the welfare of the child;
- (j) to determine the validity of a testamentary instrument;
- (k) for orders to redress neglect or misapplication of the assets of a child's estate by a guardian;
- (l) for termination of guardianship made under section 128(6) of the Act.

30. Requirement for leave of Court

- (1) An application under rule 30(i) shall be made subject to the grant of leave of the Court.
- (2) The leave may be sought as part of the substantive application.

31. Summons to be accompanied by notice to enter appearance

- (1) An originating summons filed under this part shall be accompanied by a notice to enter appearance in Form No. GR8 set out in the Schedule.
- (2) The Court shall endorse the notice to enter appearance and issue copies thereof to the applicant within three days of filing.

32. Recourse where other proceedings are before another court

Where the pending or previous proceedings relating to the child are before another court other than the Children's Court, the originating summons shall—

- (a) be filed before the Children's Court; and
- (b) disclose the existence and nature of the other proceedings.

Part V – SERVICE OF COURT PROCESS AND PRE-HEARING PROCEEDINGS**33. Service of court process**

Unless otherwise ordered by the Court, the provisions of Order 5 of the Civil Procedure Rules shall apply to the service of court process under these Rules.

34. Secretary to be party

The Secretary shall be made a party to all proceedings and shall be served with all process under these Rules.

35. Service of notice to enter appearance

- (1) Notice to enter appearance shall be served together with an originating summons upon—
 - (a) the person proposed to be appointed as guardian;
 - (b) the Secretary;
 - (c) a parent or guardian of the child, or any person who is liable to contribute to the maintenance of the child;
 - (d) all persons who are party to the proceedings; and
 - (e) any other party as the Court may direct.
- (2) Service under this rule shall be effected within ten days from the date that the applicant is issued with endorsed notices by the Court pursuant to rule 32(2).

36. Service where application is made in other proceedings

- (1) Where the application is made in pending or previous proceedings, it shall be served on—
 - (a) all persons who are party to the application;
 - (b) the Secretary;
 - (c) a parent or guardian of the child, or any person who is liable to contribute to the maintenance of the child;
 - (d) the guardian *ad litem*, if any;
 - (e) the other parties to the pending or previous proceedings whom the Court deems necessary;
 - (f) any other party as the Court may direct.
- (2) Service of application under this rule shall be effected within ten days from the date of filing.

37. Who may serve

- (1) Service of process under these Rules may be effected by the applicant or by a duly authorized process server.
- (2) The applicant or the process server as the case may be shall, immediately after effecting service under rules 36 and 37 file a certificate of service in the Form No. GR9 set out in the Schedule.

38. Appearance

A party served with a notice to enter appearance under rule 36 may, within seven days of service enter an appearance in Form No GR10 set out in the Schedule.

39. Form of reply to the originating summons

- (1) A party who has been served with the notice to enter appearance and the originating summons pursuant to rule 36 shall, whether or not that party has entered an appearance file and serve an affidavit in reply to the application.
- (2) The affidavit shall be filed and served within fourteen days from the date of service of the notice to enter appearance, and shall be served upon all persons named as party to the application.
- (3) The affidavit in reply shall indicate whether or not the respondent opposes the prayers set out in the originating summons and the reasons thereof.

40. Reply to applications

A party served with an application pursuant to rule 37 shall, within fourteen days of service file and serve a replying affidavit indicating if the party opposes the application and if so, the reasons thereof.

41. Amendment of pleadings

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

42. Close of pleadings

Pleadings shall close seven days after the filing of the replying affidavit or fourteen days after service of the notice to enter appearance on all parties to the application, whichever is later.

Part VI – PROVISIONS RELATING TO HEARING**43 Pre-trial conference**

Within seven days of close of pleadings, the Court shall convene a pre-trial conference and notify parties.

44. Matters to be handled at the pre-trial conference

- (1) At the pre-trial conference, the Court shall confirm among other things—
 - (a) filing and service of pleadings;
 - (b) amendment of pleadings where necessary;
 - (c) the participation of the child at the hearing;
 - (d) parties to attend at the hearing;

- (e) whether appropriate measures required under rule 50 have been put in place to ensure the participation of the child;
 - (f) custody and care of the child during the pendency of the proceedings;
 - (g) the date set for the hearing and service of parties;
 - (h) filing of reports;
 - (i) the disposal of any preliminary or interlocutory matters;
 - (j) mode by which the proceedings will be conducted;
 - (k) any other matter that promotes the welfare of the child and the expeditious disposal of the case.
- (2) At the pre-trial conference, the Court shall complete the hearing checklist in Form No. GR11 set out in the Schedule.
- (3) Where the case is uncontested, the Court may consider the pleadings and reports on record, as well as oral submissions, if any, and proceed to determine the case on the date set for pre-trial conference.

45. Hearing notice

At the pre-trial conference, the Court shall, where the case is certified for hearing issue directions on service of a hearing notice in Form No. GR12 set out in the Schedule.

46. Attendance at hearing

- (1) A party served under 36 who has filed and served an affidavit in reply may attend before the Court and show cause why the prayers set out in the originating summons may or may not be granted:
- Provided that a party who is not opposed to the originating summons may attend Court and submit in support of the application notwithstanding the fact that that party may not have filed any affidavit in reply.
- (2) Attendance at the hearing shall be limited to—
- (a) the child to whom the proceedings relate;
 - (b) parties;
 - (c) advocates representing the parties;
 - (d) witnesses;
 - (e) guardian *ad litem*, if any; and
 - (f) any other person with the leave of the Court.

47. Consequences of non-attendance

- (1) Where any party to the suit fails to attend at the hearing, the Court may proceed to hear and determine the originating summons, or make such orders as it deems fit.
- (2) A party who is aggrieved by an order issued under subrule (1) may apply to the Court to set aside the *ex parte* order or proceedings.
- (3) The Court shall allow an application under subrule (2) only if it is satisfied that—
- (a) the applicant was not served with the notice for the hearing; or
 - (b) the applicant was otherwise prevented by justifiable cause from attending the trial; and

- (c) it is in the best interests of the child that the *ex parte* order or proceedings be set aside.

48. Oral application

- (1) A party to a suit under these Rules may make an oral application for any order or relief from the Court in respect of the case or any other relevant matter.
- (2) Where a party to the proceedings makes an oral application under subrule (1), the Court may—
 - (a) allow the application to proceed orally in a way and on such conditions as it 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 probation officer; or
 - (c) any other person as the Court deems fit.

49. Procedure at hearing where the child is participating

- (1) Unless otherwise directed by an order of the Court, the child to whom the proceedings relate shall attend the hearing.
- (2) Where the child is able and willing to participate in the proceedings, unless for sufficient reason the Court orders otherwise, the Court shall—
 - (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 understands to enable the child participate in the process;
 - (d) ensure an enabling and safe environment for the child to participate in the process;
 - (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 of the child if any; and
 - (f) minimise the frequency of the child's appearance in Court.
- (3) The Court shall record the reasons for excluding the child from attending the whole or any part of the proceedings under these Rules.
- (4) The Court may make orders or give directions on how the child shall adduce evidence at a hearing and such directions shall include—
 - (a) that a person be excluded from the courtroom;
 - (b) that the child may have an intermediary to support the child; and
 - (c) if necessary, the child's evidence be adduced through the use of technology, including an audio or audio-visual link.

50. Proceedings to be conducted expeditiously

- (1) Proceedings under these Part shall be undertaken expeditiously and, subject to subrule (2), be determined within sixty days from the date of filing of the case.

- (2) The Court may, in exceptional circumstances, and where justifiable reasons exist, extend the time for the determination of the case upon the lapse of the period set at subrule (1).
- (3) Where the Court extends time under subrule (2), it shall—
 - (a) record the exceptional circumstances or reasons that justified the extension;
 - (b) indicate in the proceedings the period of extension;
 - (c) henceforth hear the case on priority basis.
- (4) Every Court station shall prepare and submit quarterly reports to the Registrar of the Court in Form No. GR13 as set out in the Schedule, regarding cases where extension of time has been made under this rule.

51. Period for hearing of applications

Applications filed in pending or previous proceedings relating to the child shall be heard expeditiously and be disposed of within sixty days from the date of filing.

52. Court to give directions on hearing of applications

- (1) The Court shall direct the way an application filed in pending or previous proceedings shall be disposed of, and such directions may include a direction that a separate suit be filed, if the disposal of the application is unlikely to meet the ends of justice or to achieve the objectives and principles of these Rules.
- (2) Where the Court directs that a separate suit be filed, the suit shall be filed by way of originating summons in the specified Form.

53. Provisions governing hearing of applications

The provisions of rules 47 to 51 shall apply to hearing of applications filed in pending or previous proceedings.

Part VII – APPOINTMENT OF A GUARDIAN IN RESPECT OF THE ESTATE OF A CHILD

54. Appointment of a guardian of the child's estate

Pursuant to section 122(7) of the Act, a guardian may be appointed in respect of only the estate of the child, or in respect of both the person and the estate of the child.

55. Duties of a guardian of the child's estate

A guardian appointed in respect of a child's estate shall have the duty to—

- (a) take reasonable steps to safeguard the estate of the child from loss and damage;
- (b) ensure that the child's share of inheritance in an estate that is subject to succession proceedings is preserved;
- (c) prepare and submit accounts and inventory in respect of the child's estate on every anniversary of the date of his or her appointment as such to—
 - (i) the parent or custodian of the child;
 - (ii) the Secretary;
 - (iii) the Court; and

- (iv) such other persons as the Court may direct; or
- (d) produce any account or inventory in respect of the child's estate when required to do so by the Court.

56. Powers of a guardian of the child's estate

A guardian appointed in respect of a child's estate shall have the power to—

- (a) administer the estate of the child;
- (b) receive and recover the property of the child in his own name in trust for, and for the benefit of the child;
- (c) invest the property of the child in his own name in trust for, and for the benefit of the child;
- (d) create a Trust for the child in respect to any estate of the child;
- (e) participate in the succession proceedings relating to an estate where the child has a beneficial interest.

57. Guardian to execute a bond

Before a guardian appointed to manage a child's estate, or other estate to which a child is a beneficiary, enters upon the execution of their trust, the guardian shall execute a bond in Form GR14 set out in the Schedule in such sum as the Court directs, and on the following terms and conditions—

- (a) to diligently execute the duties of a guardian as set out in the Act and rule 56;
- (b) to make and return to the Court, within three months of appointment, a true and complete inventory of all the estate, real and personal, of the child which shall come to the guardian's possession or knowledge;
- (c) to faithfully execute the duties of the guardian's trust, to manage and dispose of the estate according to these Rules for the best interest of the child, and to provide for the proper care, custody, and education of the child;
- (d) to render a true and just account of all the estate of the child, and of all proceeds or interest derived therefrom, and of its management and disposition, at the time designated by these Rules and such other times as the Court directs;
- (e) at the expiry of the guardian's trust, to settle the accounts with the Court and to deliver and pay over all the estate, effects and moneys remaining in the guardian's hands, or due from the guardian on such settlement, to the person lawfully entitled thereto; and
- (f) to give effect to the orders and directions of the Court.

58. Guardian not to spend more than child's annual income

- (1) A guardian appointed under this Part shall not spend more than the annual income of the estate of a child.
- (2) Where the guardian needs to spend more than the annual income of the estate of a child for the well-being and education of the child, the guardian may make an application to the Court by way of a notice of motion application in Form GR3 set out in the Schedule, and supported by an affidavit in Form GR4 set out in the Schedule stating the reasons why it is necessary to make such expenditures.
- (3) The application contemplated in subrule (2) shall be made to the Court by which the order was made for the appointment of the applicant as guardian of the child's estate, and in the cause in which the guardianship order was made.

59. Consequences for misappropriation and misapplication of child's estate

In an application made under rule 30(k) where the Court finds that a guardian has misappropriated or misapplied the assets of the estate of a child, the Court may—

- (a) discharge the guardian from being a guardian in relation to the child's estate, and the child, if at all;
- (b) appoint a fit person as guardian or administrator of the child's estate;
- (c) order the guardian to make good the loss or damage thereby occasioned, whether or not the Court finds him guilty of an offence on that account;
- (d) order the guardian to restore the value and surrender the estate to the guardian or administrator appointed by the Court for proper administration on behalf of the child.

60. Orders where money is payable to a child under a decree of court

Where any money is payable to a child under a judgment, decree or order made in any proceedings, the money shall be deposited in an interest-earning account in the joint names of the Court issuing the judgment, decree or order and either the—

- (a) parent;
 - (b) guardian;
 - (c) other fit person exercising parental responsibility over the child; or
 - (d) guardian *ad litem*.
- (2) The money deposited pursuant to this rule shall not be withdrawn except under an order of the Court on such terms as the Court may direct.

Part VIII – PROVISIONS RELATING TO ORDERS**61. Consideration by Court before issuing a guardianship order**

In considering whether to make a guardianship order in respect of a child, the Court shall have regard to—

- (a) the views of the—
 - (i) child;
 - (ii) applicant's spouse if any; and
 - (iii) the person who has actual custody of the child;
- (b) the importance of preserving the child's existing family relationships;
- (c) the importance of preserving the child's particular social-cultural, religious and linguistic environments;
- (d) the ability and the willingness of the proposed guardian to effectively discharge the duties imposed on the proposed guardian;
- (e) the need for the Court to be satisfied that there is no conflict of interest between the proposed guardian and the child; and
- (f) the children officer's report.

62. Orders that the Court may issue

- (1) 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) dismiss the application and make such other orders as it deems fit for the welfare of the child.
- (2) The Court may make such orders or directions in respect of parental responsibilities over the child as it deems fit.

63. Nature of guardianship orders

- (1) Upon considering an application for the appointment of a guardian under these Rules, the Court may issue a general guardianship order or limited guardianship order.
- (2) A guardianship order shall specify—
 - (a) whether the order is general or limited in application and the matters covered under the order;
 - (b) the duties and responsibilities of the guardian in respect of the child or the child's estate; and
 - (c) such conditions as the Court considers appropriate.
- (3) A limited guardianship order shall be issued considering the needs and best interests of the child.
- (4) The Court may make an order appointing two or more guardians, either jointly where each person shall have the same duties and responsibilities, or separately where each person shall have different duties and responsibilities in respect to the child or the child's estate.

64. Duration of orders

- (1) Subject to rule 75, a guardianship order that is not limited in application shall, unless otherwise earlier terminated exist until the child's eighteenth birthday.
- (2) A guardianship order that is limited in application shall specify the scope, purpose, and period of existence, and shall be valid only for the specified period and for the specified purpose.

65. Setting aside, amendment or variation of orders by Court

- (1) Any party, or other person with leave of Court may, at any time before the expiry of a guardianship order apply to set aside, amend, or vary an order made under these Rules.
- (2) An application under subrule (1) shall be made by a notice of motion application substantially in Form No. GR3 set out in the Schedule, and supported by an affidavit substantially in Form No. GR4 set out in the Schedule stating the grounds on which the application is made.
- (3) The leave required under subrule (1) where the application is made by a person who was not a party to the proceedings may be sought as part of the prayers of the substantive application.
- (4) An application made under subrule (1) shall be served by the applicant on—
 - (a) the Secretary;
 - (b) the parent or guardian of the child;
 - (c) every person who was party to the proceedings under which the order was made; and
 - (d) any other person who, in the opinion of the Court should be served.

- (5) The Court shall determine an application under this rule and make such orders as it deems fit considering the best interests of the child.
- (6) Where the Court makes an order to set aside, amend or vary an order of the Court, the party in whose favour the order is made shall serve a copy of the order on all parties to the case.
- (7) Where the Court makes an order to set aside, amend or vary the terms of guardianship, the Court may make such orders in respect of custody of, and parental responsibilities over the child as the Court thinks fit.

66. Power to correct defects in the order

- (1) The Court may on its own motion amend or vary an order issued under these Rules to correct any defect in the particulars contained therein.
- (2) Where the Court amends or varies an order under subrule (1), it shall cause to be served a copy of the amended order upon all parties to the proceedings.

67. Execution of orders and decrees

Any judgment or order given under these Rules shall be executed and enforced in accordance with the Civil Procedure Rules.

Part IX – PROCEDURE AFTER ISSUANCE OF GUARDIANSHIP ORDERS

68. Dispute between guardians

- (1) Any of the joint guardians, or a surviving parent or other authorized person exercising joint guardianship may, where there is a dispute between them file an application in accordance with the provisions of these Rules for the determination of the matters in difference.
- (2) The Court may direct that an application filed under subrule (1) be disposed of orally, or by way of written submission, or in a summary manner.
- (3) In determining an application under this rule, the Court shall direct the parties to first seek an amicable resolution of the dispute through mediation or other suitable alternative dispute resolution mechanism.
- (4) Upon determination of an application under subrule (1), the Court may give such directions or make such orders regarding the matters in difference or contention as it may deem proper having regard to the best interest of the child.

69. Failure or inability to act by appointed guardian

- (1) Where—
 - (a) a guardian duly appointed by the Court—
 - (i) fails or neglects to discharge his or her duties as guardian of the child;
 - (ii) files a disclaimer of appointment in accordance with rule 71; or
 - (iii) becomes incapable or unfit to exercise proper care and guardianship of the child or the child's estate; or
 - (b) a testamentary guardian after assumption of duties of guardianship—
 - (i) fails or neglects to discharge his or her duties as guardian of the child; or
 - (ii) becomes incapable or unfit to exercise proper care and guardianship of the child or the child's estate,

the Court may, either on its own motion or upon application made by the Secretary or other person appoint a guardian to act solely or jointly with any surviving guardian or parent.

- (2) The application contemplated under subrule (1) shall be commenced and disposed of in accordance with the procedure set out in these Rules.
- (3) An application filed under subrule (1) shall name the guardian or testamentary guardian, and the person proposed to be appointed as the new guardian as parties.
- (4) In determining an application under this rule, the Court shall summon the guardian or testamentary guardian for purposes of enquiring the reasons for his or her failure to discharge the duties of guardian and may issue such directions as it deems fit.

70. Form of disclaimer of appointment

- (1) A person appointed as a guardian under sections 122 and 123 of the Act may disclaim the appointment by instrument made in writing in the Form No. GR15 set out in the Schedule.
- (2) For a guardian to file a disclaimer of appointment under this rule, the guardian must either have—
 - (a) been appointed as such guardian by the Court without his or her knowledge or consent; or
 - (b) been appointed as guardian in proceedings to which he or she was neither a party nor was served; and
 - (c) is unwilling or unable to effectively discharge the duties of a guardian of the child or the child's estate.

71. Disclaimer of appointment to be filed in Court

- (1) The disclaimer of appointment shall be—
 - (a) made as soon as it is reasonably practicable after the person disclaiming having known that the appointment has taken effect;
 - (b) dated and signed by the person disclaiming; and
 - (c) presented for registration withing seven days of its execution.
- (2) The disclaimer of appointment shall be presented for registration at the Court registry and in the file where the appointment of the guardian was made.

72. Directions upon filing of disclaimer of appointment

- (1) Upon the filing of the disclaimer of appointment, the Court shall immediately list the case for mention and cause notice to be served upon persons who were party to the proceedings leading to the appointment as well as upon the person disclaiming.
- (2) The Court shall, after hearing the reasons for the disclaimer as well as proposals that parties have on appointment of another guardian, make such directions as it deems fit, including the direction—
 - (a) discharging the person disclaiming from being a guardian of the child either immediately or after a specified period of time;
 - (b) appointing a fit person as guardian of the child or the child's estate;
 - (c) on custody and care of the child in the meantime before the appointment of a new guardian.

73. When disclaimer can take effect

A disclaimer of appointment filed under rule 71 shall not have effect until after the Court has issued directions under rule 73.

74. Extension of guardianship beyond the child's eighteenth birthday

- (1) The Court may, where exceptional circumstances exist make an order extending the period of a guardianship order issued in terms of rule 65(1) beyond the child's eighteenth birthday.
- (2) The exceptional circumstances envisaged under subrule (1) include—
 - (a) that the child suffers from mental or physical disability, or from illness that will render him incapable of maintaining himself, or managing his own affairs or the child's property without the assistance of a guardian;
 - (b) such exceptional circumstances as the Court may deem proper having regard to the child.

75. Who may apply for extension of guardianship

- (1) An application for extension of guardianship shall be filed prior to the child's eighteenth birthday and may be made by—
 - (a) the child;
 - (b) parent or guardian of the child;
 - (c) a relative of the child; or
 - (d) the Secretary.
- (2) The provisions of rule 27 shall apply *mutatis mutandis* to the procedure for filing an application under this rule.

76. Orders of Court upon application for extension of guardianship

- (1) While making an order extending guardianship beyond the child's eighteenth birthday, the Court may attach—
 - (a) such conditions as to the duration of the order;
 - (b) directions as to how the order shall be carried out;
 - (c) conditions that must be complied with; and
 - (d) such incidental, supplemental, or consequential provisions as the Court thinks fit.
- (2) The Court shall not make an order extending the duration of guardianship under subrule (1) without the consent of the guardian whose appointment is required to be extended, as well as the consent of the child, if the child can give such consent.

77. Power of Court to vary, revoke extension orders

- (1) The Court may at any time vary, modify, or revoke any extension order made under rule 77.
- (2) An application to vary, modify, or revoke an extension order shall be commenced and disposed of as an interlocutory application made within the proceedings where the order was issued and may be filed by—
 - (a) the child;
 - (b) parent or guardian of the child;
 - (c) a relative of the child;
 - (d) the Secretary; or
 - (e) a spouse, where the child married after the eighteenth birthday

78. Grounds for termination of guardianship

The Court may make an order to terminate guardianship where—

- (a) the guardian dies;
- (b) the child in respect of whom the guardianship order was made dies;
- (c) in an application to revoke or to determine the validity of a testamentary instrument the Court revokes or invalidates such instrument;
- (d) while determining any of the applications filed under these Rules, the Court finds the guardian unfit to act, or to continue acting as guardian of the child or the child's estate;
- (e) in case of a limited guardianship order, the term for which the order was made expires and no application is made to renew the order;
- (f) the child attains the age of eighteen years and no application for extension of guardianship is issued; or
- (g) the Court, having regard to the best interest of the child otherwise finds an application for the termination of guardianship merited.

79. Secretary to set down case for mention where guardian dies

- (1) Where guardianship is terminated because of the death of the appointed guardian, the Secretary shall immediately set down the case for directions before the Court.
- (2) On the date set for directions under subrule (1), the Court shall make such orders as it thinks appropriate in respect of the custody and care of, or parental responsibility over the child.

80. Consequences of termination of guardianship

- (1) Unless the Court otherwise orders or directs, where guardianship is terminated for the reason that the child has attained the age of eighteen years, the child shall be entitled to take personal responsibility over his or her affairs and any money or property lawfully due to them and, in the case of any other form of property or investment other than money, the property or investment shall be transferred into his or her name.
- (2) Where the Court orders the termination of a guardianship relating to the management of the child's estate, the former guardian shall promptly deliver the remaining assets comprising the estate to the child along with a final account:

Provided that any written receipt or release obtained by or on behalf of the guardian in relation to the delivery of the assets comprising the estate shall not prejudice or otherwise affect any legal right to seek recovery for mismanagement or misappropriation of the estate.

Part X – MISCELLANEOUS PROVISIONS

81. Review

Any party to a proceeding who is aggrieved by an order of the Court made under these Rules may apply for review in accordance with the provisions of Order 45 of the Civil Procedure Rules (Sub.Leg.).

82. Appeal

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

- (2) The party who is aggrieved by an order of the Court shall, within fourteen days from the date that the order is made, file a memorandum of appeal at the High Court and serve the persons who participated in the proceedings.
- (3) The memorandum of appeal shall concisely state the grounds of appeal and a copy thereof shall be filed in the trial Court.
- (4) Where the appeal is against an order appointing a guardian or extending the duration of guardianship, the Court shall issue directions as to the interim care and custody of the child.
- (5) The provisions of Order 42 of the Civil Procedure Rules (Sub.Leg) shall apply to the filing and processing of appeals under these Rules.

83. Time

The provisions of Order 50 of the Civil Procedure Rules (Sub.Leg) shall apply to time specified for the doing of any act or taking any proceedings under these Rules.

84. Form of interlocutory applications

All interlocutory applications made under these Rules shall, unless where it is otherwise provided be by way of notice of motion in Form No. GR3 set out in the Schedule, and shall be supported by an affidavit stating the factual circumstances and grounds upon which the application is made.

85. Execution

Any judgment or order given under these Rules shall be executed and enforced in accordance with the provisions of the Civil Procedure Rules (Sub.Leg.).

86. Restriction on charging of fees

The Court shall not charge any fees for the filing of any pleading, application, or document, or for the issuance of any document, or service rendered under or pursuant to these Rules.

87. Confidentiality of proceedings

All records of proceedings made under these Rules shall be kept confidential and shall not be disclosed to anyone who is not a party to the proceedings, unless the Court makes an order permitting the examination or making of copies of the records.

88. Costs

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

89. Ongoing proceedings

- (1) Any proceedings relating to guardianship pending in any court at the time of coming into force of these Rules shall be finalized in accordance with these Rules, but without prejudice to the validity of anything previously done:

Provided that:

- (a) if, and in 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
- (b) the Chief Justice may issue practice notes or directions as to the procedure to be adopted in in any case of difficulty or doubt.

- (2) The court before which the proceedings are pending may either finalize the case in accordance with these Rules, or remit the case to a Children’s Court established under the Act having jurisdiction to hear the case.

90. Revocation

The Guardianship of Children (Practice and Procedure) Rules (Sub.Leg.) are revoked.

91. Revocation

The General Rules and Regulations are revoked (Sub.Leg.).

SCHEDULE

FORMS

FORM GR1

(r. 19(1))

Name of Court station....									
THE CHILDREN (GUARDIANSHIP) (PRACTICE AND PROCEDURE) RULES									
REGISTER OF TESTAMENTARY INSTRUMENTS									
No.	Date of registration.	Name of instrument.	Instrument serial number.	Date instrument was made.	Name of maker of instrument.	Child's initials	Name of person presenting for registration.	Is instrument revoked or amended?	Date of revocation or amendment
1.									
2.									
3.									
4.									
.....									
Registrar									

FORM GR2

(r.22(1))

NOTICE OF REVOCATION OF TESTAMENTARY INSTRUMENT
<p>TAKE NOTICE that the testamentary instrument whose particulars are stated herein has been revoked. The maker of the said instrument intends to make a subsequent instrument/does not intend to make a subsequent instrument (<i>pick the one applicable</i>)</p> <p>THE PARTICULARS of the revoked instrument are as follows:</p> <p>1. Name of instrument:.....</p> <p>2. Date when instrument was made/executed:.....</p> <p>3. Date of registration in Court:.....</p> <p>4. Name of maker of instrument:.....</p> <p>5. Child to whom it relates:.....</p> <p>6. Date when the instrument was revoked:.....</p> <p>7. Reason for revocation: (<i>tick the one applicable</i>)</p> <ul style="list-style-type: none"> <input type="radio"/> death of appointed guardian <input type="radio"/> unwillingness of appointed guardian <input type="radio"/> incapacity of testamentary guardian <input type="radio"/> appointed guardian unlikely to effectively discharge duties <input type="radio"/> death of the child <input type="radio"/> operation of the law <input type="radio"/> any other reason.....(<i>state</i>) <p>Dated at this day of 20</p> <p>.....</p> <p>Name and signature</p>

FORM GR3

(r. 85)

REPUBLIC OF KENYA
IN THE CHILDREN’S COURT AT.....
GUARDIANSHIP APPLICATION NO.... OF.....
IN THE MATTER OF.....AB...(Minor)
BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent

YYY.....2nd Respondent

(Note: where notice of motion is filed in other pending or previous proceedings, please indicate the heading for those other proceedings)

NOTICE OF MOTION
(State enabling provisions)

TAKE NOTICE that this Court will be moved on the day of 20..... at 9.00 O’clock in the forenoon or soon thereafter on the hearing of an application on the part of Counsel for *(state which party)*

FOR ORDERS THAT:

1.
2.

ON THE GROUNDS THAT:

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.”

FORM GR4

(r.27(a)(ii))

REPUBLIC OF KENYA
IN THE CHILDREN’S COURT AT.....
GUARDIANSHIP APPLICATION NO..... OF.....
IN THE MATTER OF.....AB...(Minor)
BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
YYY.....2nd Respondent

SUPPORTING AFFIDAVIT

I of P.O. Box do make oath and state as follows-

(1) THAT I am adult person of sound mind competent to swear this affidavit. (N.1)
(2) THAT I am the applicant in the originating summons/notice of motion (N.2) application dated.....
(3) THAT I am conversant with the factual circumstances and the grounds upon which the application is made.
(4) THAT.....(*concisely state that facts and grounds that support the application*)
(5).....
(6).....
(7).....
(8).....
(9).....

(10) THAT what is deposed to herein is trues and correct to the best of my knowledge, information, and belief.

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

By the said.....)
Before me)
COMMISSIONER FOR OATHS)

Note 1- In the case of a joint application substitute the plural.
Note 2- chose one that applies.

FORM GR5

(r. 27(c)(i))

REPUBLIC OF KENYA
 IN THE CHILDREN’S COURT AT.....
 GUARDIANSHIP APPLICATION NO..... OF.....
 IN THE MATTER OF.....AB...(Minor)
 BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

ORIGINATING SUMMONS

LET of
 within seven (7) days after service of this
 Summons, inclusive of the day of such service upon him/her cause an appearance to be
 entered to this Summons, which is issued upon the application of

FOR ORDERS THAT:

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 of..... 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.”*

FORM GR6

(r.28.(1)(a)(i))

REPUBLIC OF KENYA
 IN THE CHILDREN’S COURT AT.....
 GUARDIANSHIP APPLICATION NO..... OF.....
 IN THE MATTER OF.....AB...(Minor)
 BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

AFFIDAVIT OF FITNESS

I, of make oath and state:

1. That I am an adult Kenyan of sound mind. (If a foreigner national give full details)
2. That I know and verily believe that I am qualified to act as a guardian to.....
3. That I have no interest in the matters in question in this cause adverse to that of the said
4. That I have consented to act as a guardian to
5. That I can fairly and competently take care of the child.
6. The facts stated are true to the best of my knowledge and belief.

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

By the said.....)

Before me)

COMMISSIONER FOR OATHS)

Note. - In the case of a joint application substitute the plural.

FORM GR7

(r.28(1)(a)(ii))

REPUBLIC OF KENYA
IN THE CHILDREN’S COURT AT.....
GUARDIANSHIP APPLICATION NO..... OF.....
IN THE MATTER OF.....AB...(Minor)
BETWEEN
XXX.....Applicant
AND
The Secretary, Children Services.....1st Respondent
YYY.....2nd Respondent

VERIFYING AFFIDAVIT

I, of make oath and state:

1. That I am an adult Kenyan of sound mind.
2. That I know and verily believe that I am qualified to act as a guardian to.....
3. That I have no interest in the matters in question in this cause adverse to that of the said.....
4. That I have consented to act as a guardian in respect of the estate of.....
5. That I can fairly and competently administer the estate of the said.....
6. That I shall take all reasonable steps to safeguard the estate of the said.....
7. That I shall produce and avail all accounts in respect of the estate of the said child to the parents or custodian or the Court or to such other person as the Court may direct.
8. That should the child incur any loss/damage as a result of my negligence I shall indemnify the child against such loss and/or damage.
9. The facts stated are true to the best of my knowledge, information and belief.

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

By the said.....)

Before me)

COMMISSIONER FOR OATHS)

(Note. - In the case of a joint application substitute the plural.)

FORM GR8

(r. 32(1))

REPUBLIC OF KENYA
 IN THE CHILDREN'S COURT AT.....
 GUARDIANSHIP APPLICATION NO.... OF.....
 IN THE MATTER OF....AB...(Minor)
 BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

NOTICE TO ENTER APPEARANCE

To (*respondent*) of

TAKE NOTICE that you are required, within seven (7) 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 it thinks just notwithstanding your absence.

The Originating Summons is filed and this notice is issued by:

.....

Dated at the day of 20.....

.....

Registrar

FORM GR9

(r. 38(2))

REPUBLIC OF KENYA
 IN THE CHILDREN’S COURT AT.....
 GUARDIANSHIP APPLICATION NO..... OF.....
 IN THE MATTER OF.....AB...(Minor)
 BETWEEN
 XXX.....Applicant
 AND
 The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

CERTIFICATE OF SERVICE

I of P.O Box, state as follows:

1. That on the..... day of, 20... at *(indicate the time)* I served *(indicate the name of the party)* at *(indicate the name of the place)* by tendering a copy of *(indicate document served)* in accordance with the Civil Procedure Rules.
2. That the service was done: *(please tick the applicable mode adopted)*
 - On the person
 - On an adult member of the family
 - By affixing a copy of the document to the outer door of the residence/ premises where they carry on business/conspicuous place at.....*(indicate place affixed)*
 - By publication in a local daily newspaper*(indicate name of newspaper and attach copy of relevant page)*
 - By registered mail to the last known postal of the.....*(indicate the name of the addressee and attach a certificate of postage).*
 - By email to the last confirmed and used email address *(indicate the email addresses of the sender and the recipient used and attach a copy of the delivery receipt)*
 - By mobile-enabled messaging service*(indicate the mobile phone numbers of the sender and the recipient used and attach a copy of the delivery receipt)*
3. I declare that the information given above is true.

Name.....
 Signature.....
 Dated at.....thisday of..... 20.....

FORM GR10

(r.39)

REPUBLIC OF KENYA
IN THE CHILDREN'S COURT AT.....
GUARDIANSHIP APPLICATION NO..... OF.....
IN THE MATTER OF.....AB...(Minor)
BETWEEN
XXX.....Applicant
AND
The Secretary, Children Services.....1st Respondent
YYY.....2nd Respondent

MEMORANDUM OF APPEARANCE

ENTER an APPEARANCE for the Respondent herein, whose address for service for the purpose of this cause is.....
.....
.....
.....
.....
..

(1. Please indicate the physical, postal, and email address (if available), as well as the mobile telephone number.

2. Where the appearance is through an advocate, both the addresses of the advocate and the party must be indicated.)

Signature.....
Dated at.....thisday of..... 20.....

FORM GR11

(r.45(2))

REPUBLIC OF KENYA

IN THE CHILDREN’S COURT AT.....

GUARDIANSHIP APPLICATION NO..... OF.....

IN THE MATTER OF.....AB...(Minor)

BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent

YYY.....2nd Respondent

HEARING CHECKLIST

ACTIVITY	YES	NO
Have all pleadings been filed by parties?		
Have all pleadings been served upon all parties?		
Does any party wish to amend pleadings?		
Are there any other documents that ought to be filed? <i>(if yes indicate the documents)</i>		
Is there any party that the Court considers necessary to attend at trial and has the party been notified? <i>(If yes indicate the party)</i>		
Have arrangements been made to facilitate the participation of the child?		
Is there any report that Court or any party requires filed? <i>(If yes indicate whose report)</i>		
Any directions that the Court may make:		
1.....		
2.....		
Mention date <i>(if necessary)</i>		
Hearing date <i>(must be set)</i>		

Dated this.....of.....20.....

FORM GR12

(r.46)

REPUBLIC OF KENYA
 IN THE CHILDREN’S COURT AT.....
 GUARDIANSHIP APPLICATION NO..... OF.....
 IN THE MATTER OF.....AB...(Minor)
 BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

HEARING/MENTION NOTICE

TAKE NOTICE that this case has been listed on the.....day
 of..... 20..... at 9.00 O’clock in the forenoon or soon thereafter
 for the hearing of the originating summons/hearing of the application
 dated...../for mention (*delete the one that does not apply*)

Dated atthis day20

Signature

Drawn & filed by:.....
 To be served upon:.....

*“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.”*

FORM GR13

(r.51(4))

Name of Court station.....						
To The Registrar Children's Court Nairobi						
<u>Report for.....(state period)</u>						
S/No.	Case No.	Was this case in previous report? <i>(please tick according to how many times it has been reported)</i>	Date when case was filed	Date when extension was granted	Period of extension	Reason for extension
1.						
2.						
Totals	<i>(indicate)</i>	<i>(indicate)</i>				

FORM GR14

(r. 58)

REPUBLIC OF KENYA
 IN THE CHILDREN'S COURT AT.....
 GUARDIANSHIP APPLICATION NO..... OF.....
 IN THE MATTER OF.....AB...(Minor)
 BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

BOND

BY THIS BOND, I/We the person(s) in whose favour a guardianship 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 rule 58 of The Children (Guardianship) (Practice and Procedure) Rules.

(set out the conditions)

1.
 2.
 3.

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

)

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

in the presence of)

COMMISSIONER FOR OATHS)

FORM GR15

(r.71(1))

REPUBLIC OF KENYA
 IN THE CHILDREN’S COURT AT.....
 GUARDIANSHIP APPLICATION NO..... OF.....
 IN THE MATTER OF.....AB...(Minor)
 BETWEEN

XXX.....Applicant

AND

The Secretary, Children Services.....1st Respondent
 YYY.....2nd Respondent

DISCLAIMER OF APPOINTMENT AS GUARDIAN

TAKE NOTICE I, of P.O. Box

Having been appointed as the guardian of/guardian of the estate of (*tick the one that applies*).....(*indicate name of child*) state as follows:

1. THAT the appointment was made pursuant a Court order dated.....
2. THAT I wish to disclaim my appointment as a guardian of the child herein.
3. THAT at the time that the said order was made, I: (*tick the ones applicable*)
 - Was not a party to the proceedings
 - Was not served with the application or any documents relating to the case
 - Had no knowledge that the order was being made
 - Had been served but was unable to lodge my objection in time
 - Participated in the proceedings but did not consent to the appointment
4. THAT the reason for my disclaimer is/are that I: (*tick the ones applicable*)
 - Am unwilling to act as guardian of the child herein
 - Am unable to effectively discharge the duties of a guardian
 - Have interests that are adverse to/conflict with my duties as guardian of the child herein

Signature.....

Dated at.....thisday of..... 20.....