

(Legislative Supplement No. 19)

LEGAL NOTICE No. 73

THE ADVOCATES ACT

(Cap. 16)

IN EXERCISE of the powers conferred by section 48 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, 1983

1. This Order may be cited as the Advocates (Remuneration) (Amendment) Order, 1983, and shall be deemed to have come into force on the 1st May, 1983.

2. The Advocates (Remuneration) Order, in this Order called the principal Order, is amended by deleting subparagraphs (1) and (2) of paragraph 11 and inserting the following—

Sub. Leg.

(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. Paragraph 13 of the principal Order is amended by adding a new subparagraph as follows—

(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.

4. Paragraph 18 of the principal Order is amended by relettering subparagraphs (c) to (e) as (b) to (d) respectively and inserting a new subparagraph as follows—

(e) in respect of business in connexion with probate and the administration of estates, the remuneration is to be that prescribed in Schedule X;

5. The principal Order is amended by inserting after paragraph 49 the following new paragraph—

Costs in criminal cases. 49A. 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 V.

6. Paragraph 50 of the principal Order is amended by deleting "paragraph 22" from the first line and inserting "paragraphs 22 and 58".

7. Paragraphs 51A and 51B of the principal Order are amended by inserting "Subject to paragraph 22," at the beginning in each case.

8. The principal Order is amended by inserting after paragraph 51B the following new paragraph—

Costs in probate and administration cases. 51c. Subject to paragraph 22, the scale of costs applicable to proceedings concerning probate and the administration of estates is that set out in Schedule X.

9. Paragraph 58 of the principal Order is amended by deleting "at the trial" from the fifth line.

10. Paragraph 68A of the principal Order is deleted and the following inserted—

Certificate of costs. 68A. (1) Notwithstanding anything to the contrary in this Order, when the Registrar of the High Court enters final judgment under Order XLVIII, rule 2 of the Civil Procedure Rules, 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 VI.

(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.

11. Paragraph 73 of the principal Order is amended by deleting subparagraph (2) thereof and inserting the following—

(2) Where an advocate has withdrawn, the provisions of Order III, rule 12 of the Civil Procedure Rules shall apply.

12. Paragraph 75 of the principal Order is amended in subparagraph (1) by deleting all words after "taxing officer" in the third line.

13. Paragraph 78 of the principal Order is deleted.

14. Schedules VI and VII to the principal Order are deleted and replaced by the new Schedules VI and VII annexed to this Order and the new Schedule X annexed to this Order is added.

15. Where this Order is applied to work commenced before, but completed after 1st May, 1983, those parts thereof which were completed before 1st May, 1983, shall be charged for as if this Order had not been made, but in computing the instruction fee the taxing officer may apportion the charge between the instruction fee chargeable before 1st May, 1983, and thereafter.

SCHEDULE VI

COSTS OF PROCEEDINGS IN THE HIGH COURT

A.—Party and Party Costs

1. INSTRUCTION FEES

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, judgment or settlement between the parties and—

<i>That value exceeds</i>	<i>But does not exceed</i>	<i>Sh.</i>
<i>Sh.</i>	<i>Sh.</i>	
—	20,000	800
20,000	50,000	1,200
50,000	100,000	1,500
100,000	200,000	2,400
200,000	500,000	3,000
500,000	750,000	4,750
Over 750,000	—	4,750—

plus $\frac{1}{2}$ % on the amount over Sh. 750,000.

- (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 interpleader 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—

<i>That value exceeds</i>	<i>But does not exceed</i>	<i>Sh.</i>
<i>Sh.</i>	<i>Sh.</i>	
—	20,000	2,500
20,000	50,000	5,000
50,000	100,000	7,500
100,000	200,000	10,000
200,000	500,000	15,000
500,000	750,000	18,000
Over 750,000	—	18,000—

plus $\frac{1}{2}$ % on the amount over Sh. 750,000.

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

- (d) To defend any other proceedings: an instruction fee calculated under subparagraph 1 (b).

(e) Bankruptcy proceedings—	
(i) debtors application—	
	<i>Sh.</i>
to present or oppose a debtor's petition ..	500
to apply for or oppose discharge	250
(ii) creditors application—	
to apply for issue of a Bankruptcy Notice ..	150
to present or oppose a creditor's petition ..	750
to apply for or to oppose a discharge ..	500
(f) Companies—	
(i) to present or oppose proceedings under rule 5 (1) of the Companies (Winding Up) Rules ..	3,000
(ii) to present or oppose any other proceedings under the Companies Act, or to support a petition for winding up a company	600
(g) Matrimonial causes—	
(i) to present a petition for dissolution of mar- riage, nullity, judicial separation, or restitu- tion of conjugal rights—	
where the proceedings are not defended	3,000
where the proceedings are defended; or to defend proceedings: such sum as may be reasonable but not less than ..	8,000
(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	500
if the application is not dealt with to- gether with the petition or answer ..	2,000
(iii) to apply for a Registrar's certificate	125
(iv) to present or oppose an application to a judge under the Matrimonial Causes Rules or Guardianship of Infants Act not otherwise provided for: such sum as may be reason- able but not less than	450
(h) Adoption and guardianship—	
(i) to present or oppose an application for adoption: such sum as may be reason- able but not less than	2,000

	<i>Sh.</i>
(ii) to present or oppose an application for guardianship: such sum as may be reasonable but not less than	2,500
(i) To present or oppose an election petition	7,000
(j) Prerogative orders—	
(i) to present an application for leave for a prerogative order: such sum as may be reasonable but not less than	3,000
(ii) to present or oppose an application for a prerogative order: such sum as may be reasonable but not less than	7,000
(k) To present or oppose objections to an award made by an arbitrator	2,000
(l) To sue or defend in any case not provided for above: such sum as may be reasonable but not less than	2,000
(m) To present or oppose an appeal in any case not provided for above: such sum as may be reasonable but not less than	1,500
(n) To counter-claim: a fee under subparagraph (a) or (b), as appropriate.	
(o) Matters arising during proceedings—	
(i) to prepare an affidavit	150
(ii) to prepare interrogatories or answers thereto	1,000
(iii) to apply for a commission or letters of request for the examination of a witness	500
(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	3,000
(v) to prepare a case stated for the opinion of the court: such sum as may be reasonable but not less than	1,000
(vi) to present an application for a temporary injunction or similar order—	
if unopposed	500
to present or oppose in ordinary cases: such sum as may be reasonable but not less than	1,000
to present or oppose in cases where the judge shall certify that the matter is complex	5,000

(vii) to present or oppose any other application not otherwise provided for, whether by summons in chambers or by notice of motion—	<i>Sh.</i>
where the application is unopposed ..	250
where the application is opposed, such sum as may be reasonable but not less than ..	400

Provided that—

- (i) the taxing officer, in the exercise of his 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 in 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 shall be increased by one-third and other charges shall be doubled where requisite;
- (iii) in any case in which a certificate for Queen's 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 Queen's 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 the possession of premises, with or without a claim for arrears of rent; or
 - (b) for the 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 a sum equivalent to the annual rental value of the premises, or to one-tenth of the capital value of the premises, whichever is the 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 payments into court after the time allowed by Order XXVI, rule 2 (1), but before one month after the 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 instruction 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-quarter of the instruction fee allowed on taxation:

Provided that—

- (i) this fee may be increased as the taxing 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 10 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 in 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.

4. DRAWING

- (a) Concise statement, plaint, written statement of defence, interlocutory application, notice of motion or chamber application, originating summons, affidavit, petition of appeal, interrogatories,

	<i>Sh.</i>
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	175
(ii) in excess of four folios: additional per folio after the first four folios	25
(b) Creditor's or debtor's petition that a debtor be adjudicated insolvent, or notice of objection thereto—	
(i) six folios or less	250
(ii) in excess of six folios; per folio	25
(c) Petition for winding up of a company incorporated under the Companies Act—	
(i) nine folios or less	375
(ii) in excess of nine folios: per folio	25
(d) All other documents (including proofs of witnesses' evidence), so far as necessary: per folio	30
(e) Bill of costs: per folio	30
(f) Affidavit or return of service	40
Provided that in relation to paragraphs (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 objections 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	5
(b) The actual cost of copies of judge's notes bespoken from day to day as a case proceeds may be allowed if certified for by 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	5
6. CORRESPONDENCE	
Letters before action or other necessary letters	35
or per folio	20

7. ATTENDANCES	Ordinary Scale Sh.	Higher Scale Sh.
(a) On any necessary application to or formal attendance on the registrar or deputy registrar	75	
(b) At offices of court or registrar on routine matters ..	50	
(c) At court or in chambers on any matters on a date fixed by the court for hearing, when the case cannot be taken, or by advocate for calling over lists	150	
(d) At court or in chambers before judge not otherwise provided for—		
(i) half hour or less	200	300
(ii) one hour	400	450
(iii) half day	800	1,200
(iv) whole day	1,600	2,400
(e) Routine telephone calls: each necessary telephone call allowed per three minutes or part thereof	20	
(f) With a judge on a view, if in court hours, the same fees as for attendance 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.. .. .	360	
(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 ..	90	
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 ..	9	
(b) Of notices and other routine documents	15	
(c) Of necessary letters: per folio	9	
9. SERVICE		
(a) Within three kilometres of the High Court or district registry of the High Court	40	
(b) Every additional kilometre over three: such amount as is reasonable, not exceeding per kilometre ..	5	
(c) By post, if authorized	25	
10. PLANS, MODELS, ETC.		

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

	<i>Sh.</i>
11. TRANSLATIONS	
Actual costs, supported by vouchers of all necessary translations.	
12. EXECUTION PROCEEDINGS	
(a) Instructions to execute decree and drawing necessary application	150
(b) Attendance at court filing application	50
(c) Attending court to peruse order	50
13. OBJECTION TO EXECUTION PROCEEDINGS	
(a) Instruction to prepare objection	300
(b) Instruction to proceed with attachment	150
(c) Instruction to take proceedings to establish or to oppose such proceedings	750
14. GARNISHEE PROCEEDINGS	
(a) Instruction to institute garnishee proceedings if not opposed	450
(b) Instructions to institute or to defend garnishee proceedings, when opposed: such sum as the taxing officer considers reasonable but not less than	1,000
15. FEE ALLOWABLE ON CERTIFICATE OF COSTS UNDER PARAGRAPH 68A	
(a) Where no appearance has been entered in the suit and where the defendant was served at the first attempt	200
for each additional attempt at service	40
(b) Where appearance has been entered: a further	30
(c) Where the defendant was served out of the jurisdiction: a further	400
(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	350
(e) For an application made to the judge under paragraph 11 (2): a further	650
together with the instruction fee and any court fees and affidavit 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 fees shall be—

- (a) the fees prescribed in *A* above, increased by one-third; or
- (b) the fees ordered by the court, increased by one-third; or
- (c) the fees agreed by the parties under paragraph 57 of this Order increased by one-third,

as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

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)—

<i>Exceeds</i>		<i>But does not exceed</i>		<i>Lower Scale</i>	<i>Higher Scale</i>
<i>Sh.</i>		<i>Sh.</i>		<i>Sh.</i>	<i>Sh.</i>
—	300	100	150
300	500	130	260
500	750	170	340
750	1,000	220	400
1,000	1,500	300	575
1,500	2,000	360	700
2,000	2,750	425	850
2,750	3,500	525	900
3,500	5,000	600	1,400
5,000	7,500	800	1,800
7,500	10,000	1,250	2,500
10,000	15,000	1,500	3,000
15,000	—	a fee as for Sh. 15,000 plus an additional 6 per cent on the lower scale or 12 per cent on the higher scale 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 or awarded in the judgment (other than proceedings falling under paragraph 3 below): such costs as the court in its discretion awards but not less than Sh. 650 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 Sh. 4,000.

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

	<i>Sh.</i>
where the proceedings are undefended	1,000
where the proceedings are defended	3,000

(b) in proceedings for ancillary relief—

if heard together with petition or answer	250
if not dealt together with petition or answer	650

(c) in other proceedings for custody, access or guardianship

750

(d) in proceedings for adoption

1,000

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

100

5. On any necessary application to or attendance on magistrate in court or chambers

75

6. Attendances at the hearing where the hearing lasts more than one full day—

for each full day after the first day	650
for each part day after the first day	350

7. Where costs of adjournment of a case are awarded 150

8. SERVICE

(a) within three kilometres of subordinate court or district registry of the subordinate court 25

(b) every additional kilometre over three: such amount as is reasonable, but not exceeding, per kilometre 4

(c) by post, if authorized 15

9. Drawing and filing affidavit or return of service 15

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 otherwise provided) taking instructions, drawing or perusing pleadings or similar documents, engrossing and filing, and all necessary attendances 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 the 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 two-fifths; or
- (b) the fees ordered by the court, increased by two-fifths; or
- (c) the fees agreed by the parties under paragraph 57 of this Order, increased by two-fifths,

as the case may be, such increase to include all proper attendances 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—

<i>Exceeds</i>	<i>But does not Exceed</i>	<i>Sh.</i>
<i>Sh.</i>	<i>Sh.</i>	
—	10,000	1,000
10,000	50,000	1,500
50,000	200,000	2,000
200,000	1,000,000	One per cent of the value.
1,000,000	—	One per cent of the value on the first Sh. 1,000,000 thereof and one-half per cent of the amount over Sh. 1,000,000.
 (b) To apply for re-sealing a grant, the proceedings not being contested: four-fifths of the fee provided under paragraph (a).		
 (c) To apply for confirmation of a grant—		
(i) if uncontested		750
(ii) if contested: such sum as the taxing officer shall consider reasonable, but not less than		2,500
 (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		
		750
 (f) To lodge an objection to a grant, or a citation or other application or proceeding 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		
		1,500
 (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: Sh. 1 per Sh. 20,000 of net estate included therein, multiplied by the number of entries, but no less than		
		250
2. DRAWING		
 (a) Each form or document prescribed under or required by the Law of Succession Act		
		200
or per folio		40
 (b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit		
		150
or per entry		4
3. COPIES		
per folio		5
4. PERUSING		
 (a) Wills and codicils		
		200
or per folio		20

	<i>Sh.</i>
(b) Any other form or document prescribed under or required by the Law of Succession Act	100
or per folio	12

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 paragraphs 18 (e) and 51c of this Order (other than that included in item 6 of this Schedule)—

(a) Letters despatched	50
or per folio	30
(b) Letters received and perused	20
or per folio	12
(c) Attendances—	
(i) in ordinary cases per 15 minutes or part thereof	120
(ii) routine telephone calls within Kenya for 3 minutes or part thereof	25
(iii) in other cases the taxing officer may increase or diminish the above charges if, for any special reason, he sees 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 interests of the parties and all other circumstances;
- or, at the election of the advocate—
- (b) An 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: one and one-half per cent per annum;
 - (ii) on the amount of the income of the estate in a year or half-year: two per cent;
 - (iii) on the capital value of any portion of the estate which is realized or invested during a year or half-year: three-quarters per 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;
- (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 inventory and accounts for that year; but any additional inventories or accounts required or formal documents filed or proceedings taken under the Law of Succession Act shall be charged for separately under the appropriate paragraphs of this Schedule.

B.—Advocate and Client Costs

In contested matters under the Law of Succession Act, the fees as between advocate and client shall be—

- (a) the instruction fees prescribed in A above increased by one-third; or
- (b) the fees ordered by the court, increased by one-third; or
- (c) the fees agreed by the parties under paragraph 57 of this Order, increased by one-third,

as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

Made on the 28th April, 1983.

A. H. SIMPSON,
Chief Justice.