



LAWS OF KENYA



ADVOCATES ACT

CHAPTER 16

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CHAPTER 16
ADVOCATES ACT

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CHAPTER 16

ADVOCATES ACT

[Date of assent: 13th December, 1989.]

[Date of commencement: Section 32 — 1st January, 2000.]

[Rest: 15th December, 1989.]

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

[Act No. 18 of 1989, Act No. 7 of 1990, Act No. 21 of 1990, Act No. 12 of 1995, Act No. 9 of 2000, Act No. 2 of 2002, Act No. 7 of 2007, Act No. 1 of 2008, Act No. 6 of 2009, Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Advocates Act.

2. Interpretation

In this Act, unless the context otherwise requires—

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

“**annual licence**” *deleted by Act No. 9 of 2000, s. 56;*

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

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

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

“**Court**” means the High Court;

“**Disciplinary Tribunal**” means the Disciplinary Tribunal established under section 57;

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

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

“**Registrar**” means the Registrar of the Court;

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

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

“**the Council of Legal Education**” means the Council of Legal Education established by section 3 of the Council of Legal Education Act, 1995 (Cap. 16A);

“**the Council of the Society**” means the Council of the Society elected under section 13 of the Law Society of Kenya Act (Cap. 18);

“**the Society**” means the Law Society of Kenya established under the Law Society of Kenya Act (Cap. 18);

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

[Act No. 7 of 1990, Sch., Sch., Act No. 12 of 1995, s. 21, Act No. 12 of 2012, Sch.]

PART II

3. *Repealed by of Act No. 12 of 1995, s. 21.*

4. *Repealed by of Act No. 12 of 1995, s. 21.*

5. *Repealed by of Act No. 12 of 1995, s. 21.*

6. *Repealed by of Act No. 12 of 1995, s. 21.*

7. *Repealed by of Act No. 12 of 1995, s. 21.*

8. *Repealed by of Act No. 12 of 1995, s. 21.*

PART III – PROVISIONS RELATING TO THE RIGHT TO PRACTISE AS AN ADVOCATE

9. Qualifications for practising as an advocate

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

- (a) he has been admitted as an advocate; and
- (b) his name is for the time being on the Roll; and
- (c) he has in force a practising certificate;
- (d) *deleted by Act No. 9 of 2000, s. 57*

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

[Act No. 7 of 1990, Sch., Act No. 9 of 2000, s. 57.]

10. Certain officers entitled to act as advocates

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

- (a) an officer in the office of the Attorney-General or the office of the Director of Public Prosecutions;
- (b) the Principal Registrar of Titles and any Registrar of Titles; or
- (c) any person holding office in a local authority established under the Local Government Act, (Cap. 265).

- (d) such other person, being a public officer or an officer in a public corporation, as the Attorney-General may, by notice in the *Gazette*, specify:

Provided that the officers referred to in this section shall not be entitled to charge fees for so acting.

[Act No. 7 of 2007, Sch., Act No. 12 of 2012, Sch.]

11. Foreign advocates

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

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

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

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

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

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

PART IV – ADMISSION AS ADVOCATE

12. Qualification for admission as advocate

Subject to this Act, no person shall be admitted as an advocate unless—

- (a) he is a citizen of Kenya, Rwanda, Burundi, Uganda or Tanzania; and
- (b) he is duly qualified in accordance with section 13.

[Act No. 2 of 2002, Sch., Act No. 12 of 2012, Sch.]

13. Professional and academic qualifications

(1) A person shall be duly qualified if—

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

and thereafter both—

- (i) he has attended as a pupil and received from an advocate of such class as may be prescribed, instruction in the proper business, practice and employment of an advocate, and has attended such course or tuition as may be prescribed for a period which in the aggregate including such instruction, does not exceed eighteen months; and
- (ii) he has passed such examinations as the Council of Legal Education may prescribe; or
- (c) he possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education;
- (d) he is an Advocate for the time being of the High Court of Uganda, the High Court of Rwanda, the High Court of Burundi or the High Court of Tanzania;
- (e) he is for the time being admitted as an advocate of the superior court of a country within the Commonwealth and—
 - (i) has practised as such in that country for a period of not less than five years; and
 - (ii) is a member in good standing of the relevant professional body in that country:

Provided that the Council may, in addition, require that a person to whom this paragraph applies undergo such training, for a period not exceeding three months, as the Council may prescribe for the purpose of adapting to the practice of law in Kenya.

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

[Act No. 2 of 2002, Sch., Sch., Act No. 7 of 2007, Sch., Act No. 12 of 2012, Sch.]

14. Attorney-General and the Director of Public Prosecutions may take pupils

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

[Act No. 12 of 2012, Sch.]

15. Admission as an advocate

(1) Every person who is duly qualified in accordance with this Part may apply for admission as an advocate, and the application shall be made by petition in the prescribed form, verified by oath or statutory declaration addressed to the Chief Justice, and filed with the Registrar together with a notice intimating that the petition has been so filed together with such other documents as may be prescribed and the applicant shall also deliver a copy of the petition and of any document delivered therewith to the secretary of the Council of Legal Education and to the secretary of the Society.

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

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

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

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

16. Custody of Roll

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

PART V – SENIOR COUNSEL**17. Senior Counsel**

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

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

- (a) he is a duly enrolled advocate of the High Court of not less than fifteen years' standing; or
- (b) being a person to whom section 10 applies, he holds, and has held for a continuous period of not less than fifteen years, one or other of the qualifications specified in section 13(1).

(3) The grant shall be made not later than sixty days upon receipt of a list of names submitted by the Committee on Senior Counsel through the Chief Justice.

[Act No. 6 of 2009, Sch.]

18. Roll of Senior Counsel

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

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

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

(4) The Chief Justice shall cause to be published in the *Gazette* the names of the advocates upon whom the rank of Senior Counsel is conferred.

[Act No. 6 of 2009, Sch.]

19. Application of Part XI

In the application of Part XI to Senior Counsel—

- (a) all references therein to the Disciplinary Committee shall be construed as references to a Committee of three, to be appointed in each case by the Chief Justice, consisting of the Attorney-General or the Solicitor-General and two Senior Counsel and the Attorney-General or Solicitor-General shall be chairman of the Committee;
- (b) the secretary to the Disciplinary Committee shall perform the duties of secretary to any such committee; and
- (c) subsections (2) and (3) of section 57 shall not have effect.

PART VI – PRECEDENCE**20. Precedence**

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

[Act No. 12 of 2012, Sch.]

PART VII – PRACTISING CERTIFICATE**21. Registrar to issue practising certificates**

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

[Act No. 7 of 1990, Sch., Act No. 9 of 2000, ss. 58, 59.]

22. Application for and issue of practising certificate

- (1) Application for a practising certificate shall be made to the Registrar—
- (a) by delivering to him an application in duplicate, signed by the applicant specifying his name and place of business, and the date of his admission as an advocate;
 - (b) by producing evidence satisfactory to the Registrar that the applicant has paid to the Society the fee prescribed for a practising certificate and the annual subscriptions payable for the time being to the Society and to the Advocates Benevolent Association; and
 - (c) by producing a written approval signed by the Chairman of the Society stating that there is no objection to the grant of the certificate.

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

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

[Act No. 7 of 2007, Sch.]

23. Issue of practising certificate to confer membership of Society

(1) Every advocate to whom a practising certificate is issued under this Part shall thereupon and without payment of any further fee, subscription, election, admission or appointment, and notwithstanding anything contained in the Law Society of Kenya Act (Cap. 18) or in any regulations made thereunder, become a member of the Society and the Advocates Benevolent Association and be subject to any provision of law or rule of the Society and the Advocates Benevolent Association for the time being affecting the members thereof.

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

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

24. Date and validity of practising certificate

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

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

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

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

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

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

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

25. Discretion of Registrar to issue practising certificate in special cases

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

- (a) when for twelve months or more he has ceased to hold a practising certificate in force; or
- (b) whilst he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him; or
- (c) when, having been suspended from practice or having had his name removed from or struck off the Roll, the period of his suspension has expired or his name has been restored to the Roll, as the case may be; or
- (d) not having held a practising certificate in force within twelve months next following the date of his admission as an advocate; or
- (e) whilst he is a person to whom the powers and provisions of the Mental Health Act (Cap. 248) relating to management and administration apply; or
- (f) without having paid a penalty or costs ordered by the Disciplinary Committee to be paid by him; or
- (g) after having been adjudicated a bankrupt and obtained his discharge or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or
- (h) after having had given against him any judgment which involves the payments of moneys, not being a judgment—
 - (i) limited to the payment of costs; or
 - (ii) as to the whole effect of which upon him he is entitled to indemnity or relief from some other person; or
 - (iii) evidence of the satisfaction of which, within seven days of the giving of such judgment, has been produced to the Registrar.

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

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

(4) The Registrar may in his discretion—

- (i) grant or refuse any application made under this section; or
- (ii) decide to issue a practising certificate to the applicant upon such terms and conditions as he may think fit;

and, where the Registrar decides to issue a certificate subject to conditions, he may, if he thinks fit, postpone the issue of the certificate pending the hearing and determination of any appeal under section 26(2):

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

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

[Act No. 7 of 2007, Sch.]

26. Appeals in connection with issue of practising certificate

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

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

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

27. Suspension of practising certificate in certain circumstances

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

28. Duration of suspension of practising certificate

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

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

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

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

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

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

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

(5) The Registrar may in his discretion—

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

(ii) refuse the application.

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

(a) affirm the decision of the Registrar; or

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

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

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

Where an advocate's practising certificate has become suspended—

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

(b) by virtue of section 27 by reason of his adjudication in bankruptcy, the Registrar shall forthwith cause notice of that suspension to be published in the *Gazette* and a note thereof to be entered against the name of the advocate in the Roll; and where that suspension is terminated under subsection (2), subsection (3) or subsection (4) of section 28, the Registrar shall forthwith cause a note of that termination to be entered against the name of the advocate in the Roll and, if so requested in writing by the advocate, a note thereof to be published in the *Gazette*.

30. Evidence as to holding of practising certificate

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

(2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that that person is not qualified to practise as an advocate under a certificate for the current year, but in the case of any such person an extract from the Roll certified as correct by the Registrar shall be evidence of the facts appearing in the extract.

30A. *Repealed by Act No. 9 of 2000, s. 60.*

30B. *Repealed by Act No. 9 of 2000, s. 61.*

30C. *Repealed by Act No. 9 of 2000, s. 62.*

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

31. Unqualified person not to act as advocate

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

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

- (a) be deemed to be in contempt of the court in which he so acts or in which the suit or matter in relation to which he so acts is brought or taken, and may be punished accordingly; and
- (b) be incapable of maintaining any suit for any costs in respect of anything done by him in the course of so acting; and
- (c) in addition be guilty of an offence.

[Act No. 2 of 2002, Sch.]

32. Qualification for practice on own behalf

(1) Notwithstanding that an advocate has been issued with a practising certificate under this Act, he shall not engage in practice on his own behalf either full-time or part time unless he has practised in Kenya continuously on a full-time

basis for a period of not less than two years after obtaining the first practising certificate in a salaried post either as an employee in the office of the Attorney-General or the Director of Public Prosecutions or an organization approved by the Council of Legal Education or an advocate who has been engaged in continuous full-time private practice on his own behalf in Kenya for a period of not less than five years.

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

(3) This section shall come into operation on 1st January, 2000.

[L.N. 94/1999, Act No. 12 of 2012, Sch.]

32A. Employment as in-house Advocate

(1) A person who is qualified to act as an advocate under this Act may be employed as an in-house advocate.

(2) A person who is employed as an in-house advocate shall—

- (a) be an independent professional legal advisor to his or her employer; and
- (b) not charge fees for services rendered below the minimum prescribed fees under section 44.

[Act No. 12 of 2012, Sch.]

32B. Standards of work and remuneration

(1) The Chief Justice shall, on the recommendation of the Council of the Society, prescribe—

- (a) the standards of work that may be performed by a person employed as an in-house advocate under this Act; and
- (b) the criteria for determining the remuneration payable to an in-house counsel by an employer.

(2) The employer of an in-house advocate shall not determine the remuneration of such advocate otherwise than in accordance with the criteria prescribed under subsection (1)(b).

(3) Notwithstanding subsection (2), the employer of an in-house advocate may, in making a determination under subsection (2), offer the advocate remuneration which is higher than that prescribed.

(4) Subject to subsection (3), a person who contravenes subsection (2) commits an offence.

[Act No. 12 of 2012, Sch.]

33. Penalty for pretending to be advocate

Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognized by law as qualified to act as an advocate shall be guilty of an offence.

[Act No. 2 of 2002, Sch.]

34. Unqualified person not to prepare certain documents or instruments

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

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

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

Provided that this subsection shall not apply to—

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

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

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) This section shall not apply to—

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

[Act No. 2 of 2002, Sch.]

35. Instruments to be endorsed with name and address of drawer

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

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

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

36. Undercutting

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

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

37. Sharing profits

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

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

38. Touts

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

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

39. Advocate not to act as agent for unqualified person

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

40. No costs recoverable where unqualified person acts as advocate

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

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

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

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

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

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

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

(2) *Deleted by Act No. 2 of 2002, Sch.*

[Act No. 2 of 2002, Sch.]

43. Offences by bodies corporate

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

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

PART IX – REMUNERATION OF ADVOCATES**44. Chief Justice may make orders prescribing remuneration**

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

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

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

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

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

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

45. Agreements with respect to remuneration

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

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

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

(2) A client may apply by chamber summons to the Court to have the agreement set aside or varied on the grounds that it is harsh and unconscionable, exorbitant or unreasonable, and every such application shall be heard before a judge sitting with two assessors, who shall be advocates of not

less than five years' standing appointed by the Registrar after consultation with the chairman of the Society for each application and on any such application the Court, whose decision shall be final, shall have power to order—

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

and that the costs of the application be paid by such party as it thinks fit.

(2A) An application under subsection (2) may be made within one year after the making of the agreement, or within three months after a demand in writing by the advocate for payment under the agreement by way of rendering a fee note or otherwise, whichever is the later.

(3) An agreement made by virtue of this section, if made in respect of contentious business, shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

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

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

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

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

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

[Act No. 2 of 2002, Sch.]

46. Invalid agreements

Nothing in this Act shall give validity to—

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

[Act No. 2 of 2002, Sch.]

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

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

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

48. Action for recovery of costs

(1) Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court’s jurisdiction, in which event action may be commenced before expiry of the period of one month.

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

(3) Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.

[Act No. 2 of 2002, Sch.]

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

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

- (a) no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;
- (b) unless the bill of costs on which the suit is based is fully itemised, the plaintiff shall file a fully itemized bill of the costs within fourteen days from the date of service of the defence, or such further period as may be allowed by the court, and shall serve a copy thereof on the defendant, and, if the total amount of such bill exceeds the amount sued for, the prayer of the plaintiff shall, subject to the court's pecuniary jurisdiction, be deemed to be increased accordingly and all consequential amendments to the pleadings may be made;
- (c) no court or filing fee shall be payable on filing a bill of costs required by this section, but, if thereby the amount for which judgment is prayed in the plaint is deemed to be increased under paragraph (b), the plaintiff shall pay to the court such court or filing fee as may be appropriate to the increase; and
- (d) at any time after the bill of costs has been filed, and before the suit has been set down for hearing, any party to the action may take out a summons for directions as to whether such bill should be taxed by the taxing officer before the suit is heard.

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

(1) Where a person other than the person who is the party chargeable with a bill of costs is liable to pay the bill either to the advocate or to the party chargeable with the bill, or where a person is interested in any property in the hands or under the control of a trustee, executor or administrator, out of which property the trustee, executor or administrator has paid or is liable to pay the bill, that person or his administrators, executors or assignees may apply to the Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the Court, having regard to the extent and nature of the interest of the person, may make any order thereon which it would have been competent to make if the application had been made by that party:

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

- (i) the bill has previously been taxed; or

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

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

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

51. General provisions as to taxation

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

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

52. Charging orders

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

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

PART X – COMPLAINTS COMMISSION

53. Establishment of Complaints Commission

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

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

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

(3A) Any person who, without lawful excuse, fails or refuses to assist the Commission when required to do so under subsection (3) shall be guilty of an offence.

(4) It shall be the duty of the Commission to receive and consider a complaint made by any person, regarding the conduct of any advocate, firm of advocates, or any member or employee thereof; and—

- (a) if it appears to the Commission that there is no substance in the complaint it shall reject the same forthwith; or
- (b) if it appears to the Commission whether before or after investigation that there is substance in the complaint but that the matter complained of constitutes or appears to constitute a disciplinary offence it shall forthwith refer the matter to the Disciplinary Committee for appropriate action by it under Part XI; or
- (c) if it appears to the Commission that there is substance in the complaint but that it does not constitute a disciplinary offence it shall forthwith notify the person or firm against whom the complaint has been made of the particulars of the complaint and call upon such person or firm to answer the complaint within such reasonable period as shall be specified by the Commission in such notification; or
- (d) upon the expiration of the period specified under paragraph (c), the Commission shall proceed to investigate the matter for which purpose it shall have power to summon witnesses, to require the production of such documents as it may deem necessary, to examine witnesses on oath and generally take all such steps as it may consider proper and necessary for the purpose of its inquiry and shall, after hearing any submissions made to it by or on behalf of the complainant and the person or firm against whom the complaint has been made, make such an order or award in accordance with this section as it shall in the circumstances of the case consider just and proper; or
- (e) if it appears to the Commission that there is substance in a complaint but that the circumstances of the case do not disclose a disciplinary offence with which the Disciplinary Committee can properly deal and that the Commission itself should not deal with the matter but that the proper remedy for the complainant is to refer the matter to the courts for appropriate redress the Commission shall forthwith so advise the complainant.

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

(6) If the Commission considers that the complainant has suffered loss or damage by reason of the advocate's conduct, the Commission may, by order, award such complainant compensation or reimbursement not exceeding one hundred thousand shillings.

(6A) An order made under subsection (6) shall be registered with the Court and shall thereupon be enforceable in the same manner as an order of the Court to the like effect.

(6B) Where the matter before the Commission relates to surrender of funds or property by an advocate to a client, the Commission may order the surrender of all refunds or property which the advocate does not dispute:

Provided that this subsection shall not apply where the complainant has filed a civil suit against the advocate in respect of the same funds or property.

(6C) An advocate against whom an order is made under this section and who has not appealed against such order under section 62 may apply to the Disciplinary Committee for a review of the Order.

(6D) The Commission may, in hearing a complaint against an advocate, order such advocate to produce to the Commission a detailed fee note for purposes of taxation of the bill of costs:

Provided that where the advocate fails to produce such fee note within 14 days from the date of such order, the Commission may assess the advocate's fee in such sum as it deems fit.

(6E) The Commission may investigate the accounts of an advocate against whom a complaint has been made and for that purpose may order such advocate to produce all relevant books and documents to the Commission or to an accountant engaged before the Commission in that behalf.

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

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

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

[Act No. 2 of 2002, Sch.]

53A. Remuneration of Commissioner

(1) There shall be paid to the Commissioner such remuneration by way of salary, allowance, pension or gratuity as shall be determined by the President.

(2) The remuneration referred to in subsection (1) shall be paid out of moneys provided by Parliament.

[Act No. 21 of 1990, Sch.]

54. Secretary and staff of Commission and rules relating thereto

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

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

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

PART XI – DISCIPLINE

55. Advocates to be officers of Court

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

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

[Act No. 12 of 2012, Sch.]

56. Savings of disciplinary powers of Court

Nothing in this Act shall supersede, lessen or interfere with the powers vested in the Chief Justice or any of the judges of the Court to deal with misconduct or offences by an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the Chief Justice or any judge.

57. Establishment of Disciplinary Tribunal

(1) There is established a tribunal to be known as the Disciplinary Tribunal (in this Part referred to as “**the Tribunal**”) which shall consist of—

- (a) the Attorney-General;
- (aa) the Director of Public Prosecutions;
- (b) the Solicitor-General or a person deputed by the Attorney-General; and
- (c) six advocates (other than the chairman, vice-chairman or secretary of the Society), of not less than ten years standing, one of whom shall be an advocate who does not ordinarily practise in Nairobi, all of whom shall be elected and shall hold office for three years and be eligible for re-election;
- (d) *deleted by Act No. 7 of 2007, Sch.*

(1A) The members of the Tribunal shall be paid such remuneration, fees or allowances for expenses as the Attorney-General, in consultation with the Treasury, may authorise out of monies provided by Parliament for that purpose.

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

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

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

- (a) in the case of an application under section 59, or a complaint under section 60, upon the making of a final order; or
- (b) in the case of a matter arising under section 71, when the Chief Justice has signified his decision thereon; or
- (c) in the case of an application under section 72, upon the final conclusion of the proceedings relating thereto before the Committee or the Court, as the case may be; or
- (d) in any other case, upon the final determination thereof by the Committee.

[Act No. 2 of 2002, Sch., Act No. 7 of 2007, Sch., Act No. 12 of 2012, Sch.]

58. Proceedings of Tribunal

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

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

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

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

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

(4) For the purposes of any application or complaint made to it under this Part, the Tribunal may administer oaths or affirmations, and the complainant and

the advocate to whom a complaint relates, and an applicant making any application to the Tribunal, may take out a summons to give evidence or to produce documents, but no person shall be compellable under any such summons to produce any document which he could not legally be compelled to produce at the trial of a suit.

(5) All proceedings before the Tribunal shall be deemed for the purposes of Chapter XI of the Penal Code (Cap. 63) to be judicial proceedings and for the purposes of the Evidence Act (Cap. 80) to be legal proceedings.

(6) The Committee may make rules for regulating the making to the Committee, and the hearing and determination by the Committee, of applications or complaints under this Part or with respect to matters incidental to or consequential upon its Orders.

[Act No. 2 of 2002, Sch., Act No. 12 of 2012, Sch.]

58A. Establishment of Regional Disciplinary Committees

(1) There are hereby established Disciplinary Committees (in this Part referred to as “**Regional Committees**”) in five representative regions, other than Nairobi, identified by the society.

(2) Each Regional Disciplinary Committee shall have a jurisdiction concurrent to that of the Disciplinary Committee established under section 57 of the Advocates Act in their respective regions, and shall exercise the same functions and have the same powers and duties set out under this Part or under any other written law.

(3) Each Regional Committee shall consist of five advocates (other than the Chairman, Vice-Chairman or Secretary of the Society) of not less than ten years’ standing, all of whom shall be elected by the various chapters or regional representatives of the Society, who shall hold office for two years and shall be eligible for re-election.

(4) The provision of this Part shall apply accordingly to the Committee and the Regional Committees, and the two shall be used interchangeably where reference is made to one or in any other written law.

[Act No. 7 of 2007, Sch.]

59. Application for removal of name from the Roll

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

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

[Act No. 12 of 2012, Sch.]

60. Complaints against advocates

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

(2) Where a person makes a complaint under subsection (1), the complaint shall be by affidavit by himself setting out the allegations of professional

misconduct which appear to arise on the complaint to the Tribunal, accompanied by such fee as may be prescribed by rules made under section 58(6); and every such fee shall be paid to the Society and may be applied by the Society to all or any of the objects of the Society.

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

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

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

- (a) that such advocate be admonished; or
- (b) that such advocate be suspended from practice for a specified period not exceeding five years; or
- (c) that the name of such advocate be struck off the Roll; or
- (d) that such advocate do pay a fine not exceeding one million shillings;
- (e) that such advocate pays to the aggrieved person compensation or reimbursement not exceeding five million shillings,

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

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

(6) Where an advocate against whom the Tribunal is hearing a complaint relating to fees and costs has not filed a bill of costs in Court, the Tribunal may upon the request of the complainant, order such an advocate to produce before it a detailed fee note:

Provided that where the advocate fails to comply with an order of the Tribunal under this subsection, the Tribunal may determine the fee payable to the advocate in such sums as it deems fit.

(7) If a bill of costs has been filed in Court by the advocate against whom a complaint is being heard but has not been taxed, the Committee may adjourn the complaint for such period as it considers reasonable to allow such taxation:

Provided that if at the expiry of such adjournment, the bill is still not taxed, the Committee may make its own estimate of the costs due to the advocate and make orders accordingly.

(8) A determination of the Tribunal under subsections (7) and (8) shall be deemed, for all purposes, to be a determination of the Court.

(9) In any case where the complainant has not filed a civil suit against the advocate in respect of the sum in dispute, the Tribunal may order the advocate to pay to the complainant such sum as it finds to be due from the advocate.

(10) An order made by the Tribunal under this section—

- (a) shall be in the name of the advocate or firm of advocates in respect of whom or which the order is made;
- (b) may be filed in the civil registry of the Court by any party thereto who shall, within twenty-one days of the filing, give a notice to all other parties in writing of the filing of the order, which shall bear the date, the cause number and the registry in which it has been filed and a return of service of the order.

(11) If no memorandum of appeal is filed in accordance with subsection (1) of section 62 the party in favour of whom the order is made may apply *ex parte* by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the Court to the like effect and, if it is an order for the recovery of money, may be enforced on the immovable and movable property of the advocate in accordance with the Civil Procedure Rules (Cap. 21, Sub. Leg).

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

[Act No. 2 of 2002, Sch., Act No. 12 of 2012, Sch.]

60A. Hearing of complaints

(1) The powers conferred on the Committee by this section may be exercised on the hearing of—

- (a) any application or complaint made to the Committee under this Act by or on behalf of the Council;
- (b) any application made to the Committee by the Complaints Commission under this Act; or
- (c) any application or complaint made to the Committee under this Act, by or on behalf of any person.

(2) Where, on the hearing of any application or complaint with respect to an advocate or firm of advocates, it appears to the Committee that the professional services provided by such advocate or firm in connection with any matter in which such advocate or firm of advocates had been instructed by a client were, in any respect, not of the quality that could reasonably have been expected of an advocate, then, subject to subsection (4), the Committee may, if it thinks fit, do one or more of the following things, namely—

- (a) determine that the costs to which the advocate or firm of advocates shall be entitled, in respect of those services shall be limited to such amount as may be specified in its determination and by order, direct

the advocate to comply, or to secure compliance, with such one or more requirements falling within subsection (3) as appear to it to be necessary in order to give effect to its determination; or

- (b) by order direct the advocate or firm of advocates to secure the rectification at their own expense of any error, omission or other deficiency arising in connection with the matter as it may specify; or
- (c) by order direct the advocate or firm of advocates to take at their own expense, such other action in the interests of the client as it may specify.

(3) The requirements referred to in paragraph (a) of subsection (2) are—

- (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the advocate's costs in respect of services rendered in connection with the matter;
- (b) a requirement to remit the whole or part of the costs; and
- (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.

(4) The Committee shall not exercise any of its powers under this section unless it is satisfied that it would in all circumstances, be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers, the Committee may have regard—

- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceeding; or
- (b) where proceedings seeking any such remedy have not been commenced by the client, whether it would be reasonable to expect him to commence such proceedings.

(5) Where the Committee has given a direction under subsection (2)(a) in order to give effect to a determination by it under that provision, then—

- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified by the Committee; and
- (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay costs only to the extent of the amount specified by the Committee.

(6) Where a bill covering those costs has been taxed in accordance with subsection (5) (a), the Committee's direction under subsection (2)(a) shall, so far as relating to those costs, cease to have effect.

(7) For the purposes of this section, "**client**", in relation to any matter in which an advocate or firm of advocates has been instructed, includes any person on whose behalf the person who gave the instructions was acting.

[Act No. 2 of 2002, Sch.]

61. Reports by Tribunal and action thereon

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

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

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

[Act No. 12 of 2012, Sch.]

62. Appeal against order of Tribunal

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

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

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

[Act No. 12 of 2012, Sch.]

63. Registrar to furnish copy of the report and record

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

64. Powers of Court

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

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

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

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

[Act No. 12 of 2012, Sch.]

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

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

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

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

66. Registrar to draw up orders

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

67. Right of appeal to Court of Appeal

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

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

68. Orders to be noted on the Roll

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

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

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

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

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

(2) The Registrar shall cause to be published in the *Gazette* a notice that a final order has been made in respect of any advocate whereby he has been suspended from practice or whereby his name has been struck off the Roll and the Society may publish a similar notice in at least one daily newspaper of national circulation.

[Act No. 2 of 2002, Sch.]

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

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

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

71. Restoration to Roll

The Chief Justice shall, upon the recommendation of the Tribunal and with the written approval of the Chairman of the Society, order the Registrar to restore on the Roll the name of any advocate whose name has been removed or struck off the Roll, and the Registrar shall, upon payment by the advocate of the prescribed fee, restore such name accordingly.

[Act No. 2 of 2002, Sch., Act No. 7 of 2007, Sch., Act No. 12 of 2012, Sch.]

72. Disciplinary powers as to clerks

(1) An application may be made by or on behalf of the Council of the Society to the Tribunal for an order directing that, as from a date to be specified in such order, no advocate shall, in connection with his practise as an advocate, without the written permission of such Council, which may be given for such period and subject to such conditions as such Council may think fit, take into or retain in his employment or remunerate any person, who, being or having been a clerk to an advocate—

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

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

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

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

[Act No. 12 of 2012, Sch.]

73. Clerk's right of appeal

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

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

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

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

[Act No. 12 of 2012, Sch.]

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

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

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

75. Order of Tribunal to be received in evidence

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

[Act No. 12 of 2012, Sch.]

76. Authentication of rules and other documents

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

[Act No. 12 of 2012, Sch.]

77. Penalties for failure to comply with order of Tribunal

Any person who, without good and lawful excuse, contravenes or fails to comply with any order, notice or direction of the Tribunal or the Complaints Commission shall be guilty of an offence and, in the case of an advocate, shall, alternatively or in addition, be liable to proceedings under section 60.

[Act No. 2 of 2002, Sch., Act No. 12 of 2012, Sch.]

78. Immunity for members of Tribunal

No member of the Tribunal, nor any person who is or was at any material time a member, or the secretary, thereof, shall be liable to be sued in any civil court for or in respect of any act or thing done or omitted to be done, or ordered to be done or omitted, by him, in good faith, in the exercise, discharge or performance or intended or purported exercise, discharge or performance, of any of the powers jurisdiction, duties or functions conferred upon him under or by virtue of this Act.

[Act No. 12 of 2012, Sch.]

79. Right to legal representation

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

80. Betrayal of trust

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

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

[Act No. 12 of 2012, Sch.]

PART XII – MISCELLANEOUS PROVISIONS**81. Power to make rules**

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

- (a) the professional practice, conduct and discipline of advocates;
- (b) the keeping of accounts by advocates;
- (c) the annual submission to the Council of a certificate by an accountant registered under the Accountants Act (Cap. 531) or by some other person or class of persons specified by such Council that he has examined the books, accounts and documents of the advocate to such extent as may be prescribed and stating—
 - (i) whether or not he is satisfied that, during the period covered by his certificate, the advocate has complied with the rules for the time being in force regulating the keeping of accounts by advocates; and

- (ii) if he is not so satisfied, the matters in respect of which he is not satisfied;
- (d) the retention or otherwise by advocates of interest earned on moneys deposited, received or held for or on account of clients;
- (e) the issue of practising certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;
- (ee) the procedure for the conferment of, and the privileges attached to, the rank of Senior Counsel;
- (f) the establishment of a compensation fund for the benefit of clients;
- (g) indemnity for clients against loss or damage arising from claims in respect of any civil liability incurred by an advocate or his employee, or from breach of trust by the advocate or his employee;
- (h) continuing professional education for all advocates practising in Kenya;
- (i) generally for the better carrying out of the provisions of this Act, other than Parts III, IV, IX, X and XI.

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

(3) No rule made under this section shall require an advocate who is a member of the National Assembly or the Speaker and who holds a practising certificate to undergo continuing legal education during his tenure as such member or as the Speaker.

[Act No. 9 of 2000, s. 63, Act No. 2 of 2002, Sch., Act No. 7 of 2007, Sch., Act No. 6 of 2009, Sch., Act No. 12 of 2012, Sch.]

82. Relief to banks

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

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

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

83. Saving of other laws

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

84. Application of certain fees, etc.

All admission fees received by the Registrar under section 11(2) or 15(4), and all fees received by the Registrar in respect of replacing an advocate's name on the Roll under section 71, shall be paid by the Registrar to the Society, and those fees together with the fees for practising certificates and the Society's annual subscriptions, both of which shall be collected by the Society, shall be applied by the Society to all or any of the objects of the Society.

85. General penalty

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

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

[Act No. 2 of 2002, Sch.]

86. Repeal of Cap. 16 and savings

(1) The Advocates Act is repealed.

(2) Without prejudice to the generality of the application of subsection (3) of section 23 of the Interpretation and General Provisions Act (Cap. 2), the transitional provisions set out in the Second Schedule to this Act shall have effect on the repeal of the Advocates Act (Cap. 16).

FIRST SCHEDULE

[Section 3(2).]

PROCEEDINGS OF THE COUNCIL OF LEGAL EDUCATION

Repealed by Act No. 12 of 1995, s. 21.

SECOND SCHEDULE

[Section 86(2).]

TRANSITIONAL PROVISIONS

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

2. The Roll of all advocates kept by the Registrar in accordance with the provisions of section 20 the Advocates Act (Cap. 16) (hereinafter referred to as "the repealed Act") shall continue to be the Roll of Advocates for the purposes of this Act.
 3. Any practising certificate issued by the Registrar in accordance with the provisions of the repealed Act and in force at the commencement of this Act shall be deemed to have been issued in accordance with the provisions of this Act.
 4. The Disciplinary Committee established by the repealed Act shall become and shall be the Disciplinary Committee for the purposes of this Act and any complaint or matter pending before the Disciplinary Committee at the commencement of this Act shall continue before the Disciplinary Committee in accordance with the provisions of the repealed Act, as the case may require.
 5. Notwithstanding the repeal of the Advocates Act, a person who, immediately before the commencement of this Act, was serving articles of clerkship registered under section 14 of the Act shall continue to serve under those articles until the date of expiry and shall be deemed to be duly qualified for the purposes of section 12 of this Act.
 6. Notwithstanding the repeal of the Advocates Act, a person who, immediately before the commencement of this Act, was undergoing instruction as a pupil in accordance with section 12 or 18A thereof, shall continue to receive instruction as a pupil for the prescribed period until the date of expiry and shall be deemed to have duly complied with subparagraph (i) of subsection (1) of section 13 of this Act.
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CHAPTER 16

ADVOCATES ACT

SUBSIDIARY LEGISLATION

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Regulations under section 21

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

[L.N. 311/1962.]

1. These Regulations may be cited as the Advocates (Fees for Restoration to the Roll) Regulations, 1962.
 2. There shall be payable to the Registrar a fee of four hundred shillings to replace the name of an advocate on the Roll in pursuance of an order of the Chief Justice under section 71 of the Act.
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ADVOCATES (REMUNERATION) ORDER, 1962

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[Subsidiary]*Order*

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- SCHEDULE X – PROBATE AND ADMINISTRATION

[Subsidiary]

Order under section 48

ADVOCATES (REMUNERATION) ORDER, 1962

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

PART I – GENERAL MATTERS

1. Citation

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

2. Application of Order

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

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

3. Scale of fees

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

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

4. Additional remuneration for exceptional dispatch

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

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

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

5. Special fee for exceptional importance and complexity

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

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

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

6. Security from client for advocate's remuneration

An advocate may accept from his client and a client may give to his advocate security for the amount to become due to the advocate for remuneration and disbursements in

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business to be transacted or being transacted by him and for interest as hereinafter provided on such amount, but so that interest is not to commence until the amount due is ascertained either by agreement or taxation:

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

7. Interest may be charged

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

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

8. Costs payable by an executor, administrator or trustee

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

9. Costs payable by infant, etc.

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

10. Taxing officer

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

[L.N. 56/1972, S. 3]

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

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

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

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

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

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

[Subsidiary]

12. Reference by consent

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

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

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

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

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

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

13A. Powers of taxing officer

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

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

14. Default of advocate to attend taxation after notice

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

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

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

16. Discretion of taxing officer

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

17. Length of folio

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

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

PART II – NON-CONTENTIOUS MATTERS

18. Remuneration of advocate in non-contentious matters

Subject to rule 22, the remuneration of an advocate in respect of conveyancing and general business (not being business in any action or transacted in any court or in chambers of any judge or Registrar) shall be regulated as follows, namely:

Sales, purchases and mortgages of land

- (a) in respect of sales, purchases and mortgages of immovable property or any interest therein, the remuneration is to be that prescribed in Schedule I:

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

Leases and agreements for lease of land

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

Companies floatations and debentures

- (c) in respect of business in connexion with floatation of companies and the issue of debentures, the remuneration is to be that prescribed in Schedule III;

Trade marks, patents and designs

- (d) in respect of business in connection with registration of trade marks, patents and designs, the remuneration is to be that prescribed in Schedule IV; and
 (e) in respect of business in connexion with probate and the administration of estates, the remuneration is to be that prescribed in Schedule X;

Uncompleted transactions and other business

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

[L.N. 8/1965, Sch., L.N. 56/1972, s. 2, L.N. 73/1983, s. 4.]

19. Expenses chargeable in addition to remuneration

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

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

20. Scale charges; what they include and exclude

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

- (a) taking of instructions to prepare the necessary deed or document;
 (b) investigation of title;

[Subsidiary]

- (c) report on the title to the client;
 - (d) preparation or approval or adjustment of the deed or document;
 - (e) settlement of the transaction if in the town of the advocate's practice;
 - (f) obtaining by correspondence any necessary consent or clearance certificate but excluding land control consent;
 - (g) registration of the deed;
 - (h) correspondence between advocate and client.
- (2) Scale charges shall not include—
- (a) prior negotiations leading up to or necessary in the completion of a bargain;
 - (b) tracing of title deeds or obtaining certified copies thereof;
 - (c) payment of withholding tax or obtaining of exemption therefrom;
 - (d) completion of valuation forms for assessment of stamp duties;
 - (e) adjudication of stamp duties;
 - (f) obtaining land control consent and personal attendances for obtaining of any necessary consent or clearance certificate under subparagraph (1)(f);
 - (g) extra work occasioned by special circumstances;
 - (h) extra work occasioned by a change of circumstances emerging while an item of business is in progress, e.g. the death or bankruptcy of a party to the transaction.

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

21. Scale fees: how calculated

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

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

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

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

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

[L.N. 56/1972, s. 5.]

23. Items to be charged for separately under appropriate Schedule

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

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

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

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

24. Documents; by whom to be prepared

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

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

[L.N. 56/1972, s. 7.]

25. Place of completion

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

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

26. Definitions and application of Schedule I

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

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

27. Commission for negotiating sale or purchase

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

[Subsidiary]

28. Remuneration for conveyance on a sale by auction

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

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

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

30. Commission for negotiating loan

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

31. Costs of mortgage to be paid by borrower

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

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

32. Building society mortgagee

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

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

[L.N. 56/1972, s. 9]

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

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

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

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

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

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

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

Where a conveyance and a mortgage of the same property are completed at the same time, the respective advocates acting for the vendor and purchaser shall charge the appropriate scale fee on the conveyance and their commissions for negotiating (if any). For preparing and approving the mortgage, they shall charge one-half of the appropriate scale fee.

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

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

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

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

37. Where property is sold subject to incumbrances

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

38. Charges for mortgage to advocate

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

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

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

40. Scale: how reckoned on transfers of mortgages

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

[Subsidiary]

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

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

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

42. Application of Schedule II

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

43. Lessor's and lessee's costs

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

(2) In this Rule—

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

44. Printed or stereotyped leases

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

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

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

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

46. Where mortgagor joins in a conveyance

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

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

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

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

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

Where a conveyance or lease is partly in consideration of a money payment or premium and partly of a rent, then, in addition to the remuneration prescribed under

Schedule II by reference to the rent, there shall be paid a further sum equal to the remuneration under Schedule I on a purchase at a price equal to such money payment or premium.

PART III – TAXATION OF COSTS IN CONTENTIOUS AND OTHER MATTERS

49. Application of Part III

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

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

49A. Costs in criminal cases

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

[L.N. 73/1983, s. 5.]

50. Costs in High Court according to Schedule VI

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

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

50A. Schedule VI costs on the higher scale

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

[L.N. 56/1972, s. 12.]

51. Costs in subordinate courts according to Schedule VII

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

[L.N. 56/1972, s. 13.]

51A. Costs in Tribunal under Cap. 301

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

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

51B. Costs in Tribunal under Cap. 296

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

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

51C. Costs in probate and administration cases

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

[L.N. 73/1983, s. 8.]

[Subsidiary]

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

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

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

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

54. Costs on an opposed application

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

55. Costs out of estate of minor, etc.

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

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

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

57. Registrar to record consent order as to costs

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

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

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

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

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

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

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

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

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

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settlement or the relief awarded or the nature, importance or difficulty of the case and, in the case of a defendant, having regard to the amount sued for or the relief claimed or the nature, importance or difficulty of the case.

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

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

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

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

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

61. Costs improperly incurred by advocate

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

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

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

Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate's bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.

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

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

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

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

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

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

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

64. Appearance in Court or chambers of party not interested

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

65. Limits of time for taxation

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

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

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

[L.N. 37/1977, s. 8.]

66. Taxation of costs upon an award

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

67. Receiver in insolvency to have notice of taxation

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

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

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

68A. Certificate of costs

(1) Notwithstanding anything to the contrary in this Order, when the Registrar of the High Court enters final judgment under Order 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.

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

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

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

68B. Limitation of costs

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

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

69. Manner of preparing bills for taxation

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

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

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

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

70. Filing bills for taxation

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

71. Bills not to be altered after being lodged

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

72. Notice of taxation to be given by taxing officer

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

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

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73. No notice of taxation where party has not appeared

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

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

[L.N. 73/1983, s. 11.]

74. Vouchers to be produced

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

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

74A. Witness expenses

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

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

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

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

75. Numbering of folios on documents charged by the folio

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

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

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

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

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

77. Where more than one-sixth taxed off

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

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

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

79. Instructions of judge as to costs

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

SCHEDULE I

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

FIRST SCALE

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

(a) Consideration or value of subject matter

From (KSh.)	To (KSh.)		
0	5,000,000	1.5%	Of the consideration or the value of the subject matter subject to a minimum of KSh.25,000.
5,000,001	250,000,000	1.25%	Of the consideration or the value of the subject matter subject to a minimum of KSh.75,000.
250,000,001	500,000,000	1%	Of the consideration or the value of the subject matter subject to a minimum of KSh.3,125,000.

and in respect of an amount where the consideration or the value is more than KSh.500,000,000 such fees as may be agreed subject to a minimum of KSh.5,000,000.

(b) Vendor's Advocate

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

Scale fee as set out in 1(a) above.

(c) Purchaser's Advocate

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

Scale fee as set out in 1(a) above.

Note: Fees will be calculated on the consideration or value of the transaction using the percentage rate of the band within which the consideration lies. It shall not be cumulative.

Advocates

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SCHEDULE I—*continued*

2. SCALE OF FEES ON MORTGAGE OR CHARGES AFFECTING LAND REGISTERED IN ANY REGISTRY

(a) Consideration or value of subject matter

From (KSh.)	To (KSh.)		
0	2,500,000	1.5%	Of the consideration or the value of the subject matter subject to a minimum of KSh.20,000.
2,500,001	5,000,000	1.25%	Of the consideration or the value of the subject matter subject to a minimum of KSh.37,500.
5,000,000	250,000,000	1%	Of the consideration or the value of the subject matter subject to a minimum of KSh.62,500,000.
250,000,001	500,000,000	0.6%	Of the consideration or the value of the subject matter subject to a minimum of KSh.2,500,000.

and in respect of an amount where the consideration or value is more than KSh.500,000,000 such fee as may be agreed subject to a minimum of Ksh.3,000,000.

(b) Mortgagor's Advocate

- (i) For deducing title (including any necessary abstraction) to a freehold or leasehold property, answering any requisitions on title, perusing and and completing mortgage One-half of the scale set under 2(a) above (so that the minimum fee charged is not less than one half of the minimum permitted to be charged under 2(a) above).
- (ii) For preparing and completing reconveyance or reassignment of mortgage One quarter of the scale fee set out under 2(a) above subject to a minimum charge of KSh.15,000 and maximum of KSh. 50,000.

(c) Mortgage's Advocate

- (i) For investigating title to a freehold or leasehold property and preparing and completing mortgage Scale fee as set out in 2(a) above.
- (ii) For perusing and completing reconveyance or reassignment of mortgage, handling documents of title and settling terms of any undertaking for redemption of mortgage debt. One quarter of the scale fees set out under 2(a) above subject to a minimum charge of Ksh. 15,000 and a maximum of Shs. 50,000.00.

Note: Fees will be calculated on the consideration or value of the transaction using the percentage rate of the band within which the consideration lies. It shall not be cumulative.

SECOND SCALE

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

	SCALE FEE
1. For investigating title to a freehold or leasehold property and completing and registering a memorandum of equitable mortgage by deposit of documents or a memorandum of charges by deposit of title in respect thereof.	One half of the scale fee set out under 2(a) of the First Scale.

SCHEDULE I—*continued*

	SCALE FEE
2. For preparing, completing and registering a memorandum of discharge of equitable mortgage by deposit of documents or a memorandum of discharge of charge by deposit of title.	One eighth of the scale fee set out under 2(a) of the First Scale subject to a minimum of KSh. 8,500 and a maximum of Ksh.30,000.00.

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

THIRD SCALE

SCALE OF CHARGE RELATING TO DEBENTURES

1. Single debentures:

- (a) On each single debenture of any nature not creating a security, a fee calculated under Schedule V according to time, complexity and, responsibility.
- (b) On each single debenture of any, nature creating a security the scale fee set out under 2(a) of the First Scale.

2. Series of debentures:

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

3. Debenture stock issued under a debenture trust deed:

A fee on the total capital for which the trust is drawn as under 2(a) of the First Scale plus one-half thereof, with such additional amount as may be reasonable taking into account the time, complexity and responsibility involved in each case.

Notes

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

(b) Where an Advocate represents both the grantee of a security and company creating it he shall be entitled to increase the prescribed fee by forty per cent.

2. Where two or more securities are created by a company, whether contemporaneously or subsequently, in favour of the same grantee to secure the same or a lower amount, then the fee payable shall be the full prescribed fee in respect of the principal security plus twenty five (25%) per cent of the prescribed scale fee for each additional security. For this purpose, where the collateral or supplemental security constitutes immovable property, a sum equivalent to Twenty Five (25%) per cent of the prescribed fees shall be charged in respect of each immovable property so mortgaged favour of the grantee.

3. Where a security by one document by more than one company or other entity in favour of the same grantee to secure the same amount, then the fee payable shall be the

Advocates

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SCHEDULE I—*continued*

full prescribed fee in respect of the first company and a sum equivalent to twenty five (25%) per cent of the prescribed fee in respect of each company thereafter, the total fees to be divided equally between the companies unless otherwise agreed by all the companies in writing.

4. Where a security is created by one document by more than one company in favour of more than one grantee, the fee payable shall be the same as the one prescribed in note 2 above.

5. Unless otherwise agreed by the parties in writing the company or the companies creating a security shall pay the fees of the advocate for the grantee as well as the fees of its or their own advocate.

FOURTH SCALE

SCALE OF NEGOTIATING COMMISSION ON SALES AND MORTGAGES

	<i>Scale Fee</i>	<i>Ksh.</i>
For negotiating a sale of property by Private treaty or loan secured by mortgage	On the first £10,000 per £100	112
	Over £10,000 to 30,000 per £100	52
	Over £30,000 per £100	30

Note:

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

SCHEDULE II

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

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

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

SCALE FEE

Annual Rent

<i>From (KSh.)</i>	<i>To (KSh.)</i>		
0	120,000	15.00%	Of the annual rent
120,001	250,001	12.50%	Of the consideration or value or Ksh. 18,000

SCHEDULE II—*continued*

<i>From (KSh.)</i>	<i>To (KSh.)</i>		
250,001	500,000	10.00%	Of the consideration or value or KSh. 31,250 whichever is higher
500,001	1,000,000	7.50%	Of the consideration or value or KSh. 50,000 whichever is higher
1,000,001	2,000,000	5.00%	Of the consideration or value or KSh. 75,000 whichever is higher
2,000,001	3,000,000	4.00%	Of the consideration or value or KSh. 100,000 whichever is higher

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

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

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

SCHEDULE III

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

1. Formation and Incorporation of Companies with Share Capital

A fee calculated according to the following scales, the fee to cover taking instructions to incorporate the company, drawing memorandum of association (if any), preparing and lodging all necessary company forms at the Companies Registry on the incorporation of the company (but excluding any prospectus) and procuring certificate of incorporation including all routine attendances and correspondence in connection therewith, whether the company is private or public, with or without share capital.

Such fee, taking into account the complexity and responsibility of the matter, as may be agreed between the advocate and the client but in any event not less than KSh.50,000.

Registration of Foreign Companies

Such fee taking into account the complexity and responsibility of the matter, as may be agreed between the advocate and the client but in any event not less than KSh.50,000.

[Subsidiary]

2. *Other Company Work*

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

SCHEDULE IV

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

TRADE MARKS

1. <i>Applications</i>	<i>KSh.</i>
(a) Instructions to register one trade mark in one class	5,040
(b) Instructions to register second and further trade marks in the name of the same proprietor simultaneously per trade mark in one class	2,940
(c) Filling priority application	2,835
2. <i>Registered Users</i>	
(a) Instructions to file an application to enter one registered user of one registered trade mark or more than one registered trade mark of the same proprietor incorporated in the same set of documents and subject to the same conditions and restrictions in each case—	
(i) for the first one single registered trade mark	4,200
(ii) for the second registered trade mark	1,890
(iii) for the third registered trade mark	1,260
(iv) for the fourth and each subsequent registered trade mark, applications being filled simultaneously	504
(b) Drawing statement of case, statutory declaration in support and application, depending on the amount of work involved but not less than	6,300
(c) Drawing registered user agreement, depending on the amount of work involved but not less than	8,400
(d) Instructions to file an application under section 31(8)(b) for cancellation of a registered user in respect of one registered trade mark or more than one registered trade mark of same proprietor—	
(i) for the first or single registered trade mark	3,360
(ii) for the second registered trade mark	2,286
(iii) for the third registered trade mark	1,512
(iv) for the fourth and each subsequent trade mark, application being filed simultaneously	756
(e) Drawing application for cancellation and statement of ground, depending on amount of work involved but not less than	1,890
(f) And for each subsequent registered trade mark included in the same application for cancellation, the grounds for cancellation being the same	630
(g) Instructions to file an application for variation of terms of appointment of registered user	4,200

SCHEDULE IV—*continued*

3. <i>Assignments</i>	KSh
(a) Instructions to file an application to register a subsequent proprietor of one registered trade mark (or more than one registered trade mark standing in the same name under the same devolution of title and filed simultaneously) with or without goodwill—	
(i) for the first registered trade mark	2,520
(ii) for the second registered trade mark	1,134
(iii) for each subsequent registered trade mark	756
(b) Instructions to file application for directions by the Registrar for advertisement of the assignment of trade marks in use without goodwill and attending to the advertisement thereof—	
(i) for one registered trade mark assigned	2,520
(ii) for every other registered trade mark assigned under the same devolution of title filed simultaneously	1,134
(c) Instructions to apply for extensions of time in which to apply for directions to advertise	1,260
4. <i>Renewals</i>	
(a) Instructions to renew the registration of one trade mark in one class	2,772
(b) Instructions to renew the registration of second and further trade marks in the same proprietor simultaneously	1,890
(c) Instructions to restore the registration of one trade mark in one class under the provisions of rule 68 of the Trade Marks Rules	3,360
5. <i>Change of Name</i>	
(a) Instructions to register change of name of the registered proprietor in respect of one trade mark in one class	1,512
(b) Instructions to register change of name of the registered proprietor in respect of second and further trade marks simultaneously for each change of name per trade mark in one class	1,008
6. <i>Change of Address</i>	
(a) Instructions to register change of address of the registered proprietor in respect of one trade mark in one class	1,512
(b) Instructions to register change of address of the registered proprietor in respect of second and further trade marks simultaneously for each change of address per trade mark in one class	1,008
7. <i>Alterations or Amendments</i>	
(a) Instructions to amend or alter one registered trade mark in one class	2,520
(b) Instructions to amend or alter second and further registered trade marks simultaneously in one class, per trade mark per class	1,008
8. <i>Searches and Copies</i>	
(a) Attendances to search the register or a file at the registry and advising thereon, per quarter hour or part thereof by—	
(i) an advocate	1,260
(ii) an unqualified employee	840

Advocates

[Subsidiary]

SCHEDULE IV—*continued*

	<i>KSh</i>
(b) Instructions to obtain Registrar's preliminary advice on Form T.M. 27 or T.M. 28 including drawing the prescribed form	1,200
(c) Instructions to obtain registry certified copies of documents—	
(i) one copy of any document	2,100
(ii) second and additional copies of same document obtained simultaneously	630
9. <i>Opposition and Rectification Proceedings</i>	
(a) Instruction to enter opposition or to defend opposition proceedings or to apply for rectification or to defend rectification proceedings where such opposition or proceedings are conducted before the Registrar— Such fee as the taxing officer in the exercise of his discretion and taking into consideration the nature and importance of the opposition or rectification, the value of the trade mark to the parties concerned, the amount of evidence filed and the time required for the proceedings and all other relevant circumstances shall decide but not less than	150,000
(b) Attendance before the Registrar conducting opposition or rectification proceedings every whole day	11,760
(c) Every half-day or part thereof	5,880
(d) On interlocutory matters, taking judgement, etc., every 15 minutes or part thereof	805
10. <i>Miscellaneous Matters</i>	
(a) Instructions to advise on registrability of a mark or on a point of law or practice; such fee as may be reasonable in the circumstances but not less than	5,250
(b) Attendance on the Registrar for every 15 minutes or part thereof—	
(i) for argument	1,470
(ii) for filing papers	420
(c) Correspondence, where charged for separately (see the note to this part of this Schedule)—	
(i) per letter; or	210
per folio	126
(ii) receiving and perusing letters—	
per letter; or	84
per folio	50
(d) Drawing all other necessary documents (notices of opposition, statutory declarations, counter-statements, etc.)—	
(i) per folio	336
(ii) files copies, per folio	33
(e) Perusing documents, pleadings, statutory declarations, etc. to be charged for as for perusals at item 8(a) of Schedule VI.	
(f) All other necessary attendances (including attendances to take minutes of evidence of witnesses other than the party for whom the advocate is acting), per quarter hour or part thereof	630

SCHEDULE IV—continued

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

SCHEDULE V

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

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

PART I – AGREED HOURLY RATE

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

PART II – ALTERNATIVE METHOD OF ASSESSMENT

1. INSTRUCTIONS

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

2. DRAWING AND PERUSING, ETC.

KSh.

Table with 2 columns: Description and KSh. values. Rows include: For drawing (168), For engrossing (33), For fair copying (21), For perusing (50).

3. ATTENDANCE

Table with 2 columns: Description and KSh. values. Rows include: In ordinary cases per 15 minutes or part thereof (525), On routine telephone calls within Kenya for 3 minutes or part thereof (105). Note: In other cases the taxing officer may increase or diminish the above charges if for any special reason he sees it fit.

4. TIME ENGAGED

Table with 2 columns: Description and KSh. values. Row: Where charge is so based in lieu of charges per item of work done— Per hour or part thereof (5,000).

5. CORRESPONDENCE

Table with 2 columns: Description and KSh. values. Rows include: Letters (210), or per folio (126), Receiving and perusing letters (84), or per folio (50).

Advocates

[Subsidiary]

SCHEDULE V—*continued*

	<i>KSh.</i>
6. OPINIONS	
For formal written opinion, such fee as may be reasonable in the circumstances, having regard to the same considerations as set out above for the assessment of instructions but not less than	25,000
7. JOURNEYS FROM HOME	
For every day of not less than seven hours employed in travelling	10,500
Where a lesser time than seven hours is so employed per hour	1,680
Provided that the taxing officer may increase or diminish the above allowance if for any special reason he sees it fit.	
8. DEBT COLLECTION	
In respect of non-contentious debt collection matters an advocate may enter into a general agreement with a client to charge therefor upon the following inclusive scale in lieu of charging per item for work done: Provided that in any case where not more than one letter of demand has been written the scale shall be reduced by one-half, subject to a minimum fee of KShs. 315 and provided further that where the letter of demand is followed by the institution of proceedings at the instance of the same advocate the scale does not apply and the letter shall be charged under item 5 of this Schedule or under Schedule VI or Schedule VIII as may be appropriate.	
(a) Where the amount of the debt does not exceed KSh. 1,000	630
(b) Where the amount of the debt exceeds KSh. 1,000 but does not exceed KSh. 3,000	1,050
(c) Where the amount of the debt exceeds KSh. 3,000 but does not exceed KSh. 6,000	1,470
(d) Where the amount of the debt exceeds KSh. 6,000 but does not exceed KSh. 10,000	1,890
(e) Where the amount of the debt exceeds KSh. 10,000 but does not exceed KSh. 100,000	2,100
Plus 7.5 per cent on the amount over KSh. 10,000	
(f) Where the amount of the debt exceeds KSh. 100,000	11,550
Plus 1.5 per cent on the amount over KSh. 100,000.	
9. CHATTELS TRANSFERS	
For drawing and completing an instrument under the Chattels Transfer Act including all necessary and proper searches, affidavits, stamping and registration—	
(a) Where the amount secured does not exceed KSh. 50,000	4,200
(b) Where the amount secured exceeds KSh. 50,000, one-half of the scale fee under 1 of the First Scale of Schedule I adjusted in accordance with the notes to that Schedule.	

SCHEDULE VI

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

COSTS OF PROCEEDINGS IN THE HIGH COURT

A—Party and Party Costs

1. INSTRUCTION FEES

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

- (i) To sue in an ordinary suit in which no appearance is entered under Order IXA of the Civil Procedure Rules where no application for leave to appear and defend is made, the fee shall be 65% of the fees chargeable under item 1(a) where the value of the subject matter is in excess of KSh. 3,000,000.

SCHEDULE VI—continued

(ii) To sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% of the fees chargeable under item 1(b) where the value of the subject matter is in excess of KSh. 3,000,000.

(iii) In a suit where settlement is reached prior to confirmation of the first hearing date of the suit the fee shall be 85% of the fee chargeable under item 1(b) of this Schedule.

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

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

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

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

That value exceeds		But does not exceed
KSh.	KSh.	KSh.
—	500,000	49,000
500,000	750,000	63,000
750,000	1,000,000	77,000
1,000,000	20,000,000 fees as for Sh. 1,000,000 plus an additional 1.5%.	
Over 20,000,000	fees as for 20,000,000 plus an additional 1.25%.	

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

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

(e) Bankruptcy proceedings—

	KSh.
(i) Debtor's applicant—	
to present or oppose a debtor's petition	3,500
to apply or oppose discharge	2,100
(ii) Creditor's application—	
to apply for issue of a bankruptcy notice	700
to present or oppose a creditors petition	3,500
to apply for or oppose a discharge	2,100

(f) Companies—

(i) to present or oppose proceedings under rule 5(1) of the Companies (Winding-up) Rules	12,600
(ii) to support a petition for winding-up of Company	2,520
(iii) to present or oppose any other proceedings under the Companies Act	4,200

[Subsidiary]

SCHEDULE VI—*continued*

	<i>KSh.</i>
(g) Matrimonial causes—	
(i) to present a petition for dissolution of marriage, nullity, judicial separation, or restitution of conjugal rights:	
where the proceedings are defended	12,600
where the proceedings are defended, or to defend proceedings, such sum as may be reasonable but not less than	25,200
(ii) to apply for additional or ancillary relief, or for custody or access:	
if the application is dealt with together with the petition or answer, as the case may be	2,100
if the application is not dealt with together with the petition or answer	8,400
(iii) to apply for a Registrar's Certificate	525
(iv) to present or oppose an application to a judge under the Matrimonial Causes Rules or Laws on Guardianship not otherwise provided for: such sum as may be reasonable but not less than ...	1,890
(h) Adoption and guardianship—	
(i) to present or oppose an application for adoption such sum as may be reasonable but not less than	8,400
(ii) to present or oppose an application for guardianship such sum may be reasonable but not less than	10,550
(i) To present or oppose an election petition such sum as may be reasonable but not less than	42,000
(j) Prerogative orders—	
to present or oppose an application for a prerogative order; such sum as may be reasonable but not less than	28,000
(k) To present or oppose objections to an award made by an arbitrator	8,400
(l) To sue or defend in any case not provided for above; such sum as may be reasonable but not less than	6,300
(m) To present or oppose an appeal in any case not provided for above; such sum as may be reasonable but not less than	6,300
(n) To counter-claim; a fee under subparagraph (a) or (b), as appropriate.	
(o) Matters arising during proceedings—	
(i) to prepare an affidavit	630
(ii) to prepare interrogatories or answers thereto	3,500
(iii) to apply for a commission or letter of request for the examination of a witness	2,100
(iv) to prepare a brief for counsel in relation to a commission for examination of a person not residing in Kenya; such sum as may be reasonable but not less than	12,600
(v) to prepare a case stated for the opinion of the court; such sum as may be reasonable but not less than	4,200
(vi) to present an application for a temporary injunction or similar order:	
if unopposed	2,100
if opposed	3,000
(vii) to present or oppose in cases where the judge shall certify that the matter is complex; such sum as the judge may certify to be reasonable	

SCHEDULE VI—continued

(viii) to present or oppose any other application not otherwise provided for, whether by summons in chambers or by notice of motion:	<i>KSh</i>
where the application is unopposed	1,750
where the application is opposed, such sum as may be reasonable but not less than	3,500

Provided that—

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

2. FEES FOR GETTING UP OR PREPARING FOR TRIAL

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

Provided that—

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

3. FEE FOR GETTING UP AN APPEAL

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

[Subsidiary]

SCHEDULE VI—*continued*

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, agreement for compromise, adjustment or satisfaction of suit, or for reference to arbitration or any other pleading not otherwise provided for—	<i>KSh.</i>
(i) four folios or less	735
(ii) in excess of four folios; additional per folio after the first four folios	105
(b) Creditor's or debtor's petition that a debtor be adjudicated insolvent, or notice of objection thereto—	
(i) six folios or less	1,050
(ii) in excess of six folios per folio	105
(c) Petition for winding-up of a company incorporated under the Companies Act—	
(i) nine folios or less	1,575
(ii) in excess of nine folios; per folio	105
(d) All other documents (including proofs of witnesses; evidence) so far as necessary; per folio	126
(e) Bill of costs; per folio	126
(f) Affidavit or return of service	168
Provided that in relation to 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 objection to petition, interrogatories, replies to interrogatories, agreement in satisfaction of suit, or for reference to arbitration, exhibit bill of costs and every other document (whether for court or opposing party); per folio	21
(b) The actual cost of copies of judge's notes spoken from day to day as a case proceeds may be allowed if certified for the trial judge.	
(c) Printing actual costs, supported by vouchers of all necessary printing.	
(d) Photostat copies actual costs, supported by vouchers of all necessary photocopying.	
(e) All other necessary copies per folio	21

6. CORRESPONDENCE

Letters before action or other necessary letters	147
or folio	84

7. ATTENDANCES

	<i>Ordinary Scale KSh.</i>	<i>Higher Scale KSh.</i>
(a) On any necessary application to or formal attendance on the registrar or deputy registrar	315	—
(b) At offices of Court or registrar on routine matters	210	
(c) At court in chambers on matters on a date fixed by the court for hearing when the case cannot be taken or by advocate for calling over lists	630	

SCHEDULE VI—*continued*

	<i>Ordinary Scale KSh.</i>	<i>Higher Scale KSh.</i>
(d) At court or in chambers before judge not otherwise provided for—		
(i) half-hour or less	840	1,260
(ii) one hour	1,680	2,100
(iii) half-day	3,360	5,040
(iv) whole day	6,720	10,080
(e) Routine telephone calls each necessary telephone call allowed per three minutes or part thereof	84	—
(f) With a judge on a view, if in court hours, the same fees for attending in court conducting case; if out of court hours per hour including travelling time, in addition to all expenses properly incurred in getting to and from the place viewed	1,512	—
(g) All necessary attendance (including attendances to take minutes of evidence of witnesses other than the party for whom the advocate is appearing) of any nature whatsoever not otherwise provided for per quarter-hour	378	—
8. PERUSALS		
(a) Of pleadings, memorandum of appeal, record of appeal, affidavits, interrogatories and answers thereto, notices to admit, petition to wind up company, petition in insolvency, notice of motion in court, originating summons or other necessary documents not specifically provided for per folio	42	
(b) Of notices and other routine documents	63	
(c) Of necessary letter; per folio	42	
9. SERVICE		
(a) Within three kilometres of the High Court or district registry of the High Court	1,000	
(b) For travelling and subsistence expenses incurred by the process server; charge the actual expense incurred.		
(c) Where service is by post or by any other mode of substituted service, charge the actual expenses incurred.		
10. PLANS, MODELS, ETC.		
Actual costs supported by vouchers of all necessary plans, charts, photograph and models.		
11. TRANSLATIONS		
Actual costs, supported by vouchers, of all necessary translations.		
12. EXECUTION PROCEEDINGS		
(a) Instructions to execute decree and drawing necessary application	630	
(b) Attendance at court filing application	210	
(c) Attending court to peruse order	210	
13. OBJECTION TO EXECUTION PROCEEDINGS		
(a) Instruction to prepare objection	3,000	
(b) Instruction to proceed with attachment	1,500	
(c) Instruction to take proceedings to establish or oppose such proceedings	10,000	
14. GARNISHEE PROCEEDINGS		
(a) Instruction to institute garnishee proceedings, if not opposed	3,000	

Advocates

[Subsidiary]

SCHEDULE VI—continued

	<i>Ordinary Scale KSh.</i>	<i>Higher Scale KSh.</i>
(b) Instructions to institute or to defend garnishee proceedings, when opposed; such sum as the taxing officer considers reasonable but not less than	10,000	
15. FEE ALLOWABLE ON CERTIFICATE OF COSTS UNDER PARAGRAPH 68A		
(a) Where no appearance has been entered in the suit	840	
and where the defendant was served at the first attempt for each additional attempt of service	168	
(b) Where appearance has been entered a further	126	
(c) Where the defendant was served out of the jurisdiction; a further	1,680	
(d) Where the defendant was served in accordance with an order under Order V, rule 17 of the Civil Procedure Rules; the costs of any advertisement ordered by the court together with a further	1,470	
(e) For any application made to the judge under paragraph 11 (2); a further	2,730	
together with the instruction fee and any court fees and affidavits swearing fees incurred; but the taxing officer shall not allow more than one instruction fee.		

B—Advocate and Client Costs

As between advocate and client the minimum fee shall be—

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

SCHEDULE VII

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

COSTS OF PROCEEDINGS IN SUBORDINATE COURTS

A—Party and Party Costs

1. Where the sum found due (in the case of a wholly or partially successful plaintiff) or the sum sued for (in the case of a wholly successful defendant).
Subject as hereinafter provided, the fees for instructions shall be as follows—
 - (i) To sue in an ordinary suit in which no appearance is entered under Order IXA of the Civil Procedure Rules where no application for leave to appear and defend is made, the fee shall be 65% where the value of the subject matter is in excess of KSh. 2,000,000.
 - (ii) To sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% where the value of the subject matter is in excess of KSh. 2,000,000.
 - (iii) In a suit where settlement is reached prior to confirmation of the first hearing date of the suit the fee shall be 85% of the fee chargeable under this Schedule.

SCHEDULE VII—*continued*

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

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

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

2. In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the judgement (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not less than KSh. 5,040 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed KSh. 25,200.
 3. (a) In proceedings for dissolution of marriage, nullity, judicial separation or restitution of conjugal rights—

	<i>KSh.</i>
where the proceedings are undefended	4,200
where the proceedings are defended	12,600
 - (b) In proceedings for ancillary relief—

if heard together with petition or answer	1,400
if not dealt together with petition or answer	2,800
 - (c) In other proceedings for custody, and access
- | | |
|-------|-------|
| | 3,150 |
|-------|-------|
4. On any application, notice of motion, chamber summons or execution proceedings, to include taking instructions to proceed or oppose, drawing application, engrossing and filing
- | | |
|-------|-------|
| | 1,400 |
|-------|-------|
5. On any necessary application to or attendance on Magistrate in court or chambers
- | | |
|-------|-------|
| | 1,000 |
|-------|-------|
6. Attendance at the hearing where the hearing lasts more than one full day—

for the first whole day	3,500
for each part after the first	1,500
 7. Where costs of adjournment of a case are awarded
- | | |
|-------|-------|
| | 1,500 |
|-------|-------|
8. Service—
 - (a) within three kilometres of subordinate court or district registry of the subordinate court

.....	1000
-------	------

 - (b) For travelling and subsistence expenses incurred by the process server; charge the actual expense incurred.
 - (c) Where service is by post or by any other mode of substituted service, charge the actual expenses incurred.
 9. Drawing and filing affidavit or return of service
- | | |
|-------|-----|
| | 200 |
|-------|-----|

Notes

1. When an order has been made in general terms for the payment of cost by either party and an advocate has been employed, those costs, in addition to the court fees, shall be computed under this Schedule, which shall be the minimum fee, and shall include (except as otherwise provided) taking instructions, drawing or perusing pleadings or similar documents; engrossing and filing, and all necessary attendance at court or chambers.
2. Costs exceeding the scales in this Schedule may be ordered on special grounds arising out of the nature and importance or the difficulty or urgency of the case.

Advocates

[Subsidiary]

SCHEDULE VII—*continued*

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

B—Advocate and Client Costs

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

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

SCHEDULE VIII

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

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

A—Party and Party Costs

1. When an order has been made for payment of costs by either party and an advocate has been employed, those costs, in addition to the Tribunal fees, may be allowed to the successful party under paragraphs 6 and 7.
2. Costs exceeding the scale in this Schedule may be allowed for special grounds arising out of the nature and importance or the difficulty or the urgency of the case.
3. Except for good reason, to be recorded, costs shall be awarded to the party who substantially succeeds upon the reference or other proceedings.
4. The value of the subject-matter shall be determined as follows—
 - (a) in a case where the amount of the annual rent is disputed, the difference between the amount proposed by the landlord and the amount offered by the tenant; or
 - (b) in a case where possession is claimed, one year's rent or one year's mesne profits, plus the amount of any arrears of rent or mesne profits awarded, which total shall be determined by the Tribunal; or
 - (c) in a case concerning authority to carry out repairs, the amount claimed or awarded as the costs of the repairs, whichever is less; or
 - (d) in proceedings under section 13 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, the amount of compensation awarded; or where no compensation is awarded, the amount of compensation claimed.
5. The "Lower Scale" in paragraph 6 shall be applied where the matter is disposed of *ex parte*, by consent or by a decision on a preliminary question of law not dependent on fact and the "Higher Scale" shall be applied in all other cases.
6. (1) The instruction fee, which shall include taking instructions, drawing or perusing or similar documents, engrossing and filing the same, may be computed in accordance with subparagraph (2).

SCHEDULE VIII—continued

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

<i>Exceeds KSh.</i>	<i>Does not exceed KSh.</i>	<i>Lower scale KSh.</i>	<i>Higher scale KSh.</i>
—	1,000	924	1,680
1,000	2,000	1,512	2,940
2,000	3,500	1,785	3,570
3,500	5,000	2,520	5,880
5,000	7,500	3,360	7,560
7,500	10,000	4,200	8,400
10,000	20,000	6,300	10,500
20,000	50,000	7,350	12,600
50,000	250,000	a fee as for KSh. 50,000 plus an additional 7.5 per cent on the lower scale or 15 per cent on the higher scale in respect of the excess.	
Over 250,000		a fee for KSh. 250,000 plus an additional 1.5 per cent in respect of the excess.	

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

(c) On proceedings for leave to levy distress, one-half the fee under (a).

(d) In any proceedings not otherwise provided for, such fees as the Tribunal may assess but not less than KSh. 2,100.

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

B—Advocate and Client Costs

As between advocate and client the cost shall be—

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

[Subsidiary]

SCHEDULE IX

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

COSTS OF PROCEEDINGS IN TRIBUNALS UNDER THE RENT RESTRICTION ACT
OR ANY LEGISLATION AMENDING OR REPLACING THE SAME*A—Party and Party Costs*

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

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

<i>Exceeds KSh.</i>	<i>Does not exceed KSh.</i>	<i>Lower scale KSh.</i>	<i>Higher scale KSh.</i>
—	1,000	924	1,680
1,000	2,000	1,512	2,940
2,000	3,500	1,785	3,570
3,500	5,000	2,520	5,880
5,000	7,500	3,360	7,560
7,500	10,000	4,200	8,400
10,000	20,000	6,300	10,500
20,000	50,000	7,350	12,600
over 50,000	a fee as for Sh. 50,000 plus an additional 7.5 per cent on the lower scale or 15 per cent on the higher scale in respect of the excess.		

SCHEDULE IX—*continued*

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

(c) On proceedings for leave to levy distress, one-half the fee under (a).

(d) In any proceedings not otherwise provided for, such fees as the Tribunal may assess but not less than KSh. 2,100.

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

B—Advocate and Client Costs

As between advocate and client the costs shall be—

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

SCHEDULE X

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

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>KSh.</i>	<i>KSh.</i>	<i>KSh.</i>
—	10,000	4,200
10,000	50,000	6,300

Advocates

[Subsidiary]

SCHEDULE X—continued

<i>Exceeds</i>	<i>But does not exceed</i>	
<i>KSh.</i>	<i>KSh.</i>	<i>KSh.</i>
50,000	200,000	8,400
200,000	1,000,000	
1,000,000	1.5 per cent of the value on the first KShs. 1,000,000 thereof and three-quarter per cent over KShs. 1,000,000.	
		<i>KSh.</i>
(b) To apply for re-sealing a grant, the proceedings contested; four-fifths of the fee provided under paragraph (a).		
(c) To apply for confirmation of grant—		
(i) if uncontested		3,150
(ii) if contested; such sum as the taxing officer shall consider reasonable, but not less than		10,500
(d) To apply for grant or re-sealing where the proceedings are contested; not less than twice the fee prescribed by paragraph (a) or (b).		
(e) To lodge a caveat or a renunciation of a right to representation		6,300
(f) To lodge an objection to grant, or a citation or other application or proceedings under any provision of the Law of Succession Act not otherwise provided for in this Schedule; such sum as the taxing officer shall consider reasonable, but not less than		4,500
(g) To render an inventory or account, including an estate duty affidavit, corrective estate duty affidavit and inventory included in or annexed to an affidavit in support of petition: KShs. 2.10 per KShs. 20,000 of net estate included therein, multiplied by the number of entries, but not less than		1,050
2. DRAWING		
(a) Each form or document prescribed under or required by the Law of Succession Act		840
or per folio		168
(b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit		630
or per entry		21
3. COPIES		
Per folio		21
4. PERUSING		
(a) Wills and codicils		840
or per folio		84
(b) Any other form or document prescribed under or required by the Law of Succession Act		420
or per folio		50
5. LETTERS AND ATTENDANCES		
Including those necessary in ascertaining the particulars and extent of an estate, identities concerned, the raising and settlement of estate duty and all other work referred to in paragraphs 18(e) and 51(c) of this Order (other than that included in item 6 of this Schedule)—		
(a) Letter despatched		210
or per folio		126
(b) Letters received and perused		126
or per folio		50
(c) Attendances—		
(i) in ordinary cases per 15 minutes or part thereof		500

SCHEDULE X—*continued*

KSh.

105

- (ii) routine telephone calls within Kenya for 3 minutes or part thereof
- (iii) in other cases the taxing officer may increase or diminish the above charges if, for any special reason, he sees it fit.

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

- (a) Such annual or semi-annual fee as may be reasonable in the circumstances, having regard to the care and labour required, the number and length of the papers to be perused, the value and complexity of the estate, the interests of the parties and all other circumstances.
- (b) Annual or semi-annual commission of such amount as the taxing officer shall consider reasonable, having regard to all the circumstances, but not exceeding in aggregate the following rates—
 - (i) on the estimated net capital value of the estate two and one-half per cent per annum;
 - (ii) on the amount of the income of the estate in a year or half-year: three per cent; and
 - (iii) on the capital value of any portion of the estate which is realized or invested during a year or half-year: one and one-half 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; and
 - (ii) a fee or commission charged under paragraph (a) or (b) shall include all necessary correspondence received and sent and attendances relative thereto and the preparation of the set of inventories or accounts required or formal documents filed or proceedings taken under the Law of Succession Act shall be charged for separately under the appropriate paragraph of this Schedule.

B—Advocate and Client Costs

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

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

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

ADVOCATES (ACCOUNTS) RULES, 1966

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

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

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

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

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

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

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

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

but does not include—

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

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

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

[L.N. 111/1977.]

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

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

5. There may be paid into a client account—

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

[Subsidiary]

6. (1) Where an advocate holds or receives a cheque or draft which includes client's money—

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

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

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

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

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

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

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

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

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

[Subsidiary]

11. No money may be withdrawn from a client account under any of paragraphs (e), (f), (g), (h) or (i) of rule 9 except by a cheque drawn in favour of the advocate.
12. No money may be withdrawn from a client account except as authorized by rule 9 or as specifically authorized in writing by the Council in pursuance of an application by the advocate.
13. (1) Every advocate shall at all times keep, properly written up, such books of account as may be necessary to show—
- (a) every receipt by him of client's money, for each separate client; and
 - (b) every payment or application by him of or from client's money, for each separate client; and
 - (c) the amount held by him for the time being in a client account, for each separate client; and
 - (d) the moneys expended by him for, and the costs charged by him to, each separate client.
- (2) The books of account referred to in paragraph (1) shall include—
- (a) either—
 - (i) a cash book in which to record every transaction involving client's money or other money dealt with by the advocate through a client account, and a separate cash book in which to record every transaction involving the advocate's own money and relating to the affairs of his clients; or
 - (ii) a cash book ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the advocate through a client account and the other for recording every transaction involving the advocate's own money and relating to the affairs of his clients; and
 - (b) either—
 - (i) a ledger in which to record every transaction involving client's money or other money dealt with by the advocate through a client account, and a separate ledger in which to record every transaction involving the advocate's own money and relating to the affairs of his clients; or
 - (ii) a ledger ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the advocate through a client account and the other recording every transaction involving the advocate's own money and relating to the affairs of his clients; and
 - (c) a record showing particulars of all bills of costs delivered by the advocate to his clients, distinguishing between profit costs and disbursements.
- (3) A cash book or ledger required to be kept under this rule may be a loose-leaf book.
- (4) In this rule, "**cash book**" and "**ledger**" include such cards or other permanent records as are necessary for the operation of a mechanical system of book-keeping.
14. Every advocate shall preserve for at least six years from the date of the last entry therein all books of account required to be kept by him under rule 13.

Advocates

[Subsidiary]

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

16. The Advocates (Accounts) Regulations, 1952, are revoked.
[L.N. 786/2002]

ADVOCATES (PRACTICE) RULES, 1966

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

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

Provided always that—

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

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

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

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

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

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

[Subsidiary]

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

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

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

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

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

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

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

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

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

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

Provided that—

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

[Subsidiary]

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

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

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

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

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

ADVOCATES (DEPOSIT INTEREST) RULES, 1967

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

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

[L.N. 112/1977.]

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

4. An advocate is liable to account to a client for interest received on moneys deposited in a client account where the moneys are deposited in a separate designated account.

[L.N. 112/1977.]

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

[L.N. 112/1977.]

ADVOCATES (ACCOUNTANT'S CERTIFICATE) RULES, 1967

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

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

2. In these Rules—

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

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

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

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

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

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

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

(a) he has neither been at any time during the accounting period, nor subsequently, before giving the certificate, become a partner, clerk or servant of such advocate or any partner of his; and

(b) he is not subject to notice of disqualification under paragraph (2).

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

(a) the accountant has been found guilty by the Disciplinary Tribunal of his professional body of professional misconduct or discreditable conduct; or

(b) the Council is satisfied that an advocate has not complied with the provisions of the Advocates (Accounts) Rules in respect of matters not specified in an accountant's certificate and that the accountant was negligent in giving such certificate,

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

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

(a) make a general test examination of the books of account of the advocate;

(b) ascertain whether a client account is kept;

(c) make a general test examination of the bank pass books and statements kept in relation to the advocate's practice;

(d) make a comparison, as at not fewer than two dates selected by the accountant, between—

(i) the liabilities of the advocate to his clients as shown by his books of account;

[Subsidiary]

- (ii) the balance standing to the credit of the client account; and
- (e) ask for such information and explanations as he may require arising out of (a) to (d) above.

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

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

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

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

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

[L.N. 224/1984.]

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

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

[L.N. 287/1968.]

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

- (a) the date to which the advocate's books were last made up before the 1st January 1968; or
- (b) if the books were not made up during the practice year beginning on the 1st January 1967, either on the 1st January 1967 or on the day upon which the advocate first began or began again to hold or receive client's money, whichever be the later; or

[Subsidiary]

- (c) in the case of an advocate retiring from practice who has ceased to hold or receive client's money after the 1st January 1967, the period up to the date upon which he so ceased.

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

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

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

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

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

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

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

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

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

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

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

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

15. Every notice to be given by the Council under these Rules to an advocate shall be in writing under the hand of the Secretary and sent by registered post to the last address of

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the advocate appearing in the roll of advocates kept by the Registrar under section 20 of the Act and when so given and sent, is taken to have been received by the advocate within seven days after the date of posting.

16. Every notice given by the Council under these Rules to an accountant shall be in writing under the hand of the Secretary and sent by registered post to the address of the accountant shown on an accountant's certificate or appearing in the records of the accountancy body of which the accountant is a member, and where so given and sent, is taken to have been received by the accountant within seven days after the date of posting.

SCHEDULE

[Rule 6.]

FORM OF ACCOUNTANT'S CERTIFICATE

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

- 1. Advocate's full name
- 2. Firm(s) Name(s) and Address(es)

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

- 3. State whether practising alone or in partnership
- 4. Accounting Period(s)

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

ACCOUNTANT'S CERTIFICATE

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

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

- * (1) during the above-mentioned period(s) he has complied with the provisions of the Advocates (Accounts) Rules except so far as concerns—
 - (a) certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery: I am satisfied that none of such breaches resulted in any loss to any client;
 - (b) the matters set out on the back hereof;

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

Full name
 Qualifications (if any)
 Firm name
 Address

Signature
 Date

* Delete clause not applicable.

SCHEDULE—*continued*

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

Rules under section 58(6)

ADVOCATES (DISCIPLINARY COMMITTEE) RULES, 1990

[L.N. 458/1990, LN 59/2004.]

PART I – PRELIMINARY

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

2. In these Rules—

“the Committee” means the Disciplinary Committee;

“the Council” means the Council of the Society;

“the secretary” means the secretary of the Committee.

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

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

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

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

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

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

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

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

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

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

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

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

[Subsidiary]

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

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

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

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

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

14. The notice of hearing—

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

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

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

PART IV – MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[Subsidiary]

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

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

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

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

33. The Advocates (Disciplinary Committee) Rules are revoked.

SCHEDULE

FORM 1

[Section 59 and Rule 3.]

AFFIDAVIT BY APPLICANT BEING AN ADVOCATE
BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989
[Act No. 18 of 1989.]

MISCELLANEOUS CAUSE NO. OF 20

In the Matter of , an Advocate
and

In the Matter of the Advocates Act, 1989

I, of

make oath and say as follows:

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

OR

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

Advocates

[Subsidiary]

SCHEDULE, FORM 1—continued

OR

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

SWORN by the said

.....
at this
..... day of
....., 20

Before me,

.....
Commissioner of Oaths or Magistrate

FORM 2

[Section 60 and Rule 8.]

COMPLAINT AGAINST AN ADVOCATE

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989

[Act No. 18 of 1989.]

MISCELLANEOUS CAUSE NO. OF 20

In the Matter of an Advocate

and

In the Matter of the Advocates Act, 1989

To the Secretary of the Disciplinary Committee.

I, (i) of

..... make oath and say as follows:

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

SWORN by the said

.....
at this
..... day of
....., 20

Before me,

.....
Commissioner of Oaths or Magistrate

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

Advocates

[Subsidiary]

SCHEDULE—continued

FORM 3

[Section 72 and Rule 8.]

APPLICATION IN RESPECT OF AN ADVOCATE'S CLERK

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER THE ADVOCATES ACT, 1989

[Act No. 18 of 1989.]

DISCIPLINARY CAUSE NO. OF 20

In the Matter of (i) an Advocate's Clerk

and

In the Matter of the Advocates Act, 1989

To the Secretary of the Disciplinary Committee:

I, the undersigned (i)..... of

..... make oath and say as follows:

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

Advocate's Clerk ^{now} / _{formerly} in the employment of (iv)

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

SWORN by the said

..... at this day of , 20

Before me,

..... Commissioner of Oaths or Magistrate

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

SCHEDULE—continued

FORM 4

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

NOTICE OF HEARING

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER THE ADVOCATES ACT, 1989

[Act No. 18 of 1989.]

DISCIPLINARY CAUSE NO. OF 20

In the Matter of (i)

and

In the Matter of the Advocates Act, 1989

To:

of

NOTICE is hereby given THAT—

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

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

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

4. The powers and procedures of the Committee are regulated by the Advocates Act, 1989 and the Advocates (Disciplinary Committee) Rules, 1990 and to which your attention is directed. In particular your attention is drawn to:

- (a) the necessity of supplying to me and to all parties noted hereon, at least fourteen days before the hearing date, a list of all documents on which it is proposed to rely at the hearing; and
- (b) the right of any party to these proceedings to inspect and take copies of documents so listed.

Dated the, 20

In the name of the Disciplinary Committee.

Advocates

[Subsidiary]

SCHEDULE—continued

Secretary

Copy to:

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

In the name of the Disciplinary Committee.

Secretary

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

FORM 5

[Section 58 and Rule 32.]

WITNESS SUMMONS

BEFORE THE DISCIPLINARY COMMITTEE ESTABLISHED UNDER
THE ADVOCATES ACT, 1989

[Act No. 18 of 1989.]

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

and

In the Matter of the Advocates Act, 1989

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

AND herein fail not.

Given under my hand at Nairobi this day of
....., 20

In the name of the Disciplinary Committee.

Secretary

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

ADVOCATES (PRACTISING CERTIFICATES) (FEES) RULES, 2003

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

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

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

ARRANGEMENT OF RULES

Rule

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

[Subsidiary]

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

[L.N. 213/2003.]

1. Citation

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

2. Application

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

3. Designation of Chairman

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

4. Meetings

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

5. Special meeting

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

6. Chairman to preside

The Chairman shall preside at every meeting of the Commission at which present, and, in the absence of the Chairman at any meeting, the Commissioners present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairman.

7. Quorum

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

8. Voting

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

9. Disclosure of interest

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

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

11. Commissions may determine own procedure

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

ADVOCATES (CONTINUING LEGAL EDUCATION) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
 2. Interpretation.
 3. Programmes of the Council.
 4. Award of credits and certificates.
 5. Records.
 6. Application for accreditation.
 7. Goals of the programme.
 8. Relevant courses.
 9. Prescribing fees.
 10. Programmes of Council compulsory.
 11. Proof of compliance.
 12. Delegation.
-

[Subsidiary]

ADVOCATES (CONTINUING LEGAL EDUCATION) REGULATIONS, 2004

[L.N. 58/2004, L.N. 131/2004.]

1. Citation and commencement

These Regulations may be cited as the Advocates (Continuing Legal Education) Regulations, 2004, and shall come into operation on 1st January, 2005.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Council**”, has the meaning assigned to it in the Law Society of Kenya Act (Cap. 18);

“**unit of continuing legal education**” means a measurement assigned by the Council to all or part of a particular continuing legal education activity.

3. Programmes of the Council

(1) The Council shall conduct education programmes as may from time to time deemed relevant and may accredit any programme conducted by any institution, body or other organization (in these Regulations referred to as “the sponsoring agency”).

(2) The Council shall assign a unit or units of continuing legal education for each programme to be used in awarding credit to members participating therein.

4. Award of credits and certificates

The Council or the sponsoring agency may award credit to participants in the programme for continuing legal education and shall issue certificates of participation to all participants who have successfully completed the programme.

5. Records

(1) The Council or the sponsoring agency shall keep a record of the participants in any programme, showing whether the participants successfully completed their programmes or not.

(2) The Council shall keep a record of all the accredited programmes showing their sponsoring agencies, the description of any such programmes and whether the sponsoring agency has filed a record of its participants.

(3) The sponsoring agency shall, upon the completion of any programme, file a return with the Council.

6. Application for accreditation

(1) Any sponsoring agency seeking accreditation shall make an application in that regard to the Council in the prescribed form.

(2) The Council shall consider the application for accreditation and shall reject or approve the same, having regard to the following—

- (a) whether the programme is an educational programme;
- (b) whether the objective of the programme is that of the improvement of the professional competence of members of the Society;
- (c) whether the programme is an activity dealing with a subject matter that is directly relevant to the practice of law;

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- (d) whether the applicant has the expertise and resources necessary for achieving the goals or continuing legal education;
- (e) whether the method of presentation sought to be utilized is appropriate for dissemination of the relevant skills and knowledge to the participants;
- (f) whether the applicant has the infrastructure sufficient and conducive for disseminating the programmes; and
- (g) any other matter as may appear relevant.

(3) The Council shall issue a letter of accreditation upon the approval of any programme offered by a sponsoring agency and shall assign the units of continuing legal education credit to be awarded to participants.

7. Goals of the programme

The Council may declare any accredited programme to be incapable of obtaining the goals of continuing legal education or incompatible with the goals of the Society regarding the improvement of the conditions of learning of the members in which case such programme shall cease being recognized as from the date of such declaration.

8. Relevant courses

A programme of continuing legal education either conducted by the Council or accredited by it shall emphasize ethical as well as practical and professional aspects of legal practice and may include the following—

- (a) client counselling;
- (b) information technology;
- (c) alternative dispute resolution;
- (d) legal research;
- (e) legal writing;
- (f) oral skills;
- (g) economic principles;
- (h) entrepreneurial organization;
- (i) commercial transactions;
- (j) international business transactions;
- (k) resolution of commercial disputes;
- (l) trial and administrative ways;
- (m) appellate, constitutional and international advocacy;
- (n) management of a legal practice;
- (o) codes of ethics and discipline;
- (p) public interest lawyering;
- (q) law reform; and
- (r) other relevant contemporary issues.

9. Prescribing fees

The Council may prescribe a fee payable by participants in a programme of continuing legal education, and, in the case of an accredited programme, the Council shall approve any such fee levied by a sponsoring agency.

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10. Programmes of Council compulsory

Every member of the Society shall obtain, in each year of practice, not less than five units of continuing legal education by attending and participating in at least two programmes organized by the Council.

11. Proof of compliance

Every application for an annual practising certificate shall be accompanied by proof that the applicant has secured five units of continuing legal education during each practising year.

12. Delegation

The Council may delegate all or any of the functions under these Regulations to a committee appointed by itself from among members of the Society.

ADVOCATES (PROFESSIONAL INDEMNITY) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

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

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ADVOCATES (PROFESSIONAL INDEMNITY) REGULATIONS, 2004

[LN 82/2004.]

1. Citation

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

2. Professional indemnity cover

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

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

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

3. Purpose

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

4. Practising certificate conditional upon compliance

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

5. Agreements

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

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

ARRANGEMENT OF RULES

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Rule

1. Citation.
2. Interpretation.

PART II – COMMITTEE ON SENIOR COUNSEL

3. Composition of Committee.
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PART III – APPLICATION FOR CONFERMENT OF RANK OF SENIOR COUNSEL

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

PART IV – DUTIES AND PRIVILEGES OF SENIOR COUNSEL

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

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ADVOCATES (SENIOR COUNSEL CONFERMENT AND PRIVILEGES) RULES, 2011

[LN 155/2011, LN 36/2012, L.N. 27/2008.]

PART I – PRELIMINARY

1. Citation

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

2. Interpretation

In these Rules, unless the context otherwise requires—

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

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

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

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

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

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

PART II – COMMITTEE ON SENIOR COUNSEL

3. Composition of Committee

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

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

(2) *Deleted by Act No. 36 of 2012, s. 2.*

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

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

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

4. Functions of the Committee

The Committee on Senior Counsel shall—

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

PART III – APPLICATION FOR CONFERMENT OF RANK OF SENIOR COUNSEL

5. Notice inviting applications

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

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

6. Application

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

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

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

7. Criteria for conferment

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

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

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- (h) has actively served the Society or other regional or international bar association to which the Society is a member or has undertaken community service; and
- (i) has contributed to the development of the legal profession through scholarly writings and presentations.

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

8. List of applicants

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

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

9. Deleted by Act No. 36 of 2012, s. 7.**10. Consideration of application**

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

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

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

11. Time period for considering application

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

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

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

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

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

12. Letters of conferment

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

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

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

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

13. Signing the Roll of Senior Counsel

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

14. Restrictions on the use of title of Senior Counsel

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

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

15. Removal from Roll of Senior Counsel

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

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

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

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

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

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

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

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

16. Procedures of the Committee

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

17. Secretariat

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

PART IV – DUTIES AND PRIVILEGES OF SENIOR COUNSEL**18. Use of designation of Senior Counsel**

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

(2) *Deleted by Act No. 36 of 2012, s. 11.*

[Subsidiary]

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

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

19. Duties, powers and privileges of Senior Counsel

The rank of Senior Counsel shall bestow upon the holder thereof such other duties, powers and privileges as the Council may consider appropriate.

20. Transition

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