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CHILDREN'S ACT No.6 OF 2011

CHILDREN'S COURT RULES OF 2015

ARRANGEMENT OF RULES

RULES

TITLE

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Application.
3. Interpretation.

PART II

GUIDING PRINCIPLES

4. Overriding objective of the Rules.
5. Objective of the Rules in criminal proceedings.
6. Objective of the Rules in civil proceedings.
7. Overriding principles of the Rules.

PART III

ESTABLISHMENT AND JURISDICTION OF THE CHILDREN'S COURTS

8. Establishment.
9. Children's Court to be held separately.
10. Court environment.
11. Appointment of Magistrates.

220

12. Jurisdiction.
13. Appeals.

PART IV ADMINISTRATION

14. Case management in criminal cases.
15. Case management in civil cases.
16. Powers to manage cases
17. Case-flow Management Committee.
18. Transmission of records to the Chief Justice.
19. Record keeping.
20. Keeping of files after closure of the case.
21. Perusal of court records.

PART V GENERAL PROCEDURAL RULES IN A CHILDREN'S COURT

22. Conduct of proceedings.
23. Language of the Court.
24. Provision of interpreters.
25. In camera proceedings.
26. Age determination.
27. Admission of medical evidence.
28. Provision of information about proceedings to a child.
29. Legal and other appropriate assistance.
30. Legal assistance in criminal cases.
31. Consideration of a child's testimony
32. Child giving evidence in a place other than the Courtroom.
33. Provision of evidence through devices.

PART VI THE CHILD IN CONFLICT WITH THE LAW

34. Procedure of the court.
35. Issuance of a summons.
36. Arrest of a child.

37. Warrant of arrest.
38. The charge sheet.
39. Attendance of parents, guardians or care-givers.
40. Disqualification of parents, guardians or care-givers.
41. Bail.
42. Remand into custody.
43. Assessment report of probation officer or social welfare officer.
44. Review of remand.
45. Diversion through Director of Public Prosecutions.
46. Non-compliance with a diversion order.

PART VII

TRIAL OF CHILDREN IN CONFLICT WITH THE LAW

47. Entering a plea.
48. Entering a plea of not-guilty.
49. Timescale for a criminal trial.
50. Participation of the child in the criminal proceedings.
51. The prosecution case.
52. Child to be present in court during trial.
53. Preliminary hearing.
54. Failure to attend hearing.
55. Unavailability of the magistrate.
56. Prima facie evidence.
57. Evidence in chief of an accused child.
58. Power of the court to order production of evidence.
59. Cross-examination of witnesses.
60. Conviction of a child.
61. Second assessment report on conviction.
62. Judgment.

PART VIII

SENTENCING

63. Principles of sentencing.
64. Dismissal of the charge.
65. Discharge of an offence.
66. Sentencing to a diversion option.

- 67. Fines, costs and compensation order.
- 68. Community service order.
- 69. Failure to comply with conditions of diversion or diversionary sentence.
- 70. Custodial sentence in an approved school.
- 71. Custodial sentence in an offenders education centre.
- 72. Expungement of a child's criminal record

PART IX INTERMEDIARIES

- 73. Appointment of an intermediary in criminal cases
- 74. Appointment of an intermediary in civil cases.
- 75. Specific rules applicable to intermediaries.
- 76. Rules on intermediaries to apply to witnesses in other courts.

PART X PARENTAGE

- 77. Application for confirmation of parentage
- 78. Application for parentage by an interested person
- 79. Powers to refuse an application
- 80. Parties to proceedings.
- 81. Notice and summons of applications.
- 82. Evidence to be considered.
- 83. DNA and medical tests
- 84. Contents of the DNA report.
- 85. Making an order for custody on an application for a parentage order.
- 86. Informing the Registrar of Births of the parentage order.

PART XI CUSTODY AND ACCESS

- 87. Procedure for making an application for custody and access
- 88. Power of the court to consider an application for custody and access.
- 89. Service of an application.
- 90. Emergency applications for return of a child.
- 91. Factors to be considered in granting an ex-parte order.
- 92. Interim orders made on an ex-parte basis.

93. The first hearing.
94. Joining the child as a party to proceedings.
95. Adjournment for mediation.
96. Ordering a social enquiry report on custody and access.
97. Considerations on making a custody and access order.
98. Power of the court to make orders of its own motion.
99. Restriction on power of parent with a custody order.
100. Access orders.
101. Factors to be considered in an access application.
102. Discharge of existing orders.
103. Varying of a custody or access order.
104. No further application without special leave of the court.
105. Enforcement orders.
106. Removal of a child from Zanzibar.
107. Application for guardianship.

PART XII MAINTENANCE

108. Application for a maintenance order.
109. Consideration when making a maintenance order.
110. Social enquiry report on maintenance.
111. Payment of child maintenance.
112. Enforcement of child maintenance.
113. Variation and discharge of a maintenance order.

PART XIII CHILD PROTECTION

114. Infringement of a child's rights.
115. Registration of birth.
116. Consent to medical treatment.
117. HIV testing and disclosure of HIV status.
118. Application for an order.
119. A child in need of protection.
120. Application for an emergency protection order.
121. Ex-parte application for an emergency protection order.
122. Powers of the Court when making an emergency protection order.

- 123. Prohibition on removal of child under an emergency protection order,
- 124. Social investigation report.
- 125. Renewal of an emergency protection order.
- 126. Criteria for renewal of an emergency protection order.

**PART XIV
CARE AND SUPERVISION ORDERS**

- 127. Institution of care and protection proceedings.
- 128. First hearing of an application.
- 129. Application to be joined as a respondent.
- 130. Interim care or supervision order.
- 131. Expert evidence.
- 132. Agreement of facts by the parties
- 133. Hearing the parties.
- 134. Criteria for making an interim care or supervision order.
- 135. A supervision order.
- 136. Orders that may be made on an application for a supervision order.
- 137. A supervision plan.
- 138. Duration of a supervision order.
- 139. Orders that may be made on application for a care order.
- 140. Care plan.
- 141. Parental rights under a care order.
- 142. Application to vary access under a care order.
- 143. Annual review of a care order.
- 144. Duration of a care order.
- 145. Making an application to extend a care order.
- 146. Discharge of a care order.

**PART XIV
EXCLUSION ORDER**

- 147. Exclusion order

SCHEDULES

THE CHILDREN ACT, No. 6 OF 2011

THE CHILDREN COURT RULES OF 2015
[Made under section 43(1)]

IN EXERCISE of the powers conferred upon me under section 43(1) of the Children Act, No. 6 of 2011, **I, OMAR OTHMAN MAKUNGU**, Chief Justice of Zanzibar, do hereby make the following Regulations: L.N. 87 of 2015

PART I
PRELIMINARY PROVISIONS

1. These Rules may be cited as the Children's Court Rules of 2015 and shall come into operation immediately after being signed by the Chief Justice and published in the Official Gazette. Short title and commencement.

2.-(1) These Rules shall apply in all cases before the Court, unless the context otherwise required. Application.

(2) In the case of any lacuna in these Rules:

- (a) the provisions of the Civil Procedure Decree (Cap. 8) shall apply in civil cases;
- (b) the Criminal Procedure Act, No. 7 of 2004 shall apply in criminal cases; and
- (c) the Evidence Decree (Cap 5.) shall apply to the extent that this is consistent with court proceedings being as informal as possible and without exposing the child to adversarial procedures,

Provided that fair trial rights are protected in all proceeding before the Children's Court.

3. In these Rules, unless the context otherwise requires:

“Act” means the Children’s Act, No. 6 of 2011;

“Applicant” means a person or body who files an application in civil proceedings before the Children’s Court;

“Application” means the manner in which any proceeding, whether criminal or civil, is instituted in the Children’s Court and includes a petition, a chamber summons, chambers application or a complaint;

“Appropriate assistance” in relation to a Children’s Court means a parent or guardian or such other person as the Court in its discretion permits to assist the child;

“Care order” means an order granted under section 24 of the Act;

“Care-giver” means a person other than a parent or guardian who takes primary responsibility for the day to day care of the child or the person with whom the child has lived and who has provided day to day care to the child for a period of at least three months in the last six months;

“Case management” means actions taken by the presiding magistrate to ensure the effective and timely disposition of the proceedings;

“Child friendly” means any process and interpretation, attitude, environment and treatment, that is humane, considerate, respectful of the child’s dignity and in the best interest of the child;

“Child protection conference” means an inter-agency and inter-professional meeting which is convened by the district welfare officer or a member of his staff;

“Child protection unit” means a unit within the Department of Social Welfare responsible for delivery of child protection services at the central level;

“Child supporter” means a person who supports the child during questioning at a police station other than a parent, guardian, close relative or close friend;

“Court” means a children’s court established under section 18 of the Act;

“Court proceedings” means any action taken by a court from the time a child first appears before a children’s court to be charged with a criminal offence until the Court finally determines the case in relation to the child, or from the time any civil action relating to a child is initiated until final judgment in the case;

“Custody” means the care, control and maintenance of the child awarded by a court to a responsible adult;

“Department of Social Welfare” is a department under the Ministry responsible for children’s affairs;

“Director of Social Welfare” means the head of the Department of Social Welfare;

“District child protection unit” means a unit at the district level that is responsible for the delivery of child protection services;
“District welfare officer” means the head of a district child protection unit;

“Dock brief” means a referral by the Chief Justice in a criminal matter or a civil matter for a legal representative to be identified to provide legal representation to the child party or the child accused at no cost to the accused or party;

“Emergency protection order” means an order granted under section 22 of the Act;

“Excluded from home” means a child who is without parental care as a result of a parent forcing the child out of the home or behaving in such a way that the child feels he has no option but to leave;

- “Foster care” means a placement under Part 7 of the Act, the accompanying Rules and Regulations issued under the Act;
- “In need of immediate care and protection” means that there is reasonable cause to believe that the child is likely to suffer significant harm unless removed from the place where he or she is found;
- “Interested person” means a person who has an interest in the child or children and assists the child or takes action to realise his rights and may include an individual or an organisation;
- “Investigation” means an investigation undertaken by a welfare officer in the employ of a government department;
- “Intermediary” means a person who assists the court to hear the evidence of a child;
- “Interested person” means a person who has a personal or professional interest in the child and can include an organisation;
- “Legal representative” means an advocate admitted to the Zanzibar Bar
- “Lost or abandoned child” means a child who as a result of parental action or for some other reason finds himself left without a parent;
- “Maintenance” means provision of means of support, upkeep, subsistence, care or livelihood;
- “Next friend” means a person who assists a child to bring a legal action;
- “Order” means a writ, warrant, summons or other process, and a decree revisional or confirmatory order and any other formal expression of the decision of a court;
- “Parental care” means the care given by a parent, guardian or caregiver;
- “Probation officer” means any person appointed as such under the provisions of the Probation of Offenders Decree;

- “Report” means a report made pursuant to section 20 of the Act;
- “Representative” means a parent or guardian who assists or represents a child during court proceedings;
- “Social investigation report” means a report prepared by a social welfare officer of the child protection unit;
- “Supervision order” means an order granted under section 23 of the Act.

PART II GUIDING PRINCIPLES

4.-(1) The overriding objective of the Children’s Court Rules is to establish a uniform practice and procedures for the children’s courts of Zanzibar and to assure that the rights of the child as provided in the Act are protected.

Overriding objective of the Rules.

(2) The court shall, in exercising any power given to it under these Rules or interpreting any rule, seek to give effect to the overriding objective.

(3) These Rules shall apply to any court that is constituted or sitting as a children’s court, except where otherwise provided.

5. The objective of the Rules in relation to criminal proceedings brought against a child shall be to:

Objective of the Rules in criminal proceedings.

- (a) ensure that children are given a fair trial;
- (b) ensure that children are accorded the rights contained in the Act and to the greatest extent possible, to promote, protect and maintain the best interests and wellbeing of the child with a view to give effect to international and regional conventions and standards on the rights of the child;
- (c) ensure fairness between the prosecution and the accused;
- (d) ensure that the child is enabled to participate in the proceedings;

- (f) deal with the case efficiently and expeditiously;
- (g) ensure that all measures taken in relation to a child in conflict with the law shall be in proportion to the circumstances and gravity of the offence and to the circumstances and educational, social and other needs of the child;
- (h) ensure that appropriate information is available to the court when release, diversion and sentence are considered; and
- (i) ensure that reintegration of a child in conflict with the law into the community is a primary objective of proceedings.

Objective of the Rules in civil proceeding.

6. The objective of the Rules in relation to civil proceedings involving a child shall be to:

- (a) deal with cases expeditiously and fairly;
- (b) deal with cases in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) safeguard and promote the wellbeing of children; and
- (d) promote the upbringing of children by their families.

Overriding principles of the Rules.

7. The following principles shall apply when taking any action or making any decision under these Rules:

- (a) the best interests of the child shall be the paramount consideration in all matters related to these Rules;
- (b) a child shall be treated with dignity and without discrimination of any kind, including on the grounds of sex, race, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urban background, birth or family status, socio-economic status, being a refugee or other status;
- (c) a child appearing before the children's court as a party to proceedings shall have the right to participate in the proceedings and to be heard either directly or through a legal representative and to be assisted by a parent or

guardian, unless it is not in his or her best interests to be assisted by a parent or guardian; and

- (d) regard shall be had at all times to the evolving capacity of the child.

PART III

ESTABLISHMENT AND JURISDICTION OF THE CHILDREN'S COURTS

8.-(1) The Chief Justice may designate premises as identified by their location to be used as a children's court by notice in the Gazette in accordance with the Act, and where no separate physical facility exists, may designate a district magistrates' or regional court to function as a children's court in terms of these Rules. Establishment.

(2) The Chief Justice may, on a case-by-case basis, require that a Regional Court and a High Court hearing a criminal matter against a child in terms of section 18(1)(b) of the Act abide by the Rules set out hereunder.

9.-(1) Wherever practicable the children's court shall sit in a different room or at a different time or on a different day than that ordinarily used for hearing adult cases. Children's Court to be held separately.

(2) Locations or rooms in court buildings other than a court room may be used to conduct proceedings at the discretion of the presiding magistrate where this will serve the best interests of the child.

(3) A child attending at the court, whether as a child in conflict with the law or as a child involved in a civil case or as a witness, shall not share the same waiting room or area as adults accused of a criminal offence.

(4) In an instance of a child attending court as a witness in a case against another child charged with a criminal offence, the child witness shall not share the same waiting room or area as that child.

10.-(1) In order to promote an informal, child-friendly environment that facilitates maximum participation by the child, the children's court shall be conducted in the following manner: Court environment.

- (a) parties shall sit on the same level and the child shall not be placed in a dock or other raised structure;
- (b) a child witness may give evidence other than from a witness box;
- (c) a child shall be allowed to sit throughout the court proceedings;
- (d) a child shall sit next to his legal representative and shall be permitted to communicate freely with his legal representative;
- (e) a child in conflict with the law shall sit next to or near a parent or legal guardians if present and shall be permitted to communicate freely with his parents;
- (f) the court shall adjourn at appropriate intervals on its own initiative or upon request by the child, his legal representative, a parent, or in the case of a child witness, an intermediary, in recognition that a child's attention span is less than that of an adult; and
- (g) the court shall schedule hearings at times of the day and for periods of time appropriate to the age and maturity of the child.

(2) Court officers, such as magistrates, prosecutors, legal representatives, police and other court personnel shall not wear formal robes, official attire or uniforms.

Appoint-
ment of
Magistrates.

11.-(1) The Chief Justice shall designate a person as specified in section (18)(4) of the Act to serve as a chairperson in a children's court that is established;

(2) The Chief Justice may designate another regional magistrate as chairperson in a children's court where an appointed chairperson is not available.

(3) A chairperson assigned to the Children's Court shall, before sitting in the Children's Court, attend such training on child

development, child psychology, child rights and the contents of the Act and these Rules as may be specified by the Chief Justice.

(4) Until such time as the Chief Justice has exercised powers to specify the training to be undertaken by Chairpersons, cases before the court shall proceed to be heard and determined by the available magistrates.

12. The court shall have the power to exercise its inherent jurisdiction and make an order to safeguard and promote the wellbeing of the child whether upon application or on its own initiative, save in cases where the High Court has originating jurisdiction. Jurisdiction.

13.-(1) The court shall at the time when a decision, sentence or order is made or passed, inform the parties of the right of appeal and the period of time within which an appeal may be made. Appeals.

(2) An appeal shall be pursued in the manner and form specified in the Criminal Procedure Decree in respect of a child convicted of an offence.

(3) An appeal against an order, finding or decision in a civil matter in the children's court shall be pursued in accordance with the Civil Procedure Decree.

PART IV ADMINISTRATION

14.-(1) A magistrate presiding in a children's court shall further the overriding objective contained in Rule 4 of these Rules and the objectives in criminal proceedings as set out in rule 5 of these Rules through effective case management. Case management in criminal cases.

(2) Effective case management includes:

- (a) ensuring that there is prima facie evidence to support a criminal charge against a child;
- (b) early identification of the issues in the case;

- (c) early identification of the number, identity and needs of witnesses;
 - (d) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timeframe for the progress of the case;
 - (e) giving any direction appropriate to the needs of that case as early as possible;
 - (f) managing the progress of the case and overseeing compliance with directions;
 - (g) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (h) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (j) permitting adjournments only in exceptional circumstances;
 - (k) making use of relevant information technology; and
 - (l) ensuring that at least 2 days notice of proceedings is given to the parties.
- (3) The court may:
- (a) summon of the parties or witnesses shall be in the manner prescribed under the Form No.1 of the First Schedule to these Rules.
 - (b) summon a witness or a member of any public service or body who has failed to appear for a hearing, or who has failed to produce any relevant document or file, to attend or to bring the documents or file at a specified time;
 - (c) make any order permitted under section 18(9) of the Act.

(4) Where practicable, the same magistrate shall preside over all proceedings in the case, save that where the unavailability of the magistrate is likely to cause delay, another magistrate shall hear the case or deliver judgment in the case.

15. -(1) The court shall further the overriding objective as set out in Rule 4 and the objectives in civil proceedings as set out in Rule 6 through effective case management. Case management in civil cases.

(2) Effective case management includes:

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings, to settle or mediate where appropriate and desirable;
- (b) identifying at an early stage:
 - (i) the issues; and
 - (ii) a party to the proceedings;
- (c) deciding promptly:
 - (i) which issues need full investigation and hearing and which do not; and
 - (ii) the procedure to be followed in the case;
- (d) fixing timetables or otherwise controlling the progress of the case;
- (e) dealing with as many aspects of the case as it can on the same occasion;
- (f) making use of relevant information technology;
- (g) giving directions to ensure that the case proceeds expeditiously and efficiently; and
- (h) ensuring that parties are provided at least 2 days notice of proceedings.

16.-(1) In addition to the powers granted to it under section 18(9), the court shall have the power in both criminal and civil cases to:

- (a) make an order for disclosure of documents;
- (b) adjourn or bring forward a hearing, provided that adequate notice is given to affected parties and where applicable, any legal representatives;
- (c) require a party or the party's legal or other representative to attend at the court;
- (d) direct that part of any proceedings be dealt with as separate proceedings;
- (e) stay the whole or part of any proceedings or judgment until a specified date or event;
- (f) consolidate proceedings;
- (g) hear two or more applications or charges at the same time;
- (h) decide in what order the applications, charges or issues are to be heard;
- (i) exclude an issue from consideration; and
- (j) take any other step or make any other order, including varying or revoking an order for the purpose of managing the case and furthering the overriding objectives.

(2) The court may, in any case before it, order that any person with whom a child resides or any body or institution with care of the child or holding the child, produce the child at a named children's court at a specified time for a listed hearing.

17.-(1) A case-flow management committee shall be established by the Chief Justice in each children's court.

(2) The children's court case-flow management committee shall ensure that:

- (a) the Act and the overriding objectives of these Rules are fully implemented;
- (b) case management is effective and cases are heard and judgments given without undue delay;

(3) The case flow committee members in each children's court shall include:

- (a) the Chairperson of the Children's Court;
- (b) a representative of the prosecution service appointed by the Director of Public Prosecution;
- (c) a representative of the Department of Social Welfare;
- (d) a representative of the probation service appointed by the head of the probation service;
- (e) a member of the Gender and Children's Desk appointed by the Commissioner;
- (f) a representative of the legal profession with experience of taking cases in the children's court;
- (g) the regional medical doctor in-charge or such person as delegated by him;
- (h) the administrator in-charge of the children's court;
- (i) one representative of civil society working with children in conflict with the law or with child protection; and
- (j) such other persons or organisations whom the chairperson of the children's court case flow management committee requests or permits to become a member of the committee.

(4) The chairperson of the children's court case-flow management committee shall have the power on his own initiative or at the request of other members to ask other relevant persons to attend meetings.

(5) The children's court case-flow management committee shall meet not less than four times a year.

(6) The appointed chairperson of the children's court shall chair the children's court case-flow management committee.

(7) The administration in-charge of the children's court shall be responsible for:

- (a) setting the dates for committee meetings;
- (b) setting the agenda for committee meetings in consultation with the chairperson;
- (c) distributing minutes of the meetings to all members;
- (d) ensuring that up to date information on the administration of the court is available; and
- (e) ensuring that issues that prevent effective case management are made known to the case-flow committee.

(8) Notwithstanding sub-rule (7)(b) of this Rule, the Chief Justice and, in the alternative, the Registrar shall have the power to:

- (a) set items for the agenda; and
- (b) set performance targets for the children's court.

Transmis-
sion of
record to
the Chief
Justice.

18. The chairperson of the children's court case-flow management committee shall submit annual returns to the Chief Justice relating to:

(1) The number of criminal cases lodged with the children's court.

(2) The offence with which the child was charged, and the age and gender of the child.

(3) Whether a pre-court assessment was available in accordance with section 41 of the Act.

(4) The outcome of criminal cases lodged with the court, including:

- (a) the number of cases withdrawn, discharged or diverted;
- (b) the number of acquittals; and
- (c) the number of convictions.

(5) The measure or sentence imposed following the conviction of a child.

(6) The number of civil cases lodged with the children's court.

(7) The nature of the civil action, the age and gender of the child.

(8) The number of civil cases withdrawn, discharged, diverted, mediated or settled.

(9) The length of time from the lodging of each case involving a child until the conclusion of the proceedings.

(10) The length of time between the conclusion of the final hearing in the proceedings and the giving of judgment.

(11) The number of cases in which intermediaries were appointed to assist child witnesses.

(12) The number of care orders and supervision orders made.

(13) Such other information as may be requested by the Chief Justice.

19.-(1) Official court records in all cases shall consist of all documents filed in the court from the commencement of the case to the conclusion of the case. Record
keeping.

(2) A uniform file numbering system shall be used for all cases and documents required to be indexed by the children's court, save that

criminal cases and civil cases shall be clearly differentiated and their details separately recorded in the children's court register.

(3) The court shall ensure that a case file is opened in relation to each case before the court, that the information specified in the Second Schedule and the Third Schedule of these Rules is kept on each child appearing before the court, and that court files are stored separately from other court files in a place proximate to the children's court.

Keeping of files after closure of the case.

20. Court files shall be kept until the child reaches the age of 21 or for 10 years whichever is the longer, save that a file relating to an application under Parts 10 and 13 of these Rules shall be kept as special reserved documents under the National Archives Decree.

Perusal of court records.

21.-(1) In respect of any criminal case before the Court, a paper copy of the file or any document contained therein shall be made available free of charge to the accused child and his parent, or guardian and legal representative on request.

(2) In respect of any civil case before the Court, a paper copy of the file or any documents contained therein shall be made available free of charge to the parties on request;

(3) Where a child was the subject of civil proceedings before the children's court or a regional court, the child may, on reaching the age of 18, apply to the children's court for a copy of any order that was made and the reasons given for that order.

(4) Files may be made available to interested parties or for the purpose of research with the leave of the court that made the order or, if the court no longer exists or has ceased to function as a court, with the leave of the chairperson of a children's court.

(5) Where leave is given to access a child's file, any papers contained therein shall be treated as confidential and neither the papers nor any information contained in the file shall be released to any person other than the person granted leave without the permission of the court, nor shall any information be published which can reveal the identity of the child or children.

(6) A person seeking a copy of a document or a case file shall specify the information or document requested either orally or in writing.

PART V
GENERAL PROCEDURAL RULES IN A CHILDREN'S
COURT

22.-(1) The procedures of the children's court shall be informal as friendly to the child as possible, and made by enquiry without exposing the child to adversarial procedures, in so far as this safeguards the right to justice of the child and other parties and participants in the proceedings. Conduct of proceedings.

23.-(1) The language of the court shall be either English or Kiswahili as the magistrate shall direct, save that when the child does not read or speak the language used by the court, he shall be provided with an interpreter in accordance with Rule 24 of these Rules. Language of the Court.

(2) A child shall not be asked to sign any document in a language that he does not understand unless he has first had the document translated for him, and had the opportunity to discuss it with his legal representative.

(3) Proceedings and court decisions including judgments shall be recorded in Kiswahili or English.

24.-(1) Whenever the child is present in the court and any evidence is given in a language not understood by the child, such evidence shall be interpreted in the court in a language understood by him, including any appropriate language for deaf children, children without speech, speech impairment or other disability that impairs the child's ability to understand the evidence. Provision of interpreters.

(2) If evidence is given in a language other than the language of the court, and not understood by all parties present and their representatives, such evidence shall be interpreted in the language of the court.

(3) Where the child is giving evidence in court whether as an accused or a witness and does not speak the language of the court,

including those cases where the child suffers from a disability as set out in sub-rule (1) of this Rule, he may give evidence in his own language and it shall be interpreted in the language of the court.

(4) On the application of the accused child or his legal or other representative, a copy of the judgment or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay and free of charge.

(5) The court shall ensure that any person falling within sub-rule (1) or (3) of this Rule has the opportunity to meet the interpreter before the hearing to ensure that he or she can understand the interpreter.

(6) The court shall keep a list of persons willing to provide interpretation.

(7) Where a person falling within sub-rules (1) and (3) of this Rule does not attend with an interpreter, the presiding magistrate shall appoint an interpreter qualified to assist.

(8) The court shall have the power to dismiss an interpreter where:

- (a) the interpretation falls below an acceptable standard; or
- (b) a party or in the case of a child, the child, his parent, guardian or other representative is dissatisfied with the standard of the interpretation provided and requests such dismissal.

(9) Where an interpreter is dismissed in accordance with sub-Rule 8 of this Rule, a replacement interpreter shall be appointed by the court.

(10) The court shall inform any person providing interpretation in the court that:

- (a) he owes a duty of confidentiality to the person he is assisting; and

- (b) the proceedings are confidential and that no information about the proceedings shall be passed to any third party without the consent of the court.

25.-(1) Court proceedings shall be held behind closed doors and shall not be open to the public.

In camera proceedings.

(2) In addition to the persons referred to in section 18(8) of the Act who are permitted to attend proceedings of the court, the following persons may be permitted attend such proceedings:

- (a) in the absence of any parent or legal guardian, a relative or friend of the child with permission of the magistrate in order to act as a support to the child;
- (b) a person designated as an intermediary;
- (c) persons who wish to attend for the purpose of training or research who are given permission to attend by the magistrate; and
- (d) any other person that the magistrate considers appropriate in the particular circumstances of the child or necessary for the effective delivery of justice.

(3) Where permission is granted by the magistrate under sub-rule (2)(c) or (d) of this Rule, the consent of the parties, including a child who is a party to proceedings and of sufficient age and maturity, shall be sought by the magistrate and, where refused, such persons shall not attend.

(4) An information may not lead to the identification of a child who is alleged to have committed an offence, who is charged with or who has been convicted of a criminal offence, or who is the subject of civil proceedings in the children's court, shall be published in any oral, written, visual or virtual form without the leave of the magistrate presiding over the case, and in determining whether to grant such leave, the child's best interests shall be the paramount consideration.

26.-(1) Age determination in criminal matters shall be conducted in accordance with section 36 of the Act.

Age determination.

(2) Where a person appearing before the court in a criminal matter claims to be a child and this is a matter of dispute, the court shall cause reasonable inquiries to be made into the child's age and make a determination of age.

(3) In making a determination of age in accordance with sub-rule (2) of this Rule, the court may rely upon:

- (a) the child's birth certificate;
- (b) such medical evidence as is necessary to provide proof of birth whether it is of a documentary nature or otherwise;
- (c) information from primary school attended by the child as to the child's date of birth;
- (d) a primary school leaving or equivalent certificates; and
- (e) any other relevant credible information or document.

(4) Unless rebutted, a birth certificate shall be presumed to provide conclusive proof of the age of the child.

(5) Where the documents in sub-rule (3) of this Rule are not available or do not determine the age of the child, the court may take into account the following evidence:

- (a) an immunisation or medical records;
- (b) a medical examination of the child to determine age, save that skeletal X-ray shall not be used as a means of determining age without the leave of the court and such leave shall only be given in exceptional circumstances; and
- (c) a social investigation report as contemplated in section 18(9)(f) of the Act to assist in determining the child's age.

(6) In preparing a social investigation report, the welfare officer shall interview the child and a person who have relevant information about the probable age of the child.

(7) A DNA test may be ordered to determine identity.

(8) Where the enquiry is inconclusive on the matter of age, but there is cause to believe that the person may be a child, it shall be presumed that the person is a child under the age of 18 and shall be treated as such.

(9) If the court finds in civil proceedings that a person whose age is in dispute is a child and proceeds on that basis, a decision, order or judgment of the court shall not be invalidated or re-opened as a result of any subsequent finding or proof that the age of the person was not correctly decided by the court.

(10) In criminal cases where the age of the child victim or witness is in dispute and proof of age is required, the court may rely upon any of the documents specified in sub-rule (3) and 5(a) of this Rule.

27.-(1) Where a medical report or in any other relevant format is to be tendered as evidence in a children's court case, the prosecution and defence or parties to the case, as the case may be, shall consult before the commencement of the hearing on the extent to which the contents of the medical report are agreed.

Admission
of medical
evidence.

(2) Where the facts contained in the medical report are agreed, the medical report may be tendered in evidence and there shall be no necessity to call as a witness the doctor who attended to the person who is the subject of the medical report, the medical report shall be in the form specified by Form No. 2 of the First Schedule of these Rules.

(3) Where there is dispute concerning the medical report, the doctor who examined the person who is the subject of the medical report shall be called to give evidence.

(4) Where the doctor who examined the person who is the subject of the medical report is not available as a witness, another doctor who examined the person who is the subject of the medical report and can testify to the injuries caused to that person may be called.

(5) In the absence of a doctor who examined the person who is the subject of the medical report, another doctor may read the medical

report into the record of the hearing, the weight of this evidence to be considered in accordance with the Evidence Decree of 1917.

Provision of information about proceeding to a child.

28.-(1) When a child is a party to civil proceedings or is the subject of the proceedings and attends the children's court hearing, the court shall ensure that the child understands:

- (a) the nature of the application that has been made and the matters that the court will decide;
- (b) the role of the magistrate and assessors;
- (c) that the child has the right to be heard, either directly or, if he so wishes, through a legal representative; and
- (d) the procedure that will be followed.

(2) The Court shall explain to a child who is a party to civil proceedings or who is the subject of proceedings and is in attendance at the court any judgment given and the consequences of that judgment for the child.

Legal and other appropriate assistance.

29.-(1) A child who is a party to proceedings in a civil case or is the subject of care and protection proceedings shall have the right:

- (a) to legal assistance and other appropriate assistance, including the assistance of an intermediary; and
- (b) to be provided with free legal representation if substantial injustice would otherwise result.

Legal assistance in criminal cases.

30.-(1) Before a first hearing takes place in criminal proceedings involving a child, the presiding magistrate shall ensure that the child is legally represented.

(2) Where a child who is a party to proceedings does not have legal representation, the magistrate shall:

- (a) explain to the child his right to legal representation and if unable to obtain legal representation himself, to be

provided with legal representation in accordance with section 43(1)(e)(iii) of the Act; and

- (b) adjourn the proceedings to allow a legal representative to be appointed, and for the child to meet and speak with such representative, save that the magistrate may continue to hear an application for remand where a case does not fall within the jurisdiction of the children's court.

(3) Where a legal representative is provided for the child in accordance with sub-rule (2)(a) of this Rule, it shall be free of charge.

(4) A children's court shall keep a list of legal representatives qualified to represent a child in criminal proceedings.

(5) Where it is not possible to appoint a legal representative from the list kept by the Children's Court, the presiding magistrate shall send a request in writing to the Registrar of the High Court to appoint a legal representative by means of a dock brief from the list kept by the Chief Justice.

(6) The Registrar of the High Court will be responsible for referring a request from a presiding magistrate to the Chief Justice.

(7) An adjournment granted under sub-rule (2) of this Rule shall not exceed fourteen days.

(8) Where a legal representative is present in the court building, or can be present in the court building that day, the case shall be adjourned to allow the child to speak to the legal representative and shall continue on that day.

(9) Where a child has an objection to the specific legal representative appointed, the presiding magistrate shall permit the child to choose another legal representative or shall appoint another legal representative from the list kept by the court or by means of a dock brief.

Consideration of a child's testimony.

31.-(1) A child shall be presumed competent to give evidence in a criminal trial under section 49 of the Act, unless he is not able to respond to questions in a way that is understandable by the court.

Child giving evidence in a place other than the Courtroom.

32.-(1) In order to assist a child who is a victim or witness, the court may direct that the child may give his or her evidence:

- (a) in a room other than a courtroom; or
- (b) in the courtroom but in a manner that the victim or witness cannot see the defendant.

(2) When a child gives evidence in accordance with sub-rule (1) of this Rule, the magistrate shall be able to hear and see the child victim or witness and any intermediary, either directly or through the medium of any electronic or other devices.

(3) When a child gives evidence in accordance with sub-rule (1) of this Rule, the parties shall be able to hear the child victim or witness give evidence, but the magistrate may permit the child to give evidence without being seen by a defendant or a party to the case.

Provision of evidence through devices.

33.-(1) A Court may allow a child to give evidence:

- (a) by live video link, or
- (b) in court but behind screens that shield the child from seeing the defendant in court or
- (c) by such other means as the Chief Justice may from time to time approve.

PART VI PROCEDURE OF THE COURT IN CASES OF CHILDREN IN CONFLICT WITH THE LAW

Procedure of the court.

34. In accordance with section 45 of the Act, the applicable procedure for the court in criminal proceedings shall be that set out under these Rules.

35.-(1) Where a child has been released on police bail and a decision is made to charge the child with an offence, a summons shall be served. Issuance of a summons.

(2) A summons shall be issued by the court and shall be in writing, in duplicate, signed and sealed by a magistrate.

(3) The summons shall require the child to appear before the court at a time and place to be specified.

(4) Where the child is in the care of the Director of Social Welfare the summons shall be served on the district welfare officer of the district in which the child is accommodated.

(5) The charge sheet, particulars of the offence and any statements given by the child shall be included with the summons.

36. A child shall not be arrested, summonsed or brought before the court unless it is for the purpose of: Arrest of a child.

- (a) answering a complaint or a charge against him; or
- (b) making an application to remand him in custody.

37.-(1) Where a child fails to appear in court in response to a summons, a warrant of arrest may be issued by the court. Warrant of arrest.

(2) A warrant of arrest shall not be issued under this Rule unless a complaint has been made on oath by a police officer and:

- (a) an attempt has been made to contact the child following his failure to respond to the first summons;
- (b) the child cannot be contacted or found following his failure to respond to the first summons; and
- (c) a second summons has been issued for the child's attendance before the court and the child has failed to respond.

(3) Where a child is arrested under a warrant of arrest, the person arresting the child shall immediately inform and notify the parent, guardian or care-giver and the district welfare officer of the district in which the child resides or if the child is of no fixed abode the district in which the child was arrested of:

- (a) the arrest of the child;
- (b) the reason for the arrest; and
- (c) the child's whereabouts.

(4) Where a warrant of arrest is executed, the child shall be brought before the court the same day or, where this is impracticable, no later than the morning following the arrest, save that where the offence is a serious one, and:

- (a) the child is arrested after the end of business on Friday, a child may be detained and brought before the court on a Monday morning; or
- (b) the child is arrested after the end of business on the day before a public holiday, the next working day.

(5) Where a child is arrested with or without a warrant and it is not possible to bring the child before the court within 24 hours:

- (a) the police shall notify the district welfare officer; and
- (b) the district welfare officer shall co-operate with the police to place the child with a fit person or a place of safety until he is brought before the court,

save that where the child falls within section 40(1) of the Act, he may be kept in police custody until he is brought before the court.

(6) If the child is kept overnight at the police station either with or without a warrant of arrest:

- (a) the child shall not be placed in a cell with an adult, and shall be provided with sufficient food, water, bedding and light; and

- (b) the responsible police officer shall provide the court with a certificate in accordance with section 40(1) of the Act, setting out the period for which the child was detained and the reason for the detention.

(7) A warrant of arrest shall remain in force until it is executed or until it is cancelled by the court that issued it.

38.-(1) A charge sheet shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused child is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

The charge sheet.

(2) Before the commencement of the trial, the court shall ensure that the prosecution provide the child's legal representative, and, where the child is under the care of the Director of Social Welfare, with a copy of the charge sheet, the particulars of the offence and the statement of facts in sufficient time for the child to prepare his defence.

(3) Where the child is not able to understand either English or Kiswahili, the court shall ensure that the charge sheet, the particulars of the offence and the statement of facts are translated into a language the child understands.

39.-(1) If a parent, guardian or care giver fails to attend criminal proceedings relating to their child, the court may, if satisfied that they have been adequately informed, issue a summons requiring a parent, guardian or care-giver to attend at the court on a date or dates specified unless:

Attendance of parents, guardians or care-givers.

- (a) it is not in the child's best interests that the parent, guardian or care-giver should attend; or
- (b) it is not practicable for the parent, guardian or care-giver to attend.

(2) Where a parent, guardian or care-giver, not having sufficient excuse, fails to appear in obedience to a summons of the court, the court may, on proof of the proper service of the summons a reasonable time

before he is required to appear, issue a warrant to bring him before the court at such time and place as shall be specified in the warrant.

(3) If the court is satisfied by evidence on oath that a parent, guardian or care-giver will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of that parent, guardian or care-giver before the court at a time and place to be specified in the warrant of arrest.

(4) Where the parent, guardian or care-giver was not informed in sufficient time to permit attendance, or the parent, guardian or care-giver was unable to attend for good reason, the court may set aside any finding or order if it is in the interests of justice so to do.

(5) Where the child is in the care of a Director of Social Welfare, the assigned welfare officer shall attend the hearing and shall have the same rights as a parent.

Disquali-
fication of
parents,
guardians
or care-giv-
ers.

40.-(1) In accordance with section 43(1)(d) of the Act, the magistrate shall deem it not to be in the best interests of the child for the parent, guardian or care-giver to assist the child in the conduct of his case, if he is satisfied that:

- (a) the parent, guardian or care-giver is charged with an offence based on the same facts; or
- (b) the parent, guardian or care-giver has been convicted of an offence against the child; or
- (c) the child is in the care of a Director of Social Welfare and in exercising its parental rights under the Care and Protection of Children Regulations, the Director of Social Welfare has determined that it is not in the best interests of the child for the parent, guardian or care-giver to assist the child.

Bail.

41.-(1) In accordance with section 45(1) of the Act, a child who is brought before the court for the purpose of hearing a charge against him

shall be released into the care of his parent, guardian or other responsible person, with or without sureties save that:

- (a) where the child or his parent have insufficient money to pay the sum requested as surety and the child would otherwise have been released on bail, no financial surety shall be required; and
- (b) where the child is in the care of the Director of Social Welfare and the child would otherwise have been released on bail, no financial surety shall be required.

(2) A child shall not be refused bail on the ground that he is without parental care or without a fixed abode.

(3) Subject to the sub-rule (2) of this Rule, the court shall refer the child to the Director of Social Welfare as being in need of care and protection under section 19(1) of the Act and the Director of Social Welfare shall provide the child with accommodation and assistance.

42.-(1) In any case where an application is made for the child to be remanded in custody, save where the child is accused of a non-bailable offence, the court shall take into account :

Remand
into custody.

- (a) that bail shall not be denied if in the event that the child is convicted of an offence, he is unlikely to receive a custodial sentence; and
- (b) that deprivation of liberty pending trial is to be used only in exceptional circumstances, as a measure of last resort and for the shortest appropriate period of time.

(2) An order remanding a child into custody shall only be made where it is necessary and:

- (a) where the child is an immediate danger to himself or to others; or
- (b) the child has failed to attend court on a criminal charge on a previous session; or

- (c) the child has previously been granted bail by a court and has failed to comply with the conditions of bail or has absconded.

(3) A lack of parental care or a fixed abode shall not be a reason to remand the child in custody.

(4) Before granting a remand order specified under Form No. 3 of the First Schedule of these Rules, the magistrate shall consider whether the child and public can be adequately safeguarded by alternative measures, including:

- (a) placing the child at home under the supervision of a parent;
- (b) placing the child with a guardian, relative, family friend or fit person; or
- (c) where the child is without parental care, placing the child in the care of the Director of Social Welfare, in accordance with the Care and Protection of Children Regulations.

(5) Notwithstanding the sub-rule (4) of this Rule, the child shall remain in such care until final determination of the case except where the court deems it appropriate to review its decision

(6) Subject to the sub-rule (4) of this Rule, the court may impose restrictions and conditions requiring the child to:

- (a) abstain from visiting a particular locality or premises;
- (b) abstain from meeting with a named person or group of people;
- (c) remain in their place of accommodation at specified times;
- (d) attend a specified place, including a school; and
- (e) any other condition which the court may deem proper and just to impose.

(7) In deciding to remand a child in custody, the court shall give priority to remanding a child in a remand home accommodating only under-18s, unless it is not practicable to do so.

(8) Where a child is remanded into custody, he shall be held separately from adults and shall receive care, protection and all necessary individual social, educational, vocational, psychological, medical and physical assistance that he may require in view of his age, gender, disability, health status and personal circumstances.

(9) Where it is not possible to place the child separately from adult offenders as specified in sub-rule (8) of this Rule, the child shall be remanded with a fit person.

(10) Where a child is transported to or from a police station, a remand home or an offenders education centre, the child shall be transported separately from adults.

43.-(1) A child who is arrested shall be assessed by a probation officer or welfare officer in accordance with section 41 of the Act as specified under Form No. 4 of the First Schedule of these Rules.

Assessment
report of
probation
officer or
social wel-
fare officer.

(2) In completing a written assessment report, the probation officer or welfare officer shall:

- (a) have regard to the purpose of the assessment referred to in section 41 of the Act;
- (b) ensure that the report contains information about the child's history, the family circumstances, the circumstances surrounding the offence and the impact of the offence on the victim; and
- (c) indicate whether the child is;
 - (i) likely to pose a danger to himself or any other person if he is released on bail; and
 - (ii) whether the child is in need of protection.

(3) If a child is remanded, a written assessment report shall be made available to the court no later than two days before the review of the child's first period of remand.

Review of
remand.

44.-(1) An order for remand shall be reviewed every fourteen days.

(2) The child shall be present during every review of remand.

(3) The welfare officer who prepared the assessment report shall be present at the first review of the remand and shall, if requested by the court, give evidence on any matter contained in the report.

(4) The court shall take into account the assessment of the child prepared in accordance with section 41 of the Act and rule 43 of these Rules and shall consider whether the child should be released on bail or should continue to be held on remand.

(5) Where the assessment report recommends that the child be bailed, the magistrate shall invite the prosecution to address the court on the need for continuation of the remand.

(6) The court shall only continue the remand if the child falls within the criteria contained in rule 42(2) of these Rules and the public cannot be adequately safeguarded through the use of any of the options contained in Rule 42(4) of these Rules.

(7) In accordance with section 51 of the Act, a child shall not be held in pre-trial detention for a period exceeding six months.

(8) Where the child does not have any accommodation to which he can return on release from custody or is without parental care, the court shall make a child protection referral to the Director of Social Welfare.

(9) A child who is referred in accordance with sub-rule (9) of this Rule shall be treated as a child in need of care and protection within the meaning of section 19(1) of the Act and shall be provided with accommodation and assistance by the Director of Social Welfare.

(10) The court shall record and give reasons:

- (a) for a continuation or remand; or
- (b) the decision to release the child on bail,
a copy of which shall be given to the child's legal representative.

45.-(1) Where a child falls within section 42(1) of the Act and a decision has been made by the prosecution to divert the child, the prosecutor shall inform the court within 48 hours:

Diversion
through
Director of
Public Prosecutions.

- (a) of the decision to divert; and
- (b) the diversion option chosen.

(2) The court shall, within 48 hours of receiving notification from the DPP that it intends to divert the child, summon the child and the parent, guardian or care-giver to appear before the magistrates in chambers and in accordance with section 42(3) of the Act shall make an order specifying:

- (a) the diversion option;
- (b) such conditions as may be appropriate; and
- (c) that as a result of the diversion, criminal proceedings shall not be taken against the child in relation to the offence .

(3) Where a parent, guardian or care-giver is unable to accompany the child to court, the court welfare officer shall attend with the child.

(4) Where the child is without parental care, the court shall refer the child to the Director of Social Welfare.

(5) An order for diversion shall be made on form specified under Form No. 5 of the First Schedule of these Rules.

(6) Where the order of the court for diversion contains a requirement that the child provide a limited service to the victim, such service shall:

- (a) not exceed 10 hours per week, with a maximum of 3 hours on any one day;
- (b) not fall within school hours;
- (c) comply with the labour laws of Zanzibar; and
- (d) be completed within three months from the start of the order.

(7) An order for diversion that requires the child to confer any benefit may not include a monetary benefit, but may include a benefit or service to a community organisation.

Non-compliance with a diversion order.

46.-(1) Where the diversion order has not been complied with, the probation officer or welfare officer shall notify the Director of Public Prosecution in writing of the failure.

(2) Where the non-compliance is serious and repeated, the Director of Public Prosecution shall notify the court.

(3) The court shall, on being notified of the child's failure to comply with the order, summons the child, parent, guardian or caregiver and the child's probation or welfare officer to appear before the magistrate in chambers within fourteen days.

(4) Where the court is satisfied by evidence given on oath that the child has failed to observe the directions or conditions contained in the order, the court may confirm, vary, amend or substitute the order in accordance with section 50 of the Act, provided that such order shall not be more severe than the original order.

PART VII

TRIAL OF CHILDREN IN CONFLICT WITH THE LAW

Entering a plea.

47.-(1) When a child is charged with an offence, the court shall explain to the child in a language that he understands:

- (a) the substance of the charges and the particulars of the offence alleged, whether offence, acts, omissions, capacities or intentions;
- (b) the matters shall be established before the child can be found guilty;
- (c) the role of the magistrate; and
- (d) the procedures of the court.

(2) The court shall also inform the child that:

- (a) he has a right to be provided with legal representation free of charge in accordance with Rule 30 of these Rules;
- (b) that if he does not understand the language of the court, a right to an interpreter in accordance with Rule 24 of these Rules;
- (c) the right not to be compelled to give evidence or confess guilt;
- (d) the right to examine or have examined witnesses for the prosecution and to call his own witnesses to give evidence in his defence; and
- (e) the right to appeal against conviction and any sentence imposed by the court.

(3) The child shall be asked to enter a plea after he has been given an opportunity to communicate with his representative.

(4) Where the child enters a plea of guilty, the court shall ascertain that the plea is unequivocal.

(5) Following a plea of guilty, a summary of evidence shall be presented by the prosecutor, and the court shall ensure that the information provided corroborates the child's admission of guilt to the offence with which the child is charged.

(6) The child shall be given the opportunity to make a statement and his admission and evidence or statement shall be recorded as nearly as possible in the words used by the child.

(7) If a plea of guilty is recorded, the child may be convicted of the offence, and following consideration of the assessment report and the provision of any further information as to the child's general conduct, home surroundings, school record and medical history, the court may sentence the child in accordance with section 47 of the Act.

(8) If the child's explanation of what took place does not amount to an admission of guilt to the charge that has been laid, the court shall order a plea of "not guilty" to be entered.

Entering a plea of not-guilty.

48. If the child accused does not admit the offence with which he is charged, or if the court does not accept the child's plea of guilty to the charge, it shall be:

- (a) record a plea of not guilty;
- (b) proceed to sign the record; and
- (c) proceed to hear the evidence for the prosecution.

Timescale for a criminal trial.

49. A case triable before the court shall be completed no later than six months after the child has first appeared on the charge before the court.

Participation of the child in the criminal proceedings.

50.-(1) The court shall in all criminal proceedings:

- (a) permit the child to communicate with his or her legal representative, parent, guardian or family members at any point during a hearing;
- (b) ensure that the language used during the trial is suitable to the child's age and understanding; and
- (c) ensure that any examination or cross-examination of the child is conducted in a manner that the child understands and to which he is able to respond.

(2) Where it appears to the court that an accused child is unable to participate in the hearing, in that the child:

- (a) is unable to understand the proceedings; or
- (b) is unable to instruct his legal representative as to his defence,

the court shall stay the proceedings to determine whether a fair hearing can take place.

(3) In determining whether a fair hearing can take place, the court may request that a welfare officer interview the child and report back to the court within seven (7) days on the child's capacity to participate in and understand the proceedings.

(4) If the court is satisfied that the child is not able to understand or participate in the proceedings, conduct his defence or instruct his legal representative as to his defence, the charge shall be dismissed and in accordance with section 43(5) of the Act, the child shall be referred to the Director of Social Welfare to decide whether child protection proceedings should be taken under Part IV of the Act.

(5) Where the court dismisses a charge against a child, or the child is discharged for any other reason, and there are reasonable grounds to suspect that the child falls within the provisions of section 19 of the Act, the magistrate shall refer the child to the Director of Social Welfare to decide whether child protection proceedings should be taken under Part IV of the Act.

51.-(1) The prosecutor shall serve the details of the prosecution case in duplicate on the court before the first hearing in court.

The prosecution case.

(2) The court shall supply a copy of the details of the prosecution case to the child's legal representative or, if a legal representative has still to be appointed or assigned, to the child no later than the time of the first hearing.

(3) The details of the prosecution case shall include:

- (a) the charge sheet and the particulars of the offence;

- (b) a statement of facts; and
- (c) any document or extract on which the case will be based.

(4) At least fourteen (14) days before the trial of the offence charged, the prosecution shall disclose to the court any witness statements and any other evidence upon which the prosecution seek to rely.

(5) At all times during the court proceedings, the prosecutor shall keep under review whether there is prosecution material, which might reasonably be considered capable of undermining the case for the prosecution against the accused child or of assisting the case for the child, which has not been disclosed to the court.

(6) Subject to the sub-rule (5) of this Rule, the prosecutor shall disclose the prosecution material to the court at any time.

(7) Prosecution material includes material:

- (a) which is in the prosecutor's possession and came into his possession in connection with the prosecution case against the accused; or
- (b) which the prosecutor has inspected in connection with the case for the prosecution against the accused; and
- (c) any other discoveries relating to the case.

(8) Where the prosecution fails to file the documents specified in this Rule at the required times, the court shall have the power, either on the application of the accused or of its own motion, to order that the prosecution shall file such documents within three days;

(9) Before the court exercises its power under sub-rule (8) of this Rule, it shall give the prosecution the opportunity to make representations against disclosure.

52.-(1) A child shall not be tried in absentia.

Child to be
present in
court during
trial.

(2) The child shall be entitled to hear all the evidence in the case and to remain in court at all times.

53.-(1) In any case where a child charged pleads not guilty to the charge, the presiding magistrate shall fix a preliminary hearing to be held as soon as practicable and not later than fourteen days after charge.

Preliminary
hearing.

(2) The preliminary hearing may take place at the first hearing if the child has a legal representative or at a subsequent hearing if a legal representative has still to be obtained or appointed.

(3) The magistrate shall explain the nature and purpose of the preliminary hearing to the child and his legal representative.

(4) The prosecutor shall read the statement of facts to the accused at the preliminary hearing in a language that the child understands, or in the event that the child does not understand Kiswahili or English, in the presence of an interpreter appointed for the child.

(5) After the statement of fact has been read, the parties shall agree which matters, if any, are not in dispute between the parties.

(6) The magistrate may put such questions or seek such clarifications relating to the statement of facts as he thinks fit and the answers to the questions may be given without oath or affirmation.

(7) At the conclusion of the preliminary hearing, at the request of the prosecution, the court shall prepare a memorandum of the matters agreed.

(8) The memorandum shall be read over and explained to the child in a language that he understands.

(9) The memorandum shall be signed by the magistrate, the child, his legal representative and by the prosecutor, and then filed with the court.

(10) Any fact or document admitted or agreed whether such fact or document is mentioned in the summary of evidence or not in a memorandum filed under this sub-Rule shall be deemed to have been duly proved.

(11) If during the course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under this sub-Rule be formally proved.

(12) A witnesses shall not be called during a preliminary hearing.

(13) The court may give notice to any person who is likely to be called as a witness after a preliminary hearing, that he may be required to give evidence before the court on a date to be specified in the notice and such notice shall be deemed to be a summons duly issued and served upon him to appear and give evidence as required in the trial.

(14) The magistrate presiding over the first hearing shall preside in any subsequent hearings relating to the charge against the child, unless it is not practicable to do so or it would cause undue delay.

Failure
of attend
hearing.

54.-(1) Where the prosecution fails to attend a fixed hearing, and has not informed the court of his inability to attend, the court shall inform the prosecutor of his failure to attend and set a second fixed date for the hearing.

(2) If the prosecutor fails to attend the second fixed hearing and has not informed the court of his inability to attend, the case shall be dismissed and shall not be reinstated.

(3) Where a welfare officer responsible for an assessment report fails to attend a fixed hearing, and has not informed the court of his inability to attend, the court shall have the power to summon the said officer or the district welfare officer of the relevant child protection unit to provide an explanation for non-attendance.

(4) Where a witness for the prosecution or defence fails to attend court in response to a summons, the court shall either:

- (a) dispense with that witness and continue the proceedings; or
- (b) if no sufficient excuse is given for the failure to appear, issue a warrant to bring him before the court at such time and place as shall be specified in the warrant.

(5) Once a trial has commenced, the court shall proceed to hear all witnesses in the case on consecutive days without any further adjournment or going part-heard, save where a witness has good reason for not attending, in which case the court may grant an adjournment to permit the witness's evidence to be heard or such other order as it thinks fit.

(6) Where an adjournment is granted after the commencement of the trial, and the case is part-heard, the court shall resume the hearing on the first possible date.

55.- (1) When a trial has started and the magistrate is aware that for professional reasons he will be absent for a short period of time, he shall notify the parties and the witnesses of such periods and ensure that the case is listed to resume as soon as possible.

Unavail-
ability of
the magis-
trate.

(2) Where a magistrate is aware, before starting a trial, that due to professional commitments, transfer, annual leave or medical treatment that:

- (a) it is unlikely that the trial will start within an acceptable time frame; or
- (b) the trial will go part heard as a result of his absence he shall transfer the case to another court of competent jurisdiction to avoid delay.

56.-(1) When the prosecution has closed its case, the court shall determine whether a prima facie evidence has been established and the child has a case to answer.

Prima facie
evidence.

(2) When the court decides that the prosecution has not made out its case sufficiently to require the child to answer the allegations, the court shall dismiss the charge and acquit the child.

(3) Where the prosecution has made out a prima facie case, the court shall hear the witnesses for the defence and any further statement the child wishes to make in his defence.

Evidence in chief of an accused child.

57.-(1) Evidence in chief shall be given orally.

(2) The court shall, in hearing the accused's evidence in chief, keep the proceedings as informal as possible and shall not apply the strict rules of evidence save to the extent that this is necessary and in the best interests of the child.

Power of the court to order production of evidence.

58. The court may, in any proceedings before it, examine and cross-examine parties and witnesses and shall have the power to order that relevant evidence be produced or brought before the court.

Cross-examination of witnesses.

59.-(1) An accused child may be cross examined by a prosecutor or co-accused.

(2) A witness, other than the accused, may be cross-examined by any party to the proceedings other than the party that called the witness, save for a hostile witness.

(3) The court shall ensure that cross-examination is conducted in a non-adversarial manner and that the right of the accused child not to incriminate himself is upheld.

(4) When cross-examining a child, whether an accused child or a child witness, the cross-examiner shall:

- (a) use simple language that the child can understand;
- (b) ask short direct questions; and
- (c) avoid confrontation, bullying or hectoring of the child.

(5) During and at the close of each witness's evidence the court may ask the witness such questions as appears necessary and desirable:

- (a) to clarify the evidence;

- (b) for the purpose of establishing the truth of the facts alleged; or
- (c) to test the credibility of the witness.

(6) The court shall control and guide the conduct of parties to the proceedings by limiting irrelevant questions or needless repetition of questions.

60.-(1) Where after hearing the witnesses, the court is satisfied beyond all reasonable doubt that the offence against the child is proved, the child shall be convicted of the offence charged. Conviction of a child.

(2) When a child is charged with an offence consisting of several particulars, a combination of some of which only constitute a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

(3) The prosecutor shall inform the court if the child is a first offender or has any previous record.

61.-(1) The court shall, after convicting the child and before passing a sentence, take into account the assessment report prepared by the welfare officer and, where the court deems it necessary, in order to comply with section 46(3) of the Act, may request that the court welfare officer provide a second assessment report updating or containing further information relating to the child and his family. Second assessment report on conviction.

(2) In preparing a second assessment report for the Children's Court, the probation officer or welfare officer shall have regard to Rule 44 of these Rules and shall, in addition provide information about:

- (a) the child's progress and attendance at any school, training programme or employment; the child's state of health; any previous offences the child may have committed and the likelihood of the child re-offending or causing serious harm;

- (b) the likely impact of the various forms of sentence open to the Court upon the child; and
- (c) the child's ability to be reintegrated into society, taking into account that the purposes of sentence shall be rehabilitative and to assist the child to be a constructive member of his family and community.

(3) In preparing the second assessment report, the probation officer or welfare officer shall consult other professionals who have had contact with the child.

(4) Where a second assessment report is requested by the Children's Court, the report shall be filed not later than fourteen days after the request is made.

Judgment.

62.-(1) The magistrate hearing the case shall deliver a written judgment, which shall contain the evidence presented and points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the magistrate as of the date on which it is pronounced in court.

(2) Where for any reason the magistrate is unable to pronounce his written judgment in court in accordance with sub-rule (1) of this Rule, the court shall arrange for another magistrate to read the judgment in court.

(3) Judgments shall be pronounced in court no later than twenty one days after the conclusion of the proceedings.

(4) In the case of conviction, the judgment shall specify the offence and the section of the Penal Act, No.6 2004 or other law under which the accused person is convicted.

(5) In the case of an acquittal, the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

(6) The court shall explain to the child the substance of the judgment given and the consequences thereof.

PART VIII SENTENCING

63.-(1) Before reaching a decision on the appropriate sentence to impose on a convicted child, the court shall have regard to the following principles: Principles of sentencing.

- (a) that any sentence given to the child shall be proportionate not only to the circumstances and the gravity of the offence but also to the child's age and individual circumstances;
 - (b) the importance of reintegrating the child and his assumption of a constructive role in society;
 - (c) the need to maintain and strengthen family relationships wherever possible;
 - (d) the importance of imposing a sentence that is most likely to enable the child to address his or her offending behaviour;
 - (e) the desirability of imposing the least restrictive sentence upon the child consistent with the legitimate aim of protecting victims and the community;
 - (f) the need to take into account factors that have contributed to the child's offending behaviour, including any mental health problems or learning disability, poverty, low educational achievement and lack of parental care; and
 - (g) the need to take into account the special circumstances of particular groups of child offenders, especially children living in difficult circumstances.
- (2) Before passing sentence, the court shall take into account:
- (a) the assessment report;
 - (b) plea of mitigation made by the child or made on his behalf;

- (c) the culpability of the child and the harm caused, intended or foreseeable, taking into account aggravating and mitigating factors relating to the offence;
- (d) that placement in an approved school or an offenders education centre should only be imposed as an exceptional measure, as a last resort and for the shortest appropriate period of time; and
- (e) whether a discharge or a non-custodial sentence would be in the best interests of the child and serve the interests of justice.

Dismissal
of the
charge.

64.-(1) Where a child is convicted of an offence by the court, the court may make an order dismissing the charge:

- (a) after giving advice and admonition to the child; and
- (b) verbal counsel to the parent, which may include advising the parents on the need to care for the child in a manner which meets his needs and providing information on assistance with parenting that is available.

(2) The dismissal of the charge and the admonition shall be recorded on the court record.

Discharge
of an
offence.

65.-(1) Where a child is convicted of an offence by the court, the court may make an order discharging the child and:

- (a) releasing the child into the care of a named parent, guardian, relative or a fit person willing to care for the child or in the absence of any person able to provide parental care, the Director of Social Welfare; or
- (b) placing the child under the supervision of a probation officer or a welfare officer with a requirement that the child be of good conduct, and good behaviour for a period not exceeding three years; or
- (c) order the parent or guardian of the child to give an undertaking that will secure the child's good behaviour.

(2) An order placing the child under the supervision of a probation officer or welfare officer shall contain the details of the district probation officer or district welfare officer responsible for monitoring the implementation of the order and the details of any specific conditions with which the child is to comply.

(3) A child who is the subject of a probation order as set out in the Form No. 6 of the First Schedule of these Rules, may be subject to one or more of the following conditions that the court considers are necessary and appropriate, including but not be limited to:

- (a) reporting to a relevant probation or welfare officer at specified times and places;
- (b) obeying any instructions of the probation or welfare officer;
- (c) reporting any changes of address, school or employment;
- (d) not leaving an area of residency without permission of the probation officer;
- (e) refraining from contact or communication with a specified person or people;
- (f) refraining from entering specified premises or a specified area; and
- (g) obeying school or home rules.

(4) The court may impose additional conditions including, but not limited to, a requirement that the child attend school, reside at a particular place, undergo treatment or counselling, attend a rehabilitation or reintegration programme or not use alcohol or drugs.

(5) Where a probation order is deemed by the court to be the appropriate sentence for a child, but there is no parent, guardian or relative willing to supervise the child, the court shall place the child under the supervision of the Director of Social Welfare.

(6) In accordance with sub-rule (4) of this Rule, the court shall make a child protection referral to the Director of Social Welfare who

shall accommodate and assist the child in accordance with their statutory duty under section 19 of the Act.

(7) Where the child is discharged under the supervision of a probation officer or a welfare officer, the court may require the parent to execute a bond, but:

- (a) where the parent or guardian does not have the means to pay, a bond shall not be required; and
- (b) where the requirement that a parent or guardian execute a bond is likely to impact negatively on the relationship between the child and the parent or guardian it shall not be required.

(8) The court shall ensure that where the child is placed under the supervision of a probation officer or a welfare officer he understands and accepts the conditions attached to the supervision.

(9) The court shall only make an order requiring the parent or guardian to give an undertaking as to the good conduct where the parent or guardian understands the duties and responsibilities of making such an undertaking and accepts them.

sentencing
to a diver-
sion option.

66.-(1) Where the child is convicted of an offence, the court may discharge the child and in accordance with section 47(1)(e) make an order that the child comply with any of the diversion options listed in section 42(2) of the Act, including:

- (a) an oral or written apology to a specified person or persons or institution;
- (b) referral of the child to counselling or therapy;
- (c) restitution of an object to a specified victim or victims of the offence;
- (d) provision of some limited service or benefit to the victim or victims,
- (e) where there is no identifiable person or persons to whom

restitution or restoration can be made, provision of some limited service or benefit to the community; and

- (f) referral of the child to family group conferencing or to victim offender mediation.

(2) In making an order under this Rule, the court shall provide the information as set out under the Form No. 5 of the First Schedule of these Rules.

(3) An order shall only be made under section 47(1)(e) of the Act where the child and the parent or guardian caring for the child, or in the case of a child without parental care for whatever reason, the Director of Social Welfare, consents.

(4) Where an order is made under sub-rule (1) of this Rule, it shall contain full details of the acts to be completed by the child and if he is to engage in any of the activities specified in sub-rule (1) of this Rule, the duration for which the child shall participate.

(5) Where the court orders that the child perform a service or benefit, this shall not exceed forty hours in total and shall not exceed four hours in any one day.

67.-(1) A fine, compensation or costs may be imposed on a convicted child to reflect the loss caused by the child's act in accordance with 47(1)(f) of the Act.

Fines, costs
and com-
pensation
order.

(2) A child who does not have the means to pay, shall not be the subject of such a sentence.

(3) Where the court intends to impose a fine, compensation or costs against a parent, guardian or relative, such person shall be given an opportunity to be heard by the court.

(4) In imposing such an order on a parent, guardian or relative, the court shall take into account the effect of such an order on the victim, and on the relationship between the person ordered to pay and the child.

Community
service
order.

68.-(1) Where an order referring the child for community service is made under section 47(1)(g) of the Act, it shall specify the place and time at which the community services shall be performed, the type of service to be performed, the organisation or person responsible for monitoring the performance of the community service and the number of hours service that the child shall perform.

(2) Before making a community service order the court shall ensure that any service constitutes a constructive activity for the child.

Failure to
comply
with con-
ditions of
diversion or
diver-
sionary
sentence.

69.-(1) Where a child is in breach of a non-custodial sentence his case may be referred back to the court by the prosecutor.

(2) On receiving a referral, the court shall:

- (a) issue a summons as set out under the Form No. 7 of the First Schedule of these Rules requiring the child to attend court for an inquiry into the breach; and
- (b) order that a further assessment be undertaken by the relevant welfare officer.

(3) If the court finds that the child has failed to comply with the terms or conditions of the non-custodial sentence, the court may:

- (a) confirm the non-custodial order;
- (b) vary, add or substitute any condition of the order; or
- (c) revoke the order and impose another non-custodial sentence as the court thinks fit.

(4) A custodial sentence shall only be imposed where there is a breach of a non-custodial sentence if the criteria contained in Rule 71(1) of these Rules are satisfied.

Custodial
sentence in
an approved
school.

70.-(1) Where a child has attained the age of 16 and is convicted of:

- (a) an offence under the Second Schedule of the Act; or

- (b) has committed repeated offences under the First Schedule of the Act and has committed offences that would if committed by an adult be punishable by a custodial sentence;
 - (c) if the court believes there is a significant risk of harm to members of the public; and
 - (d) it is a sentence of last resort,
- the court may, impose a sentence on the child that he be placed in an approved school.

(2) Where the court decides that the appropriate sentence for a child who has reached the age of sixteen years is to be placed in an approved school, such placement shall be for a period of two years save that the court may if it is satisfied, having regard to the offence and the circumstances of the offence reduce the period of stay to such period as it sees fit as set out under the Form No.8A of the First Schedule of these Rules.

(3) Where the court decides that the placement of a child aged sixteen years in an approved school shall be for a period less than two years, it shall record the reasons for its decision in writing.

(4) A child who falls under sub-rule (1) of this Rule and is aged twelve to sixteen years may be placed in an approved school until he ceases to be a child, save that in determining the length of placement, the court shall have regard to section 6 of the Act and Rule 5 of these Rules and may reduce the period of stay as it sees fit.

(5) Where the court decides that the placement of a child aged twelve to sixteen years should cease earlier than the child's eighteenth birthday, it shall record the reasons for its decision in writing.

(6) An order for placement of the child in an approved school shall:

- (a) not be made unless the approved school has informed the court that there is a place for the child; and

- (b) be reviewed by the court on an annual basis to determine whether continued placement is necessary and in the best interests of the child and in so determining shall take into account the reports of the responsible officer of the approved school and the welfare officer.

(7) Where the court determine at an annual review that continued placement of the child is not necessary and is not in the child's best interests, the child shall be released forthwith and in any event no later than three days following the decision of the court.

(8) An order for placement of the child in an approved school shall not be imposed due to the child having no accommodation or parental care.

(9) Where a child, who has been convicted, does not fall under sub-rule (1) of this Rule but has no accommodation or parental care, the court shall make a child protection referral to the Director of Social Welfare.

(10) A child who is detained in the approved school beyond the period stated in the order, or whose case has not been subject to an annual review by the court, shall have a right to apply to the children's court for immediate release.

(11) A child who was under the age of sixteen years when sentenced to placement in an approved school and who is detained beyond the age of eighteen years shall have a right to apply to the children's court for immediate release.

(12) In passing a sentence of placement of a child in an approved school the court shall provide the information required under the Form No.8B of the First Schedule of these Rules.

71. (1) Where a child:

- (a) falls under rule 70(1) of these Rules; and

- (b) has reached the age of 16, and
- (c) a non-custodial sentence or placement in an approved school are inadequate to protect the public from harm an order for detention in an offenders education centre may be made.

(2) The court shall have regard to Rules 5 and 63 of these Rules in determining the length of the sentence in an offenders education centre.

(3) A custodial sentence shall not be imposed due to the child having no accommodation or parental care.

72.-(1) In accordance with section 52 of the Act, the magistrate sentencing a child for an offence listed under the Second Schedule of the Act shall make an order regarding the expungement of the child's criminal record and, if no order is to be made, the reasons for that decision.

Expunge-
ment of a
child's crimi-
nal record.

(2) Where the magistrate decides not to expunge a child's criminal record an application may be made for a review or appeal upon application by the child, his legal representative or the child's parent, guardian or care-giver as specified under these Rules.

(3) An application to challenge the decision not to expunge the record may be made at any time up to three years after the child is released from custody, save that the court shall have discretion to allow an application for expungement out of time.

PART IX INTERMEDIARIES

73.-(1) The court shall permit a child who is a victim or witness to a crime and who is giving evidence before the court to be assisted by an intermediary.

Appoint-
ment of an
intermedi-
ary in civil
cases.

(2) On the application of the prosecutor, a welfare officer or a child falling under sub-rule (1) of this Rule, the court shall have the

power to appoint an intermediary for a child victim or witness where such an appointment is in the best interests of the child.

Appoint-
ment of an
intermediary
in criminal
cases.

74.-(1) An intermediary may be appointed where a child is either a party to civil proceedings or the subject of civil proceedings and the child is of sufficient age and maturity to express his views and wishes.

(2) The role of the intermediary shall be to support and assist the child to communicate and express his views and wishes to the Court.

(3) The court shall consider whether an intermediary should be appointed for a child at the start of civil proceedings and may, at any time during the proceedings, appoint an intermediary.

Specific
rules ap-
plicable to
intermedi-
aries.

75.-(1) An intermediary shall be a person who has received specialised training in supporting and assisting children.

(2) The Director of Social Welfare shall recruit and keep a list of available intermediaries and shall specify the training to be undertaken before a person can be appointed as an intermediary, save that until such date as the Director has compiled the list and specified the training, a person may be appointed as an intermediary if he has experience of working with children.

(3) An intermediary shall meet with the child before supporting and assisting the child in Court to explain his role.

(4) The intermediary shall sit next to the child whenever the child is in court or is giving evidence.

(5) The intermediary may advise the court on the need for any special protective measures for the child.

(6) Wherever possible, the same intermediary shall support the child throughout the proceedings.

(7) Once the intermediary has been appointed, examination, cross-examination and re-examination of a child victim or witness shall take place in the presence of the intermediary.

(8) Where the child is having difficulty understanding the questions being asked by the parties or by the magistrate, the intermediary may, with the consent of the magistrate, put the question to the child in child-friendly language that can be understood by the child.

(9) An appointed intermediary fail to attend court, and no notice or reason has been given for absence, the court may:

- (a) postpone the proceedings; or
- (b) revoke the intermediary's appointment; and:
 - (i) either appoint another in his or her place; or
 - (ii) continue the proceedings without an intermediary as the interests of justice require.

(10) The court may, of its own motion or following an application by a welfare officer, dismiss an intermediary who acts contrary to the best interests of a child, and shall in such instance, appoint a new intermediary from the list referred to in sub-rule (2) of this Rule.

76. The provisions of Rule 73 and 75 of these Rules, with the changes required by the context, apply together with criminal proceedings where a child witness is to give evidence in the district or High Court.

Rules on intermediaries to apply to witnesses in other courts.

PART X PARENTAGE

77.-(1) The court shall receive and determine applications for parentage under section 55 of the Act where:

Application for confirmation of parentage.

- (a) the child is ordinarily resident in Zanzibar; or
- (b) the child has been resident in Zanzibar for a period of at least one year; or
- (c) the person whose parenthood is in issue died before the date of the application and either before his death was domiciled in Zanzibar or was ordinarily resident in Zanzibar,

Provided that an application for determination of parentage has not previously been filed in the Kadhi's court.

(2) An application for a parentage order shall be made to the children's court by way of petition as specified under the Form No. 9 of the First Schedule of these Rules.

(3) The application shall be filed at the court in the region where:

- (a) both the applicant and the respondent ordinarily reside;
or
- (b) the area where the applicant ordinarily resides.

(4) An application shall be made by way of a petition to the court as specified under the Form No. 9 of the First Schedule of these Rules:

- (a) the name and address of the applicant;
- (b) particulars of the facts giving the court jurisdiction;
- (c) details of any previous application that has been made;
- (d) the grounds and reasons for the application; and
- (e) the relief sought.

(5) Such an application shall not be open to objection on the ground that the applicant only seeks a declaratory decree or that no consequential relief is claimed.

Application
for parent-
age by an
interested
person.

78.-(1) Where an applicant is an interested person the petition shall set out the applicant's relationship with the child and the reasons for seeking leave to apply for a parentage order.

(2) In deciding whether to grant leave to an interested person the court shall hear evidence from the interested person, and such other persons as the court considers appropriate.

(3) There shall be no obligation on the court to notify the child who is the subject of the application or any other person with parental rights and responsibilities of the application for special leave.

(4) Where leave to make an application to confirm parentage is sought the court shall:

- (a) consider such application within 28 days of the application being filed; and
- (b) shall give judgment on the application no later than 3 months after the filing of the application.

(5) In deciding whether to grant leave the court shall have particular regard to:

- (a) the applicant's connection with the child;
- (b) risk might be of the proposed application disrupting the child's life to such an extent that he would be harmed by it; and
- (c) risk of harm that might be caused as a result of the petition to any respondent to an application.

(6) Where the Court decides to grant special leave, the interested person shall file an application to confirm parentage in accordance with this Part.

(7) For the purposes of these Rules, a child who applies for a parentage order in relation to himself shall be considered an interested person.

79.-(1) Notwithstanding that the applicant falls within section 55 of the Act, the court shall have the power in relation to any petition for confirmation of parentage to refuse to hear the petition if it considers that the determination of the petition would not be in the best interests of the child.

Powers to
refuse an
application.

(2) In reaching a decision it shall take into account the factors contained in rule 78(5) of these Rules.

(3) Where a court concludes that it is not in the best interests of the child to hear a petition for confirmation of parentage it may order

that no further petition shall be made by the applicant without the special leave of the court.

Partes to proceedings.

80. Where an application is made for parentage and where leave is given to an interested person, the respondents to the application shall be:

- (a) the person whose parentage is in issue; and
- (b) a person who is or is alleged to be the parent of the person whose parentage is in issue, except where that person is the applicant; and
- (c) a guardian of a child, save where the applicant is the guardian.

Notice and summons of applications.

81.-(1) an application, notice, summons or documents signed and sealed with the seal of the court shall be served on all respondents within seven days of being filed in accordance with the procedure for service of a summons provided under the Civil Procedure Decree.

(2) Where a respondent to the application cannot be found, the procedure contained in the Civil Procedure Decree shall be followed.

(3) The respondent to any petition for a declaration of parentage shall file an answer to the petition with the court within fourteen days of receipt of the petition, and shall include details of any other person that the respondent considers should be made a party to the application or be given notice of the application.

(4) A person given notice of the proceedings under sub-rule (3) of this Rule, may within fourteen days beginning with the date on which the notice was served, apply to be joined as a party.

(5) Where a person has reasonable cause for not complying with the timescale set out in this Rule, or it is impracticable to do so, the court may in its discretion, extend the time for filing the required notices, summons and applications.

(6) When all documents have been lodged with the court and all the relevant petitions have been served, the court shall set a day for hearing of the petition and shall give a minimum of seven days notice of the day appointed for the hearing.

82.-(1) In addition to the evidence prescribed in section 56 of the Act, the court may also consider:

Evidence to be considered.

- (a) the date and place of the child's birth;
- (b) the names of the child, including all names that the child has or has had, and the facts relating to any change of the child's name; and
- (c) the consent of the respondent to the making of the parentage order.

83.-(1) In cases where parentage is contested, and other evidence is not sufficient to determine the parentage of the child, the court may, at the first hearing, order a DNA or other medical test upon request of any party to the proceedings or if its own motion.

DNA and medical tests.

(2) Where a DNA test is ordered by the court, a sample, as determined by the DNA testing body, shall be provided by the mother, any person claiming to be the father and the child.

(3) The arrangements for the taking and testing of samples shall be the responsibility of the party who requested the test, save that the court shall set a time limit for the arranging of the test.

(4) The court shall decide who shall pay for the test or the extent to which the cost shall be shared amongst the parties to the proceedings.

(5) If the mother or a person claiming to be the father refuses to provide a sample, the court may draw such conclusions as may be appropriate in the circumstances.

84. The DNA report shall include the following information:

- (a) the names of the tested parties;

Contents of the DNA report.

- (b) the date and circumstances of the specimen collection for each tested party;
- (c) the probability of paternity following a DNA test; and
- (d) a statement of conclusion on paternity.

Making an order for custody on an application for a parentage order.

85.-(1) When hearing an application for a parentage order, the court may make an order for custody on its own motion on such conditions as it sees fit.

Information the Registrar of Births of the parentage order.

86. A court officer shall send a copy of the order, including the declaration of parentage to the Registrar of Births within twenty one days, beginning with the date on which the order was made.

PART XI CUSTODY AND ACCESS

Procedure for making an application for custody and access.

87.-(1) An application for custody or access by a person falling under section 58(3) or section 60 of the Act shall be made by filing specified under the Form No. 10 of the First Schedule of these Rules.

(2) An application for custody or access shall be signed by the applicant or his representative.

(3) The application shall be filed at the court in the region:

- (a) where both the applicant and respondent ordinarily reside; or
- (b) the district where the respondent resides.

(4) Where the applicant for an access order is a child under the age of eighteen years the application shall be made on behalf of the child by a next friend.

(5) If the mother or father is a respondent to the application for an access order, she or he may not act as the next friend of the child.

88. (1) The court may consider an application for custody or access under sections 58 and 60 of the Act where:

Power of the court to consider an application for custody and access.

- (a) the child is domiciled or ordinarily resident in Zanzibar; or
- (b) the child has been resident in Zanzibar for a period of at least one year; or
- (c) the child has been wrongfully removed from another country or wrongfully retained in Zanzibar; and
- (d) an application has not previously been filed for custody or access in the Kadhi's court.

(2) The court shall:

- (a) consider any such application within twenty eight days of the application being filed; and
- (b) give judgment on the application no later than forty two days after the filing of the application.

(3) An application made for custody and access in the children's court shall be determined in that court and shall not be transferred to the Kadhi's court.

89.-(1) A respondent to an application for custody or access and any interested person shall be served by the court within fourteen days of the application being filed with a signed and sealed court copy of:

Service of an application.

- (a) the application;
- (b) the date of the first hearing before the court which shall be no later than twenty eight days after the application has been filed; and
- (c) details of any mediation service available in the area, with details of how the service can be contacted.

(2) Where the applicant is a child, the district welfare officer in the district in which the child ordinarily resides shall be informed of the application.

(3) Where the child lives with a person who is not a party to the proceedings, that person shall be deemed an interested person and shall be served with the documents as contained in sub-rule (1) of this Rule.

(4) Where an interested person is identified after the start of the proceedings the documents specified in sub-rule (1) of this Rule shall be served within fourteen days of that identification.

(5) If the respondent is residing outside Zanzibar at the time of the application, the time for service shall be extended as deemed reasonable by the court.

(6) The procedure for issue and service of summons shall be that provided under the Civil Procedure Decree.

(7) A respondent shall have fourteen days to file an answer to the application save that where the respondent can show that it was not practicable to answer in such time, the court may extend the time for answer.

(8) A respondent in his answer to the application may include a cross-application asking for the same or a different order.

(9) The court shall have the power to grant on a cross-application any order that it might have granted on the applicant's application.

Emergency
application
for return of
a child.

90.-(1) Where a child has been:

- (a) removed or retained by one parent without the consent of the other; or
- (b) unlawfully removed or retained in contravention of a court order;

a parent, whether or not ordinarily resident in Zanzibar, may apply to the court for an emergency order that the child be returned and a custody order granted.

(2) Where an application is made under this Rule:

- (a) it may be made ex-parte; and
- (b) when the application is made at a time when the court is not sitting in the region in which the applicant resides, it may be made in any other convenient manner by a court of concurrent jurisdiction.

(3) A copy of any order made shall be served by the court within forty eight hours on each respondent to the application.

(4) Where the court refuses to hear the application on an ex-parte basis, it shall direct that the application is made inter-parties, in which case the application will proceed in accordance with Rule 87 and 88 of these Rules .

91. In determining whether to grant an ex- parte order, the court shall consider:

Factors be considered in granting an ex-parte order.

- (a) whether the application could be made on notice but the period of time for notice and answer shortened;
- (b) whether there is good and sufficient reason for making the order;
- (c) the impact on the child; and
- (d) the period of time that has elapsed since the removal or retention of the child.

92.-(1) Where an application has been made for custody or access, and the court has decided that it is in the best interests of the child to make an order, it may:

Interim order made on an ex-parte basis.

- (a) make an interim order granting custody to the applicant under section 58 or 60 of the Act pending an inter-partes hearing; and
- (b) make an order under its inherent jurisdiction that the child be returned immediately to the applicant.

(2) Where an order is made under sub-rule (1)(a) or (b) of this Rule, the order shall:

- (a) authorise a welfare officer to search for, take charge of and deliver the child to the person named in the order; and
- (b) authorise the police officer in charge of the district to assist the welfare officer in this task.

(3) Where an order is made under sub-rule (2) of this Rule, a copy of the order shall be served by the court on the police officer in charge of the district and the district welfare officer where the child is believed to be located.

(4) Where an interim order has been made ex parte, and the absent party wishes to challenge it, the court shall fix a date for an inter-partes hearing within fourteen days.

The first hearing.

93.-(1) The date for the first hearing should be no later than twenty eight days after the application has been filed.

(2) When informing the parties of the date of the first hearing, the court shall:

- (a) provide details of any mediation service that is available;
- (b) inform the parties that they will be required to attempt to settle their dispute through mediation before the first hearing; and
- (c) require the parties and any interested person who has been served to attend the hearing.

94.-(1) An application to make the child a party may be made by the Director of Social Welfare, a child's next friend or the court may make the child a party on its own motion.

Joining the child as a party to proceedings.

(2) The court should grant such an application where it is in the best interests of the child to be joined.

(3) In deciding whether a child is of sufficient age and maturity, the magistrate may speak with the child in chambers in the presence of a welfare officer.

95.-(1) At the first hearing the court shall enquire the parties whether they have seen a mediator and, if not, where practicable and appropriate to do so, adjourn the hearing for a period of no more than twenty eight days to allow the parties to resolve the issues through mediation.

Adjournment for mediation.

(2) Where the parties have seen a mediator and evidence is provided that they have not been able to resolve their differences, the court shall proceed to hear the case.

96.-(1) Where there is a contested application for custody or access, the court may direct a welfare officer to prepare a social investigation report under section 67 of the Act.

Ordering a social enquiry report on custody and access.

(2) A welfare officer shall, in preparing the report:

- (a) see the parties to the proceedings separately; and
- (b) see the child separately and, if necessary, with the parents or other relevant persons.

(3) In providing recommendations for custody or access the best interests of the child shall be the paramount consideration.

(4) The court shall consider the social investigation report before making a decision on custody or access.

(5) The welfare officer who prepared the social investigation

report shall make himself available to the court to give evidence, if the court or a party to the proceedings so requests.

(6) Where a court decides not to accept the recommendations contained in the social investigation report it shall state the reasons for such non-acceptance.

Considerations on making a custody and access order.

97. In determining whether to make a custody or access order, the court may, in addition to the factors contained in section 61 of the Act, consider the following:

- (a) the ascertainable wishes and feelings of the child;
- (b) the background and any characteristics of the child which the court considers relevant;
- (c) the child's physical, emotional and educational needs;
- (d) the undesirability of disturbing the life of the child by changes of custody;
- (e) the likely effect on the child of a change of circumstances;
- (f) how capable each parent and any other person in relation to whom the court considers the question relevant is of meeting the child's needs;
- (g) any harm the child has suffered or is likely to suffer;
- (h) the willingness of each parent to support and facilitate the child's on-going relationship with the other parent; and
- (i) the willingness of any non-parent to support and facilitate the child's on-going relationship with the parents.

Power of the court to make order of its own motion.

98. The court may:

- (a) when making a custody order, make an access order either on application of a party to the proceedings or of its own motion; and

- (b) when making an access order, make a custody order either on application of a party or of its own motion.

99.-(1) The court in granting a custody order in relation to a child, may permit the parent with custody to take day to day decisions about the child and to:

Restriction on power of parent with a custody order.

- (a) decide where that child shall reside;
- (b) decide where the child shall be educated; and
- (c) take medical decisions in relation to the child,
 - save to the extent that the court has limited or imposed conditions on the exercise of such right

(2) Before taking any major decision about a child's life, including the issues contained in sub-rule (1) of this Rule, the custodial parent shall, whenever practicable, consult the other parent.

(3) A person who has a custody order may not:

- (a) cause the child to be known by a new name; or
- (b) change the child's religion; or
- (c) remove the child from Zanzibar for a period of more than 28 days; or
- (d) agree to the child's marriage; or
- (e) place the child to live with another care giver,
 - without the consent of the other parent or the leave of the court.

100.-(1) An order for access shall set out the days and times on which the child is to have access with a non-custodial parent or other relevant person and the times and duration of such access, and the order may include details of:

Access orders.

- (a) any overnight stays that are to occur during access;
- (b) access on public holidays;
- (c) access during school holidays; or
- (d) where the child does not attend school, any extra access time for the purpose of taking a holiday with the child.

(2) Notwithstanding sub-rule (1) of this Rule, an order for access may, where there is consent by all parties, provide only that the child shall have access with a non-custodial parent or other relevant person, access to be on such days and times as shall be agreed between the parties.

(3) An order for access may set out:

- (a) where the access is to take place;
- (b) the arrangements for picking up and dropping off the child before and after access;
- (c) any restrictions on:
 - (i) where the child is to be taken during access;
 - (ii) who should care for the child during access;
 - (iii) who should be present during the time the child is having access with the parent or other relevant person;
- (d) a medical or other treatment shall be provided to the child during access; and
- (e) such other provisions as may be necessary in the best interests of the child.

Factors
to be
considered
in an access
application.

101.-(1) In determining whether to grant an application for access, the court shall have particulars regard to:

- (a) the best interests of the child;

- (b) the applicant's connection to the child and the family;
- (c) any risk there might be of the proposed application disrupting the child's life to the extent that he would be harmed by it; and
- (d) any risk of harm that might be caused as a result of the petition to any respondent to an application.

(2) The court shall have the power to make an order that a child shall not have access to a parent or other relevant person, save that such an order shall only be made where this is necessary to safeguard the best interests of the child.

102.-(1) Where a court grants a custody order to a parent or relevant person, this shall have the effect of discharging any existing care order or custody order.

Discharge of existing orders.

(2) Where a court grants an access order, it shall state the extent to which the order discharges other existing access orders.

Varying of a custody or access order.

103.-(1) Where an order has been made for custody or access, an application may be made by any party to the proceedings on sufficient grounds to vary or set aside the order.

(2) An application shall be made in accordance with Rule 87 of these Rules as set out under the Form No. 10 of the First Schedule of these Rules.

104.-(1) In deciding to grant special leave under section 60 of the Act, court shall have regard to the factors contained in rule 97 of these Rules.

No further application without special leave of the court.

(2) The court shall consider such an application within 28 days of the application for special leave being filed and shall give judgment no later than 42 days after the filing of the application.

(3) On disposing of any application for an order for custody or access, the court may order that there be no further application by any

person named in the order with respect to the child concerned without the special leave of the court.

(4) Such an order shall only be made as a matter of last resort in cases of repeated and unreasonable applications.

Enforce-
ment
orders.

105.-(1) An application may be made to the court for enforcement of an order under these Rules where a party has failed to comply with the terms of the order as set out under the Form No. 11 of the First Schedule of these Rules.

(2) The burden of proving a breach of the order shall be on the applicant.

(3) Where the court is satisfied that the order has not been complied with, the court may vary the order as it deems fit.

Removal of
a child from
Zanzibar.

106.-(1) A child shall only be removed from Zanzibar when either the parent or guardian seeking to remove the child:

- (a) has the written consent of the other parent or guardian, provided such consent has not been unreasonably withheld; and
- (b) has obtained leave from the court to remove the child, save that where the child is the subject of a custody order, the custodial parent may remove the child from the jurisdiction for a period not exceeding 28 days.

(2) An application for permission to remove the child from the jurisdiction shall be made in accordance with the Form No. 12 of the First Schedule of these Rules.

(3) In deciding whether to grant leave to remove the child from the jurisdiction, the court may take into account:

- (a) the factors contained in section 4 of the Act and Rule 97 of these Rules;

- (b) the reason for the intended removal;
- (c) the impact of refusal on the applicant parent and any new family of the child;
- (d) the arrangements made to ensure a continuing relationship with the other parent.

(4) An order permitting removal from the jurisdiction, may contain:

- (a) a provision relating to the length of the removal; and
- (b) arrangements for both direct and indirect access to the parent remaining within the jurisdiction.

(5) The court may require that an applicant parent provide a surety to ensure:

- (a) that the child is returned at the end of the period of removal granted; and
- (b) the access arrangements agreed in the order are fulfilled.

107.-(1) A person applying for an order of guardianship under section 59 of the Children's Act shall make an application as specified under the Form No. 11 of the First Schedule of these Rules.

Application
for a guard-
ians-
hip.

(2) In deciding whether to grant an application for guardianship the Children's Court shall consider:

- (a) the best interests of the child; and
- (b) the applicant's connection to the child and the family;
- (c) the degree of commitment the applicant has shown towards the child;
- (d) the extent to which the application has contributed towards expenses in connection with the child;
- (e) the views of the child where he or she is able to express them; and

- (f) any other fact that should in the opinion of the Court be taken into account.

ART XII MAINTENANCE

Application
for a main-
tenance
order.

108.-(1) An application for maintenance may be made under section 64 of the Act as specified under the Form No. 13 of the First Schedule of these Rules.

(2) An application may be made against one parent or both or against any other person eligible to maintain the child or contribute towards the welfare and maintenance of the child.

(3) The court may receive and determine applications for maintenance of a child whose parents are unmarried if there is a parentage order made against the biological father or the Court is satisfied that there is reasonable cause to believe that the man alleged to be the father is the real father.

(4) The court may determine an application provided that a claim for maintenance has not previously been filed in the Kadhi's court.

Consider-
ation when
making a
main-
tenance

109. Before making an order for maintenance the court shall take into account the matters contained in section 66 of the Act and the income or wealth of both parents of the child or of any person legally liable to maintain the child, including any:

- (a) wages, salaries, commission, bonuses and allowances;
- (b) service provided;
- (c) business activities;
- (d) pension or severance benefits;
- (e) dividends and interests; and
- (f) returns from real or personal property (rents, sale of produce, farm products, livestock, poultry, dairy product and other similar items),

110.-(1) Before an order for maintenance is made in accordance with section 66 of the Act, the court may request a welfare officer to prepare a social investigation report under section 67 of the Act for the purposes of:

Social enquiry report on maintenance.

- (a) assessing the ability of parents to provide for the maintenance and care of the child; and
- (b) ascertaining the accuracy of any statements relating to income and outgoings and liabilities.

(2) Before making any investigation a welfare officer shall, if it is reasonably practicable to do so, give written notice of his intention to make such an investigation to:

- (a) the parent without custody;
- (b) the person with custody of the child; and
- (c) the employer of either parent.

(3) The welfare officer shall submit his report to the court within fourteen days from the date the court made the order.

111.-(1) The court shall order the payment of child maintenance to be made:

Payment of child maintenance.

- (a) to the parent or person caring for the child or children in question;
- (b) to the district welfare officer; or
- (c) to such other person as the court may, from time to time, specify.

(2) The court shall specify in the order the amount of maintenance and the intervals at which payment of child maintenance is to be made.

112. Where a maintenance order has been applied for under section 64 of the Act and:

Enforcement of child maintenance.

- (a) has been granted by the court; and
- (b) the person ordered to maintain a child has failed to comply with the maintenance order for more than twenty eight days after the order was made,

an application may be made for enforcement of the order under section 69 of the Act by using the Form No. 12 of the First Schedule of these Rules.

Variation and discharge of a maintenance order.

113.-(1) A parent or person who has custody of a child or any other person legally liable and appointed to maintain the child, may make an application to the court to vary, extend, renew or discharge the maintenance orders on the grounds of a change of circumstances as set out under the Form No. 14 of the First Schedule of these Rules.

(2) In determining whether to grant an application to vary or discharge a maintenance order the court may consider the following factors:

- (a) any substantial and material change of circumstances since the making of the order;
- (b) the reasonable needs of the child; and
- (c) the ability of each parent to pay towards the maintenance of the child.

(3) If the Court decides to vary the order, it may raise or reduce the sum to be paid or leave the order unchanged.

(4) An order shall be automatically discharged on the death of a child under the age of eighteen or on the death of the father.

PART XIII CHILD PROTECTION

Infringement of a child rights.

114.-(1) Where a referral has been made to a welfare officer under section 20(1) or (3) of the Act and the welfare officer has conducted a

risk assessment under section 21(1) of the Act, the Director of Social Welfare may make an application to the court for:

- (a) a relief or an order as the circumstances may require; and
- (b) in the case of a parent, an order that the parent sign an undertaking to exercise proper care and guardianship of the child and provide the child with such requirements as may be specified by the court.

(2) The Director of Social Welfare may make an application in accordance with section 21(2) of the Act where:

- (a) the welfare officer has reason to believe that the child concerned is in need of immediate protective services or protection which can only be provided by the court; or
- (b) the person infringing the child's right has failed to take action or to refrain from certain forms of action, as required by the welfare officer within the time specified; and
- (c) the issue cannot be dealt with under any other provisions of the Act.

(3) An application for an order under section 21(2) of the Act shall be made in accordance with the provisions of these Rules and shall include:

- (a) the name and, where possible, the date of birth of the child;
- (b) if known, where about the child;
- (c) the full name of the parties to the application together with their relationship to the child;
- (d) a statement of facts setting out the background to the case and the rights of the child that are being infringed; and

(e) the relief sought.

(4) An application shall be heard by the court no later than seven days after the application is filed.

(5) The court may exercise its powers:

(a) under section 18(9)(f) of the Act and order that a welfare officer or any other person carry out a further investigation into the circumstances of the child and provide a written report on such issues as may be specified by the court;

(b) under section 18(9)(g) of the Act and order a medical practitioner, psychologist, developmental or educational practitioner to assess the child who is the subject of the proceedings and provide the court with a written report on such issues as may be specified by the court.

(6) Where the court exercises its powers under section 18(9)(f) or (g) of the Act, it shall record its request.

(7) The district welfare officer of the area where the child is residing or is found shall have responsibility for ensuring that persons are identified to complete the investigation or provide the written report ordered under sections 18(9)(f) and (g) of the Act and that the required written reports are provided within the time frame specified.

(8) The court may, in the exercise of its powers under section 21(2)(i) of the Act, provide the child with protection and make an order or determine an issue in respect of infringement of the child's rights including, but not limited to:

(a) orders to restrain publicity;

(b) orders to prevent an undesirable association;

(c) orders relating to medical treatment, including the obtaining of a DNA test;

- (d) orders relating to education;
- (e) orders to protect abducted or trafficked children;
- (f) orders for the return of children to and from another country; and
- (g) an order that the district welfare officer undertake an initial investigation to determine whether the child is suffering or is at risk of suffering significant harm.

(9) In exercising its powers under section 21(2)(i) of the Act, the court may, where it is necessary to protect the child, order that parental rights be vested in the Director of Social Welfare and the parents' exercise of their parental rights shall be restricted to the extent that the court deems necessary.

(10) Where parental rights are vested in the Director of Social Welfare, the court may order that day to day care and control of the child be given to a named individual, save that an important step shall not be taken in the child's life without the consent of the court.

(11) Parental rights shall remain vested with the Director of Social Welfare unless and until the court discharges the order.

(12) Where the Director of Social Welfare has parental rights as a result of an order under section 21(2)(i) of the Act, the child shall not be removed from Unguja and Pemba without the consent of the court.

115.-(1) The court may in accordance with its powers under section 18(9)(h) of the Act, when hearing an application relating to a child: Registration of birth.

- (a) make a finding that the child has not been registered at birth; or
- (b) that the parents of a child are unknown and it is not possible to determine whether the child has been registered at birth, and order in accordance with the Form No. 15 of the First Schedule of these Rules that

the Registrar of Births and Deaths to issue a birth certificate for the child.

Consent
to medical
treatment.

116.-(1) Where a child is in need of medical treatment and there is no body to give consent or the parent, guardian or care-giver is unable or refuses to give consent, or a child who is of sufficient age and maturity refuses to consent, an application may be made by:

- (a) the director of the medical facility treating the child;
- (b) the Director of Social Welfare; or
- (c) an interested person for an order that the child be given the medical treatment.

(2) An application may be made under sub-rule (1) of this Rule shall be required to include:

- (a) the name and, if known, the date of birth of the child;
- (b) the full names of the parties to the application together with their relationship to the child;
- (c) a statement of facts setting out the medical condition of the child, the need for treatment, the treatment proposed and the reason why an order is being sought from the court for consent to such treatment.

(3) Where an order is sought as a matter of emergency, service may be abridged and the application heard the day that it is made.

(4) The district welfare officer of the area where the child resides or is located, or a welfare officer delegated by him, shall appear before the court and provide evidence as to the best interests of the child who is the subject of proceedings.

(5) Where the child is refusing to consent, the magistrate shall, where appropriate, see and speak to the child to ascertain his views in the presence of a welfare officer.

(6) Where it is not possible for the child to attend at the court, the presiding magistrate may visit the child at his home or in a hospital, clinic or medical facility treating the child.

(7) The court shall hear evidence from all parties to the proceedings and from a medical expert and the district welfare officer of the area where the child resides or is located or a welfare officer delegated by him to give such evidence.

(8) In the case of an emergency, the presiding magistrate shall give an oral decision at the conclusion of the hearing, and deliver a written judgment within a week.

(9) A party to the proceedings may seek a review or an appeal of the decision.

117.-(1) Where the child falls within section 112 of the Act and if: HIV testing and disclosure of HIV status.

- (a) the child is sixteen or seventeen years of age or under the age of sixteen but is of sufficient age and maturity to consent to a HIV test but refuses to give consent to a HIV test; or
- (b) the child is under sixteen years and not of sufficient age and maturity to provide consent to a HIV test and the parent or guardian; or where the child does not have a parent, guardian or care-giver, the Director of Social Welfare or the superintendent of a hospital or regional director of a clinic treating the child refuses to provide consent to a HIV test; or
- (c) any of the parties mentioned under sub-rule (1)(b) of this Rule refuse consent to disclosing the fact that the child is HIV positive,

an application may be made to the court for an order that consent is being unreasonable withheld and that:

- (i) the child should undergo a HIV test; or

(ii) the fact that the child is HIV positive should be disclosed.

(2) An application may be made by:

- (a) the child through a next friend;
- (b) the parent or guardian;
- (c) the superintendent or person in charge of a hospital or the regional director of a clinic treating the child;
- (d) the Director of Social Welfare; or
- (e) an interested person as specified under the provisions of these Rules.

(3) Where an order is made requiring the child to undergo a HIV test, counselling shall be provided in accordance with section 113 of the Act.

(4) Where the court orders that the HIV positive status of the child should be disclosed, it shall name the persons and bodies to whom such information is to be provided and shall stipulate in the order that the information shall not be passed to any person, body or organisation other than those named in the order.

Application
for an order.

118.-(1) An application may be made for an order under section 26 of the Act as specified under the Form No. 16 of the First Schedule of these Rules:

- (a) a child through his next friend;
- (b) a parent, guardian or care-giver;
- (c) the Director of Social Welfare;
- (d) the person in-charge of a medical facility; or
- (e) an interested person.

(2) An application shall:

- (a) indicate clearly which order is being sought; and
- (b) include an affidavit setting out the reasons for the application; and
- (c) name the respondents to the action.

(3) Where an application is made under section 26 (e) (f) or (g) of the Act an interested person may apply to the court for leave to be joined as a respondent to the application.

(4) In deciding whether to grant leave under sub-rule (3) of this Rules, the court shall have particular regard to:

- (a) the applicant's relationship with the child; and
- (d) whether the best interests of the child are served by joinder.

(5) An application made for an order under section 26 of the Act, shall be treated as an emergency application and shall be heard by the Court within twenty four hours of the application being made, save where the Court is not sitting the day the application is made when the application shall be heard on the next court day.

(6) Where an application is made under section 26 of the Act and waiting until the next Court day would place the child at risk of suffering significant harm, the application shall be heard at an emergency sitting of the Court or by another court of concurrent jurisdiction.

(7) Where the Court makes an order under section 26(c) of the Act, permitting a hospital to retain a child, it shall specify the period of time that the child may be retained, any inquiries that are to be undertaken and who is permitted to have contact with the child during the period of retention.

(8) The Court shall permit a free-standing application to be made under paragraph (c), (e), (f) or (g) of section 26 by any person

listed in sub-rule (1) of this Rule, and such an application shall be made on accordance with provisions of these Rules.

A child in
need of
protection.

119.-(1) A child shall be regarded as being in need of care and protection if he is suffering harm or is at risk of suffering significant harm as defined in the Care and Protection of Children Regulations and one or more of the circumstances contained in section 19 of the Act applies.

(2) In this Part harm means the ill-treatment or the impairment of health of development, including impairment suffered from seeing or hearing the ill-treatment of another and:

- (a) development means physical, intellectual, emotional, social or behavioural development;
- (b) health means physical and mental health;
- (c) ill-treatment includes physical abuse and sexual abuse and forms of ill-treatment and abuse that are not physical.

(3) Harm may be caused by physical, emotional and sexual abuse and neglect.

(4) In determining whether a child is in need of care and protection or is exposed to a risk of suffering significant harm, the following factors shall be taken into account:

- (a) the nature and extent of the harm suffered or likely to be suffered by the child as a result of ill-treatment, abuse or failure to provide adequate care;
- (b) the impact on the child's health and development;
- (c) the child's development within the context of their family and the wider environment;
- (d) any special needs, such as a medical condition, communication impairment or disability, that may

affect the child's development and care within the family; and

- (e) the capacity of the parents to protect the child and to meet the child's needs.

120.-(1) In accordance with section 22 of the Act, the Director of Social Welfare may make an application for an emergency protection order if a welfare officer has a reasonable belief that:

Applica-
tion for an
emergency
protection
order.

- (a) the child is in immediate need of emergency protection or is exposed to substantial risk of imminent harm; and
- (b) that the child's parent or guardian has refused or is likely to refuse to allow the welfare officer access to the child or to remove the child if necessary to protect him from harm.

(2) The application for an emergency protection order shall:

- (a) contain the name of the child, the name of each parent or guardian and any person who it is believed has care of the child, their addresses and contact details;
- (b) the facts on which the welfare officer relies for his belief that the child is in need of immediate emergency protection or is exposed to substantial risk of imminent harm;
- (c) the premises where it is believed that the child is to be found; and
- (d) details of any attempts made to investigate the circumstances of the child prior to the application being made, details of any risk assessment that has been conducted, and any other intervention to determine the care needs of the child that has taken place.

(3) An application for an emergency protection order shall be served on the respondents within twenty four hours.

(4) Where the Court is satisfied that all reasonable steps to locate the parents, guardians or care-givers for the purpose of service of notice for an emergency protection order have been tried and have been unsuccessful the application may be heard by the Court without notice being given.

(5) An application made inter partes shall be heard no later than forty eight hours after the notice is served and the time limit shall also apply to cases falling under sub-rule (4) of this Rule.

Ex-parte application for an emergency protection order.

121.-(1) Where the Director of Social Welfare has reasonable cause to believe that if the parent, guardian or care-giver is notified of the application for an emergency protection order, that person may remove the child from the premises where he is believed to be present, the Director of Social Welfare may make an ex parte application to the court or, if the court is not sitting to a court of competent jurisdiction.

(2) An application for an ex parte order shall be heard by the court on the day that it is lodged.

(3) If an ex parte order is made by the court and the order is executed, the parent, guardian or care-giver shall be shown the order at the time the social welfare officer or the police enter the premises.

(4) Where an ex parte order is granted, the parents or guardians shall have the right to make an application to set aside an emergency protection order in the court within seventy two hours of the order being executed.

(5) Where the court grants the application to set aside the emergency protection order, the child shall be returned by the social welfare officer forthwith to the parent, guardian or care-giver.

Power of the Court when making an emergency protection order.

122. Where the court is satisfied that the conditions in Rule 120 (1) of these Rules are met, it may:

- (a) grant the Director of Social Welfare or any welfare officer delegated by him to undertake the task, the power to enter named premises and remove the child,

or any other child found on the premises who is in need of emergency protection or is at substantial risk of imminent harm for a period of seven days; or

- (b) require the parent, guardian or care-giver to produce the child at a place and time to be determined by the court and no later than seven days after the order was made.

123. Where an application for an emergency protection order has been made under Rule 120 of these Rules, and where a welfare officer determines that a child who is staying with a temporary care-giver will be at immediate risk of suffering significant harm if he is removed from that place by a parent, guardian or care-giver, the court may order that the child shall not be removed without the permission of the Director of Social Welfare for a period of up to seven days.

Prohibition on removal of child under an emergency protection order.

124. A welfare officer shall undertake a social investigation on any child removed under an emergency protection order and shall file a written statement with the court no later than the close of business on the fourth day after removal of the child.

Social investigation report.

125.-(1) The Director of Social Welfare may make an application in accordance with provisions of these Rules to renew an emergency protection order for a further seven days.

Renewal of an emergency protection order.

(2) An application under sub-rule (1) of this Rule shall be made not later than the close of business on the fourth day after the start of the order

(3) The application shall be served on the respondents within twenty four hours.

126.-(1) In deciding whether to renew the emergency protection order, the court shall consider the social investigation report, the reasons for renewal and any statements filed by the parties.

Criteria for renewal of an emergency protection order.

(2) An emergency protection order shall only be extended if:

- (a) there is reasonable cause to believe that the child would suffer or be at risk of suffering harm if he were returned to the parent, guardian or person caring for him prior to his removal; or
- (b) that the child would not be made available for further investigation.

(3) The court shall, if it extends the emergency protection order provide for the contact that is to take place between the child and his parent, guardian or care-giver save that it may order that there be no contact if it has reasonable cause to believe that contact would place the child at risk of suffering significant harm.

(4) The provisions of Rule 123 of these Rules shall apply to a renewed emergency protection order just as they do to an initial emergency protection order.

PART XIV CARE AND SUPERVISION ORDERS

Insitution
of care and
protection
proceed-

127.-(1) An application for a supervision order or care order may be made by the Director of Social Welfare in accordance with Form No. 17 of the First Schedule of these Rules.

(2) The respondents to the action shall be:

- (a) the mother of the child;
- (b) the father of the child if:
 - (i) he is or was married to the mother at the time of the child's conception or birth; or
 - (ii) his name is on the child's birth certificate; or
 - (iii) he is paying maintenance for the child;

- (c) a guardian of the child;
 - (d) a person who was caring for the child immediately before the application was made; and
 - (e) the child who is the subject of an application.
- (3) An application shall include:
- (a) the name and, where possible, the date of birth of the child;
 - (b) the full name of the respondent parents and any other parties to the application together with their relationship to the child; and
 - (c) whether the application is for a care order or a supervision order.
- (4) The following documents shall be filed with the application:
- (a) an initial statement from a welfare officer in accordance with the Care and Protection of Children Regulations;
 - (b) the care or supervision plan for the child, containing information as set out in the Care and Protection of Children Regulations;
 - (c) the risk assessment conducted under the Care and Protection of Children Regulations, if this has been finalised at the time of the application;
 - (d) the social investigation report conducted under the Care and Protection of Children Regulations if this has been finalised at the time of the application;
 - (d) evidence that the parents, guardian or care giver have been informed of the intention of the Director of Social Welfare to make an application for a care or supervision

order and of the right to be represented in accordance with the Care and Protection of Children Regulations

Provided that where an application is made on an emergency basis, the documents required to be attached to an application may be provided in accordance with the directions of the court.

(5) An application for a care or supervision order shall be served on the respondents by the court within forty eight hours of it being filed and shall specify the time and date of the first hearing.

First hearing of an application.

128.-(1) As soon as practicable after an application is made and not later than forty eight hours after an application is filed, a first hearing shall take place at which the court shall set the time:

- (a) for the documents required in Rule 125(4) of these Rules to be served if such documents have not already been filed and served by the Director of Social Welfare;
- (b) by which any respondent, other than the child who is the subject of the proceedings, shall file an answer to the application, a statement and any further evidence on which he intends to rely; and
- (c) by which the applicant may file a statement in reply.

(2) The court may also make directions on the following matters, among others:

- (a) whether service of the application on certain parties can be dispensed with where reasonable enquiries have been made by the Director of Social Welfare of those likely to know where the parent, guardian or other relevant person is residing, including family members and the last known employer;
- (b) whether proceedings or any part of the proceedings should be expedited;

- (c) whether any other person should be made a party to proceedings;
- (d) the appointment of an intermediary for the child unless one has already been appointed;
- (e) attendance of the child or any other person before the court;
- (f) the filing of evidence including any expert evidence; and
- (g) whether the parties and their representatives should meet at any stage of the proceedings and the purpose of such a meeting.

(3) Wherever practicable and where it will not cause undue delay the magistrate conducting the first hearing shall retain conduct of the case until the conclusion of the final hearing.

129.-(1) An interested person may apply to the court for special leave to be joined as a respondent to the application for a care or supervision order.

Applica-
tion to be
joined as a
respondent.

(2) In deciding whether to grant special leave the court shall have particular regard to:

- (a) the applicant's relationship with the child;
- (b) whether the applicant is a potential care giver for the child;
- (c) the view of the Director of Social Welfare in relation to joinder; and
- (d) whether the best interests of the child are served by joinder.

130.-(1) The court may, at the first hearing of an application for a care or supervision order, or at any time up until the completion of the final hearing, make an interim care or supervision order.

Interim
carew or
supervision
order.

(2) Where an application is made for a care order following the removal of a child under an emergency protection order and it is not possible to locate and serve the parent, guardian or care giver with the application before the cessation of the initial emergency protection order, the order may be extended for a further period of seventy two hours to permit service to be effected or to be dispensed with.

(3) An interim care or supervision order shall be made for such period as may be specified in the order, not exceeding a period of eight weeks beginning with the date on which the order is first made.

(4) An interim order may be renewed for a period of twenty eight days.

(5) Where the parties consent in writing to a renewal of the interim care or supervision order, the court may renew it without the parties appearing before the court.

(6) Where an interim order is made by the court, the court may direct to arrange a medical or psychiatric examination, assessment or report of the child or of any respondent to the proceedings to:

- (a) the district welfare officer on behalf of the Director of Social Welfare; or
- (b) any other party to the proceedings,

Expert evidence.

131. Once a child is the subject of an application for a care or supervision order, a person may not cause the child to be medically or psychiatrically examined, or otherwise assessed for the purpose of preparation of expert evidence for use in the proceedings without the court's permission.

Agreement of facts by the parties.

132. The court shall ask the parties prior to the final hearing of the application to draft in a document:

- (a) the areas of fact in the application on which they agree; and

- (b) the areas of fact in the application on which they disagree.

133.-(1) Subject to any directions given under sub-rule (2) of this Rule, the parties and the child's intermediary, shall adduce their evidence at any hearing on an application under this Part in the following order: Hearing of the parties.

- (a) the applicant;
- (b) a parent, guardian or care giver of a child;
- (c) other respondents to the application;
- (d) the child through his intermediary; and
- (e) the child if he is a party to proceedings and there is no intermediary.

(2) The court may permit a witness to give evidence out of order where it is:

- (a) in the best interest of the child; and
- (b) necessary in the interests of justice.

134.-(1) A court may only make an interim care or supervision order or a care or supervision order if it is satisfied: Criteria for making an interim care or supervision order.

- (a) that the child concerned is suffering or is likely to suffer significant harm; and
- (b) that no other order under the Act would adequately safeguard the child; and
- (c) the making of such an order is necessary to protect the child.

135.-(1) A supervision order may be made when the child is suffering or is at risk of suffering significant harm and such an order is necessary to prevent such harm occurring to the child while the child remains in the family home in the care of his parent, guardian or relative. A supervision order.

(2) A supervision order shall not require that the child live anywhere other than with his family.

Order that be made on an application for a supervision order.

136.-(1) On an application for a supervision order, the court may make an order:

- (a) placing the child under the supervision of the applicant Director of Social Welfare;
- (b) placing the child with respect to whom an application was made in the care of the applicant Director of Social Welfare;
- (c) an order under section 26 of the Act; or
- (d) an exclusion order in accordance with section 25 of the Act.

(2) The court may make a care order rather than a supervision order on its own motion, if it finds this to be in the best interests of the child.

(3) Before making a care order on its own motion, the court shall adjourn the proceedings to permit the Director of Social Welfare to produce a care plan.

(4) Where in any proceedings for a supervision order, the proceedings are adjourned, the court may make an interim supervision or an interim care order with respect to the child concerned.

(5) The court shall not make a supervision order on a child until it has considered the supervision plan.

A supervision plan.

137.-(1) When applying for a supervision order, the Director of Social Welfare shall file a supervision plan for the child, which shall identify how the child's short term needs will be met.

(2) The supervision plan shall include, but shall not be limited to:

- (a) where the child will live for the duration of the supervision order;
- (b) the support that will be offered by the district welfare officer or other bodies to the child and the family;
- (c) any education or training activities that the child or parents are expected to attend;
- (d) any particular places that the child is expected to attend at any particular times;
- (e) any duties that the parents are expected to perform; and
- (f) such other requirements as the district welfare officer considers necessary to safeguard the child, including attendance at a hospital or medical or treatment programme.

138.-(1) A supervision order may be made for a period of one year or until the child reaches the age of eighteen years whichever is the earlier. Duration of a supervision order.

(2) An order under sub-rule (1) of this Rule shall only be made with the consent of a parent or guardian.

(3) The Director of Social Welfare may make an application to extend the supervision order for a further period of one year or until the child reaches the age of eighteen years, whichever is the earlier on accordance with the provisions of these Rules.

(4) The court shall only extend an order where the child continues to be at risk of harm and such an extension:

- (a) is in the best interests of the child; and
- (b) the parent or guardian consents; and
- (c) the child consents.

Orders that may be made on application for a care order.

139.-(1) On an application for a care order, the court may make:

- (a) an order placing the child with respect to whom an application was made in the care of the Director of Social Welfare;
- (b) an order placing the child under the supervision of the Director of Social Welfare;
- (c) an order under section 26 of the Act; or
- (d) an exclusion order in accordance with section 25 of the Act.

(2) The court may on its own motion make a supervision order rather than a care order, if it finds this to be in the best interests of the child.

(3) Where the court decides that a supervision order rather than a care order would be in the best interests of the child, it shall adjourn the proceedings to permit the Director of Social Welfare to produce a supervision plan.

(4) Where in any proceedings for a care order, the proceeding are adjourned, the court may make an interim care or an interim supervision order with respect to the child concerned.

(5) The court shall not make a care order regarding a child until it has considered the care plan.

Care plan.

140.-(1) A care plan shall be drafted and shall include, but shall not be limited to:

- (a) the arrangements to meet the child's needs in relation to his:
 - (i) health, including both physical and mental health;
 - (ii) education and training;
 - (iii) emotional and behavioural development;

- (iv) identity, with particular regard to the child's religious persuasion, racial origin and cultural and linguistic background;
 - (v) family and social relationships;
 - (vi) placement, and
 - (vi) social and self-care skills;
- (b) the long term plan for the child's upbringing, including kafalah or adoption if this in the best interests of the child; and
 - (c) the access that the child is to have with the parents and other important persons in the child's life under an interim or full care order and the arrangements for such access; and
 - (d) if the care plan recommends that there shall be no access to parents or any other important persons in the child's life, the reasons for denying access.

(2) A care plan shall, so far as is possible, be agreed by the assigned social welfare officer with:

- (a) a parent, guardian or care giver; and
- (b) the child, if he is of sufficient age and maturity.

(3) The care plan shall be kept under review during the proceedings and shall be amended to reflect any change in the circumstances and the child's needs.

(4) The final care plan, in addition to the information contained in sub-rule 1(a) - (c) of this Rule, shall:

- (a) clearly identify the roles and responsibilities of professionals and relatives including the nature and frequency of contact by professionals with the child; and

(b) set the date for the first review.

(5) The final care plan shall be filed no later than two weeks before the final hearing.

(6) The court in making a care order shall approve the care order or make such changes as it considers appropriate.

Parental
rights under
a care order.

141.-(1) Where a care order or an interim care order is in force with respect to a child, the Director of Social Welfare shall:

- (a) have parental rights and responsibility over the child; and
- (b) have the power to determine the extent to which the parent or any person who has been granted parental rights by the court shall exercise parental rights and responsibilities over the child.

(2) The Director of Social Welfare shall only limit the exercise of parental rights to the extent that it is necessary to do so to safeguard and promote the child's welfare.

(3) While a care order is in force:

- (a) the Director of Social Welfare or any person caring for the child shall not:
 - (i) change the child's names; or
 - (ii) change the child's religion, or
 - (iii) consent to the child's marriage,
 without an order from the court;
- (b) the Director of Social Welfare shall not remove the child, or permit anyone acting on its behalf to remove the child from Zanzibar except in accordance with sub-rule (3)(c) of this rule, without the consent of the court;

- (c) sub-rule (3) (b) shall not prevent the removal of a child subject to a care order from the Zanzibar for a period of not more than twenty eight days provided that the person taking the child has obtained the written consent of the Director of Social Welfare.

(4) Sub-rule (3)(b) of this Rule shall not apply where the care plan is for the child to live outside Zanzibar.

142.-(1) The Director of Social Welfare or an interested person may make an application on accordance with provisions of these Rules seeking to vary the access of a parent or legal guardian to a child who is the subject of a care order.

Appli-
cation to
vary access
under a care
order.

(2) The application shall be:

- (a) supported by a statement detailing the reasons why access should be varied; and
- (b) provide the name of the parent or guardian against whom the order is sought; and
- (c) the name and address, if known, of any other parent or guardian.

(3) The following shall be respondents to the application:

- (a) the parents or guardian;
- (b) the Director of Social Welfare where it has not made the application; and
- (c) the child.

(4) Notice shall be served upon the respondents no later than seven days after the application has been received and a hearing date set for no later than twenty one days after filing of the application.

(5) A respondent may file a statement in response to the application.

(6) In determining the application to vary access the court shall seek views and opinions of:

- (a) the child if he is of sufficient age and maturity to give an opinion, and
- (b) the welfare officer assigned to the child.

(7) The court may appoint an intermediary to assist the child.

(8) The court may make an order varying access:

- (a) for a limited period of time; or
- (b) for an indefinite period

(9) Where the order is for an indefinite period, the court shall inform the parent or guardian that they have a right to apply to vary the order under section 24(10) of the Act.

Annual
review of a
care order.

143.-(1) A care order shall be reviewed by the court on an annual basis to ensure that the child's best interests continue to be met by the order.

(2) The court shall enter the date of the annual review on its rolling list and shall notify the Director of Social Welfare of the date one month before the review.

(3) The Director of Social Welfare shall file:

- (a) minutes of the last review conference;
- (b) a statement on the extent to which the care plan is meeting the child's needs and any changes that are to be made to the care plan no later than 14 days before the review

(4) The welfare officer assigned to the child shall attend the review, if so requested by the presiding magistrate.

(5) The parent or guardian or an interested person may apply to the court to be informed of the date of the annual review, and shall have the right to submit written evidence to the magistrate:

- (a) on the extent to which the care plan for the child has been implemented; and
- (b) the extent to which the care plan meets the child's needs.

(6) After considering the evidence before it, a court shall find:

- (a) that the care plan is meeting the child's needs; or
- (b) that the care plan meets the child needs, but that further action is required to implement the care plan; or
- (c) that the care plan does not meet the child's needs.

(7) Where the care plan is not meeting the child's needs or is not being implemented adequately, the court may:

- (a) require the Director of Social Welfare to amend the care plan; or
- (b) to report on the action taken to implement the care plan within a fixed time period of time.

144. A care order may be made for a maximum period of three years or until the child reaches the age of eighteen, whichever is earlier. Duration of a care order.

145.-(1) The Director of Social Welfare may make an application for an extension of the care order when the care order ceases provided that the child is under the age of eighteen years at the time of application. Making an application to extend a care order.

(2) An application on specified under the provisions of these Rules shall be filed by the Director of Social Welfare.

(3) The application shall be made in accordance with Rule 127 of these Rules and shall in addition include:

- (a) a statement setting out the reasons why an application is being made to extend the care order;
- (b) any social investigation of the family undertaken for the purposes of reintegration;
- (c) a care plan setting out the arrangements that are to be made for the child containing the information set out in Rule 140 of these Rules;
- (d) the minutes of the pre-discharge case review conference conducted in accordance with the Care and Protection of Children Regulations under the previous care order; and
- (e) a copy of the original care order and any extension made to the care order by the court.

(4) Where the Director of Social Welfare is applying to extend the care order, the application shall be filed at least six weeks before the end of the previous care order.

(5) The respondents shall be those listed in Rule 127(2) of these Rules.

(6) The court shall:

- (a) serve the respondents with the application in accordance with Rule 127(5) of these Rules; and
- (b) list a hearing to take place at least 3 weeks before the end of the care order.

(7) At the hearing to renew the care order the court shall:

- (a) hear the applicant and the respondent in accordance with Rule 133 of these Rules; and
- (b) ascertain the views and wishes of the child, having

regard to the child's age and maturity, before deciding whether or not to continue the care order;

(8) Where the child is not of sufficient maturity to give direct evidence of his views and wishes, the court may receive evidence of those views and wishes from an intermediary.

(9) A care order shall only be extended where the court is satisfied that the child would be at risk of suffering harm if full parental rights were returned to the parents.

(10) The care order may be extended for a maximum period of one year or until the child is reached the age of eighteen whichever is earlier.

(11) There shall be no limit on the number of extensions that may be applied for, save that order shall continue beyond the child's eighteenth birthday.

146.-(1) An application for discharge of an order under Section 24(10) of the Act may be made by the child, the Director of Social Welfare, a parent or guardian. Discharge of a care order.

(2) An application shall be made on accordance with Form No. 17 of the First Schedule of these Rules and a statement setting out the reasons for discharge and the arrangements to be made for the child shall be included.

(3) Where an application is made for discharge by the child:

- (a) the Director of Social Welfare shall be named as a party to the proceedings; and
- (b) the child shall be assisted in the proceedings by an intermediary;

(4) Where a child who has applied for the care order to be discharged does not have an intermediary, the court shall appoint one

on receiving the application and shall, wherever practicable, appoint the same intermediary that assisted the child in the care proceedings.

(5) Where it is not possible to appoint an intermediary and the child needs support to progress his claim, the presiding magistrate shall appoint a legal representative to assist him free of charge.

(6) Where an application to discharge the care order is made by a parent, the child and the Director of Social Welfare shall be named as parties to the proceedings.

(7) Where the Director of Social Welfare has applied to discharge the care order:

- (a) the child and the parents or guardian shall be named as parties to the proceedings, and an intermediary appointed for the child;
- (b) the Director of Social Welfare shall file a discharge care plan in accordance with the Care and Protection of Children Regulations.

(8) A care order shall only be discharged where:

- (a) the court is satisfied that a care order is no longer required to safeguard the welfare of the child;
- (b) the discharge care plan safeguards and promotes the welfare of the child; and
- (c) discharge is in the best interests of the child.

PART XIV EXCLUSION ORDER

Exclusion
order,

147.-(1) An application for an exclusion order under section 25 of the Act may be made on accordance with Form No. 19 of the First Schedule of these Rules supported by a statement detailing the reasons why the order is being sought by:

- (a) a child or the child's family;
- (b) one or both of the child's parents
- (c) the guardian or care-giver; or
- (e) the Director of Social Welfare.

(2) The applicant may seek an order from the court:

- (a) requiring the named person to leave the home where the child is living;
- (b) prohibiting a named person from entering a home where a child is living;
- (c) prohibiting a named person from entering a defined area around the home in which the child is living; or
- (d) prohibiting a named person from contacting or speaking to the child concerned or to persons looking after the child.

(3) The named person shall be a respondent to the action.

(4) An application for an exclusion order may be made ex-parte where there is a risk of violence from the named person to the applicant or to any child.

(5) Notice shall be served upon the respondent no later than 48 hours after the application is lodged and the matter set down for a hearing in the court no later than seven days after the application has been received.

(6) The person in respect of whom an application for an exclusion order has been submitted may file a statement in response contesting the application.

(7) An application for an exclusion order shall only be granted where it is necessary for the protection of the child and to safeguard the child's best interests.

(8) Where an ex parte order is granted, the named person shall have the right to make an application to set aside the exclusion order in the court within 72 hours of the order being executed.

(9) An exclusion order may be made for a specific period of time or indefinitely where this is necessary to protect the child and to safeguard the child's best interests, save that where an order is for an indefinite period, the court shall review the order every six months unless satisfied on the balance of probabilities that continued review of the order is not in the child's interests.

(10) At any time that an exclusion order is in force, an application may be made to vary the order to:

- (a) include other named persons; or
- (b) to remove an order on a named person; or
- (c) to vary the period of time for which the order is in force,
or
- (d) to vary or extend the terms of the order.

**FIRST SCHEDULE
FORM No. 1
[Made under the Rule 14(3)(a)]
SUMMON OF THE PARTIES OR WITNESS**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
(Under the Zanzibar Children’s Act 2011)

Between

.....Applicant

And

..... 1st Respondent
..... 2nd Respondent

(State name of Child where appropriate)

TAKE NOTICE that the above mentioned case has been fixed for/hearing/
mention/ruling/judgment on the..... day of..... 20..... at..... A copy
of the Petition/Application lodged in the Children’s Court at
..... on the..... day of 20.....is enclosed herewith.

YOU are required to appear in this Court without fail and must produce on that
day all documents upon which you intend to rely in support of your case.

GIVEN under my hand and SEAL of the Court this day.....of
.....20....

.....
MAGISTRATE

TO BE SERVED UPON:

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

**FIRST SCHEDULE
FORM No. 2
[Made under the Rule 27(2)
MEDICAL REPORT**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Civil Case No... of 20.....

In the Matter of the Application/Petition for.....
(Under the Zanzibar Children’s Act 2011)

Between

..... Applicant/Petitioner

And

..... 1st Defendant/
Respondent
2nd Defendant /
Respondent

And

.....

(State name of Child where appropriate)

STATEMENT OF THE APPLICANT/RESPONDENT/ WITNESS FOR
THE APPLICANT/ RESPONDENT/EXPERT WITNESS (CIRCLE AS
APPROPRIATE)

FIRST SCHEDULE
FORM No. 3
[Made under the Rule 42(4)]
WARRANT OF COMMITMENT ON REMAND/REMAND ORDER



IN THE CHILDREN'S COURT OF ZANZIBAR

AT

Criminal Case No..... of 20.....

DPP

v

.....
 (Accused)

To the Manager of Retention Home/Superintendent of the Prison.....
 Whereas. (name of child)

.....
 Has this day been charged before me

with.....

and has been remanded until the.....day of.....20.....

This is to authorise and command you to receive the child
 (name)

And to produce him before this court ata.m/p.m on....day

GIVEN under my hand and **COURT SEAL** on (date)

.....
MAGISTRATE

**FIRST SCHEDULE
FORM No. 4
[Made under the Rule 43(1)]
FIRST/ SECOND SOCIAL ASSESSMENT REPORT**



Social assessment reports should follow the headings listed

Court.....Criminal Case
No.....
S. I. No..... Offence
Charged.....
Date of Arrest..... Date Convicted.....

DETAILS OF CHILD

1.1 First Name Middle Name Last Name
.....

1.2 Date of Birth:.....

1.3 Gender :.....

1.4 Birth Registration Number:.....

1.5 Religion:.....

1.6 Parents names

1.7 Current Place of Residence/Contact Details.....

2. SOURCES OF INFORMATION

Who has been interviewed in compiling this report

3. FAMILY BACKGROUND

Details of family background and present family circumstances;

Current education / employment situation

State of health of the child/ parents

Use of drugs/alcohol by the child/ family and whether this has any impact on the child's offending

4. Child understands of the offence and its consequences

5. The risk of the child re-offending (only to be filled in if the child has admitted the offence or has been convicted)

6. Recommendation to the Court of the appropriate sentence (only to be filled in if child has admitted the offence or been convicted).

**FIRST SCHEDULE
FORM No. 5
[Made under the Rule 45(5)]
ORDER FOR DIVERSION**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT
Criminal Case No..... of 20.....

DPP

v

.....
(Accused)

The Court upon being notified by the Director of Public Prosecutions of his/her decision to divert the child.....
(name)

And on the consent of the child and (the parent/guardian)
.....

The Court Orders by consent that the following diversion option:
.....

With the following conditions(if appropriate)

No criminal proceedings shall be taken against the accused child in relation to this offence following this Order.

Consent by the Child: name

Signature or Thumbprint.....

Consent by Parents/Guardian/caregiver if available: name

Signature or Thumbprint.....

Social Welfare Officer (If parents/guardians/caregiver are not available)

GIVEN under my hand the **SEAL** of the Court this.....day of
20.....

.....
MAGISTRATE

**FIRST SCHEDULE
FORM No. 6
[Made under the Rule 65(3)]
PROBATION ORDER**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT
Criminal Case No..... of 20.....

DPP

v

.....
(Accused)

Sitting in the Children Court at(court name) pn (date)

WHEREAS.....(name)of.....
(address) is charged before this court with the offence of
..... contrary to and the court is satisfied that the
offence is proved but is of the opinion that having regard to the assessment report
prepared by (name and occupation) the Court orders that the
..... (name of the child) be released on on probation:

AND

- (a) (..... (name of the child) having been convicted of the said offence):
- (b) (without proceeding to conviction):

THE COURT HEREBY ORDER that (name of the child) shall be released subject to the following conditions:

1. That during the period of the Order (name) shall submit himself to the supervision of.....
 [Specify the name of the person(s) who will supervise the child)

2. That (name) is to attend the following counselling,, treatment, education or programme

2. That for the purpose of securing the supervision of the child/offender:-

(a) (Name of child) shall attend all meetings with the the Probation Officer or Welfare Officer weekly or at such other intervals as the Welfare Officer may think fit and at such places as the Probation Officer or Welfare Officer chooses and shall answer truly all questions put to him by the Probation Officer or Welfare Officer with regard to his conduct, or residence, and

(b) abide by all the conditions of the Order, including attendance at any counselling, treatment, education or programme agreed as part of the probation Order or

(c) report any change of residence immediately to the Probation Officer or Welfare Officer; and

4. This Order shall have effect for a period of.....from the date hereof.

Dated this.....day of20.....

.....
MAGISTRATE

**FIRST SCHEDULE
FORM No. 7
[Made under the Rule 69(2)]
SUMMON**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Criminal Case No..... of 20.....

DPP

v

.....

(Accused)

To:.....
.....

You are hereby ordered in the name of the Revolutionary Government of Zanzibar to attend this Court on the.....day of.....20.....at..... am/pm in the above case as witness/ for breach of court order and not to depart without leave of the Court and you are hereby warned that if you shall without just excuse, neglect to obey this summons a warrant will be issued to compel your attendance, and you will furthermore render yourself liable to a fine as shall be determined by the Court.

GIVEN under my hand the **SEAL** of the Court this.....day of 20.....

This summons has been issued on the application of.....

.....

MAGISTRATE

FIRST SCHEDULE
FORM No. 8A
[Made under the Rule 70(2)]
APPROVED SCHOOL ORDER



IN THE CHILDREN'S COURT OF ZANZIBAR

AT Criminal Case No..... of 20.....

DPP

v

.....
 (Accused)

WHEREAS on the.....day of.....20.....
 the child..... (name) (date of birth)
 (information as to whose antecedents is given in Form No.8B) was charged before me
 and was convicted of the offence.....
 Punishable under section.....of the.....

AND WHEREAS, the provisions of section 118 of the Children's Act have been
 complied with. **IT IS HEREBY ORDERED** that the said.....
 Shall be committed to custody to the Approved School, subject to the provisions
 of the said Act.

AND IT IS FURTHER ORDERED that the said
 shall be conveyed as soon as possible to the said school by.....
 and there handed over to the custody of the Manager of the School together with
 a certificate copy of this order.

GIVEN under my hand and the **SEAL** of this Court, this.....day of.....20.....

.....
MAGISTRATE

FIRST SCHEDULE

FORM No. 8B

[Made under the Rule 70(12)]

**MATERIAL INFORMATION OF A CHILD FOR COMMITAL ORDER
TO AN APPROVED SCHOOL**



A. GENERAL AND SPECIAL PARTICULARS:

- 1. Name.....
- 2. Tribe.....
- 3. Date of Birth.....
- 4. Religion.....
- 5. Residence.....
- 6. Circumstances in which brought before the Court (state substance of offence or ground of application).....
- 7. Particulars of previous convictions (if any).....
- 8. School last attended (if any).....
- 9. Employment (if any) with appropriate dates.....

B. HOME SURROUNDINGS:

- 12. Name and address of parents or guardian.....
- 13. Religion of parents
- 14. Occupation of parents
- 16. Parental attitude to child.....
- 17. Name and address of any person interested in child.....
- 18. Any other relevant information.....

I certify that the above particulars are accurate and complete to the best of my knowledge and belief.

.....
MAGISTRATE

FIRST SCHEDULE
FORM No. 9
[Made under the Rule 77(2)]
APPLICATION FOR PARENTAGE ORDER



IN THE CHILDREN'S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
 (Under the Zanzibar Children's Act 2011)

Between

.....Applicant/Petitioner

And

.....1st Respondent

1. I,(name) of
 address) the Petitioner(s) born on (date) seek a declaration
 of parentage of the child(name) born on
(date of birth) under section 55 of the Children's Act.

2. The Respondent to the petition is (name and address)

3. The Petitioner claims that the child and the respondent are related in the
 following manner:.....(specify)

4. The child lives with(name the person
 with whom the child lives) at(address).

5. The reasons for making this application are:

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

(give details of why you are making this application and include details of the facts on which you rely)

6. Are you are aware of any other court case, which concern the parentage of the person whose parentage is in question?

- (a) Name of the Court where the proceedings was heard
- (b) Case number.....
- (c) Parties of the case.....

WHEREFORE the Petitioner prays for the following orders.

- (a) Declaration that respondent /petitioner is the mother/ father of.....
- (b) That the respondent pay maintenance of..... (including arrears) fromto.....
- (c) That the Respondent continue to pay maintenance until the child is aged or completes school.
- (d) The petitioner to have a sole custody of the child(ren)
- (e) That the respondent be allowed access of the child(ren).....
- (f) The costs of the petition
- (g) Any other relief this Honourable court may deem just and equitable to grant.

Signed this..... day of..... 20.....

.....
PETITIONER

VERIFICATION

All that is stated in this application is true based on my knowledge and belief.
Verified at (location) this.....day of.....20.....

.....
PETITIONER

FIRST SCHEDULE
FORM No. 10
[Made under the Rule 87(1)]
CHAMBER APPLICATION FOR CUSTODY OR ACCESS



IN THE CHILDREN'S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
 (Under the Zanzibar Children's Act 2011)

Between

.....Applicant/Petitioner

And

.....1st Respondent

I, AB..... (date of birth)

Of (address)

Legally represented by (name, address of legal representative if any);

A. I am the mother/ father (or other relationship, example grandmother, aunt, carer) of:

1. (name of child, date of birth and place of birth)
2. (name of child, date of birth and place of birth);
3. (name of child, date of birth and place of birth)

Add extra names if more children

B. Apply for an order for custody of the said child(ren) or

Apply for an order for access to the said child(ren)

C. The Respondent is (name, address, date of birth and relationship to the child)

D. Notice should be given to the following interested persons

(name, address and relationship to the child)

E. The parents of the children are (name of parents if they have not been named as applicant and respondent or an interested party)

F. The reason for this application is

Signed thisday of.....20.....

.....

APPLICANT

Filed this.....day of.....20.....

.....

MAGISTRATE

FIRST SCHEDULE
FORM No. 11
[Made under the Rule 105(1)]
APPLICATION FOR ENFORCEMENT/EXECUTION OF CUSTODY,
ACCESS AND MAINTENANCE ORDER



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
(Under the Zanzibar Children’s Act 2011)

Between

..... Applicant

And

.....1st Respondent

In the matter of a maintenance/custody / access order (Case no.) made by the Children’s Court of Region on (date)

Do apply for an application to enforce the order

I attach the Order and an affidavit to this application, setting out the reasons why I seek enforcement of the Order

Dated this day of 20.....

.....
APPLICANT

Filed this..... day of20.....

.....
MAGISTRATE

**FIRST SCHEDULE
FORM No. 12
[Made under the Rule 106(2)]
CHAMBER APPLICATION FOR REMOVAL FROM THE
JURISDICTION**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
(Under the Zanzibar Children’s Act 2011)

Between

..... Applicant/

And

.....1st Respondent

A. I, (name of applicant) of (address) apply for an order to remove the following children from the jurisdiction to (name of state)

- 1..... (name) (date of birth)
- 2..... (name) (date of birth)
- 3..... (name) (date of birth)

(Add the names, date of birth an location of birth of any further children)

B. State the relationship between the applicant and any child listed above

C. The children are currently living with (name, address and telephone number)

D. The Respondent(s) to this application are (each parent if not an applicant must be named as a respondent, as must any guardian or person caring for the child)

Name, address, telephone number of respondents

- 1.
- 2.
- 3.

I attach an affidavit setting out the reasons for applying for an Order of the Court to remove the children from the jurisdiction.

Signed this..... day of.....20.....

.....
APPLICANT

Filed this.....day of.....20.....

.....
MAGISTRATE

FIRST SCHEDULE
FORM No. 13
[Made under the Rule 108(1)]
CHAMBER APPLICATION FOR MAINTENANCE



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
(Under the Zanzibar Children’s Act 2011)

Between

.....Applicant

And

.....1st Respondent

I,.....name of Applicant
of..... (address)

State that.....the Respondent
Is the father of a child (ren) mentioned below and that the defendant is legally
liable to maintain the following child(ren)

- 1..... Born on at
- 2..... Born on at.....
- 3..... Born onat.....

(Add the names, date of birth an location of birth of any further children)

The child(ren) is /are under my custody and care

The respondent has not supported the said child(ren) since
 (date) and has made no contribution towards maintenance; or has made the
 following contribution towards maintenance

.....

I request that the Respondent be ordered to make the following contribution(s)
 towards maintenance of the child(ren)

AMOUNT		NAME OF CHILD	BORN
SHS.	IN RESPECT OF		
SHS.	IN RESPECT OF		
SHS	IN RESPECT OF		

and/or

state any other contributions sought (for example medical, school fees, uniforms,
 expenses for sport and/or cultural activities and birth expenses)

.....

Signed thisday of.....20.....

.....
APPLICANT

Filed this.....day of.....20.....

.....
MAGISTRATE

**FIRST SCHEDULE
FORM No. 14
[Made under the Rule 113(1)]
CHAMBER APPLICATION TO
VARY, EXTEND/RENEW OR DISCHARGE AN ORDER**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
(Under the Zanzibar Children’s Act 2011)

Between

.....Applicant/Petitioner

And

.....1st Respondent
.....2nd Respondent
.....Respondent child

I,.....(name)of.....
address apply for an order to

- Vary
- Extend
- Renew
- Discharge (other than a care or supervision order)

2. The Order in question was made in Court proceedings case number..... on(date)
(specify the name of the order and the date it was made and attach a copy of the order to the application)

3. If you are applying for an order to be varied, extended/renewed or discharged, specify the details of the order which you would now like the court to make.....
.....
.....

4. Reason(s) for the application
.....
.....

5. Respondent(s) to this application:

Name.....

Address.....

Signed this..... day of.....20.....

.....
APPLICANT

Filed this..... day of.....20.....

.....
MAGISTRATE

**FIRST SCHEDULE
FORM No. 15
[Made under the Rule 115(1)(b)]
ORDER FOR REGISTRATION OF BIRTH**



IN THE CHILDREN’S COURT OF ZANZIBAR

AT Civil Case No... of 20.....

In the Matter of the Petition for registration
of birth under Rule 115 of the Children’s Court
Rules and the Children’s Act 2011

Between

..... Applicant

And

..... Respondent

Upon hearing the petition of (name and address of applicant)

.....
And upon hearing the evidence of all the witnesses. And on the Court being satisfied with the evidence and statement/exhibits produced in court
And it having being proved to the satisfaction of the Court that the respondent is the natural father/mother of the child and that the said child was born on..... day.....20...

And that all the requirements of the Children Act have been complied with;;
The Registrar of Births for the (name of region) is ordered to make an entry on the child’s birth certificate recording the names of his/her father and his/her mother
And accordingly issue a Birth Certificate

GIVEN under my hand the **SEAL** of the Court this.....day of20.....

.....
MAGISTRATE

FIRST SCHEDULE
FORM No. 16
[Made under the Rule 118(1)]
CHAMBER APPLICATION FOR EMERGENCY PROTECTION
ORDER, CARE OR SUPERVISION ORDER



IN THE CHILDREN'S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
 (Under the Zanzibar Children's Act 2011)

Between

..... Applicant/

And

..... 1st Respondent
 2nd Respondent
 Respondent Child

I, the Director of Social Welfare, make this application
 I am legally represented by (name, address and phone number of any legal
 representative)

1. The Applicant makes an application for (tick the order sought)

- Emergency protection order
 Care order
 Supervision order

1. The respondent(s) to the application is/are

1.....(name) of (Address and contact details)

2.....(name) of (Address and contact details)

Each parent, guardian or any other person caring for the child, other than a foster parent or a children's home providing care for the child with the agreement of the Director of Social Welfare must be named as a respondent.

2. The child (name and date of birth)

1..... Born on at

2..... Born on at.....

3..... Born onat.....

(Add the names, date of birth an location of birth of any further children)

3. The ground for the application is that the child is / are suffering or are likely to suffer significant harm; and (tick those that apply)

No other order would adequately protect the child(tick if applicable)

The making of such an order is necessary to protect the child (tick if applicable)

4. The reasons for the application are: (or see attached statement)

5. The following documents are attached to this application (tick all that apply)

A statement from the Director of Social Welfare or a welfare officer

The care or supervision plan if applying for a care or supervision order;

An initial investigation report if applying for a care or supervision order;

The social investigation report if applying for a care or supervision order;

Evidence that the parent/ guardian or carer has been informed of the intention of the Director of Social Welfare to apply for a care or supervision order

All document filed with this application to be must be clearly marked with their title and numbered consecutively.

6. The following directions / orders are sought: (specify)

Signed this.....day of.....20.....

.....
APPLICANT

Filed this.....day of.....20.....

.....
MAGISTRATE

FIRST SCHEDULE
FORM No. 17
[Made under the Rule 146(2)]
APPLICATION FOR DISCHARGE OF A CARE ORDER



IN THE CHILDREN'S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application for
discharge of a care order under s.24 and 30
of the Children's Act 2011

Between

.....Applicant

And

.....1st Respondent

And

2nd Respondent
Respondent child

I,.....(name)of
.....(address) make an application to
discharge the care order made by the Children's Court of (name region) on (date)
(attach order to the application) in relation to (name child and date of birth).

1. The nature of my relationship to the child is

2. The respondent(s) to this action is/ are the Director of Social Welfare and (Name all respondents and provide address if known) (respondents should include the child and the parent(s) / guardian unless they were not respondents to the initial care or supervision proceedings or were dismissed as respondents)

3. Reasons for applying for discharge of the care or supervision order.

Signed this..... day of.....20.....

.....
APPLICANT

Court Office:

Filed this.....day of.....20.....

.....
MAGISTRATE

To be served upon

.....

FIRST SCHEDULE
FORM No. 18
[Made under the Rule 147(1)]
CHAMBER APPLICATION FOR AN EXCLUSION ORDER



IN THE CHILDREN'S COURT OF ZANZIBAR

AT

Case No..... of 20.....

In the Matter of the Application/Petition for.....
 (Under the Zanzibar Children's Act 2011)

Between

.....Applicant/

And

.....1st Respondent

I.....(name) of /.....
 (address) apply the Court for an Exclusion Order

I am the mother /father / other relationship of [name of child and date of birth]; or

I am a welfare officer; or

the Director of Social Welfare

(tick box that applies)

2. The Respondent's (name, address and date of birth).

3. I seek an order in the following terms: (tick all that apply)

- that [name of respondent] be requiring to leave the home where [name of child] is living [specify address];
- that [name of respondent] be prohibited from entering the home at [specify address];
- that [name of respondent] be prohibited from entering [state the area] around [address];
- prohibiting [name respondent] from contacting or speaking to the [name of child and applicant [if order to apply to Applicant as well] or to [name of person(s)] looking after the (name child).

4. Does the Applicant believe it is necessary for the Court to make an order without giving notice to the Respondent (an ex- parte Order) ?

- Yes
- No

If yes, specify reasons why

5. On what date does the Applicant want the Order to start?

6. The grounds for this application are set out in an affidavit attached to this application.

Signed this..... day of.....20.....

.....
APPLICANT

Filed this.....day of.....20.....

.....
MAGISTRATE

To be served upon

.....
.....

SECOND SCHEDULE
MATTERS TO BE RECORDED ON A CRIMINAL CASE FILE
[Made under rule 19(3)]



- (1) A criminal case file shall contain the following information
- (a) the name of the Court and the location (region and district);
 - (b) the charges laid against the child;
 - (c) case number and year including the police case number;
 - (d) Parties to the case;
 - (e) the police station responsible for the investigation;
 - (f) details about the child including:
 - (i) the name of the accused child;
 - (ii) the gender of the accused child;
 - (iii) the accused child's date of birth, if available; and
 - (iv) the child's place of residence;
 - (g) date of commencement of hearing;
 - (h) a copy of the assessment report, unless this has been dispensed with;
 - (i) any dates on which the child deprived of liberty (if any) (to be updated as circumstances require throughout the proceedings);
 - (j) plea;
 - (i) date of finding;
 - (l) sentence;
 - (m) notice of any appeal made and the date of any such appeal;
 - (n) the name of the Magistrate;
 - (o) the name of the prosecutor;
 - (p) the name of any legal representative;
 - (q) any other information for the time being applicable.

(2) Notwithstanding the above information, during the proceedings of the case the Court shall ensure that it records of the following information;

- (a) details of the parents including -
 - (i) the name of the child's mother, father, guardian or other care giver;
 - (ii) the parents' place of residence if different to that of the child;
 - (iii) the parents' telephone number and email address, if available;

- (b) other information such as -
 - (i) that the child was granted bail and the reasons for denial;
 - (ii) diversion that has been considered/recommended by the prosecutor;
 - (iii) recommendation by the magistrate to the prosecutor to consider diversion and the outcome of that recommendation;
 - (iv) date of each hearing and the directions, orders or decisions taken;
 - (v) the presence or absence of the accused child at each hearing;
 - (vi) a parent or guardian, attended a hearing;
 - (vii) a request was made for the assistance of an interpreter or any other request for assistance;
 - (ix) adjournment that is requested, the reason for the request and whether an adjournment was granted;
 - (x) details of any charge withdrawn or dismissed;
 - (xi) an assessment report or pre-sentence report ordered and provided;

- (c) such other information as the Chief Justice may from time to time require.

THIRD SCHEDULE

MATTERS TO BE RECORDED ON A CIVIL CASE FILE [Made under rule 19(3)]

1. A civil case file shall contain the following information:
 - (a) the name of the Court and the location (region and district);
 - (b) the nature of the application (the order being applied for);
 - (c) the number of the case;
 - (d) the name of the applicant/s and all parties to the proceedings, including the name of any party joined part way through the proceedings;
 - (e) date of application;
 - (f) details of the child in respect of whom a children's court matter has arisen;
 - (g) the name of the child's parents (if not the applicant and respondent);
 - (h) the place of the child's ordinary residence;
 - (i) the parents' place of residence if different to that of the child;
 - (j) the parents' contact details;
 - (k) copy of any written child protection plan previously formulated in respect of the child;
 - (l) copies of any subpoenas or summons issued;
 - (m) details of any intermediaries or support persons appointed;
 - (n) relevant court fees paid number and date of receipt;
 - (o) date of ruling/judgment;
 - (p) notice of appeal (if any) and the date of the appeal;
 - (q) the name of magistrate and details of the members of any panel;
 - (r) the name of any legal representative;
 - (s) the date of each hearing and the directions, orders or decisions taken;

- (t) a request for the assistance of an interpreter or any other request for assistance;
- (u) all requests for adjournments, the reason why and whether these were granted;
- (v) determinations, referrals, directions, orders or judgments; and
- (w) such other information as the Chief Justice may from time to time require or that the Registrar of the Court of Appeal considers appropriate.

Signed on this day of....., 2015

(OMAR OTHMAN MAKUNGU)
Chief Justice
Zanzibar