

CHAPTER 8

THE JUDICATURE ACT

SUBSIDIARY LEGISLATION

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THE HIGH COURT (ADMIRALTY) RULES

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THE HIGH COURT (ADMIRALTY) RULES

[Legal Notice 8 of 1979, Legal Notice 116 of 1997]

1. Citation

These Rules may be cited as the High Court (Admiralty) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"admiralty proceedings" means proceedings in the High Court by virtue of section 4 of the Act;

"Admiralty Registry" means the Registry of the High Court at Nairobi or any District Registry through which for the time being the jurisdiction conferred by section 4 of the Act is exercised;

"court" means the High Court;

"judge" means a judge of the High Court;

"marshal" includes the Admiralty marshal appointed under rule 4 and deputy marshals appointed under rule 5;

"Registrar" means the Registrar of the High Court or a deputy registrar for the time being in charge of an Admiralty Registry.

3. Conduct of admiralty proceedings generally

The Supreme Court Rules, 1965 of England, as amended from time to time, shall apply to the exercise by the High Court of its admiralty jurisdiction under section 4 of the Act.

4. Admiralty marshal

(1) There shall be an Admiralty marshal who shall have the powers and authority and carry out the duties and functions for the time being conferred upon or attaching to the office of Admiralty marshal of the High Court of Justice in England and any further or other powers, authority, duties and functions as may from time to time be conferred upon him by the Chief Justice.

(2) The Admiralty marshal shall be the Registrar or a deputy registrar of the High Court and shall be appointed by the Chief Justice on the advice of the Judicial Service Commission and shall hold office upon such terms and conditions as the Chief Justice may from time to time direct.

5. Appointment of deputy marshals at Mombasa and elsewhere

(1) The resident judge at Mombasa and every other judge before whom admiralty proceedings are pending may from time to time appoint a magistrate not below the rank of magistrate of the first class to be a deputy marshal and the deputy marshal shall have in relation to those particular proceedings, subject to the direction of the Judge, the power, authority, duties and functions of the Admiralty marshal.

(2) The appointment of a deputy marshal under paragraph (1) may be terminated by notice in writing at any time by the Chief Justice or by the Judge before whom for the time being the proceedings are pending, but termination shall be without prejudice to anything lawfully done by the deputy marshal prior to termination.

6. Marshals may employ brokers, etc.

(1) In the exercise of the powers, authority, duties and functions conferred upon him by these Rules a marshal may appoint and employ such brokers or other persons as may appear to him to be expedient for the purpose of examining, appraising, valuing, offering for sale or selling any ship or any cargo in or on any ship:

[Subsidiary]

Provided that a broker so appointed may with the approval of the marshal by whom he is employed appoint a surveyor for the purpose of inspecting the ship or cargo concerned and submitting a confidential report thereon to the broker; and the proper charges of the surveyor shall be paid by the marshal.

(2) As soon as may be after his appointment a broker shall at the request of the marshal prepare, sign and submit to the marshal in confidence an appraisalment of the ship and, if required, the cargo therein; and the contents of that appraisalment shall not be disclosed to any person without the authority of the judge or, in the event of the ship being sold, until after the completion of the sale.

(3) The remuneration of the broker for his services shall be—

- (a) *fee for appraisalment*: a sum of Sh. 500 in respect of the first £1,000 in value together with Sh. 50 for each additional sum of £400 in value but not to exceed Sh. 2,000 in all;
- (b) *commission on sale of ship*: at the rate 10 per cent on the first £250 realized together with 5 per cent on the next £500 realized, 2½ per cent on the next £750 realised and 1 per cent on the balance over £1,500;
- (c) *commission on sale of cargo*: at the rate of 10 per cent on the first £250 realized together with 5 per cent of the next £500 realized and 2 per cent on the balance over £750.

7. Forms

(1) Subject to paragraph (2), the forms to be used in admiralty proceedings shall be those in use for the time being in the Queen's Bench Division (Admiralty Court) in England, subject to any variations of whatever nature which may be expedient.

(2) The heading to the forms shall be—

"In the High Court of Kenya at (name of registry) Admiralty Jurisdiction" followed by the title of the suit as in England.

8. Fees

(1) Subject to paragraphs (5) and (6), the fees set out in column 2 of the Schedule to these Rules shall be paid in respect of the items set out opposite thereto in column 1.

(2) The fees prescribed by these Rules shall, subject to the provisions of paragraph (3), be paid in cash and the document indicated in column 3 of the Schedule shall be marked by the officer of the court receiving the fee, showing the amount of the fee and the date of its receipt.

(3) The fee at item 10 in the Schedule shall be paid by transfer from money in court.

(4) Where no other provision is made by these Rules the fees prescribed in Section 1 of the Schedule to Part IX of the High Court (Practice and Procedure) Rules (Sub. Leg.) shall, subject to paragraphs (5) and (6), apply *mutatis mutandis* to admiralty proceedings.

(5) Where it appears to the Chief Justice that the payment in admiralty proceedings of a fee would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Chief Justice may reduce or remit the fee in the case.

(6) Where by a convention entered into by the Government with any foreign power it is provided that no fee shall be required to be paid in respect of any proceedings, no fee shall be charged or levied in any admiralty proceedings.

SCHEDULE

[r. 8]

ADMIRALTY COURT FEES

[L.N. 116/1997.]

Item	Steps in Action	R.S.C. No.	Amount (KSh.)
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Judicature

[Subsidiary]

1.	On issuing a writ, whether in rem or in personam	O. 6 r 7(2) O. 75 r 3(2)	The same fee is payable on the filing of a Plaint under Rule 3 of the Schedule to Part IX of the Judicature Act (Cap. 8).
2.	On filing <i>praecipe</i> for caveat against arrest	O. 75 r 6	100 00
3.	On filing <i>praecipe</i> for withdrawal of caveat against arrest.	O. 75 r 15(1)	100 00
4.	On filing request to Court to search in caveat book whether there is a caveat against arrest	O. 75 r 5(3)	100 00
5.	On filing <i>praecipe</i> for arrest		500 00
6.	On filing affidavit to lead to arrest	O. 75 r 5	1,000 00
7.	On filing <i>ex parte</i> application for leave to issue warrant notwithstanding defects in affidavit to lead to warrant of arrest	O. 75 r 5(4)	200 00
8.	On issue of warrant of arrest	O. 75 r 5(4)	100 00
9.	On filing written undertaking regarding Admiralty Marshall's expenses	O. 75 r 10(3)	100 00
10.	On execution of warrant of arrest	O. 75 r 10(5) & (6)	350 00
11.	On filing written request to Marshall not to execute warrant of arrest	O. 75 r 10(4)	200 00
12.	On filing notice of motion by <i>caveator</i> for discharge of warrant in respect of property protected by caveat against arrest	O. 75 r 7 & r 33A(2)	250 00

Judicature

[Subsidiary]

13.	On filing affidavit in support of application under item 12 above	O. 75 r 7 & r 33A(2)	100 00
14.	On filing notice of motion by party at whose instance caveat against arrest was entered for order discharging warrant of arrest	O. 75 r 7 & r 34(2)	250 00
15.	On filing affidavit in support of application under item 14 above	O. 75 r 7 & r 34(2)	100 00
16.	On filing application by summons or motion for directions	O. 75 r 12(3)	350 00
17.	On filing application to intervene by a person claiming interest in the property under arrest	O. 75 r 17(1)	1,000 00
18.	On filing affidavit in support of application under item 17 above	O. 75 r 17	500 00
19.	On filing <i>praecipe</i> for caveat against release of any arrested property or of payment out of the proceeds of sale of that property	O. 75 r 14(1)	500 00
20.	On filing <i>praecipe</i> for withdrawal of caveat against release	O. 75 r 15(1)	250 00
21.	On filing notice of motion seeking release of property under arrest on account of delay of such release	O. 75 r 14(2)	500 00
22.	On filing affidavit in support of application under item 21.		200 00

Judicature

[Subsidiary]

23.	On filing bail bond for release of property under arrest	O. 75 r 16(1)	100 00
24.	On filing affidavit of justification in support of application under item 23	O. 75 r 16(2)	100 00
24A.	On filing notice of bail	O. 75 r 16(4)	100 00
25.	On filing affidavit of service of notice of bail exhibiting copy of notice of bail	O. 75 r 16(4)	100 00
26.	On filing application for release of property on bail	O. 75 r 16	500 00
27.	On filing application by summons by party who objects to the Marshall's directions as to costs, charges and expenses for variation or revocation of the directions	O. 75 r 13(8)	350 00
28.	On filing notice of motion to set aside writ or warrant of arrest	O. 12 r 8 O. 75 r 34(1)	5,000 00
29.	On filing affidavit in support of an application under item 28	O. 12 r 8 O. 75 r 34(1)	1,000
30.	On the defendant filing acknowledgement of service	O. 12 r 3(1) O. 75 r 6(4)	100. 00
31.	On filing notice of motion for judgment in default	O. 75 r 21(3)	1,000 00
31A.	On filing affidavit verifying facts on which action is based	O. 75 r 21(3)	350 00
32.	On filing summons for order that action be tried without pleadings	O. 81 r 21(1) O. 75 r 31	250. 00

Judicature

[Subsidiary]

33.	On filing affidavit in support of application under item 32.	O. 81 r 21 (1) O. 75 r 31	100. 00
34.	On filing statement of grounds charging any other party with negligence where action is being tried without pleadings	O. 75 r 18(4)	750 00
35.	In actions to enforce claim for damages, loss of life or personal injury arising out of collision between ships:.		
(a)	On Plaintiff lodging preliminary act	O. 75 r 18 (1)	500 00
(b)	On Defendant filing notice of having lodged preliminary act	O. 75 r 18 (2A)	500 00
(c)	On Defendant filing summons to dismiss action in default of Plaintiff lodging preliminary act	O. 75 r 19(1) & (7)	500 00
(d)	On filing affidavit in support of (c) above	O. 75 r 19(1) & (7)	250 00
(e)	On Plaintiff filing notice of motion for judgment in default of Defendant failing to lodge preliminary act	O. 75 r 19(3) & (7)	500 00
(f)	On filing affidavit in support of (e) above	O. 75 r 19(3) & (7)	250 00
36.	On filing statement of claim	O. 81 r 1 O. 75 r 18(5)	500. 00
37.	On filing summons for dismissal of action in default of statement of claim	O. 19 r 1	500 00
38.	On filing affidavit in support of application under item 37	O. 91 r 1	250 00
39.	On filing Defence	O. 15 r 2 O. 18 r 2	500. 00
40.	On filing counterclaim	the same fee as is payable on the filing of a counterclaim under Rule 3 of the Schedule to Part IX of the Judicature Act (Cap. 8)	

Judicature

[Subsidiary]

41.	On filing notice of motion for judgement in default of defence	O. 75 r 21(4)	1,000 00
42.	On filing affidavit that no defence has been served..	O. 75 r 21(4)	350 00
43.	On filing affidavit verifying facts on which action is based	O. 75 r 21(4)	350 00
44.	On filing reply to defence and/ or defence to counterclaim	O. 81 r 3(1)-(3)	500 00
45.	On filing application for judgement on counterclaim in default of defence to counterclaim	O. 75 r 21(5)	1,000 00
46.	On filing affidavit that no defence to counterclaim has been served	O. 75 r 21(5)	250 00
47.	On filing affidavit verifying facts on which counterclaim is based	O. 75 r 21(5)	350 00
48.	On filing any other application not otherwise specifically mentioned herein		750. 00
49.	On filing any pleading, affidavit or other document not otherwise specifically provided herein		500. 00
50.	On issue of any decree or order		500. 00
51.	On Court serving any writ or other document of whatsoever nature		350. 00
52.	On lodging with the Admiralty Marshall a Commission for the appraisalment and sale of ship or any property.		5,000 00
53. (a)	On the sale of a ship or cargo— for every KSh. 2,000 or fraction of KSh. 2,000 of the price up to KSh.2,000,000		50. 00
(b)	for every KSh. 2,000 or fraction of KSh. 2,000 of the price exceeding KSh.2,000,000		25 00

THE HIGH COURT (PRACTICE AND PROCEDURE) RULES

ARRANGEMENT OF RULES

Rule

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None – SCHEDULE TO PART XVI



THE HIGH COURT (PRACTICE AND PROCEDURE) RULES

[Gazette Notice 1356 of 1952, Act No. 3 of 1924, Gazette Notice 1572 of 1955, Legal Notice 459 of 1957, Legal Notice 87 of 1964, Act No. 21 of 1966, Legal Notice 244 of 1969, Legal Notice 197 of 1969, Legal Notice 3 of 1970, Legal Notice 38 of 1974, Legal Notice 122 of 1975, Legal Notice 71 of 1976, Legal Notice 139 of 1980, Legal Notice 69 of 1981, Legal Notice 97 of 1981, Legal Notice 69 of 1982, Legal Notice 109 of 1982, Legal Notice 75 of 1985, Legal Notice 275 of 1990, Legal Notice 552 of 1991, Legal Notice 1 of 1992, Legal Notice 56 of 1992, Legal Notice 294 of 1995, Legal Notice 116 of 1997, Act No. 10 of 1997, Legal Notice 53 of 2013]

PART I – VACATIONS

1. (1) The sittings of the High Court shall be three in every year.
- (2) Such sittings other than in the Coast Province shall be as follows—
 - (a) From 14th January to the second Wednesday before Good Friday;
 - (b) from the Wednesday after Easter week to 31st July; and
 - (c) from 16th September to 20th December.
- (3) Despite subrule (1) and (2), the Chief Justice may determine sittings of the Court which sittings shall be advertised and notified in the manner as the Chief Justice may direct.

[LN 53/2013, r. 2.]

2. Subject to Article 159(2) of the Constitution, the Chief Justice may, from time to time, by notice in the *Gazette*, determine the number of vacations of the Courts and offices of the High Court.

[LN 53/2013, r. 3.]

3. (1) Any party to any cause or matter may at any time apply by summons for the trial or hearing of such cause or matter during a vacation, and the Judge being satisfied that there is urgent need for such trial or hearing may make an order for the trial or hearing of such cause or matter during the vacation and may fix a date.
- (2) Any party to a cause or matter may, at any time during a vacation, file an urgent application with an affidavit giving the grounds thereof and the Judge may deal with that application if satisfied that it is urgent, and where an application filed under subrule (3) is referred to the Judge, or where an appeal is made from a decision of the Registrar, the Judge may deal with that application or appeal during a vacation if satisfied that it is urgent.
- (3) Any party to a cause or matter may, at any time during a vacation other than the Summer Vacation in the Coast Province and the Christmas Vacation elsewhere, file an application which may under the Civil Procedure Rules (Cap. 21, Sub. Leg) be heard and determined by the Registrar.

[LN 109/1982.]

4. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

5. (1) The offices of the High Court throughout Kenya, including Mombasa and all District Registries shall be open on every day of the year except Sundays and public holidays under the Public Holidays Act (Cap. 110) and such other days as the Chief Justice may direct.

- (2) The hours during which the offices of the High Court, including registries, shall be open to the public shall be from 8.00 a.m to 5.00 p.m on Monday through to Friday, or such other time as the Chief Justice may direct.
- (3) *Deleted by LN 53/2013, r. 5.*

[LN 109/1982, LN 53/2013, r. 4 and 5.]

*These Rules are deemed to have been made under section 10 of the Act, by virtue of section 10(2) of the Act (as originally enacted).]

Judicature

[Subsidiary]

6. The Chief Justice shall appoint vacation judges to hear and try all causes and matters arising under subrules (1) and (2) of rule 3.

7. Deleted by LN 53/2013, r. 6.

8. (1) The Court offices of all Resident Magistrates shall be open during the times set out in subrules (1) and (2) of rule 5.

(2) Deleted by LN 53/2013, r. 7.

[LN 53/2013, r. 7.]

9. During the vacations under rule 2, the Resident Magistrates' Court shall hear civil cases of an urgent nature and civil cases where advocates are not engaged.

[LN 53/2013, r. 8.]

PART II – JURIES

[Revoked by LN 87/1964.]

PART III – REFERENCE TO HIGH COURT ARCHIVES

1. Interpretation

In this Part—

"archives" means—

- (a) notes taken by the Judge and evidence recorded in a case;
- (b) any pleading, application, order, exhibit or other document made, recorded or filed in a case;
- (c) indices of cases and cause lists.

"judge" includes a magistrate or other person acting in a judicial capacity;

"person directly interested" includes the properly authorized representatives of that person.

[R.E. 1948, Vol. V.]

2. Reference to archives

Reference to the archives may be made only on the terms and in the manner following—

Application, how made

- (a) Application for reference to an archive must be in writing, signed by the person making it, and addressed to the Judge or, as regards the archives of the High Court, to the Registrar of the High Court; and the order of the Judge or Registrar shall be endorsed on the application so presented;

Fees

- (b) inspection of the files of pending cases may at the discretion of the Judge be granted free of charge to parties directly interested, but subject to this exception every application shall bear a stamp of Sh. 4 unless the fee is specially remitted or reduced by the Judge on account of the poverty of the applicant;

Civil cases: Persons interested

- (c) in civil cases a person directly interested shall ordinarily be permitted to refer to an archive, and in civil cases decided more than a year before the date of application the provisions of this rule shall apply to the general public;

Civil cases: Persons not interested

- (d) in civil cases which are pending or have been decided less than a year before the date of application, inspection of an archive by a person not directly interested shall only be permitted on special grounds;

Criminal cases

- (e) in criminal cases leave shall ordinarily be granted to a person affected by a judgment or order of the Court to refer to an archive relating to his case:

Provided that the Judge or Registrar may for reasons to be stated by order allow a person other than a person affected to inspect the record of a criminal case; and the order shall state if the inspection shall be limited to the judgment or otherwise;

Copies

- (f) unless specially ordered to the contrary, a person who has obtained leave to refer to an archive shall be entitled to have a copy thereof, and if application for the copy is made within seven days of inspection the fee paid for reference shall be treated as part payment for the copy, and the rates shall be such as may for the time being be prescribed by the fee table; and no reference fee shall be charged on an application for copies of archives required for the purposes of an appeal or application for revision; the estimated cost of copies shall be deposited in court when the copies are bespoke, unless the applicant's undertaking to pay on demand is accepted in lieu thereof;

Cause lists

- (g) reference may be made to the cause list of the day, and of the suits set down for hearing, on verbal application to the clerk of the court without payment;

Place of inspection

- (h) archives may only be inspected in the Court precincts and in the presence of an officer of the Court, except with the special permission of the Judge;

Marks and erasures

- (i) no person who has obtained permission to refer to an archive may make any mark or erasure thereon or remove it or show it to a third party or make any copy or note therefrom except a note of the date or title.

PART IV – TRANSACTION OF BUSINESS IN CHAMBERS

1. Transaction of business in chambers

The business in chambers of the judges of the High Court and of subordinate courts shall be carried on in conjunction with their court business.

[R.E. 1948, Vol. V.]

2. Business to be disposed of in chambers

The business to be disposed of in chambers shall consist of the following matters, in addition to the matters which under any other rule or by any Act may be disposed of in chambers—

Applications for payment or transfer of cash or securities consequent on judgment, etc.

- (a) Applications for payment or transfer to a person of cash or securities standing to the credit of any cause or matter where there has been a judgment or other order declaring the rights or where the title depends only upon proof of the identity of the birth, marriage or death of a person;

For payment of dividends or interest

- (b) applications for payment to a person of the dividend or interest on securities standing to the credit of any cause or matter, whether to a separate account or otherwise;

On behalf of infants

[Subsidiary]

- (c) applications on behalf of an infant if a ward of court or the administration of the estate of the infant, or the maintenance of the infant if under the direction of the Court;

For settlement of infants' property

- (d) applications for the settlement of property of an infant on marriage;

As to guardianship, etc., of infants

- (e) applications as to the guardianship and maintenance or advancement of infants;

For the distribution of insolvent and other estates

- (f) applications for orders on the further consideration of a cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture-holders;

For time to plead, etc.

- (g) applications for time to plead, for leave to amend pleadings, for discovery and production of documents and generally all applications relating to the conduct of a cause or matter;

Vendor and purchaser summonses

- (h) applications analogous to those in vendor and purchaser summonses in the High Court in England;

Other matters

- (i) such other matters as the Judge may think fit to dispose of at chambers.

PART V – LETTERS OF REQUEST FOR SERVICE OF PROCESS

1. Procedure on requests for service of process

Where, in a civil or commercial matter pending before a court or tribunal of a foreign country, a letter of request from that court or tribunal for service on a person in Kenya of a process or citation in that matter is transmitted to the High Court by the Cabinet Secretary with an intimation that it is desirable that effect should be given to it, the following procedure shall be adopted—

- (a) the letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language;
- (b) service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof in accordance with rules and practice of the High Court regulating service of persons;
- (c) after service has been effected, the process server shall return to the Registrar of the High Court one copy of the process, together with the evidence of service by affidavit of the person effecting the service verified by a magistrate and particulars of charges for the cost of effecting service;
- (d) the particulars of charges for the cost of effecting service shall be submitted to the Registrar of the High Court, who shall certify the correctness of the charges, or such other amount as is properly payable for the cost of effecting service;
- (e) the Registrar shall transmit to the Cabinet Secretary the letter of request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the

High Court for use out of the jurisdiction; and the certificate shall be in the form in the Schedule.

[R.E. 1948, Vol. V.]

2. Upon the application of the Attorney-General, the Court or a judge may make all such orders for substituted service or otherwise as may be necessary to give effect to this Part.

SCHEDULE TO PART V

CERTIFICATE OF SERVICE OF FOREIGN PROCESS

I,, Registrar of the High Court of Kenya, hereby certify that the documents annexed hereto are as follows—

- (a) the original letter of request for service of process received from the Court or tribunal at in the of in the matter of versus: and
- (b) the process received with such letter of request; and
- (c) the evidence of service upon, the person named in such letter of Request, together with the verification of a magistrate.

And I further have the honour to request that you will be/are such as are required by the law and practice of the High Court of Kenya regulating the service of legal process in Kenya and the proof thereof.

And I certify that the cost of effecting such service amounts to the sum of Sh.

Dated this day of, 20

PART VI – LETTERS OF REQUEST TO A FOREIGN TRIBUNAL TO EXAMINE WITNESSES ABROAD

[R.E. 1948, Vol. V.]

The following shall be the form of a letter of request to a foreign tribunal to examine witnesses abroad—

Whereas an action is now pending in the High Court of Kenya at, in which is plaintiff and is defendant:

And in the said action the plaintiff claims [*insert endorsement on writ*].

And whereas it has been represented to the said court that it is necessary, for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say, E.F., of, G.H., of, and I.J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable court;

Now I,, as the Judge of the High Court of Kenya, have the honour to request, and to hereby request, that, for the reasons aforesaid and for the assistance of the High Court of Kenya, you as the President and Judges of the said, or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I certify that such service so proved, and the proof thereof, pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and

[Subsidiary]

documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your Tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through the Cabinet Secretary, for transmission to the High Court.

PART VII – EVIDENCE FOR FOREIGN TRIBUNAL

1. Application to court

Where, under the Foreign Tribunals Evidence Act, 1856, a civil or commercial matter or a criminal matter, is pending before a court or tribunal of a foreign country and it is made to appear to the Court or a judge, by commission rogatoire, or letter of request, or other evidence as hereinafter provided, that that court or tribunal is desirous of obtaining the testimony in relation to the matter of any witness or witnesses within the jurisdiction, the Court or a judge may on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of the foreign court or tribunal, and on production of the commission rogatoire, or letter of request, or of a certificate signed in the manner and certifying to the effect mentioned in section 2 of the Foreign Tribunals Evidence Act, 1856, or such other evidence as the Court or a judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above-mentioned in conformity with section 1 of the Foreign Tribunals Evidence Act, 1856.

[R.E. 1948, Vol. V., LN 87/1964, Act No. 19 and 20 Vict., c. 113.]

2. Form of order

An order made under rule 1 shall be in the form in Schedule I with such variations as circumstances may require.

3. Examination

The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or other qualified person as the Court or judge may think fit; and a person appointed by the Court or a judge shall be entitled to charge the fees and charges mentioned in Schedule III and shall endorse on the depositions when he transmits them to the Registrar of the High Court a statement of the hours within which the examination began and ended.

4. Forwarding of examination

Unless otherwise provided in the order for examination, the examiner before whom the examination is taken shall, on its completion, forward it to the Registrar of the High Court, and on receipt thereof the Registrar shall append thereto a certificate, in the form in Schedule II, with such variations as circumstances may require, duly sealed with the seal of the High Court for use out of the jurisdiction, and shall forward the depositions so certified, and the commission rogatoire or letter of request, if any, to the Cabinet Secretary, for transmission to the foreign court or tribunal requiring it.

5. Method of examination

An order made under rule 1 may direct the examination to be taken as requested by the commission rogatoire or letter of request from the Foreign Court, or therein signified to be in accordance with the practice or requirements of such a court or tribunal, or as requested by the applicant for the order; but in the absence of any such special directions in the order for examination it shall be taken in the manner prescribed by rule 6.

6. Procedure

- (1) The provisions of the Civil Procedure Act (Cap. 21) and of the rules of court for the time being in force relating to the summoning, attendance and examination of witnesses and to the remuneration of and penalties to be imposed upon witnesses shall apply to persons required to give evidence or to produce documents under

this Part, and for the purposes of this rule an examiner appointed under this Part shall be deemed to be a civil court.

- (2) An examiner appointed under this Part may apply to a court within the local limits of whose jurisdiction a witness resides for the issue of process which he may find it necessary to issue to or against that witness, and the Court may issue any process it considers reasonable and proper.

7. Application of rules to British Tribunals

This Part applies, so far as may be, to applications under the Evidence by Commission Act, 1859 for the purpose of giving effect to a commission or letter of request from a Commonwealth Tribunal out of the jurisdiction, but in those cases the duly certified depositions and letter of request, if any, shall be returned to the authority which forwarded the commission or letter of request, unless they are returned under the provisions of rule 9.

[22 Vict., c. 20.]

8. Application to court by Attorney-General

Where a commission rogatoire or letter of request mentioned in rule 9 is transmitted to the High Court by the Cabinet Secretary with an intimation that it is desirable that effect should be given to it without requiring an application to be made to the Court by the agents in Kenya of any of the parties to the action or matter in the foreign country, the Registrar of the High Court shall transmit it to the Attorney-General, who may thereupon make such applications and take such steps as may be necessary to give effect to the commission rogatoire or letter of request in accordance with rules 1 to 6.

9. Return of commission direct to Court or Foreign Tribunal

Where a commission rogatoire or letter of request has been received from a Foreign Court or Tribunal direct, without having been transmitted through the Cabinet Secretary, then, notwithstanding anything contained in rule 4, the Registrar may, after the commission rogatoire or letter of request has been complied with, if in his opinion the course would tend to avoid undue inconvenience and delay, return the depositions duly certified direct to the Court or Foreign Tribunal from which the commission rogatoire or letter of request emanated.

SCHEDULE I TO PART VII

ORDER UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856

In the High Court of Kenya

(a) Registrar.

In the matter of the Foreign Tribunals Evedence Act, 1856 (19 and 20 Vict., c. 113).

And in the matter of the Foreign Tribunals Evidence Act, 1856 (19 and 20 Vict., c. 113).

And in the matter of a Civil [or Commercial] [or Criminal] proceeding now pending before (b) instituted as follows—

Between plaintiff

and

..... Defendant.

Upon reading the affidavit (if any) of filed the day of 20, and the certificate of (c) that proceedings are pending in the (b) In (d) and that such court is desirous of obtaining the testimony of (e),

It is ordered that the said witnesses do attend before (f), who is hereby appointed examiner herein, at (g) on the day of, 20 at o'clock, or such other day and time as the said examiner may appoint, and do

[Subsidiary]

there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce (h).

And, it is further ordered that the said examiner do take down in writing the evidence of the said witness, or witnesses, according to the rules and practice of the High Court of Kenya pertaining to the examination and cross-examination of witnesses (or as may be otherwise directed); and do cause each and every such witness to sign his or her depositions in his, the said examiner's, presence; and do sign the depositions taken in pursuance of this order and, when so completed, do transmit the same, together with this order, to the Registrar, the High Court of Kenya, Nairobi, for transmission to the President of the said Tribunal desiring the evidence of such witness or witnesses.

Dated this day of, 20

- (a) Name of Registrar;
- (b) Description of foreign Tribunal;
- (c) Name and description of the Ambassador Cabinet Secretary, Diplomatic Agent, Consul of the foreign country;
- (d) Name of foreign country;
- (e) Names of witnesses;
- (f) Name and address of the examiner;
- (g) Place appointed for examination;
- (h) Description of documents, if any, required to be produced.

SCHEDULE II TO PART VII

CERTIFICATE UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856

I,, Registrar of the High Court of Kenya, hereby certify that the documents annexed hereto are (1) the original order of the High Court of Kenya dated the day of, 20, made in the matter of, pending in the at in the of, directing the examination of certain witnesses to be taken before, and (2) the examination and depositions taken by the said pursuant to the said order, and duly signed and completed by him on the day of, 20

Dated this day of, 20

SCHEDULE III TO PART VII

[LN 459/1957.]

	Sh.	cts.
EXAMINER'S FEES		
1. On taking evidence on commission—		
(a) for giving an appointment to take an examination	30	00
(b) for each hour or par of an hour occupied in taking the evidence	40	00

Note.— The party prosecuting the order, or his advocate, shall also pay interpretation and clerical fees, all reasonable travelling and other expenses, both of the examiner, including charges for the room (other than the examiner's chambers) where the examination is taken.

COURT FEES

2. On a request made by a foreign court or tribunal for taking evidence within Kenya—

(a) on registering letter of request to take evidence	15	00
(b) on application under rule 1	15	00
(c) on order thereon	10	00
(d) other fees the same as those payable under rules for the time being in force relating to fees payable in High Court.	10	00

No court fee shall be charged in respect of service when a request is received by the Registrar in a civil or commercial matter pending before a court or tribunal in a foreign country with which a convention in that behalf has been or shall be made and applied to Kenya.

The particulars of charges of the officer or agent employed to effect service shall be submitted to the Registrar of the High Court, who shall certify the amount properly payable in respect thereof.

PART VIII – ATTACHMENT AND SALE OF PROPERTY

[Revoked by LN 69/1981, LN 71/1976.]

PART IX – COURT FEES

[LN 122/1975, LN 139/1980, LN 97/1981, LN 69/1982, LN 75/1985, LN 275/1990, r. 2, LN 294/1995, r. 2.]

1. The fees specified in the Schedule to this Part shall be leviable by the High Court and courts subordinate thereto in respect of the matters and proceedings mentioned therein, and no portion of any fee which has been properly levied in accordance with the Schedule to this Part upon the filing of a suit or other proceeding shall be refunded because a lesser amount was adjudged to be payable than was assessed as being involved in the suit or proceeding, or by reason of any settlement or abandonment of any suit or proceeding.

2. (1) In any case where a court fee is assessed and levied or sought to be levied by a registry of the High Court or of a subordinate court by virtue of these Rules the person required to pay the fee may, if he wishes to contend that such fee has been wrongly assessed or that no fee is leviable, pay the fee so assessed and within seven days thereafter file in that registry a protest in writing against the fee setting out the grounds upon which he relies in his contention; and upon receipt of the protest, the registry shall forthwith consider it and inform the person by whom the fee was paid in writing of the result of such consideration.
- (2) If as a result of its consideration the registry is of the opinion that the fee paid was in excess of the lawful fee or that no fee was leviable it shall forthwith refund to the person by whom it was paid the amount of the excess or of the fee as the case may be.
- (3) If the person by whom the fee was paid is not satisfied with the decision of the registry upon his protest he may require in writing that the registry thereupon refer the matter to a judge or resident magistrate (as the case may be) in chambers for determination and the order to be made in writing on that reference shall be final.
- (4) A fee of Sh. 100 shall be payable on a written protest which fee will be returnable to the person by whom it was paid in the event of the protest succeeding in whole or in part.

SCHEDULE TO PART IX

[LN 294 of 1995, r. 2.]

[Subsidiary]

COURT FEES

SECTION I — GENERAL

[LN 38 of 1974]

	Sh.	cts.
1. Sale of forms—		
(a) Summons for directions (per form)	10	00
(b) Other forms		
per 1 form	5	00
per 50 forms	160	00
per 100 forms	320	00
2. For taking particulars of 100 plaint		00
3. On filing a plaint or counterclaim (save as may be otherwise provided for) where the subject matter involved—		
(a) does not exceed Sh. 100	50	00
(b) exceeds Sh. 100, a fee of Sh. 50 together with an additional fee of Sh. 20 for every Sh. 100 or part thereof up to Sh. 2,000 and then an additional fee of Sh.10 for every additional Sh. 100 or part thereof up to Sh. 5,000 and thereafter an additional fee of Sh. 5 for every additional Sh. 100 or part thereof, the whole fee not to exceed Sh. 70,000 subject in the high Court to a minimum fee of	1,500	00
4. On filing an election petition of any nature —		
(a) in the High Court	25,000	00
(b) in a subordinate court	10,000	00
5. A hearing fee for every day or part of a day after the first two days during which the case is being heard before a judge or magistrate in court: to be paid as a further additional fee on the plaint or petition (or, if the Judge or magistrate so directs, on the counterclaim)—		
(a) in the High Court	2,000	00
(b) in the Resident Magistrate's Court	1,250	00
(c) in all other courts	200	00
6. On submission of a special case—		

Judicature

[Subsidiary]

(a) where the amount involved cannot be estimated 2,000 00

(b) where the amount involved can be estimated — a fee as on a plaint in accordance with item 3. 00

Note.—If the subject matter has a pecuniary value, *ad valorem* fees are chargeable; if not, the fees is Sh. 1,500. If the subject matter has both a pecuniary and a non-pecuniary value, *ad valorem* fees on the pecuniary value only are chargeable.

7. On a reference to the High Court other than by way of appeal or review—

(a) if in chambers 1,000 00

(b) if in court 2,000 00

7A. For listing of a matter 150 00

“for mention” only unless the judge or magistrate otherwise directs

8. In a suit where there is a claim for damages of an unspecified amount or where the amount involved in the suit cannot be estimated at a money value and no special fee is prescribed for that class of suit 1,500 00

Provided that—

(i) where, and as soon as, the amount of damages or the amount otherwise involved in the suit is ascertained by judgment of the court or by agreement of the parties or otherwise, an *ad valorem* fee on the amount so ascertained shall be calculated in accordance with the scale in item 3 and, if that fee exceeds Sh. 1,500 the excess shall immediately become payable;

(ii) where the Court has delivered a judgment which does not specifically state the amount of money involved in the judgment

[Subsidiary]

and parties cannot agree upon that amount, any party to the suit or the Registrar may apply to the court to assess the amount for the purpose of levying a fee under this Schedule and the court may assess the amount accordingly.

9. (a) On filing a plaint in a An *ad valorem* fee of 15% on the yearly rental of the suit for arrears of rent by a property in addition to the fee leviable for recovery of landlord against a tenant rent under item 3 where an order for the subject to a minimum of Sh. 1,500 and possession of the property maximum of Sh. 70,000. occupied is sought from the tenant. }

(b) Where no rent is claimed but an order for possession only is claimed. } An *ad valorem* fee of 15% on the yearly rental value of the property, subject to a minimum of Sh. 1,500 to a maximum of Sh.70,000.

10. On an interlocutory application, including the filing of one or more affidavits in support 250 00

Note.—Notices of motion are generally interlocutory but a notice of motion under Order XXXV, rule 1 is an application for final judgment and the fee is as prescribed in item 10A.

10A. For an application for 1,000 summary judgment under Order XXXV in the High Court 00

In a subordinate court 250 00

11. On an application in the High Court for judgment under Order IXA which fee includes any fee on the decree and on any certificate of costs 500 00

12. On the filing of an application for judicial review for an order of *mandamus* prohibition *certiorari* or any application 6,000 00

for a constitutional reference

Provided however that on filing of an application for enforcement of a judicial order or decree against a Government department, a fee of Sh. 1,500 shall be charged, and provided further that on filing an application for *habeas corpus*, a fee of Sh. 1,500 shall be charged.

13. (a) On a summons, motion, application or demand taken out, made or filed (not particularly charged and subject to item 10)	250	00
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Provided that no fee shall be chargeable on an application for execution of a decree where the amount sought to be recovered, including the costs of the application, is less than Sh. 300.

(b) On a decree or order (not particularly charged and subject to item 10)	150	00
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(c) On an originating summons or originating motion, if the value of the subject matter can be determined, *ad valorem* fee under item 3(b) shall be charged; but if the value of the subject matter cannot be determined, a minimum fee of Sh. 1,500 shall be charged.

(d) On application for stay of execution of a decree or order— in the High Court	1,000	00
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in a subordinate court	250	00
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14. (1) On an application for the adjournment of a hearing of a suit whether

Judicature

[Subsidiary]

or not by consent in the High Court—		
(a) if made at the hearing or at any time after confirmation of the suit in the call over	1,000	00
(b) if made at he call over at request of the party making it	500	00
(c) on an application for adjournment of an interlocutory summons, notice of a motion or any application made at the hearing thereof.	400	00
(2) On an application for adjournment in a subordinate court of a resident magistrate's, principal magistrate's or a chief magistrate's court—		
(a) if made at the hearing of a suit or within one month thereof	400	00
(b) on an application for adjournment of an interlocutory application if made at the hearing thereof	200	00
(3) In any other court on an application—		
(a) for adjournment of a suit at the hearing thereof	200	00
(b) for adjournment of an interlocutory application at the hearing thereof	100	00
Provided that the Chief Justice, the presiding judge or magistrate or an officer designated by the Chief Justice may, on application in that behalf for good cause shown, remit all or part of such fee.		
15. On the taking or passing of an account by an officer of the Court otherwise than in court unless the Judge or magistrate otherwise orders, minimum fee	400	00

Judicature

[Subsidiary]

And in addition for every 200 00
 hour or part thereof after
 the first hour spent in
 taking or passing the
 account

Note.—This fee should
 not be charged until the
 account has actually been
 taken.

16. For service of a document on a party witness, assessor or other person—

(a) within two miles of the 150 00
 Court issuing it

(b) beyond that distance 300 00
 up to ten miles

(c) over ten miles, in 400 00
 addition to the cost of
 transport

(d) for service of a 200 00
 document within Kenya,
 at the request of a
 court or partly outside
 Kenya, in addition to any
 expenses incurred by
 the person serving the
 document

Provided that no court
 fee shall be charged in
 respect of service when
 a request therefor is
 received by the Registrar
 in relation to a civil matter
 pending before a court
 or tribunal in a foreign
 country with which a
 convention in that behalf
 has been made and
 applied to Kenya and is
 subsisting. The particulars
 of charges of the officer or
 agent employed to effect
 service shall be submitted
 to the Registrar who shall
 certify the amount properly
 payable in respect thereof.

16A. Issuing summons 50 00
 to enter appearance or
 any other summons not
 provided for ...

17. (a) On the issue of 50 00
 witness summons or

[Subsidiary]

notice (not particularly charged).		
(b) On the issue of every order for execution such as a warrant of attachment or of sale of property or a warrant of arrest and of attachment of salary	50	00
18. For attending to view, in addition to all other expenses incurred, unless otherwise ordered	400	00
19. On filing a bill of costs for taxation, drawn as between advocate and client or party and party, for every ten folios or part thereof	250	00
20. On a deposit of a document or bundle of documents	300	00
21. On taking an affidavit or declaration (other than by a court process server deposing as to his service of a document)	50	
22. For every exhibit an affidavit or declaration	10	00
23. For attending elsewhere than at the offices of the Court to administer an oath or affirmation or to take a declaration in addition to the ordinary fee thereon	300	00
Provided that the distance travelled exceeds two miles such further fees as will cover the cost of the entire journey shall be charged.		
24. (a) On balance of estate of deceased person paid into court.	10 per cent on any amount or value up to and including £100 and 5 percent above, in no case exceeding a total fee of Sh. 3,000.	
(b) For superintending or taking an inventory.		

(c) On deposit of any money or valuables in court.		
(d) On money lodged in court otherwise than within the framework of an existing suit.		
25. On payment of money into court in an action.	10 per cent on the payment not exceeding a maximum fee of KSh. 1,500	
26. (a) On filing in the High Court consent of judgment	150	00
(b) On filing in any court other than the High Court an application for entering <i>ex parte</i> and/or consent to judgment not otherwise provided for	150	00
27. (a) On filing in the High Court or the Resident Magistrate's Court any other document for the filing where of no other special fees is prescribed	75	00
(b) On filing in any court other than High Court or the Resident Magistrate's Court any other document for the filing whereof no other special fee is prescribed under this schedule	25	00
Provided that no fee is payable on the filing of a letter of settlement save where herein otherwise provided.		
28. For certifying or attesting a signature or seal on a document	75	00
29. For attendance of an officer of the Court at a sale for each hour or part of an hour	300	00
30. On reference to the archives—		00
(a) in a district Magistrate's Court	25	00

Judicature

[Subsidiary]

(b) in any other court	50	00
(c) in the Probate Registry, per calendar year of search	50	00
31. For making a photocopy of any document in the archives: per foolscap page	10	00
32. For making an uncertified copy of any document in the archives otherwise than by photocopy process: per foolscap page .	30	00
33. For certifying a copy of any documents in the archives or prepared outside the court per foolscap page or a part thereof.	30	00
34. All certificates not otherwise provided for	100	00
35. For official translation tendered by a party—		
(a) for the first folio of 100 words or part thereof	200	00
(b) for each subsequent folio or part thereof	100	00
36. for certifying a translation of any document—		
(a) for the first folio of 100 words or part thereof	100	00
(b) for each subsequent folio or part thereof	50	00
37. For every communication with a court or tribunal outside Kenya	250	00
Provided that no communication fee shall be chargeable for sending or returning a summons decree or notice to any court or tribunal outside Kenya where the fee		

prescribed in item 16(d)
has been charged.

38. For every 100

communication with
another court or tribunal
within Kenya, including
communications relating
to the transfer of cases
from one registry to
another (other than a
reminder).....

39. On the filing of a 50

recognisance, bail bond or
surety

40. (a) For taking a 150

shorthand note of
evidence in court or
chambers there shall
be payable by the
party requesting the
note (unless the Court
otherwise directs) a
fee per hour or part
thereof

(b) For an uncertified
copy of a transcript of the
shorthand note—

(i) for the first copy per 30

folio of 100 words or part
thereof

(ii) for each additional 10

copy per folio or part
thereof

41. (1) For the execution
of a warrant or service of
process issuing from a
civil court by the police,
in addition to the ordinary
court fees chargeable
under any other item—

(a) for service in ordinary
course of police patrol
duty when no special
journey is made—no fee
other than the ordinary
service fees under item
16;

(b) for service by a police
officer when a special
journey is made at the
request of the party

[Subsidiary]

on whose behalf the document is to be served or those of the advocate representing that party—
(i) when the distance the officer has to travel does not exceed two miles from the police station where he is stationed. 75

(ii) when the distance exceeds two miles at the rate laid down from time to time for Government officers using their own motor vehicles in the public service.

(2) For execution of civil warrants of arrest if that duty necessitates the absence of a police officer from his station for a longer period than six hours: for the first six hours and for each day or part of a day thereafter—

(a) for an officer of or above the rank of inspector..... 200

(b) for any other officer 100

(3) In addition to the Court fees already prescribed in this paragraph, there shall be paid by the party requiring the services of a police officer, any necessary rail fares and mileage allowances at the rate laid down from time to time for Government officers using their own motor vehicles in the public service when the vehicle is used, which fares or allowances shall be paid to the police officer effecting the service and there shall be paid by the party to that police officer subsistence allowance to be determined by the Court.

42. On the estates of wards of court, minors or lunatics managed by the Court or trustee appointed

by the Court, the charge for management per calendar year or part thereof shall be—

(a) if the capital value of the estates does not exceed Sh. 1,000	150	00
if the capital value of the estate exceeds Sh. 1,000 but does not exceed Sh. 5,000	750	00
if the capital value of the estate exceeds Sh. 5,000 a fee calculated on the capital value of the estate at 5 per cent.		
(b) and, in every case, on the net annual income of the estate.....	10%	

Note.—The above fees shall not apply to the Public Trustee.

43. On a protest against a fee as assessed in the registry (returnable if the protest is upheld)	1,500	00
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SECTION II – COMPANY MATTERS

	<i>Sh.</i>	<i>cts.</i>
1. On presenting in a petition—		
(a) to confirm an alteration in a memorandum	1,500	00
(b) to confirm the substitution of a memorandum and articles for a deed of settlement	1,500	00
(c) to sanction a re-organisation of capital	1,500	00
(d) to confirm a reduction of capital	1,500	00
(e) to sanction a compromise or scheme of arrangement	1,500	00
(f) to restore a name to the register of companies	750	00
(g) of such a nature as is not herein provided for	1,500	00

Provided that when a petition is presented under more than one of the above items, a fee of Sh. 300 only shall be paid in respect of each additional item after the first.

[Subsidiary]

2. On an application for extension of time, for registration or for rectification of a register or mortgages, or for the registration of an allotment of shares	750	00
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SECTION III – APPEALS AND APPLICATIONS FOR REVIEW OF JUDGMENT

1. Save as otherwise provided, on appeal from any court or tribunal within Kenya to any other court or tribunal within Kenya (other than the Court of Appeal)—

(a) on filing a memorandum of appeal from any court, tribunal or other body from which an appeal lies to the High Court (save as otherwise provided)	1,500	00
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(aa) on filing an appeal from the Business Premises Tribunal or Rent Restriction Tribunal, minimum	2,500	00
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Provided if the yearly rental value can be ascertained the scale laid down in item 3 of Section I shall be applicable subject to the said minimum.

(b) on appeals from orders in interlocutory matters and motions	750	00
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(c) on filing security for costs	200	00
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2. On filing an application for review of judgment, half the fee payable on the original plaint, but not to exceed Sh. 1,500.

SECTION IV – MATRIMONIAL MATTERS

1. On filing a petition (other than for a protection order)—

(a) to the High Court	1,500	00
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(b) to a subordinate court.....	500	00
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2. On filing a petition for a protection order: a fee calculated under Section I upon the estimated value of the property to be protected.

3. Motions and chamber applications—

(a) filing fee	250	00
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Judicature

[Subsidiary]

(b) fee on the order	150	00
(c) for services: as under Section I.		
4. On an application for a Registrar's certificate of compliance	200	00
5. On a decree <i>nisi</i>	150	00
6. On an application for a decree absolute	200	00
7. On an order making a decree absolute	150	00
8. On a Registrar's certificate that a decree has been made absolute	75	00
9. Other fees: as prescribed in this Schedule.		

SECTION V – REGISTRATION OF JUDGMENTS UNDER THE FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

1. On filing an application and supporting affidavit	200	00
2. On filing any other affidavit	50	00
3. On issuing summons for leave to register	200	00
4. On any other summons	100	00
5. On the order of registration	150	00
6. Other fees: as prescribed in this Schedule.		

SECTION VI – CRIMINAL AND QUASI-CRIMINAL MATTERS

1. (a) On every summons or warrant issued at the instance of a private prosecutor (unless directed by court to be issued free of charge)	1,000	0000
(b) service fee: as item in 16 in Section I.		
2. On hearing a private prosecution (unless otherwise directed	1,500	00

Judicature

[Subsidiary]

by court) for the first day		
For each subsequent day or part thereof	1,000	00
3. On a warrant of commitment	50	00
4. On an application to the High Court for revision (per person)	300	00
5. On filing a petition of appeal—		
(a) to the High Court	500	00
(b) to a subordinate court	150	00
Provided that the Judge or magistrate before whom the appeal is heard may waive these fees at his discretion.		
6. On any other application to the Court or to a judge in chambers (per person)	300	00

PART X – FEES IN CRIMINAL APPEALS

[R.E. 1948, Vol. V.]

1. (1) Where a defendant in a criminal case tried by a subordinate court desires to appeal to the High Court against the order or sentence of the Court and alleges that he is unable to pay the prescribed fees in connection with the appeal by reason of his poverty, he shall so inform the Court whose order or sentence is to be appealed against, and the Court shall thereupon inquire into the means of the defendant.
- (2) The Court, where it is satisfied as to the poverty of the defendant, shall forward a report to that effect to the High Court, and shall make a recommendation in the report as to what proportion, if any, of the prescribed fees should be paid by the defendant together with a statement of the reasons for its recommendation.
- (3) Where a defendant so desiring to appeal is in gaol, the officer in charge of the gaol shall make the inquiry, report and recommendation provided for in this rule, and the High Court may receive that report and recommendation in lieu of a report and recommendation by the Court whose order or sentence is to be appealed against.
2. The High Court may—
 - (a) accept and give effect to a report or recommendation made under rule 1; or
 - (b) vary or refuse to accept the report or recommendation; or
 - (c) direct a court or gaoler to make a further inquiry, report and recommendation.
3. Where the High Court in respect of an appeal to which this Part refers—
 - (a) decides to reserve its decision as to the exercise of its powers under rule 2 in regard to a report or recommendation; or
 - (b) has been notified that an inquiry under rule 1 is being conducted but has not yet received the report and recommendation relating to the inquiry, the Court, prior to the exercise of those powers or to the receipt of the report and recommendation, as the case may be, may proceed to hear and determine the appeal.

PART XI – FEES OF COURT IN PROCEEDINGS FOR
THE ACQUISITION OF LAND FOR PUBLIC PURPOSES

The amount of court fees payable on a memorandum of appeal against an order relating to compensation under any law for the time being in force regulating the compulsory acquisition of land for public purposes shall be computed according to the *ad valorem* scale at present in force in civil cases upon the difference between the amount awarded and the amount claimed by the appellant.

[R.E. 1948 Vol. V.]

PART XII – COSTS UNDER THE MINING ACT

1. When an order has been made by the Commissioner of Mines under section 66 of the Mining Act for the payment of the costs in a dispute adjudicated upon under the provisions of section 61 of that Act, and an advocate has been employed, costs in addition to court fees may be allowed to the successful party according to the following scale—

- (a) The remuneration of advocates for and in connection with conducting cases on behalf of clients in respect of inquiries into disputes before the Commissioner (Mines and Geology) shall be such sum per diem not less than Sh. 20 and not exceeding Sh. 100 as the Commissioner shall in each case allow, and in addition to that remuneration the Commissioner (Mines and Geology) may allow an advocate his reasonable travelling expenses in connection with the case;
- (b) the scale of allowances to witnesses shall apply to witnesses in proceedings under the Mining Act (Cap. 306), and shall also apply to a party who is a material and necessary witness.

[R.E. 1948 Vol. V, G.N. 1572/1955.]

2. (1) The taxing officer shall not be absolutely bound by the above scale, but shall allow such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence.
 - (2) The loss of time of a witness shall be taken into consideration.
 - (3) A party who is a material and necessary witness may be allowed for his loss of time and expenses as if a stranger to the suit.
 - (4) When taxing costs, witnesses' expenses shall be supported by a statement signed by the advocate and filed with the bill of costs stating the place of abode and the condition, quality, occupation or rank in life of the witnesses or intended witnesses charged for, the distance they have had to travel, the mode of travel, and if by rail the class in which the witnesses travelled for the purpose of attending the trial, also whether to the knowledge or belief of the deponents they attended as the witnesses in any other cause or came upon any other business, also that they were material and necessary witnesses for the party on the trial of the cause, and the notes of their evidence shall be produced on taxation.
 - (5) The allowances in respect of fees to any accountants, merchants, engineers, actuaries and scientific persons to whom a question is referred shall, save where the Court or judge otherwise orders, be regulated by the taxing officer, subject to review by the Court.

PART XIII – COST OF IDENTIFICATION BY THE FINGER PRINT SYSTEM

1. In all court proceedings, criminal as well as civil, in which the evidence of a representative of the central finger print bureau is required by any party to the proceedings other than the Government for the purpose of identifying or distinguishing persons by the finger print system, the fees and charges set out in the Schedule shall be allowed as costs in the cause.

[R.E. 1948, Vol. V.]

2. All fees and charges paid to or recovered by the central finger print bureau under this Part shall be paid into the Consolidated Fund.

[Subsidiary]

SCHEDULE TO PART XIII

	Sh.	cts.
1. Upon an examination and report	10	00
2. For photographing first copy	5	00
3. Additional copies, each	1	00
4. For enlarging, per copy	2	00
5. For drawing points of comparison	20	50
6. Witness fees, attendance in court to give expert evidence, per day, or part thereof	40	00
7. Such travelling expenses and allowances as have reasonably been incurred.		

PART XIV – CLEARING OFFICE

1. Officer before whom certificate should be produced

The proper officer before whom certificates shall, in pursuance of Article 1(iv) of the Treaty of Peace Order in Council 1919, be produced for registration shall be the Registrar or deputy Registrar of the High Court.

[R.E. 1948, Vol. V.]

2. Duplicate certificate

A duplicate of each certificate produced for registration shall be supplied by the clearing office, and the High Court shall cause the duplicate to be served upon the debtor.

3. Clearing office to supply facts

The clearing office shall supply to the proper officer particulars specifying the place of residence of the debtor either by inserting those particulars in the certificate or otherwise.

4. Fees

The fee payable upon the production of a certificate for registration shall be Sh. 20, and the scale of fees usually payable in the High Court shall apply to all subsequent acts, applications or proceedings.

PART XV – MAINTENANCE ORDERS ENFORCEMENT

1. Copies of orders, to whom to be sent

The copy of an order made by a court outside Kenya and received in Kenya under section 3 of the Maintenance Orders Enforcement Act (Cap. 154) (in this Part referred to as "the Act") shall—

- (a) if the order was made by a court of superior jurisdiction, be sent to the Registrar of the High Court, who shall enter the order in a register to be kept for that purpose at Nairobi, and the copy so received shall be filed in the Registry of the High Court at Nairobi;

- (b) if the order was not made by a court of superior jurisdiction, be sent to a magistrate holding a subordinate court of the first class having jurisdiction within the area in which the defendant is alleged to be living.

[R.E. 1948. Vol. V.]

2. Copies of provisional orders, to whom to be sent

The copy of a provisional order made by a court outside Kenya and received in Kenya under section 6 of the Act shall be sent to a subordinate court of the first class in the manner provided by rule 1, with the accompanying documents and a requisition for the issue of a summons.

3. Registration of order

The Court to whom an order is sent in accordance with rule 1 or 2 shall enter it in his civil register on the date on which he receives it in the same manner as though the proceedings had been had and the order had been made at his court, but each entry shall be headed as follows—

"In the matter of the Maintenance Orders Enforcement Act."

4. Notice of confirmation of order or otherwise

When an order provisionally made outside Kenya has been confirmed with or without modification under section 6 of the Act by a subordinate court of the first class, or the Court has decided not to confirm it, the Court shall send notice thereof to the Court from which it has issued and also to the President.

5. Confirmation of provisional order; direction for payments

When an order has been registered under section 3 of the Act or a provisional order has been confirmed under section 6 of the Act, the Court shall unless satisfied that it is undesirable to do so, direct that all payments due thereunder shall be made to such person as it may specify for the purpose.

6. Payments

(1) The person through whom the payments are directed to be made shall collect the moneys due under the order and may take proceedings in his own name for enforcing payment, and shall send the moneys when so collected to the Crown Agents for transmission to the person to whom they are due.

(2) The person through whom payments are directed to be made may retain out of moneys which come into his hands the amount of all disbursements necessarily made and a further sum not exceeding 1 percent in respect of his charges.

7. Variation or rescission of order

(1) An application for the variation or rescission of a confirmed order shall be made with notice to the person through whom payments are directed to be made; and the applicant shall cause a copy of any order varying or rescinding a confirmed order to be served upon that person.

(2) The fees and costs payable upon the lodging of an application under section 6(6) of the Act shall be the fees and costs payable in respect of interlocutory applications in the High Court.

8. Appeals

(1) An appeal against an order in confirmation lodged under section 6(7) of the Act shall be presented to the High Court and shall be heard in the same manner as a civil appeal from a subordinate court under the Civil Procedure Act (Cap. 21).

(2) Where a person through whom payments are directed to be made has been nominated, the appellant shall cause notice of the appeal and of any order made by the High Court in the course of the hearing of the appeal to be served upon that person.

[Subsidiary]

(3) The fee payable upon the appeal shall be Sh. 20.

10. Inspection and copies of registers

(1) The register to be kept under rule 1, and the entries to be made in the register of a subordinate court of the first class under rule 3, shall be open to inspection on the payment of a fee of Sh. 2,50.

(2) Copies of any orders registered in accordance with these Rules shall be supplied upon payment of the usual copying fees.

11. Steps to be taken by Registrar

Where an order is registered in the High Court under the Act, the Registrar of the High Court shall forward all papers lodged with him, other than those required for registration, to the Attorney-General, who may cause any necessary application to be made, and steps to be taken, to enforce the order.

12. Legal representative of party

The Attorney-General or the person acting for him under the rule 11 shall be deemed to be the legal representative of the party in whose favour the order was made or given unless and until an advocate is appointed in his place.

PART XVI – SUBORDINATE COURTS PRACTICE AND PROCEDURE

A subordinate court holding a preliminary inquiry under Part VIII of the Criminal Procedure Code (Cap. 75) shall, after compliance with the provisions of section 233 of the Criminal Procedure Code as to the manner of taking depositions, subscribe on the record, at the end of the depositions taken before the Court on each day during which the preliminary inquiry continues, a certificate in the form in the Schedule hereto, or a form to similar effect, with variations as the circumstances of the case require.

[R.E. 1948, Vol. V.]

SCHEDULE TO PART XVI

I certify that the above depositions of C.D. and E.F. were taken and sworn before me in the presence of the accused persons A.B. and that A.B. or his advocate had full opportunity of cross-examining the several witnesses,

at on this day, 20

.....

G.H., Magistrate
