

LEGAL NOTICE NO. 264

ADVOCATES ACT

(Cap. 16)

IN EXERCISE of the powers conferred by section 44 of the Advocates Act, the Chief Justice, on the recommendation of the Council of the Law Society, makes the following Order:—

THE ADVOCATES (REMUNERATION) (AMENDMENT)
ORDER, 1993

1. This Order may be cited as the Advocates (Remuneration) (Amendment) Order, 1993, and shall be deemed to have come into force on 1st September, 1993.

2. The Advocates (Remuneration) Order, is amended by Sub. Leg. deleting all Schedules thereto and inserting the following new schedules—

SCHEDULE I

FIRST SCALE

SCALE OF CHARGES ON SALES, PURCHASES AND MORTGAGES
AFFECTING LAND REGISTERED IN ANY REGISTRY

VENDOR'S ADVOCATE	<i>Scale fee</i>	<i>Sh.</i>
For preparing and completing contract, answering any preliminary enquiries, deducing title (including any necessary abstraction) to a freehold or leasehold property, answering any requisitions on title, perusing and completing conveyance or assignment.	On the first £5,000 minimum charge Over £5,000 to £25,000 per £100 Over £25,000 per £100	8,000 35 20
PURCHASER'S ADVOCATE		
For investigating title to a freehold or leasehold property and preparing and completing conveyance (including perusal and completion of contract, if any).	The scale fee set out under 1 above.	
MORTGAGOR'S ADVOCATE		
(a) For deducing title (including any necessary abstraction) to a freehold or leasehold property, answering any requisitions on title, perusing and completing mortgage.	One-half of the scale set out under 1 above.	
(b) For preparing and completing reconveyance or reassignment of mortgage.	One-quarter of the scale fee set out under 1 above subject to a maximum charge of Sh. 20,000.	
MORTGAGEE'S ADVOCATE		
(a) For investigating title to a freehold or leasehold property and preparing and completing mortgage.	The scale fee set out under 1 above.	
(b) For preparing and completing reconveyance or reassignment of mortgage.	One-quarter of the scale fee set out under 1 above subject to a maximum charge of Sh. 20,000.	

SCHEDULE I—(Contd.)

SECOND SCALE

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

Scale fee

- | | |
|---|---|
| 1. For investigating title to a freehold or leasehold property and completing and registering a memorandum of equitable mortgage by deposit of documents or a memorandum of charges by deposit of title in respect thereof. | One-half of the scale fee set out under 1 of the First Scale. |
| 2. For preparing, completing and registering a memorandum of discharge of equitable mortgage by deposit of documents or a memorandum of discharge of charge by deposit of title. | One-eighth of the scale fee set out under 1 of the First Scale. |

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

THIRD SCALE

SCALE OF CHARGES RELATING TO DEBENTURES

1. Single debentures:

- (a) On each single debenture of any nature not creating a security, a fee calculated under Schedule V according to time, complexity and responsibility.
- (b) On each single debenture of any nature creating a security the scale fee set out under 1 of the First Scale.

2. Series of debentures:

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

3. Debenture stock issued under a debenture trust deed:

A fee on the total capital for which the trust is drawn as under 1 of the First Scale plus a one-half thereof, with such additional amount as may be reasonable taking into account the time, complexity and responsibility involved in each case.

NOTES:

1. (a) Where the grantee of a security and the company creating it are separately represented, the advocate for the company shall be entitled to charge one-half of the fees chargeable by the advocate for the grantee.
- (b) Where one advocate represents both the grantee of a security and the company creating it he shall be entitled to increase the prescribed fee by forty per cent.
2. Where two or more securities are created by a company, whether contemporaneously or subsequently, in favour of the same grantee to secure the same amount, then the fee payable shall be the full prescribed fee in respect of the principal security plus one-half of the prescribed fee based on the value of the property charged or the principal sum secured, whichever is the less in respect of the other securities.

SCHEDULE I—(Contd.)

3. Where a security by one document by more than one company 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 company, one-half of such fee in respect of the second company and one-quarter of such fee in respect of each company thereafter, the total fees to be divided equally between the companies unless otherwise agreed by all the companies in writing.
4. Where a security is created by one document by more than one company in favour of more than one grantee, then the fee payable shall be the full prescribed fee in respect of the first grantee, one-half of such fee in respect of the second grantee and one-quarter of such fee in respect of each grantee thereafter.
5. Unless otherwise agreed by the parties in writing the company or companies creating a security shall pay the fees of the advocate for the grantee as well as the fees of its or their own advocate.

FOURTH SCALE

SCALE OF NEGOTIATING COMMISSION ON SALES AND MORTGAGES

	<i>Scale fee</i>	<i>Sh.</i>
For negotiating a sale of property by private treaty or a loan secured by mortgage ..	On the first £10,000 per £100	75.00
	Over £10,000 to £30,000 per £100	35.00
	Over £30,000 per £100	20.00

NOTES:

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

SCHEDULE II

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

	<i>Scale fee</i>	<i>%</i>
	Annual Rent:	
1. To the advocate preparing, settling and completing lease or agreement and counterpart	Up to £2,500	10
	Over £2,500 to £5,000	5
	Over £5,000	3
2. To the advocate perusing, amending and completing lease or agreement or counterpart.	One-half of the fee payable under 1 above.	

NOTES:

1. Where a varying rent is payable the amount of the annual rent means the amount of the largest rent payable under the lease or agreement.
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 V.

SCHEDULE IV

TRADE MARKS

1. APPLICATIONS	Sh.
(a) Instructions to register one trade mark in one class	2,400
(b) Instructions to register second and further trade marks in the name of the same proprietor simultaneously per trade mark in one class	1,400
(c) Filing Priority Application	1,350
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—	
(1) for the first one single registered trade mark	2,000
(2) for the second registered trade mark ...	900
(3) for the third registered trade mark ...	600
(4) for the fourth and each subsequent registered trade mark, applications being filed simultaneously	240
(b) Drawing statement of case, statutory declaration in support and application, depending on the amount of work involved but not less than	3,000
(c) Drawing registered user agreement, depending on the amount of work involved but not less than	4,000
(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—	
(1) for the first or single registered trade mark	1,600
(2) for the second registered trade mark ...	1,080
(3) for the third registered trade mark ...	720
(4) for the fourth and each subsequent trade mark, application being filed simultaneously	360
(e) Drawing application for cancellation and statement of ground, depending on amount of work involved but not less than	900

SCHEDULE IV—(Contd.)

(f) And for each subsequent registered trade mark included in the same application for cancellation, the grounds for cancellation being the same	Sh. 300
(g) Instructions to file an application for variation of terms of appointment of registered user	2,000
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 devolution of title and filed simultaneously) with or without goodwill—	
(1) for the first registered trade mark ...	1,200
(2) for the second registered trade mark ...	540
(3) for each subsequent registered trade mark	360
(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—	
(1) for one registered trade mark assigned ...	1,200
(2) for every other registered trade mark assigned under the same devolution of title filed simultaneously	540
(c) Instructions to apply for extensions of time in which to apply for directions to advertise	600
4. RENEWALS	
(a) Instructions to renew the registration of one trade mark in one class	1,320
(b) Instructions to renew the registration of second and further trade marks in the name of the same proprietor simultaneously	900
(c) Instructions to restore the registration of one trade mark in one class under the provisions of rule 68 of the Trade Marks Rules	1,600
5. CHANGE OF NAME	
(a) Instructions to register change of name of the registered proprietor in respect of one trade mark in one class	720
(b) Instructions to register change of name of the registered proprietor in respect of second and further trade marks simultaneously, for each change of name per trade mark in one class	480

SCHEDULE IV—(Contd.)

	<i>Sh.</i>
6. CHANGE OF ADDRESS	
(a) Instructions to register change of address of the registered proprietor in respect of one trade mark in one class	720
(b) Instructions to register change of address of the registered proprietor in respect of second and further trade marks simultaneously, for each change of address per trade mark in one class	480
7 ALTERATIONS OR AMENDMENTS	
(a) Instructions to amend or alter one registered trade mark in one class	1,200
(b) Instructions to amend or alter second and further registered trade marks simultaneously in one class, per trade mark per class	480
8 SEARCHES AND COPIES	
(a) Attendances to search the register or a file at the registry and advising thereon, per quarter hour or part thereof by:	
an advocate	600
an unqualified employee	400
(b) Instructions to obtain Registrar's preliminary advice on Form T.M. 27 or T.M. 28 including drawing the prescribed form	600
(c) Instructions to obtain registry certified copies of documents—	
One copy of any document	1,000
Second and additional copies of same document obtained simultaneously	300
9. OPPOSITION AND RECTIFICATION PROCEEDINGS	
(a) Instructions to enter opposition or to defend opposition proceedings or to apply for rectification or to defend rectification proceedings where such opposition or proceedings are conducted before the Registrar—such fee as the taxing officer in the exercise of his discretion and taking into consideration the nature and importance of the opposition or rectification, the value of the trade mark to the parties concerned, the amount of evidence filed and the time required for the proceedings and all other relevant circumstances shall decide but not less than	8,400
(b) Attendance before the Registrar conducting opposition or rectification proceedings every whole day	5,600

SCHEDULE IV—(Contd.)		Sh.
(c) Every half-day or part thereof		2,800
(d) On interlocutory matters, taking judgement, etc. every 15 minutes or part thereof ...		350
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		2,500
(b) Attendance on the Registrar, for every 15 minutes or part thereof—		
(i) for argument		700
(ii) for filing papers		200
(c) Correspondence, where charged for separately (see the note to this part of this Schedule)		
(i) per letter		100
or per folio		60
(ii) receiving and perusing letters:		
per letter		40
or per folio		24
(d) Drawing all other necessary documents (notices of opposition, statutory declarations, counter-statements, etc.) per folio		160
files copies, per folio		16
(e) Perusing documents, pleadings, statutory declarations, etc. to be charged for as for perusals at item 8 (a) of Schedule VI		
(f) All other necessary attendances (including attendances to take minutes of evidence of witnesses other than the party for whom the advocate is acting), per quarter hour or part thereof		300

Note.—The fees in items 1, 2, 3, 4, 5, 6 and 7 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 8 and 9 and work occasioned by objections or queries by the Registrar or third parties or by any other complication or unusual delay, which matters and writ shall be charged for separately.

SCHEDULE V

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

PART I—AGREED HOURLY RATE

1. Fees falling to be assessed under this Schedule may either be charged in accordance with paragraph 2 of this Part or assessed in accordance with Part II.

SCHEDULE V—(Contd.)

2. An advocate may charge his fees at such hourly rate or rates as may be agreed with his client from time to time.

Commentary

It is strongly recommended that advocates should be encouraged to charge fees on an hourly rate basis. This is the most widely-used basis internationally and is fair to both advocate and client. Many clients expect lawyers to quote their hourly rates and most aid agencies seeking services remunerate professionals on this basis.

PART II—ALTERNATIVE METHOD OF ASSESSMENT

1. INSTRUCTIONS

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

2. DRAWING AND PERUSING, ETC.

	<i>Sh.</i>
For drawing	80
For engrossing	16
For fair copying	10
For perusing	24

3. ATTENDANCES

In ordinary cases, per 15 minutes or part thereof ..	250
On routine telephone calls within Kenya for 3 minutes or part thereof	50

In other cases the taxing officer may increase or diminish the above charges if for any special reason he sees it fit.

4. TIME ENGAGED

Where charge is so based in lieu of charges per item of work done: per hour or part thereof	1,000
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5. CORRESPONDENCE

Letters	100
or per folio	60
Receiving and perusing letters	40
or per folio	24

6. OPINIONS

For formal written opinion, such fee as may be reasonable in the circumstances, having regard to the same considerations as set out above for the assessment of instructions, but not less than	1,000
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7. JOURNEYS FROM HOME

For every day of not less than seven hours employed in travelling	5,000
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SCHEDULE V—(Contd.)

Where a lesser time than seven hours is so employed, per hour Sh. 800

Provided that the taxing officer may increase or diminish the above allowance if for any special reason he sees it fit.

8. DEBT COLLECTION

In respect of non-contentious debt collection matters an advocate may enter into a general agreement with a client to charge therefor upon the following inclusive scale in lieu of charging per item for work done. Provided that in any case where not more than one letter of demand has been written the scale shall be reduced by one-half, subject to a minimum fee of Sh. 150; and provided further that where the letter of demand is followed by the institution of proceedings at the instance of the same advocate the scale does not apply and the letter shall be charged for under item 5 of this Schedule or under Schedule VI or Schedule VIII as may be appropriate.

(a) Where the amount of the debt does not exceed Sh. 1,000	300
(b) Where the amount of the debt exceeds Sh. 1,000 but does not exceed Sh. 3,000	500
(c) Where the amount of the debt exceeds Sh. 3,000 but does not exceed Sh. 6,000	700
(d) Where the amount of the debt exceeds Sh. 6,000 but does not exceed Sh. 10,000	900
(e) Where the amount of the debt exceeds Sh. 10,000 but does not exceed Sh. 100,000	1,000 plus 5 per cent on the amount over 10,000
(f) Where the amount of the debt exceeds Sh. 100,000	5,500 plus 1 per cent on the amount over 100,000

9. CHATTELS TRANSFERS

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

(a) Where the amount secured does not exceed Sh. 50,000	2,000
(b) Where the amount secured exceeds Sh. 50,000 one-half of the scale fee under 1 of the First Scale of Schedule I adjusted in accordance with the notes to that Schedule.	

SCHEDULE VI

COSTS OF PROCEEDINGS IN THE HIGH COURT

A.—PARTY AND PARTY COSTS

1. INSTRUCTION FEES

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

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

<i>That value exceeds But does not exceed</i>		
<i>Sh.</i>	<i>Sh.</i>	<i>Sh.</i>
—	100,000	7,000
100,000	200,000	9,000
200,000	500,000	10,500
500,000	750,000	13,500
Over 750,000	—	13,500

plus 1 per cent the amount over Sh. 750,000

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

<i>That value exceeds But does not exceed</i>		
<i>Sh.</i>	<i>Sh.</i>	<i>Sh.</i>
—	100,000	15,000
100,000	200,000	20,000
200,000	500,000	30,000
500,000	750,000	36,000
Over 750,000	—	36,000

plus 1 per cent on the amount over Sh. 750,000

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

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

- (e) Bankruptcy proceedings—

(i) debtors applicant—	<i>Sh.</i>
to present or oppose a debtor's petition ..	1,000
to apply or oppose discharge	500
(ii) creditor's application—	
to apply for issue of a bankruptcy notice ..	300
to present or oppose a creditor's petition ..	1,500
to apply for or to oppose a discharge	1,000

SCHEDULE VI—(Contd.)

(f) Companies—	Sh
(i) to present or oppose proceeding under rule 5 (1) of the Companies (Winding-up) Rules	6,000
(ii) to present or oppose any other proceedings under the Companies Act, or to support a petition for winding-up a company	1,200
(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	6,000
where the proceedings are defended, or to defend proceedings, such sum as may be reasonable but not less than	16,000
(ii) to apply for additional or ancillary relief, or for custody or access—	
if the application is dealt with together with the petition or answer, as the case may be	1,000
if the application is not dealt with together with the petition or answer	4,000
(iii) to apply for a Registrar's certificate	250
(iv) to present or oppose an application to a judge under the Matrimonial Causes Rules or Guardianship of Infants Act not otherwise provided for: such sum as may be reasonable but not less than	900
(h) Adoption and guardianship—	
(i) to present or oppose an application for adoption: such sum as may be reasonable but not less than	4,000
(ii) to present or oppose an application for guardianship: such sum as may be reasonable but not less than	5,000
(i) To present or oppose an election petition	14,000
(j) Prerogative orders—	
To present or oppose an application for a prerogative order: such sum as may be reasonable but not less than	14,000
(k) To present or oppose objections to an award made by an arbitrator	4,000
(l) To sue or defend in any case not provided for above: such sum as may be reasonable but not less than	4,000
(m) To present or oppose an appeal in any case not provided for above: such sum as may be reasonable but not less than	3,000
(n) To counter-claim: a fee under subparagraph (a) or (b), as appropriate.	
(o) Matters arising during proceedings—	
(i) to prepare an affidavit	300
(ii) to prepare interrogatories or answers thereto	2,000
(iii) to apply for a commission or letter of request for the examination of a witness	1,000

SCHEDULE VI—(Contd.)

	<i>Sh.</i>
(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	6,000
(v) to prepare a case stated for the opinion of the court: such sum as may be reasonable but not less than	2,000
(iv) to present an application for a temporary injunction or similar order if unopposed	1,000
to present or oppose in cases where the judge shall certify that the matter is complex.. .. .	10,000
to present or oppose in ordinary cases: such sum as may be reasonable but not less than	2,000
(vii) to present or oppose any other application not otherwise provided for, whether by summons in chambers or by notice of motion—	
where the application is unopposed	500
where the application is opposed, such sum as may be reasonable but not less than	500

Provided that—

- (i) the taxing officer, in the exercise of this discretion, shall take into consideration the other fees and allowances to the advocate (if any) in respect of 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 the instruction fee allowed on taxation as between party and party shall be increased by one-third and other charges shall be doubled where requisite;
- (iii) in any case which a certificate for senior counsel has been given by the judge, the instruction fee allowed on taxation as between party and party shall be increased by one-half and other charges shall be doubled where requisite, the allowance for attendances of senior counsel in court conducting or leading the cause being on the higher scale;
- (iv) for the purpose of assessing an instruction fee in any suit—
 - (a) for the possession of premises, with or without a claim for arrears of rent; or
 - (b) for the specific performance of a lease, the value of the subject-matter shall be taken to be the arrears of rent or mesne profits, if any, that may be found due, increased by sum equivalent to the annual rental value of the premises or to one-tenth of the capital value of the premises, whichever is the higher;

SCHEDULE VI—(Contd.)

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

2. FEES FOR GETTING UP OR PREPARING FOR TRIAL

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

Provided that—

- (i) this fee may be increased as the taxing officer considers reasonable but it does not include any work comprised in the instruction fee;
- (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 10 per cent of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
- (iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.

3. FEE FOR GETTING UP AN APPEAL

In any appeal to the High Court in which a respondent appears at the hearing of the appeal and which the court at the conclusion of the hearing has certified that in view of the extent or difficulty of the work required to be done subsequently to the lodging of the appeal the case is a proper one for consideration of a getting up fee, the taxing officer may allow such a fee in addition to the instruction fee.

4. DRAWING

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

SCHEDULE VI—(Contd.)

compromise, adjustment or satisfaction of suit, or for reference to arbitration or any other pleading not otherwise provided for—	Sh.
(i) four folios or less	350
(ii) in excess of four folios: additional per folio after the first four folios	50
(b) Creditor's or debtor's petition that a debtor be adjudicated insolvent, or notice of objection thereto—	
(i) six folios or less	500
(ii) in excess of six folios: per folio	50
(c) Petition for winding-up of a company incorporated under the Companies Act—	
(i) nine folios or less	750
(ii) in excess of nine folios: per folio	50
(d) All other documents (including proofs of witnesses; evidence), so far as necessary: per folio	60
(e) Bill of costs: per folio	60
(f) Affidavit or return of service	80
Provided that in relation to paragraphs (a) (ii), (b) (ii), (c) (ii) and (d) the judge may direct that the costs of any repetitive or unnecessary matter shall be disallowed.	

5. COPIES

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

6. CORRESPONDENCE

Letters before action or other necessary letters ..	70
or per folio	40

7. ATTENDANCES

	Ordinary Scale Sh.	Higher Scale Sh.
(a) On any necessary application to or formal attendance on the registrar or deputy registrar	150	—
At offices of court or registrar on routine matters	100	

SCHEDULE VI—(Contd.)

	Ordinary Scale Sh.	Higher Scale Sh.
(c) At court in chambers on matters on a date fixed by the court for hearing, when the case cannot be taken or by advocate for calling over lists	300	—
(d) At court or in chambers before judge not otherwise provided for—		
(i) half-hour or less	400	600
(ii) one hour	1,200	900
(iii) half-day	1,600	2,400
(iv) whole day	3,200	4,800
(e) Routine telephone calls: each necessary telephone call allowed per three minutes or part thereof	40	—
(f) With a judge on a view, if in court hours, the same fees as for attendance in court conducting case; if out of court hours: per hour including travelling time, in addition to all expenses properly incurred in getting to and from the place viewed	720	—
(g) All necessary attendance (including attendances to take minutes of evidence of witnesses other than the party for whom the advocate is appearing) of any nature whatsoever not otherwise provided for: per quarter-hour	180	—
8. PERUSALS		
(a) Of pleadings, memorandum of appeal, record of appeal affidavits, interrogatories and answers thereto, notices to admit, petition to wind-up company, petition in insolvency, notice of motion in court, originating summons, or other necessary documents not specifically provided for: per folio		20
(b) of notices and other routine documents		30
(c) of necessary letters: per folio		20
9. SERVICE		
(a) Within three kilometres of the High Court or district registry of the High Court		80
(b) Every additional kilometre over three: such amount as is reasonable, not exceeding per kilometre		10
(c) By post, if authorized		50
10. PLANS, MODELS, ETC.		
Actual costs supported by vouchers of all necessary plans, charts, photographs and models.		
11. TRANSLATIONS		
Actual costs, supported by vouchers of all necessary translations.		

SCHEDULE VI—(Contd.)

12. EXECUTION PROCEEDINGS	
(a) Instructions to execute decree and drawing necessary application	Sh. 300
(b) Attendance at court filing application	100
(c) Attending court to peruse order	100
13. OBJECTION TO EXECUTION PROCEEDINGS	
(a) Instruction to prepare objection	600
(b) Instruction to proceed with attachment	300
(c) Instruction to take proceedings to establish or to oppose such proceedings	1,500
14. GARNISHEE PROCEEDINGS	
(a) Instruction to institute garnishee proceedings, if not opposed	900
(b) Instructions to institute or to defend garnishee proceedings, when opposed: such sum as the taxing officer considers reasonable but not less than	2,000
15. FEE ALLOWABLE ON CERTIFICATE OF COSTS UNDER PARAGRAPH 68A	
(a) Where no appearance has been entered in the suit and where the defendant was served at the first attempt for each additional attempt of service	400 80
(b) Where appearance has been entered: a further	60
(c) Where the defendant was served out of the jurisdiction: a further	800
(d) Where the defendant was served in accordance with an order under Order V, rule 17 of the Civil Procedure Rules: the costs of any advertisement ordered by the court together with a further	700
(e) For any application made to the judge under paragraph 11 (2): a further	1,300
together with the instruction fee and any court fees and affidavit swearing fees incurred; but the taxing officer shall not allow more than one instruction fee.	

B.—ADVOCATE AND CLIENT COSTS

As between advocate and client the minimum fee shall be—

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

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

SCHEDULE VII

COSTS OF PROCEEDINGS IN SUBORDINATE COURTS

A.—PARTY AND PARTY COSTS

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

<i>Exceeds</i> <i>Sh.</i>	<i>Does not</i> <i>exceed</i> <i>Sh.</i>	<i>Lower scale</i> <i>Sh.</i>	<i>Higher scale</i> <i>Sh.</i>
—	1,000	440	800
1,000	2,000	720	1,400
2,000	3,500	850	1,700
3,500	5,000	1,200	2,800
5,000	7,500	1,600	3,600
7,500	10,000	2,000	4,000
10,000	20,000	3,000	5,000
20,000	50,000	3,500	6,000
50,000	250,000	a fee as for Sh. 50,000 plus an additional 5 per cent on the lower scale or 10 per cent on the higher scale in respect of the excess.	
over 250,000		a fee as for Sh. 250,000 plus an additional 1 per cent of the excess.	

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

2. In any suit or appeal by the nature of which no specific sum is sued for, claimed or awarded in the judgment (other than proceedings falling under paragraph 3 below): such costs as the court in its discretion awards but not less than Sh. 2,400 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Sh. 12,000.

3. (a) In proceedings for dissolution of marriage, nullity, judicial separation or restitution of conjugal rights—	<i>Sh.</i>
where the proceedings are undefended ...	2,000
where the proceedings are defended ...	6,000
(b) In proceedings for ancillary relief—	
if heard together with petition or answer ...	500
if not dealt together with petition or answer ...	1,300
(c) In other proceedings for custody, access or guardianship ...	1,500
(d) In proceedings for adoption ...	2,000

SCHEDULE VII—(Contd.)

	Sh.
4. On any application, notice of motion, chamber summons or execution proceedings, to include taking instructions to proceed or oppose, drawing application, engrossing and filing	200
5. On any necessary application to or attendance on magistrate in court or chambers	150
6. Attendance at the hearing where the hearing lasts more than one full day—	
for each full day after the first	1,300
for each part day after the first	700
7. Where costs of adjournment of a case are awarded	300
8. Service—	
(a) within three kilometres of subordinate court or district registry of the subordinate court	50
(b) every additional kilometre over three: such amount as is reasonable, but not exceeding, per kilometre	10
(c) by post, if authorized	30
9. Drawing and filing affidavit or return of service	30

NOTES

1. When an order has been made in general terms for the payment of costs by either party and an advocate has been employed, those costs, in addition to the court fees, shall be computed under this Schedule, which shall be the minimum fee, and shall include (except as otherwise provided) taking instructions, drawing or perusing pleadings or similar documents, engrossing and filing, and all necessary attendances at court or chambers.

2. Costs exceeding the scales in this Schedule may be ordered on special grounds arising out of the nature and importance or the difficulty or the urgency of the case.

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

B.—ADVOCATE AND CLIENT COSTS

As between advocate and client the minimum fees shall be—

(a) the fees prescribed in A above, increased by two-fifths;
or

(b) the fees ordered by the court, increased by two-fifths; or

(c) the fees agreed by the parties under paragraph 57 of this Order, increased by two-fifths,

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

SCHEDULE VIII

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

A—PARTY AND PARTY COSTS

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

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

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

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

(a) in a case where the amount of the annual rent is disputed, the difference between the amount proposed by the landlord and the amount offered by the tenant; or

(b) in a case where possession is claimed, one year's rent or one year's mesne profits, plus the amount of any arrears of rent or mesne profits awarded, which total shall be determined by the Tribunal; or

(c) in a case concerning authority to carry out repairs, the amount claimed or awarded as the cost of the repairs, whichever is less; or

(d) in proceedings under section 13 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, the amount of compensation awarded; or where no compensation is awarded, the amount of compensation claimed.

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

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

SCHEDULE VIII—(Contd.)

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

Exceeds	Does not exceed	Lower scale	Higher scale
Sh.	Sh.	Sh.	Sh.
—	1,000	440	800
1,000	2,000	720	1,400
2,000	3,500	850	1,700
3,500	5,000	1,200	2,800
5,000	7,500	1,600	3,600
7,500	10,000	2,000	4,000
10,000	20,000	3,000	5,000
20,000	50,000	3,500	6,000
50,000	250,000	a fee as for Sh. 50,000 plus an additional 5 per cent on the lower scale or 10 per cent on the higher scale in respect of the excess.	
over 250,000		a fee as for Sh. 250,000 plus an additional 1 per cent in respect of the excess.	

(b) On a complaint where non-pecuniary relief other than possession is sought, such costs as the Tribunal in its discretion awards; but not less than Sh. 1,000 if undefended or unopposed, and if opposed, a reasonable amount not exceeding Sh. 8,000.

(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 Sh. 1,000.

	Sh.
7. (a) On any necessary attendance on the Tribunal other than at the hearing	150
(b) On any necessary attendance by an advocate at the offices of the Tribunal other than (a) above	100
(c) Attendances at the hearing—	
(i) for each full day after the first day ...	1,300
(ii) for each part of the day after the first day	700
(d) Where costs of adjournment of the case are awarded	300
(e) Service—	
(i) within three kilometres of the Tribunal	50
(ii) every additional kilometre over three; such amount as is reasonable, not exceeding per kilometre	10
(iii) by post, if authorized	30

SCHEDULE VIII—(Contd.)

	Sh.
(f) Drawing and filing affidavit or return of service to include swearing fee	30
(g) Drawing and filing any other affidavits; (for first four folios)	150
(thereafter per folio)	20

B.—ADVOCATE AND CLIENT COSTS

As between advocate and client the costs shall be—

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

SCHEDULE IX

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

A—PARTY AND PARTY COSTS

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

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

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

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

- (a) in a case where the amount of the annual rent is disputed, the difference between the amount proposed by the landlord and the amount offered by the tenant; or
- (b) in a case where possession is claimed, one year's rent or one year's mesne profits, plus the amount of any arrears of rent or mesne profits awarded, which total shall be determined by the Tribunal; or

SCHEDULE IX—(Contd.)

- (c) in a case concerning authority to carry out repairs, the amount claimed or awarded as the cost of the repairs, whichever is less; or
- (d) in proceedings under section 15 of the Rent Restriction Act, the amount of compensation awarded; or where no compensation is awarded the amount of compensation claimed.

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

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

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

<i>Exceeds</i>	<i>Does not exceed</i>	<i>Lower scale</i>	<i>Higher scale</i>
<i>Sh.</i>	<i>Sh.</i>	<i>Sh.</i>	<i>Sh.</i>
—	1,000	440	800
1,000	2,000	720	1,400
2,000	3,500	850	1,700
3,500	5,000	1,200	2,800
5,000	7,500	1,600	3,600
7,500	10,000	2,000	4,000
10,000	20,000	3,000	5,000
20,000	50,000	3,500	6,000
over 50,000	—	a fee as for Sh. 50,000 plus an additional 5 per cent on the lower scale or 10 per cent on the higher scale in respect of the excess.	

- (b) On a complaint where non-pecuniary relief other than possession is sought, such costs as the Tribunal in its discretion awards; but not less than Sh. 1,000 if undefended or unopposed, and if opposed, a reasonable amount not exceeding Sh. 8,000.
- (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 Sh. 1,000.

SCHEDULE IX—(Contd.)

	<i>Sh.</i>
7. (a) On any necessary attendance on the Tribunal other than at the hearing	150
(b) On any necessary attendance by an advocate at the offices of the Tribunal other than (a) above	100
(c) Attendances at the hearing—	
(i) for each full day after the first day ...	1,300
(ii) for each part of the day after the first day	700
(d) Where costs of adjournment of the case are awarded	300
(e) Service—	
(i) within three kilometres of the Tribunal	50
(ii) every additional kilometre over three; such amount as is reasonable, not exceeding per kilometre	10
(iii) by post, if authorized	30
(f) Drawing and filing affidavit or return of service to include swearing fee	30
(g) Drawing and filing any other affidavits; for first four folios	150
thereafter per folio	20

B.—ADVOCATE AND CLIENT COSTS

As between advocate and client the costs shall be—

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

SCHEDULE X

PROBATE AND ADMINISTRATION

A.—PARTY AND PARTY COSTS

1. INSTRUCTION FEES

- (a) To apply for grant of probate of written will, or proof of oral will, or letters of administration with or without will annexed, the proceedings not being contested: where the

SCHEDULE X—(Contd.)

gross capital value of property comprised in the grant—

<i>Exceeds</i> Sh.	<i>But does not exceed</i> Sh.	Sh.
—	10,000	2,000
10,000	50,000	3,000
50,000	200,000	4,000
200,000	1,000,000	one per cent of the value.
1,000,000	—	one per cent of the value on the first Sh. 1,000,000 thereof and one-half per cent over Sh. 1,000,000.

(b) To apply for re-sealing a grant, the proceedings not being contested: four-fifths of the fee provided under paragraph (a).

	Sh.
(c) To apply for confirmation of a grant—	
(i) if uncontested	1,500
(ii) if contested; such sum as the taxing officer shall consider reasonable, but not less than	5,000
(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	1,500
(f) To lodge an objection to a grant, or a citation or other application or proceeding under any provision of the Law of Succession Act not otherwise provided for in this Schedule: such sum as the taxing officer shall consider reasonable, but not less than	3,000
(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: Sh. 1 per Sh. 20,000 of net estate included therein, multiplied by the number of entries, but not less than	500

2. DRAWING

(a) Each form or document prescribed under or required by the Law of Succession Act ...	400
or per folio	80

SCHEDULE X—(Contd.)

	<i>Sh.</i>
(b) An inventory or account, except where embodied in a prescribed form, including an estate duty affidavit and corrective estate duty affidavit	300
or per entry	10
3. COPIES	
per folio	10
4. PERUSING	
(a) Wills and codicils	400
or per folio	40
(b) Any other form or document prescribed under or required by the Law of Succession Act ...	200
or per folio	24
5. LETTERS AND ATTENDANCES	
Including those necessary in ascertaining the particulars and extent of an estate, identities concerned, the raising and settlement of estate duty and all other work referred to in paragraphs 18 (e) and 51 (c) of this Order (other than that included in item 6 of this Schedule)—	
(a) Letters despatched	100
or per folio	60
(b) Letters received and perused	60
or per folio	24
(c) Attendances—	
(i) in ordinary cases per 15 minutes or part thereof	240
(ii) routine telephone calls within Kenya for 3 minutes or part thereof	50
(iii) in other cases the taxing officer may increase or diminish the above charges if, for any special reason, he sees it fit.	
6. ACTUAL ADMINISTRATION OF A TESTAMENTARY OR OTHER ESTATE OR TRUST	
(a) Such annual or semi-annual fee as may be reasonable in the circumstances, having regard to the care and labour required, the number and length of the papers to be perused, the value and complexity of the estate, the interests of the parties and all other circumstances;	

SCHEDULE X—(Contd.)

or, a the election of the advocate—

- (b) An annual or semi-annual commission of such amount as the taxing officer shall consider reasonable, having regard to all the circumstances, but not exceeding in aggregate the following rates—
- (i) on the estimated net capital value of the estate—one and one-half per cent per annum;
 - (ii) on the amount of the income of the estate in a year or half-year—two per cent; and
 - (iii) on the capital value of any portion of the estate which is realized or invested during a year or half-year—three-quarters per cent, or at the election of the advocate.
- (c) An amount based upon Schedule V:

Provided that—

- (i) in relation to a shorter period than a year or half-year, the commission under paragraph (b) (i) shall be calculated with reference to that period; 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 inventory and accounts for that year; but any additional 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 paragraphs of this Schedule.

B.—ADVOCATE AND CLIENT COSTS

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

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

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

Made on the 23rd August, 1993.

F. K. APALOO,
Chief Justice.