

**NO. 49 OF 2013**

**THE MATRIMONIAL PROPERTY ACT**

SUBSIDIARY LEGISLATION

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*List of Subsidiary Legislation*

*Page*

1. The Matrimonial Property Rules.....	3
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**THE MATRIMONIAL PROPERTY RULES**

ARRANGEMENT OF RULES

PART I – PRELIMINARY

*Rule*

1. Citation
2. Interpretation
3. Objectives of the Rules

PART II – COMMENCEMENT OF PROCEEDINGS

4. Persons by whom proceedings may be instituted
5. When applications may be made
6. Court to which application may be made
7. Institution of claim

PART III – SERVICE OF SUMMONSES AND OTHER COURT PROCESSES

8. Modes of service
9. Service out of Kenya
10. Proof of service
11. Memorandum of appearance

PART IV – GROUNDS OF OPPOSITION, REPLYING  
AFFIDAVIT, COUNTERCLAIMS AND SET-OFF

12. Filing of grounds of opposition and replying affidavit
13. Admission of claim
14. Counterclaim or set-off
15. Form of counterclaim as a separate action
16. Response to counterclaim or set-off
17. Close of pleadings
18. Filing of pleadings out of time
19. Amendment of pleadings
20. Interlocutory applications
21. Discretion of court as to orders

PART V – DIRECTIONS, PROCEDURE AT HEARING,  
EVIDENCE, POWERS OF COURT, ORDERS AND DECREES

22. Alternative dispute resolution
23. Claim in ongoing matrimonial proceedings
24. Application of Order 37, Rules 16 to 19 of the Civil Procedure Rules (sub. leg)
25. Consolidation or transfer of proceedings
26. Default of appearance, non-attendance and want of prosecution
27. Right of respondent to be heard without filing reply to summons
28. Hearing to be on a day-to-day basis
29. Failure to adduce evidence
30. Powers of the court
31. Execution of orders and decrees

PART VI – REVIEWS AND APPEALS

32. Review
33. Appeals

PART VII – GENERAL PROVISIONS

*Matrimonial Property*

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[Subsidiary]

- 34. Costs
- 35. Forms
- 36. Transitional provisions

SCHEDULES

SCHEDULE —

FORMS

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**THE MATRIMONIAL PROPERTY RULES**

[Legal Notice 137 of 2022]

**PART I – PRELIMINARY****1. Citation**

These Rules may be cited as the Matrimonial Property Rules.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

"Registrar" has the meaning assigned to it under the High Court (Organisation and Administration) Act (Cap. 8C); and

"Summons" means an Originating Summons filed under the Act.

**3. Objectives of the Rules**

(1) The objective of these Rules is to facilitate the just, expeditious, proportionate and affordable resolution of disputes relating to matrimonial property.

(2) A court to which an application is made under the Act shall, in the exercise of its powers or interpretation of any of the provisions of the Act, seek to give effect to the spirit and principles of the Constitution.

**PART II – COMMENCEMENT OF PROCEEDINGS****4. Persons by whom proceedings may be instituted**

Any person, including the following persons, may institute civil proceedings claiming any right or relief in relation to matrimonial property—

- (a) a spouse;
- (b) any person against whom a spouse has made a conflicting claim in respect of property; and
- (c) a trustee in bankruptcy, an executor under a will or other testamentary grant, an administrator or a personal representative, of the estate of a spouse for an order or declaration relating to the status, ownership, vesting, or possession of any specific property by, or for the beneficial interest of, a spouse or former spouse.

**5. When applications may be made**

(1) A spouse or former spouse may apply to a court for the determination or declaration of any right or claim over matrimonial property in accordance with rule 7—

- (a) at any time after the dissolution of the marriage by a decree of a court given in final determination of proceedings under the Marriage Act (Cap. 150);
- (b) as part of the relief sought in a matrimonial cause under section 17 of the Marriage Act (Cap. 150), where the applicant is seeking a declaration of rights to any property that is contested between the applicant and the applicant's spouse or former spouse; or
- (c) with respect to the persons specified in rule 4(b) and (c), during the subsistence of a marriage.

(2) An application under paragraph (1)(a) shall be filed within twelve months from the date on which the decree absolute is given.

(3) Without prejudice to the generality of paragraph (2), a court may, for good cause, extend the time for making an application under paragraph (1)(a) after hearing —

- (a) the applicant; and

[Subsidiary]

- (b) any other person interested in the property who is likely to be affected by the order sought and who the Court considers as having a right to be heard.

(4) An application made in a matrimonial cause under section 17 of the Marriage Act (Cap. 150) as contemplated in paragraph 1(b), shall be in accordance with the Matrimonial Proceedings Rules (sub. leg).

## **6. Court to which application may be made**

(1) An application to enforce a claim relating to matrimonial property may be made in any proceedings under the Act—

- (a) to the High Court in any case where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate's court; or
- (b) to a magistrate's court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.

(2) Where the spouses profess the Muslim faith, the court to which an application is made may, on the request of the parties, be guided by Muslim law.

## **7. Institution of claim**

(1) Where, under section 17, a person seeks a declaration of any right to property that is contested between that person and a spouse or a former spouse in a petition made to a court for dissolution of the marriage under the Marriage Act (Cap. 150), the application may be made as part of the relief sought in the matrimonial cause in accordance with the Matrimonial Proceedings Rules (sub. leg).

(2) Where a spouse seeks to assert a right of claim or interest after the dissolution of the marriage by a decree of a court given in final determination of proceedings under the Marriage Act (Cap. 150), the claim shall be made by way of Originating Summons, returnable before a judge or magistrate, in Form MP1 as set out in the Schedule, setting out—

- (a) the parties to the proceedings;
- (b) the parties' respective postal and physical addresses for service, email addresses and telephone contacts, if any;
- (c) the date on which the marriage was dissolved;
- (d) the issues or questions to be determined by the court, set out in a concise manner with sufficient particulars to enable the court to identify the issues in contention and the cause of action;
- (e) the property rights or beneficial interests asserted in the claim; and
- (f) the relief sought.

(3) Where a claim relating to matrimonial property is made during the subsistence of a marriage by any of the persons specified in rule 4 (b) and (c), the claim shall be made, with the necessary modifications, by way of Originating Summons in Form No. MP1 as set out in the Schedule, setting out—

- (a) the matters specified in paragraphs (2)(a), (c), (d), (e) and (f); and
- (b) the grounds on which the claim is made.

(4) A claim made under these Rules shall be supported by an affidavit stating—

- (a) the grounds on which the claim is made;
- (b) whether there has been any previous claim relating to the matrimonial property in question, and whether any attempts have been made to reconcile the parties;
- (c) in the case of a claim for a transfer or settlement of assets—
  - (i) the assets in respect of which the claim is made and the liabilities, if any, attaching thereto; and
  - (ii) the assets to which the party against whom the claim is made is entitled, either in possession or reversion;

- (d) in the case of a claim for an order to vary an agreement made before their marriage setting out their property rights, or an order of a court made in determination of their property rights—
  - (i) all settlements, whether made before or after their marriage, made on the spouses; and
  - (ii) the funds brought into settlement by each spouse;
- (e) in the case of a claim for cancellation of a transfer or other disposition—
  - (i) the assets to which the disposition relates;
  - (ii) the persons in whose favour the disposition is alleged to have been made; and
  - (iii) in the case of a disposition alleged to have been made by way of a settlement, the trustees and the beneficiaries of the settlement.

(5) Where the proceedings for the division of matrimonial property or cancellation of a disposition relates to immovable property, the affidavit in support shall, in addition to containing any of the particulars specified in paragraph (4)—

- (a) state whether the title to the immovable property is registered or unregistered and, if registered, the particulars of registration;
- (b) give particulars, so far as is known to the applicant, of any charge or mortgage of the property and any interest therein; and
- (c) give particulars of the registered owner or owners of the property and, if there is more than one owner, the manner in which the property is held, whether as joint tenants or tenants-in-common.

(6) In addition to the matters specified in paragraphs (4) and (5), the affidavit in support of the Summons shall be accompanied by—

- (a) a duly authenticated bundle of evidential documents sought to be relied upon at the hearing of the claim;
- (b) a list of witnesses, if any; and
- (c) witness statements, if any.

(7) Notwithstanding the provisions of paragraph (6), the claimant may file and serve on the respondent additional list of witnesses, witness statements and bundle of evidential documents within seven days of service of the response.

(8) In the absence of any written statement made by the applicant pursuant to paragraph (6)(c), the claimant's affidavit in support of the summons may be adopted as the claimant's witness statement.

### PART III – SERVICE OF SUMMONSES AND OTHER COURT PROCESSES

#### **8. Modes of service**

(1) Whenever it is reasonably practicable, service of the summons and notice of appearance shall be made on the respondent in person.

(2) The notice of appearance shall be in Form MP2 as set out in the Schedule.

(3) Where the respondent has appointed an agent with power to accept service on his or her behalf, and has notified the applicant of that fact, service on the agent shall be sufficient.

(4) Service may be made on an advocate who has instructions to accept service on behalf of the respondent and enter an appearance.

(5) Service of the summons and notice of appearance on the respondent in person is valid only if it is effected by an advocate or a duly authorised process server.

(6) Notwithstanding the provisions of paragraphs (1), (3), (4) and (5), service of the summons and other court process may, with leave of the Court, be served on a party to the proceeding by—

- (a) registered courier services;

[Subsidiary]

- (b) electronic mail services (E-mail); or
- (c) mobile-enabled messaging applications.

(7) An application for substituted service shall be made in accordance with Order 5 Rule 17 of the Civil Procedure Rules (sub. leg) and, except as otherwise provided in these Rules, Order 5 of the Civil Procedure Rules (sub. leg) shall apply to this part with necessary modifications.

### **9. Service out of Kenya**

(1) Service out of Kenya of a summons or notice of appearance may be allowed by a court whenever it is shown to the satisfaction of the court that the respondent or any other person not resident in Kenya and that it is a proper case for service out of Kenya.

(2) An application for leave to serve the summons or other process relating to proceedings under the Act out of Kenya shall be by notice of motion supported by affidavit stating—

- (a) the place or country where the respondent or the person ordinarily resides or may be found; and
- (b) the grounds on which the application is made.

(3) An order granting leave to effect service out of Kenya shall—

- (a) specify the time within which service shall be effected;
- (b) specify the mode of service and the form of proof of such service; and
- (c) limit the time within which, after service of the summons or notice of appearance, the respondent or the person is required to enter an appearance, having regard to the particular place or country at which the summons, notice or other process is served.

(4) Where leave is granted under this rule to serve out of Kenya, the summons, notice or other process to which the order relates shall be served in such manner and within such time as the court may direct.

### **10. Proof of service**

Except as otherwise directed by the court, the summons shall not proceed to hearing unless—

- (a) the respondent has entered an appearance; or
- (b) the claimant has filed an affidavit in proof of service in Form MP3 as set out in the Schedule sworn by the process server deposing to the fact that—
  - (i) the respondent was duly served in person;
  - (ii) service was effected on the respondent's advocate or other authorised agent; or
  - (iii) in the case of substituted service or service out of Kenya, such service was effected in accordance with the order of the court.

### **11. Memorandum of appearance**

On being served with the summons and notice of appearance in accordance with these Rules, the respondent may enter an appearance in Form MP4 as set out in the Schedule within fourteen days after service.

#### PART IV – GROUNDS OF OPPOSITION, REPLYING AFFIDAVIT, COUNTERCLAIMS AND SET-OFF

### **12. Filing of grounds of opposition and replying affidavit**

(1) The respondent may, within fourteen days after appearance, file his or her response setting out the grounds on which he or she opposes the claim, and containing statements of the facts or points of law relied upon, other than a bare denial of the facts stated in the summons.



(2) The response shall contain any one or more of the following documents—

- (a) a notice of preliminary objection on points of law; or
- (b) a replying affidavit—
  - (i) verifying the matters of which the deponent has personal knowledge;
  - (ii) disclosing relevant matters of which the deponent is informed, and the source of such information; and
  - (iii) deposing as to belief in the truth of the other facts alleged in the response.

(3) In addition to the grounds of opposition or affidavit in reply to the Summons, the respondent may, file and serve on the claimant the following documents—

- (a) a list of witnesses, if any;
- (b) witness statements, if any; and
- (c) duly authenticated copies of evidential documents to be relied upon at the hearing.

(4) Without prejudice to the generality of paragraph (3), the respondent may file and serve on the claimant additional list of witnesses, witness statements and bundle of evidential documents within seven days of service of the claimant's additional documents.

(5) The respondent shall serve on the claimant the documents, if any, filed in response to the summons in accordance with Part III.

### **13. Admission of claim**

The respondent may, at any stage in the proceeding, admit the whole or any part of the claim and state, in a precise manner, the particulars of the claim admitted.

### **14. Counterclaim or set-off**

(1) Where the respondent wishes to plead a set-off or counterclaim, they shall set out in a concise manner, in their affidavit in the reply to the summons, the material particulars on which the set-off or counterclaim is made.

(2) Where the respondent pleads a counterclaim or set-off in response to the summons, they shall file and serve on the applicant an affidavit—

- (a) disclosing the nature and material particulars of the counterclaim or set-off;
- (b) verifying the facts relied upon in support of the counterclaim or set-off, and of which the respondent has personal knowledge;
- (c) deposing as to belief in the truth of the other facts relating to the counterclaim or set-off; and
- (d) setting out the relief sought in relation to the counterclaim or set-off.

### **15. Form of counterclaim as a separate action**

(1) Where the respondent has a counterclaim in respect of which a separate application may be made, they may file a separate claim in accordance with rule 7.

(2) Where the respondent files a counterclaim pursuant to this rule, they may, in addition to the affidavit in reply to the claim, file an affidavit in support of their counterclaim under this rule.

(3) The respondent's affidavit in support of their counterclaim shall set out in a concise manner, the material particulars on which the counterclaim is made, including, with necessary modifications, the particulars set out in rule 7(4).

(4) Where the respondent files a separate claim under this rule, they shall serve the process in that proceeding on the claimant in accordance with Part III, whereupon rules 11, 12 and 13 shall apply with necessary modifications as regards to appearance, reply or admission.

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**16. Response to counterclaim or set-off**

A claimant who is served with an affidavit in reply to their summons containing a counterclaim or set-off, or with a separate claim containing a counterclaim, may file and serve on the respondent an affidavit in reply to the counterclaim within fourteen days from the date of service.

**17. Close of pleadings**

Pleadings close on filing of the reply to a summons or to a counterclaim, if any, and no subsequent pleading or further affidavits may be filed except with leave of the court on application by a party to the proceeding.

**18. Filing of pleadings out of time**

(1) No party may file any pleading or other process out of time except with leave of the court on application for extension of time for that purpose, and on such terms as the court may think just.

(2) An application for leave to file pleadings or other process out of time may be made by way of notice of motion supported by affidavit, or orally at any stage in the proceedings.

**19. Amendment of pleadings**

(1) The claimant may amend the summons and serve on the respondent the amended summons without leave at any time before the respondent has filed the reply to the summons.

(2) Where the respondent has filed a reply to the summons, the claimant may amend the summons or other pleading only with the leave of the court on such terms as the court may direct, including terms as to costs and the time within which the amended summons shall be filed and served.

(3) Paragraphs (1) and (2) shall apply, with necessary modifications, to a counterclaim filed as a separate application pursuant to rule 16.

(4) An application for leave to amend pleadings under this rule may be made by way of notice of motion supported by affidavit or orally at any stage in the proceedings.

**20. Interlocutory applications**

(1) Interlocutory applications under these Rules shall be made by way of notice of motion.

(2) A party to the proceedings may, before or after commencement of the proceedings under these Rules, but before the final determination of the respective claims, apply for temporary injunctions or other interlocutory orders in accordance with Order 40 of the Civil Procedure Rules (sub. leg), and the court may grant the orders sought on such terms or conditions as may be just in the circumstances.

(3) The court may, at any time it thinks fit, extend, vary, cancel, or discharge any interlocutory order made under paragraph (2), and may vary any terms or conditions upon or subject to which such order has been made.

**21. Discretion of court as to orders**

Where application is made to a court for any order under the Act or these Rules, the court may, subject to the provisions of the Act, make any other order which could have been made if application for that other order had been made when the first-mentioned application was made.

PART V – DIRECTIONS, PROCEDURE AT HEARING,  
EVIDENCE, POWERS OF COURT, ORDERS AND DECREES

**22. Alternative dispute resolution**

(1) The court to which a claim is made may, at any stage in the proceedings, but before final orders in determination of the summons, refer any or all of the issues in dispute to

mediation in accordance with the practice and procedure for the time being in force for the administration of court-annexed mediation.

(2) Any mediated settlement reached between the parties in respect of all or any of the issues in dispute shall constitute part of the record in the proceedings and adopted as an order of the court.

(3) If the parties fail to reach agreement on any of the issues referred for amicable settlement under this rule, the court shall proceed to hear and determine the remaining issues in accordance with these Rules.

### **23. Claim in ongoing matrimonial proceedings**

Where a claim is made pursuant to section 17 of the Act as part of the relief sought in a petition filed in accordance with the Matrimonial Proceedings Rules (sub. leg), Part V of those Rules shall apply in all respects, including the procedure relating to close of pleadings, the requirement as to certificate of compliance, hearing and decrees.

### **24. Application of Order 37, Rules 16 to 19 of the Civil Procedure Rules (sub. leg)**

Where a summons is filed pursuant to rule 5(1)(a) or (c), Order 37 Rules 16 to 19, both inclusive, of the Civil Procedure Rules (sub. leg), shall apply with respect, but not limited, to -

- (a) directions by a judge or magistrate;
- (b) procedure for appearance and attendance before a judge or magistrate;
- (c) evidence and directions upon hearing of summons; and
- (d) powers of court upon hearing of summons.

### **25. Consolidation or transfer of proceedings**

(1) Without prejudice to the generality of rule 24, the directions contemplated in paragraph (a) of that rule may include an order to consolidate claims made by the spouses in different courts of concurrent jurisdiction.

(2) Where a claim is filed in the High Court, the court may of its own motion or on the application of either spouse or a party, and for good cause shown to the satisfaction of the court, order that the claim be transferred and heard in a particular place, including a magistrate's court of competent jurisdiction.

(3) When making an order under paragraph (2), the court shall have regard to—

- (a) the convenience of the parties and of their witnesses and to the date on which such trial is to take place; and
- (b) all other circumstances of the case.

(4) Where a claim which may be instituted in any one of two or more magistrates' courts is instituted in one of those courts, the respondent after notice to the claimant, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the claim transferred to another court, and the High Court shall, on hearing the parties, determine in which of the several courts of competent jurisdiction the claim shall proceed.

### **26. Default of appearance, non-attendance and want of prosecution**

(1) In any case where the respondent fails to enter an appearance in accordance with these rules, the provisions of Order 12 of the Civil Procedure Rules (sub. leg), shall apply with necessary modifications.

(2) In relation to a claim for relief in a petition filed by a spouse in accordance with the Matrimonial Proceedings Rules (sub. leg), rule 18 of those Rules shall apply in respect of procedure for setting down the petition for hearing, and the consequences of non-attendance at hearing.

(3) Where summons are filed pursuant to rule 5(1)(a) or (c), Rules 2 and 3 of Order 17 of the Civil Procedure Rules (sub. leg) shall apply with respect to the consequences of want of prosecution.

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**27. Right of respondent to be heard without filing reply to summons**

(1) Notwithstanding anything in these Rules, a respondent may, without filing a reply to the summons, be heard in respect of any question of law arising in a claim if the respondent has filed a memorandum of appearance.

(2) In addition to the right to be heard pursuant to paragraph (1), the respondent shall have the right to—

- (a) cross-examine witnesses on the evidence adduced in support of the summons; and
- (b) make oral or written submissions on questions of law or costs.

**28. Hearing to be on a day-to-day basis**

(1) Where a summons has been set down for hearing, it shall not be adjourned unless the party applying for adjournment satisfies the court that it is just to grant the adjournment.

(2) If the court grants an adjournment, it shall either fix a date for further hearing or give such directions as it considers appropriate, with or without any orders as to costs.

**29. Failure to adduce evidence**

Where any party to a summons to whom time has been granted fails to produce their evidence, or to call his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to determine the claim.

**30. Powers of the court**

(1) Upon hearing the summons or any application made in the proceeding, the court may make any one or more of the following—

- (a) an order for the sale of the matrimonial property or any part of the matrimonial property, and for the division, vesting, or settlement of the proceeds of sale;
- (b) in the case of property owned by the spouses jointly, an order vesting the property in them in common in such shares as the court considers just;
- (c) an order vesting the matrimonial property, or any part of the matrimonial property, in either spouse;
- (d) an order postponing the vesting of any share in the matrimonial property, or any part of such share, until a future date specified in the order or until the occurrence of a future event specified in the order;
- (e) an order for the partition or vesting of any matrimonial property;
- (f) in the case of matrimonial property owned by one spouse, an order vesting the property in the spouses jointly or in common in shares that the court considers just;
- (g) in the case of matrimonial property owned by the spouses jointly or in common, an order vesting the matrimonial property in one of them;
- (h) an order for the payment of a sum of money by one spouse to the other;
- (i) an order for the transfer of land, or of an interest in land, including a lease, licence or tenancy;
- (j) an occupation order granting to such spouse for such period or periods and on such terms and subject to such conditions as the court thinks fit, the right personally, and to the exclusion of the other spouse, to occupy the matrimonial home or any other premises forming part of the matrimonial property:

Provided that, in making the order under this paragraph, the court may have regard to the interest of any minor or dependent children of the marriage;

- (k) an order vesting in either spouse the tenancy of any dwelling house:

Provided that the court shall not make an order under this paragraph unless—

*Matrimonial Property*

[Subsidiary]

- (i) the spouse against whom the order is made is or was the sole tenant of the dwelling house, or is or was a tenant holding jointly or in common with the applicant;
  - (ii) the other spouse is a tenant of the dwelling house; and
  - (iii) either spouse is residing in the dwelling house;
- (l) an order granting, to the person in whose favour an order is or has been made under paragraphs (j) or (k), the use of all or any of the furniture, household appliances and household effects in the matrimonial home or other premises to which the occupation order relates, or the dwelling house to which the tenancy order relates;
- (m) an order vesting the rights and obligations under a hire purchase agreement or conditional sale agreement, or under an agreement to hire or lease, in either spouse and any such order shall have effect notwithstanding anything in any agreement;
- (n) where a claim relates to a policy of assurance or insurance, an order—
- (i) vesting the policy in either spouse subject to such conditions, including the payment of premiums by either spouse, as it thinks fit;
  - (ii) directing the payment of a proportion of the surrender or paid-up value from one spouse to the other; or
  - (iii) make such other order as it thinks just;
- (o) an order for the transfer of shares or stock, or of mortgages, charges, debentures, or other securities, or of the title or documents of title of any property;
- (p) an order for the transfer of rights or obligations under an instrument or contract, and an order of this kind has effect regardless of any provision or term of the instrument or contract;
- (q) an order varying the terms of any trust or settlement, other than a trust under a will or other testamentary disposition;
- (r) in the case of money or other property that is part of the separate property of one spouse, an order requiring that spouse to pay the money, or transfer the other property, to the other; or
- (s) such other orders or directions as the court deems just.

(2) Where under any order made under these Rules one spouse is or may become liable to pay to the other a sum of money, a court may, upon hearing the parties, direct that it shall be paid either in one sum or in instalments and either with or without security and otherwise in such manner and subject to such conditions, including a condition requiring the payment of interest, as the court deems fit.

(3) Where a court makes an order for the sale of any matrimonial property and for the division, application, or settlement of the proceeds, the court may appoint a person to sell the property and divide, apply or settle the proceeds accordingly, and the execution of any instruments by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the property is vested.

(4) In exercise of the powers under this rule, the court may make an order for valuation of the matrimonial property and give such other directions as it may deem appropriate.

(5) Where a court appoints a person, to sell any property and to divide, apply, and settle the proceeds or execute any necessary document or perform any other function the court may make provision in that order for the payment of remuneration to that person and for the reimbursement of their expenses.

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[Subsidiary]

### **31. Execution of orders and decrees**

Subject to the provisions of these Rules and any other written law, an order or decree of a court may be enforced, with necessary modifications, in accordance with the provisions of Order 22 of the Civil Procedure Rules (sub. leg).

#### **PART VI – REVIEWS AND APPEALS**

### **32. Review**

(1) A court may, on application by any party considering themselves aggrieved by its decree or order from which an appeal is allowed, but from which no appeal has been preferred, review its judgment, decree or order on such terms as the court thinks just.

(2) An application under paragraph (1) shall be made without unreasonable delay, supported by an affidavit, to the court which passed the decree or made the order and shall be served upon the corresponding party in accordance with the provisions of Part III.

(3) A party served with an application made under this rule may, within fourteen days of service, file their grounds of opposition or affidavit in reply to the application.

(4) An application under this rule may be made on the following grounds—

- (a) on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within their knowledge or could not be produced by them at the time when the decree was passed or the order made;
- (b) on account of some mistake or error apparent on the face of the record; or
- (c) for any other sufficient reason.

(5) An application for review of a decree or order of a court on the grounds that there exists a clerical or arithmetic mistake or error apparent on the face of the decree or order shall be made only to the judge or magistrate who passed the decree or made the order sought to be reviewed, unless otherwise directed.

(6) Upon hearing the application, the court may—

- (a) dismiss the application; or
- (b) grant the application and give such orders or directions as it thinks just.

(7) A court shall not entertain any application to review an order made on an application for review of a decree or order passed or made on a review.

### **33. Appeals**

(1) A party who is dissatisfied with an order or decision of a magistrates' court may appeal to the High Court as of right within thirty days from the date of the order or decision complained of.

(2) An appeal lodged pursuant to paragraph (1) shall be in accordance with Order 42 of the Civil Procedure Rules (sub. leg).

(3) An appeal from the High Court to the Court of Appeal shall be in accordance with Part IV of the Court of Appeal Rules (sub. leg).

#### **PART VII – GENERAL PROVISIONS**

### **34. Costs**

Notwithstanding anything contained in these Rules or any other written law, a court may make such orders as to costs as may be just in the circumstances.

### **35. Forms**

(1) The forms to be used in proceedings under these Rules are those set out in Schedule with such modifications as may be required to meet the circumstances of each case.

(2) Failure to strictly comply with the forms prescribed by these Rules does not of itself prejudice or invalidate the proceedings.

- (3) Where no specific form is prescribed by these Rules for any particular purpose, the parties may devise an appropriate form using, as a guide—
- (a) the forms prescribed by these Rules; or
  - (b) the forms prescribed under the Civil Procedure Rules (sub. leg).

**36. Transitional provisions**

In all proceedings pending in court at the time of the coming into force of these Rules, the provisions of these Rules shall thereafter apply, but without prejudice to the validity of anything previously done:

Provided that—

- (a) if and so far as it is impracticable in any such proceedings to apply the provisions of these Rules, the practice and procedure obtaining shall be followed; and
- (b) in any case of difficulty or doubt, the Judge, Registrar or Magistrate, as the case may be, may informally give directions as to the procedure to be adopted.

SCHEDULE

FORMS

Form MP 1 r. 7  
 REPUBLIC OF KENYA  
 IN THE \_\_\_\_\_ COURT OF KENYA  
 AT .....  
 MATRIMONIAL PROPERTY CAUSE NO \_\_\_\_\_ OF.....  
 IN THE MATTER OF  
 BETWEEN

AND

ORIGINATING SUMMONS

LET ..... of ..... within fourteen (14) days after service of this summons, inclusive of the day of such service upon him/her cause an appearance to be entered to this summons, which is issued upon the claim of ..... for ORDERS:

- 1.
- 2.
- 3.

PARTICULARS

(a) the parties to the Claim

- i.
- ii.

(b) the parties' contacts

Claimant —*Postal addressphysical addressemail addresstelephone contacts*  
 —*Landlinemobile phone* Respondent(s) *Postal addressphysical addressemail addresstelephone contacts* —*Landlinemobile phone*

(c) the date on which the marriage was dissolved -.....

(d) the issues or questions falling to be determined by the court-

(e) the property rights or beneficial interests asserted in the claim -

WHICH CLAIM is supported by the affidavit of ..... and premised on the grounds provided in the attached affidavit and further grounds to be adduced at the hearing of this claim..

Matrimonial Property

[Subsidiary]

Dated at ..... this..... day ..... 20 .....

Signature

DRAWN & FILED BY

Name

Postal address

Physical address

Email address

Telephone contacts: Landline..... Mobile phone .....

TO BE SERVED UPON

Name

Postal address

Physical address

Email address

Telephone contacts: Landline ..... Mobile phone .....

"If any party served does not appear at the time and place above-mentioned such order will be made and proceedings taken as the court may think just and expedient."

Form MP 2

r. 8

REPUBLIC OF KENYA

IN THE \_\_\_\_\_ COURT OF KENYA AT .....

MATRIMONIAL PROPERTY CAUSE NO \_\_\_\_\_ OF .....

NOTICE OF APPEARANCE

In the ..... Court of Kenya

at .....

TAKE NOTICE that you are required, within fourteen (14) days after service hereof upon you, inclusive of the day of such service, to enter an appearance either in person or by your advocate at the court registry at ....., should you think fit so to do and within fourteen (14) days thereafter reply to this Originating Summons, and that, in default of your so doing, the Court will proceed to hear the claim and pronounce judgment, your absence notwithstanding

The Originating Summons are filed by ..... (name of Claimant and/or Advocate and address)

Dated at ..... (Court claim is filed) on the ..... day of ....., 20 .....

Deputy Registrar/Magistrate

..... Law Courts

This notice is issued at ..... this ... day of ....., 20.....

Form MP 3

(r. 10)

REPUBLIC OF KENYA

IN THE \_\_\_\_\_ COURT OF KENYA AT .....

MATRIMONIAL PROPERTY CAUSE NO \_\_\_\_\_ OF.....

AFFIDAVIT OF SERVICE

I ..... of ..... an advocate/a process server (1) of the court make oath and say as follows—

(1) On ....., 20 ..... at ..... (time) I served the summons in this case on at ..... (place) by tendering a copy thereof to him/ her requiring a Signature on the original. He/She signed/refused (1) to sign



Matrimonial Property

[Subsidiary]

the summons. He/she was personally known to me/was identified (1) to me by ..... and admitted that he/she was the defendant  
 (2) Not being able to find the defendant on ....., 20 ..... at ..... (time) I served the summons on an adult member of the family of the defendant who is residing with him/her.  
 (3) Not being able to find the defendant or any person whom service could be made, on ....., 20 ..... (time) I affixed a copy of the summons to the outer door of .....being the house in which he/she ordinarily resides/carries business/personally works for gain(1). I was accompanied by who identified the house to me.  
 (4) Otherwise specify the manner in which the summons was served).  
 SWORN at ..... by the said )  
 ..... )

DEPONENT

This ..... day of ..... 20 ..... )  
 BEFORE ME: )  
 A COMMISSIONER FOR OATHS )  
 DRAWN & FILED BY )  
 .....

Form MP 4 r. 11

REPUBLIC OF KENYA  
 IN THE ..... COURT OF KENYA AT .....  
 MATRIMONIAL PROPERTY CAUSE NO ..... OF .....  
 ..... (insert name of filing party)

CLAIMANT  
 VERSUS  
 ..... (name of party entering appearance) RESPONDENT

MEMORANDUM OF APPEARANCE

PLEASE ENTER an APPEARANCE for .....the Respondent herein whose address of service for the purpose of this suit shall be .....  
 Dated at ..... this ..... day of ..... 20 .....

(Signed)

ADVOCATES FOR THE RESPONDENT/RESPONDENT (1)

DRAWN & FILED BY

Name  
 Postal address  
 Physical address  
 Email address  
 Telephone contacts: Landline..... Mobile phone .....

TO BE SERVED UPON

Name  
 Postal address  
 Physical address  
 Email address  
 Telephone contacts: Landline ..... Mobile phone .....

\*Notes---

I. Delete which is not applicable