

CHAPTER 145

LEGITIMACY ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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RULES UNDER SECTION 4(7)

LEGITIMACY RULES, 1930

[G.N. 607/1933.]

1. These Rules may be cited as the Legitimacy Rules, 1930.
2. In these Rules, except where a contrary intention appears, “the Registrar” means the Registrar of the High Court or a district or deputy registrar.
3. An application for legitimation shall be made by petition to the court entitled “In the matter of the Legitimacy Act and in the matter of an application for a declaration as to the legitimacy of (the person sought to be legitimated)”; the petitioner shall be the person applying for a declaration of legitimacy or in the case of an infant his or her parent or guardian or other person appointed by the court as guardian *ad litem*.
4. The petition shall be filed in the court in accordance so far as practicable with the practice relating to other petitions filed in the court.
5. The person applying for a declaration of legitimacy, or in the case of an infant his parent or guardian or guardian *ad litem*, shall be the petitioner, and the Attorney-General shall be the respondent.
6. Where an infant is petitioner by a guardian *ad litem*, the petition shall be served on the parent or parents of the infant if alive and procurable, or on the person or persons having the actual custody of the infant, but the judge may dispense with service on any of those persons and may order the petition to be served on any other person or persons.
7. Every petition, notice or document shall be served in the manner prescribed by the Civil Procedure Rules (Cap. 21, Sub. Leg) or any rules for the time being in force relating to civil procedure.
8. (1) The petition shall be verified by affidavit paragraph by paragraph.
(2) There shall be annexed to the affidavit copies of all certificates, consents and other documents proper for proving the allegations in the petition, and the affidavit shall contain a deposition as to the absence of collusion.
(3) The original certificates, consents and other documents shall be exhibited at the hearing of the petition.
9. (1) Evidence shall be by affidavit, unless the judge thinks proper to direct evidence to be given orally.
(2) In a case in which it is necessary to appoint a guardian *ad litem*, the application for appointment shall be in the form of a summons returnable in chambers, supported by affidavit, to which shall be annexed a copy of the petition.
(3) When the pleadings are in order, the Registrar shall, subject to the provisions of subsection (4) of section 4 of the Act, appoint a day for the hearing of the petition, and shall give notice to all parties of the day so appointed.
10. The judge may refuse to make a legitimacy order unless all parties attend before him, but he may dispense with the attendance of any party, and may direct that any of the parties shall attend separately and apart from the others.
11. If it appears that the petitioner or any person on his behalf has made a previous application under the Act and that the application has been refused, the court shall not make a legitimacy order unless satisfied that there has been a subsequent change in the circumstances.
12. All petitions under the Act shall be heard in chambers, unless the judge otherwise orders.

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13. Every legitimacy order shall be drawn up by the Registrar and served on the Registrar-General within seven days of its date, either by exhibiting to that officer the original order or by leaving with him a certified copy thereof under the seal of the court and the signature of the Registrar, or by forwarding a certified copy by registered post.

14. The judge may make such orders as to costs as he thinks fit, and may direct that all the costs of a petition under the Act shall be borne and paid by the petitioner, or where the petitioner is an infant by his parent or guardian or such other person as may apply on his behalf for an order under the Act.

15. The court fees payable on proceedings under the Act shall be as follows—

On filing a petition for a legitimacy order: Sh. 60.

Other fees shall be the same as those payable under the rules of court for the time being in force relating to civil matters in the High Court.

REGULATIONS UNDER PARAGRAPH 6 OF THE SCHEDULE

LEGITIMACY REGULATIONS, 1961

[L.N. 364/1960, L.N. 585/1961.]

1. These Regulations may be cited as the Legitimacy Regulations.
2. In these Regulations—

“**informant**” means the parents of a legitimated person or, in cases where re-registration may lawfully be effected on information furnished by one parent, that parent, and, where one of the parents is dead, the surviving parent, and, where both parents are dead, the legitimated person or his guardian;

“**registrar**” means the registrar appointed under the Births and Deaths Registration Act (Cap. 149) for the area in which the legitimated person was born;

“**Registrar-General**” includes a deputy or assistant registrar-general.
3. Every application for re-registration shall be in form L.O.1 in the Schedule, and shall be signed by the informant and delivered to the Registrar-General.
4. Every application for re-registration shall be accompanied by certified copies of the entries in the registers maintained under the Births and Deaths Registration Act (Cap. 149) and the Marriage Act (Cap. 150) relating to the birth of the legitimated person and the marriage of his parents respectively.
5. The Registrar-General may require the informant to produce such evidence by way of statutory declaration or otherwise as he may think necessary to establish the domicile of the father of the legitimated person at the time of his marriage to the mother of the legitimated person.
6. If the Registrar-General is satisfied that the person to whom the application for re-registration relates was legitimated under the Act by the marriage of his parents and that the birth may be re-registered under the Act, he shall—
 - (a) send to the registrar an authority in writing for the re-registration of the birth of that person; and
 - (b) direct the informant (or where the term includes both parents such one of them as he may specify) to attend personally at the office of the registrar and to sign the register in the presence of the registrar.
7. The registrar shall cause entries of the birth of the legitimated person to be made in the register of births in accordance with the requirements of the Births and Deaths Registration Act (Cap. 149) and shall sign the register, adding after his signature the words “By authority of the Registrar-General”.
8. (1) Where the Registrar-General is satisfied that the informant is unable to attend personally at the office of the registrar, he may require the informant to make a statutory declaration in form L.O.2 in the Schedule.

(2) On receipt of the statutory declaration, the Registrar-General may authorize the registrar to re-register the birth without requiring the signature of the register by the informant.
9. Whenever a birth is re-registered under the Act, the registrar shall endorse the original entry relating to the birth with the words “Re-registered under the Legitimacy Act” and add the date of re-registration.
10. If application is made to the Registrar-General for a certified copy of or extract from the original entry relating to a birth which has been re-registered, it shall be in his absolute discretion whether or not to supply such copy or extract.

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11. Except where, by virtue of paragraph 5 of the Schedule to the Act, no fee is chargeable, a fee of Sh.10 shall be paid for re-registration of a birth.

SCHEDULE

FORM L.O.1

(r. 3)

APPLICATION FOR RE-REGISTRATION

To: The Registrar-General.

We [I], being [one of] the parents of a person legitimated by the Legitimacy Act, hereby apply that his [her] birth be re-registered. Copies of the entries in the register of births relating to his [her] birth and of the entry in the register of marriages relating to the marriage of his [her] parents are attached.

Dated this day of, 20.....

(Signed)

Informant

FORM L.O.2

(r. 8)

STATUTORY DECLARATION

I, of

do solemnly and sincerely declare as follows—

- 1. That I am the father [mother] of and that is his [her] mother [father].
2. That the said was born on the day of, 20, at

SCHEDULE, FORM L.O.2—*continued*

5. I make this declaration conscientiously believing the same to be true [and according to the Oaths and Statutory Declaration Act (Cap. 15)].*

Declared at }
this day of, 20 }

Before me

* These words to be omitted if the declaration is made outside Kenya.