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# A Guide to **Co-Parenting** in Kenya through a Parental Responsibility Agreement:



# INTRODUCTION



Co-parenting in Kenya is a legal and social framework that facilitates the shared responsibilities of parents who are not living together after their divorce or separation or who are not married. [The Constitution of Kenya](#) and the [Children Act 2022](#) provide the legal basis for co-parenting, emphasizing the importance of a **Parental Responsibility Agreement (PRA)** to ensure the child's best interests. This guide outlines the significance of the PRA, its essential components, and the legal context surrounding it.

## IMPORTANCE OF THE PARENTAL RESPONSIBILITY AGREEMENT

A **Parental Responsibility Agreement** is crucial for establishing clear parental roles and responsibilities. It is particularly beneficial for unmarried, divorced and separated parents, as it formalizes their obligations and rights regarding their child. The agreement is designed to:

- **Ensure the Best Interests of the Child:** Article 53(1) of the Constitution of Kenya asserts that a child's best interests are paramount in all matters concerning them. The Children Act in Sections 4 and 8

echoes this principle, mandating that the child's welfare must be the primary consideration in any parental agreement. The Act has defined the best interests of the child principle as at prime the child's right to survival, protection, participation and development above other considerations and includes the rights contemplated under Article 53(1) of the Constitution and section 8 of this Act.

- **Prevent Disputes:** By clearly delineating responsibilities, a PRA helps prevent conflicts between parents regarding custody, visitation, and financial obligations. This is vital in maintaining a stable environment for the child, minimizing the emotional and psychological impact of parental separation.
- **Clarity and Structure:** It offers a comprehensive framework for making decisions regarding the child's welfare, including education, healthcare, and moral upbringing.
- **Child's Stability:** The PRA is a testament to your commitment to your child's well-being. It ensures a consistent and stable

environment for the child by committing both parents to actively participate in the child's upbringing, making you feel responsible and dedicated to your child's stability.

- **Legal Enforceability:** Once filed and adopted by the court, a PRA becomes a legally binding document. This means that any breaches can lead to legal consequences, thus providing a framework for accountability.

## LEGAL FRAMEWORK FOR PARENTAL RESPONSIBILITY AGREEMENT

The [Constitution of Kenya](#) in article 53 ( e) grants every child the inherent right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.

Further, the [Children Act \(Act No. 29 of 2022\)](#) provides the legal foundation for parental responsibility agreements. Key sections relevant to co-parenting include:

- **Section 31:** Establishes the equal parental responsibilities of the mother and the father, which include the duty to provide the child with basic nutrition; shelter; water and sanitation facilities; clothing; medical care, including immunization; basic education; and general guidance, social conduct and moral values.
- **Section 32:** Emphasizes equal parental responsibility and emphasizes that both parents share equal parental responsibility on an equal basis, and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility whether or not the child is born within or outside wedlock.

- **Section 33:** Details the Parental responsibility agreement as a tool for equal parenting of a child whose parents are not living together, outlining the financial and non-financial child maintenance and support, decision-making, etc.

## TRANSMISSION OF PARENTAL RESPONSIBILITY

The [Children Act \(Act No. 29 of 2022\)](#) in Section 34 provides detailed provisions for the transmission of parental responsibility:

- 1. Surviving Parent's Role:** If the mother dies, the father assumes parental responsibility alone or with a testamentary guardian appointed by the mother. If the father dies, the mother takes on this role alone or with a guardian appointed by the father.
- 2. Objection to Testamentary Guardians:** The surviving parent can object to a testamentary guardian and apply to the court for revocation.
- 3. When Both Parents Are Deceased:** Parental responsibility may be exercised by a testamentary guardian, a court-appointed guardian, a person with a pre-existing residence order, or a fit person appointed by the court. In the absence of these, a relative or any other fit person through alternative family-based care may assume responsibility.
- 4. Relatives' Right to Challenge:** If relatives believe the surviving parent is unfit, they may apply to the court for orders to safeguard the child's best interests.
- 5. Role of a Parent's Spouse:** If a parent remarries, their spouse will exercise parental responsibility under the Act, regardless of whether they have legally adopted the child.

## EXTENSION OF RESPONSIBILITY BEYOND THE 18TH BIRTHDAY

Parental responsibility ideally exists until the child attains the age of majority, that is, 18 years of age. However, under Section 35 of the [Children Act](#), it can be extended beyond that age if the court finds special circumstances, such as severe disability or developmental disorder, necessitating continued care.

## ESSENTIAL COMPONENTS OF A PARENTAL RESPONSIBILITY AGREEMENT

A well-drafted PRA should include the following elements:

**1. Custody Arrangements:** Specify whether custody is joint or sole, and outline physical custody arrangements, including where the child will live primarily and visitation rights for the non-custodial parent.

**2. Visitation Schedule:** Clearly define when each parent will spend time with the child, including regular visits, holidays, and special occasions.

**3. Financial Responsibilities:** Detail how parents will contribute to the child's expenses, including housing, education, healthcare, and extracurricular activities. This section should specify which parent is responsible for specific costs.

**4. Decision-Making Authority:** Outline how decisions regarding the child's education, health, and religious upbringing will be made. This can include joint decision-making processes or designate one parent as the primary decision-maker.

**5. Dispute Resolution Mechanism:** Include provisions for resolving disagreements amicably, potentially through mediation before escalating to court proceedings. This helps maintain a cooperative co-parenting relationship.

**6. Notification of Changes:** Require parents to inform each other of significant changes, such as relocations or changes in contact information, to ensure ongoing communication and involvement in the child's life.

## SUPREME COURT'S DECISION ON PARENTAL RESPONSIBILITY AGREEMENTS AND BEST INTERESTS

The Supreme Court of Kenya in the landmark case [Mutheu Agatha Khimulu v Raheem Mehdi Aziz Azad & 4 others \(Petition No. E003 of 2022\)](#), made significant ruling regarding **Parental Responsibility Agreements (PRAs)** and the principle of the best interests of the child, which underscores the operational status of PRAs and the ongoing obligations of parents.

### CASE BACKGROUND

In this case, the parents had entered into a PRA after their marriage dissolved. The agreement was intended to outline their shared responsibilities for their child. Following the breakdown of their relationship, disputes arose regarding custody and the welfare of the child, leading to legal proceedings in both the UK and Kenya. The High Court initially ruled that the mother was unfit to retain custody due to allegations of child abuse, effectively nullifying the PRA. However, the mother appealed this decision to the Supreme Court.

### SUPREME COURT FINDINGS

The Supreme Court ruled that:

**1. Operational Status of PRAs:** The PRA remains in effect unless specifically revoked by a court order or the parties' mutual consent. The court emphasized that parental responsibility cannot be extinguished; it is an ongoing obligation that both parents must fulfill, regardless of their marital status.

**2. Best Interests of the Child:** The court reiterated that the child's best interests are paramount in all decisions concerning custody and parental responsibilities. Factors considered include:

- The existence and terms of the PRA.
- The past performance of each parent in fulfilling their responsibilities.
- The child's expressed wishes, depending on their age and maturity.
- The overall home environment and the ability of each parent to provide for the child's needs.

**3. Ongoing Obligation:** The ruling highlighted that parental responsibility is not a one-time agreement but a continuous obligation that requires parents to actively ensure the welfare and needs of the child are met.

**4. Legal Framework:** The decision reinforced the legal framework established by the Children Act and the Constitution of Kenya, which mandates that the welfare of the child is the primary consideration in any legal proceedings involving children.

## IMPACT OF THE DECISION

The Supreme Court's ruling serves as a critical precedent for co-parenting arrangements in Kenya. It clarifies that:

- PRAs are essential tools for delineating parental responsibilities, especially in situations where parents are separated or unmarried.
- Courts will uphold the terms of a PRA as long as they align with the child's best interests.
- Parents must remain committed to their responsibilities as outlined in the PRA, and

any changes to custody or access must be approached with the child's welfare as the foremost concern.

This decision emphasizes the importance of cooperation between parents and the need for clear, enforceable agreements that prioritize the child's well-being, thereby providing a stable and nurturing environment for their upbringing.

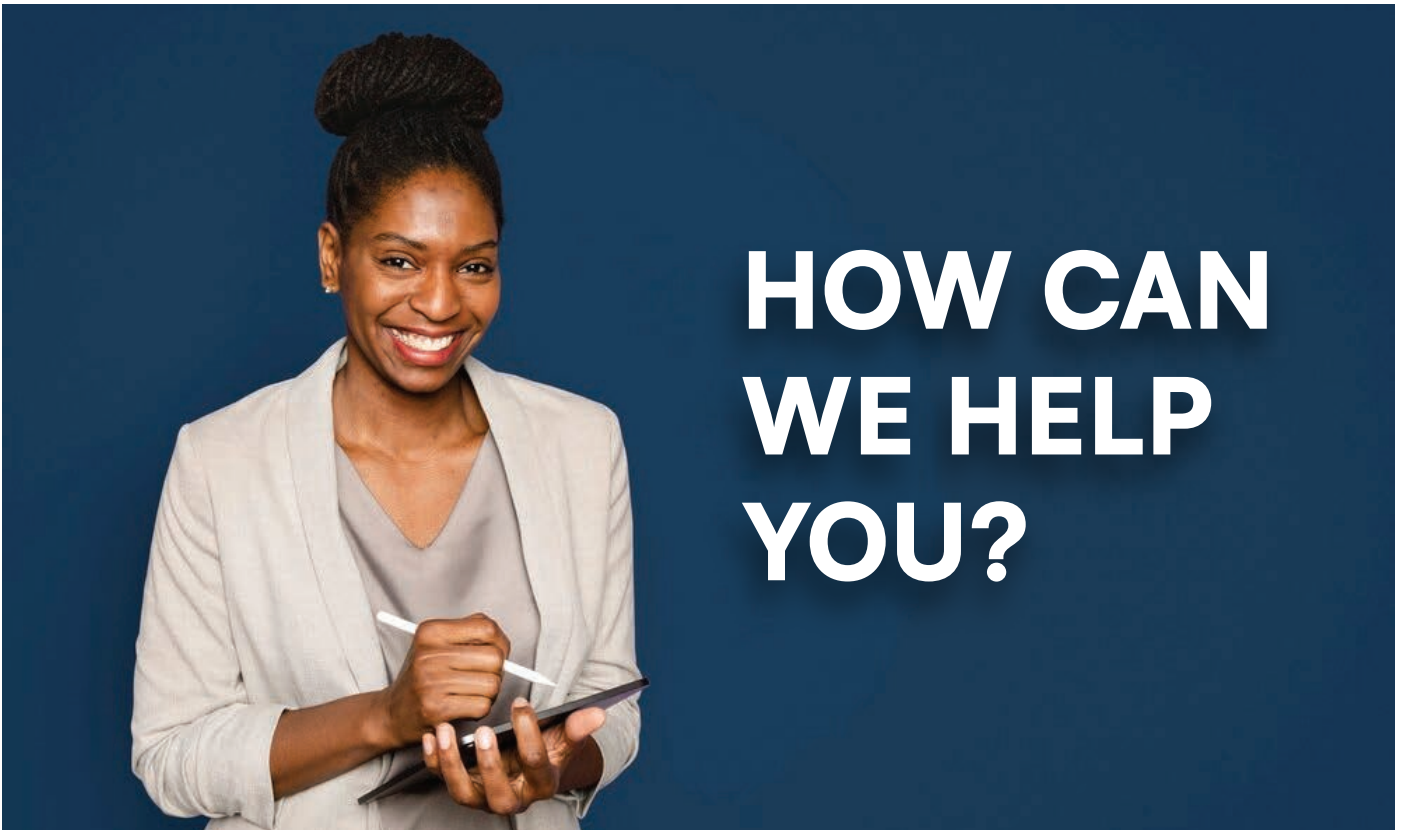
## BEST INTERESTS PRINCIPLE

The best interest's principle is central to all aspects of co-parenting in Kenya. This principle is enshrined in the Constitution and the Children Act, mandating that all decisions made by parents, or the court must prioritize the child's welfare. Courts will consider factors such as:

- The child's emotional and psychological needs.
- The stability and the continuity of the child's life.
- The relationship between the child and each parent.
- Any history of abuse or neglect.
- The child's views and preferences, considering the child's views when appropriate.

## CONCLUSION

Co-parenting in Kenya, facilitated by a Parental Responsibility Agreement, is essential for ensuring that both parents remain actively involved in their child's life, even after separation. Parents can create a cooperative and nurturing environment that prioritizes their child's best interests by adhering to the legal frameworks established in the Children Act and the Constitution. Drafting a comprehensive PRA is a proactive step towards achieving this goal, reducing conflicts, and fostering a stable upbringing for the child.



# HOW CAN WE HELP YOU?

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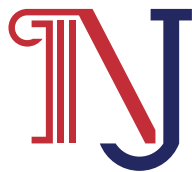
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- Compassionate and understanding approach, ensuring your comfort throughout the legal process.
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