

(Legislative Supplement No. 46)

LEGAL NOTICE NO. 159

THE ADVOCATES ACT

(Cap. 16)

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

THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER,
2006

1. This Order may be cited as the Advocates (Remuneration) (Amendment) Order, 2006.

2. The Advocates (Remuneration) Order, in this Order called the principal Order, is amended by deleting paragraph 3 and inserting the following new paragraph— Sub. Leg.

Scale fees. 3. "No. advocate may agree or accept his remuneration at less than that provided by this Order."

3. Paragraph 7 of the principal Order is amended by deleting the expression "9" appearing in the first line and substituting therefor the expression "14".

4. The principal Order, is amended by deleting all Schedules thereto and substituting therefor the following new Schedules—

SCHEDULE 1

FIRST SCALE

SCALES OF CHARGES ON SALES, PURCHASES AND MORTGAGES
AFFECTING LAND REGISTERED IN ANY REGISTRY

1. VENDORS ADVOCATE

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

SCALE FEE

Consideration or value of subject matter

From (KSh.)	To (KSh.)		
0	2,500,000	1.50%	Of the consideration or value or Shs. 20,000 whichever is higher
2,500,001	5,000,000	1.25%	Of the consideration or value or Shs. 37,500 whichever is higher
5,000,001	10,000,000	1%	Of the consideration or value or Shs. 62,500 whichever is higher
10,000,001	25,000,000	0.75%	Of the consideration or value or Shs. 100,000 whichever is higher
25,000,001	50,000,000	0.65%	Of the consideration or value or Shs. 187,500 whichever is higher
50,000,001	100,000,000	0.60%	Of the consideration or value or Shs. 325,000 whichever is higher
100,000,001	250,000,000	0.50%	Of the consideration or value or Shs.600,000 whichever is higher
250,000,001	500,000,000	0.30%	Of the consideration or value or Shs.1,250,000 whichever is higher

and in respect of an amount where the consideration or value is more than KSh. 500,000,000 such fee as may be agreed, but in any event not less than KSh. 1,500,000.

2. PURCHASER'S ADVOCATE

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

SCALE FEE

The scale fee set out under 1 above.

5. MORTGAGOR'S ADVOCATE

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

SCALE FEE

One-half of the scale set under 1 above (so that the minimum fee charged is not less than one half of the minimum amount permitted to be charged under 1 above).

(b) For preparing and completing reconveyance or reassignment of mortgage

One-quarter of the scale fee set out under 1 above subject to a maximum charge of Sh. 30,000.

6. MORTGAGEE'S ADVOCATE

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

SCALE FEE

The scale fee set out under 1 above.

- (b) For perusing and completing reconveyance reassignment of mortgage. One-quarter of the scale fee set out under 1 above subject to a maximum charge of Sh. 30,000.

SECOND SCALE

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

SCALE FEE

1. For investigating title to a freehold or leasehold property and completing and registering a memorandum of equitable mortgage by deposit of documents or a memorandum of charges by deposit of title in respect thereof. One-half of the scale fee set out under 1 of the First Scale.
2. For preparing, completing and registering a memorandum of discharge of equitable mortgage by deposit of documents or a memorandum of Discharge of charge by deposit of title. One-eighth of the scale fee set out under 1 of the First Scale.

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

THIRD SCALE

SCALE OF CHARGE RELATING TO DEBENTURES

1. *Single debentures:*
- (a) On each single debenture of any nature not creating a security, a fee calculated under Schedule V according to time, complexity and responsibility.
- (b) On each single debenture of any nature creating a security the scale fee set out under 1 of the First Scale.

2. *Series of debentures:*

A fee on the total capital for which the series issued as for a single debenture with the addition of fees under Schedule V in respect of the preparation, completion and registration of all debentures after the first.

3. *Debenture stock issued under a debenture trust deed:*

A fee on the total capital for which the trust is drawn as under 1 of the First Scale plus one-half thereof, with such additional amount as may be reasonable taking into account the time, complexity and responsibility involved in each case.

Notes

1. (a) Where the grantee of a security and the company creating it are separately represented, the advocate for the company shall be entitled to charge one-half of the fees chargeable by the advocate for the grantee.

- (b) Where one Advocate represents both the grantee of a security and company creating it he shall be entitled to increase the prescribed fee by forty per cent.
2. Where two or more securities are created by a company, whether contemporaneously or subsequently, in favour of the same grantee to secure the same or a lower amount, then the fee payable shall be the full prescribed fee in respect of the principal security plus Kshs, 40,000 for each additional security. For this purpose, where the collateral or supplemental security constitutes immoveable property, KSh. 40,000 shall be charged in respect of each immoveable property so mortgaged in favour of the grantee.
 3. Where a security by one document by more than one company or other entity in favour of the same grantee to secure the same amount, then the fee payable shall be the full prescribed fee in respect of the first company and KSh. 40,000 in respect of each company thereafter, the total fees to be divided equally between the companies unless otherwise agreed by all the companies in writing.
 4. Where a security is created by one document by more than one company in favour of more than one grantee, then the fee payable shall be the same as the one prescribed in note 3 above.
 5. Unless otherwise agreed by the parties in writing the company or the companies creating a security shall pay the fees of the advocate for the grantee as well as the fees of its or their own advocate.

FOURTH SCALE

SCALE OF NEGOTIATING COMMISSION ON SALES AND MORTGAGES

	SCALE FEE	KSH.
For negotiating a sale of property by private treaty or loan secured by mortgage	On the first £10,000 per £100	112
	Over £10,000 to 30,000 per £100	52
	Over £30,000 per £100	30

Notes

1. In calculating fees payable under any of the above scales a fraction of £100 up to and including £50 shall be accounted as one-half but over £50 shall be accounted as a whole unit of calculation.
2. In the above scales, "Mortgage" includes a conveyance, assignment or other assurance or an agreement to convey, assign or otherwise assure the immovable property or any estate, interest or other right therein to secure the payment of moneys; and "charge" includes an agreement to charge immovable property or any estate, interest or other right therein to secure the payment of moneys; but neither word includes a memorandum of equitable mortgage by deposit of documents or a memorandum of charge by deposit of title or an agreement exclusively collateral thereto unless the collateral agreement or covenant to execute a mortgage or charge at some future time or when called upon.

SCHEDULE II

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

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

SCALE FEE

Annual Rent

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

and in respect of an amount where the annual rent is more than KSh. 3,000,000, such fee as may be agreed but in any event not less than KSh. 100,000 and not more than the fee chargeable under paragraph 1(f) above plus 0.1% on the excess amount.

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

Notes:

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

SCHEDULE III

1. FORMATION AND INCORPORATION OF COMPANIES WITH SHARE CAPITAL

A fee calculated according to the following scales, the fee to cover taking instructions to incorporate the company, drawing memorandum of association (if any), preparing and lodging all necessary company forms at the Companies Registry on the incorporation of the company (but excluding any prospectus) and 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 event not less than KSh. 50,000.

REGISTRATION OF FOREIGN COMPANIES

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 event not less than Kshs.50, 000.

2. 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 appropriate schedule.

SCHEDULE IV

TRADE MARKS

1. APPLICATIONS	KSH.
(a) Instructions to register one trade mark in one class	5,040
(b) Instructions to register second and further trade marks in the name of the same proprietor simultaneously per trade mark in one class	2,940
(c) Filing priority application	2,835
2. REGISTERED USERS	
(a) Instructions to file an application to enter one registered user of one registered trade mark or more than one registered trademark 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 one single registered trade mark	4,200
(ii) for the second registered trade mark	1,890
(iii) for the third registered trade mark	1,260
(iv) for the fourth and each subsequent registered trade mark, applications being filled simultaneously	504
(b) Drawing statement of case, statutory declaration in support and application, depending on the amount of work involved but not less than	6,300
(c) Drawing registered user agreement, depending on the amount of work involved but not less than	8,400

(d) Instructions to file an application under Section 31(8) (b) for cancellation of a registered user in respect of one registered trademark or more than one registered trademark of same proprietor—	
(i) For the first or single registered trade mark	3,360
(ii) For the second registered trademark	2,286
(iii) For the third registered trademark	1,512
(iv) For the fourth and each subsequent trademark, application being filed simultaneously	756
(e) Drawing application for cancellation and statement of ground, depending on amount of work involved but not less than	1,890
(f) And for each subsequent registered trade mark included in the same application for cancellation, the grounds for cancellation being the same	630
(g) Instructions to file an application for variation of terms of appointment of registered user	4,200
3. ASSIGNMENTS	
(a) Instructions to file an application to register a subsequent proprietor of one registered trademark (or more than one registered trademark standing in the same name under the same devolution of title and filed simultaneously) with or without goodwill—	
(i) for the first registered trademark	2,520
(ii) for the second registered trademark	1,134
(iii) for each subsequent registered trade mark	756
(b) Instructions to file application for directions by the Registrar for advertisement of the assignment of trademarks in use without goodwill and attending to the advertisement thereof—	
(i) for one registered trademark assigned	2,520
(ii) for every other registered trade mark assigned under the same devolution of title filed simultaneously	1,134
(b) Instructions to apply for extensions of time in which to apply for directions to advertise	1,260
4. RENEWALS	
(a) Instructions to renew the registration of one trademark in one class	2,772
(b) Instructions to renew the registration of second and further trademarks in the same proprietor simultaneously	1,890

(c) Instructions to restore the registration of one trademark in one class under the provisions of rule 68 of the Trade Marks Rules	3,360
5. CHANGE OF NAME	
(a) Instructions to register change of name of the registered proprietor in respect of one trade mark in one class	1,512
(b) Instructions to register change of name of the registered proprietor in respect of second and further trade marks simultaneously for each change of name per trade mark in one class	1,008
6. CHANGE OF ADDRESS	
(a) Instructions to register change of address of the registered proprietor in respect of one trade mark in one class	1,512
(b) Instructions to register change of address of the registered proprietor in respect of second and further trade marks simultaneously for each change of address per trade mark in one class	1,008
7. ALTERATIONS OR AMENDMENTS	
(a) Instructions to amend or alter one registered trademark in one class	2,520
(b) Instructions to amend or alter second and further registered trademarks simultaneously in one class, per trade mark per class	1,008
8. SEARCHES AND COPIES	
(a) Attendances to search the register or a file at the registry and advising thereon, per quarter hour or part thereof by—	
(i) an advocate	1,260
(ii) an unqualified employee	840
(b) Instructions to obtain Registrar's preliminary advice on Form T. M. 27 or T.M. 28 including drawing the prescribed form	1,260
(c) Instructions to obtain registry certified copies of documents:—	
(i) One copy of any document .	2,100
(ii) Second and additional copies of same document obtained simultaneously	630
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 in the exercise of his discretion and 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 shall decide but not less than	150,000
(b) Attendance before the Registrar conducting opposition or rectification proceedings every whole day	11,760
(c) Every half-day or part thereof	5,880
(d) On interlocutory matters, taking judgement, etc every 15 minutes or part thereof	805
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	5,250
(b) Attendance on the Registrar, for every 15 minutes or part thereof—	
(i) For argument	1,470
(ii) For filing papers	420
(c) Correspondence, where charged for separately (see the note to this part of this schedule)—	
(i) Per letter	210
or per folio	126
(ii) Receiving and perusing letters—	
Per letter	84
or per folio.	50
(d) Drawing all other necessary documents (notices of opposition, statutory declarations, counter-statements, etc)—	
(i) Per folio	336
(ii) Files copies, per folio	33
(e) Perusing documents, pleadings, statutory declarations, etc. to be charged for as for perusals at item 8 (a) of schedule VI.	
(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	630
<i>Note.</i> —The fees in items 1, 2, 3,4,5,6 and 7 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 8 and 9 and work occasioned by objections or queries by the Registrar or third parties or by any other complication or unusual delay, which matters and *writ* shall be charged for separately.

SCHEDULE V

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 falling 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 of the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fee for other charges raised under this schedule.

2. DRAWING AND PERUSING, ETC.

	KSH.
For drawing	168
For engrossing	33
For fair copying	21
For perusing	50

3. ATTENDANCE

In ordinary cases per 15 minutes or part thereof	525
On routine telephone calls within Kenya for 3 minutes or part thereof	105
In other cases the taxing officer may increase or diminish the above charges if for any special reason he sees it fit.	

4. TIME ENGAGED

Where charge is so based in lieu of charges per item of work done—

Per hour or part thereof	5,000
5. CORRESPONDENCE	
Letters	210
Or per folio	126
Receiving and perusing letters	84
Or per folio	50
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	25,000
7. JOURNEYS FROM HOME	
For every day of not less than seven hours employed in travelling	10,500
Where a lesser time than seven hours is so employed per hour	1,680
Provided that the taxing officer may increase or diminish the above allowance if for any special reason he sees it fit.	
8. 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. Provided that in any case 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 Shs.315 and provided further that where the letter of demand if followed by the institution of proceedings at the instance of the same advocate the scale does not apply and the letter shall be charged under item 5 of this schedule or under Schedule VI or Schedule VIII as may be appropriate.	
	KSH.
(a) Where the amount of the debt does not exceed Sh. 1,000	630
(b) Where the amount of the debt exceeds Sh. 1,000 but does not exceed Sh. 3,000	1,050
(c) Where the amount of the debt exceeds Sh. 3,000 but does not exceed Sh. 6,000	1,470
(d) Where the amount of the debt exceeds Sh. 6,000 but does not exceed Sh. 10,000	1,890
(e) Where the amount of the debt exceeds Sh. 10,000 but does not exceed Sh. 100,000	2,100
Plus 7.5 per cent on the amount over 10,000	
(f) Where the amount of the debt exceeds Sh. 100,000	11,550
Plus 1.5 per cent on the amount over 100,000	

9. CHATTELS TRANSFERS

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

	KSH.
(a) Where the amount secured does not exceed Sh. 50,000	4,200
(b) Where the amount secured exceeds Sh. 50,000, one-half of the scale fee under 1 of the First Scale of Schedule 1 adjusted in accordance with the notes to that Schedule.	

SCHEDULE VI

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—

- i. To sue in an ordinary suit in which no appearance 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) where the value of the subject matter is in excess of Ksh. 3,000,000.
- ii. 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) where the value of the subject matter is in excess of Ksh. 3,000,000.
- iii. 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 fee 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 defence or other denial of liability is filed; where the value of the subject matter can be determined from the pleading, judgement or settlement between the parties and—

	That value exceeds	But does not exceed
KSh.	KSh.	KSh.
—	500,000	28,000
500,000	750,000	35,000
750,000	1,000,000	49,000
1,000,000	20,000,000 fees as for Shs. 1,000,000 plus an additional 1.5 per cent.	
Over 20,000,000	fees as for 20,000,000 plus an additional 1.25%	

(b) To sue in any proceedings described in paragraph (a) where a defence 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, judgement or settlement between the parties and—

That value exceeds	But does not exceed	
<i>Sh.</i>	<i>Sh.</i>	<i>Shs.</i>
—	500,000	49,000
500,000	750,000	63,000
750,000	1,000,000	77,000
1,000,000	20,000,000 fees as for Sh. 1,000,000 plus an additional 1.5 per cent.	
Over 20,000,000	fees as for 20,000,000 plus an additional 1.25 per cent	
(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—		
(i) debtors applicant		<i>Sh.</i>
to present or oppose a debtor's petition		3,500
to apply or oppose discharge		2,100
(ii) Creditor's application:-		
to apply for issue of a bankruptcy notice		700
to present or oppose a creditors petition		3,500
to apply for or oppose a discharge		2,100
(f) Companies—		
(i) to present or oppose proceedings under rule 5 (1) of the companies (winding-up) Rules		12,600
(ii) to support a petition for winding-up of a company		2,520
(iii) to present or oppose any other proceedings under the companies Act		4,200
(g) Matrimonial causes—		
(i) to present a petition for dissolution of marriage, nullity, judicial separation, or restitution of conjugal rights:		
where the proceedings are defended		12,600
Where the proceedings are defended, or to defend proceedings, such sum as may be reasonable but not less than		25,200

(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	2,100
If the application is not dealt with together with the petition or answer	8,400
(iii) to apply for a Registrar's Certificate	525
(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	1,890
(h) Adoption and guardianship—	
(i) to present or oppose an application for adoption such sum as may be reasonable but not less than	8,400
(ii) to present or oppose an application for guardianship; such sum may be reasonable but not less than	10,550
(i) To present or oppose an election petition; such sum as may be reasonable but not less than	42,000
(j) Prerogative orders—	
To present or oppose an application for a prerogative order; such sum as may be reasonable but not less than	28,000
(k) To present or oppose objections to an award made by an arbitrator	8,400
(l) To sue or defend in any case not provided for above; such sum as may be reasonable but not less than	8,400
(m) To present or oppose an appeal in any case not provided for above; such sum as may be reasonable but not less than	6,300
(n) To counter-claim; a fee under subparagraph (a) or (b), as appropriate.	
(o) Matters arising during proceedings—	
(i) to prepare an affidavit	630
(ii) to prepare interrogatories or answers thereto	3,500
(iii) to apply for a commission or letter of request for the examination of a witness	2,100
(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	12,600
(v) to prepare a case stated for the opinion of the court; such sum as may be reasonable but not less than	4,200

(vi) to present an application for a temporary injunction or similar order if unopposed	2,100
if opposed	3,000
(vii) to present or oppose in cases where the judge shall certify that the matter is complex; such sum as the judge may certify to be reasonable.	
(viii) to present or oppose any other application not otherwise provided for, whether by summons in chambers or by notice of motion where the application is unopposed	1,750
where the application is opposed, such sum as may be reasonable but not less than	3,500

Provided that—

- (i) the taxing officer, in the exercise of this discretion, shall take into consideration the other fees and allowances 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 purpose 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 XXVI of the Civil Procedure Rules, the following rules shall apply—
 - (a) where the plaintiff accepts payment into court under the provisions of order XXVI, rule 2 (1), he may claim the full instruction fee;
 - (b) where the plaintiff accepts payment into court after the time allowed by order XXVI, 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 fee.

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;
- (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 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;
- (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. FEE 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

- 1) Concise statement, plaint, written statement of defence, 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—

KSh.

- (i) four folios or less

735

- (ii) in excess of four folios; additional per folio after the first four folios

105

- 2) Creditor's or debtor's petition that a debtor be adjudicated insolvent, or notice of objection thereto—

(i) six folios or less	1,050
(ii) in excess of six folios per folio	105
(c) Petition for winding up of a company incorporated under the Companies Act—	
(i) nine folios or less	1,575
(ii) in excess of nine folios; per folio	105
(d) All other documents (including proofs of witnesses; evidence) so far as necessary; per folio	126
(e) Bill of costs; per folio	126
(f) Affidavit or return of service	168

Provided that in relation to paragraph (a) (ii), (b) (ii), (c) (ii) and (d), the judge may direct that the costs of any repetitive or unnecessary matter shall be disallowed.

5. COPIES

(a) Of plaint, written statement of defence, 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); per folio	21
(b) The actual cost of copies of judge's notes spoken from day to day as a case proceeds may be allowed if certified for the trial judge.	
(c) Printing: actual costs, supported by vouchers of all necessary printing.	
(d) Photostat copies: actual costs, supported by vouchers of all necessary photocopying.	
(e) All other necessary copies: per folio	21

6. CORRESPONDENCE

Letters before action or other necessary letters	147
or folio	84

7. ATTENDANCES

	<i>Ordinary Scale Ksh.</i>	<i>Higher Scale Ksh.</i>
(a) On any necessary application to or formal attendance on the registrar or deputy registrar	315	—
(b) At offices of Court or registrar on routine matters	210	

(c) At court in chambers on matters on a date fixed by the court for hearing when the case cannot be taken or by advocate for calling over lists	630	
(d) At court or in chambers before judge not otherwise provided for:—		
(i) half-hour or less	840	1,260
(ii) one hour	1,680	2,100
(iii) half-day	3,360	5,040
(iv) whole day	6,720	10,080
(e) Routine telephone calls each necessary telephone call allowed per three minutes or part thereof	84	—
(f) With a judge on a view, if in court hours, the same fees for attending in court conducting case; if out of court hours per hour including travelling time, in addition to all expenses properly incurred in getting to and from the place viewed	1,512	—
(g) All necessary attendance (including 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	378	—

8. PERUSALS

(a) Of pleadings, memorandum of appeal, record of appeal, affidavits, interrogatories 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	42
(b) Of notices and other routine documents	63
(c) Of necessary letter; per folio	42

9. SERVICE

(a) Within three kilometres of the High Court or district registry of the High Court	1,000
(b) For travelling and subsistence expenses incurred by the process server; charge the actual expense incurred.	
(c) Where service is by post or by any other mode of substituted service, charge the actual expenses incurred.	

10. PLANS, MODELS, E.T.C.

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 | 630 |
| (b) Attendance at court filing application | 210 |
| (c) Attending Court to peruse order | 210 |

13. OBJECTION TO EXECUTION PROCEEDINGS

- | | |
|---|--------|
| (a) Instruction to prepare objection | 3,000 |
| (b) Instruction to proceed with attachment | 1,500 |
| (c) Instruction to take proceedings to establish or oppose such proceedings | 10,000 |

14. GARNISHEE PROCEEDINGS

- | | |
|---|--------|
| (a) Instruction to institute garnishee proceedings, if not opposed | 3,000 |
| (b) Instructions to institute or to defend garnishee proceedings, when opposed; such sum as the taxing officer considers reasonable but not less than | 10,000 |

15. FEE ALLOWABLE ON CERTIFICATE OF COSTS UNDER PARAGRAPH 68A

- | | |
|---|-------|
| (a) Where no appearance has been entered in the suit | 840 |
| and where the defendant was served at the first attempt for each additional attempt of service | 168 |
| (b) Where appearance has been entered a further | 126 |
| (c) Where the defendant was served out of the jurisdiction; a further | 1,680 |
| (d) Where the defendant was served in accordance with an order under order V, rule 17 of the Civil Procedure Rules; the costs of any advertisement ordered by the court together with a further | 1,470 |
| (e) For any application made to the judge under paragraph 11(2); 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. | 2,730 |

B – ADVOCATE AND CLIENT COSTS

As between advocate and client the minimum fee shall be—

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

SCHEDULE VII

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

- (i) To sue in an ordinary suit in which no appearance 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 where the value of the subject matter is in excess of KSh. 2,000,000.
- (ii) 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% where the value of the subject matter is in excess of KSh. 2,000,000.
- (iii) 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 this Schedule.

<i>Exceeds KSh.</i>	<i>Does not exceed KSh.</i>	<i>Lower scale KSh.</i>	<i>Higher scale KSh.</i>
—	5,000	700	1,400
5,000	10,000	2,800	5,600
10,000	20,000	4,200	8,400
20,000	50,000	8,400	12,600
50,000	250,000	16,800	25,200
250,000	500,000	28,000	42,000

Over 500,000 under enhanced jurisdiction of subordinate court if and when applicable, a fee as for KSh. 500,000 plus 2.5 per cent in respect of the excess.

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 judgement (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not less than Sh. 5,040 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) not to exceed KSh. 25,200.

3. (a) In proceedings for dissolution of marriage, nullity, judicial separation or restitution of conjugal rights:—

where the proceedings are undefended	4,200
where the proceedings are defended	12,600

(b) In proceedings for ancillary relief;	
if heard together with petition or answer	1,400
if not dealt together with petition or answer	2,800
(c) In other proceedings for custody, and access	3,150
4. On any application, notice of motion, chamber summons or execution proceedings, to include taking instructions to proceed or oppose, drawing application, engrossing and filing	1,400
5. On any necessary application to or attendance on magistrate in court or chambers	1,000
6. Attendance at the hearing where the hearing lasts more than one full day—	
for the first whole day	3,500
for each part after the first	1,500
7. Where costs of adjournment of a case are awarded	1,500
8. Service—	
(a) within three kilometres of subordinate court or district registry of the subordinate court	1000
(b) For traveling and subsistence expenses incurred by the process server; charge the actual expense incurred.	
(c) Where service is by post or by any other mode of substituted service, charge the actual expenses incurred.	
9. Drawing and filing affidavit or return of service	200

Notes

1. When an order has been made in general terms for the payment of cost 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 otherwise provided) taking instructions, drawing or perusing pleadings or similar documents, engrossing and filling, and all necessary attendance at court or chambers.
2. Costs exceeding the scales in this schedule may be ordered on special grounds arising out of the nature and importance or the difficulty or urgency of the case.
3. Where success in a suit is divided, the scale may be applied distributively, having regard to partial success on either side.

B- ADVOCATE AND CLIENT COSTS

As between advocate and client, the minimum fees shall be—

- (a) the fees prescribed in A above, increased by one-half; or
- (b) the fees ordered by the court, increased by one-half;

(c) the fees agreed by the parties under paragraph 57 of this order, increased by one-half, as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

SCHEDULE VIII

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. 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 who 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 the amount of the annual rent is disputed, the difference between the amount proposed by the landlord and the amount offered by the tenant; or
 - (b) in a case where possession is claimed, one year's rent or 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; or
 - (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.
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 dependent 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 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 KSh.</i>	<i>Does not exceed KSh.</i>	<i>Lower scale KSh.</i>	<i>Higher scale KSh.</i>
—	1,000	924	1,680
1,000	2,000	1,512	2,940
2,000	3,500	1,785	3,570
3,500	5,000	2,520	5,880

5,000	7,500	3,360	7,560
7,500	10,000	4,200	8,400
10,000	20,000	6,300	10,500
20,000	50,000	7,350	12,600
50,000	250,000 a fee as for Sh. 50,000 plus an additional 7.5 per cent on the lower scale or 15 per cent on the higher scale in respect of the excess.		
Over 250, 000	a fee for Sh. 250,000 plus an additional 1.5 per cent in respect of the excess.		

- (b) On a complaint where non-pecuniary relief other than possession is sought such costs as the Tribunal in its discretion awards; but not less than KSh. 2,100 if undefended or unopposed, and if opposed, a reasonable amount not exceeding KSh. 16,800.
- (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 Sh. 2,100.

	KSh.
7. (a) On any necessary attendance on the Tribunal other than at the hearing	315
(b) On any necessary attendance by an advocate at the offices of the tribunal other than (a) above	210
(c) Attendances at the hearing:	
(i) for each day after first day	2,730
(ii) for each part of the day after the first day	1,470
(d) where costs of adjournment of the case are awarded	630
(e) Service—	
(i) within three kilometres of the Tribunal	105
(ii) every additional kilometre over three; such amount as is reasonable, not exceeding per kilometre	21
(iii) by post, if authorized	63
(f) Drawing and filling affidavit or return of service to include swearing fee	63
(g) Drawing and filing any other affidavits; (for first four folios	315
(thereafter per folio)	42

B – ADVOCATE AND CLIENT COSTS

As between advocate and client the cost shall be —

- (a) the cost prescribed in A above, increased by one-half; or
- (b) the costs ordered by the Tribunal, increased by one-half; or

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

SCHEDULE IX

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 and 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 who 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 the amount of the annual rent is disputed, the difference between amount proposed by the landlord and the amount offered by the tenant; or
 - (b) in a case where possession is claimed, one year's rent or 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; or
 - (c) in a case concerning authority to carry out repairs, the amount claimed or awarded as the cost of the repairs, whichever is less; or
 - (d) 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 dependent 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. (a) Where the value of the subject matter—

<i>Exceeds KSh.</i>	<i>Does not exceed KSh.</i>	<i>Lower scale KSh.</i>	<i>Higher scale KSh.</i>
—	1,000	924	1,680
1,000	2,000	1,512	2,940
2,000	3,500	1,785	3,570
3,500	5,000	2,520	5,880
5,000	7,500	3,360	7,560
7,500	10,000	4,200	8,400

10,000	20,000	6,300	10,500
20,000	50,000	7,350	12,600
over 50,000	a fee as for Sh. 50,000 plus an additional 7.5 per cent on the lower scale or 15 per cent on the higher scale in respect of the excess.		

- (b) On a complaint where non-pecuniary relief other than possession is sought, such costs as the Tribunal in its discretion awards; but not less than KSh. 2,100 if undefended or un-opposed, and if opposed a reasonable amount not exceeding KSh. 16,800.
- (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 KSh. 2,100

	<i>Sh.</i>
(a) On any necessary attendance on the tribunal other than at the hearing	315
(b) On any necessary attendance by an Advocate at the offices of the tribunal other than (a) above	210
(c) Attendances at the hearing:	
(i) for each full day after the first day	2,730
(ii) for each part of the day after the first day	1,470
(d) Where costs of adjournment of the case are awarded	630
(e) Service—	
(i) within three kilometres of the Tribunal	105
(ii) every additional kilometre over three; such amount as is reasonable, not exceeding per kilometre	21
(iii) by post, if authorized	63
(f) Drawing and filing affidavit or return of service to include swearing fee	63
(g) Drawing and filing any other affidavits, for first four folios thereafter per folio	315 42

B-ADVOCATE AND CLIENT COSTS

As between advocate and client the costs shall be—

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

SCHEDULE X

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	But does not exceed	
KSh.	KSh.	KSh.
—	10,000	4,200
10,000	50,000	6,300
50,000	200,000	8,400
200,000	1,000,000	
1,000,000	1.5 per cent of the value on the first Shs. 1,000,000 thereof and three quarters per cent over Shs. 1,000,000.	

- (b) To apply for re-sealing a grant, the proceedings contested; four-fifths of the fee provided under paragraph (a).

- (c) To apply for confirmation of grant—

(i) if uncontested	3,150
(ii) if contested; such sum as the taxing officer shall consider reasonable, but not less than	10,500

- (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
- 6,300

- (f) To lodge an objection to grant, or a citation or other application or proceedings under any provision of the Law of Succession Act not otherwise provided for in this Schedule; such sum as the taxing officer shall consider reasonable, but not less than
- 4,500

- (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. 2.10 per KShs. 20,000 of net estate included therein, multiplied by the number of entries, but not less than
- 1,050

2. DRAWING

- (a) Each form or document prescribed under or required by the Law of Succession Act
- 840
- or per folio
- 168

(b) An inventory or account, except where embodied in a prescribed form,	
including an estate duty affidavit and corrective estate duty affidavit	630
or per entry	21
3. COPIES	
Per folio	21
4. PERUSING	
(a) Wills and codicils	840
or per folio	84
(b) Any other form or document prescribed under or required by the Law of Succession Act	420
or per folio	50
5. 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 paragraph 18 (e) and 51 (c) of this Order (other than that included in item 6 of this Schedule)—	
(a) Letter dispatched	210
or per folio	126
(b) Letters received and perused	126
or per folio	50
(c) Attendances—	
(i) in ordinary cases per 15 minutes or part thereof	500
(ii) routine telephone calls within Kenya for 3 minutes or part thereof	105
(iii) in other cases the taxing officer may increase or diminish the above charges if, for any special reason, he sees it fit.	
6. 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 per cent per annum;

(ii) on the amount of the income if 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 upon Schedule V:

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

1) contested matter under the Law of Succession Act, the fees between advocate and client shall be—

1) the fees prescribed in A above increased by one-half; or

2) the fees ordered by the court, increased by one-half; or

3) the fees agreed by the parties under paragraph 57 of this order increased by one-half as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

Made on 12th October, 2006.

J. E. GICHERU,
Chief Justice.