

Registration of Customary Marriages in Kenya

A customary marriage is one that is conducted in accordance with the customs of communities of either both or one of the parties to the marriage. Registration of customary marriages in Kenya is governed by the Marriage (Customary Marriage) Rules, 2017, under the Marriage Act. These rules were effected by Gazette Notice Number 5345 issued on the 9th June 2017. The Gazette Notice required that all customary marriages be registered from the 1st of August 2017. There are two sets of customary marriages i.e. existing customary marriages conducted before 1st August 2017 and new customary marriages conducted after 1st August 2017.

1. Existing customary marriages

Parties who were already married prior to the gazette notice are only required to register the marriage and be furnished with a marriage certificate. Both parties have to appear before the Registrar, who conducts an interview to ascertain the legality of the marriage and whether both parties are consenting adults. An application for registration is made in a prescribed form and is accompanied by a letter of confirmation from the Chief of the area where the marriage ceremony took

place. The form includes a declaration that neither of the parties is underage, that they freely consented to the marriage, that none of them was in a subsisting civil, Christian, Hindu or Islamic marriage and that there is no impediment prohibiting the marriage. The requisite fees for registration of an existing customary marriage is Kshs. 3900. The Registrar then issues a Certificate of Customary Marriage under the prescribed form, after conducting any further investigations where necessary. Both parties have to make a physical appearance before the Registrar and cannot be represented.

2. New customary marriages

Parties who wish to contract customary marriages after the commencement date, are required to notify the Registrar of their status as husband and wife within three (3) months of completion of the relevant customary rites. The notification is made in a prescribed form setting out particulars such as the community under whose customary law the marriage was conducted, the date of the marriage, the location at which the customary marriage was conducted, the particulars of the couples parents as well as the their occupation. Similarly, parties have to appear before the Registrar in person together with their witnesses who are required to make a declaration. The notice is to be accompanied by passport size photos of the parties and copies of the witnesses' national identity cards.



Display of the notice

The Registrar then displays the notice in a conspicuous place within the premises, for a period of fourteen (14) days. This is meant to invite any person with an objection to the proposed registration, to notify the Registrar and provide grounds of objection within that period.

Issuance of an Acknowledgement Certificate

After the expiry of fourteen (14) days, if no objection has been filed, or where any objections filed have been considered and dealt with by the Registrar, the Registrar issues to the parties an Acknowledgement Certificate in the prescribed form.

Application for registration

Once the parties have been issued with an Acknowledgement Certificate, they can then apply for registration of the

marriage. Application for registration is made in the prescribed form and should be accompanied with a copy of the Acknowledgment Certificate. It includes a declaration that neither of the parties is underage, that they freely consented to the marriage, that none of them was in a subsisting civil, Christian, Hindu or Islamic marriage and that there is no impediment prohibiting the marriage. On the day of application for registration, parties have to appear before the Registrar accompanied by their witnesses. The total requisite fees for registration of a new customary marriage is Kshs. 3900.

Registration

The Registrar then considers the application made and issues a Certificate of Customary Marriage under the prescribed form, after conducting any further investigations where necessary.

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