

## **THE CHILDREN ACT.**

Statutory Instrument 59—2.

### **The Children (Family and Children Court) Rules.**

#### **Arrangement of Rules.**

##### **Rule**

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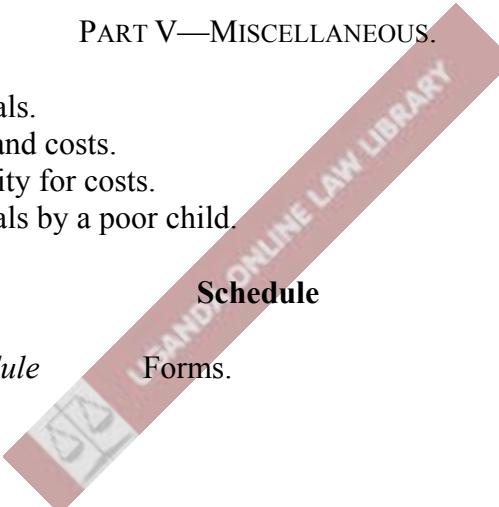
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# **THE CHILDREN ACT.**

Statutory Instrument 59—2.

## **The Children (Family and Children Court) Rules.** *(Under sections 16, 18 and 83 of the Children Act.)*

### **PART I—PRELIMINARY.**

#### **1. Citation.**

These Rules may be cited as the Children (Family and Children Court) Rules.

#### **2. Interpretation.**

In these Rules, unless the context otherwise requires—

- (a) “Act” means the Children Act;
- (b) “court” means a family and children court established under section 13 of the Act.

#### **3. Procedure in family and children court.**

The procedure of the family and children court as set out in these Rules is subject to section 16 of the Act.

#### **4. General principles.**

- (1) Subject to these Rules—

- (a) the general procedures relating to trials of criminal cases in a magistrate’s court apply to the trial of a criminal case in the court with the necessary modifications; and
- (b) the general procedures set out in the Third Schedule to the Magistrates Courts Act and the Civil Procedure Rules apply to matters of a civil nature in the court.

- (2) The procedures provided for in subrule (1) of these Rules are subject to the following—

- (a) as far as possible, the court shall be so arranged that the magistrate presiding sits at the same table with—
  - (i) the child;

- (ii) the child's parent or guardian;
  - (iii) the child's legal representative if any;
  - (iv) the complainant or the prosecutor, who shall not appear in uniform; and
  - (v) any other person permitted by the court such as the probation and social welfare officer;
- (b) evidence shall not be given from the witness box; and
  - (c) in any particular case, special safety precautions may be taken as the magistrate presiding may deem fit.
- (3) In an appeal, the court may adopt the procedure prescribed by subrules (1) and (2) of this rule.

## PART II—JURISDICTION AND PROCEDURE IN CIVIL CASES.

### **5. Jurisdiction.**

Subject to the Act and any other written law, the court shall have jurisdiction in the trial and determination of all causes and matters of a civil nature concerning children where the child resides or where the cause of action arises.

### **6. Suits for property.**

(1) Where the relief being sought is in relation to property, the suit shall be instituted in the court within the local limits of the jurisdiction in which the property is situated.

(2) Where the property is situated in more than one area of jurisdiction, the suit may be instituted in either court in whose jurisdiction either portion of the property is situated.

### **7. Plaintiff and defendant in different jurisdictions.**

Where the defendant resides or carries on business or personally works for gain within the geographical jurisdiction of another court from that of the plaintiff, the plaintiff may, at his or her option, institute proceedings in any of the relevant courts.

### **8. Objection to jurisdiction.**

Where a defendant objects to the jurisdiction of the court and the objection is upheld, the case shall be referred to the court with proper jurisdiction; but if the objection is rejected, the court shall record the objection and the reasons for rejecting it, and proceed with the trial of the case.

#### **9. Institution of suits.**

Every suit shall be instituted in the manner prescribed by the Civil Procedure Rules or in the Third Schedule to the Magistrates Courts Act, as the case may be.

#### **10. Service on defendant.**

Where a suit has been duly instituted, service on the defendant shall be in the manner prescribed by the Civil Procedure Rules or in the Third Schedule to the Magistrates Courts Act, as the case may be.

#### **11. Service of documents.**

(1) Any document which is required to be served in connection with the suit may be sent for service in another district or to a court having jurisdiction in that district.

(2) The court to which a document referred to in subrule (1) of this rule is sent shall, upon receipt of the document, proceed to effect service as if it had been issued by that court and shall return the document to the court of issue together with a record, if any, of its proceedings with regard to the document.

#### **12. Power to order discovery and the like.**

The court may, at any time, either on its own motion or on the application of any party—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts and the discovery, inspection, production, impounding and return of documents or other material objects adducible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other material objects referred to in paragraph (a) of this rule; or

- (c) order any fact to be proved by affidavit.

### **13. Summons to witnesses.**

Rules 11 and 12 of these Rules apply to summonses to witnesses to give evidence or to produce documents or other material objects.

### **14. Penalty for default.**

The court may compel the attendance of any person to whom a summons has been issued under rule 12(b) of these Rules and for that purpose may—

- (a) issue a warrant for the arrest of that person;
- (b) order the attachment and sale of the property of that person to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under paragraph (c) of this rule;
- (c) impose a fine on that person not exceeding one hundred thousand shillings; or
- (d) order that person to furnish security for his or her appearance and in default commit that person to prison for a term not exceeding three months.

### **15. Judgment and decree.**

The court, after the case has been heard, shall pronounce judgment, and on the judgment, a decree shall follow; but where the defendant has not filed a defence, the court may give judgment for the plaintiff in default.

### **16. Interest.**

(1) Where an agreement for the payment of interest is sought to be enforced, and the court is of the opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced, the court may give judgment for the payment of interest at such rate as it may think just.

(2) Where the decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the institution of the suit to the date of the decree in addition to any interest adjudged on the principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged

from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

### **17. Costs.**

(1) Subject to such conditions and limitations as may be prescribed by the Rules Committee and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court which shall have full power to determine by whom and out of what property and to what extent the costs are to be paid, and to give all necessary directions for the purpose.

(2) The court may give interest on costs at a rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such.

### **18. Execution of judgments, orders, etc.**

The execution of judgments, decisions, decrees and orders given under this Part and any other Part of these Rules shall be in accordance with section 111 of the Act.

## **PART III—PROCEDURE IN APPLICATIONS FOR ORDERS.**

### **19. Application for supervision order, care order, etc.**

(1) A person seeking any of the orders listed in subrule (2) of this rule shall apply to court supported by an affidavit, and any reports or documents to be relied upon shall be attached to the application.

- (2) The orders referred to in subrule (1) of this rule are—
- (a) a supervision order;
  - (b) a care order;
  - (c) an interim supervision order;
  - (d) an interim care order;
  - (e) a search and production order;
  - (f) a exclusion order;
  - (g) a recovery order;
  - (h) a maintenance order;
  - (i) a contribution order; and
  - (j) a custody order.

(3) An application under subrule (1) of this rule shall be as specified in Form 1 in the Schedule to these Rules.

**20. Application for declaration of parentage.**

An application for a declaration of parentage shall be by a complaint on oath as specified in Form 2 in the Schedule to these Rules.

**21. Court to issue summons.**

The court shall, on receiving an application under rule 19 or 20 of these Rules, issue a summons to the respondent directing him or her to appear in court on a date named in the summons, as specified in Form 3 in the Schedule to these Rules and accompanied by all the relevant documents filed by the applicant.

**22. Application of rule 4(1)(b) to parentage.**

Rule 4(1)(b) of these Rules applies to an application for a declaration of parentage subject to section 69(2) of the Act.

PART IV—JURISDICTION AND PROCEDURE IN CRIMINAL CASES.

**23. Jurisdiction of the court.**

The court shall have the criminal jurisdiction set out in section 93 of the Act.

**24. Duration of cases.**

Every case shall be handled expeditiously without unnecessary delay, and shall be conducted from day to day, except that for exceptional reasons short adjournments may be granted by the court.

**25. First appearance in a criminal matter, bail, remand.**

(1) Where a child appears before a court, charged with any offence, the magistrate presiding over the court shall inquire into the case and unless there is a serious danger to the child, release the child on bail—

- (a) on a court bond on the child's own recognisance; or
- (b) with sureties, preferably the child's parents or guardians who

shall be bound on a court bond, not cash.

(2) If bail is not granted, the court shall record the reasons for refusal and inform the child of his or her right to apply for bail to a chief magistrate's court or to the High Court, as the case may be, and the court to which the child applies shall adopt the procedure prescribed by this rule.

(3) Where a child is not released on bail, the court may make an order remanding or committing the child in custody—

- (a) in a remand home to be named in the order, situated in the same area as the court making the order; or
- (b) in any establishment declared by the Minister as a remand home under section 91(8) of the Act.

(4) If there is no remand home within a reasonable distance of the court, the court shall make an order as to the detention of the child in a place of safe custody as it deems fit.

(5) For the purposes of these Rules, a place of safe custody shall be a place which the court considers fit to provide good care for the child and assures that the child shall be brought to court when required and shall not associate with an adult detainee.

(6) It shall be the duty of the local government council to provide an appropriate place of custody, and before making an order remanding or committing a child in custody, the court shall ascertain that there is a place readily available.

(7) Remand in custody shall not exceed—

- (a) six months in the case of an offence punishable by death; or
- (b) three months in the case of any other offence.

(8) No child shall be remanded in custody in an adult prison.

(9) Whenever possible, the court shall consider alternatives to remand such as close supervision or placement with a fit person determined by the court on the recommendation of a probation and social welfare officer.

## **26. Variation of remand order by the court.**

(1) A child who escapes from a remand home or other place of safe

custody in which the child is detained may be arrested with or without a warrant and returned to that place.

(2) Where the child notifies the arresting officer that he or she wishes to apply to the court that made the order to vary the terms of detention or remand on the grounds of abuse, mistreatment or neglect, the arresting officer shall take the child before the court; and the court shall consider the complaint in the presence of the person responsible for the remand home and make such order as it thinks just.

## **27. Trial by summary procedure.**

Where the charges brought against a child are of a minor nature, the court shall conduct the trial by summary procedure as laid down in section 142 of the Magistrates Courts Act.

## **28. Trial by full procedure.**

Where the court decides to conduct a trial by full procedure, the following shall apply—

- (a) where the court ascertains that the plea is unequivocal and the facts relied on by the prosecutor are understood and accepted by the child, the court may record that the child has admitted the charge; but if the charge has not been admitted, the court shall proceed to try the issues raised by the charge;
- (b) the court shall explain the issues for trial in a language which the child understands and whether or not the child is represented by counsel, admissions may be made as to facts put forward by the prosecutor, and recorded specifically by the court;
- (c) the prosecutor shall produce his or her witnesses, who in the case of an adult, shall be examined in accordance with the rules of procedure in the Magistrates Courts Act and the Evidence Act; but in the case of a child, it shall be sufficient if the court, having examined the child and found that he or she has sufficient intelligence to give evidence and understands the duty to tell the truth, permits the child to make a solemn affirmation as to the truth of the child's evidence;
- (d) the child may be examined by inquiry, but the defence may cross-examine the child, and the prosecutor may reexamine the witness;
- (e) as far as possible, inquiry under paragraph (d) of this rule shall not be by way of leading questions except as to formal matters

- (f) not in dispute;
  - (g) at the end of the prosecution case the court shall rule whether or not the child has a case to answer in respect of the offence charged, or any other lesser charge which may be relevant and upon which the court may find that the offence has been proved;
  - (h) the court shall explain the right of defence to the child, namely, that the child has a right to give evidence on affirmation and that if the child does so, he or she will be liable to cross-examination or to make a statement, not on affirmation, in which case the child shall be asked no questions, but after the child has made his or her election, the court shall hear the child and the witnesses if any, and any other evidence for the defence;
  - (i) the court shall record the substance of the evidence and record its findings on the issues for trial and its conclusion whether or not the offence has been proved against the child beyond reasonable doubt;
  - (j) if the charge is not proved beyond reasonable doubt, the court shall acquit the child and set him or her free;
  - (k) if the charge is admitted or proved against the child, the court shall consider the circumstances of the case, any report by the prosecutor as to the antecedents of the child, or any report by a probation and social welfare officer, and may make any of the following orders—
    - (i) absolute discharge;
    - (ii) caution;
    - (iii) conditional discharge for not more than twelve months;
    - (iv) binding the child over to be of good behaviour for a period not exceeding twelve months;
    - (v) compensation, restitution or fine, taking into consideration the means of the child so far as they are known to the court; but an order of detention shall not be made in default of payment of a fine;
    - (vi) a probation order for not more than twelve months, with such conditions as may be recommended by the probation and social welfare officer; or
    - (vii) detention for a period not exceeding three months for a child under sixteen years of age, and a period not exceeding twelve months for a child above sixteen years of age and, in the case of an offence punishable by death, three years in respect of any child of or above the age of criminal responsibility.

## **29. Detention in National Rehabilitation Centre for Children.**

(1) The court shall promote reconciliation between the complainant and the child.

(2) If after careful consideration the court is satisfied that all other reasonable alternatives have been tried, and that offence warrants the order, as a last resort, the court may order detention in the National Rehabilitation Centre for Children established under section 96 of the Act, with such conditions as may be recommended by the probation and social welfare officer; except that no order shall be made unless the court is satisfied that a suitable place is available.

## **30. Dismissal of cases.**

Where the case of a child appearing before a court is not completed within three months after the plea has been taken, the case shall be dismissed and the child is not liable to any further proceedings for the same offence.

## **31. Probation and social welfare report.**

(1) The court shall not make a detention or probation order until a written social background report has been prepared by a probation and social welfare officer, and the report shall be taken into account by the court before making the order.

(2) The report shall include among other things the social and family background of the child, the circumstances in which the child is living and the conditions under which the offence was committed.

(3) The court shall ensure that the contents of the report are made known to the child and that a copy of the report is provided for the child or the legal representative of the child.

(4) In all other cases, the court may request an oral report.

## **32. Procedure of court in remitted cases.**

For the avoidance of doubt, when a case has been remitted to the court from the High Court or a magistrate's court for trial or sentencing, the court shall

follow the appropriate procedure as set out in rules 27 and 28 of these Rules.

## PART V—MISCELLANEOUS.

### **33. Appeals.**

- (1) An appeal shall lie, in a case involving the trial of a child, from—
  - (a) a village administrative committee court to a parish executive committee court;
  - (b) a parish executive committee court to a family and children court;
  - (c) a family and children court to a chief magistrate's court;
  - (d) a chief magistrate's court to the High Court;
  - (e) the High Court to the Court of Appeal; and
  - (f) the Court of Appeal to the Supreme Court.
- (2) The procedure of appeal to be followed in the court shall be, with necessary modifications, similar to the procedure followed in a magistrate's court under the Magistrates Courts Act and the Criminal Procedure Code Act in criminal cases and the Civil Procedure Rules in civil cases.

### **34. Fees and costs.**

Fees to be charged in applications under Part IX of the Act, (relating to parentage of children) shall be those charged in a magistrate's court, except that a party who is unable to pay fees and costs may apply for remission on proof that he or she is a poor person, and the court may remit the whole or part of the fees and costs, on such conditions as it thinks fit.

### **35. Security for costs.**

- (1) Security for costs of a civil appeal to—
  - (a) the chief magistrate's court may be ordered in the sum of ten thousand shillings;
  - (b) the High Court may be ordered in the sum of twenty thousand shillings;
  - (c) the Court of Appeal may be ordered in the sum of thirty thousand shillings; and
  - (d) the Supreme Court may be ordered in the sum of fifty thousand shillings.
- (2) Any sum ordered under subrule (1) of this rule may be increased,

decreased or waived in the discretion of the particular court to which an appeal is made.

**36. Appeals by a poor child.**

Where a child wishes to appeal and is unable to pay fees or security for costs in a civil matter, the child may apply as a poor person in accordance with Order XLV (Pauper Appeals) of the Civil Procedure Rules.

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*Schedule.*

rule 19(3).

**Forms.**

Republic of Uganda

Form 1.  
Application.  
*The Children Act.*

In the Family and Children Court at \_\_\_\_\_

In the matter of \_\_\_\_\_ (*name of child*), a child,

and

In the matter of an application for \_\_\_\_\_  
\_\_\_\_\_  
(*state type of order*.)

I, \_\_\_\_\_ (*name of applicant*),  
being \_\_\_\_\_ (*state relationship to child*)  
apply for a \_\_\_\_\_ (*state type of order*)  
against \_\_\_\_\_ (*name of respondent*)  
being the (father/mother) of \_\_\_\_\_ (*name  
of child*) on the following grounds:

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\_\_\_\_\_ Date \_\_\_\_\_ Applicant

rule 20.

## Republic of Uganda

Form 2.  
Application for a Declaration of Parentage.  
*The Children Act.*

## In the Family and Children Court at

In the matter of *(name of child)*, a child,

and

In the matter of an application for a declaration of parentage.

## Complaint on Oath.

I, \_\_\_\_\_ (*name of complainant*),  
being \_\_\_\_\_ (*state relationship to child*) apply for  
a declaration of parentage against  
\_\_\_\_\_ (*name of respondent*) being the (father/mother) of  
\_\_\_\_\_ (*name of child*)  
on the following grounds:

Sworn at  this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

## Complainant

Before me \_\_\_\_\_  
Commissioner for Oaths/Magistrate

rule 21.

Republic of Uganda

Form 3.  
Summons in Chambers.  
*The Children Act.*

\_\_\_\_\_  
Applicant

versus

\_\_\_\_\_  
Respondent

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*(Name, description  
and place of  
residence)*

Whereas \_\_\_\_\_ has  
instituted proceedings for \_\_\_\_\_ (*state type of order*),  
you are summoned to appear in the chambers of \_\_\_\_\_  
in person or by an advocate duly instructed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to  
answer to the claim.

Take notice that, in default of your appearance on the day above-mentioned,  
the application shall be heard and determined, and such order as is deemed  
fit will be rendered in your absence.

Given under my hand and the seal of this court on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_\_.  
\_\_\_\_\_

\_\_\_\_\_  
Magistrate

**History:** S.I. 24/1998.

#### Cross References

Civil Procedure Rules, S.I. 71-1.

Criminal Procedure Code Act, Cap. 116.  
Evidence Act, Cap. 6.  
Magistrates Courts Act, Cap. 16.

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