

THE ADVOCATES (REMUNERATION) ORDER

ARRANGEMENT OF PARAGRAPHS

PART I – GENERAL MATTERS

Paragraph

1. Citation
2. Application of Order
3. Scale of fees
4. Additional remuneration for exceptional dispatch
5. Special fee for exceptional importance and complexity
6. Security from client for advocate's remuneration
7. Interest may be charged
8. Costs payable by an executor, administrator or trustee
9. Costs payable by infant, etc
10. Taxing officer
11. Objection to decision on taxation and appeal to Court of Appeal
12. Reference by consent
13. Taxation of cost as between advocate and client on application of either party
- 13A. Powers of taxing officer
14. Default of advocate to attend taxation after notice
15. Taxation procedure contained in Part III to apply to bills under Part II
16. Discretion of taxing officer
17. Length of folio

PART II – NON-CONTENTIOUS MATTERS

18. Remuneration of advocate in non-contentious matters
19. Expenses chargeable in addition to remuneration
20. Scale charges; what they include and exclude
21. Scale fees: how calculated
22. Liberty to advocate to elect Schedule 5; election to be communicated to client in writing
23. Items to be charged for separately under appropriate Schedule
- 23A. Choice of methods of completion of transaction; fee applicable
24. Documents; by whom to be prepared
25. Place of completion
26. Definitions and application of Schedule 1
27. Commission for negotiating sale or purchase
28. Remuneration for conveyance on a sale by auction
29. Charges where same advocate acting for both vendor and purchaser
30. Commission for negotiating loan
31. Costs of mortgage to be paid by borrower
32. Building society mortgagee
33. Charges where advocate is concerned for both mortgagor and mortgagee
34. Charges where conveyance and mortgage are prepared by one advocate
35. Charges where one document prepared and one approved by one advocate
36. Charges where mortgage in favour of vendor and one advocate acts for both parties
37. Where property is sold subject to incumbrances
38. Charges for mortgage to advocate

[Subsidiary]

39. Charges for transfer of mortgage to advocate or subsequent work in relation to mortgage in which advocate is personally interested
40. Scale: how reckoned on transfers of mortgages
41. Charges for approving draft on behalf of several parties having different interests
42. Application of Schedule 2
43. Lessor's and lessee's costs
44. Printed or stereotyped leases
45. Charges where advocate is concerned for both lessor and lessee
46. Where mortgagor joins in a conveyance
47. Where third party joining in conveyance or lease is separately represented
48. Where consideration for conveyance or lease consists partly of premium and partly of rent

PART III – TAXATION OF COSTS IN
CONTENTIOUS AND OTHER MATTERS

49. Application of Part III
- 49A. Costs in criminal cases
50. Costs in High Court according to Schedule 6
- 50A. Schedule 6 costs on the higher scale
51. Costs in subordinate courts according to Schedule 7
- 51A. Costs in Tribunal under Cap. 301
- 51B. Costs in Tribunal under Cap. 296
- 51C. Costs in probate and administration cases
- 51D.
52. Costs to be taxed as between party and party unless otherwise directed
53. No advocate's costs where suit brought without notice except on special order
54. Costs on an opposed application
55. Costs out of estate of minor, etc
56. Court may fix costs or record consent order as to costs
57. Registrar to record consent order as to costs
58. Costs in High Court may be restricted to subordinate courts' scale
59. Costs of more than one advocate may be certified by the judge
60. Judge may certify for costs of Queen's Counsel and Junior Counsel
61. Costs improperly incurred by advocate
62. Costs where same advocate is employed by two or more plaintiffs or defendants
- 62A. Costs where there has been a change of advocates
63. Costs between party and party where joint executors or trustees defend separately may be restricted
64. Appearance in Court or chambers of party not interested
65. Limits of time for taxation
66. Taxation of costs upon an award
67. Receiver in insolvency to have notice of taxation
68. Advocate of insolvent petitioner to give credit for deposit towards costs
- 68A. Certificate of costs
- 68B. Limitation of costs
69. Manner of preparing bills for taxation
70. Filing bills for taxation
71. Bills not to be altered after being lodged
72. Notice of taxation to be given by taxing officer
73. No notice of taxation where party has not appeared

- 74. Vouchers to be produced
- 74A. Witness expenses
- 75. Numbering of folios on documents charged by the folio
- 76. Taxing officer may proceed ex parte and extend or limit time or adjourn
- 77. Where more than one-sixth taxed off
- 78. *[Deleted by L.N. 73/1983, s. 13.]*
- 79. Instructions of judge as to costs

SCHEDULES

SCHEDULE 1 —	SCALE FEES
SCHEDULE 2 —	SCALE OF CHARGES FOR THE PREPARATION OF LEASES, AGREEMENTS, FOR LEASES AND TENANCY AGREEMENTS AT A RACK RENT
SCHEDULE 3 —	FORMATION, INCORPORATION AND REGISTRATION OF COMPANIES
SCHEDULE 4 —	TRADE MARKS
SCHEDULE 5 —	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
SCHEDULE 6 —	COSTS OF PROCEEDINGS IN THE HIGH COURT
SCHEDULE 7 —	COSTS OF PROCEEDINGS IN SUBORDINATE COURTS
SCHEDULE 8 —	COSTS OF PROCEEDINGS IN TRIBUNAL UNDER THE LANDLORD AND TENANT (SHOPS, HOTELS AND CATERING ESTABLISHMENTS) ACT
SCHEDULE 9 —	COSTS OF PROCEEDINGS IN TRIBUNALS UNDER THE RENT RESTRICTION ACT OR ANY LEGISLATION AMENDING OR REPLACING THE SAME
SCHEDULE 10 —	PROBATE AND ADMINISTRATION
SCHEDULE 11 —	COSTS OF PROCEEDINGS BEFORE TRIBUNALS OTHER THAN THOSE UNDER SCHEDULES 8 AND 9 OF THIS ORDER EXCEPT WHERE OTHERWISE PRESCRIBED UNDER THE ACT SETTING UP THE TRIBUNAL
SCHEDULE 12 —	PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

THE ADVOCATES (REMUNERATION) ORDER

[Legal Notice 64 of 1962, Legal Notice 8 of 1965, Legal Notice 227 of 1967, Legal Notice 198 of 1969, Legal Notice 56 of 1972, Legal Notice 164 of 1973, Legal Notice 37 of 1977, Legal Notice 264 of 1978, Legal Notice 62 of 1979, Legal Notice 117 of 1980, Legal Notice 70 of 1982, Legal Notice 73 of 1983, Legal Notice 121 of 1984, Legal Notice 264 of 1993, Legal Notice 550 of 1997, Legal Notice 159 of 2006, Legal Notice 50 of 2009, Legal Notice 35 of 2014, Legal Notice 45 of 2014, Legal Notice 268 of 2017]

PART I – GENERAL MATTERS

1. Citation

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

2. Application of Order

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

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

3. Scale of fees

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

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

4. Additional remuneration for exceptional dispatch

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

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

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

5. Special fee for exceptional importance and complexity

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

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

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

6. Security from client for advocate's remuneration

An advocate may accept from his client and a client may give to his advocate security for the amount to become due to the advocate for remuneration and disbursements in business to be transacted or being transacted by him and for interest as hereinafter provided on such

[Subsidiary]

amount, but so that interest is not to commence until the amount due is ascertained either by agreement or taxation:

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

7. Interest may be charged

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

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

8. Costs payable by an executor, administrator or trustee

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

9. Costs payable by infant, etc

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

10. Taxing officer

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

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

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

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

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

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

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

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

12. Reference by consent

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

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 overcaution, 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

[Subsidiary]

figures is to be counted as one word: eg. "£25,564 16s 8d." is to be counted as three words, and "254 feet 11 inches" is to be counted as four words.

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

PART II – NON-CONTENTIOUS MATTERS

18. Remuneration of advocate in non-contentious matters

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

Sales, purchases and securities

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

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

Leases and agreements for lease of land

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

Companies formations, incorporations and registrations

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

Trademarks

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

Estates

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

Uncompleted transactions and other business

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

Patents, designs and utility models

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

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

19. Expenses chargeable in addition to remuneration

The remuneration prescribed by this Order does not include stamps, auctioneer's or valuer's charges, agent's fees, travelling expenses, fees paid on searches in public offices or on registration, costs of extracts from any register, record or roll, cost of photocopies and

other disbursements reasonably and properly incurred, but includes stationery, copies of letters and charges and allowances for time of the advocate and his clerks.

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

20. Scale charges; what they include and exclude

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

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

but excluding land control consent;

- (g) registration of the deed;
- (h) correspondence between advocate and client.

(2) Scale charges shall not include—

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

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

21. Scale fees: how calculated

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

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

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

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

[Subsidiary]

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

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

23. Items to be charged for separately under appropriate Schedule

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

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

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

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

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

24. Documents; by whom to be prepared

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

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

25. Place of completion

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

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

26. Definitions and application of Schedule 1

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

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

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

27. Commission for negotiating sale or purchase

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

28. Remuneration for conveyance on a sale by auction

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

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

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

30. Commission for negotiating loan

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

31. Costs of mortgage to be paid by borrower

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

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

32. Building society mortgagee

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

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

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

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

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

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

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

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

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

[Subsidiary]

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

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

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

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

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

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

37. Where property is sold subject to incumbrances

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

38. Charges for mortgage to advocate

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

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

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

40. Scale: how reckoned on transfers of mortgages

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

(if any) for negotiating the loan shall be chargeable on such transfers and further charges under Schedule 1.

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

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

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

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

42. Application of Schedule 2

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

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

43. Lessor's and lessee's costs

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

(2) In this Rule—

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

44. Printed or stereotyped leases

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

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

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

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

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

46. Where mortgagor joins in a conveyance

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

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

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

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

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

[Subsidiary]**48. Where consideration for conveyance or lease consists partly of premium and partly of rent**

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

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

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

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

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

49A. Costs in criminal cases

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

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

50. Costs in High Court according to Schedule 6

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

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

50A. Schedule 6 costs on the higher scale

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

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

51. Costs in subordinate courts according to Schedule 7

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

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

51A. Costs in Tribunal under Cap. 301

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

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

51B. Costs in Tribunal under Cap. 296

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

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

51C. Costs in probate and administration cases

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

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

51D.

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

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

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

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

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

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

54. Costs on an opposed application

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

55. Costs out of estate of minor, etc

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

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

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

57. Registrar to record consent order as to costs

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

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

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

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

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

In causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded, could have been brought in a resident magistrate's or other

[Subsidiary]

subordinate court, costs on the scale application to subordinate courts only shall be allowed unless the judge otherwise orders.

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

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

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

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

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

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

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

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

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

61. Costs improperly incurred by advocate

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

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

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

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

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

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

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

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

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

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

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

64. Appearance in Court or chambers of party not interested

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

65. Limits of time for taxation

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

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

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

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

66. Taxation of costs upon an award

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

67. Receiver in insolvency to have notice of taxation

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

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

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

[Subsidiary]

be deducted by the taxing officer in arriving at the amount for which his certificate of taxation issues.

68A. Certificate of costs

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

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

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

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

68B. Limitation of costs

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

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

69. Manner of preparing bills for taxation

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

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

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

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

70. Filing bills for taxation

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

71. Bills not to be altered after being lodged

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

72. Notice of taxation to be given by taxing officer

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

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

73. No notice of taxation where party has not appeared

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

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

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

74. Vouchers to be produced

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

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

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

[Subsidiary]

any proceeding before him, and for proper cause to adjourn the hearing of any taxation from time to time.

77. Where more than one-sixth taxed off

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

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

78.

[Deleted by L.N. 73/1983, s. 13.]

79. Instructions of judge as to costs

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

SCHEDULE 1

SCALE FEES

[L.N. 8/1965, Sch., L.N. 56/1972, s. 16, L.N. 37/1977, s. 10, L.N. 264/1978, s. 2, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 50/2009, L.N. 35/2014, r. 7.]

FIRST SCALE

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

Vendor's Advocate and Purchaser's Advocate

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

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

SECOND SCALE

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

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

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

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

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

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

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

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

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

Notes.

1. The scale fees for the creation of an equitable mortgage by deposit of documents

- (a) or a memorandum of charge by deposit of title shall be 50% of the fees specified in paragraphs (b) to (e) subject to a minimum fee of Kshs. 12,500.
- (b) The scale fees for the creation of a discharge of equitable mortgage shall be 15% of the fees specified in paragraphs (b) to (e) above subject to a minimum of Kshs. 10,000 but subject to a maximum of Kshs. 42,000.

2. The fee on a single debenture of any nature not creating a security shall be calculated under Schedule 5 according to time, complexity and responsibility.

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

5. Subject to paragraph 23A of the Order, where two or more securities are created, whether contemporaneously or subsequently, in favour of the same grantee to secure the same or a lower amount, then the fee payable shall be the full prescribed fee in respect of the principal

[Subsidiary]

security plus 25% of the prescribed scale fee for the first additional security and 10% for each subsequent additional security.

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

7. Where a security is created by more than one grantor in favour of the same grantee to secure the same amount, then the fee payable shall be the full prescribed fee in respect of the first grantor and a sum equivalent to 5% of the prescribed fee in respect of each grantor thereafter, the total fees to be divided equally between the grantors unless otherwise agreed by all the grantors in writing.

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

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

THIRD SCALE

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

On the first KSh. 200,000 per KSh. 2,000 KSh. 112

Over KSh. 200,000 to KSh. 600,000 per KSh. 2,000 KSh. 52

Over KSh. 600,000 per KSh. 2,000 KSh. 30

Notes

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

2. In scales 1, 2 and 3—

- (a) "mortgage" includes a conveyance, assignment or other assurance, or an agreement to convey, assign or otherwise assure the immovable property or any estate, interest or other right therein to secure the payment of moneys;
- (b) "charge" includes an agreement to charge immovable property or any estate, interest or other right therein to secure the payment of moneys; and
- (c) neither "mortgage" nor "charge" includes a memorandum of equitable mortgage by deposit of documents or a memorandum of charge by deposit of title or an agreement exclusively collateral thereto unless the collateral agreement or covenant to execute a mortgage or charge at some future time or when called upon.

SCHEDULE 2

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

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

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

- (a) From Kshs. 1 to Kshs. 500,000, 15% of the annual rent or Kshs. 20,000 whichever is higher.

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

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

Notes.

1. Where a varying rent is payable the amount of the annual rent means the amount of the highest rent payable under the lease or agreement.
2. In the case of extension of the term of a lease, agreement for lease or tenancy agreement capable of being effected by way of an endorsement on or annexure to the original instrument, the charge shall be calculated under Schedule 5.
3. Charges as to conveyances in fee, or for any other freehold estate reserving rent, or building leases reserving rent or other long leases not at a rack rent, or agreement for the same respectively, shall be calculated under Schedule 5.
4. Fees will be calculated on the consideration or value of the transaction using the percentage rate of the band within which the consideration lies. It shall not be cumulative.

SCHEDULE 3

FORMATION, INCORPORATION AND REGISTRATION OF COMPANIES

[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, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

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

A fee calculated according to the following scales—

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

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

2. *Registration of foreign companies*

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

3. *Other company work*

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

SCHEDULE 4

TRADE MARKS

[L.N. 56/1972, s. 16, L.N. 37/1977, s. 12, L.N. 264/1978, s. 2, L.N. 70/1982, s. 2, L.N. 264/1993, s. 2, L.N. 550/1997, s. 2, L.N. 159/2006, s. 4, L.N. 35/2014, r. 7.]

Particulars	KSh.
1. Applications	
(a) Instructions to register one trade mark in one class	42,000
(b) Instructions to register second and further trade marks in the name of the same proprietor simultaneously per trade mark in one class	29,000
(c) Filing priority application	4,000
2. Registered users	
(a) Instructions to file an application to enter one registered user of one registered trade mark or more than one registered trade mark of the same proprietor incorporated in the same set of documents and subject to the same conditions and restrictions in each case—	
(i) for the first single registered trade mark	40,000
(ii) for the second registered trade mark	18,900
(iii) for the third registered trade mark and each subsequent registered trade mark, applications being filed simultaneously	2,600
(iv) For the fourth and each subsequent registered trade mark applications being filed simultaneously.	5,040
(b) Drawing statement of case, statutory declaration in support and application, depending on the amount of work involved but not less than Kshs.	9,000
(c) Drawing registered user agreement, depending on the amount of work involved but not less than Kshs.	12,000
(d) Instructions to file an application under section 31(8)	
(b) for cancellation of a registered user in respect of one registered trade mark or more than one registered trade mark of same proprietor—	
(i) For the first or single registered trade mark	25,000
(ii) For the second registered trade mark	15,000
iii) For the third registered trade mark and each subsequent trade mark, application being filed simultaneously	10,000
(iv) For the fourth and each subsequent trade mark, applications being filed simultaneously	5,040
(e) Drawing application for cancellation and statement of ground, depending on amount of work involved but not less than Kshs.	12,500
(f) And for each subsequent registered trade mark included in the same application for cancellation, the grounds for cancellation being the same Kshs.	5,040
(g) Instructions to file an application for variation of terms of appointment of registered user Kshs.	6,000
3. Assignments	
(a) Instructions to file an application to register a subsequent proprietor of one registered trade mark (or more than one registered trade mark standing in the same name under	

the same devotion of title and filed simultaneously) with or without goodwill—

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

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

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

filed simultaneously

- | | |
|---|--------|
| (c) Instructions to apply for extensions of time in which to apply for directions to advertise an assignment without goodwill | 12,600 |
|---|--------|

4. *Renewals*

(a) Instructions to renew the registration of one trade mark in one class 25,000

(b) Instructions to renew the registration of second and further trade marks in the same proprietor simultaneously 12,600

(c) Instructions to restore the registration of one trade mark in one class under the provisions of rule 68 of the Trade Marks Rules 15,000

5. *Change of name*

(a) Instructions to register change of name of the registered proprietor in respect of one trade mark in one class 10,000

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

6. *Change of address*

(a) Instructions to register change of address of the registered proprietor in respect of one trade mark in one class 10,000

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

8. *Searches and copies*

(a) Attendances to search a registered trade mark at the registry and advising thereon by—

- | | |
|---------------------------|-------|
| (i) An advocate | 5,000 |
| (ii) Unqualified employee | 2,000 |

(b) Instructions to obtain Registrar's preliminary advice on Form T.M. 27 or T.M. 28 including drawing the prescribed form 5,000

Advocates

[Subsidiary]

(c) Instructions to obtain registry certified copies of documents—

(i) One copy of any document 2,940

(ii) Second and additional copies of same document obtained simultaneously 882

9. *Opposition and rectification proceedings*

(a) Instruction to enter opposition or to defend opposition proceedings or to apply for rectification or to defend rectification proceedings where such opposition or proceedings are conducted before the Registrar, such fee as the taxing officer may decide taking into consideration the nature and importance of the opposition or rectification, the value of the trade mark to the parties concerned, the amount of evidence filed and the time required for the proceedings and all other relevant circumstances but not less than Kshs. 210,000

(b) Attendance before the Registrar conducting opposition or rectification proceedings every whole day 16,464

(c) Attendance before the Registrar conducting opposition or rectification proceedings every half-day or part thereof 8,232

(d) On interlocutory matters, taking judgment, etc. every 15 minutes or part thereof 1,127

(e) On taxation of bill of costs for every 15 minutes or part thereof 1,127

10. *Miscellaneous matters*

(a) Instructions to advise on registrability of a mark or on a point of law or practice, such fee as may be reasonable in the circumstances but not less than Kshs. 7,500

(b) Attendance on the Registrar for filing papers every 15 minutes or part thereof—

(i) For argument 2,100

(ii) For filing papers 588

(c) Correspondence where charged for separately (see the note to this part of this schedule)—

(i) Per letter 294

(ii) Per folio 176

(d) Receiving and perusing letters, documents, pleadings, statutory declarations, etc.—

(i) Per letter 117

(ii) Per folio 70

(e) Perusing documents, pleadings, statutory declarations, etc., to be charged for as for perusals at Item 8 (a) of schedule 6. 1,127

(f) All other necessary attendances (including attendances to take minutes of evidence of witnesses other than the party for whom the Advocate is acting), per quarter hour or part thereof 1,127

(g) Applying to the Registrar for an extension of time 1,000

Notes.

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

SCHEDULE 5

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

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

PART I – AGREED HOURLY RATE

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

PART II – ALTERNATIVE METHOD OF ASSESSMENT

1. INSTRUCTIONS

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

2. DRAWING AND PERUSING, ETC.

For drawing Kshs 250

For engrossing Kshs 50

For fair copying Kshs 30

For perusing Kshs 70

3. ATTENDANCE

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

On routine telephone calls within Kenya for 15 minutes or part thereof In other cases the taxing officer may increase or diminish the above charges for any special reason. 150

4. TIME ENGAGED

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

5. CORRESPONDENCE

Letters 300

Or per folio 200

Receiving and perusing letters 150

Or per folio 70

6. OPINIONS

[Subsidiary]

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

JOURNEY FROM HOME

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

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

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

7. DEBT COLLECTION

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

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

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

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

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

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

CHATELS TRANSFER

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

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

Kshs. 50,000

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

SCHEDULE 6**COSTS OF PROCEEDINGS IN THE HIGH COURT**

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

A — PARTY AND PARTY COSTS**1. Instruction fees**

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

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

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

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

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

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

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

- (c) To defend proceedings where the defendant substantially adopts the defence of another defendant; an instruction fee calculated under sub-paragraph 1(a).
- (d) To defend any other proceedings; an instruction fee calculated under subparagraph 1(b)
- (e) *Bankruptcy proceedings*
 - (i) Debtors application:

[Subsidiary]

- To present or oppose a debtor's petition Kshs 12,000
- To apply or oppose discharge Kshs 12,000
- (ii) *Creditor's application—*
 - To apply for issue of a bankruptcy notice Kshs 2,000
 - To apply or oppose a creditors petition to Kshs 12,000
 - Apply for or oppose a discharge Kshs 12,000
- (f) *Companies*
 - (i) to present or oppose proceedings under Rule 5(1) of the Companies (Winding-up) Rules Kshs 25,200
 - (ii) to support a petition for winding-up of a company Kshs 10,000
 - (iii) to present or oppose any other proceedings under the Companies Act Kshs 15,000
- (g) *Matrimonial causes*
 - (i) to present a petition for dissolution of Marriage, nullity, judicial separation, or restitution of conjugal rights: where the proceedings are not defended 20,000

Where the proceedings are defended, or to defend proceedings, such sum as may be reasonable but not less than 35,300
 - (ii) to apply for additional or ancillary relief, or for custody or access—

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

If the application is not dealt with together with the petition or answer 12,000
 - (iii) to apply for a Registrar's Certificate 3,500
 - (iv) to present or oppose an application to a Judge under the matrimonial Causes Rules or Laws on Guardianship not otherwise provided for: such sum may be reasonable but not less than 10,000
- (h) *Adoption and guardianship*
 - (i) To present or oppose an application for adoption such sum as may be reasonable but not less than 11,800
 - (ii) To present or oppose an application for guardianship such sum as may be reasonable but not less than 14,800
- (i) *Election petitions*
To present or oppose an election petition;
such sum as may be reasonable but not less than 500,000
- (j) *Constitutional petitions and prerogative orders*
To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—
 - (i) where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000
 - (ii) where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000
 - (iii) to present or oppose application for setting aside arbitral award 50,000

Other Matters

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

- (i) If undefended 45,000
- (ii) If defended 75,000

Appeals

- (a) To present or oppose an appeal in any case not provided for above; such sum as may be reasonable but not less than Kshs 25,200
- (b) To counter-claim, a fee under subparagraph (a) or (b), as appropriate
- (c) Matters arising during proceedings—
 - (i) to prepare an affidavit 900
 - (ii) to prepare interrogatories or answers thereto 4900
 - (iii) to apply for a commission or letter of request for the examination of a witness 3,000
 - (iv) to prepare a brief for counsel in relation to a Commission for examination of a person not residing in Kenya; such sum as may be reasonable but not less than 18,000
 - (v) to prepare a case stated for the opinion of the court; such sum as may be reasonable but not less than 25,200
 - (vi) to present an application for a temporary injunction or similar order if unopposed 3,000
 - (vii) to present or oppose in cases where the judge shall certify that the matter is complex;

such sum as the judge may certify to be reasonable but not less than 100,000
 - (viii) to present or oppose any other application not otherwise provided for —

where the application is unopposed 3,000

where the application is opposed, such sum as may be reasonable but not less than 5,000

Provided that:

- (i) the taxing officer may take into consideration other fees and allowances due to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial judge, and all other relevant circumstances;
- (ii) In any case which a certificate for more than one advocate has been given by the judge, the instruction fee allowed on taxation as between party and party and other charges shall be doubled where requisite;
- (iii) In any case which a certificate for senior counsel has been given by the judge, the instruction fee allowed on taxation as between party and party shall be increased by one-half and other charges shall be doubled where requisite, the allowance for attendances of senior counsel in court conducting or leading the cause being on the higher scale.
- (iv) for the purposes of assessing an instruction fee in any suit—
 - (a) for possession of premises, with or without a claim for arrears of rent; or
 - (b) for specific performance of a lease, the value of the subject matter shall be taken to be the arrears of rent or mesne profits, if any that may be found due,

[Subsidiary]

increased by sum equivalent to the annual rental value of the premises or to one-tenth of the capital value of the premises, whichever is higher;

- (v) for the purposes of assessing an instruction fee in a case where payment into court has been made under Order 27 of the Civil Procedure Rules, the following rules shall apply—
 - (a) where the plaintiff accepts payment into court under the provisions of Order 27, Rule 2(1), he may claim the full instruction fee;
 - (b) where the plaintiff accepts payment into court after the time allowed by Order 27, Rule 2(1), but before one month after setting down of the case for hearing, he may claim three quarters of the instruction fee;
 - (c) Where the plaintiff does not accept the payment into court and does not recover more than the payment, he may claim his costs to the date of payment, including one-half of the fees.

2. *Fees for getting up or preparing for trial*

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

Provided that —

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

3. *Fees for getting up an appeal*

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

4. *Drawing*

- (a) Concise statement, plaint, written statement of defense, interlocutory application, notice of motion or chamber application, originating summons, affidavit, petition of appeal, interrogatories, agreement for compromise, adjustment or satisfaction of suit, or for reference to arbitration or any other pleading not otherwise provided for—
 - (i) four folios or less 1,100
 - (ii) in excess of four folios; additional perfolio after the first four folios 150
- (b) Creditor's or debtor's petition that a debtor be adjudicated insolvent, or notice of objection thereto:
 - (i) six folios or less 1,470
 - (ii) in excess of six folios per folio 150
- (c) Petition for winding up of a company incorporated under the Companies Act—
 - (i) nine folios or less 2,300
 - (ii) in excess of nine folios per folio 150

Advocates

[Subsidiary]

- (d) All other documents (including proofs of witnesses and evidence) so far as necessary per folio. Kshs.180
- (e) Bill of costs per folio Kshs 180
- (f) Affidavit or return of service Kshs. 240
- (g) In relation to sub-paragraphs (a)(ii), (b)(ii), (c)(ii) and (d), the court may direct that the costs of any repetitive or unnecessary matter shall be disallowed.

5. Copies

- (a) Of complaint, written statement of defense, affidavit, petition of appeal, cross objection to petition, interrogatories, replies to interrogatories, agreement in satisfaction of suit, or for reference to arbitration, exhibit bill of costs and every other document (whether for court or opposing party) Kshs 25 per folio
- (b) The actual cost of copies of judge's notes taken from day to day as a case proceeds may be allowed if certified the trial court Kshs 25 per by page or folio
- (c) Printing actual costs, supported by vouchers of all necessary printing Kshs 10
- (d) Photostat copies per page; actual costs, supported by vouchers of all necessary photocopying
- (e) All other necessary copies Kshs 25 per folio

6. Correspondence

- (a) Letters before action or other necessary letters Kshs 1,000
or per folio Kshs 118

7. Attendances

- (a) On any necessary application to or formal attendance on the registrar or deputy registrar Kshs 1,000
- (b) At offices of Court or registrar on routine Matters Kshs 500
- (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 his lists Kshs 1,000
- (d) At court or in chambers before judge not otherwise provided for—

	**Ordinary Scale	**Higher Scale
	Kshs**	Kshs**
Half-hour or less	1,100	1,900
One hour	2,300	3,000
Whole day	10,000	15,000

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 perfolio Kshs. 50
- (b) Of notices and other routine documents Kshs 50
- (c) Of necessary letter; perfolio Kshs 50

9. Service

Advocates

[Subsidiary]

- (a) within three kilometers of the High Court district registry of the High Court Kshs 1,400
- (b) Every additional kilometer over three, such amount as is reasonable, not exceeding per kilometer Kshs 35
- (c) For traveling and subsistence expenses incurred by the process server; charge the actual expense incurred.
- (d) Where service is by post or by any other mode of substituted service, charge the actual expenses incurred.

10. Plans, models, etc.

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

11. Translations

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

12. Execution proceedings

- (a) Instructions to execute decree and drawing necessary application — Kshs 1,000
- (b) Attendance at court filing application — Kshs 300
- (c) Attending Court to peruse order — Kshs 300

13. Objection to execution proceedings

- (a) Instruction to prepare objection— Kshs 10,000
- (b) Instruction to proceed with attachment — Kshs 2,100
- (c) Instruction to take proceedings to establish or oppose such proceedings — Kshs 14,000

14. Garnishee proceedings

- (a) Instructions to institute garnishee proceedings, if not opposed— Kshs 4,200
- (b) Instructions to institute or to defend garnishee Proceedings, when opposed, such sum as the taxing officer considers reasonable but not less than Kshs 14,000.

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

- (a) Where—
 - (i) no appearance has been entered in the suit Kshs 1,200
 - (ii) the defendant was served at the first attempt for each additional attempt of service Kshs 250
- (b) Where appearance has been entered a further Kshs 180
- (c) Where the defendant was served in a jurisdiction outside Kenya
Actual costs incurred
- (d) Where the defendant was served in accordance with Order V, Rule 17 of the Civil Procedure rules.
The costs of any advertisement ordered by the court plus Kshs 2,100.
- (e) For any application made to the judge under Paragraph 11 (2);

a further; together with the instruction fee and any court fees and affidavits swearing fees incurred; but the taxing officer shall not allow more than one instruction fee. Kshs 4,000

B - ADVOCATE AND CLIENT COSTS

As between advocate and client the minimum fee shall be—

- (a) the fees prescribed in A above, increased by 50%; or

(b) the fees ordered by the court, increased by 50%; or

(c) the fees agreed by the parties under paragraph 57 of this order increased by 50%; as the case may be, such increase to include all proper attendances on the client and all necessary correspondences.

SCHEDULE 7

COSTS OF PROCEEDINGS IN SUBORDINATE COURTS

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

A — PARTY AND PARTY COSTS

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

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

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

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

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

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

Note

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

2. In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the judgment (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not less than Kshs. 20,000 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Kshs. 50,000.

3. Election petition

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

- (a) In proceedings for dissolution of marriage, nullity, Judicial separation or restitution of conjugal rights:-
 - (i) where the proceedings are undefended Kshs. 10,000

[Subsidiary]

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

Notes.

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

B — ADVOCATE AND CLIENT COSTS

As between advocate and either the minimum fees shall be—

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

SCHEDULE 8

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

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

A — PARTY AND PARTY COSTS

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

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

Provided—

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

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

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

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

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

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

7.

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

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

Exceeds Kshs.	Does not exceed	Lower scale Kshs.	Higher scale Kshs.
			Kshs.

Advocates

[Subsidiary]

-	10,000	1,293	5,000
10,000	20,000	2,000	8,000
20,000	50,000	8,000	15,000
50,000	100,000	15,000	22,500
100,000	250,000	22,500	35,000 the fee for
	over 250,000		Kshs. 250,000 plus
			an additional 2%
			in respect of the
			excess

- (b) On a complaint where a non-pecuniary relief other than possession is sought such costs as the Tribunal in its discretion awards; but not less than Kshs. 2,940 if undefended or unopposed, and if opposed, a reasonable amount not less than Kshs. 23,520.
- (c) On proceedings for leave to levy distress, one-half the fee under (a).
- (d) In any proceedings not otherwise provided for, such fees as the Tribunal may assess but not less than Kshs. 15,000.
- (a) On any necessary attendance on the Tribunal other than at the hearing Kshs 1,400
- (b) On any necessary attendance by an Advocate at the offices of the tribunal other than as provided in sub-paragraph (a) Kshs 1,000
- (c) Attendances at the hearing—
 - (i) For the first whole day Kshs 4,000
 - (ii) For each part of the day after the first day Kshs 2,100
- (d) Where costs of adjournment of the case are awarded Kshs 900
- (e) Service—
 - (i) within three kilometers of the Tribunal Kshs 1,400
 - (ii) every additional kilometer over three kilometres, such amount as is reasonable, not exceeding per kilometer Kshs 35
 - (iii) by post, if authorized Kshs 100
- (f) Drawing and filling affidavit or return of service to include swearing fee Kshs 100
- (g) Drawing and filing any other affidavits—
 - for first four folios Kshs 500
 - thereafter per folio Kshs 100

B — ADVOCATE AND CLIENT COSTS

As between advocate and client the cost shall be—

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

SCHEDULE 9

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

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

A — PARTY AND PARTY COSTS

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

2. Costs exceeding the scale in this schedule may be allowed for special grounds arising out of the nature and importance or the difficulty or the urgency of the case.

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

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

- (a) in a case where possession is claimed, one year's rent or one year's mesne profit plus the amount of any arrears of rent or mesne profits awarded which total shall be determined by the Tribunal;
- (b) in a case concerning authority to carry out repairs, the amount claimed or awarded as the cost of the repairs, whichever is less; or
- (c) In proceedings under section 15 of the Rent Restriction Act, the amount of compensation awarded or, where no compensation is awarded, the amount of compensation claimed.

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

6.

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

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

Exceeds Kshs. Does not exceed Lower scale Kshs. Higher scale Kshs.

-	1,000	1,293	2,352
1,000	2,000	2,117	4,116
2,000	3,500	2,499	4,998
3,500	5,000	3,528	8,232
5,000	7,500	4,704	10,584
7,500	10,000	5,880	11,760
10,000	20,000	8,820	14,700
20,000	50,000	10,290	17,640
over 50,000	a fee as for Kshs. 50,000 plus an additional 2% in respect of the excess		

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

Advocates

[Subsidiary]

- (a) On any necessary attendance on the Tribunal other than at the hearing — Kshs 500
- (b) On any necessary attendance by an Advocate at the offices of the tribunal other than (a) above — Kshs 300
- (c) Attendances at the hearing—
 - (i) For the first whole day — Kshs 4,000
 - (ii) For each part of the day after the first — Kshs 2,100
- (d) Where costs of adjournment of the case are awarded — Kshs 900
- (e) Service—
 - (i) Within three kilometres of the Tribunal — Kshs 250
 - (ii) Every additional kilometre over three, such amount as is reasonable, not exceeding per kilometre — Kshs 35
- (iii) By post, if authorized — Kshs 100
- (f) Drawing and filling affidavit or return of service to include swearing fee — Kshs 100
- (g) Drawing and filing any other affidavits —
for first four folios Kshs 500
thereafter per folio Kshs 100

B — ADVOCATE AND CLIENT COSTS

As between advocate and client the cost shall be—

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

SCHEDULE 10
PROBATE AND ADMINISTRATION

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

A—PARTY AND PARTY COSTS**1. INSTRUCTION FEES**

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

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

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

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

2. DRAWING

- (a) Each form or document —
prescribed under or required by the law Kshs 1,200
or per folio Kshs 235
- (b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit Kshs 1,400
or per entry Kshs 25
- (c) Wills such sum as agreed but not less than Kshs 30,000.

3. COPIES

- (a) Each form or document prescribed under or required by the law Kshs 1,200
or per folio Kshs 235
- (b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit Kshs 1,400
or per entry Kshs 25
- (c) Wills such sum as agreed but not less than Kshs 30,000.

4. PERUSING

Per folio Kshs 42

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

5. LETTERS AND ATTENDANCES

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

6. LETTERS AND ATTENDANCES

[Subsidiary]

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

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

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

- (a) Such annual or semi-annual fee as may be reasonable in the circumstances, having regard to the care and labour required, the number and length of the papers to be perused, the value and complexity of the estate, the interest of the parties and all other circumstances.
- (b) Annual or semi-annual commission of such amount as the taxing officer shall consider reasonable, having regard to all the circumstances, but not exceeding in aggregate the following rates—
 - (i) On the estimated net capital value of the estate two and one-half percent per annum;
 - (ii) On the amount of the income of the estate in a year or half year—three per cent; and
 - (iii) On the capital value of any portion of the estate which is realized or invested during a year or half year — one and one-half cent, or at the election of the advocate.
- (c) An amount based on Schedule 5:

Provided that—

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

B —ADVOCATE AND CLIENT COSTS

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

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

SCHEDULE 11

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

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

A—PARTY AND PARTY COSTS

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

2. Costs exceeding the scale in this schedule may be allowed for special grounds arising out of the nature and importance or the difficulty or the urgency of the case. Except for good reason to be recorded, costs shall be awarded to the party who substantially succeeds upon the reference or other proceedings.

3. When taxing the costs consideration shall be given by the taxing officer to either the value of the subject-matter or, where the value of the subject matter cannot be determined, to the following criteria.

- (a) the nature and importance of the proceedings;
- (b) the complexity of the matter and the difficulty or novelty of the question raised;
- (c) the amount or value of the subject matter;
- (d) the time expended by the advocate(s);
- (e) The number and importance of the documents prepared or perused, without regard to length.

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

5. The instruction fee shall include taking instructions, drawing, perusals, engrossing documents and filing the same.

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

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

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

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

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

[Subsidiary]

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

- (a) On any necessary attendance on the Tribunal other than at the hearing — Kshs. 500
- (b) On any necessary attendance by an Advocate at the offices of the tribunal other than (a) above — Kshs. 500
- (c) Attendances at the hearing—
 - (i) For each day after first day — Kshs. 4,000
 - (ii) For each part of the day after the first day — Kshs. 2,100
- (d) Where costs of adjournment of the case are awarded — Kshs. 1,200

B — ADVOCATE AND CLIENT COSTS

As between advocate and client the costs shall be—

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

SCHEDULE 12

PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

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

1. INITIAL APPLICATIONS FOR REGISTRATION

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

2. SUBSIDIARY PROCESSING APPLICATIONS FOR PATENTS AND UTILITY MODELS

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

REGISTRATION OF LICENCES

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

ASSIGNMENTS

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

ANNUITY APPLICATIONS

Instructions to pay annual maintenance fees for a patent or utility model and drafting and filing an annuity application Kshs.12,600

APPLICATIONS FOR EXTENSION OF TERM OF INDUSTRIAL DESIGNS

Instructions to file an application for an extension of term of registration of an industrial design Kshs.12,600

APPLICATIONS TO RESTORE REGISTRATION OF PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

Instructions to file an application to restore the registration of a patent, utility model or industrial design and supporting affidavits Kshs.15,000

CHANGE OF NAME OR ADDRESS

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

SEARCHES AND COPIES

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

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

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

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

- (c) Attendance before the Managing Director or the Tribunal in connection with conducting proceedings, applications or appeals referred to in paragraphs 10 (a) and 10 (b)—
 - (i) for a full day — Kshs. 16,464
 - (ii) Every half-day or part thereof: — Kshs 8,232
 - (iii) minutes or part thereof — Kshs 1,127

[Subsidiary]

- (iv) On interlocutory matters, taking directions, judgments, etc. for every 15
- (v) On taxation of bill of costs for every 15 minutes or part thereof — Kshs 1,127

MISCELLANEOUS MATTERS

Instructions to advise on patentability of an invention or registrability of an industrial design or a utility model or on a point of law or practice; such fee as may be reasonable in the circumstances but not less than 25,000

Instructions to request reasons for a refusal of a patent, utility model or industrial design 8,400

- (l) Instructions to surrender a patent, utility model or industrial design 8,400
- (m) Instructions to have a caution or similar notice included or removed from the Register in respect of a patent, utility model or industrial design
- (n) Attendance on the Managing Director or the Tribunal for every 15 minutes or part thereof—
 - (i) For argument 1,127
 - (ii) For filing papers 840
- (o) Correspondence, where charged for separately (see the note to this part of this Schedule)
 - (i) Per letter 294
 - (ii) per folio 176
- (g) Receiving and perusing letters, documents, pleadings, statutory declarations, etc.—
 - (i) Per letter 294
 - (ii) per folio 176
- (h) Drawing all necessary documents associated with any of the applications or proceedings referred to above in this Schedule including but not limited to, requests and statements of facts in infringement proceedings, applications for expungement and rectification, applications for entry or expungement of cautions, applications for compulsory licences and licences as of right, notices of opposition to design applications, statutory declarations, counter-statements and all documents associated with any of the above:—
 - (i) Per folio Kshs 470
 - (ii) File copies, per folio Kshs 46
- (i) Perusing documents, pleadings, statutory declarations, etc. to be charged for as for perusals at item 8 (a) of Schedule 6
- (j) All other necessary attendances (including attendances to take minutes of evidence of witnesses other than the party for whom the Advocate is acting), per quarter hour or part thereof Kshs 1,127
- (k) Applying to the Managing Director for any extension of time Kshs 4,200

Notes

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