

✓ LEGAL NOTICE NO: 50

## THE ADVOCATES ACT

(Cap. 16)

IN EXERCISE of the powers conferred by section 44 of the Advocates Act, the Chief Justice, on the recommendation of the Council of the Law Society, makes the following Order:—

THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER,  
2009

1. This Order may be cited as the Advocates (Remuneration) (Amendment) Order, 2009.

2. The Advocates (Remuneration) Order, in this Order referred to as the "principal Order", is amended by deleting Schedules I & II thereto and substituting therefor the following new Schedules—

## SCHEDULE I

## FIRST SCALE

## I. SCALE OF FEES ON SALES AND PURCHASES AFFECTING LAND REGISTERED IN ANY REGISTRY

## (a) Consideration or value of subject matter

<i>From (KSh.)</i>	<i>To (KSh.)</i>		
0	5,000,000	1.5%	Of the consideration or the value of the subject matter subject to a minimum of KSh. 25,000.
5,000,001	250,000,000	1.25%	Of the consideration or the value of the subject matter subject to a minimum of KSh. 75,000.
250,000,001	500,000,000	1%	Of the consideration or the value of the subject matter subject to a minimum of KSh. 3,125,000.

and in respect of an amount where the consideration or the value is more than KSh. 500,000,000 such fee as may be agreed subject to a minimum of KSh. 5,000,000.

## (b) Vendor's Advocate

For preparing and completing contract, answering any preliminary enquiries, deducing title (including any necessary abstraction to a freehold or leasehold property, answering any requisitions on title, perusing and completing conveyance or assignment).

Scale fee as set out in I(a) above.

## (c) Purchaser's Advocate

For investigating title to a freehold or leasehold property and preparing and completing conveyance (including perusal and completion of contract, if any)

Scale fee as set out in 1(a) above.

Note: Fees will be calculated on the consideration or value of the transaction using the percentage rate of the band within which the consideration lies. It shall not be cumulative.

## 2. SCALE OF FEES ON MORTGAGES OR CHARGES AFFECTING LAND REGISTERED IN ANY REGISTRY

## (a) Consideration or value of subject matter

From (KSh.)	To (KSh.)		
0	2,500,000	1.5%	Of the consideration or the value of the subject matter subject to a minimum of KSh.20,000.
2,500,001	5,000,000	1.25%	Of the consideration or the value of the subject matter subject to a minimum of KSh.37,500.
5,000,001	250,000,000	1%	Of the consideration or the value of the subject matter subject to a minimum of KSh.62,500,000
250,000,001	500,000,000	0.6%	Of the consideration or the value of the subject matter subject to a minimum of KSh.2,500,000

and in respect of an amount where the consideration or value is more than KSh. 500,000,000 such fee as may be agreed subject to a minimum of Ksh. 3,000,000.

## (b) Mortgagor's Advocate

(i) For deducing title (including any necessary abstraction) to a freehold or leasehold property, answering any requisitions on title, perusing and completing mortgage.

One-half of the scale set under 2 (a) above (so that the minimum fee charged is not less than one half of the minimum permitted to be charged under 2(a) above).

(ii) For preparing and completing reconveyance or reassignment of mortgage.

One-quarter of the scale fee set out under 2 (a) above subject to a minimum charge of KSh.15,000 and maximum of KSh. 50,000.

## (c) Mortgagee's Advocate

(i) For investigating title to a freehold or leasehold property and preparing and completing mortgage.

Scale fee as set out in 2 (a) above.

(ii) For perusing and completing reconveyance or reassignment of mortgage, handling

One quarter of the scale fees set out under 2(a) above subject to a

documents of title and settling terms of any undertaking for redemption of mortgage debt.	minimum charge of KSh. 15,000 and a maximum of Shs.50,000.00.
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Note: Fees will be calculated on the consideration or value of the transaction using the percentage rate of the band within which the consideration lies. It shall not be cumulative.

#### SECOND SCALE

##### SCALE OF CHARGES RELATING TO MEMORANDA OF EQUITABLE MORTGAGES BY DEPOSIT OF DOCUMENTS OR CHARGES BY DEPOSIT OF TITLE

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|---|---|
| 1. For investigating title to a freehold or leasehold property and completing and registering a memorandum of equitable mortgage by deposit of documents or a memorandum of charges by deposit of title in respect thereof. | SCALE FEE<br>One-half of the scale fee set out under 2(a) of the First Scale.   |
| 2. For preparing, completing and registering a memorandum of discharge of equitable mortgage by deposit of documents or a memorandum of Discharge of charge by deposit of title.  | SCALE FEE<br>One-eighth of the scale fee set out under 2 (a) of the First Scale subject to a minimum of KSh. 8,500 and a maximum of Kshs.30,000.00. |

Note.—Only half of scale fee should be charged for equitable mortgages and charges in the circumstances set out in note (2) to the third scale of this schedule.

#### THIRD SCALE

##### SCALE OF CHARGE RELATING TO DEBENTURES

1. *Single debentures:*
  - (a) On each single debenture of any nature not creating a security, a fee calculated under Schedule V according to time, complexity and, responsibility.
  - (b) On each single, debenture of any, nature creating a security the scale fee set out under 2(a) of the First Scale.
2. *Series of debentures:*  
A fee on the total capital for which the series issued as for a single debenture with the addition of fees under Schedule V in respect of the preparation, completion and registration of all debentures after the first.
3. *Debenture stock issued under a debenture trust deed:*  
A fee on the total capital for which the trust is drawn as under 2(a) of the First Scale plus one-half thereof, with such additional amount as may be reasonable taking into account the time, complexity and responsibility involved in each case.

*Notes*

- 1.(a) Where the grantee of a security and the company creating it are separately represented, the advocate for the company shall be entitled to charge one-half of the fees chargeable by the advocate for the grantee.
- (b) Where one Advocate represents both the grantee of a security and company creating it he shall be entitled to increase the prescribed fee by forty per cent.
2. Where two or more securities are created by a company, whether contemporaneously or subsequently, in favour of the same grantee to secure the same or a lower amount, then the fee payable shall be the full prescribed fee in respect of the principal security plus Twenty Five (25%) percent of the prescribed scale fee for each additional security. For this purpose, where the collateral or supplemental security constitutes immoveable property, a sum equivalent to Twenty-Five (25%) of the prescribed fees shall be charged in respect of each immoveable property so mortgaged in favour of the grantee.
3. Where a security by one document by more than one company or other entity in favour of the same grantee to secure the same amount, then the fee payable shall be the full prescribed fee in respect of the first company and a sum equivalent to Twenty Five (25%) of the prescribed fee in respect of each company thereafter, the total fees to be divided equally between the companies unless otherwise agreed by all the companies in writing.
4. Where a security is created by one document by more than one company in favour of more than one grantee, then the fee payable shall be the same as the one prescribed in note 3 above.
5. Unless otherwise agreed by the parties in writing the company or the companies creating a security shall pay the fees of the advocate for the grantee as well as the fees of its or their own advocate.

## FOURTH SCALE

## SCALE OF NEGOTIATING COMMISSION ON SALES AND MORTGAGES

	<i>Scale Fee</i>	<i>Ksh.</i>
For negotiating a sale of property by	On the first	112
Private treaty or loan secured by mortgage	£10,000 per £100	
	Over £10,000 to	52
	30,000 per £100	
	Over £30,000 per £100	30

*Note:*

1. In calculating fees payable under any of the above scales a fraction of £100 up to and including £50 shall be accounted as one-half but over £50 shall be accounted as a whole unit of calculation.
2. In the above scales, "Mortgage" includes a conveyance, assignment or other assurance, or an agreement to convey, assign or otherwise assure the immovable property or any estate, interest or other right therein to secure the payment of moneys; and "charge" includes an agreement to charge immovable property or any estate, interest or, other right therein to secure the payment of moneys; but neither

word includes a memorandum of equitable mortgage by deposit of documents or a memorandum of charge by deposit of title or an agreement exclusively collateral thereto unless the collateral agreement or covenant to execute a mortgage or charge at some future time or when called upon.

#### SCHEDULE II

#### SCALE OF CHARGES FOR THE PREPARATION OF LEASES, AGREEMENTS FOR LEASES AND TENANCY AGREEMENTS AT A RACK RENT

1. To the advocate preparing, settling and completing lease or agreement and counterpart.

#### SCALE FEE

#### Annual Rent

<i>From (KSh.)</i>	<i>To (KSh.)</i>		
0	120,000	15.00%	Of the annual rent
120,001	250,000	12.50%	Of the consideration or value or KSh.18,000 whichever is higher
250,001	500,000	10.00%	Of the consideration or value or KSh.31,250 whichever is higher
500,001	1,000,000	7.50%	Of the consideration or value or KSh.50,000 whichever is higher
1,000,001	2,000,000	5.00%	Of the consideration or value or KSh.75,000 whichever is higher
2,000,001	3,000,000	4.00%	Of the consideration or value or KSh.100,000 whichever is higher

and in respect of an amount where the annual rent is more than KSh. 3,000,000 such fee as may be agreed but in any event not less than KSh. 100,000 and not more than the fee chargeable under the last band above plus 1% on the excess amount.

2. To the advocate perusing, amending and completing lease or agreement or counterpart  
One-half of the fee payable under 1 above (so that the minimum fee charged is not less than one half of the minimum amount permitted to be charged under).

#### Notes

1. Where a varying rent is payable the amount of the annual rent means the amount of the largest rent payable under the lease or agreement.
2. In the case of extension of the term of a lease, agreement for lease or tenancy agreement capable of being effected by way of an endorsement on or annexure to the original instrument, the charge shall be calculated under Schedule V.
3. Charges as to conveyances in fee, or for any other freehold estate reserving rent, or building leases reserving rent or other long leases not at a rack rent, or agreement for the same respectively, shall be calculated under Schedule V.

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4. Fees will be calculated on the consideration or value of the transaction using the percentage rate of the band within which the consideration lies. It shall not be cumulative.

Dated the 25th March, 2009.

J. E. GICHERU,  
*Chief Justice.*