

CHAPTER 16

ADVOCATES ACT

SUBSIDIARY LEGISLATION

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**ADVOCATES (FEES FOR RESTORATION
TO THE ROLL) REGULATIONS, 1962**

[L.N. 311/1962.]

1. These Regulations may be cited as the Advocates (Fees for Restoration to the Roll) Regulations, 1962.
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ADVOCATES (REMUNERATION) ORDER, 1962

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[Subsidiary]

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ADVOCATES (REMUNERATION) ORDER, 1962

[L.N. 64/1962, L.N. 8/1965, L.N. 227/1967, L.N. 198/1969, L.N. 56/1972, L.N. 164/1973, L.N. 37/1977, L.N. 264/1978, Corr. No. 3/1979, L.N. 62/1979, L.N. 117/1980, L.N. 70/1982, L.N. 73/1983, L.N. 121/1984, L.N. 264/1993, L.N. 550/1997, L.N. 159/2006, L.N. 50/2009, L.N. 35/2014, L.N. 45/2014, L.N. 268/2017.]

PART I – GENERAL MATTERS**1. Citation**

This Order may be cited as the Advocates (Remuneration) Order, 1962.

2. Application of Order

This Order shall apply to the remuneration of an advocate of the High Court by his client in contentious and non-contentious matters, the taxation thereof and the taxation of costs as between party and party in contentious matters in the High Court, in subordinate courts (other than Muslim courts), in a Tribunal appointed under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301) and in a Tribunal established under the Rent Restriction Act (Cap. 296).

[L.N. 56/1972, s. 2, L.N. 62/1979, s. 3.]

3. Scale of fees

No advocate may agree or accept his remuneration at less than that provided by this Order.

[L.N. 37/1977, s. 2, L.N. 62/1979, s. 4, L.N. 159/2006, s. 2.]

4. Additional remuneration for exceptional dispatch

(1) Where any business requires and receives exceptional dispatch, or, at the request of the client, is attended to outside normal business hours the advocate shall be entitled to receive and shall be allowed such additional remuneration as is appropriate in the circumstances.

(2) Such additional remuneration shall, except in special circumstances, be allowable only as between advocate and client.

[L.N. 62/1979, s. 5.]

5. Special fee for exceptional importance and complexity

(1) In business of exceptional importance or of unusual complexity an advocate shall be entitled to receive and shall be allowed as against his client a special fee in addition to the remuneration provided in this Order.

(2) In assessing such special fee regard may be had to—

- (a) the place at or the circumstances in which the business or part thereof is transacted;
- (b) the nature and extent of the pecuniary or other interest involved;
- (c) the labour and responsibility entailed; and
- (d) the number, complexity and importance of the documents prepared or examined.

6. Security from client for advocate's remuneration

An advocate may accept from his client and a client may give to his advocate security for the amount to become due to the advocate for remuneration and disbursements in business to be transacted or being transacted by him and for interest as hereinafter provided on such amount, but so that interest is not to commence until the amount due is ascertained either by agreement or taxation:

Provided that, for the purpose of this rule, the amount of such costs and disbursements shall be deemed to have been agreed as at the expiry of one calendar month from the date of delivery of the bill unless the client shall within such period have disputed the same or applied to have the same taxed.

7. Interest may be charged

An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.

[L.N. 37/1977, s. 3, L.N. 117/1980, Sch., L.N. 159/2006, s. 3.]

8. Costs payable by an executor, administrator or trustee

Where costs are payable to his advocate by an executor, administrator or trustee for or in connexion with work required to be done for him in that capacity such costs shall be so computed as to afford a complete indemnity against all expenses properly incurred in the matter and any taxation thereof shall be on the basis of advocate and own client.

9. Costs payable by infant, etc

In cases where a bill of costs is payable by an infant or lunatic or out of a fund not presently available, demand for payment thereof may be made on the parent or guardian or trustee or other person liable.

10. Taxing officer

The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.

[L.N. 56/1972, s. 3, L.N. 35/2014, s. 3.]

11. Objection to decision on taxation and appeal to Court of Appeal

(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.

[L.N. 8/1965, Sch.]

12. Reference by consent

With the consent of both parties, the taxing officer may refer any matter in dispute arising out of the taxation of a bill for the opinion of the High Court. The procedure for such reference shall follow that of a case stated but shall be to a judge in chambers.

[Subsidiary]

13. Taxation of cost as between advocate and client on application of either party

(1) The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.

(2) Due notice of the date fixed for such taxation shall be given to both parties and both shall be entitled to attend and be heard.

(3) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof.

[L.N. 73/1983, s. 3.]

13A. Powers of taxing officer

For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.

[L.N. 227/1967, s. 2.]

14. Default of advocate to attend taxation after notice

Any advocate who after the due notice without reasonable excuse fail to appear on the date and at the time fixed for taxation or on any date and time to which such taxation is adjourned, or who shall in any way delay or impede the taxation, or put any other party to any unnecessary or improper expense relative to such taxation shall, on the order of the taxing officer, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and attending the taxation, and shall in addition be personally liable to pay for any unnecessary or improper expense to which he has put any party; and the taxing officer may proceed with such taxation *ex parte*.

15. Taxation procedure contained in Part III to apply to bills under Part II

The provisions of Part III of this Order as to the form and procedure for filing and disposal of a bill of costs for taxation shall apply in all appropriate respects and so far as practicable to any bill of costs under Part II of this Order which may require to be taxed.

16. Discretion of taxing officer

Notwithstanding anything contained in this Order, on every taxation the taxing officer may allow all such costs, charges and expenses as authorized in this Order as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses.

17. Length of folio

A folio shall for all purposes of this Order be deemed to consist of 100 words and any part of a folio shall be charged as one folio. A sum or quantity of one denomination stated in figures is to be counted as one word: eg. "£25,564 16s 8d." is to be counted as three words, and "254 feet 11 inches" is to be counted as four words.

[L.N. 8/1965, Sch., L.N. 73/1983, s. 2.]

PART II – NON-CONTENTIOUS MATTERS

18. Remuneration of advocate in non-contentious matters

Subject to paragraph 22, the remuneration of an advocate in respect of conveyance and general business (not being in any action, or transacted in any court or in chambers of any judge or registrar) shall be regulated as follows—

Sales, purchases and securities

- (a) in respect of sales and purchases of immovable property or an interest in immovable property, and in respect of debentures, mortgages and charges, and in respect of negotiating commissions on sales and mortgages, the remuneration is to be that prescribed in Schedule 1:

Provided that where the advocate acting for a vendor does not prepare a letter of agreement, heads of agreement or agreement for sale, the scale fee is reduced by one-third.

Leases and agreements for lease of land

- (b) In respect of leases, agreements for lease or conveyances reserving rents or agreements for the same, the remuneration is to be that prescribed in Schedule 2.

Companies formations, incorporations and registrations

- (c) In respect of business in connection with the formation, incorporation and registration of a company, the remuneration is to be that prescribed in Schedule 3.

Trademarks

- (d) In respect of business in connection with the registration of and proceedings concerning trademarks, the remuneration is to be that prescribed in Schedule 4.

Estates

- (e) In respect of business in connection with probate and the administration of estates, the remuneration is to be that prescribed in Schedule 10.

Uncompleted transactions and other business

- (f) In respect of any business referred to in this paragraph which is not completed, and in respect of other deeds or documents, including settlements, deeds of gift *inter vivos*, assents and instruments vesting property in new trustees, and any other business of a non-contentious nature, the remuneration which has otherwise not been provided for, the remuneration is to be that prescribed in Schedule 5.

Patents, designs and utility models

- (g) In respect of business in connection with the registration of patents, designs and utility models as well as proceedings concerning patents, designs and utility models, the remuneration is to be that prescribed in Schedule 12.

[L.N. 8/1965, Sch., L.N. 56/1972, r. 2, L.N. 73/1983, r. 4, L.N. 35/2014, r. 5.]

19. Expenses chargeable in addition to remuneration

The remuneration prescribed by this Order does not include stamps, auctioneer's or valuer's charges, agent's fees, travelling expenses, fees paid on searches in public offices or on registration, costs of extracts from any register, record or roll, cost of photocopies and other disbursements reasonably and properly incurred, but includes stationery, copies of letters and charges and allowances for time of the advocate and his clerks.

[L.N. 37/1977, s. 4.]

[Subsidiary]

20. Scale charges; what they include and exclude

(1) Scale charges shall include all work ordinarily incidental to a transaction, and in the case of a conveyance, transfer or mortgage shall include—

- (a) taking of instructions to prepare the necessary deed or document;
- (b) investigation of title;
- (c) report on the title to the client;
- (d) preparation or approval or adjustment of the deed or document;
- (e) settlement of the transaction if in the town of the advocate's practice;
- (f) obtaining by correspondence any necessary consent or clearance certificate but excluding land control consent;
- (g) registration of the deed;
- (h) correspondence between advocate and client.

(2) Scale charges shall not include—

- (a) prior negotiations leading up to or necessary in the completion of a bargain;
- (b) tracing of title deeds or obtaining certified copies thereof;
- (c) payment of withholding tax or obtaining of exemption therefrom;
- (d) completion of valuation forms for assessment of stamp duties;
- (e) adjudication of stamp duties;
- (f) obtaining land control consent and personal attendances for obtaining of any necessary consent or clearance certificate under subparagraph (1)(f);
- (g) extra work occasioned by special circumstances;
- (h) extra work occasioned by a change of circumstances emerging while an item of business is in progress, e.g. the death or bankruptcy of a party to the transaction.

[L.N. 62/1979, s. 6.]

21. Scale fees: how calculated

In the calculation of scale charges the basis of charge shall unless otherwise provided in the Schedules, and irrespective of the number of titles involved or documents required to be prepared or approved, be the sum set forth in the deed or document as the price or consideration or, if no price or consideration or only a nominal price or consideration is set forth, the value of the subject matter affected by the deed, which shall be deemed to be—

- (a) the value fixed for the purpose of stamp duty; which failing
- (b) the sum at which the property affected has last been passed for estate duty; which failing
- (c) the last price at which a sale has taken place within ten years from the date of the transaction; which failing
- (d) the estimated average market value during the preceding three years.

22. Liberty to advocate to elect Schedule 5; election to be communicated to client in writing

(1) In all cases in which any other Schedule applies, an advocate may, before or contemporaneously with rendering a bill of costs drawn as between advocate and client, signify to the client his election that, instead of charging under such Schedule, his remuneration shall be according to Schedule 5, but if no election is made his remuneration shall be according to the scale applicable under the other Schedule.

(2) Subject to paragraph 3, an advocate who makes an election under subparagraph (1) of this paragraph may not by reason of his election charge less than the scale fee under the appropriate Schedule.

[L.N. 56/1972, s. 5, L.N. 35/2014, s. 3.]

23. Items to be charged for separately under appropriate Schedule

In the event of the business handled by an advocate in the course of any one transaction falling under more than one of the categories prescribed by Schedules 1 to 4, each item shall be charged separately according to the remuneration prescribed by the Schedule within which it falls and any part of the business not specially provided for by any of the said Schedules 1 to 4 shall be charged under Schedule 5.

[L.N. 35/2014, s. 3.]

23A. Choice of methods of completion of transaction; fee applicable

Where a transaction may be completed in more ways than one, the advocate concerned may complete the transaction in any way he chooses but, in the absence of agreement to the contrary, he must charge the fee applicable to the method attracting the lowest fee.

[L.N. 56/1972, s. 6.]

24. Documents; by whom to be prepared

Unless otherwise agreed, all conveyancing documents shall be prepared by the advocate of the parties as follows—

- (a) conveyance or transfer or assignment advocate of the purchaser or party to whom property is conveyed, transferred or assigned;
- (b) mortgage or charge advocate of mortgagee or chargee;
- (c) release or discharge advocate of party in whose favour release or discharge is given;
- (d) Lease advocate of lessor;
- (e) all other documents advocate of the grantee or obligee, unless express provision to the contrary is made elsewhere in this Order.

25. Place of completion

Unless otherwise agreed, the place of completion of conveyancing transactions shall be the office of the advocate for the vendor, mortgagee, chargee or lessor as the case may be.

[L.N. 56/1972, s. 8.]

26. Definitions and application of Schedule 1

(1) Rules 27 to 41 shall govern the application of Schedule 1 and shall be applied in sequence, and the words “the scales”, or words of similar import appearing in any of the said rules, shall be read and construed as meaning the charges prescribed by the First, Second and Third Scales to the said Schedule, as modified by the provisions of any preceding rule.

(2) In this Order, wherever their application so requires, “conveyance”, “mortgage”, “mortgagor”, and “mortgagee” shall respectively be read and construed as “transfer” or “assignment”, “charge”, “chargor” and “chargee”.

[L.N. 35/2014, s. 3.]

27. Commission for negotiating sale or purchase

Commission for negotiating a sale or purchase by private contract shall apply to cases where the advocate of a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer, or estate or other agent.

28. Remuneration for conveyance on a sale by auction

The remuneration for deducting title and perusing and completing conveyance on a sale by auction is to be chargeable on each lot of property except that where property held under the same title is divided into lots for convenience of sale and the same purchaser buys several lots and takes one conveyance and only one abstract of title is delivered the remuneration is to be chargeable upon the aggregate prices of the lots.

[Subsidiary]

29. Charges where same advocate acting for both vendor and purchaser

Where an advocate acts for both vendor and purchaser he shall be entitled to charge as against the vendor the vendor's advocate's charges and as against the purchaser the purchaser's advocate's charges, such charges in each case to be reduced by one-sixth.

30. Commission for negotiating loan

The commission for negotiating a loan shall be payable to the mortgagor's advocate where he arranges and obtains the loan on instructions from the mortgagor to endeavour to raise or find the loan. The commission for negotiating a loan shall be payable to the mortgagee's advocate where he arranges the loan on instructions from the mortgagee to arrange or find an investment. Where an advocate arranges a loan between two clients on respective instructions to raise a loan and to find an investment he shall be entitled to charge only the one commission, of which half shall be payable by the mortgagor and half by the mortgagee.

31. Costs of mortgage to be paid by borrower

The costs of a mortgagee for the investigation of title and the preparation, completion and registration of his security or of any discharge or assignment thereof made at the request of the borrower, whether or not the transaction is completed, shall be payable to the borrower, but any commission due to the mortgagee's advocate for negotiating the loan shall be payable by the mortgagee.

[L.N. 62/1979, s. 7.]

32. Building society mortgagee

(1) Where an advocate acting on behalf of a building society mortgagee makes use of a printed or stereotyped form of engrossment of mortgage or discharge, the fee payable to the mortgagee's advocate in respect thereof under Schedule 1 shall be reduced by one-third but is not subject under this paragraph and any other paragraph to a reduction in excess of one-half of the scale fee.

(2) For the purposes of this rule, a building society shall be deemed to include any association, corporation or company acting in the making of an advance or the lending of money on the security of, or for the purposes of purchasing or building, domestic residential property.

[L.N. 56/1972, s. 9, L.N. 35/2014, s. 3.]

33. Charges where advocate is concerned for both mortgagor and mortgagee

Where an advocate is concerned for both mortgagor and mortgagee, he shall charge the mortgagee's advocate's charges and one-half of those which would be allowed to the mortgagor's advocate.

[L.N. 62/1979, s. 8]

34. Charges where conveyance and mortgage are prepared by one advocate

Where a conveyance and mortgage of the same property are completed at the same time and are prepared by the same advocate he shall charge only one-half of the scale fees for preparing and approving the mortgage deed in addition to his charges for the conveyance and his commission for negotiating (if any).

[L.N. 62/1979, s. 9]

35. Charges where one document prepared and one approved by one advocate

Where a conveyance and a mortgage of the same property are completed at the same time, the respective advocates acting for the vendor and purchaser shall charge the

appropriate scale fee on the conveyance and their commissions for negotiating (if any). For preparing and approving the mortgage, they shall charge one-half of the appropriate scale fee.

[L.N. 56/1972, s. 10, L.N. 62/1979, s. 10.]

36. Charges where mortgage in favour of vendor and one advocate acts for both parties

Where a conveyance and mortgage of the same property are completed at the same time and are prepared by the same advocate, and the mortgagee is the vendor, the advocate shall be entitled to charge only one-third of the scale fee prescribed for preparing and approving the mortgage deed in addition to his charge for the conveyance and his commission for negotiating (if any).

[L.N. 62/1979, s. 11.]

37. Where property is sold subject to incumbrances

Where a property is sold subject to incumbrances consisting of one or more legal mortgages or legal charges, the amount of the incumbrances shall be deemed part of the purchase money for the purpose of calculating the charges for the conveyance, except where the mortgagee is the purchaser, in which case the charge for the conveyance shall be calculated upon the price of the equity of redemption.

38. Charges for mortgage to advocate

Any advocate to whom, either alone or jointly with any other person, a mortgage of immovable property is granted as security for money shall be entitled to charge for all business transacted and acts done in investigating the title to the property and preparing and completing the mortgage, all such professional charges and remuneration, other than negotiating commission, as he would have been entitled to receive if such mortgage had been made to a person not an advocate, and such person had retained and employed such advocate to transact such business and do such acts; and such charges and remuneration shall accordingly be recoverable from the mortgagor.

39. Charges for transfer of mortgage to advocate or subsequent work in relation to mortgage in which advocate is personally interested

Any advocate to or in whom, either alone or jointly with any other person, any mortgage is transferred or is vested, shall be entitled to charge for all business transacted and acts done by such advocate in relation to such mortgage or to the security thereby created or the property therein comprised, all such professional charges and remuneration, other than negotiating commission, as he would have been entitled to receive if such mortgage had been transferred to and had remained vested in a person not an advocate, and to recover the same from the person on whose behalf such business is transacted and work done, or to charge the same against the security as if such person had retained and employed such advocate to transact such business and do such acts.

40. Scale: how reckoned on transfers of mortgages

The scale fee as to mortgages shall apply to transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same advocate on the original mortgage or on any previous transfer; and the said scale fee shall not apply to further charges where the title has been previously investigated by the same advocate or firm of advocates within the next preceding twelve months. As to such transfers and further charges the remuneration shall be regulated according to Schedule 5, but the commission (if any) for negotiating the loan shall be chargeable on such transfers and further charges under Schedule 1.

[L.N. 35/2014, s. 3.]

[Subsidiary]

41. Charges for approving draft on behalf of several parties having different interests

If any advocate approves of a draft on behalf of several parties having distinct, but not conflicting, interests capable of separate representation, he shall be entitled to charge the scale fee in respect of the first or principal party, and Sh. 250 in addition for each such party after the first, the whole charges to be aggregated and paid in equal shares by such parties or apportioned according to their respective interests.

[L.N. 37/1977, s. 5.]

42. Application of Schedule 2

Rules 43 to 48 shall govern the application of Schedule 2.

[L.N. 35/2014, s. 3.]

43. Lessor's and lessee's costs

(1) Notwithstanding any custom or practice to the contrary, a party to a lease shall, unless the parties thereto agree otherwise in writing, be under no obligation to pay the whole or part of any other party's advocate's costs of or relating to the preparation, execution or registration of the lease, but nevertheless the costs and expenses of having the lease duly stamped and registered shall be borne by the lessee.

(2) In this Rule—

- (a) “**lease**” includes a letting and an under-lease and also an agreement for a lease, letting or under-lease or for a tenancy or sub-tenancy;
- (b) “**costs**” includes fees, charges, disbursements and remuneration.

44. Printed or stereotyped leases

Where an advocate acting on behalf of a lessor who is granting or proposing to grant two or more leases in common form makes use of a printed or stereotyped form of engrossment of lease the fee payable to such advocate in respect of each such lease under Schedule 2 shall be reduced by one-third.

[L.N. 35/2014, s. 3.]

45. Charges where advocate is concerned for both lessor and lessee

Where an advocate is concerned for both lessor and lessee, he shall be entitled to charge the lessor's advocate's charges and one-half of those of the lessee's advocate.

[L.N. 8/1965, Sch.]

46. Where mortgagor joins in a conveyance

Where a mortgagor or mortgagee joins in a conveyance or lease, the vendor's or lessor's advocate may charge an additional fee of Sh. 120 for obtaining the concurrence of the party so joining.

[L.N. 37/1977, s. 6.]

47. Where third party joining in conveyance or lease is separately represented

Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate advocate, the charges of such separate advocate shall be calculated under Schedule 5.

[L.N. 35/2014, s. 3.]

48. Where consideration for conveyance or lease consists partly of premium and partly of rent

Where a conveyance or lease is partly in consideration of a money payment or premium and partly of a rent, then, in addition to the remuneration prescribed under Schedule 2 by reference to the rent, there shall be paid a further sum equal to the remuneration under Schedule 1 on a purchase at a price equal to such money payment or premium.

[L.N. 35/2014, s. 3.]

PART III – TAXATION OF COSTS IN CONTENTIOUS AND OTHER MATTERS**49. Application of Part III**

(1) This Part shall apply to contentious matters and the taxation of costs as between advocate and client and between party and party in contentious and other proceedings.

(2) In this Part, the expression “**the Court**” means the High Court or any judge thereof or a resident Magistrate Court or any magistrate sitting as a member of a resident Magistrate Court.

49A. Costs in criminal cases

Costs in criminal cases, whether in the High Court or subordinate courts, if not agreed or ordered, shall be taxed as between advocate and client under Schedule 5.

[L.N. 73/1983, s. 5, L.N. 35/2014, s. 3.]

50. Costs in High Court according to Schedule 6

Subject to paragraphs 22 and 58 and to any order of the court in the particular case, a bill of costs in proceedings in the High Court shall be taxable in accordance with Schedule 6 and, unless the court has made an order under paragraph 50A, where Schedule 6 provides a higher and a lower scale the costs shall be taxed in accordance with the lower scale.

[L.N. 56/1972, s. 11, L.N. 73/1983, s. 6, L.N. 35/2014, s. 3.]

50A. Schedule 6 costs on the higher scale

The court may make an order that costs are to be taxed on the higher scale in Schedule 6 on special grounds arising out of the nature and importance or the difficulty or urgency of the case. The higher scale may be allowed either generally in any cause or matter or in respect of any particular application made or business done.

[L.N. 56/1972, s. 12, L.N. 35/2014, s. 3.]

51. Costs in subordinate courts according to Schedule 7

Subject to paragraph 22, the scale of costs applicable to proceedings in subordinate courts (other than Kadhi's Courts) is that set out in Schedule 7.

[L.N. 56/1972, s. 13, L.N. 35/2014, s. 3.]

51A. Costs in Tribunal under Cap. 301

Subject to paragraph 22, the scale of costs applicable to proceedings in a Tribunal appointed under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is that set out in Schedule 8.

[L.N. 198/1969, s. 2, L.N. 56/1972, s. 14, L.N. 73/1983, s. 7, L.N. 35/2014, s. 3.]

51B. Costs in Tribunal under Cap. 296

Subject to paragraph 22, the scale of costs applicable to proceedings in a Tribunal establishment under the Rent Restriction Act (Cap. 296) is that set out in Schedule 9.

[L.N. 62/1979, s. 12, L.N. 73/1983, s. 7, L.N. 35/2014, s. 3.]

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51C. Costs in probate and administration cases

Subject to paragraph 22, the scale of costs applicable to proceedings concerning probate and the administration of estates is that set out in Schedule 10.

[L.N. 73/1983, s. 8, L.N. 35/2014, s. 3.]

51D. Subject to paragraph 22, the remuneration applicable to proceedings before Tribunals other than those under schedules 8 and 9 of this Order except where otherwise prescribed under the Act setting up the Tribunal, is that set out in Schedule 11.

[L.N. 35/2014, r. 6.]

52. Costs to be taxed as between party and party unless otherwise directed

The costs awarded by the Court on any matter or application shall be taxed and paid as between party and party unless the Court in its order shall have otherwise directed.

53. No advocate's costs where suit brought without notice except on special order

If the plaintiff in any action has not given the defendant notice of his intention to sue, and the defendant pays the amount claimed or found due at or before the first hearing, no advocate's costs shall be allowed except on a special order of the judge or magistrate.

54. Costs on an opposed application

In the absence of any express direction costs of an opposed motion or other application (other than an action) shall follow the event, and shall be taxed as between party and party.

55. Costs out of estate of minor, etc

The Court may order costs to be borne by the estate of a minor, lunatic, insolvent or deceased person and may give such directions as may be necessary to secure the due payment thereof.

56. Court may fix costs or record consent order as to costs

The Court may of its own motion fix a sum to be paid in lieu of taxed costs and shall, at the request of all parties to any proceedings, record as an integral part of the final order or judgment therein, the agreement of the parties as to the amount of costs to be paid in pursuance of the Court's order or judgment unless the Court, for reasons to be recorded, considers that the amount so agreed is exorbitant or unreasonable.

57. Registrar to record consent order as to costs

(1) If, after the disposal of any proceedings by the Court, the parties thereto agree the amount of costs to be paid in pursuance of the Court's order or judgment therein, the parties may in lieu of filling a bill of costs and proceeding to taxation thereof, request the registrar by joint letter to record their agreement and unless he considers the amount agreed upon to be exorbitant the registrar shall do so upon payment of the same court fee as is payable on the filling of any document for which no special fee is prescribed.

(2) Such agreement where recorded shall have the same force and effect as a certificate of taxation by the taxing officer:

Provided that if the taxing officer shall consider the amount so agreed upon to be exorbitant he may direct the said costs to be taxed in accordance with this Order and the provisions of rule 11 shall apply in regard to every such taxation.

[L.N. 8/1965, Sch.]

58. Costs in High Court may be restricted to subordinate courts' scale

In causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded, could have been brought in a resident magistrate's or other subordinate court, costs on the scale application to subordinate courts only shall be allowed unless the judge otherwise orders.

[L.N. 73/1983, s. 9.]

59. Costs of more than one advocate may be certified by the judge

(1) The costs of more than one advocate may be allowed on the basis hereinafter provided in causes or matters in which the judge at the trial or on delivery of judgment shall have certified under his hand that more than one advocate was reasonable and proper having regard, in the case of a plaintiff, to the amount recovered or paid in settlement or the relief awarded or the nature, importance or difficulty of the case and, in the case of a defendant, having regard to the amount sued for or the relief claimed or the nature, importance or difficulty of the case.

(2) A certificate may be granted under this rule in respect of two members or employees of the same firm.

60. Judge may certify for costs of Queen's Counsel and Junior Counsel

(1) In any cause or matter where an order for costs is made in favour of a party whose case has been conducted or led by one of Her Majesty's Counsel, additional costs provided in Schedule 6 shall be allowed if the judge at the trial or on delivery of judgment shall have certified under his hand that the employment of Queen's Counsel was reasonable and proper having regard, in the case of a plaintiff, to the amount recovered or paid in settlement or the relief awarded or the nature, importance or difficulty of the case, and, in the case of a defendant, having regard to the amount sued for or the relief claimed or the nature, importance or difficulty of the case.

(2) A certificate for Queen's Counsel (with or without Junior Counsel) may be granted notwithstanding that he is a member of the firm of advocates by whom he was instructed.

(3) A certificate for Junior Counsel (with or without Queen's Counsel) may be granted notwithstanding that he is a member or employee of the firm of advocates by whom he was instructed.

[L.N. 35/2014, s. 3.]

61. Costs improperly incurred by advocate

(1) If in any case it appears to the Court or a judge that costs have been incurred improperly or without reasonable cause, or that by reason of any undue delay in proceedings under any judgment or order, or of any misconduct or default of the advocate, any costs properly incurred have proved fruitless to the party on whose behalf the same were incurred, the Court or judge may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the advocate and his client, and also (if the circumstances of the case shall require) why the advocate should not repay to his client any costs which his client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require.

(2) The Court or judge may in any case refer the matter to a taxing officer for inquiry and report and direct the advocate in the first place to show cause before such taxing officer.

62. Costs where same advocate is employed by two or more plaintiffs or defendants

Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate's bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if

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he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.

62A. Costs where there has been a change of advocates

(1) Where there has been a change of advocates or more than one change of advocates, the advocate finally on the record shall draw a single bill for the whole of the matter in respect of which costs have been awarded.

(2) On taxing the bill the taxing officer shall take into account the following principles, that the bill shall not be larger than if a single advocate had been employed and that the party taxing the bill shall not obtain indemnity for costs which he has not paid.

(3) The bill shall be accompanied by a certificate setting out the dates during which all advocates acted, together with all agreements for remuneration made with them, all sums paid to them for costs and whether those sums were paid in full settlement.

[L.N. 37/1977, s. 7.]

63. Costs between party and party where joint executors or trustees defend separately may be restricted

In taxing as between party and party the costs of joint executors or trustees who defend separately, the taxing officer shall, unless otherwise ordered by the Court or judge, allow only one set of costs for such defendants when he is of opinion that they ought to have joined in their defence, such costs to be apportioned among them as the taxing officer shall deem fit.

64. Appearance in Court or chambers of party not interested

Where any party appears upon any application or proceedings in Court or in chambers in which he is not interested or upon which, according to the practice of the Court, he ought not to attend, he shall not be allowed any costs of such appearance unless the Court or judge shall otherwise order.

65. Limits of time for taxation

(1) At any time after 14 days from the making of an order for the payment forthwith of costs when taxed, any party liable to pay the costs may give not less than one calendar month's notice to the party entitled to tax his bill to do so. The notice shall be filed and delivered.

(2) If the party entitled to tax his bill does not file his bill for taxation within the time limited by the notice, the taxing officer, on the application in writing of any person liable to pay such costs, may notify the party in delay that the bill will not be taxed unless the time for filing shall have been extended by the taxing officer or the court, which extension may be granted either before or after the expiry of the notice.

(3) The period excluded by Order 50, rule 3 of the Civil Procedure Rules (Cap. 21, Sub. Leg.) is excluded for the purposes of this paragraph.

[L.N. 37/1977, s. 8, L.N. 268/2017, s. 2.]

66. Taxation of costs upon an award

Costs may be taxed upon an award in an arbitration notwithstanding that the time for setting aside the award has not elapsed.

67. Receiver in insolvency to have notice of taxation

In insolvency matters the registrar shall give to the receiver the usual notice of the appointment to tax any bill of costs relating to the insolvency between party and party and the advocate or party lodging the bill shall on application furnish the receiver with a copy thereof, on payment of the proper fee, which payment may be charged to the estate.

68. Advocate of insolvent petitioner to give credit for deposit towards costs

An advocate in the matter of an insolvency petition presented by the insolvent himself shall, in his bill of costs, give credit for such sum or security, if any, as he may have received from the debtor, as a deposit on account of the costs and expenses to be incurred in and about the filing and prosecution of such petition; and the amount of any such deposit shall be deducted by the taxing officer in arriving at the amount for which his certificate of taxation issues.

68A. Certificate of costs

(1) Notwithstanding anything to the contrary in this Order, when the Registrar of the High Court enters final judgment under Order 49, rule 2 of the Civil Procedure Rules (Cap. 21, Sub. Leg.), he may, on application in writing and without the filing or taxation of a bill of costs or of notice to any party, sign a certificate of the costs of the suit calculated in accordance with item 15 of Schedule 6.

(2) An advocate may, in any case in lieu of taxation, apply in writing for a certificate under this paragraph.

(3) If the Registrar refuses an application under this paragraph he shall on request certify his refusal in writing to the applicant and the applicant may within fourteen days of receipt of the certificate give notice of objection, whereupon paragraph 11 shall apply.

[L.N. 227/1967, s. 3, L.N. 56/1972, s. 15, L.N.
73/1983, s. 10, L.N. 35/2014, s. 3, L.N. 268/2017, s.3.]

68B. Limitation of costs

Where in any case to which rule 68A could apply, no increase on the scale fee is obtained on a bill of costs lodged for taxation under rule 70, no further costs shall be allowed than would have been allowed under rule 68A.

[L.N. 227/1967, s. 3.]

69. Manner of preparing bills for taxation

(1) Bills of costs for taxation shall be prepared in five columns in manner following—

- (a) the first or left-hand column for dates, showing year, month and day;
- (b) the second column for the items, which shall be serially numbered;
- (c) the third column for the particulars of the services charged for;
- (d) the fourth column for the professional charges claimed; and
- (e) the fifth column for the taxing officer's deductions.

(2) Disbursements shall be shown separately at the foot of the bill.

(3) Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer.

70. Filing bills for taxation

Every bill of costs of taxation shall be lodged with the registrar and shall be endorsed with the name and address of the advocate by whom it is lodged, and also the name and address of the advocate (if any) for whom he is agent, and the name and address of any advocate or other person entitled to receive notice of the taxation. Every such bill shall be accompanied by one carbon or other true copy thereof for each name endorsed thereon of any advocate or other person entitled to receive such notice.

71. Bills not to be altered after being lodged

No addition or alteration shall be made in a bill of costs by the party submitting the same after the bill has been lodged for taxation, except by consent of the parties, or by permission or direction of the Court or taxing officer.

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72. Notice of taxation to be given by taxing officer

When a bill of costs has been lodged for taxation as aforesaid the registrar shall, upon payment of the fee prescribed, issue to the party lodging the bill a notice of the date and time (being not less than five days after the issue of such notice, unless a shorter time is specially allowed by the registrar) fixed for taxation thereof and shall also issue a copy of such notice, accompanied by a copy of the bill, to each advocate and other person whose name is endorsed on the bill as entitled to receive notice of the taxation thereof:

Provided that where any person so entitled to receive notice cannot be found at his last-known address for service the taxing officer may in his discretion by order in writing dispense with service of notice upon such person.

73. No notice of taxation where party has not appeared

(1) It shall not be necessary for notice of taxation of costs to be given to a party against whom such costs are being taxed in any case in which such party has not appeared in person or by advocate.

(2) Where an advocate has withdrawn, the provisions of Order 3, rule 12 of the Civil Procedure Rules (Cap. 21, Sub. Leg.)

[L.N. 73/1983, s. 11, L.N. 35/2014, s. 3.]

74. Vouchers to be produced

Subject to paragraph 74A, receipts or vouchers for all disbursements charged in a bill of costs shall be produced on taxation if required by the taxing officer.

[L.N. 37/1977, s. 9.]

74 A. Witness expenses

(1) The taxing officer shall allow reasonable charges and expenses of witnesses who have given evidence and shall take into account all circumstances and without prejudice to the generality of the foregoing, the following factors—

- (a) the loss of time of the witness;
- (b) if the witness is a party, the time spent giving evidence;
- (c) the loss of wages or salary to the witness or his employer while attending court;
- (d) the cost of travelling, board and lodging in accordance with the status of the witness;
- (e) where the witness is a professional man, any scale fees by which he may charge for his time or attendance;
- (f) if the witness came from abroad, whether this was a reasonable means of obtaining his evidence after considering the importance or otherwise of his evidence;
- (g) where the witness is an expert witness as defined by the Evidence Act (Cap. 80) and has given evidence, a fee for qualifying to give evidence where he has reasonably had to spend time, effort or money in investigating the particular matter on which he gave evidence.

(2) The taxing officer shall allow reasonable charges and expenses in respect of any person not actually called as a witness whose attendance has been certified as necessary by the Judge.

[L.N. 37/1977, s. 9.]

75. Numbering of folios on documents charged by the folio

(1) All drafts and other documents or copies thereof, the preparation of which is charged for, shall be produced at taxation if required by the taxing officer.

(2) The length of all documents not vouched by production of the original or copies thereof or other evidence satisfactory to the taxing officer may be certified by the advocate in writing, and if such certificate be found by the taxing officer to be erroneous, the taxing officer may disallow the cost of the document so erroneously certified or any part thereof.

[L.N. 73/1983, s. 12.]

76. Taxing officer may proceed *ex parte* and extend or limit time or adjourn

The taxing officer shall have power to proceed to taxation *ex parte* in default of appearance of either or both parties or their advocates, and to limit or extend the time for any proceeding before him, and for proper cause to adjourn the hearing of any taxation from time to time.

77. Where more than one-sixth taxed off

(1) If more than one-sixth of the total amount of a bill of costs, exclusive of court fees, be disallowed on taxation, the party presenting the bill for taxation may, in the discretion of the taxing officer, be disallowed the costs of such taxation.

(2) The decision of the taxing officer under this rule shall be final.

78. Deleted by L.N. 73/1983, s. 13.

79. Instructions of judge as to costs

The judge may, for special reasons to be certified by him, allow an advocate's costs in any case in which costs are not allowed under the foregoing rules, and may allow costs in addition to the costs provided by this Order, or may refuse to allow an advocate's costs, or may allow costs at a lower rate than that provided by this Order.

SCHEDULE 1

[L.N. 8/1965, Sch., L.N. 56/1972, s. 16, L.N. 37/1977, s. 10, L.N. 264/1978, s. 2, Corr. No. 3/1979, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 50/2009, LN. 35/2014, r. 7.]

FIRST SCALE

1. SCALE FEES ON SALES AND PURCHASES AFFECTING LAND REGISTERED IN ANY REGISTRY

Vendor's Advocate and Purchaser's Advocate

The scale fee shall be calculated cumulatively on the basis of the consideration or value of the subject matter as follows—

- (i) from Kshs. 1 to Kshs. 5,000,000, 2% of the consideration or the value of the subject matter or Kshs. 35,000 whichever is higher.
- (ii) from Kshs. 5,000,001 to Kshs. 100,000,000, the fee prescribed in (i) plus 1.5% of the balance.
- (iii) from Kshs. 100,000,001 to Kshs. 250,000,000, the fee prescribed in (ii) plus 1.25 % of the balance.
- (iv) from Kshs. 250,000,001 to Kshs. 1,000,000,000, the fee prescribed in (iii) plus 1% of the balance.
- (v) in respect of an amount where the consideration or value is more than Kshs. 1,000,000,000, the fee set out in (iv) plus 0.1% of the balance.

SECOND SCALE

2. SCALE FEES ON DEBENTURES, MORTGAGES OR CHARGES AFFECTING LAND REGISTERED IN ANY REGISTRY

- (a) In this paragraph, "security" means:—

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- (i) any mortgage or charge of land (including an equitable or charge by deposit of documents of title); or
 - (ii) any debenture of any nature creating a security.
- (b) *Advocate for the grantee: scale fee on the creation of a security*

The scale fee for the creation of a security payable to the advocate for the grantee of the security shall be calculated cumulatively on the basis of the consideration or the value of the subject matter as follows—

- (i) from Kshs. 1 to Kshs. 2,500,000, 2% of the consideration or the value of the subject matter or Kshs. 28,000 whichever is higher.
 - (ii) from Kshs. 2,500,001 to Kshs. 5,000,000, the fee prescribed in (i) plus 1.75% of the balance.
 - (iii) from Kshs. 5,000,001 to Kshs. 100,000,000, the fee prescribed in (ii) plus 1% of the balance.
 - (iv) from Kshs. 100,000,001 to Kshs. 250,000,000, the fee prescribed in (iii) plus 0.75% of the balance
 - (v) from Kshs. 250,000,001 to Kshs. 1,000,000,000, the fee prescribed in (iv) plus 0.15% of the balance.
 - (vi) in respect of an amount where the consideration or value is more than Kshs. 1,000,000,000, the fee set out in (v) plus 0.1% of the balance.
- (c) *Advocate for the grantee: scale fee on the discharge of a security*

The scale fee payable to the advocate for the grantee of the security for the reconveyance, reassignment or discharge of a security shall be—

- (i) where there is an undertaking required for the redemption of all or part of the secured debt, 25% of the scale fee set out under sub-paragraph (b) subject to a minimum fee of Kshs. 15,000.
 - (ii) where there is no undertaking required for the redemption of all or part of the secured debt, 15% of the scale fee set out under sub-paragraph (b) subject to a minimum fee of Kshs. 10,000.
- (d) *Advocate for the grantor: Scale fee on the creation of a Security*

The scale fee for the creation of a security payable to the advocate for the grantor of the security shall be 50% of the scale fee set out in sub-paragraph (b) above.

- (e) *Advocate for the grantor: Scale fee on the discharge of a Security*

The scale fee payable to the advocate for the grantor of the security for the reconveyance, reassignment or discharge of a security shall be 25% of the scale fee set out under sub-paragraph (b) subject to a minimum fee of Kshs. 15,000.

Notes.

1. The scale fees for the creation of an equitable mortgage by deposit of documents or a memorandum of charge by deposit of title shall be 50% of the fees specified in paragraphs (b) to (e) subject to a minimum fee of Kshs. 12,500.
 - (b) The scale fees for the creation of a discharge of equitable mortgage shall be 15% of the fees specified in paragraphs (b) to (e) above subject to a minimum of Kshs. 10,000 but subject to a maximum of Kshs. 42,000.
2. The fee on a single debenture of any nature not creating a security shall be calculated under Schedule 5 according to time, complexity and responsibility.

3. Where one advocate represents both the grantee and the grantor of a security, he shall charge the scale fee payable to the advocate for the grantee of the security and one half of the scale fee payable to the advocate for the grantor of the security.

5. Subject to paragraph 23A of the Order, where two or more securities are created, 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 25% of the prescribed scale fee for the first additional security and 10% for each subsequent additional security.

6. Where a mortgage or charge comprises more than one immoveable property, a sum equivalent to 10% of the prescribed fee shall be charged in respect of the second immoveable property and a sum equivalent to 5% of the prescribed fee shall be charged in respect of the third and each subsequent immoveable property.

7. Where a security is created by more than one grantor 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 grantor and a sum equivalent to 5% of the prescribed fee in respect of each grantor thereafter, the total fees to be divided equally between the grantors unless otherwise agreed by all the grantors in writing.

8. Where a security is created by in favour of more than one grantee, no addition shall be made to the prescribed fee.

9. Unless otherwise agreed by the parties in writing, the grantor of a security shall pay the fees of the advocate for the grantee as well as the fees of its own advocate.

THIRD SCALE

3. For negotiating a sale of property by private treaty or loan secured by mortgage—

On the first KSh. 200,000 per KSh. 2,000	KSh. 112
Over KSh. 200,000 to KSh. 600,000 per KSh. 2,000	KSh. 52
Over KSh. 600,000 per KSh. 2,000	KSh. 30

Notes

1. In calculating fees payable under scales 1, 2 or 3, a fraction of KSh. 2,000 up to and including KSh. 1,000 shall be accounted as one-half but over KSh. 1,000 shall be accounted as a whole unit of calculation.

2. In scales 1, 2 and 3—

- (a) "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;
- (b) "charge" includes an agreement to charge immovable property or any estate, interest or other right therein to secure the payment of moneys; and
- (c) neither "mortgage" nor "charge" 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.



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SCHEDULE 2

[L.N. 56/1972, s. 16, L.N. 37/1977, s. 11, L.N. 264/1978, s. 2, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 50/2009, L.N. 35/2014, r. 7.]

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

1. Scale fees to the advocate preparing, settling and completing lease or agreement and counterpart shall be calculated on the basis of the annual rent reserved by the lease as follows—

- (a) From Kshs. 1 to Kshs. 500,000, 15% of the annual rent or Kshs. 20,000 whichever is higher.
- (b) From Kshs. 500, 001 to Shs. 3, 000,000 - the fee prescribed in (a) plus 3% on the balance.
- (c) In respect of an amount where the annual rent is more than Kshs. 3,000,000 the fee prescribed in (a) plus 1% on the excess amount.

2. To the advocate perusing, amending and completing lease or agreement or counterpart, 50% per cent of the fees payable under 1.

Notes.

1. Where a varying rent is payable the amount of the annual rent means the amount of the highest 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 5.

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 5.

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.

SCHEDULE 3

[L.N. 8/1965, Sch., L.N. 56/1972, s. 16, L.N. 37/1977, s. 10, L.N. 164/1973, s. 2, L.N. 264/1978, s. 2, Corr. No. 3/1979, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

FORMATION, INCORPORATION AND REGISTRATION OF COMPANIES

1. *Formation and incorporation of companies with share capital*

A fee calculated according to the following scales—

- (a) the fee to cover taking instructions to incorporate the company;
- (b) drawing memorandum of association (if any);
- (c) preparing and lodging all necessary company forms at the Companies Registry on the incorporation of the company (but excluding any prospectus); and
- (d) procuring certificate of incorporation including all routine attendances and correspondence in connection therewith, whether the company is private or public, with or without share capital:

Such fee, taking into account the complexity and responsibility of the matter, as may be agreed between the advocate and the client but in any case not less than Kshs. 60, 000.

2. Registration of foreign companies

Such fees taking into account the complexity and responsibility of the matter, as may be agreed between the advocate and the client but in any case not less than KSh. 60, 000.

3. Other company work

All work relating to company matters other than that for which fees are prescribed in this Schedule shall be charged under the relevant Schedule.

SCHEDULE 4

[L.N. 56/1972, s. 16, L.N. 37/1977, s. 12, L.N. 264/1978, s. 2, Corr. No. 3/1979, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

TRADE MARKS

<i>Particulars</i>	<i>KSh.</i>
1. Applications	
(a) Instructions to register one trade mark in one class	42,000
(b) Instructions to register second and further trade marks in the name of the same proprietor simultaneously per trade mark in one class	29,000
(c) Filing priority application	4,000
2. Registered users	

(a) Instructions to file an application to enter one registered user of one registered trade mark or more than one registered trade mark of the same proprietor incorporated in the same set of documents and subject to the same conditions and restrictions in each case—

(i) for the first single registered trade mark	40,000
(ii) for the second registered trade mark	18,900
(iii) for the third registered trade mark and each subsequent registered trade mark, applications being filed simultaneously	12,600
(iv) For the fourth and each subsequent registered trade mark applications being filed simultaneously.	5,040

(b) Drawing statement of case, statutory declaration in support and application, depending on the amount of work involved but not less than Kshs. 9,000.

(c) Drawing registered user agreement, depending on the amount of work involved but not less than Kshs. 12,000.

(d) Instructions to file an application under section 31(8)(b) for cancellation of a registered user in respect of one registered trade mark or more than one registered trade mark of same proprietor—

(i) For the first or single registered trade mark	25,000
(ii) For the second registered trade mark	15,000
(iii) For the third registered trade mark and each subsequent trade mark, application being filed simultaneously	10,000
(iv) For the fourth and each subsequent trade mark, applications being filed simultaneously	5,040

[Subsidiary]

(e) Drawing application for cancellation and statement of ground, depending on amount of work involved but not less than Kshs. 12,500

(f) And for each subsequent registered trade mark included in the same application for cancellation, the grounds for cancellation being the same Kshs. 5,040

(g) Instructions to file an application for variation of terms of appointment of registered user Kshs. 6,000

3. *Assignments*

(a) Instructions to file an application to register a subsequent proprietor of one registered trade mark (or more than one registered trade mark standing in the same name under the same devolution of title and filed simultaneously) with or without goodwill—

- | | |
|---|--------|
| (i) for the first registered trade mark | 25,000 |
| (ii) for the second registered trade mark | 15,000 |
| (iii) for each subsequent registered trade mark | 12,000 |

(b) Instructions to file application for directions by the Registrar for advertisement of the assignment of trade marks in use without goodwill and attending to the advertisement thereof—

- | | |
|---|--------|
| (i) for one registered trade mark assigned | 25,000 |
| (ii) for every other registered trade mark assigned under the same devolution of title filed simultaneously | 20,000 |

(c) Instructions to apply for extensions of time in which to apply for directions to advertise an assignment without goodwill12,600

4. *Renewals*

- | | |
|--|--------|
| (a) Instructions to renew the registration of one trade mark in one class | 25,000 |
| (b) Instructions to renew the registration of second and further trade marks in the same proprietor simultaneously | 12,600 |
| (c) Instructions to restore the registration of one trade mark in one class under the provisions of rule 68 of the Trade Marks Rules | 15,000 |

5. *Change of name*

- | | |
|---|--------|
| (a) Instructions to register change of name of the registered proprietor in respect of one trade mark in one class | 10,000 |
| (b) Instructions to register change of name of the registered proprietor in respect of second and further trademarks simultaneously for each change of name per trade mark in one class | 10,800 |

6. *Change of address*

- (a) Instructions to register change of address 10,000 of the registered proprietor in respect of one trade mark in one class
- (b) Instructions to register change of address of the registered proprietor in respect of second and further trademarks simultaneously for each change of address per trade mark in one class 5,040

8. *Searches and copies*

- (a) Attendances to search a registered trade mark at the registry and advising thereon by—
- (i) An advocate 5,000
- (ii) Unqualified employee 2,000
- (b) Instructions to obtain Registrar's preliminary advice on Form T.M. 27 or T.M. 28 including drawing the prescribed form 5,000
- (c) Instructions to obtain registry certified copies of documents—
- (i) One copy of any document 2,940
- (ii) Second and additional copies of same document obtained simultaneously 882

9. *Opposition and rectification proceedings*

- (a) Instruction to enter opposition or to defend opposition proceedings or to apply for rectification or to defend rectification proceedings where such opposition or proceedings are conducted before the Registrar, such fee as the taxing officer may decide taking into consideration the nature and importance of the opposition or rectification, the value of the trade mark to the parties concerned, the amount of evidence filed and the time required for the proceedings and all other relevant circumstances but not less than Kshs. 210,000
- (b) Attendance before the Registrar conducting opposition or rectification proceedings every whole day 16,464
- (c) Attendance before the Registrar conducting opposition or rectification proceedings every half-day or part thereof 8,232
- (d) On interlocutory matters, taking judgment, etc. every 15 minutes or part thereof 1,127
- (e) On taxation of bill of costs for every 15 minutes or part thereof 1,127

10. *Miscellaneous matters*

- (a) Instructions to advise on registrability of a mark or on a point of law or practice, such fee as may be reasonable in the circumstances but not less than Kshs. 7,500
- (b) Attendance on the Registrar for filing papers every 15 minutes or part thereof—
- (i) For argument 2,100
- (ii) For filing papers 588
- (c) Correspondence where charged for separately (see the note to this part of this schedule)—

Advocates

[Subsidiary]

(i) Per letter	294
(ii) Per folio	176
(d) Receiving and perusing letters, documents, pleadings, statutory declarations, etc.—	
(i) Per letter	117
(ii) Per folio	70
(e) Perusing documents, pleadings, statutory 1,127 declarations, etc., to be charged for as for perusals at Item 8 (a) of schedule 6.	
(f) All other necessary attendances (including attendances to take minutes of evidence of witnesses other than the party for whom the Advocate is acting), per quarter hour or part thereof	1,127
(g) Applying to the Registrar for an extension of time	1,000

Notes.

The fees in items 1, 2, 3, 4, 5, 6, 7 and 8 are inclusive, unless otherwise provided, of drawing statutory forms and authorization of agent as necessary, and of all necessary routine correspondence with and attendances at the registry and correspondence with the client, but they do not cover additional matters shown in items 9 and 10 and work occasioned by objections or queries by the Registrar or third parties or by any other complication or unusual delay, which matters shall be charged for separately on time basis.

SCHEDULE 5

[L.N. 56/1972, s. 16, L.N. 62/1979, s. 13, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

FEEs IN RESPECT OF BUSINESS THE REMUNERATION FOR WHICH IS NOT OTHERWISE PRESCRIBED OR WHICH HAS BEEN THE SUBJECT OF AN ELECTION UNDER PARAGRAPH 22

PART I – AGREED HOURLY RATE

1. Fees to be assessed under this Schedule may either be charged in accordance with paragraph 2 of this Part or assessed in accordance with Part II.
2. An advocate may charge his fees at such hourly rate or rates as may be agreed with his client from time to time.

PART II – ALTERNATIVE METHOD OF ASSESSMENT

1. INSTRUCTIONS

Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.

2. DRAWING AND PERUSING, ETC.

	<i>Kshs.</i>
For drawing	250
For engrossing	50
For fair copying	30
For perusing	70

3. ATTENDANCE

In ordinary cases per 15 minutes or part thereof 1,000

On routine telephone calls within Kenya for 15 minutes or part thereof 150

In other cases the taxing officer may increase or diminish the above charges for any special reason.

4. TIME ENGAGED

Where charge is so based in lieu of charges per item of work done per for 15 minutes or part thereof 7,000

5. CORRESPONDENCE

Letters 300

Or per folio 200

Receiving and perusing letters 150

Or per folio 70

6. OPINIONS

For formal written opinion, such fee as may be reasonable in the circumstances, having regard to the same considerations as set out above for the assessment of instructions, but not less than Kshs. 35,000.

JOURNEY FROM HOME

For every day of not less than seven hours employed in travelling 15,000

Where a lesser time than seven hours is so employed, per hour 2,500

The taxing officer may increase or diminish the above fee for any special reason.

7. DEBT COLLECTION

In respect of non-contentious debt collection matters an advocate may enter into a general agreement with a client to charge therefor upon the following inclusive scale in lieu of charging per item for work done, but—

- (a) where not more than one letter of demand has been written the scale shall be reduced by one-half, subject to a minimum fee of Kshs.1, 000; or
- (b) where the letter of demand is followed by the institution of proceedings at the instance of the same advocate the scale does not apply and fee shall be as prescribed in paragraph 5 of this Schedule or under Schedule 6 or Schedule 7 as the case may be.

Where the amount of the debt does not exceed Kshs.100,000 10%

Where the amount of the debt exceeds Kshs.100,000 but does not exceed Kshs 500,000 Kshs.10,000 plus 5% of the amount over Kshs 100,000

Where the amount of the debt exceeds Kshs. 500,000 but does not exceed Kshs 2,000,000 Kshs. 50,000 plus 3% of the amount over Kshs 500,000

Where the amount of the debt exceeds Kshs. 2,000,000 Kshs.100,000 plus 1.5% of the amount over Kshs. 2,000,000

Advocates

[Subsidiary]

CHATTELS TRANSFER

For drawing and completing an instrument under the Chattels Transfer Act including all necessary and proper searches, affidavits, stamping and registration—

Where the amount secured does not exceed Kshs. 6,000

Kshs. 50,000

Where the amount secured exceeds Kshs. 50,000 One half of the scale fee under paragraph (a) of the Second Scale of Schedule 1 adjusted in accordance with the notes to that Schedule.

SCHEDULE 6

[L.N. 8/1965, Sch., L.N. 56/1972, s. 16, L.N. 164/1973, s. 3, L.N. 37/1977, s. 13, L.N. 62/1979, s. 13, L.N. 73/1983, s. 14, L.N. 121/1984, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

COSTS OF PROCEEDINGS IN THE HIGH COURT

A—PARTY AND PARTY COSTS

1. *Instruction fees*

Subject as hereinafter provided, the fees for instructions shall be as follows—

- (a) To sue in an ordinary suit in which no appearances is entered under Order IX A of the Civil Procedure Rules where no application for leave to appear and defend is made, the fee shall be 65% of the fees chargeable under item 1(a).
- (b) To sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% of the fees chargeable under item 1(b).
- (c) In a suit where settlement is reached prior to confirmation of the first hearing date of the suit the fee shall be 85% of the fee chargeable under item 1(b) of this Schedule.

The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it—

(a) To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and—

<i>That value exceeds Kshs.</i>	<i>But does not exceed Kshs.</i>	<i>Kshs.</i>
—	500,000	45,000
500,000	750,000	65,000
750,000	1,000,000	75,000
1,000,000	20,000,000 fees as for Kshs. 1,000,000 plus an additional 1.75%	
Over 20,000,000	fees as for 20,000,000 plus an additional 1.5%.	

(b) To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties and—

Advocates

[Subsidiary]

	<i>That value exceeds Kshs.</i>	<i>But does not exceed Kshs.</i>	<i>Kshs.</i>
	-	500,000	75,000
	500,000	750,000	90,000
	750,000	1,000,000	120,000
1,000,000		20,000,000 fees as for Kshs. 1,000,000 plus an additional 2%.	
Over 20,000,000		fees as for 20,000,000 plus an additional 1.5%.	

(c) To defend proceedings where the defendant substantially adopts the defence of another defendant; an instruction fee calculated under sub-paragraph 1(a).

(d) To defend any other proceedings; an instruction fee calculated under sub-paragraph 1(b).

(e) *Bankruptcy proceedings**Kshs*

(i) Debtors application:

To present or oppose a debtor's petition 12,000

To apply or oppose discharge 12,000

(ii) Creditor's application—

To apply for issue of a bankruptcy notice 2,000

To apply or oppose a creditors petition to 12,000

Apply for or oppose a discharge 12,000

(f) *Companies**Kshs*

(i) to present or oppose proceedings under Rule 5(1) of the Companies (Winding-up) Rules 25,200

(ii) to support a petition for winding-up of a company 10,000

(iii) to present or oppose any other proceedings under the Companies Act 15,000

(g) *Matrimonial causes**Kshs*

(i) to present a petition for dissolution of Marriage, nullity, judicial separation, or restitution of conjugal rights: where the proceedings are not defended 20,000

Where the proceedings are defended, or to defend proceedings, such sum as may be reasonable but not less than 35,300

(ii) to apply for additional or ancillary relief, or for custody or access—

If the application is dealt with together with the petition or answer, as the case may be; 3,000

If the application is not dealt with together with the petition or answer 12,000

(iii) to apply for a Registrar's Certificate 3,500

(iv) to present or oppose an application to a Judge under the matrimonial Causes Rules or Laws on Guardianship not otherwise provided for: such sum may be reasonable but not less than 10,000

Advocates

[Subsidiary]

(h) Adoption and guardianship

(i) To present or oppose an application for adoption such sum as may be reasonable but not less than 11,800

(ii) To present or oppose an application for guardianship such sum as may be reasonable but not less than 14,800

(i) Election petitions

To present or oppose an election petition; such sum as may be reasonable but not less than 500,000

(j) Constitutional petitions and prerogative orders

To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—

(i) where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000

(ii) where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000

(iii) to present or oppose application for setting aside arbitral award 50,000

Other Matters

To sue or defend in any case not provided for above; such sum as may be reasonable but not less than —

(i) If undefended 45,000

(ii) If defended 75,000

Appeals

(a) To present or oppose an appeal in any case not provided for above; such sum as may be reasonable but not less than Kshs 25,200

(b) To counter-claim, a fee under subparagraph (a) or (b), as appropriate

(c) Matters arising during proceedings—

(i) to prepare an affidavit 900

(ii) to prepare interrogatories or answers thereto 4900

(iii) to apply for a commission or letter of request for the examination of a witness 3,000

(iv) to prepare a brief for counsel in relation to a Commission for examination of a person not residing in Kenya; such sum as may be reasonable but not less than 18,000

(v) to prepare a case stated for the opinion of the court; such sum as may be reasonable but not less than 25,200

(vi) to present an application for a temporary injunction or similar order if unopposed 3,000

(vii) to present or oppose in cases where the judge shall certify that the matter is complex; 100,000

such sum as the judge may certify to be reasonable but not less than

(viii) to present or oppose any other application not otherwise provided for—

where the application is unopposed 3,000

where the application is opposed, such sum 5,000

as may be reasonable but not less than

Provided that:

- (i) the taxing officer may take into consideration other fees and allowances due to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial judge, and all other relevant circumstances;
- (ii) In any case which a certificate for more than one advocate has been given by the judge, the instruction fee allowed on taxation as between party and party and other charges shall be doubled where requisite;
- (iii) In any case which a certificate for senior counsel has been given by the judge, the instruction fee allowed on taxation as between party and party shall be increased by one-half and other charges shall be doubled where requisite, the allowance for attendances of senior counsel in court conducting or leading the cause being on the higher scale.
- (iv) for the purposes of assessing an instruction fee in any suit—
 - (a) for possession of premises, with or without a claim for arrears of rent; or
 - (b) for specific performance of a lease, the value of the subject matter shall be taken to be the arrears of rent or *mesne* profits, if any that may be found due, increased by sum equivalent to the annual rental value of the premises or to one-tenth of the capital value of the premises, whichever is higher;
- (v) for the purposes of assessing an instruction fee in a case where payment into court has been made under Order 27 of the Civil Procedure Rules, the following rules shall apply—
 - (a) where the plaintiff accepts payment into court under the provisions of Order 27, Rule 2(1), he may claim the full instruction fee;
 - (b) where the plaintiff accepts payment into court after the time allowed by Order 27, Rule 2(1), but before one month after setting down of the case for hearing, he may claim three quarters of the instruction fee;
 - (c) Where the plaintiff does not accept the payment into court and does not recover more than the payment, he may claim his costs to the date of payment, including one-half of the fees.

2. Fees for getting up or preparing for trial

In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:

Provided that —

- (i) this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;

[Subsidiary]

- (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
- (iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.

3. Fees for getting up an appeal

In any appeal to the High Court in which a respondent appears at the hearing of the appeal and which the court at the conclusion of the hearing has certified that in view of the extent or difficulty of the work required to be done subsequently to the lodging of the appeal the case is a proper one for consideration of a getting up fee, the taxing officer may allow such a fee in addition to the instruction fee and such a fee shall not be less than one-third of the instruction fee.

4. Drawing

(a) Concise statement, plaint, written statement of defense, interlocutory application, notice of motion or chamber application, originating summons, affidavit, petition of appeal, interrogatories, agreement for compromise, adjustment or satisfaction of suit, or for reference to arbitration or any other pleading not otherwise provided for—

- (i) four folios or less 1,100
- (ii) in excess of four folios; additional per folio after the first four folios 150

(b) Creditor's or debtor's petition that a debtor be adjudicated insolvent, or notice of objection thereto:

- (i) six folios or less 1,470
- (ii) in excess of six folios per folio 150

(c) Petition for winding up of a company incorporated under the Companies Act—

- (i) nine folios or less 2,300
- (ii) in excess of nine folios per folio 150

(d) All other documents (including proofs of witnesses and evidence) so far as necessary per folio.

- (e) Bill of costs per folio Kshs 180
- (f) Affidavit or return of service Kshs. 240

(g) In relation to sub-paragraphs (a)(ii), (b)(ii), (c)(ii) and (d), the court may direct that the costs of any repetitive or unnecessary matter shall be disallowed.

5. Copies

(a) Of plaint, written statement of defense, affidavit, petition of appeal, cross objection to petition, interrogatories, replies to interrogatories, agreement in satisfaction of suit, or for reference to arbitration, exhibit bill of costs and every other document (whether for court or opposing party)

(b) The actual cost of copies of judge's notes taken from day to day as a case proceeds may be allowed if certified the trial court

(c) Printing actual costs, supported by vouchers of all necessary printing

Advocates

[Subsidiary]

(d) Photostat copies per page; actual costs, Kshs 10
supported by vouchers of all necessary
photocopying

(e) All other necessary copies Kshs 25 per folio

6. Correspondence

(a) Letters before action or other necessary Kshs 1,000
letters

or per folio Kshs 118

7. Attendances

(a) On any necessary application to or Kshs 1,000
formal attendance on the registrar or deputy
registrar

(b) At offices of Court or registrar on routine Kshs 500
Matters

(c) At court in chambers on matters on a Kshs 1,000
date fixed by the court for hearing when the
case cannot be taken or by advocate for
calling his lists

(d) At court or in chambers before judge not otherwise provided for—

	<i>Ordinary Scale</i>	<i>Higher Scale</i>
	<i>Kshs</i>	<i>Kshs</i>
Half-hour or less	1,100	1,900
One hour	2,300	3,000
Half-day	5,000	7,100
Whole day	10,000	15,000

(e) Routine telephone calls each necessary Kshs 120
telephone call allowed per three minutes or
part thereof

(f) With a judge on a view, if in court Kshs 2,200
hours, the same fees for attending in court
conducting case; if out of court hours per
hour including traveling time, in addition to all
expenses properly incurred in getting to and
from the place viewed

(g) All necessary attendance (including Kshs 600
attendances to take minutes of evidence
of witnesses other than the party for whom
the advocate is appearing) of any nature
whatsoever not otherwise provided for per
quarter-hour

8. Perusals

(a) Of pleadings, memorandum of appeal, Kshs. 50
record of appeal, affidavits, interrogatives
and answers thereto, notices to admit,
petition to wind up company, petition
in insolvency, notice of motion in court,
originating summons or other necessary
documents not specifically provided for per
folio

(b) Of notices and other routine documents Kshs 50

[Subsidiary]

(c) Of necessary letter; per folio Kshs 50

9. SERVICE

(a) within three kilometers of the High Court or district registry of the High Court Kshs 1,400

(b) Every additional kilometer over three, such amount as is reasonable, not exceeding per kilometer Kshs 35

(c) For traveling and subsistence expenses incurred by the process server; charge the actual expense incurred.

(d) Where service is by post or by any other mode of substituted service, charge the actual expenses incurred.

10. Plans, models, etc.

Actual costs supported by vouchers of all necessary plans, charts, photograph and models.

11. Translations

Actual costs, supported by vouchers, of all necessary translations.

12. Execution proceedings

(a) Instructions to execute decree and drawing necessary application — Kshs 1,000

(b) Attendance at court filing application — Kshs 300

(c) Attending Court to peruse order — Kshs 300

13. Objection to execution proceedings

(a) Instruction to prepare objection— Kshs 10,000

(b) Instruction to proceed with attachment — Kshs 2,100

(c) Instruction to take proceedings to establish or oppose such proceedings — Kshs 14,000

14. Garnishee proceedings

(a) Instructions to institute garnishee proceedings, if not opposed— Kshs 4,200

(b) Instructions to institute or to defend garnishee Proceedings, when opposed, such sum as the taxing officer considers reasonable but not less than Kshs 14,000.

15. Fee allowable on certificate of costs under paragraph 68A

(a) Where—

(i) no appearance has been entered in the suit Kshs 1,200

(ii) the defendant was served at the first attempt for each additional attempt of service Kshs 250

(b) Where appearance has been entered a further Kshs 180

(c) Where the defendant was served in a jurisdiction outside Kenya Actual costs incurred

(d) Where the defendant was served in accordance with Order V, Rule 17 of the Civil Procedure rules. The costs of any advertisement ordered by the court plus Kshs 2,100.

(e) For any application made to the judge under Paragraph 11 (2); Kshs 4,000

a further; together with the instruction fee and any court fees and affidavits swearing fees incurred; but the taxing officer shall not allow more than one instruction fee.

B — ADVOCATE AND CLIENT COSTS

As between advocate and client the minimum fee shall be—

- (a) the fees prescribed in A above, increased by 50%; or
- (b) the fees ordered by the court, increased by 50%; or
- (c) the fees agreed by the parties under paragraph 57 of this order increased by 50%; as the case may be, such increase to include all proper attendances on the client and all necessary correspondences.

SCHEDULE 7

[L.N. 8/1965, L.N. 56/1972, s. 16, L.N. 37/1977, s. 14, L.N. 62/1979, s. 13, , L.N. 73/1983, s. 4, L.N. 121/1984, s. 3, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7, L.N. 45/2014, r. 2.]

COSTS OF PROCEEDINGS IN SUBORDINATE COURTS

A — PARTY AND PARTY COSTS

1. Where the sum found due (in the case of a wholly or partially successful plaintiff) or the sum sued for (in the case of a wholly successful defendant).

Subject as provided in this Schedule, the fees for instructions shall be as follows—

- (a) To sue in an ordinary suit in which no appearances is entered under Order IX A of the Civil Procedure Rules where no application for leave to appear and defend is made, the fee shall be 65% of the fees chargeable under item 1(a).
- (b) To sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% of the fees chargeable under item 1(b).
- (c) In a suit where settlement is reached prior to confirmation of the first hearing date of the suit the fee shall be 85% of the fee chargeable under item 1(b) of this Schedule.

<i>Exceeds Kshs</i>	<i>Does not exceed Kshs</i>	<i>Lower scale Kshs</i>	<i>Higher scale KSh.</i>
—	50,000	10,000	15,000
50,000	100,000	15,000	30,000
100,000	200,000	30,000	40,000
200,000	500,000	45,000	65,000
500,000	1,000,000	65,000	90,000
1,000,000	2,000,000	90,000	120,000

Over 2,000,000, a fee as for KSh. 2,000,000 plus 2.5% in respect of the excess.

[L.N. 45/2014, r. 2.]

Note

The "Lower Scale" shall be applied in all cases where no defence or other denial of liability has been filed and the "Higher Scale" shall be applied in all other cases.

2. In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the judgment (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not less than Kshs. 20,000 if undefended or unopposed

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[Subsidiary]

and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Kshs. 50,000.

3. Election petition

To present or oppose an election petition; such sum as may be reasonable but not less than Kshs. 100,000.

4. (a) In proceedings for dissolution of marriage, nullity, Judicial separation or restitution of conjugal rights:-	(i) where the proceedings are undefended	Kshs. 10,000
	(ii) where the proceedings are defended	Kshs 18,000
(b) In proceedings for ancillary relief:-	(i) if heard together with petition of answer	Kshs 2,000
	(ii) if not dealt together with petition or answer	Kshs 4,000
(c) In proceedings for custody, and access		Kshs 5,000
5. On any application, notice of motion, chamber summons or execution proceedings, to include taking instructions to proceed or oppose, drawing application, engrossing and filing		Kshs. 3,000
6. On any necessary application to or attendance on Magistrate in court or chambers		Kshs 1,400
7. Attendance at the hearing where the hearing lasts more than one full day—	(i) for the first whole day	Kshs 5,000
	(ii) for each part after the first	Kshs 2,100.
8. Where costs of adjournment of a case are awarded		Kshs 2,100
9. For attending any alternative dispute resolution session pursuant to a court order, whether by consent or otherwise—	(i) half an hour or less	Kshs. 1,000
	(ii) one hour	Kshs 1,400
10. Service—	(i) within three kilometers of subordinate court or district registry of the subordinate court	Kshs 1,400
	(ii) for travelling and subsistence expenses incurred by the process server.	charge the actual expense incurred
	(iii) where service is by post or by any other mode of Substituted service.	charge the actual expense incurred
11. Drawing and filing affidavit or return of service		Kshs 1,000

Notes.

1. When an order has been made in general terms for the payment of costs by either party and an advocate has been employed, those costs, in addition to the court fees, shall be computed under this Schedule, which shall be the minimum fee,

and shall include (except as may be provided) taking instructions, drawing or perusing documents, pleadings or similar documents, engrossing and filing documents, and all necessary attendance at court or chambers.

2. Costs exceeding the scales in this Schedule may be charged on special grounds arising out of the nature, importance, difficulty or urgency of the case.

3. Where success in a suit is divided, the scale may be distributed having regard to partial success on either side.

B — ADVOCATE AND CLIENT COSTS

As between advocate and either the minimum fees shall be—

- (a) the fees prescribed in A above increased by 50%;
- (b) the fees ordered by the court increased by the 50%; or
- (c) the fees agreed by the parties under paragraph 57 increased by 50%, as the case may be and the increase to include all proper attendances on the client and all necessary correspondence.

SCHEDULE 8

[L.N. 198/1969, s. 3, L.N. 62/1979, s. 13, L.N. 121/1984, s. 5, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

COSTS OF PROCEEDINGS IN TRIBUNAL UNDER THE LANDLORD AND TENANT (SHOPS, HOTELS AND CATERING ESTABLISHMENTS) ACT

A — PARTY AND PARTY COSTS

1. When an order has been made for payment of costs by either party and an advocate has been employed, those costs, in addition to the Tribunal fees, may be allowed to the successful party under paragraphs 6 and 7.

2. In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:

Provided—

- (i) that this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;
- (ii) that no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15 per cent of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned; and
- (iii) that in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.

3. Costs exceeding the scale in this Schedule may be allowed for special grounds arising out of the nature, importance, difficulty or urgency of the case.

4. Except for good reason to be recorded, costs shall be awarded to the party who substantially succeeds upon the reference or other proceedings.

5. The value of the subject-matter shall be determined as follows—

- (a) in a case where the amount of the annual rent is disputed, the difference between the amount proposed by the landlord and the amount offered by the tenant;

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- (b) in a case where possession is claimed, one year's *mesne* profits, plus the amount of any arrears of rent or *mesne* profits awarded, which total shall be determined by the Tribunal;
- (c) in a case concerning authority to carry out repairs, the amount claimed or awarded as the costs of the repairs, whichever is less; or
- (d) in proceedings under section 13 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, the amount of compensation awarded; or where no compensation is awarded, the amount of compensation claimed.

6. The "Lower Scale" in paragraph 7 shall be applied where the matter is disposed of *ex parte*, by consent or by a decision on a preliminary question of law not dependant on fact and the "Higher Scale" shall be applied in all other cases.

7. (1) The instruction fee, which shall include taking instructions, drawing or perusing or similar documents, engrossing and filing the same, may be computed in accordance with subparagraph (2).

(2)(a) Where the value of the subject matter—

<i>Exceeds Kshs.</i>	<i>Does not exceed Kshs.</i>	<i>Lower scale Kshs.</i>	<i>Higher scale Kshs.</i>
-	10,000	1,293	5,000
10,000	20,000	2,000	8,000
20,000	50,000	8,000	15,000
50,000	100,000	15,000	22,500
100,000	250,000	22,500	35,000
	over 250,000		the fee for Kshs. 250,000 plus an additional 2% in respect of the excess

- (b) On a complaint where a non-pecuniary relief other than possession is sought such costs as the Tribunal in its discretion awards; but not less than Kshs. 2,940 if undefended or unopposed, and if opposed, a reasonable amount not less than Kshs. 23,520.
- (c) On proceedings for leave to levy distress, one-half the fee under (a).
- (d) In any proceedings not otherwise provided for, such fees as the Tribunal may assess but not less than Kshs. 15,000.

8. (a) On any necessary attendance on the Tribunal other than at the hearing Kshs 1,400

(b) On any necessary attendance by an Advocate at the offices of the tribunal other than as provided in sub-paragraph (a) Kshs 1,000

(c) Attendances at the hearing—

(i) For the first whole day Kshs 4,000

(ii) For each part of the day after the first day Kshs 2,100

(d) Where costs of adjournment of the case are awarded Kshs 900

(e) Service—

(i) within three kilometers of the Tribunal Kshs 1,400

(ii) every additional kilometer over three kilometres, such amount as is reasonable, not exceeding per kilometer Kshs 35

(iii) by post, if authorized Kshs 100

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[Subsidiary]

- (f) Drawing and filling affidavit or return of service to include swearing fee Kshs 100
- (g) Drawing and filing for first four folios Kshs 500
any other affidavits — thereafter per folio Kshs 100

B — ADVOCATE AND CLIENT COSTS

As between advocate and client the cost shall be—

- (a) the cost prescribed in A above, increased by 50%;
- (b) the costs ordered by the Tribunal, increased by 50%; or
- (c) the costs agreed by the parties under paragraph 57 of this Order, increased by 50% as the may be, such increase to include all proper attendance on the client and all necessary correspondence.

SCHEDULE 9

[L.N. 62/1979, s. 13, L.N. 121/1984, s. 5, L.N. 264/1993, s. 2,
L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

COSTS OF PROCEEDINGS IN TRIBUNALS UNDER THE RENT RESTRICTION ACT OR ANY LEGISLATION AMENDING OR REPLACING THE SAME

A — PARTY AND PARTY COSTS

1. When an order has been made for payment of costs by either party and an advocate has been employed, those costs, in addition to the Tribunal fees, may be allowed to the successful party under paragraphs 6 or 7.
2. Costs exceeding the scale in this schedule may be allowed for special grounds arising out of the nature and importance or the difficulty or the urgency of the case.
3. Except for good reason, to be recorded, costs shall be awarded to the party which substantially succeeds upon the reference or other proceedings.
4. The value of the subject-matter shall be determined as follows—
 - (a) in a case where possession is claimed, one year's rent or one year's *mesne* profit plus the amount of any arrears of rent or *mesne* profits awarded which total shall be determined by the Tribunal;
 - (b) in a case concerning authority to carry out repairs, the amount claimed or awarded as the cost of the repairs, whichever is less; or
 - (c) In proceedings under section 15 of the Rent Restriction Act , the amount of compensation awarded or, where no compensation is awarded, the amount of compensation claimed.
5. The "Lower Scale" in paragraph 6 shall be applied where the matter is disposed of *ex parte*, by consent or by a decision on a preliminary question of law not dependant on fact and the "Higher Scale" shall be applied in all other cases.
6. (1) The instruction fee, which shall include taking instructions, drawing or perusing pleadings or similar documents, engrossing and filing the same, may be computed in accordance with subparagraph (2).
 - (2) Where the value of the subject matter—
 - (a)

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<i>Exceeds Kshs.</i>	<i>Does not exceed Kshs.</i>	<i>Lower scale Kshs.</i>	<i>Higher scale Kshs.</i>
-	1,000	1,293	2,352
1,000	2,000	2,117	4,116
2,000	3,500	2,499	4,998
3,500	5,000	3,528	8,232
5,000	7,500	4,704	10,584
7,500	10,000	5,880	11,760
10,000	20,000	8,820	14,700
20,000	50,000	10,290	17,640

a fee as for Kshs. 50,000 plus an additional 2% in respect of the excess

- (b) On a complaint where a non-pecuniary relief other than possession is sought such costs as the Tribunal in its discretion awards; but not less than Kshs.15,000 if undefended or unopposed, and if opposed, a reasonable amount not exceeding Kshs 25,000.
- (c) On proceedings for leave to levy distress, one-half of the fee under (a).
- (d) In any proceedings not otherwise provided for, such fees as the Tribunal may assess but not less than Kshs. 15,000.

7. (a) On any necessary attendance on the Tribunal other than at the hearing — Kshs 500

- (b) On any necessary attendance by an Advocate at the offices of the tribunal other than (a) above — Kshs 300
- (c) Attendances at the hearing—
 - (i) For the first whole day — Kshs 4,000
 - (ii) For each part of the day after the first — Kshs 2,100
- (d) Where costs of adjournment of the case are awarded — Kshs 900
- (e) Service—
 - (i) Within three kilometres of the Tribunal — Kshs 250
 - (ii) Every additional kilometre over three, such amount as is reasonable, not exceeding per kilometre — Kshs 35
 - (iii) By post, if authorized — Kshs 100
- (f) Drawing and filling affidavit or return of service to include swearing fee — Kshs 100

(g) Drawing and filing for first four folios Kshs 500
 any other affidavits — thereafter per folio Kshs 100

B —ADVOCATE AND CLIENT COSTS

As between advocate and client the cost shall be—

- (a) The cost prescribed in A above, increased by 50%;
- (b) The costs ordered by the Tribunal, increased by 50%; or
- (c) The costs agreed by the parties under paragraph 57 of this Order, increased by 50% as the may be, such increase to include all proper attendance on the client and all necessary correspondence.

SCHEDULE 10

[L.N. 73/1983, s. 14, L.N. 121/1984, s. 6, L.N. 264/1993, s. 2,
L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

PROBATE AND ADMINISTRATION

A—PARTY AND PARTY COSTS

1. INSTRUCTION FEES

- (a) To apply for grant of probate of written will, or proof of oral will, or letters of administration with or without will annexed, the proceedings not being contested, where the gross capital value of property comprised in the grant—

Exceeds Kshs.	But does not exceed Kshs.
—	10,000
10,000	50,000
50,000	200,000
200,000	1,000,000
1,000,000	5 per cent of the value on the first Kshs. 1,000,000 thereof and 1% over Kshs. 1,000,000.

- (b) To apply for re-sealing a grant, the proceedings being contested, four-fifths of the fee provided under paragraph (a).
- (c) To apply for confirmation of grant—
- (i) if uncontested — Kshs 15,000
 - (ii) if contested; such sum as the taxing officer shall consider reasonable, but not less than Kshs 30,000.
- (d) To apply for grant or re-sealing where the proceedings are contested; not less than twice the fee prescribed by paragraph (a) or (b).
- (e) To lodge a caveat or a renunciation of a right to representation — Kshs 10,000
- (f) To lodge an objection to grant, or a citation or other application or proceedings under the law not otherwise provided for in this Schedule; such As the taxing officer shall consider reasonable, but not less than Kshs 10,000
- (g) To render an inventory or account, including an estate duty affidavit, corrective estate duty affidavit and inventory included in or annexed to an affidavit in support of petition: Kshs 2,103 per Kshs 20,000 of net estate included therein, multiplied by the number of entries, but not less than Kshs 3,000.

2. DRAWING

- (a) Each form or document —prescribed under or required by the law or per folio Kshs 1,200
- (b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit or per entry Kshs 235
Kshs 1,400
- (c) Wills such sum as agreed but not less than Kshs 30,000.

3. COPIES

- (a) Each form or document prescribed under or required by the law or per folio Kshs 1,200
Kshs 235

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- (b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit
Kshs 1,400
or per entry Kshs 25
- (c) Wills such sum as agreed but not less than Kshs 30,000.

4. PERUSING

- Per folio Kshs 42
- (a) Wills and codicils Kshs 1,200
Or per folio Kshs 100
- (b) Any other form or document prescribed under or required by the law Kshs 600
Or per folio Kshs 60

5. LETTERS AND ATTENDANCES

- (a) Wills and codicils Kshs 1,200
Or per folio Kshs 100
- (b) Any other form or document prescribed under or required by the law Kshs 600
Or per folio Kshs 60

6. LETTERS AND ATTENDANCES

Including those necessary in ascertaining the particulars and extent of an estate, identities concerned, the raising and settlement of estate duty and all other work referred to in paragraphs 18(e) and 51(c) of this Order (other than that included in item 6 of this Schedule)—

- (a) Letter dispatched — Kshs 300
or per folio — Kshs 200
- (b) Letters received and perused — Kshs 200
Or per folio — Kshs 60
- (i) in ordinary cases per 15 minutes part thereof— Kshs 700
- (ii) Routine telephone calls within Kenya for 3 minutes or part thereof — Kshs 125
- (iii) In other cases the taxing officer may increase or diminish the above charges if, for any special reason, he sees it fit.

7. ACTUAL ADMINISTRATION OF A TESTAMENTARY OR OTHER ESTATE OR TRUST

- (a) Such annual or semi-annual fee as may be reasonable in the circumstances, having regard to the care and labour required, the number and length of the papers to be perused, the value and complexity of the estate, the interest of the parties and all other circumstances.
- (b) Annual or semi-annual commission of such amount as the taxing officer shall consider reasonable, having regard to all the circumstances, but not exceeding in aggregate the following rates—
- (i) On the estimated net capital value of the estate two and one-half percent per annum;
- (ii) On the amount of the income of the estate in a year or half year-three per cent; and
- (iii) On the capital value of any portion of the estate which is realized or invested during a year or half year – one and one-half cent, or at the election of the advocate.

- (c) An amount based on Schedule 5:

Provided that—

- (i) in relation to a shorter period than a year or half-year, the commission under paragraph (b) (i) shall be calculated with reference to that period; and
- (ii) a fee or commission charged under paragraph (a) or (b) shall include all necessary correspondence received and sent and attendances relative thereto and the preparation of the set of inventories or accounts required of formal documents filed or proceedings taken under the law of succession Act shall be charged for separately under the appropriate paragraph of this Schedule.

B —ADVOCATE AND CLIENT COSTS

In contested matter under the law, the fees as between advocate and client shall be—

- (a) the fees prescribed in A above increased by 50%;
- (b) the fees ordered by the court, increased by 50%; or
- (c) the fees agreed by the parties under paragraph 57 of this order increased by 50% as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

SCHEDULE 11

[L.N. 35/2014, r. 7.]

COSTS OF PROCEEDINGS BEFORE TRIBUNALS OTHER THAN THOSE UNDER SCHEDULES 8 AND 9 OF THIS ORDER EXCEPT WHERE OTHERWISE PRESCRIBED UNDER THE ACT SETTING UP THE TRIBUNAL

A—PARTY AND PARTY COSTS

1. When an order has been made for payment of costs by either party and an advocate has been employed, those costs, in addition to the Tribunal fees, may be allowed to the successful party.
2. Costs exceeding the scale in this schedule may be allowed for special grounds arising out of the nature and importance or the difficulty or the urgency of the case. Except for good reason to be recorded, costs shall be awarded to the party who substantially succeeds upon the reference or other proceedings.
3. When taxing the costs consideration shall be given by the taxing officer to either the value of the subject-matter or, where the value of the subject matter cannot be determined, to the following criteria.
 - (a) the nature and importance of the proceedings;
 - (b) the complexity of the matter and the difficulty or novelty of the question raised;
 - (c) the amount or value of the subject matter;
 - (d) the time expended by the advocate(s);
 - (e) The number and importance of the documents prepared or perused, without regard to length.
4. The "Lower Scale" shall be applied where the matter is disposed of *ex parte*, by consent or by a decision on a preliminary question of law not dependant on fact and the "Higher Scale" shall be applied in all other cases.
5. The instruction fee shall include taking instructions, drawing, perusals, engrossing documents and filing the same.

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[Subsidiary]

6. Binding and Photostat copies; actual costs incurred supported by vouchers of all necessary photocopying will be allowed to the successful party.

7. Expert witness expenses maybe allowed in accordance with Rule 74A of the Advocates Remuneration Order.

8. (a) Where the value of the subject matter can be ascertained—

That value exceeds Kshs.	But does not exceed Kshs.	.	Kshs.
0	50,000	.	17,640
50,000	100,000	.	23,520
100,000	200,000	.	35,280
200,000	500,000	.	58,800
500,000	1,000,000	.	1,000,000
1,000,000	20,000,000	.	Fees as for 1,000,000 plus an additional 1 %.
20,000,000	250,000,000	.	Fees as for 20,000,000 plus an additional 0.5%.
Over 250,000,000	Fees as for 250,000,000 plus an additional 0.1% per cent	.	

(b) Where the lower scale applies, the fees shall be the one prescribed in (a) above reduced by 50%.

9. Where the value of the subject matter cannot be ascertained such costs as the court in its discretion but not less than Kshs. 35,280 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) such figure being left to the discretion of the court.

10. (a) On any necessary attendance on the Tribunal other than at the hearing — Kshs. 500

(b) On any necessary attendance by an Advocate at the offices of the tribunal other than (a) above — Kshs. 500

(c) Attendances at the hearing—

(i) For each day after first day — Kshs. 4,000

(ii) For each part of the day after the first day — Kshs. 2,100

(d) Where costs of adjournment of the case are awarded — Kshs. 1,200

B — ADVOCATE AND CLIENT COSTS

As between advocate and client the costs shall be —

(a) The cost prescribed in A above, increased by 50%; or

(b) The costs ordered by the Tribunal, increased by 50%; or

(c) The costs agreed by the parties under paragraph 57 of this Order, increased by 50% as the case may be, such increase to include all proper attendance on the client and all necessary correspondence.

SCHEDULE 12

[L.N. 35/2014, r. 7.]

PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

1. INITIAL APPLICATIONS FOR REGISTRATION

	Kshs.
(a) Instructions to register one patent	42,000

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(b) Instructions to register one industrial design	42,000
(c) Instructions to register one utility model	42,000
(d) Instructions to enter a national phase of international application	42,000

2. SUBSIDIARY PROCESSING APPLICATIONS FOR PATENTS AND UTILITY MODELS

	Kshs.
(a) Application for amendment of specification, claims, abstract or drawings of pending patent and utility models	15,120
(b) Application to convert pending patent application into a utility model application or vice versa and preliminary advice thereon	15,120
(c) Application for substantive examination for patents and preliminary advice thereon	6,048

REGISTRATION OF LICENCES

(d) Instructions to file an application to register a licensee of a patent, industrial design or utility model and advice on registerability of licence agreement	21,000
(e) Drawing an application	6,300
(f) Drawing a licence agreement, depending on the amount of work involved but not less than	12,600

ASSIGNMENTS

Instructions to file an application to register a subsequent proprietor of a pending patent, utility model or industrial design application or registered patent, utility model or industrial design	21,000
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ANNUITY APPLICATIONS

Instructions to pay annual maintenance fees for a patent or utility model and drafting and filing an annuity application	12,600
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APPLICATIONS FOR EXTENSION OF TERM OF INDUSTRIAL DESIGNS

Instructions to file an application for an extension of term of registration of an industrial design	12,600
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APPLICATIONS TO RESTORE REGISTRATION OF PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

Instructions to file an application to restore the registration of a patent, utility model or industrial design and supporting affidavits	15,000
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CHANGE OF NAME OR ADDRESS

Instruction to register a change of name or change of address of the registered proprietor in respect of a patent, utility model or industrial design and reviewing all necessary supporting document	10,000
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[Subsidiary]

SEARCHES AND COPIES

- (g) Searches at the Kenya Industrial Property Institute (the "Institute") and advising thereon—
- (h) (i) If qualified person 10,000
(ii) If unqualified person 2,000
- (i) Instructions to obtain registry certified copies of documents—
- (i) One copy of any document 2,940
(ii) Second and additional copies of same 882
document obtained simultaneously

INFRINGEMENT, EXPUNGEMENT, RECTIFICATION, OPPOSITION
PROCEEDINGS AND APPLICATIONS AND APPEALS LISTED BELOW

- (a) Instructions to file infringement, expungement, rectification, caution and opposition proceedings, applications for compulsory licences, variation, transfer or cancellation of compulsory licences, entry of licences as of right and to defend or contest such proceedings or applications where such proceedings or applications are conducted before the Managing Director of the Institute (the "Managing Director") or the Industrial Property Tribunal (the "Tribunal").
- (b) Instructions to appeal to Tribunal against any decision of the Managing Director which is appealable under the Industrial Property Act.

For paragraphs 10 (a) and 10(b), such fee as the taxing officer in the exercise of his discretion and taking into consideration the nature and importance of the proceedings or applications, the patents, utility models or designs to the parties concerned, the amount of evidence filed and the time required for the proceedings and all other relevant circumstances shall decide but not less than Kshs 210,000.

- (c) Attendance before the Managing Director or the Tribunal in connection with conducting proceedings, applications or appeals referred to in paragraphs 10 (a) and 10 (b)—
- (i) for a full day — Kshs. 16,464
(ii) Every half-day or part thereof: — Kshs 8,232
(iii) minutes or part thereof — Kshs 1,127
(iv) On interlocutory matters, taking directions, judgments, etc. for every 15
(v) On taxation of bill of costs for every 15 minutes or part thereof — Kshs 1,127

MISCELLANEOUS MATTERS

- Instructions to advise on patentability of an invention or registrability of an industrial design or a utility model or on a point of law or practice; such fee as may be reasonable in the circumstances but not less than 25,000
- Instructions to request reasons for a refusal of a patent, utility model or industrial design 8,400
- (l) Instructions to surrender a patent, utility model or industrial design 8,400
- (m) Instructions to have a caution or similar notice included or removed from the Register in respect of a patent, utility model or industrial design 10,500

(n) Attendance on the Managing Director or the Tribunal for every 15 minutes or part thereof—	
(i) For argument	1,127
(ii) For filing papers	840
(o) Correspondence, where charged for separately (see the note to this part of this schedule—	
(i) Per letter	294
(ii) per folio	176
(g) Receiving and perusing letters, documents, pleadings, statutory declarations, etc.—	
(i) Per letter	294
(ii) per folio	176
(h) Drawing all necessary documents associated with any of the applications or proceedings referred to above in this Schedule including but not limited to, requests and statements of facts in infringement proceedings, applications for expungement and rectification, applications for entry or expungement of cautions, applications for compulsory licences and licences as of right, notices of opposition to design applications, statutory declarations, counter-statements and all documents associated with any of the above:—	
(i) Per folio	Kshs 470
(ii) File copies, per folio	Kshs 46
(i) Perusing documents, pleadings, statutory declarations, etc. to be charged for as for perusals at item 8 (a) of Schedule 6	
(j) All other necessary attendances (including attendances to take minutes of evidence of witnesses other than the party for whom the Advocate is acting), per quarter hour or part thereof	Kshs 1,127
(k) Applying to the Managing Director for any extension of time	Kshs 4,200

Notes

The fees in items 1 to 9 above are inclusive, unless otherwise provided, of drawing statutory forms and authorizations as necessary, and of all necessary routine correspondence with and attendances at the registry and correspondence with the client, but they do not cover additional matters shown in items 10 and 11 and work occasioned by objections or queries by the Managing Director or third parties or by any other complication or unusual delay, which matters shall be charged for separately.

Rules under section 83 (Cap. 16 (1986))

ADVOCATES (ACCOUNTS) RULES, 1966

[L.N. 137/1966, L.N. 111/1977.]

1. These Rules may be cited as the Advocates (Accounts) Rules, 1966.

2. In these Rules, except where the context otherwise requires—

“**advocate**” includes a firm of advocates;

“**client**” means any person on whose account an advocate holds or receives client’s money;

“**client account**” means a current or deposit account at a bank or with a building society or a financial institution (as defined in the Banking Act (Cap. 488)) in the name of the advocate but in the title of which either the word “client” or the word “trust” appears;

“**client’s money**” means money held or received by an advocate on account of a person for whom he is acting in relation to the holding or receipt of such money either as an advocate or, in connexion with his practice as an advocate as agent, bailee, trustee, stakeholder or in any other capacity, and includes—

- (a) money held or received by an advocate by way of deposit against fees to be earned or disbursements to be incurred; and
- (b) money held or received as or on account of a trustee, whether or not the advocate is sole trustee or trustee with others,

but does not include—

- (i) money to which the only person entitled is the advocate himself, or in the case of a firm of advocates, one or more of the partners in the firm; nor
- (ii) money held or received by an advocate in payment of or on account of an agreed fee in any matter;

“**money**” includes banknotes, currency notes, bank drafts, cheques and any other negotiable instruments;

“**trustee**” includes executor, administrator, manager in lunacy, trustee of a will or settlement, trustee in bankruptcy, receiver or liquidator.

[L.N. 111/1977.]

3. An advocate may keep one client account or several client accounts as he thinks necessary.

4. Subject to rule 8, an advocate shall without delay pay into a client account all client’s money held or received by him.

5. There may be paid into a client account—

- (a) trust money;
- (b) such money belonging to the advocate as may be necessary for the purpose of maintaining the account;
- (c) money to replace any sum drawn from the account in contravention of these Rules; and
- (d) a cheque or draft received by the advocate which under rule 6 he is entitled to split but which he does not split.

6.

(1) Where an advocate holds or receives a cheque or draft which includes client’s money

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- (a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or
- (b) if he does not split the cheque or draft, he shall pay the cheque or draft into a client account.

(2) Money which is not client's money but which is paid into a client account other than under rule 5(b) shall be paid out as soon as reasonably possible.

7. No money other than money which under these Rules an advocate is required or permitted to pay into a client account shall be paid into a client account.

8. An advocate need not pay into a client account client's money held or received by him which—

- (a) is received by him in the form of cash, and is without delay paid in cash in the ordinary course of business to the client or to a third party; or
- (b) he pays in, without delay, to the credit of a separate account opened or to be opened in the name of a client, trust or estate or of some person nominated by the client; or
- (c) is received by him in the form of a cheque or draft and is, without delay, endorsed over and delivered in the ordinary course of business to the client or to a third party for or on behalf of or to the use of the client and is not cashed or passed through a bank account by the advocate.

(1) Subject to rules 10 and 12, an advocate may withdraw from a client account—

- (a) money properly required for payment to the client;
- (b) money properly required for or towards a payment authorized by the client;
- (c) money properly required for or towards a payment on behalf of the client within the mandate of the advocate in the matter or any of the matters in which he is acting for or on behalf of the client;
- (d) money which he is transferring to a separate account opened or to be opened in the name of the client;
- (e) money properly required for or towards payment of a debt due to the advocate from the client or in reimbursement of money properly expended by the advocate for or on behalf of the client;
- (f) money properly required for or towards payment of the advocate's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client;
- (g) money paid into the account in contravention of these Rules;
- (h) money paid into the account under rule 5(b); and
- (i) money not being client's money paid into the account under rule 6(1)(b).

(2) Every cheque drawn upon a client account shall bear on its face the words "client account" or "trust account".

10. In no circumstances may an advocate withdraw from a client account any sum in excess of the amount held for the time being in such account for the credit of the client in respect of whom the drawing is proposed to be made.

11. No money may be withdrawn from a client account under any of paragraphs (e), (f), (g), (h) or (i) of rule 9 except by a cheque drawn in favour of the advocate.

12. No money may be withdrawn from a client account except as authorized by rule 9 or as specifically authorized in writing by the Council in pursuance of an application by the advocate.

13. (1) Every advocate shall at all times keep, properly written up, such books of account as may be necessary to show—

- (a) every receipt by him of client's money, for each separate client; and
- (b) every payment or application by him of or from client's money, for each separate client; and
- (c) the amount held by him for the time being in a client account, for each separate client; and
- (d) the moneys expended by him for, and the costs charged by him to, each separate client.

(2) The books of account referred to in paragraph (1) shall include—

- (a) either—
 - (i) a cash book in which to record every transaction involving client's money or other money dealt with by the advocate through a client account, and a separate cash book in which to record every transaction involving the advocate's own money and relating to the affairs of his clients; or
 - (ii) a cash book ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the advocate through a client account and the other for recording every transaction involving the advocate's own money and relating to the affairs of his clients; and
- (b) either—
 - (i) a ledger in which to record every transaction involving client's money or other money dealt with by the advocate through a client account, and a separate ledger in which to record every transaction involving the advocate's own money and relating to the affairs of his clients; or
 - (ii) a ledger ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the advocate through a client account and the other recording every transaction involving the advocate's own money and relating to the affairs of his clients; and
- (c) a record showing particulars of all bills of costs delivered by the advocate to his clients, distinguishing between profit costs and disbursements.

(3) A cash book or ledger required to be kept under this rule may be a loose-leaf book.

(4) In this rule, "**cash book**" and "**ledger**" include such cards or other permanent records as are necessary for the operation of a mechanical system of book-keeping.

14. Every advocate shall preserve for at least six years from the date of the last entry therein all books of account required to be kept by him under rule 13.

15. Every advocate shall take reasonable precautions to ensure the safety of all books of account which he is required by rule 14 to preserve, and in the event of any such books being lost, destroyed or materially damaged, shall forthwith give notice thereof to the Council, together with a written report on the circumstances.

16. The Advocates (Accounts) Regulations, 1952, are revoked.

ADVOCATES (PRACTICE) RULES, 1966

[L.N. 19/1967, L.N. 223/1984.]

1. These Rules may be cited as the Advocates (Practice) Rules, 1966.
2. No advocate may directly or indirectly apply for or seek instructions for professional business, or do or permit in the carrying on of his practice any act or thing which can be reasonably regarded as touting or advertising or as calculated to attract business unfairly.
3. No advocate may hold himself out of or allow 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 scales laid down by the Advocates (Remuneration) Order for the time being in force.
4. No advocate may agree to share with any person not being an advocate or other duly qualified legal Agent practising in another country his profit costs in respect of any business whether contentious or non-contentious:

Provided always that—

- (i) an advocate carrying on practice on his own account may agree to pay an annuity or other sum out of profits to a retired partner or predecessor or the dependants or legal personal representative of a deceased partner or predecessor;
- (ii) an advocate who has agreed in consideration of a salary to do the legal work of an employer who is not an advocate may agree with such employer to set off his profit costs received in respect of contentious business from the opponents of such employer or the costs paid to him as the advocate for employer by third parties in respect of non-contentious business against—
 - (a) the salary so paid or payable to him; and
 - (b) the reasonable office expenses incurred by such employer in connexion with such advocate (and to the extent of such salary and expenses).

4A. No advocate employed by an unqualified person shall draw documents or render other legal service to his employer for which fees are charged directly or indirectly by his employer to any other person and retained by that employer.

[L.N. 223/1984, s. 2.]

5. (1) No advocate may join or act in association with any organization or person (not being a practising advocate) whose business or any part of whose business is to make, support or prosecute (whether by action or otherwise and whether by an advocate or agent or otherwise) claims as a result of death or personal injury, including claims under the Workmen's Compensation Act (Cap. 236), in such circumstances that such person or organization solicits or receives any payment, gift or benefit in respect of such claims, nor may an advocate act in respect of any such claim for any client introduced to him by such person or organization.

(2) No advocate may with regard to any such claim knowingly act for any client introduced or referred to him by any person or organization whose connexion with such client arises from solicitation in respect of the cause of any such claim.

(3) It is the duty of an advocate to make reasonable inquiry before accepting instructions in respect of any such claim for the purpose of ascertaining whether the acceptance of such instructions would involve a contravention of subrule (1) or (2).

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6. (1) An advocate may act for a client in a matter in which he knows or has reason to believe that another advocate is then acting for that client only with the consent of that other advocate.

(2) An advocate may act for a client in a matter in which he knows or has reason to believe that another advocate was acting for that client, if either—

- (a) that other advocate has refused to act further; or
- (b) the client has withdrawn instructions from that other advocate upon proper notice to him.

7.(1) Subject to specific agreement, an advocate who briefs, instructs or consults another advocate is personally responsible for the payment to such other advocate of his proper professional remuneration in respect thereof.

(2) Subject to specific agreement, an advocate who consults, instructs or calls as a witness any architect, engineer, doctor, surgeon or other professional or technical person is personally responsible for the payment to that person of his proper remuneration in respect thereof.

8. No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit; and if, while appearing in any matter, it becomes apparent that he will be required as a witness to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear:

Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non-contentious matter of fact in any matter in which he acts or appears.

9. (1) No advocate may coach or permit the coaching of any witness in the evidence he will or may give before any court, tribunal or arbitrator.

(2) No advocate may call to give evidence before any court, tribunal or arbitrator a witness whom he knows to have been coached in the evidence he is to give without first informing the court, tribunal or arbitrator of the full circumstances.

10. No advocate or firm of advocates shall, in connexion with the practice of the advocate or firm, cause or permit himself or firm name to be described otherwise than as "Advocate" or "Advocates", as the case may be, whether by means of printed headings on business notepaper or legal forms, or by means of printed insertions therein, or by writing or typescript or similar means on such notepaper or forms, or on any name-plate, or in any public advertisement, or in any other manner whatsoever:

Provided that—

- (i) where an advocate, whether a member of a firm of advocates or not, holds the office of Notary Public or Commissioner for Oaths, he may add the words "Notary Public" or "Commissioners for Oaths", whichever is appropriate, to the description "Advocates", as the case may be;
- (ii) where more than one member of a firm of advocates holds such office, the firm may add the words "Notaries Public" or "Commissioner for Oaths", whichever is appropriate, to the description "Advocates";
- (iii) where an advocate, whether a member of a firm of advocates or not, possesses an academic distinction, or a professional qualification additional to that by virtue of which he was admitted as an advocate he may indicate, in the manner and style commonly adopted, that he possesses such distinction or qualification personally.

10A. No advocate shall practise under any name other than his own name or the name of a past or present member or members of the firm.

[L.N. 223/1984, s. 2.]

11. No advocate may request in a letter of demand before action payment from any person other than his client of any costs chargeable by him to his client in respect of such demand before action, or in respect of professional services connected with the demand.

12. The Council of the Law Society of Kenya shall have power to waive in writing any of the provisions of these Rules in any particular case.

13. The Advocates (Practice) Regulations, 1952 (G.N. 785/1952) are revoked.

ADVOCATES (DEPOSIT INTEREST) RULES, 1967

[L.N. 205/1967, Corr. No. 81/1967, L.N. 112/1977.]

1. These Rules may be cited as the Advocates (Deposit Interest) Rules, 1967.
2. Except as provided by these Rules an advocate is not liable by virtue of the relation between advocate and client to account to any client for interest received by the advocate on moneys deposited in a client account being moneys received or held for or on account of his clients generally.

[L.N. 112/1977.]

3. When an advocate holds or receives for or on account of a client money on which, having regard to all the circumstances (including the amount and the length of time for which the money is likely to be held), interest ought in fairness to the client to be earned for him, the advocate shall take instructions from the client concerning the investment of that money.
4. An advocate is liable to account to a client for interest received on moneys deposited in a client account where the moneys are deposited in a separate designated account.

[L.N. 112/1977.]

5. In these Rules “**Separate designated account**” means a deposit account in the name of the advocate or his firm in the title of which the word “client” appears and which is designated by reference to the identity of the client or matter concerned.

[L.N. 112/1977.]

ADVOCATES (ACCOUNTANT'S CERTIFICATE) RULES, 1967

[L.N. 80/1968, L.N. 287/1968, L.N. 224/1984.]

1. These Rules may be cited as the Advocates (Accountant's Certificate) Rules, 1967 and come into force on the 1st January, 1968.

2. In these Rules—

“**accountant's certificate**” means the certificate provided for by rule 3;

“**advocate**” means any person whose name is duly entered upon the roll of advocates but does not mean any person whose name is duly entered upon the roll of advocates having the rank of Queen's Counsel;

“**the Council**” means the Council of the Law Society of Kenya;

“**the secretary**” means the Secretary of the Law Society of Kenya and includes any person appointed temporarily to perform the duties of the office;

the expressions “**client**”, “**client account**”, and “**client money**”, have the meanings assigned to them in the Advocates (Accounts) Rules.

3. Subject to these Rules every advocate shall once in every practice year deliver to the Council a certificate signed by an accountant and complying with these Rules.

4. (1) An accountant is qualified to give an accountant's certificate if—

- (a) he has neither been at any time during the accounting period, nor subsequently, before giving the certificate, become a partner, clerk or servant of such advocate or any partner of his; and
- (b) he is not subject to notice of disqualification under paragraph (2).

(2) In either of the following cases, that is to say, where—

- (a) the accountant has been found guilty by the Disciplinary Tribunal of his professional body of professional misconduct or discreditable conduct; or
- (b) the Council is satisfied that an advocate has not complied with the provisions of the Advocates (Accounts) Rules in respect of matters not specified in an accountant's certificate and that the accountant was negligent in giving such certificate,

the Council may at its discretion at any time notify the accountant concerned, that he is not qualified to give an accountant's certificate, and it may give notice of that fact to any advocate on whose behalf he has given an accountant's certificate, and after the accountant has been so notified, unless and until the notice is withdrawn by the Council, he is not qualified to give an accountant's certificate. In coming to its decision the Council shall take into consideration any observations or explanations made by the accountant or by any professional body of which he is a member.

5. (1) With a view to the signing of an accountant's certificate an accountant is not required to do more than—

- (a) make a general test examination of the books of account of the advocate;
- (b) ascertain whether a client account is kept;
- (c) make a general test examination of the bank pass books and statements kept in relation to the advocate's practice;
- (d) make a comparison, as at not fewer than two dates selected by the accountant, between—
 - (i) the liabilities of the advocate to his clients as shown by his books of account;
 - (ii) the balance standing to the credit of the client account; and

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- (e) ask for such information and explanations as he may require arising out of (a) to (d) above.

(2) If after making the investigation prescribed by paragraph (1), it appears to the accountant that there is evidence that the Advocates (Accounts) Rules have not been complied with, he shall make such further investigations as may be necessary to enable him to sign the accountant's certificate.

6. An accountant's certificate delivered by an advocate shall be in the form set out in the Schedule or in a form to the like effect approved by the Council.

7. The Council will in each practice year be satisfied that the delivery of an accountant's certificate is unnecessary, and shall not require evidence of that fact, in the case of an advocate who—

- (a) holds his first current practising certificate; or
- (b) after having for twelve months or more ceased to hold a current practising certificate, holds his next current practising certificate; or
- (c) delivers to the Council a statutory declaration stating that the Advocates (Accounts) Rules did not apply to him because he had not, during the period to which the declaration refers, practised on his own account either alone or in partnership or held or received client's money; or
- (d) has ceased to hold a current practising certificate and, if he has at any time after the 31st December 1967 held or received client's money, has delivered an accountant's certificate covering an accounting period ending on the date upon which he ceased to hold or receive client's money; or
- (e) has at no time since the 31st December 1967, held a current practising certificate or held or received client's money.

7A. A statutory declaration delivered under rule 7 by an Advocate in the employment of an unqualified person or body shall state whether such advocate has complied with rule 4A of the Advocates (Practice) Rules.

[L.N. 224/1984.]

8. Subject to rules 9, 10 and 11 the accounting period specified in an accountant's certificate shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's certificate has been delivered;
- (b) cover not less than twelve months;
- (c) terminate not more than nine months before the date of the delivery of the certificate to the Council; and
- (d) where possible, consistently with paragraphs (a), (b) and (c) correspond to a period or consecutive periods for which the accounts of the advocate or his firm are ordinarily made up.

[L.N. 287/1968.]

9. The accounting period specified in an accountant's certificate delivered during the practice year beginning on the 1st January 1968 shall begin on—

- (a) the date to which the advocate's books were last made up before the 1st January 1968; or
- (b) if the books were not made up during the practice year beginning on the 1st January 1967, either on the 1st January 1967 or on the day upon which the advocate first began or began again to hold or receive client's money, whichever be the later; or
- (c) in the case of an advocate retiring from practice who has ceased to hold or receive client's money after the 1st January 1967, the period up to the date upon which he so ceased.

10. In any practice year beginning on or after the 1st January, 1969—

- (a) in the case of an advocate who—
 - (i) becomes under an obligation to deliver his first accountant's certificate; or
 - (ii) having been exempt under rule 7 from delivering an accountant's certificate in the previous practice year, becomes under an obligation to deliver an accountant's certificate,

the accounting period shall begin on the date upon which he first held or received client's money or, after such exemption, began again to hold or receive client's money, and may cover less than twelve months, and shall in all other respects comply with rule 8; and

- (b) in the case of an advocate retiring from practice who, having ceased to hold or receive client's money, is under an obligation to deliver his final accountant's certificate, the accounting period shall end on the date upon which he ceased to hold or receive client's money, and may cover less than twelve months, and shall in all other respects comply with rule 8.

11. (1) In any practice year beginning on or after the 1st January 1969, in the case of an advocate who—

- (a) was not exempt under rule 7 from delivering an accountant's certificate in the preceding practice year; and
- (b) since the expiry of the accounting period covered by such accountant's certificate has become, or ceased to be, a member of a firm of advocates,

the accounting period may cover less than twelve months and shall in all other respects comply with rule 8.

(2) In the case of an advocate who has two or more places of business—

- (a) separate accounting periods, covered by separate accountant's certificates, may be adopted in respect of each such place of business provided that the accounting periods comply with rule 8; and
- (b) the accountant's certificate or accountant's certificates delivered by him to the Council in each practice year shall cover all client's money held or received by him.

12. If any advocate fails to comply with these Rules a complaint in respect of such failure may be made by or on behalf of the Council to the Disciplinary Committee.

13. On receipt either of an accountant's certificate or of a declaration under rule 7(3) the Secretary will forward to the advocate a certificate under his hand stating that an accountant's certificate for a specified period has been received or that no accountant's certificate is required for a specified period, as the case may be.

14. A certificate under the hand of the Secretary is, until the contrary is proved, evidence that an advocate has or has not, as the case may be, delivered to the Council an accountant's certificate or supplied any evidence required under these Rules.

15. Every notice to be given by the Council under these Rules to an advocate shall be in writing under the hand of the Secretary and sent by registered post to the last address of the advocate appearing in the roll of advocates kept by the Registrar under section 20 of the Act and when so given and sent, is taken to have been received by the advocate within seven days after the date of posting.

16. Every notice given by the Council under these Rules to an accountant shall be in writing under the hand of the Secretary and sent by registered post to the address of the accountant shown on an accountant's certificate or appearing in the records of the accountancy body of which the accountant is a member, and where

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so given and sent, is taken to have been received by the accountant within seven days after the date of posting.

SCHEDULE

[Rule 6.]

FORM OF ACCOUNTANT'S CERTIFICATE

Note.—In the case of a firm with a number of partners, carbon copies of the Certificate may be delivered provided section 1 below is completed on each Certificate with the name of the individual advocate.

1. Advocate's full name

2. Firm(s) Name(s) and Address(es)

Note.— All addresses at which the advocate(s) practice(s) must be covered by an Accountant's Certificate or Certificates.

3. State whether practising alone or in partnership

4. Accounting Period(s)

Note.—The period(s) must comply with the Advocates (Accountant's Certificate) Rules, 1967.

ACCOUNTANT'S CERTIFICATE

In compliance with the Advocates (Accountant's Certificates) Rules, 1967.

I, have examined the books, accounts and documents of the above-named advocate relating to the above practice(s) produced to me and I hereby certify that from my examination pursuant to rule 5 of the Advocates (Accountant's Certificate) Rules, 1967, and from explanations and information given to me, I am satisfied that—

*(1) during the above-mentioned period(s) he has complied with the provisions of the Advocates (Accounts) Rules except so far as concerns—

- (a) certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery: I am satisfied that none of such breaches resulted in any loss to any client;
(b) the matters set out on the back hereof;

*(2) having retired from active practice as an advocate he ceased to hold client's money on the

Particulars of the Accountant
Full name
Qualifications (if any)
Firm name
Address
Signature
Date

* Delete clause not applicable.

To the Secretary
The Law Society of Kenya,
P.O. Box 12219,
Professional Center,
Nairobi.

Rules under section 58(6)

ADVOCATES (DISCIPLINARY COMMITTEE) RULES, 1990

[L.N. 315/1964, L.N. 458/1990, L.N. 59/2004.]

PART I – PRELIMINARY

1. These Rules may be cited as the Advocates (Disciplinary Committee) Rules, 1990.

[L.N. 458/1990.]

2. In these Rules—

“the Committee” means the Disciplinary Committee;

“the Council” means the Council of the Society;

“the secretary” means the secretary of the Committee.

[L.N. 458/1990.]

PART II – APPLICATION BY ADVOCATE FOR NAME TO BE
REMOVED FROM ROLL

3. (1) An application to the Committee by an advocate under section 59 of the Act to procure his name to be removed from the Roll shall be made by way of affidavit in Form 1 set out in the Schedule.

(2) Such affidavit shall be sent to the secretary and a copy thereof to the Council.

[L.N. 458/1990.]

4. (1) Unless within fifteen days after receipt of the affidavit, written notice of intention to oppose the same has been given to the secretary, the Committee may decide the application without requiring the attendance of the applicant.

(2) In any other case, the Committee shall fix a day for the hearing, and the secretary shall give written notice thereof to the applicant and to the Council not less than twenty-one days before the day fixed for the hearing.

(3) The Committee may, if it thinks fit, require the applicant to give notice of his application and of the day fixed for the hearing, by advertisement or otherwise as it may direct.

[L.N. 458/1990.]

5. If any person other than the Council intends to object to the application at the hearing thereof, he shall give written notice of his intention to the applicant, the Council and the secretary at least seven days before the day fixed for the hearing, specifying the grounds of his objection; and if the Council intends to object to the application it shall cause a similar notice to be given to the applicant and to the secretary.

[L.N. 458/1990.]

6. If, on the hearing of the application, the Committee is of the opinion that grounds exist for a complaint against the applicant under section 60 of the Act, the Committee may refuse the application or adjourn the same *sine die* pending the making and disposal of a complaint under that section, and may give all such directions with respect thereto as the Committee may deem expedient.

[L.N. 458/1990.]

7. Part IV shall apply *mutatis mutandis* to the hearing of an application under this Part.

[L.N. 458/1990.]

[Subsidiary]

PART III – COMPLAINTS AGAINST ADVOCATES AND
APPLICATIONS CONCERNING ADVOCATE'S CLERKS

8. A complaint to the Committee under section 60, or an application to the Committee under section 72, of the Act shall be made by way of affidavit in Form 2 or Form 3 in the Schedule, as the case requires:

Provided that, where a complaint or application is instigated by the Council, such complaint or application may be made on behalf of the Council by the secretary of the Society or by such other person as may be appointed by the Council.

[L.N. 458/1990.]

9. An affidavit referring a complaint to the Committee under section 60(2) of the Act shall be accompanied by a fee of one hundred shillings.

[L.N. 458/1990.]

10. The Council may, if of the opinion that the circumstances of a complainant or applicant or the nature of a complaint or application so warrant, appoint an advocate to represent the complainant or applicant; and the disbursements of such advocate, so far as not recoverable from the advocate or advocate's clerk in respect of whom the complaint or application is made, shall be paid out of the funds of the Society.

[L.N. 458/1990.]

11. If a complaint made to the Committee is dismissed under the proviso to section 60(3) of the Act, the Committee shall, if so required by the complainant or the advocate to whom the complaint relates, make a formal order dismissing the complaint.

[L.N. 458/1990.]

12. In the case of an application in respect of an advocate's clerk, the clerk shall not be represented before the Committee by any advocate by whom he was employed at the time of the matters which form the subject matter of the application, or by any employee of such an employer.

[L.N. 458/1990.]

13. In the case of a complaint against an advocate, and in the case of an application in respect of an advocate's clerk, the Committee shall fix a day for the hearing, and the secretary shall give notice thereof to each party to the proceedings not less than twenty-one days before the day fixed for the hearing, and shall at the same time furnish each party, other than the complainant or the applicant, with a copy of the affidavit of complaint or application and of any affidavit in support thereof.

[L.N. 458/1990.]

14. The notice of hearing—

- (a) shall be in Form 4 in the Schedule, and shall, unless the Committee otherwise directs, require the party to whom it is addressed to furnish to the secretary and to every other party, at least fourteen days before the day fixed for the hearing, a list of all documents on which he intends to rely at the hearing; and
- (b) shall set out, in general terms, the charge or charges of professional misconduct made against the advocate, or the grounds of the application in respect of an advocate's clerk, as the case may be:

Provided that the Committee shall not be precluded from taking into consideration, subject to rule 23, any other charge or ground which may become apparent at the hearing and which fairly arises from the matters set out in the complaint or application.

[L.N. 458/1990.]

15. Any party may inspect and take copies of the documents included in the list furnished by any other party.

[L.N. 458/1990.]

PART IV — MISCELLANEOUS PROVISIONS

16. Deleted by L.N. 59/2004, s. 2.

17. If any party fails to appear at the hearing, the Committee may, in its discretion, upon proof of service on such party of the notice of hearing, proceed to hear and determine the complaint or application in his absence.

[L.N. 458/1990.]

18. The Committee may, in its discretion either as to the whole case or as to any particular fact or facts, proceed and act upon evidence given by affidavit.

[L.N. 458/1990.]

19. The Committee may, at any stage of any proceedings refer the case to the Council, which may cause a complaint or a further complaint to be lodged against an advocate or, in case of an application under Part II, may make representations to the committee.

[L.N. 458/1990.]

20. No complaint or application made under Part II or Part III shall be withdrawn after it has been sent to the secretary, except with the leave of the Committee, which may be granted, or refused, upon such terms as to costs or otherwise as the Committee thinks fit.

[L.N. 458/1990.]

21. The Committee may of its own motion, or upon the application of any party, adjourn the hearing upon such terms as to costs or otherwise as it thinks fit.

[L.N. 458/1990.]

22. The Committee may, in its discretion and after giving the parties concerned an opportunity to be heard, order the consolidation of the hearing of any proceedings before it.

[L.N. 458/1990.]

23. If, in the course of a hearing, it appears to the Committee that the charges of which notice has been given, or the grounds of an application under section 72 of the Act, require to be amended or added to, the Committee may make or permit such amendment or addition, and the filing of such further affidavit, as it thinks fit, or, if in the opinion of the Committee such amendment or addition is not within the scope of the complaint or application, may require the same to be embodied in a further complaint or application:

Provided that if such amendment or addition is, in the opinion of the Committee such as to take any party by surprise, or prejudice the conduct of his case, the Committee shall grant an adjournment of the hearing upon such terms as to costs or otherwise as the Committee thinks fit.

[L.N. 458/1990.]

24. Upon the hearing or determination of any complaint or application, the Committee may, in the case of a complaint against an advocate, without finding any professional misconduct proved against the advocate, or, in the case of an application in respect of an advocate's clerk, without making any order under section 72 of the Act, nevertheless order any party to pay the costs of proceedings if, having regard to his conduct and to all the circumstances of the case, the Committee so thinks fit.

[L.N. 458/1990.]

25. The Chairman of the Committee shall take or cause to be taken a note of all proceedings before the Committee, or may order that the record of any proceedings before it shall be taken by shorthand note.

[L.N. 458/1990.]

Advocates

[Subsidiary]

26. Any party to proceedings before the Committee shall be entitled to inspect the record or transcript thereof, and any party entitled to be heard in any appeal filed from any such proceedings shall be entitled to be supplied with a copy of a transcript of such proceedings against payment, if so ordered by the Committee, of copying charges at such rate, not exceeding two shillings per folio of one hundred words, as the Committee may from time to time direct.

[L.N. 458/1990.]

27. Service of any notice or document may be effected under these Rules by any method authorized by law or by registered post, addressed to the last known postal address or abode in Kenya of the person to be served, and such service shall be deemed to have been effected seventy-two hours after posting.

[L.N. 458/1990.]

28. The Committee may dispense with any requirements of these Rules respecting notices, affidavits, documents, service or time, in any case where it appears to the Committee to be just or expedient so to do.

[L.N. 458/1990.]

29. The Committee may extend the time for doing anything under these Rules on such terms as to costs or otherwise as the Committee thinks fit.

[L.N. 458/1990.]

30. (1) Any party may by notice in writing, at any time not later than nine days before the day fixed for the hearing, call upon any other party to admit any document and if such other party desires to challenge the authenticity of the document he shall within six days after service of such notice, give notice that he does not admit the document and requires it to be proved at the hearing.

(2) If such other party refuses or neglects to give notice of non-admission within the time prescribed in paragraph (1), he shall be deemed to have admitted the document unless the Committee otherwise directs.

(3) Where a party gives notice of non-admission within the time prescribed by paragraph (1), and the document is proved at the hearing, the costs of proving the document shall be paid by the party who has challenged the document, whatever the order of the Committee may be, unless in its report or order the Committee finds that there were reasonable grounds for not admitting the authenticity of the documents.

[L.N. 458/1990.]

31. Where a party proves a document without having given notice to admit under rule 30(1), the Committee may disallow the costs of proving the document.

[L.N. 458/1990.]

32. A witness summons issued under section 60(4) of the Act shall be in Form 5 in the Schedule.

[L.N. 458/1990.]

33. The Advocates Committee (Disciplinary Proceedings) Rules, 1952, are revoked.

33. The Advocates (Disciplinary Committee) Rules (L.N. 315/1964) are revoked.

[L.N. 458/1990.]

Advocates

[Subsidiary]

SCHEDULE

FORM 1

[Section 59 and Rule 3.]

AFFIDAVIT BY APPLICANT BEING AN ADVOCATE
BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989
[Cap. 16.]

MISCELLANEOUS CAUSE NO. OF 20
In the Matter of , an Advocate
and
In the Matter of the Advocates Act, 1989

I, of
make oath and say as follows:

- 1. I was admitted an Advocate of the High Court of Kenya on the day of , 20
2. I desire that my name be removed from the Roll of Advocates for the following reasons:
(here state reasons)
3. I am not aware of, and I do not know of any cause for, any application or complaint to the Court or to the Disciplinary Committee concerning me.
4. I do not make this application for the purpose of evading any adverse application, or complaint, or of defeating or delaying any claim upon me as an Advocate.
5. I have accounted to all clients for all moneys held or received by me on their behalf and have no outstanding liability to any client in respect of client's money as defined by the Advocates (Accounts) Rules.

OR

I have retired from partnership in the firm of Messrs. with effect from the day of , 20 The continuing partners of that firm accept liability to account to the clients of the firm and myself for all moneys held or received on behalf of such clients and have agreed to indemnify me against all actions, proceedings, costs, claims and demands in respect thereof, as is evidenced by the document annexed hereto and marked

Advocates

[Subsidiary]

SCHEDULE, FORM 1—continued

OR

(here state what arrangements have been made with regard to any moneys held or received by applicant on behalf of clients and not accounted for where applicant is unable to complete either of the above alternatives).

SWORN by the said

.....
at this
..... day of
....., 20
Before me,

.....
Commissioner of Oaths or Magistrate

FORM 2

[Section 60 and Rule 8.]

COMPLAINT AGAINST AN ADVOCATE

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989

[Cap. 16.]

MISCELLANEOUS CAUSE NO. OF 20

In the Matter of an Advocate

and

In the Matter of the Advocates Act, 1989

To the Secretary of the Disciplinary Committee.

I, (i) of
..... make oath and say as follows:

- 1. I make a complaint, on the ground set out below, against the conduct of (ii)
..... of an Advocate of the High Court of Kenya.
2. (Here state the facts of the matter and concise details of the complaint in numbered paragraphs and show deponent's means of knowledge. Annex the originals (where possible of any documents necessary as exhibits).

SWORN by the said

.....
at this
..... day of
....., 20
Before me,

.....
Commissioner of Oaths or Magistrate

- (i) insert full name; address and description.
(ii) insert full name and last known postal address.

Advocates

[Subsidiary]

SCHEDULE—continued

FORM 3

[Section 72 and Rule 8.]

APPLICATION IN RESPECT OF AN ADVOCATE'S CLERK
BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989
[Cap. 16.]

DISCIPLINARY CAUSE NO. OF 20
In the Matter of (i) an Advocate's Clerk
and
In the Matter of the Advocates Act, 1989

To the Secretary of the Disciplinary Committee:

I, the undersigned (i) of
make oath and say as follows:

1. That I am instructed by the Council of the Law Society of Kenya to make this application on the
grounds herein deponed to for an order under section 72 of the Act in respect of E.F. (ii)
of (iii) an

Advocate's Clerk now
formerly in the employment of (iv)

2. (Here state the facts of the matter concisely in numbered paragraphs and show deponent's
means of knowledge. Annex the originals (where possible) of any documents necessary as
exhibits).

SWORN by the said

at this
day of
, 20
Before me,

Commissioner of Oaths or Magistrate

- (i) insert full names.
(ii) insert full names, address and capacity i.e. "member of the Council" or "secretary of the
Law Society of Kenya" or as the case may be.
(iii) insert last known postal address of the advocate's clerk.
(iv) insert full names and postal address of the advocate or firm of advocate.

Advocates

[Subsidiary]

SCHEDULE—continued

FORM 4

[Sections 60 and 72, and Rules 13 and 14.]

NOTICE OF HEARING

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER THE ADVOCATES ACT, 1989

[Cap. 16.]

DISCIPLINARY CAUSE NO. OF 20

In the Matter of (i)

and

In the Matter of the Advocates Act, 1989

To:

of

NOTICE is hereby given THAT—

- 1. (a) (ii) A complaint against you under section 60 of the Advocates Act, 1989 has been made by of to the Disciplinary Committee.
- 2. (b) (ii) An application in respect of you under section 72 of the Advocates Act, 1989 has been made by of to the Disciplinary Committee for an order directing that, as from a date to be specified in such order, no advocate shall in connection with his practice as an advocate take you into or retain you in his employment or remunerate you without the written permission of the Council of the Law Society of Kenya, or that such other order be made as the Committee shall think right.

2. The hearing of the said complainant/applicant will take place on the day of, 20 at o'clock in the [.....] noon at If you fail to appear the Committee may proceed with the hearing in your absence.

3. A copy of the affidavit of the complaint/application is attached hereto.
The allegations against you are, in substance, as set out below but these are intended merely as a guide and the Committee may take into consideration any other allegation against you which may become apparent to the hearing and which fairly arises from the facts set out in the said affidavit.

- 4. The powers and procedures of the Committee are regulated by the Advocates Act, 1989 and the Advocates (Disciplinary Committee) Rules, 1990 and to which your attention is directed. In particular your attention is drawn to:
 - (a) the necessity of supplying to me and to all parties noted hereon, at least fourteen days before the hearing date, a list of all documents on which it is proposed to rely at the hearing; and
 - (b) the right of any party to these proceedings to inspect and take copies of documents so listed.

Dated the, 20

In the name of the Disciplinary Committee.

Advocates

[Subsidiary]

SCHEDULE, FORM 4—continued

Secretary

Copy to:

..... Complainant Your attention is directed to paragraph 4 of the
Applicant foregoing Notice for your compliance as may be
necessary.

In the name of the Disciplinary Committee.

Secretary

- (i) insert the full names of the advocate.
(ii) delete paragraph 1(a) or 1(b) as necessary.

FORM 5

[Section 58 and Rule 32.]

WITNESS SUMMONS

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989

[Cap. 16.]

DISCIPLINARY CAUSE NO. OF 20
In the Matter of C.D., an Advocate (or E.F. an Advocate's Clerk)

and

In the Matter of the Advocates Act, 1989

You are required to attend before the Disciplinary Committee at
on day of, 20
hour of in the
noon, and so from day to day until the above matter is disposed of, to give evidence on behalf of
and also to bring with you and to produce at the time
and place aforesaid
(specify documents to be produced)

AND herein fail not.

Given under my hand at Nairobi this day of
, 20

In the name of the Disciplinary Committee.

Secretary

To:
.....
.....
.....

ADVOCATES (PRACTISING CERTIFICATES) (FEES) RULES, 2003

[L.N. 85/1984, L.N. 193/2003, Corr. No. 104/2003.]

1. These rules may be cited as the Advocates (Practising Certificates) (Fees) Rules, 2003.
[L.N. 193/2003.]
 2. (1) The fees for a practising certificate issued to an advocate under section 26 of the Act shall be—
 - (a) the sum of five thousand shillings in respect of advocates who have been on the Roll of Advocates for five years or more; and
 - (b) the sum of three thousand shillings in respect of advocates who have not been on the Roll of Advocates for five years.
 - (2) The fees for a practising certificate shall be paid to the Society in accordance with the provisions of section 84 of the Act.
 - (3) The Advocates (Practising Certificates) (Fees) Rules (L.N. 85/1984) are repealed.
[L.N. 193/2003, Corr. No. 104/2003.]
-

**ADVOCATES (COMPLAINTS COMMISSION)
(STRUCTURE AND PROCEDURE) RULES, 2003**

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Application.
 3. Designation of Chairman.
 4. Meetings.
 5. Special meeting.
 6. Chairman to preside.
 7. Quorum.
 8. Voting.
 9. Disclosure of interest.
 10. Commissions may determine own procedure.
-

[Subsidiary]

**ADVOCATES (COMPLAINTS COMMISSION)
(STRUCTURE AND PROCEDURE) RULES, 2003**

[L.N. 213/2003.]

1. Citation

These Rules may be cited as the Advocates (Complaints Commission) (Structure and Procedure) Rules, 2003.

2. Application

The provisions of these Rules shall apply where two or more Commissioners are appointed to the Commission under section 53(2) of the Act.

3. Designation of Chairman

Where two or more Commissioners are appointed to the Commission, the Attorney-General may, by notice in the *Gazette*, designate one Commissioner to be the chairman of the Commission.

4. Meetings

Subject to rule 5, the Commission shall have at least four meetings in each calendar year.

5. Special meeting

Notwithstanding rule 4, the Secretary to the Commission may, at any time, and shall, within fourteen days of the receipt of a written request signed by at least two Commissioners, convene a special meeting of the Commission.

6. Chairman to preside

The Chairman shall preside at every meeting of the Commission at which present, and, in the absence of the Chairman at any meeting, the Commissioners 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.

7. Quorum

The quorum for a meeting of the Commission shall be two Commissioners.

8. Voting

A decision on any matter before the Commission shall be by a majority of the votes of the members present and voting, and, in the case of an equality of votes, the Chairman or the person presiding shall have a casting vote.

9. Disclosure of interest

(1) If a Commissioner is directly or indirectly interested in any matter before the Commission, and is present at a meeting of the Commission at which the matter is the subject of consideration, such Commissioner shall, at the meeting and as soon as soon as reasonably practicable after the commencement thereof, disclose that fact, and shall not take part in the consideration or discussion of, or vote on, any questions with respect to that matters or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes at which it is made.

10. Commissions may determine own procedure

Subject to these Rules, the Commission may determine its own procedure, including the procedure for the attendance of other persons at its meetings, and may make standing orders in the respect thereof.

ADVOCATES (CONTINUING LEGAL EDUCATION) REGULATIONS, 2004

[L.N. 58/2004.]

[Revoked by L.N. 43/2014.]

ADVOCATES (PROFESSIONAL INDEMNITY) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Professional indemnity cover.
 3. Purpose.
 4. Practising certificate conditional upon compliance.
 5. Agreements.
-

[Subsidiary]

ADVOCATES (PROFESSIONAL INDEMNITY) REGULATIONS, 2004

[L.N. 82/2004.]

1. Citation

These Regulations may be cited as the Advocates (Professional Indemnity) Regulations, 2004.

2. Professional indemnity cover

(1) Every advocate practising on his own behalf shall purchase a policy of insurance (in these Regulations referred to as “the professional indemnity cover”) the value of which shall be not less than one million shillings.

(2) In the case of those practising in partnership, such professional indemnity cover shall be purchased in common by the partners:

Provided that the minimum value thereof shall be one million shillings.

3. Purpose

The professional indemnity cover shall be used in the compensation of clients for loss or damage from claims in respect of any civil liability or breach of trust by the advocate or his employees.

4. Practising certificate conditional upon compliance

No practising certificate shall be issued to an advocate to whom these regulations apply, unless the requirements in paragraph (2) are complied with.

5. Agreements

Nothing in these Regulations shall be taken to preclude any agreement between an advocate or a firm of advocates and a client in respect of any insurance cover as may be deemed appropriate.

ADVOCATES (SENIOR COUNSEL CONFERMENT AND PRIVILEGES) RULES, 2011

ARRANGEMENT OF RULES

PART I – PRELIMINARY

Rule

1. Citation.
2. Interpretation.

PART II – COMMITTEE ON SENIOR COUNSEL

3. Composition of Committee.
4. Functions of the Committee.

PART III – APPLICATION FOR CONFERMENT OF RANK OF SENIOR COUNSEL

5. Notice inviting applications.
6. Application.
7. Criteria for conferment.
8. List of applicants.
9. *Deleted.*
10. Consideration of application.
11. Time period for considering application.
12. Letters of conferment.
13. Signing the Roll of Senior Counsel.
14. Restrictions on the use of title of Senior Counsel.
15. Removal from Roll of Senior Counsel.
16. Procedures of the Committee.
17. Secretariat.

PART IV – PRIVILEGES OF SENIOR COUNSEL

18. Use of designation of Senior Counsel.
 19. Duties, powers and privileges of Senior Counsel.
 20. Transition.
-

[Subsidiary]

**ADVOCATES (SENIOR COUNSEL
CONFERMENT AND PRIVILEGES) RULES, 2011**

[L.N. 155/2011, L.N. 36/2012., L.N. 147/2014.]

PART I – PRELIMINARY

1. Citation

These Rules may be cited as the Advocates (Senior Counsel Conferment and Privileges) Rules, 2011.

2. Interpretation

In these Rules, unless the context otherwise requires—

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

“**Committee**” means the Committee on Senior Counsel constituted under rule 3;

“**Secretary**” means the Secretary of the Society appointed under section 17 of the Law Society of Kenya Act;

“**Senior Counsel**” has the meaning assigned to it under the Act;

“**Society**” means the Law Society of Kenya established under section 3 of the Law Society of Kenya Act.

[L.N. 36/2012, s. 2.]

PART II – COMMITTEE ON SENIOR COUNSEL

3. Composition of Committee

(1) The Committee on Senior Counsel referred to under section 17(3) of the Act shall consist of—

- (a) a Judge of the Supreme Court nominated by the Chief Justice;
- (b) a Judge of the Court of Appeal nominated by the Judges of the Court of Appeal;
- (c) a Judge of the High Court nominated by the Kenya Magistrates and Judges Association;
- (d) the Attorney General;
- (e) the chairperson of the Society;
- (f) three Senior Counsel nominated at a meeting of Senior Counsel; and
- (g) two Advocates not being senior counsel who shall have at least ten years experience in practice, elected by the Society.

(2) *Deleted by L.N. 36/2012, s. 2.*

(3) Notwithstanding paragraph (2), where the first Committee under these Rules is constituted before the Society holds its elections, the Council shall nominate persons under paragraph (1)(f) and (g) to the Committee.

(4) The persons nominated under paragraph (1)(a), (b), (c), (f) and (g) shall serve for a non-renewable term of two years and upon expiry, the nominating body shall nominate a different person to serve in the Committee.

[L.N. 36/2012, s. 3.]

4. Functions of the Committee

The Committee on Senior Counsel shall—

- (a) consider the applications submitted to it under rule 6(1);
- (b) make recommendations to the President for the conferment on a person of the rank of Senior Counsel; and
- (c) consider any application for the removal of a person from the Roll of Senior Counsel and make recommendations to the President.

PART III – APPLICATION FOR CONFERMENT OF RANK OF SENIOR COUNSEL

5. Notice inviting applications

The Committee shall, at least thirty days before the thirty-first day of March in each year or on such date as the Committee shall determine, send to the members of the Society, a notice inviting applications from persons who qualify for conferment of the rank of Senior Counsel.

[L.N. 36/2012, s. 4.]

6. Application

(1) A person who meets the criteria for conferment of the rank of Senior Counsel under rule 7 may submit an application to the Committee in accordance with this rule.

(2) An application under paragraph (1) shall be submitted to the Secretary on or before the thirty-first day of March or on such date as the Committee shall stipulate.

(3) An applicant under paragraph (1) shall submit, together with his application, such information or evidence necessary to ascertain that he meets the criteria specified under rule 7.

7. Criteria for conferment

(1) A person qualifies for conferment of the rank of Senior Counsel if that person—

- (a) meets the requirements specified under section 17(2) of the Act;
- (b) is an active legal practitioner and undertakes training of other members in the legal profession;
- (c) holds a valid practicing certificate or is entitled to act as an advocate under section 10 of the Act, at the time of making the application;
- (d) has not been found guilty of professional misconduct by the Disciplinary Committee established under the Act;
- (e) possesses sound knowledge of law and professional competence;
- (f) has argued a substantive matter before a superior, regional or international court;
- (g) is a person of integrity, irreproachable professional conduct and good character;
- (h) has actively served the Society or other regional or international bar association to which the Society is a member or has undertaken community service; and
- (i) has contributed to the development of the legal profession through scholarly writings and presentations.

[L.N. 36/2012, s. 5.]

8. List of applicants

The Committee shall publish in the minutes of the Society, a list of persons who have submitted an application under rule 6(1).

[L.N. 36/2012, s. 6.]

[Subsidiary]

9. Deleted by L.N. 36/2012, s. 7.

10. Consideration of application

(1) The Committee shall, subject to rule 11, consider the applications submitted under rule 6 and may request for such additional information from the applicant or from any other person, which it considers necessary for the determination of an application under these Rules.

(2) In considering and making a recommendation for conferment of rank of Senior Counsel on an applicant, the Committee shall not be influenced by the age, tribe, gender, race, political belief or association of the applicant or any other factor constituting discrimination within the meaning of the Constitution.

[L.N. 36/2012, s. 8.]

11. Time period for considering application

(1) The Committee shall consider the applications submitted within six months from the date of the deadline for receiving applications under rule 6(2).

(2) The Committee shall, upon consideration of the applications under paragraph (1), communicate its decision to the applicants in writing and submit copies of its decision to the Council.

(3) A person whose application is declined may reapply for conferment of the rank of Senior Counsel for consideration by the Committee in accordance with these Rules.

(4) Deleted by L.N. 36/2012, s. 9.

(5) Deleted by L.N. 36/2012, s. 9.

12. Letters of conferment

(1) The Committee shall submit a list of the names of the persons it recommends for conferment of the rank of Senior Counsel to the Chief Justice within a period of thirty days from the date of its decision.

(2) The Chief Justice shall, on receipt of the list of names submitted to him under paragraph (1), submit the names to the President.

(3) The President shall, upon receipt of the names submitted to him under paragraph (2), grant a letter of conferment to each person whose name is contained in the list.

[L.N. 36/2012, s. 10.]

13. Signing the Roll of Senior Counsel

A person upon whom the rank of Senior Counsel is conferred under rule 12 shall sign the Roll of Senior Counsel in accordance with section 18(3) of the Act.

14. Restrictions on the use of title of Senior Counsel

(1) A person shall not use the designation "Senior Counsel" or the abbreviation "SC" purporting to be a Senior Counsel under the Act unless the rank of Senior Counsel has been conferred on him in accordance with these Rules.

(2) A person who contravenes the provisions of paragraph (1) commits professional misconduct.

15. Removal from Roll of Senior Counsel

(1) The Committee may, either on its own motion or on the application of a member of the Society, remove the name of a person from the Roll of Senior Counsel if the person ceases to meet the qualifications prescribed under rule 7.

(2) A member of the Society who applies for the removal of a person from the Roll of Senior Counsel under paragraph (1) shall submit a written petition to the Committee and submit a copy of the petition to the Council.

(3) The Committee shall inform the Senior Counsel of its intention or, of receipt of an application, to remove his name from the Roll of Senior Counsel.

(4) The Committee shall conduct an inquiry on the removal of the Senior Counsel and shall give the Counsel an opportunity to be heard on the petition.

(5) The Committee shall, where it determines that the name of the Senior Counsel should be removed from the Roll of Senior Counsel, submit its decision to the Chief Justice and the Senior Counsel and give reasons for its decision.

(6) The Chief Justice shall transmit the decision of the Committee to the President and the President shall revoke the grant of conferment of the rank of Senior Counsel.

(7) The Chief Justice shall cause to be removed from the Roll of Senior Counsel, the name of the Senior Counsel and cause to be published in the *Gazette*, a notice revoking the conferment of the Rank of Senior Counsel.

(8) The Committee shall determine its own rules and procedures for holding an inquiry under this rule.

16. Procedures of the Committee

The Committee shall regulate its own procedures for meetings held under these Rules.

17. Secretariat

The secretariat of the Society shall facilitate the conduct of the affairs of the Committee.

PART IV – PRIVILEGES OF SENIOR COUNSEL

[L.N. 147/2014, s. 2.]

18. Use of designation of Senior Counsel

(1) Subject to paragraph (3), a person upon whom the rank of Senior Counsel is conferred may use the designation of "Senior Counsel" or abbreviation of "SC".

(2) *Deleted by L.N. 36/2012, s. 11.*

(3) A person whose name is struck off the roll of Senior Counsel or whose practicing certificate has been cancelled or suspended shall cease to hold the title of Senior Counsel and shall not use the designation of Senior Counsel.

[L.N. 36/2012, s. 11.]

19. Duties, powers and privileges of Senior Counsel

A person upon whom the rank of Senior Counsel is conferred shall enjoy the following privileges:

- (a) precedence in having his matters mentioned when appearing in Court or in a Tribunal.
- (b) when appearing robed in Court or in a Tribunal of wearing the gown and court sleeved waistcoat as worn by a judge of the Court of Appeal.
- (c) the exclusive right to sit within the Bar in all Courts in which there is a Bar separating the area for Senior Counsel from the general area of the Court. In all other courts to sit on the front bench.
- (d) such other privileges as the Council may consider appropriate.

[L.N. 147/2014, s. 3.]

[Subsidiary]

20. Transition

A person who has been conferred the title of Senior Counsel before the commencement of these Rules shall be deemed to be Senior Counsel under these Rules.

ADVOCATES (MARKETING AND ADVERTISING) RULES, 2014

ARRANGEMENT OF RULES

Rules

1. Short title.
 2. General conduct.
 3. Advertising.
 4. Manner of advertising.
 5. What may be contained in an advertisement.
 6. Register of specialists.
 7. Forms of advertisement.
 8. Conferences, seminars, public activities, etc.
 9. Council to rule on conduct of advocate.
 10. Professional misconduct.
-

[Subsidiary]

ADVOCATES (MARKETING AND ADVERTISING) RULES, 2014

[L.N. 42/2014.]

1. Short title

These Rules may be cited as the Advocates (Marketing and Advertising) Rules, 2014.

2. General conduct

An advocate shall not—

- (a) unfairly apply for or unfairly seek instructions for professional business; or
- (b) do or permit to be done in the advocate's name anything that may reasonably be considered as calculated to unfairly attract professional business.

3. Advertising

An advocate shall not advertise the advocate's practice other than in accordance with these Rules.

4. Manner of advertising

An advertisement made under these Rules shall—

- (a) be objective, true and dignified;
- (b) be respectful of the professional ethics of the profession; and
- (c) not attempt to denigrate another advocate or the profession.

5. What may be contained in an advertisement

(1) An advocate may only provide the following information in an advertisement under these Rules—

- (a) the identity of the advocate;
- (b) the identity of the advocate's firm;
- (c) the date on which the advocate was admitted to the Roll of Advocates;
- (d) the address and other contact information of the advocate or the advocate's firm;
- (e) the hours of business of the advocate or the advocate's firm;
- (f) the language of business used by the advocate or the advocate's firm;
- (g) the academic or professional qualifications of the advocate; or
- (h) any contribution that the advocate or the advocate's firm may have made to the preparation of a published legal article or a legislative Bill, or any contribution made by the advocate or the advocate's firm to legal education.

(2) An advocate shall not provide the following information in an advertisement under these Rules—

- (a) the name or the identity of a client of the advocate or the advocate's firm;
- (b) a picture of the advocate, the advocate's partner or partners, or another advocate employed in the advocate's firm;
- (c) academic or professional positions held by the advocate before that advocate's admission to the Roll of Advocates; or
- (d) a promise by the advocate or the advocate's firm to achieve a particular outcome for clients or prospective clients of the advocate or the advocate's firm or that failure to obtain that outcome shall constitute a waiver of the advocate's or the advocate's firm's legal fees.

6. Register of specialists

(1) The Council may maintain a register of advocates who are specialists in any branch of law and such a register may classify advocates into each branch or specialty.

(2) If an advocate is recorded in the register under sub-paragraph (1), that advocate may state that fact in an advertisement made under these Rules.

7. Forms of advertisement

(1) An advocate may advertise under these Rules in the following forms—

- (a) in a non-legal or non-professional directory;
- (b) in a legal or professional directory;
- (c) in a website or other digital platform on the internet;
- (d) in the print media including in a newspaper, magazine, booklet, periodical or journal:

Provided that the advocate shall only advertise in a print medium up to four times in any given year and the advertisement shall measure not more than 0.210m x 0.297m; or

- (e) in the form of a plate or a plaque at the entrance to the advocate's or advocate's firm's ordinary place of business and the plate or plaque shall measure not more than 0.5m x 0.35m.

(2) An advocate shall not advertise under these Rules on radio, television or in the form of an illuminated billboard or placard.

8. Conferences, seminars, public activities, etc

An advocate who attends a conference, seminar or similar public activity may publish a paper, a circular, an article or a similar document but only by identifying that advocate by name and profession.

9. Council to rule on conduct of advocate

Where a person accuses an advocate or an advocate's law firm of professional misconduct under these Rules, the Council shall hear both the complainant and the advocate or the advocate's firm expeditiously and determine whether that advocate or advocate's firm has committed an act of professional misconduct under these Rules.

10. Professional misconduct

An advocate commits an act of professional misconduct under these Rules if—

- (a) that advocate or that advocate's firm fails to comply with these Rules;
 - (b) that advocate uses an appearance at a conference, seminar or similar public activity for advertisement;
 - (c) that advocate or that advocate's firm uses an intermediary to solicit professional business; or
 - (d) that advocate or that advocate's firm makes false or misleading statements regarding information that should be provided under these Rules to solicit professional business.
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**ADVOCATES (CONTINUING PROFESSIONAL
DEVELOPMENT) RULES, 2014**

ARRANGEMENT OF RULES

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ADVOCATES (CONTINUING PROFESSIONAL DEVELOPMENT) RULES, 2014

[L.N. 43/2014.]

1. Short title

These Rules may be cited as the Advocates (Continuing Professional Development) Rules, 2014.

2. Interpretation

Unless the context otherwise requires—

“**accredited provider**” means an institution or individual approved by the Council;

“**approved activity**” means an activity which meets the requirements of Rule 6;

“**attendance**” means attendance in person by an advocate at an approved activity;

“**Committee**” means the Continuing Professional Development Committee established under Rule 5;

“**CPD year**” means a calendar year beginning on the 1st January and ending on the 31st December;

“**participation**” includes the delivery of a paper or the giving of a lecture at an approved activity by an advocate as an accredited provider or the attendance of an advocate at the delivery of a paper or the giving of a lecture by an accredited provider;

“**Society**” means the Law Society of Kenya; and

“**unit**” means a numerical unit of measurement that an advocate accrues by participation at an approved event.

3. Purpose of continuing professional development

The purpose of Continuing Professional Development is to—

- (a) maintain, improve and broaden the professional knowledge and skills of advocates;
- (b) further develop the personal qualities of advocates required for the execution of the advocates’ professional and technical duties;
- (c) encourage constant reflection, learning and the maintenance of a broad outlook by advocates to maintain high professional standards;
- (d) reassure recipients of legal services and the public of the high standards of training, knowledge, skills and expertise of advocates; and
- (e) keep advocates relevant and informed of the developments in the practice of law.

4. General requirements

In each CPD year—

- (a) an advocate shall participate in or attend approved events at which that advocate shall accrue a minimum of five units except where that advocate has been exempted in part or in whole;
- (b) if an advocate accrues more than five units, the excess number of units shall not be carried over to the next CPD year by that advocate;
- (c) if an approved event lasts longer than one day, the Committee shall include a session on the subject of ethics; and

- (d) if an advocate fails to accrue five units, that advocate may make up the difference in the period between the 1st January and the 31st January of the next CPD year.

5. The Continuing Professional Development Committee

(1) There is established a committee to be known as the Continuing Professional Development Committee.

(2) The principle function of the Committee is to implement the Continuing Professional Development programme in Kenya.

(3) The Committee shall comprise of such number of members as the Council shall appoint from time to time.

(4) A person is qualified to be appointed as a member of the Committee if that person holds a valid practicing certificate and has complied with the requirements of Continuing Professional Development for at least two years before the appointment.

(5) The members of the Committee shall elect from among their number a chairperson and a vice-chairperson.

(6) The members of the Committee shall serve for a period of two years and shall be eligible for re-appointment for one further period of two years.

(7) The Council shall approve the budget and expenditures of the Committee.

(8) The Committee shall regulate its own procedure.

(9) The Committee shall from time to time revise these Rules and submit them to the Council for approval.

6. Approved activities

(1) An approved activity may be—

- (a) a seminar;
- (b) a workshop;
- (c) a lecture;
- (d) a conference;
- (e) a discussion group;
- (f) a symposium;
- (g) a colloquium;
- (h) a multi-media-based or website-based programme;
- (i) the research and preparation for an article published in a law journal; or
- (j) a combination of the activities contemplated in paragraphs (a) to (i).

(2) An activity may only be an approved activity by the Council if it contains significant intellectual or practical content related to the law or the practice of law.

(3) An approved activity shall only be conducted or offered by a provider as may be accredited by the Council from time to time except where the approved activity involves research or preparation for an article in which case the Committee shall determine whether such research or preparation is an approved activity.

(4) Where an advocate is an accredited provider and the advocate prepares and presents material at an approved event that advocate shall be accredited two units but that advocate may not be accredited more than two units in a CPD year for the preparation or presentation of material at an approved activity.

(5) Where an advocate prepares an article and that article is published in a law publication, law journal or a similar publication, that advocate shall be accredited one unit for every one thousand words published but in any case not more than two units in any CPD year for preparation and publication of articles.

[Subsidiary]

(6) An advocate may, on that advocate's application to the Committee, be awarded not more than two units in a CPD year for—

- (a) serving as a member of a committee, commission, task force or similar body engaged in law reform; or
- (b) being engaged in significant consultancy work involving law reform or law review.

(7) An advocate may, on that advocate's application to the Committee, be awarded not more than three units in a CPD year for—

- (a) being engaged in post-graduate studies leading to a certificate, diploma or degree but only if the Committee determines that the studies are relevant to the practice of law; or
- (b) teaching a course leading to the award of a certificate, diploma or degree in any area of law relevant to the practice of law.

(8) An advocate, on that advocate's application to the Committee, may be awarded not more than one unit in a CPD year for acting as an external examiner of a university in a course leading to the award of a post-graduate degree in an area of law related to the practice of law.

(9) Where the Committee thinks it fit to do so, it may specify—

- (a) the nature, content and format of approved activities to be undertaken by an advocate or class of advocates in order for that advocate or class of advocates to satisfy the requirements of these Rules; and
- (b) the minimum number of units an advocate or a class of advocates must accrue in any CPD year in any area of study.

(10) For the purposes of these Rules, private study is not an approved activity except where it involves the private study of audio, video or electronic material and such study is considered an approved activity by the Committee and for which an advocate may accrue only one unit.

(11) Regular or *pro bono* legal work is not an approved activity except for legal work that is for the purposes of the Legal Aid Programme and for which the Committee shall determine how many units an advocate may accrue in a CPD year for that work.

(12) A member of the Council or an *ad hoc* committee of the Society who regularly attends the meetings of the Council or the *ad hoc* committee, as the case may be, may, on application to the Committee, accrue one unit in a CPD year for attending the meetings of the Council or of the *ad hoc* committee, as the case may be:

Provided that the advocate may only apply to the Committee to accrue one unit only in a CPD year.

(13) The Committee may, on application in writing by an advocate, exempt that advocate wholly or in part from complying with these Rules in a CPD year and on such conditions as the Committee may determine.

(14) The Council shall issue an advocate with a certificate of compliance if that advocate fully complies with these Rules in a CPD year.

7. CPD records

Every advocate shall keep a record of all CPD activities that the advocate has participated in and shall produce them before the Committee or the Council when required to do so.

8. Compliance

(1) The Council shall prescribe the form in which information regarding an advocate's compliance with these Rules shall be provided when an advocate is applying for a practicing certificate.

(2) When an advocate is applying for a practicing certificate, that advocate shall provide information in the form prescribed by the Council regarding that advocate's compliance with these Rules.

9. Effect of failure to comply with these Rules

If an advocate fails to comply with these Rules—

- (a) the Council shall notify the advocate in writing of the failure; and
- (b) the Council may require the advocate to inform the Council in writing within fourteen days of the Council's notice of that advocate's proposal to comply with these Rules.

10. Non-recommendation

The Council may decline to recommend that an advocate be issued with a practicing certificate if that advocate—

- (1) fails to inform the Council within fourteen days of that advocate's proposal to comply with these Rules; or
- (2) informs the Council of that advocate's proposal to comply with these rules but fails to comply with these Rules within ninety days of having informed the Council of that advocate's proposal.

11. Professional misconduct

An advocate who fails to comply with these Rules commits an act of professional misconduct.

12. Appeals

An advocate aggrieved by the decision of the Committee may appeal to the Council and the decision of the Council shall be final.

13. Delegation of powers by Council

The Council may delegate any of its powers under these Rules to the Committee except the power to hear appeals arising out of decision of the Committee.

14. Accreditation

(1) A person or institution wishing to provide an approved activity in a CPD year shall apply to the Committee in writing to become an accredited provider.

(2) The Committee shall determine an application under sub-rule (1) by considering all relevant matters including—

- (a) whether the activity is an educational programme;
- (b) whether the objective of the activity is for the improvement of the competence of advocates;
- (c) whether the activity is related to the practice of law;
- (d) whether the applicant has the capacity to meet the needs of advocates under these Rules; and
- (e) whether the proposed method of delivery of content during the activity is appropriate.

15. Claiming of units

If an advocate wishes to claim units for participating in an activity that is not provided by the Society or an accredited provider, that advocate shall apply in writing to the Committee.

[Subsidiary]

16. Transitional provisions

(1) A member of the Committee on Continuing Legal Education immediately before the commencement of these Rules shall continue to serve as a member of the Committee until such a time as members of the Committee shall be appointed by the Council in accordance with these Rules.

(2) Any activity which complied with the provisions of the Advocates (Continuing Legal Education) Rules, 2004 (L.N. 58/2004), before the commencement of these Rules is deemed to comply with the provisions of these Rules.

(3) An exemption that was granted under the Advocates (Continuing Legal Education) Rules, 2004 (L.N. 58/2004), before the commencement of these rules, is deemed to be an exemption granted under these Rules:

Provided that the exemption complies with these Rules.

17. Revocation of Legal Notice No. 58 of 2004

The Advocates (Continuing Legal Education) Rules, 2004 (L.N. 58/2004), are revoked.
