

CHAPTER 293

DISTRESS FOR RENT ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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1. Distress for Rent Rules, 1959	17

Rules under section 27

DISTRESS FOR RENT RULES, 1959

[Cap. 154 (1948), Sub. Leg., L.N. 14/1959, Act No. 5 of 1996, Act No. 17 of 2006.]

1. These Rules may be cited as the Distress for Rent Rules, 1959.

2. In these Rules—

“**certificate**” means a certificate to act as a licensed auctioneer granted or renewed under the Act;

“**judge**” means the judge of the High Court;

“**registrar**” means the Registrar of the High Court and includes a deputy registrar and a district registrar.

[Act No. 5 of 1996, s. 34.]

Certificates

3. (1) Certificates may be either general or special.

(2) A special certificate shall specify the particular distress or distresses to which it applies.

(3) Certificates shall be in Forms 1 and 2 in the First Schedule, with such variations as circumstances may require; and the date at which a general certificate will become terminable shall be added at the foot thereof.

4. A special certificate may be granted by a judge or registrar, but a general certificate shall only be granted by a judge.

5. A general certificate shall authorise the licensed auctioneer named in it to levy at any place in Kenya.

[Act No. 5 of 1996, s. 34.]

6. An advocate shall, on application, and on payment of the prescribed fee, be entitled to a general or special certificate.

7. Subject to rule 6, a general or special certificate may, on payment of the prescribed fee, be granted to any applicant who satisfies the authority granting it that he is a fit and proper person to hold a certificate.

8. An applicant for a general certificate shall satisfy the judge that he is resident or has his principal place of business in Kenya, and shall state whether he has ever been refused a certificate, or had a former certificate cancelled or declared void.

Security

9. An applicant for a certificate may, if the authority applied to thinks fit, be required to give security for the due performance of his duties.

10. The security shall be a security to the satisfaction of the Registrars in the case of a general certificate the amount shall be four hundred shillings and in the case of a special certificate the amount shall be one hundred shillings.

11. The security shall be given to the registrar; and may be given by deposit, or by bond, or by guarantee, as the registrar may think fit.

Duration and Renewal of Certificates

12. A general certificate shall (unless previously cancelled or declared void) have effect until the 31st December next after the granting thereof, and may be from time to time renewed by a judge for a further period of twelve months.

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13. On an application for the renewal of a certificate, the registrar shall be satisfied that the security (if any) required under these Rules is subsisting.

14. A renewed certificate shall be in Form 3 in the First Schedule, and the date at which the renewed certificate will become terminable shall be added at the foot thereof.

Cancellation of Certificates

15. On any application to cancel or declare void a certificate, the judge may, whether he cancels the certificate or not, order that the security shall be forfeited either wholly or in part and that the amount directed to be forfeited shall be paid to the party aggrieved.

16. Where the judge orders that the security shall be forfeited, either wholly or in part, but does not cancel or declare void the certificate, he shall direct that the licensed auctioneer shall give fresh security as a condition of retaining his certificate.

[Act No. 5 of 1996, s. 34.]

17. Subject to rule 15, where a certificate is cancelled or declared void by the judge, the security shall also be cancelled, and the deposit (if any) returned.

18. Where a certificate is cancelled or declared void, Form 4 in the First Schedule shall be used.

19. Where a certificate is cancelled or declared void or expires in consequence of non-renewal, it shall nevertheless continue to have effect for the purpose of any distress where the licensed auctioneer has entered into possession before the date on which the certificate is cancelled or declared void or expires.

[Act No. 5 of 1996, s. 34.]

List of Certificates

20. (1) There shall be made and signed by the Registrar of the High Court before the 31st January in every year, and exhibited in the office of the High Court, a list of the licensed auctioneers holding certificates for the time being, and if any such certificate is cancelled or declared void, or if any fresh appointment is made, the fact shall be notified by the Registrar on that list and published by him in the Gazette.

(2) As soon as possible after the 31st January in every year the Registrar of the High Court shall cause a list of all licensed auctioneers holding general certificates to be compiled and to be supplied to all district registrars and to every subordinate court of the first class, and that list shall be exhibited on the notice board of each court concerned.

(3) All cancellations from, and additions to, the list shall be notified from time to time to each such court by the Registrar of the High Court, and shall from time to time be exhibited on the notice board of each court concerned.

[Act No. 5 of 1996, s. 34.]

Fees, Charges and Expenses

21. No person shall be entitled to any fees, charges or expenses for levying a distress, or for doing any act or thing in relation thereto, other than those specified in the Second Schedule, unless a judge otherwise orders.

22. Where the rent demanded and due exceeds four hundred shillings, the fees, charges and expenses specified in Scale I shall be allowed, and where the rent demanded and due does not exceed four hundred shillings the fees, charges and expenses specified in Scale II shall be allowed.

23. (1) In case of any difference as to fees, charges and expenses between the parties, or any of them, the fees, charges and expenses shall be taxed by the district registrar of the district in which the distress is levied.

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(2) The registrar may make such order as he thinks fit as to the costs of taxation.

24. A copy of the table of fees, charges and expenses authorized by these Rules shall be posted up by the Registrar of the High Court in a conspicuous place in the office of the court at Nairobi and by each district registrar in his office.

25. Every licensed auctioneer levying a distress shall on the request of the tenant produce to him his certificate and a copy of the table of fees, charges and expenses authorized by these Rules.

[Act No. 5 of 1996, s. 34.]

26. The court fees set out in the Third Schedule shall be payable in respect of the various items set out therein.

FORM 1

FIRST SCHEDULE

(r. 3.)

[Act No. 5 of 1996, s. 34.]

GENERAL CERTIFICATE

Date

IN THE HIGH COURT OF KENYA

Pursuant to section 18 of the Distress for Rent Act and the Rules made thereunder,
..... of is hereby appointed under the
provisions of the said Act to act as a licensed auctioneer to levy distress for rent in Kenya.

L.S.

Judge

This certificate will become terminable on the day of
20

FORM 2

(r. 3.)

SPECIAL CERTIFICATE

Date

IN THE HIGH COURT OF KENYA

Pursuant to section 18 of the Distress for Rent Act and the Rules made thereunder,
..... of is hereby authorized to act as a licensed

Distress for Rent

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FIRST SCHEDULE—*continued*

auctioneer to levy distress on the premises of
of for rent alleged to be due to
of

L.S.
Judge or Registrar

FORM 3

(r. 14.)

[Act No. 5 of 1996, s. 34.]

RENEWED GENERAL CERTIFICATE

Date

IN THE HIGH COURT OF KENYA

Pursuant to section 18 of the Distress for Rent Act and the Rules made thereunder, I by this renewed certificate authorize of to act as a licensed auctioneer to levy distresses for rent in Kenya.

L.S.
Judge

This certificate will become terminable on the day of 20

FORM 4

(r. 18.)

[Act No. 5 of 1996, s. 34.]

CANCELLATION OF CERTIFICATE

Date

IN THE HIGH COURT OF KENYA

In pursuance of section 18 of the Distress for Rent Act, I hereby cancel and declare void the certificate granted to of to act as a licensed auctioneer to levy distresses for rent in Kenya, save and except as to any distress where the said has entered into possession before the date hereof [or to act as a licensed auctioneer to levy a distress on the premises of of for rent alleged to be due to of].

L.S.
Judge

SECOND SCHEDULE

[Rule 21.]

TABLE OF FEES, CHARGES AND EXPENSES

SCALE I – DISTRESSES FOR RENT WHERE THE
SUM DEMANDED AND DUE EXCEEDS SH. 400

1. For levying distress, 5 per cent on any sum exceeding Sh. 400 and not exceeding Sh. 1,000, 3 per cent on any additional sum up to Sh. 4,000, and 2 per cent for any additional sum.
2. For man in possession, Sh. 20 per day, to provide his own board.
3. For appraisalment, where the tenant or owner of the goods and chattels by writing requires an appraisalment to be made, 3 per cent on the value as appraised, with a minimum fee of Sh. 10 for each approved valuer, the cost of the appraisalment to be borne by the tenant or owner requiring it.
4. For removal of the goods and chattels distrained, the reasonable costs and charges attending the removal, to be borne and paid in the first instance by the tenant or owner, and to be subject to taxation under rule 23.
5. For advertisements, the sum actually and necessarily paid.
6. For commission to the auctioneer on sale by auction, 10 per cent on the sum realized not exceeding £100, 5 per cent on the next £200, 4 per cent on the next £200, and on any additional sum 3 per cent up to £1,000 and 2½ per cent on any sum exceeding £1,000.
7. Reasonable fees, charges and expenses where distress is withdrawn, or where no sale takes place, and for negotiations between landlord and tenant respecting the distress, subject to taxation under rule 23.
8. A fraction of one pound to be in all cases for the purposes of calculating poundage reckoned as one pound.

SCALE II – DISTRESSES FOR RENT WHERE THE SUM
DEMANDED AND DUE DOES NOT EXCEED SH. 400

1. For levying distress, where the sum demanded and due does not exceed Sh. 200, Sh. 15, where the sum demanded and due exceeds Sh. 200, Sh. 20.
2. For man in possession, Sh. 20 per day, to provide his own board.
3. For appraisalment, where the tenant or owner of the goods and chattels by writing requires an appraisalment to be made, 50 cents in the pound on the value as appraised, in addition to the amount for the stamp, with a minimum fee of Sh. 5 for each approved valuer, the costs of the appraisalment to be borne by the tenant or the owner requiring it.
4. For removal of the goods and chattels distrained, the reasonable costs and charges attending the removal, to be borne and paid in the first instance by the tenant or owner, and to be subject to taxation under rule 23.
5. For advertisements, if any, Sh. 20.
6. For commission on sale and delivery of goods, 10 per cent on the sum reached.
7. Reasonable fees, charges and expenses, where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress, not to exceed in any event 5 per cent on the sum demanded and due for rent, and to be subject to taxation under rule 23.

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8. A fraction of one pound to be in all cases for the purpose of calculating poundage reckoned as one pound.

THIRD SCHEDULE

Repealed by Act No. 17 of 2006, s. 22
