

THE ADVOCATES ACT, 1989

No. 18 of 1989

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FIRST SCHEDULE—Proceedings of Council of Legal Education.

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An Act of Parliament to amend and consolidate the law relating to advocates

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the Advocates Act, 1989. Short title.
2. In this Act, unless the context otherwise requires— Interpretation.

“advocate” means any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel and, for the purposes of Part IX, includes any person mentioned in section 10;

“client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an advocate and any person who is or may be liable to pay to an advocate any costs;

“contentious business” means any business done by an advocate in any court, civil or military, or relating to proceedings instituted or intended to be instituted in any such court, or any statutory tribunal or before any arbitrator or panel of arbitrators;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“the Council of Legal Education” means the Council of Legal Education established and constituted by section 3;

Cap. 18.

“the Council of the Society” means the Council of the Society elected under section 13 of the Law Society of Kenya Act;

“Court” means the High Court;

“Disciplinary Committee” means the Disciplinary Committee established under section 57;

“non-contentious business” means any business done by an advocate other than contentious business;

“practising certificate” means a certificate issued under section 21;

“Registrar” means the Registrar of the Court;

“Roll” means, as the case may require, the Roll of Advocates kept under section 16 or the Roll of Advocates having the rank of Senior Counsel under this Act;

“Senior Counsel” means an advocate upon whom the President has conferred the rank of Senior Counsel;

Cap. 18.

“the Society” means the Law Society of Kenya established under the Law Society of Kenya Act;

“unqualified person” means a person not qualified under section 9 to act as an advocate.

PART II—THE COUNCIL OF LEGAL EDUCATION

3. (1) There is hereby established a Council of Legal Education which shall consist of—

Council of
Legal
Education.

- (a) the Chief Justice, or a judge to be appointed by the Chief Justice, who shall be chairman;
- (b) a judge, to be appointed by the Chief Justice;
- (c) the Solicitor-General or a person deputed by the Attorney-General;
- (d) four advocates to be nominated by the Council of the Society; and
- (e) one person associated with the teaching of law in Kenya, to be appointed by the Attorney-General.

(2) The conduct and regulation of affairs and business of the Council of Legal Education shall be as provided for in the Schedule.

4. The members of the Council of Legal Education nominated under paragraph (d) of section 3 (1) shall hold office for four years and shall be eligible for renomination.

Duration of
membership of
the Council.

5. The functions of the Council of Legal Education shall be to exercise general supervision and control over legal education in Kenya for the purposes of this Act and to advise the Government in relation to all aspects thereof.

Functions of
the Council.

6. The Attorney-General shall appoint a public officer to be secretary to the Council.

Secretary.

7. The Council of Legal Education, with the approval of the Chief Justice, may make regulations for the purposes of giving effect to this Part, and without prejudice to the generality of the foregoing the regulations may—

Regulations.

- (a) make provisions with respect to the engagement and training of pupils by advocates and their respective conduct, duties and responsibilities;

- (b) make different provision for different circumstances;
- (c) authorize the charging by the Council of fees; and
- (d) prescribe anything which may be prescribed under this Part.

Expenses.

8. The expenses of the Council of Legal Education shall be defrayed out of moneys provided by Parliament and all fees and other moneys received by the Council shall be paid into the Consolidated Fund.

**PART III—PROVISIONS RELATING TO THE RIGHT TO
PRACTISE AS AN ADVOCATE**

Qualifications
for practising
as advocate.

9. Subject to this Act, no person shall be qualified to act as an advocate unless—

- (a) he has been admitted as an advocate; and
- (b) his name is for the time being on the Roll; and
- (c) he has in force a practising certificate,

and for the purpose of this Act a practising certificate shall be deemed not to be in force at any time while he is suspended by virtue of section 27 or by an order under section 60 (4).

Certain officers
entitled to act
as advocates.

10. Each of the following persons shall, if he holds one of the qualifications specified in paragraphs (a), (b) and (c) of section 13 (1) at the time of his appointment to his office, be entitled in connexion with the duties of his office to act as an advocate, and shall not to that extent be deemed to be an unqualified person, that is to say—

- (a) an officer in the Attorney-General's office;
- (b) the Principal Registrar of Titles and any Registrar of Titles; or
- (c) any person holding office in a local authority established under the Local Government Act.

Cap. 265.

Foreign
advocates.

11. (1) The Attorney-General may, in his absolute discretion, admit to practise as an advocate, for the purpose of any specified suit or matter in or in regard to which the

person so admitted has been instructed by the Attorney-General or an advocate, a practitioner who is entitled to appear before superior courts of a Commonwealth country, if such person has come or intends to come to Kenya for the purpose of appearing, acting or advising in that suit or matter and is not disqualified or suspended by virtue of this Act, and a person so admitted (hereinafter in this section referred to as a "foreign advocate") shall not, for the purpose of that suit or matter, be deemed to be an unqualified person.

(2) No foreign advocate shall be entitled to practise until he has paid to the Registrar the prescribed admission fee.

(3) No foreign advocate shall be entitled to practise unless he is instructed by, and if appearing in court appears with, an advocate or any person mentioned in section 10, nor shall any foreign advocate be entitled to sign or file any pleadings in court.

(4) Every foreign advocate shall, during and for the purposes of his admission, be deemed to be an advocate for the purposes of Parts VIII, IX, X, and XI:

Provided that in respect of a foreign advocate references in Part XI, or in any rules made under this Act, to the Disciplinary Committee shall be construed as references to the Chief Justice and references to striking the name of an advocate off the Roll shall be construed as references to disqualifying a foreign advocate from practise in Kenya.

(5) Where a complaint under Part XI has been made in respect of a foreign advocate, the Chief Justice, in addition to the powers conferred upon him by that Part as modified by subsection (4), shall have power, in his discretion at the instance of the complainant or of the Council of the Society, to suspend immediately such foreign advocate from practice in Kenya pending the dismissal of the complaint or the making of a final order in respect thereof.

PART IV—ADMISSION AS ADVOCATE

12. Subject to this Act, no person shall be admitted as an advocate unless---

(a) he is a citizen of Kenya; and

(b) he is duly qualified in accordance with section 13.

Qualification for
admission as
advocate.

Professional
and academic
qualifications.

13. (1) A person shall be duly qualified if—

- (a) having passed the relevant examinations of any recognized university in Kenya he holds, or has become eligible for the conferment of, a degree in law of that university; or
- (b) having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve, he holds, or has become eligible for conferment of, a degree in law in the grant of that university, university college or institution which the Council may in each particular case approve;

and thereafter both—

- (i) he has attended as a pupil and received from an advocate of such class as may be prescribed, instruction in the proper business, practice and employment of an advocate, and has attended such course or tuition as may be prescribed for a period which in the aggregate including such instruction, does not exceed one year; and
- (ii) he has passed such examinations as may be prescribed other than those examinations passed by him for the purpose of obtaining a degree referred to in paragraphs (a) or (b); or
- (c) he possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education.

(2) The Council of Legal Education may exempt any person from any or all of the requirements prescribed for the purposes of paragraph (i) or paragraph (ii) of subsection (1) upon such conditions, if any, as the Council may impose.

Attorney-
General may
take pupils.

14. The Attorney-General may take pupils in accordance with section 13 and in this Part and in any regulations “advocate”, in the context of pupillage, includes the Attorney-General.

Admission as
an advocate.

15. (1) Every person who is duly qualified in accordance with this Part may apply for admission as an advocate, and the application shall be made by petition in the prescribed

form, verified by oath or statutory declaration addressed to the Chief Justice, and filed with the Registrar together with a notice intimating that the petition has been so filed together with such other documents as may be prescribed and the applicant shall also deliver a copy of the petition and of any document delivered therewith to the secretary of the Council of Legal Education and to the secretary of the Society.

(2) The notice referred to in subsection (1) shall be publicly exhibited by the Registrar for one month before any order shall be made on the petition.

(3) Every petition made under this section shall be heard by the Chief Justice in chambers, and the Council of Legal Education and the Society shall have the right to be heard thereon; and, if the Chief Justice is satisfied as to the qualifications, service and moral fitness of the petitioner, he shall adjourn the hearing into open court and shall order that the petitioner be admitted as an advocate.

(4) On an order being made under subsection (3), and after payment by the petitioner to the Registrar of the prescribed fee, the petitioner shall take an oath or make an affirmation as an officer of the Court before the Chief Justice in such form as he shall require, and shall thereafter sign the Roll in the presence of the Registrar or a Deputy Registrar who shall add his signature as witness.

(5) All reports, records and communications made under or in connexion with this section shall be absolutely privileged.

16. The Registrar shall keep the Roll of Advocates in accordance with this Act and any directions as to its form and the information to be recorded as the Chief Justice may give, and shall allow any person to inspect the Roll during office hours without payment.

Custody of
Roll.

PART V—SENIOR COUNSEL

17. (1) The President may grant a letter of conferment to any person of irreproachable professional conduct who has rendered exemplary service to the legal and public service in Kenya conferring upon him the rank and dignity of Senior Counsel.

Senior Counsel.

(2) A person shall not be eligible to be a Senior Counsel unless—

(a) he is a duly enrolled advocate of the High Court of not less than fifteen years' standing; or

(b) being a person to whom section 10 applies, he holds, and has held for a continuous period of not less than fifteen years, one or other of the qualifications specified in section 13 (1).

Roll of Senior Counsel.

18. (1) Upon the commencement of this Act, the Registrar shall cause to be prepared, and shall thereafter maintain, a Roll of Advocates having the rank of the Senior Counsel (hereinafter called "the Roll of Senior Counsel") in accordance with this Part and any directions as to its form and the information to be recorded as the Chief Justice may give, and shall allow any person to inspect the Roll during office hours without payment.

(2) There shall be entered in the Roll of Senior Counsel the names of all persons having the rank thereof in accordance with this Part.

(3) Every person upon whom the rank of Senior Counsel has been conferred shall sign the Roll of Senior Counsel in the presence of the Registrar, and the Registrar shall add his signature as a witness.

Application of Part XI.

19. In the application of Part XI to Senior Counsel—

(a) all references therein to the Disciplinary Committee shall be construed as references to a Committee of three, to be appointed in each case by the Chief Justice, consisting of the Attorney-General or the Solicitor-General and two Senior Counsel and the Attorney-General or Solicitor-General shall be chairman of the Committee;

(b) the secretary to the Disciplinary Committee shall perform the duties of secretary to any such committee; and

(c) subsections (2) and (3) of section 57 shall not have effect.

PART VI—PRECEDENCE

20. The Attorney-General, the Solicitor-General, Senior Counsel or Queen's Counsel according to the date of their appointment as such, the chairman and the vice-chairman (if not a Senior Counsel) of the Society shall, in that order, take precedence of advocates who, *inter se*, shall take precedence according to the date upon which they signed their names on the Roll.

Precedence.

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PART VII—PRACTISING CERTIFICATE

21. The Registrar shall issue in accordance with, but subject to, this Part and any rules made under this Act certificates authorizing the advocates named therein to practise as advocates.

Registrar to issue practising certificates.

22. (1) Application for a practising certificate shall be made to the Registrar—

Application for and issue of practising certificate.

(a) by delivering to him an application in duplicate, signed by the applicant specifying his name and place of business, and the date of his admission as an advocate; and

(b) by producing evidence satisfactory to the Registrar that the applicant has paid to the Society the fee prescribed for a practising certificate and the annual subscriptions payable for the time being to the Society and to the Advocates Benevolent Association.

(2) Subject to section 31, the Registrar, if satisfied that the name of the applicant is on the Roll and that he is not for the time being suspended from practice, shall within fourteen days of the receipt by him of the application issue to the applicant a practising certificate.

(3) The Registrar shall cause one copy of each declaration delivered to him under this section to be filed in a register kept for that purpose, and any person may inspect the register during office hours without payment.

23. (1) Every advocate to whom a practising certificate is issued under this Part shall thereupon and without payment of any further fee, subscription, election, admission or appointment, and notwithstanding anything contained in the Law

Issue of practising certificate to confer membership of Society.

Cap. 18.

Society of Kenya Act or in any regulations made thereunder, become a member of the Society and the Advocates Benevolent Association and be subject to any provision of law or rule of the Society and the Advocates Benevolent Association for the time being affecting the members thereof.

(2) Every advocate who has become a member of the Society under this section shall remain a member until the end of one month after expiration of his practising certificate, unless his name, whether at his own request or otherwise, is removed from or struck off the Roll, whereupon he shall cease to be a member of the Society.

(3) An advocate who has become a member of the Society under this section and who is suspended from practice shall not be entitled during the period of the suspension to any of the rights or privileges of such membership.

Date and
validity of
practising
certificates.

24. (1) Every practising certificate shall bear the date of the day on which it is issued and shall have effect from the beginning of that day:

Provided that a practising certificate which is issued during the first month of any practising year shall have effect for all purposes from the beginning of that month.

(2) The practising year shall be from the 1st January to 31st December:

Provided that the Council of the Society, with the approval of the Chief Justice, may by order alter the practising year, and the order may make such transitional provision in regard to incidental matters as may be expedient.

(3) Every practising certificate shall expire at the end of the practising year in which it was issued:

Provided that, where the name of an advocate is removed from or struck off the Roll, the practising certificate (if any) of that advocate shall expire forthwith.

(4) The Registrar shall enter upon the Roll a note of the date of the issue of every practising certificate.

Discretion of
Registrar
to issue
practising
certificate in
special cases.

25. (1) Subject to subsection (3) and to section 28 (5), subsection (2) shall have effect where an advocate applies for a practising certificate—

(a) when for twelve months or more he has ceased to hold a practising certificate in force; or

- (b) whilst he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him; or
- (c) when, having been suspended from practice or having had his name removed from or struck off the Roll, the period of his suspension has expired or his name has been restored to the Roll, as the case may be; or
- (d) not having held a practising certificate in force within twelve months next following the date of his admission as an advocate; or
- (e) whilst he is a person to whom the powers and provisions of Part XI of the Mental Treatment Act relating to management and administration apply; or
- (f) without having paid a penalty or costs ordered by the Disciplinary Committee to be paid by him; or
- (g) after having been adjudicated a bankrupt and obtained his discharge or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or
- (h) after having had given against him any judgment which involves the payments of moneys, not being a judgment—
 - (i) limited to the payment of costs; or
 - (ii) as to the whole effect of which upon him he is entitled to indemnity or relief from some other person; or
 - (iii) evidence of the satisfaction of which, within seven days of the giving of such judgment, has been produced to the Registrar.

Cap. 248.

(2) The applicant shall give to the Registrar and to the secretary of the Society not less than six weeks before his application for a practising certificate notice of his intention to apply therefor.

(3) The Council of the Society may make representations or submit a recommendation to the Registrar with respect to any application made under this section and any such representations or recommendations shall be absolutely privileged.

(4) The Registrar may in his discretion—

- (i) grant or refuse any application made under this section; or

(ii) decide to issue a practising certificate to the applicant upon such terms and conditions as he may think fit; and, where the Registrar decides to issue a certificate subject to conditions, he may, if he thinks fit, postpone the issue of the certificate pending the hearing and determination of any appeal under section 26 (2):

Provided that in a case such as is mentioned in paragraph (b) or paragraph (h) of subsection (1), where an appeal has been made to the appropriate court against the order or judgment in question the Registrar shall not refuse the application before the determination of that appeal.

(5) Where a practising certificate free of conditions is issued by the Registrar under subsection (2) to an advocate in relation to whom that subsection has effect by virtue of any of the particular circumstances mentioned in paragraphs (a), (c), (d), (g) and (h) of subsection (1), subsections (2), (3) and (4) shall not thereafter have effect in relation to that advocate by virtue of those circumstances.

Appeals in connection with issue of practising certificates.

26. (1) If in any case, not being a case to which section 25 applies, the Registrar on an application duly made to him refuses or neglects to issue a practising certificate the applicant may apply to the Chief Justice who may make such an order in the matter as is just.

(2) Where under section 25 the Registrar either refuses to grant a practising certificate or decides to issue that certificate subject to terms and conditions, the applicant may by petition presented within one month after being notified of the decision of the Registrar, and in such manner and subject to such regulations as the Chief Justice may from time to time direct, appeal against that decision to the Chief Justice, who may—

- (a) affirm the decision of the Registrar; or
- (b) direct the Registrar to issue a certificate to the applicant free from terms and conditions or upon such terms and conditions as the Chief Justice may think fit; or
- (c) direct the Registrar not to issue a certificate; or
- (d) if a certificate has been issued, by order suspend that certificate; or
- (e) make such other order as he may think fit;

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27. The making by the Disciplinary Committee or the Court of an order suspending an advocate from practice shall operate, and the adjudication in bankruptcy of an advocate shall operate immediately, to suspend any practising certificate of that advocate for the time being in force.

Suspension of practising certificate in certain circumstances.

28. (1) Subject to this section, where a practising certificate has become suspended by an order under section 26 (2) or by virtue of section 27, that suspension shall continue until the certificate expires.

Duration of suspension of practising certificate.

(2) The suspension of a practising certificate by virtue of section 27 by reason of an adjudication in bankruptcy shall terminate if the adjudication is annulled and a certified copy of the order annulling the adjudication has been served on the Registrar.

(3) Where an advocate's practising certificate has become suspended—

(a) by an order under section 26 (2); or

(b) by virtue of section 27 by reason of his adjudication in bankruptcy,

the advocate may at any time before the certificate expires (and, in the case of adjudication in bankruptcy, while the adjudication remains unannulled) apply to the Registrar to terminate the suspension of the practising certificate, giving at the same time notice to the secretary of the Society that the application has been made.

(4) The Council of the Society may make representations or submit recommendations to the Registrar with respect to any application made under this section, and the representations or recommendations shall be absolutely privileged.

(5) The Registrar may in his discretion—

(i) by order terminate the suspension either unconditionally or upon such terms and conditions as he may think fit; or

(ii) refuse the application.

(6) If, on an application by an advocate under subsection (3), the Registrar refuses the application or terminates the suspension subject to terms or conditions, the advocate may, by petition presented in such manner and subject to such regulations as the Chief Justice may from time to time direct,

appeal against the decision of the Registrar to the Chief Justice, who may—

(a) affirm the decision of the Registrar; or

(b) terminate the suspension either unconditionally or upon such terms and conditions as he may think fit.

(7) Where an advocate's practising certificate has become suspended by virtue of section 27 by reason of his suspension from practice and the suspension of his practising certificate is terminated unconditionally under subsection (5) or subsection (6), then, notwithstanding paragraph (c) of subsection (1) of section 25, subsections (2), (3) and (4) of section 25 shall not thereafter have effect in relation to that advocate by virtue of that suspension from practice and the expiry of the period thereof.

Publication of suspension or termination of suspension of practising certificate in certain cases.

29. Where an advocate's practising certificate has become suspended—

(a) by an order under section 26 (2); or

(b) by virtue of section 27 by reason of his adjudication in bankruptcy,

the Registrar shall forthwith cause notice of that suspension to be published in the Gazette and a note thereof to be entered against the name of the advocate in the Roll; and where that suspension is terminated under subsection (2), subsection (3) or subsection (4) of section 28, the Registrar shall forthwith cause a note of that termination to be entered against the name of the advocate in the Roll and, if so requested in writing by the advocate, a note thereof to be published in the Gazette.

Evidence as to holding of practising certificate.

30. (1) Any list purporting to be published by authority of the Registrar and to contain the names of advocates who have obtained practising certificates for the current year before the 1st February in that year shall, until the contrary is proved, be evidence that the persons named therein as advocates holding such certificates as aforesaid for the current year are advocates holding such certificates.

(2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that that person is not qualified to practise as an advocate under

a certificate for the current year, but in the case of any such person an extract from the Roll certified as correct by the Registrar shall be evidence of the facts appearing in the extract.

**PART VIII—PROVISIONS WITH RESPECT TO UNQUALIFIED
PERSONS ACTING AS ADVOCATES AND OFFENCES
BY ADVOCATES**

31. (1) Subject to section 83, no unqualified person shall act as an advocate, or as such cause any summons or other process to issue, or institute, carry on or defend any suit or other proceedings in the name of any other person in any court of civil or criminal jurisdiction.

Unqualified
person not to
act as advocate.

(2) Any person who contravenes subsection (1) shall—

(a) be deemed to be in contempt of the court in which he so acts or in which the suit or matter in relation to which he so acts is brought or taken, and may be punished accordingly; and

(b) be incapable of maintaining any suit for any costs in respect of anything done by him in the course of so acting; and

(c) in addition be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings or to imprisonment for a term not exceeding two years or to both.

32. (1) Notwithstanding that an advocate has been issued with a practising certificate under this Act, he shall not engage in practice on his own behalf either full-time or part time unless he has practised in Kenya continuously on a full-time basis for a period of not less than two years after obtaining the first practising certificate in a salaried post either as an employee in the office of the Attorney-General or an organization approved by the Council of Legal Education or an advocate who has been engaged in continuous full-time private practice on his own behalf in Kenya for a period of not less than five years.

Qualification
for practice
on own behalf.

(2) The person employing an advocate under this section shall in the prescribed form notify the secretary to the Council of Legal Education and the Registrar of the High Court of the

commencement and the termination of the employment at the time of commencement and at the termination.

(3) This section shall come into operation on such date as the Attorney-General may by notice in the Gazette appoint.

Penalty for pretending to be advocate.

33. Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognized by law as qualified to act as an advocate shall be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings or to imprisonment for a term not exceeding two years or to both.

Unqualified person not to prepare certain documents or instruments.

34. (1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument—

- (a) relating to the conveyancing of property; or
- (b) for, or in relation to, the formation of any limited liability company, whether private or public; or
- (c) for, or in relation to, an agreement of partnership or the dissolution thereof; or
- (d) for the purpose of filing or opposing a grant of probate or letters of administration; or
- (e) for which a fee is prescribed by any order made by the Chief Justice under section 44; or
- (f) relating to any other legal proceedings;

nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document or instrument:

Provided that this subsection shall not apply to—

- (i) any public officer drawing or preparing documents or instruments in the course of his duty; or
- (ii) any person employed by an advocate and acting within the scope of that employment; or
- (iii) any person employed merely to engross any document or instrument.

(2) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable summarily.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings or to imprisonment for a term not exceeding two years or to both.

(4) This section shall not apply to—

- (a) a will or other testamentary instrument; or
- (b) a transfer of stock or shares containing no trust or limitation thereof.

35. (1) Every person who draws or prepares, or causes to be drawn or prepared, any document or instrument referred to in section 34 (1) shall at the same time endorse or cause to be endorsed thereon his name and address, or the name and address of the firm of which he is a partner and any person omitting so to do shall be guilty of an offence and liable to a fine not exceeding five thousand shillings in the case of an unqualified person or a fine not exceeding five hundred shillings in the case of an advocate:

Instruments to be endorsed with name and address of drawer.

Provided that, in the case of any document or instrument drawn, prepared or engrossed by a person employed, and whilst acting within the scope of his employment, by an advocate or by a firm of advocates, the name and address to be endorsed thereon shall be the name and address of such advocate or firm.

(2) The Registrar, the Registrar of Titles, the Principal Registrar of Government Lands, the Registrar-General, the Registrar of Companies and any other registering authority shall refuse to accept or recognize any document or instrument referred to in section 34 (1) unless such document or instrument purports to be endorsed in accordance with this section.

36. (1) Any advocate who holds himself out or allows himself to be held out, directly or indirectly and whether or not by name, as being prepared to do professional business at less than the remuneration prescribed, by order, under this Act shall be guilty of an offence.

Undercutting.

(2) No advocate shall charge or accept, otherwise than in part payment, any fee or other consideration in respect of professional business which is less than the remuneration prescribed, by order, under this Act.

Sharing
profits.

37. Any advocate who agrees to share his profits in respect of any professional business, whether contentious or non-contentious, with any person not being an advocate or other duly qualified legal practitioner (by whatever name called) shall be guilty of an offence:

Provided that this section shall not apply to the payment of any bonus to any of his employees by an advocate, being a bonus based or calculated on the advocate's total earnings or profits in respect of any period.

Touts.

38. (1) Any unqualified person who, in consideration of any payment or other advantage to himself or any other person, procures or attempts to procure the employment of an advocate as such in any suit or matter or solicits from an advocate any such payment or advantage in consideration of such employment shall be deemed to be a tout for the purposes of this section.

(2) The Chief Justice may, if satisfied that any person has acted as a tout, by order exclude such person from the employment by an advocate in his practice as such.

Advocate not
to act as agent
for unqualified
person.

39. Any advocate who acts as agent in any suit, or in any matter in bankruptcy, for any unqualified person, or permits his name, or that of any firm of which he is a partner, to be made use of in any such suit or matter, upon the account or for the profit of any unqualified person or who does any other act enabling an unqualified person to appear, act or practise in any respect as an advocate in such suit or matter, or who in any way assists any unqualified person in any cause or matter in which he knows that such person is contravening or intends to contravene this Act, shall be guilty of an offence.

No costs
recoverable
where
unqualified
person acts
as an advocate.

40. No costs in respect of anything done by an unqualified person in contravention of this Part shall be recoverable in any suit or matter by any person.

Employment by
advocate of
persons
struck-off the
Roll or
suspended.

41. (1) No advocate shall, in connection with his practice as an advocate, without the written permission of the Council of the Society, which may be given for such period and subject to such conditions as the Council thinks fit, employ or remunerate any person who to his knowledge is disqualified from practising as an advocate by reason of the fact that his name

has been struck off the Roll, otherwise than at his own request, or is suspended from practising as an advocate.

(2) An advocate aggrieved by the refusal of the Council of the Society to grant any permission referred to in subsection (1), or by conditions attached by the Council to the grant thereof, may appeal to the Chief Justice, who may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Council, grant such permission for such period and subject to such conditions as he thinks fit.

(3) If any advocate acts in contravention of this section or of the conditions subject to which any permission has been given thereunder he shall be liable to proceedings under section 60.

42. (1) Any person who, whilst he is disqualified from practising as an advocate by reason of the fact that he has been struck off the Roll, otherwise than at his own request, or is suspended from practising as an advocate, seeks or accepts employment by an advocate in connection with the advocate's practice without previously informing him that he is so disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings.

Penalty for failure to disclose fact of having been struck off, etc.

(2) Proceedings under this section may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced except by, or with the consent of, the Attorney-General.

43. (1) If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as an advocate, the body corporate shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings for each such offence, and, in the case of an act done by any director, officer or servant of the corporation, he shall, without prejudice to the liability of the corporation, be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings for each such offence.

Offences by bodies corporate.

(2) In this Part, references to unqualified persons and to persons include references to bodies corporate.

PART IX—REMUNERATION OF ADVOCATES

Chief Justice
may make
orders
prescribing
remuneration.

44. (1) The Council of the Society may make recommendation to the Chief Justice on all matters relating to the remuneration of advocates, and the Chief Justice, having considered the same, may by order, prescribe and regulate in such manner as he thinks fit the remuneration of advocates in respect of all professional business, whether contentious or non-contentious.

(2) An order made under this section in respect of non-contentious business may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode or partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

- (a) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (c) the amount of the capital money or rent to which the business relates;
- (d) the skill, labour and responsibility involved therein on the part of the advocate;
- (e) the number and importance of the documents prepared or perused, without regard to length.

(3) An order made under this section may authorize and regulate—

- (a) the taking by an advocate from his client of security for payment of any remuneration to be ascertained by taxation or otherwise, which may become due to him under any such order; and
- (b) the allowance of interest.

(4) So long as an order made under this section in respect of non-contentious business is in operation, taxation of bills of costs of advocates in respect of non-contentious business shall, subject to section 45, be regulated by that order.

45. (1) Subject to section 46 and whether or not order is in force under section 44, an advocate and his client may—

- (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;
- (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate's instruction fee in respect thereof or his fees for appearing in court or both;
- (c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof;

Agreements with respect to remuneration.

and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

(2) A client may, within six months after the date of any agreement made by virtue of this section, apply by chamber summons to the Court to have the agreement set aside or varied on the grounds that it is harsh and unconscionable, exorbitant or unreasonable, and every such application shall be heard before a judge sitting with two assessors, who shall be advocates of not less than five years' standing appointed by the Registrar after consultation with the chairman of the Society for each application and on any such application the court, whose decision shall be final, shall have power to order—

- (a) that the agreement be upheld; or
 - (b) that the agreement be varied by substituting for the amount of the remuneration fixed by the agreement such amount as the Court may deem just; or
 - (c) that the agreement be set aside; or
 - (d) that the costs in question be taxed by the Registrar;
- and that the costs of the application be paid by such party as it thinks fit.

(3) An agreement made by virtue of this section, if made in respect of contentious business, shall not affect the amount

of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

Provided that any such agreement shall be produced on demand to a taxing officer and the client shall not be entitled to recover from any other person, under any order for the payment of any costs to which the agreement relates, more than the amount payable by him to his advocate in respect thereof under the agreement.

(4) Where any agreement made by virtue of this section is made by the client as the guardian or committee of, or trustee under deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the advocate shall, before payment thereunder is accepted or demanded and in any event within six months after its due date, apply by chamber summons to the Court for approval of such agreement, and every such application shall be dealt with in accordance with subsection (2).

(5) If, after an advocate has performed part only of the business to which any agreement made by virtue of this section relates, such advocate dies or becomes incapable of acting, or the client changes his advocate as, notwithstanding the agreement, he shall be entitled to do, any party, or the legal personal representatives of any party, to such agreement may apply by chamber summons to the Court to have the agreement set aside or varied, and every such application shall be dealt with in accordance with subsection (2):

Provided that, in the case of a client changing his advocate, the Court shall have regard to the circumstances in which the change has taken place and, unless of opinion that there has been default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall allow the advocate the full amount of the remuneration agreed to be paid to him.

(6) Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.

46. Nothing in this Act shall give validity to—

- (a) any purchase by an advocate of the interest, or any part of the interest, of his client in any suit or other contentious proceeding; or
- (b) any agreement relieving any advocate from responsibility for professional negligence or any other responsibility to which he would otherwise be subject as an advocate; or
- (c) any agreement by which an advocate retained or employed to prosecute or defend any suit or other contentious proceeding stipulates for payment only in the event of success in such suit or proceeding or that the advocate shall be remunerated at different rates according to the success or failure thereof; or
- (d) any agreement by which an advocate agrees to accept, in respect of professional business, any fee or other consideration which shall be less than the remuneration prescribed by any order under section 44 in respect of that business; or
- (e) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is, under the law relating to bankruptcy, invalid against a trustee or creditor in any bankruptcy or composition.

Invalid agreements.

47. (1) The jurisdiction of the Court to make orders for the delivery by an advocate of a bill of costs, and for the delivery up of or otherwise in relation to, any deeds, documents or papers in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the Court.

Power of court to order advocate to deliver his bill and to deliver up deed.

(2) In this section and in sections 48, 49 and 50 "advocate" includes the executors, administrators and assignees of the advocate in question.

48. (1) Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause, to be verified by affidavit filed with the plaint, for believing that the party

Action for recovery of costs.

chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.

Procedure in
action where
quantum of
costs is
challenged
by defence.

49. Where, in the absence of an agreement for remuneration made by virtue of section 45, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof—

(a) no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;

(b) unless the bill of costs on which the suit is based is fully itemized, the plaintiff shall file a fully itemized bill of the costs within fourteen days from the date of service of the defence, or such further period as may be allowed by the court, and shall serve a copy thereof on the defendant, and, if the total amount of such bill exceeds the amount sued for, the prayer of the plaintiff shall, subject to the court's pecuniary jurisdiction, be deemed to be increased accordingly and all consequential amendments to the pleadings may be made;

(c) no court or filing fee shall be payable on filing a bill of costs required by this section, but, if thereby the amount for which judgment is prayed in the plaint is deemed to be increased under paragraph (b), the plaintiff shall pay to the court such court or filing fee as may be appropriate to the increase;

(d) at any time after the bill of costs has been filed, and before the suit has been set down for hearing, any party to the action may take out a summons for directions as to whether such bill should be taxed by the taxing officer before the suit is heard.

Taxation on
application of
third parties,
beneficiaries
under trust, etc

50. (1) Where a person other than the person who is the party chargeable with a bill of costs is liable to pay the bill either to the advocate or to the party chargeable with the bill, or where a person is interested in any property in the hands

or under the control of a trustee, executor or administrator, out of which property the trustee, executor or administrator has paid or is liable to pay the bill, that person or his administrators, executors or assignees may apply to the Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the Court, having regard to the extent and nature of the interest of the person, may make any order thereon which it would have been competent to make if the application had been made by that party:

Provided that no order for taxation of a bill shall be made under this section in any case where—

- (i) the bill has previously been taxed; or
- (ii) the application is made more than six months after the date on which the bill was rendered to the party chargeable therewith or three months after the date on which the bill was paid, or the date when the party making the application became entitled to do so, whichever is the earliest.

(2) If an applicant under subsection (1) pays or has paid any money to the advocate in respect of a bill of costs payable out of property in the hands or under the control, of a trustee, executor or administrator he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate had.

(3) The Court may, if it orders taxation of the bill under this section, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

51. (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

General provisions as to taxation.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

Charging
orders.

52. Any court in which an advocate has been employed to prosecute or defend any suit or matter may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit or matter, and may make orders for the taxation of the costs and for raising money to pay or for paying the costs out of the property so charged as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate:

Provided that no order shall be made if the right to recover the costs is barred by limitation.

PART X—COMPLAINTS COMMISSION

Establishment
of Complaints
Commission.

53. (1) There is hereby established a Complaints Commission (in this Part referred to as "the Commission") which shall consist of such commissioner or commissioners as shall be appointed by the President for the purpose of enquiring into complaints against any advocate, firm of advocates, or any member or employees thereof.

(2) If a single commissioner is appointed under subsection (1) he shall be a person who is qualified to be appointed as a Judge of the High Court under Chapter IV of the Constitution, and if more than one commissioner is appointed then one commissioner shall be so qualified.

(3) The Commission may require any person, whom it considers necessary for the purpose of carrying out its duties under this section, to assist it in so doing.

4) It shall be the duty of the Commission and of any person summoned by it to assist in accordance with subsection (3), to receive and consider a complaint made by any person, regarding the conduct of any advocate, firm of advocates, or any member or employee thereof; and

(a) if it appears to the Commission that there is no substance in the complaint it shall reject the same forthwith; or

(b) if it appears to the Commission that there is substance in the complaint but that the matter complained of constitutes or appears to constitute a

disciplinary offence it shall forthwith refer the matter to the Disciplinary Committee for appropriate action by it under Part XI; or

- (c) if it appears to the Commission that there is substance in the complaint but that it does not constitute a disciplinary offence it shall forthwith notify the person or firm against whom the complaint has been made of the particulars of the complaint and call upon such person or firm to answer the complaint within such reasonable period as shall be specified by the Commission in such notification; or
- (d) upon the expiration of the period specified under paragraph (c), the Commission shall proceed to investigate the matter for which purpose it shall have power to summon witnesses, to require the production of such documents as it may deem necessary, to examine witnesses on oath and generally take all such steps as it may consider proper and necessary for the purpose of its inquiry and shall, after hearing any submissions made to it by or on behalf of the complainant and the person or firm against whom the complaint has been made, make such an order or award in accordance with this section as it shall in the circumstances of the case consider just and proper; or
- (e) if it appears to the Commission that there is substance in a complaint but that the circumstances of the case do not disclose a disciplinary offence with which the Disciplinary Committee can properly deal and that the Commission itself should not deal with the matter but that the proper remedy for the complainant is to refer the matter to the courts for appropriate redress the Commission shall forthwith so advise the complainant.

(5) In all cases which do not appear to the Commission to be of serious or aggravated nature, the Commission shall endeavour to promote reconciliation and encourage and facilitate an amicable settlement between the parties to the complaint.

(6) If the Commissioner considers that the complainant has suffered loss or damage by reason of the advocate's conduct,

but that the conduct in question does not amount to a disciplinary offence, it may award to the complainant reimbursement of expenses not exceeding ten thousand shillings.

(7) The Commission may issue a warrant for the levy of the amount of any sum ordered to be paid by virtue of this section on the immovable and movable property of the person or firm by whom the compensation is ordered to be paid by distress and sale under warrant, and such warrant shall be enforced as if it was a warrant issued by the Court.

(8) Any party aggrieved by a decision or order of the Commission under this section may appeal to the High Court and the determination of any such appeal shall be final.

(9) The Commission shall publish a quarterly report as to the complaints dealt with by it in that quarter and the report shall be made in such manner and be in such form as shall be prescribed by rules made under subsection (3) of section 54.

Secretary and staff of Commission and rules relating thereto.

54. (1) There shall be a secretary to the Commission who shall be appointed by the Attorney-General.

(2) The Attorney-General shall provide such public officers as are necessary for the proper and efficient exercise of the duties and functions of the Commission.

(3) The Attorney-General may make rules regulating the structure and operation of the Commission and for the carrying into effect its functions under this Part.

PART XI—DISCIPLINE

Advocates to be officers of Court.

55. Every advocate and every person otherwise entitled to act as an advocate shall be an officer of the Court and shall be subject to the jurisdiction thereof and, subject to this Act, to the jurisdiction of the Disciplinary Committee:

Provided that the persons mentioned in section 10, other than those included in paragraph (c) of that section, shall not be subject to the jurisdiction of the Disciplinary Committee.

Saving of disciplinary powers of Court.

56. Nothing in this Act shall supersede, lessen or interfere with the powers vested in the Chief Justice or any of the judges of the Court to deal with misconduct or offences by

an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the Chief Justice or any judge.

6

57. (1) There is hereby established a committee, to be known as the Disciplinary Committee (in this Part referred to as "the Committee") which shall consist of—

Establishment
of Disciplinary
Committee.

- (a) the Attorney-General;
- (b) the Solicitor-General or a person deputed by the Attorney-General; and
- (c) three advocates (other than the chairman, vice-chairman or secretary of the Society), of not less than ten years standing, one of whom shall be an advocate who does not ordinarily practise in Nairobi, all of whom shall be elected and shall hold office for three years and be eligible for re-election.

(2) During the illness, or temporary absence from Kenya, of any of its elected members, the Committee may nominate any advocate who is qualified for election as a member of the Committee to act as a temporary member of the Committee.

(3) In the event of there being any complaint or matter pending before the Committee at the date of retirement of any member and such member being a member of a tribunal thereof which had, prior to such date, entered upon the hearing thereof in accordance with section 60, that member shall, in the event of his not being re-elected, be deemed to remain in office for the purpose only of such complaint or matter and shall so remain until such complaint or matter has been finally disposed of.

(4) For the purposes of subsection (3), a complaint or matter shall be deemed to be pending if under consideration by the Committee, and a complaint or matter shall be deemed to have been finally disposed of—

- (a) in the case of an application under section 59, or a complaint under section 60, upon the making of a final order; or

- (b) in the case of a matter arising under section 71, when the Chief Justice has signified his decision thereon; or
- (c) in the case of an application under section 72, upon the final conclusion of the proceedings relating thereto before the Committee or the Court, as the case may be; or
- (d) in any other case, upon the final determination thereof by the Committee.

Proceedings of
Committee.

58. (1) The Committee may, subject to subsection (2), act as a tribunal of either three or five members, and may require the chairman or vice-chairman of the Society or both, to sit as an additional member or members of the Committee to constitute the tribunal for the purposes of any complaint or matter where, on the grounds of availability or convenience, a tribunal would not otherwise be available.

(2) The Attorney-General or Solicitor-General shall be the chairman of the Committee and shall preside at all meetings at which he is present, and in absence of the Attorney-General or the Solicitor-General the person deputed by the Attorney-General under section 57 (1) (b) shall be chairman of that meeting:

Provided that if both the Attorney-General and the Solicitor-General or any person deputed by the Attorney-General under subsection (1) of section 57 are unable to be present, the tribunal shall appoint a chairman from the members present.

(3) The secretary of the Society shall be the secretary of the Committee and his remuneration, if any, shall be paid by the Society:

Provided that the Committee may, in the case of absence or inability to act of the secretary, appoint any person entitled to act as an advocate to act as secretary to the Committee during the period of such absence or inability to act and in such case the remuneration, if any, of the person so appointed shall be paid by the Society.

(4) For the purposes of any application or complaint made to it under this Part, the Committee may administer oaths or affirmations, and the complainant and the advocate to whom a complaint relates, and an applicant making any

application to the Committee, may take out a summons to give evidence or to produce documents, but no person shall be compellable under any such summons to produce any document which he could not legally be compelled to produce at the trial of a suit.

(5) All proceedings before the Committee shall be deemed for the purposes of Chapter XI of the Penal Code, to be judicial proceedings and for the purposes of Chapter VIII of the Evidence Act, to be legal proceedings.

Cap. 63.

Cap. 80.

(6) The Committee may make rules for regulating the making to the Committee, and the hearing and determination by the Committee, of applications or complaints under this Part.

59. (1) An advocate may make an application to the Committee to procure his name to be removed from the Roll.

Application for removal of name from the Roll.

(2) On the hearing of an application under subsection (1), the Committee may make an order that the name of such advocate be removed from the Roll and may make such other order in relation to the case as it may think fit.

60. (1) A complaint against an advocate of professional misconduct, which expression includes disgraceful or dishonourable conduct incompatible with the status of an advocate, may be made to the Committee by any person.

Complaints against advocates.

(2) Where a person makes a complaint under subsection (1), the complaint shall be by affidavit by himself setting out the allegations of professional misconduct which appear to arise on the complaint to the Committee, accompanied by such fee as may be prescribed by rules made under section 58 (6); and every such fee shall be paid to the Society and may be applied by the Society to all or any of the objects of the Society.

(3) Where a complaint is referred to the Committee under Part X or subsection (1) the Committee shall give the advocate against whom the complaint is made an opportunity to appear before it, and shall furnish him with a copy of the complaint, and of any evidence in support thereof, and shall give him an opportunity of inspecting any relevant document not less than seven days before the date fixed for the hearing:

Provided that, where in the opinion of the Committee the complaint does not disclose any prima facie case of professional misconduct, the Committee may, at any stage of the proceedings, dismiss such complaint without requiring the advocate to whom the complaint relates to answer any allegations made against him and without hearing the complaint.

(4) After hearing the complaint and the advocate to whom the same relates, if he wishes to be heard, and considering the evidence adduced, the Committee may order that the complaint be dismissed or, if of the opinion that a case of professional misconduct on the part of the advocate has been made out, the Committee may order—

- (a) that such advocate be admonished; or
- (b) that such advocate be suspended from practice for a specified period not exceeding five years; or
- (c) that the name of such advocate be struck off the Roll; or
- (d) that such advocate do pay a fine not exceeding fifty thousand shillings,

or such combination of the above orders as the Committee thinks fit.

(5) The Committee may make any such order as to payment by any party of any costs or witness expenses and of the expenses of the Committee or the members thereof in connection with the hearing of any complaint as it may think fit, and any such order may be registered with the Court and shall thereupon be enforceable in the same manner as an order of the Court to the like effect.

(6) The Committee may issue a warrant for the levy of the amount of any sum ordered to be paid by virtue of this section on the immovable and movable property of the advocate by distress and sale under warrant, and such warrant shall be enforced as if it were a warrant issued by the Court.

Reports by
Committee and
action thereon.

61. (1) On the termination of the hearing of a complaint, if the Committee does not dismiss the same, the Committee shall embody its findings and the order or orders made by it in the form of a report to the Court, which shall be delivered to the Registrar, together with the record of evidence taken and any documents put in evidence.

(2) The Registrar shall give to the complainant, to the Complaints Commission (if the complainant has been referred by it to the Committee), to the Council of the Society and to the advocate to whom the complaint relates notice of delivery of the report, which shall be open to inspection by the complainant, the Commissioner, the advocate to whom the complaint relates and their respective advocates, if any, and by the Council.

(3) At the conclusion of the hearing of a complaint the Committee may, if evidence of an offence appears to it to have been disclosed under section 80, make a report of the proceedings and its findings to the Attorney-General who shall consider whether to exercise his powers under that section.

62. (1) Any advocate aggrieved by order of the Committee made under section 60 may, within fourteen days after the receipt by him of the notice to be given to him pursuant to section 61 (2), appeal against such order to the Court by giving notice of appeal to the Registrar, and shall file with the Registrar a memorandum setting out his grounds of appeal within thirty days after giving by him of such notice of appeal.

Appeal against order of Committee.

(2) The Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Council of the Society and to the advocate not less than twenty-one days' notice of the date of hearing.

(3) An appeal under this section shall not suspend the effect or stay the execution of the order appealed against notwithstanding that the order is not a final order.

63. When notifying the Council of the Society and the advocate to whom a complaint relates of the date fixed for the hearing of the appeal, the Registrar shall also forward to the Council and the advocate a copy of the report of the evidence, a list of any documents put in evidence and the memorandum of appeal.

Registrar to furnish copy of report and record.

64. The Court, after considering the evidence taken by the Committee, the report of the Committee and the memorandum of appeal, and having heard the parties, and after taking any further evidence, if it thinks fit so to do, may—

Powers of Court.

(a) refer the report back to the Committee with directions for its findings on any specified point; or

(b) confirm, set aside or vary any order made by the Committee or substitute therefor such order as it may think fit;

and may also make such order as to the payment by any person or costs, or otherwise in relation to the appeal, as it may think fit.

Powers of Court under section 64 to be exercised by two judges.

65. (1) The powers conferred upon the Court by section 64 shall be exercised by not less than two of the judges of the Court.

(2) If such powers are exercised by two judges and the opinion of the Court is equally divided, the matter shall be reheard by three judges.

(3) If such powers are exercised by three judges and they do not agree in their opinion, the decision of the majority shall be taken to be the decision of the Court.

Registrar to draw up orders.

66. Where an order has been made by the Court under section 64, the Registrar shall, within one week from the date of the making thereof, cause the order to be drawn up.

Right of appeal to Court of Appeal.

67. (1) Any advocate aggrieved by a decision or order of the Court made under section 64 may appeal therefrom to the Court of Appeal in the manner and within the time prescribed by the rules made from time to time by the Court relating to second appeals in civil matters.

(2) An appeal under this section shall not suspend the effect or stay the execution of the decision or order appealed against notwithstanding that the order concerned is not a final order.

Orders to be noted on the Roll.

68. (1) The Registrar shall cause a note of the effect of a final order to be entered in the Roll against the name of the advocate concerned, and where the order so directs shall remove or strike off his name from the Roll.

(2) The Registrar shall send to the secretary of the Society a certified copy of every final order made under this Part removing or striking off the name of an advocate from the Roll or suspending an advocate from practice.

(3) Where an advocate is a member of a professional body outside Kenya, or is subject to the jurisdiction for the purposes of discipline of a professional body outside Kenya, the Registrar shall also send to the professional body a certified copy of every final order made under this Part suspending or striking off the name of the advocate from the Roll.

69. (1) The Registrar shall inform the secretary to the Society of the making of an entry in respect of any advocate on the Roll and of the removal from, or the striking off, the Roll of the name of any advocate in accordance with the provisions of this Part.

Law Society to be informed of result of disciplinary proceedings and publicity of striking-off or suspension.

(2) The Registrar shall cause to be published in the Gazette a notice that a final order has been made in respect of any advocate whereby he has been suspended from practice or whereby his name has been struck off the Roll.

70. Subject as hereinafter provided, no advocate shall be liable to have his name struck off the Roll on account of any defect in his admission and enrolment, unless the application to strike his name off the Roll is made within twelve months after the date of his enrolment:

Limitation of time for certain applications to strike names off the Roll.

Provided that this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment.

71. The Chief Justice may, if he thinks fit, either on his own initiative or on the recommendation of the Committee, at any time order the Registrar to replace on the Roll the name of any advocate whose name has been removed from or struck off the Roll, and upon payment to the Registrar of the prescribed fee the Registrar shall replace that name accordingly.

Restoration to Roll.

72. (1) An application may be made by or on behalf of the Council of the Society to the Committee for an order directing that, as from a date to be specified in such order, no advocate shall, in connection with his practise as an advocate, without the written permission of such Council, which may be given for such period and subject to such conditions as such Council may think fit, take into or retain in his

Disciplinary powers as to clerks.

employment or remunerate any person, who, being or having been a clerk to an advocate—

- Cap. 63. (a) has been convicted of any offence mentioned in Chapters XI, XXVI, XXXII or XXXV, in or against any one or more of sections 280, 281, 282, 285, 293, 294, 308, 311, 314, or 393 of the Penal Code, or any offence mentioned in the Prevention of Corruption Act; or
- Cap. 65. (b) has been convicted of any offence involving fraud or deceit; or
- (c) has been party to any act or default of an advocate in respect of which a complaint has been or might be made against such advocate to the Committee; or
- (d) has so conducted himself whilst employed as a clerk to an advocate that, had he himself been an advocate, such conduct might have formed the subject of a complaint against him to the Committee.

(2) The provisions of section 58 and of subsections (4), (5) and (6) of section 60 shall apply, *mutatis mutandis*, to the hearing of an application under this section.

(3) Every order made by the Committee under this section shall be filed, on a file to be kept for that purpose, by the secretary to the Committee who shall cause a certified copy of such order to be delivered to the person to whom it relates or shall forward the same by registered post to his last known address.

(4) The file mentioned in subsection (3) may be inspected by any advocate during office hours without payment.

Clerk's right
of appeal.

73. (1) Any person against whom an order has been made by the Committee under section 72 may, within fourteen days of the date of such order, appeal against such order to the Court, by giving notice of appeal to the Registrar and shall file with the Registrar a memorandum setting out his grounds of appeal within thirty days after the giving by him of such notice of appeal.

(2) The Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Council of the Society and to the appellant not less than twenty-one days' notice of the hearing.

(3) The provisions of sections 64, 65 and 79 shall apply, *mutatis mutandis* to the hearing of an appeal under this section.

(4) The decision of the Court shall be final.

74. (1) Any person against whom an order made under section 72 is in force who seeks or accepts employment by, or remuneration from, an advocate in connection with his practice as an advocate without previously informing him of the order shall be guilty of an offence.

Offences and penalties with respect to employment of clerks against whom an order is in force.

(2) Any advocate who knowingly acts in contravention of an order made under section 72 or in contravention of any condition subject to which the permission of the Council of the Society may have been given under subsection (1) of that section shall be guilty of an offence.

75. Every report and every order made by the Committee under this Part shall be signed by the chairman of the Committee, and any document, purporting to be a report or an order so signed shall be received in evidence in any judicial proceedings or in any proceedings under this Act, and shall be deemed to be such a report or an order without further proof of its contents unless the contrary is shown.

Order of Committee to be received in evidence.

76. Subject to section 75, all rules, certificates, notices and other documents made or issued by the Committee for any purpose whatsoever may be signed on behalf of the Committee by the secretary to the Committee or by such member or other person as the Committee may for that purpose appoint.

Authentication of rules and other documents.

77. Any person who, without good and lawful excuse, contravenes or fails to comply with any order, notice or direction of the Committee shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both and, in the case of an advocate, shall, alternatively or in addition, be liable to proceedings under section 60.

Penalties for failure to comply with order of Committee.

78. No member of the Committee, nor any person who is or was at any material time a member, or the secretary, thereof, shall be liable to be sued in any civil court for or in

Immunity for members of Committee.

respect of any act or thing done or omitted to be done, or ordered to be done or omitted, by him, in good faith, in the exercise, discharge or performance or intended or purported exercise, discharge or performance, or any of the powers jurisdiction, duties or functions conferred upon him under or by virtue of this Act.

Right to
legal
representation

79. Any advocate against whom a complaint is made or any complainant under part X or this Part, may be represented by an advocate.

Betrayal of
trust.

80. Any person who, being an advocate, is entrusted in his professional capacity with any money, valuable security or other property to retain it in safe custody with instructions to pay or apply it for any purpose in connection with his duty as an advocate fails to pay, apply or account for the same after due completion of the purpose for which it was given, shall be guilty of an offence:

Provided that no prosecution for an offence under this section shall be instituted unless a report has been made to the Attorney-General by the Committee under subsection (3) of section 61.

PART XII—MISCELLANEOUS PROVISIONS

Power to
make rules.

81. (1) The Council of the Society, with the approval of the Chief Justice, may make rules with regard to—

- (a) the professional practice, conduct and discipline of advocates;
- (b) the keeping of accounts by advocates;

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(c) the annual submission to the Council of a certificate by an accountant required by the Accountants Act or by some other person or class of persons specified by such Council that he has examined the books, accounts and documents of the advocate to such extent as may be prescribed and stating—

- (i) whether or not he is satisfied that, during the period covered by his certificate, the advocate has complied with the rules for the time being in force regulating the keeping of accounts by advocates; and
- (ii) if he is not so satisfied, the matters in respect of which he is not satisfied;

- (d) the retention or otherwise by advocates of interest earned on moneys deposited, received or held for or on account of clients;
- (e) the issue of practising certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;
- (f) generally for the better carrying out of the provisions of this Act, other than Parts III, IV, IX, X and XI.

(2) If an advocate fails to comply with any rules made under this section, any person may make a complaint in respect of that failure to the Disciplinary Committee.

82. (1) Subject to this section, no bank shall, in connection with any transaction on any account of any advocate kept with it or with any other bank (other than an account kept by an advocate as trustee for a specified beneficiary) incur any liability or be under any obligation to make an inquiry, or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Relief to banks.

Provided that nothing in this subsection shall relieve a bank from any liability or obligation to which it would be subject apart from this Act.

(2) Notwithstanding anything in subsection (1), a bank at which an advocate keeps an account for client's money shall not, in respect of any liability of the advocate to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against moneys standing to the credit of that account.

83. Nothing in this Act or any rules made thereunder shall affect the provisions of any other written law empowering any unqualified person to conduct, defend or otherwise act in relation to any legal proceedings.

Savings of other laws.

84. All admission fees received by the Registrar under sections 11 (2) or 15 (4), and all fees received by the Registrar in respect of replacing an advocate's name on the Roll under

Application of certain fees, etc.

section 71, shall be paid by the Registrar to the Society, and those fees together with the fees for practising certificates and the Society's annual subscriptions, both of which shall be collected by the Society, be applied by the Society to all or any of the objects of the Society.

General
penalty.

85. (1) Any person who is guilty of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years or to both.

(2) Any advocate who is guilty of an offence under this Act shall be liable, whether or not he has been charged with, convicted or acquitted of such offence, to proceedings under section 60.

Repeal of
Cap. 16
and savings.

86. (1) The Advocates Act is repealed.

Cap. 2.

(2) Without prejudice to the generality of the application of subsection (3) of section 23 of the Interpretation and General Provisions Act, the transitional provisions set out in the Second Schedule to this Act shall have effect on the repeal of the Advocates Act.

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FIRST SCHEDULE

(s. 3 (2))

PROCEEDINGS OF THE COUNCIL OF LEGAL EDUCATION

1. The chairman shall preside at every meeting of the Council of Legal Education at which he is present, and in the absence of the chairman at a meeting the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

2. The quorum of the Council of Legal Education shall be four.

3. At any meeting of the Council of Legal Education the chairman shall have a casting as well as deliberative vote and subject thereto, the decision of the majority of the members present and voting at any meeting of the Council shall be deemed to be the decision of the Council.

4. Subject to paragraph 2, no proceedings of the Council of Legal Education shall be invalid by reason only of a vacancy among the members thereof.

5. The chairman of the Council of Legal Education may at any time of his own motion convene a meeting of the Council and shall

FIRST SCHEDULE—(Contd.)

in any case convene a meeting within fourteen days of the receipt by him of a written request in that behalf signed by at least three members.

6. All instruments made by, and all decisions of, the Council of Legal Education shall be signified under the hand of the chairman or of the secretary.

7. Except as provided by this Schedule, the Council of Legal Education may regulate its own proceedings.

SECOND SCHEDULE

(s. 86 (2))

TRANSITIONAL PROVISIONS

1. The four advocates who, immediately before the commencement of this Act, were members of the Council of Legal Education then existing shall be deemed to be the four advocates nominated by the Society for the purposes of section 3 of this Act.

2. The Roll of all advocates kept by the Registrar in accordance with the provisions of section 20 of the Advocates Act (hereinafter referred to as "the repealed Act") shall continue to be the Roll of Advocates for the purposes of this Act.

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3. Any practising certificate issued by the Registrar in accordance with the provisions of the repealed Act and in force at the commencement of this Act shall be deemed to have been issued in accordance with the provisions of this Act.

4. The Disciplinary Committee established by the repealed Act shall become and shall be the Disciplinary Committee for the purposes of this Act and any complaint or matter pending before the Disciplinary Committee at the commencement of this Act shall continue before the Disciplinary Committee in accordance with the provisions of the repealed Act, as the case may require.

5. Notwithstanding the repeal of the Advocates Act, a person who, immediately before the commencement of this Act, was serving articles of clerkship registered under section 14 of the Act shall continue to serve under those articles until the date of expiry and shall be deemed to be duly qualified for the purposes of section 12 of this Act.

6. Notwithstanding the repeal of the Advocates Act, a person who, immediately before the commencement of this Act, was undergoing instruction as a pupil in accordance with section 12 or 18A thereof, shall continue to receive instruction as a pupil for the prescribed period until the date of expiry and shall be deemed to have duly complied with subparagraph (i) of subsection (1) of section 13 of this Act.