

LEGAL NOTICE NO. 37

## THE ADVOCATES ACT

(Cap. 16)

IN EXERCISE of the powers conferred by section 48 of the Advocates Act, the Chief Justice, on the recommendation of the Council of the Law Society of Kenya, hereby makes the following Order:—

THE ADVOCATES (REMUNERATION) (AMENDMENT)  
ORDER, 1977

1. This Order may be cited as the Advocates (Remuneration) (Amendment) Order, 1977 and will come into force on the 1st March, 1977.

Sub. Leg.

2. Paragraph 3 of the Advocates (Remuneration) Order (hereinafter called "the Order") is repealed.

3. Paragraph 7 of the Order is amended by substituting for the figure "6" the figure "9".

4. Paragraph 19 of the Order is repealed and replaced by the following paragraph:—

**Expenses** chargeable in addition to remuneration. 19. 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.

5. Paragraph 41 of the Order is amended by substituting for the figure "90" the figure "250".

6. Paragraph 46 of the Order is amended by substituting for the figure "45" the figure "120".

7. The Order is amended by inserting immediately after paragraph 62 a new paragraph as follow:—

**Costs where there has been a change of advocates.** 62A. (1) Where there has been a 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.

8. Paragraph 65 of the Order is repealed and replaced by the following paragraph:—

Limits of  
time for  
taxation.

65. (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.

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

9. The Order is amended by repealing paragraph 74 and by substituting therefor the following two paragraphs:—

Vouchers to  
be produced.

74. 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.

Witness  
expenses.

74A. (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 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.

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(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.

10. Schedule I of the Order is amended by substituting for the First and Second Scales the following two Scales:—

FIRST SCALE

*Scale of Charges on Sales, Purchases and Mortgages Affecting Land Registered in the Government Lands Registry or the Land Titles Registry*

	(1) On the first £1,000	(2) From £1,000 to £2,000	(3) From £2,000 to £4,500	(4) From £4,500 to £15,000	(5) Over £15,000
	<i>A Minimum Charge Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>
<b>(a) VENDOR'S ADVOCATE—</b>					
For preparing and completing contract, answering any preliminary inquiries, deducing title (including any necessary abstraction) to freehold or leasehold property, answering any requisitions on title, perusing and completing conveyance or assignment ..	500 00	50 00	35 00	15 00	7 50
<b>(b) PURCHASER'S ADVOCATE—</b>					
For investigating title to freehold or leasehold property and preparing and completing conveyance (including perusal and completion of contract, if any) .. .. .	500 00	50 00	35 00	15 00	7 50
<b>(c) MORTGAGOR'S ADVOCATE—</b>					
(ii) For deducing title (including any necessary abstraction) to freehold or leasehold property, answering any requisitions on title, perusing and completing mortgage .. .. .	One-half the fee payable under (b) above				
(ii) For preparing and completing reconveyance or reassignment of mortgage, a fixed charge of Sh. 275.					
<b>(d) MORTGAGEE'S ADVOCATE—</b>					
(i) For investigating title to freehold or leasehold property and preparing and completing mortgage	500 00	50 00	35 00	15 00	7 50
(ii) For perusing and completing reconveyance or reassignment of mortgage, a fixed charge of Sh. 135.					

## SECOND SCALE

*Sale of Charges, Purchases and Charges Affecting Land Registered in the Inland Registry or the Coast Registry or Registered under the Registered Land Act*

	(1) On the first £1,000	(2) From £1,000 to £2,000	(3) From £2,000 to £4,500	(4) From £4,500 to £15,000	(5) Over £15,000
<i>A Minimum Charge Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>	<i>Per £100 Sh. cts.</i>
<b>(a) VENDOR'S ADVOCATE—</b>					
For preparing and completing contract for sale or conditions (if any), answering any preliminary inquiries, deducing title (including any necessary abstraction) to freehold or leasehold property, answering any requisitions on title, perusing and completing transfer .. .. .	450 00	40 00	25 00	11 50	6 75
<b>(b) PURCHASER'S ADVOCATE—</b>					
For investigating title to freehold or leasehold property and preparing and completing transfer (including perusal and completing of contract, if any) .. .. .	450 00	40 00	25 00	11 50	6 75
<b>(c) CHARGOR'S ADVOCATE—</b>					
(i) For deducing title (including any necessary abstraction) to freehold or leasehold property, answering any requisitions on title, perusing and completing charge .. .. .					
(ii) For preparing and completing discharge of charge, a fixed charge of Sh. 250.					
				One-half the fee payable under (b) above	
<b>(d) CHARGEЕ'S ADVOCATE—</b>					
(i) For investigating title to freehold or leasehold property and preparing and completing charge .. .. .	450 00	40 00	25 00	11 50	6 75
(ii) For perusing and completing discharge of charge, a fixed charge of Sh. 110.					

11. Schedule II of the Order is amended by substituting for the First Scale the following Scale:—

#### FIRST SCALE

*Scale of Charges for the Preparation of Leases, Agreements for Lease and Tenancy Agreements at a Rack Rent*

(1) To the advocate preparing, settling and completing lease or agreement and counterpart—	
(a) Where the annual rent does not exceed £200.	Fifteen per cent of the annual rent.
(b) Where the annual rent does not exceed £400.	Ten per cent of the annual rent or Sh. 400 whichever is the greater.
(c) Where the annual rent exceeds £400 and does not exceed £1,250.	Ten per cent on the first £400 of the annual rent, and three per cent on the excess over £400.
(d) Where the annual rent exceeds £1,250.	Ten per cent on the first £400 of the annual rent, three per cent on the next £850 and one per cent on the excess over £1,250.
(2) To the advocate perusing, amending and completing lease or agreement and counterpart.	One-half of the amount payable to the advocate preparing, settling and completing or Sh. 200 whichever is the greater.

Provided that—

- (i) where a varying rent is payable, the amount of annual rent means the amount of the largest annual rent payable under the lease or agreement for lease or tenancy agreement;
- (ii) in the case of a lease, agreement for lease or tenancy agreement of a dwelling-house or flat for a term exceeding one year but not exceeding three years and not containing an option for renewal or extension capable of making the entire term one in excess of three years an advocate may in his discretion reduce the above stated charges by a sum not exceeding fifty per cent thereof;
- (iii) in the case of a lease, agreement for lease or tenancy agreement of a dwelling-house or flat for a term not exceeding one year and not containing an option for renewal or extension capable of making the entire term one in excess of one year there shall be charged by each advocate concerned a fee equal to five per cent of the total rent reserved or Sh. 200 whichever is the greater; but so that the fee so chargeable may not exceed that chargeable under paragraph (1) of this Scale;
- (iv) in the case of an 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.

12. The Order is amended by substituting for Schedule IV the following Schedule:

## SCHEDULE IV

## TRADE MARKS, PATENTS AND CHATTELS TRANSFER

*A—Trade Marks*

	<i>Sh.</i>
1. APPLICATIONS—	
(a) Instructions to register one trade mark in one class and drawing form of authorization .. .. .	150
(b) Instructions to register second and further trade marks in the name of the same proprietor simultaneously per trade mark in one class .. .. .	90
(c) Drawing application for registration and four copies of representation of mark .. .. .	45
2. REGISTERED USERS—	
(a) Instruction to file an application to enter one Registered User of one registered trade mark or more than one registered trade mark of same proprietor incorporated in the same set of documents and subject to the same conditions and restrictions in each case—	
(1) for the first or single registered trade mark .. .. .	165
(2) for the second registered trade mark .. .. .	75
(3) for the third registered trade mark .. .. .	50
(4) for the fourth and each subsequent registered trade mark, applications being filed simultaneously .. .. .	20
(b) Drawing statement of case, statutory declaration in support and application, depending on the amount of work involved but not less than .. .. .	300
(c) Drawing registered user agreement depending on the amount of work involved but not less than .. .. .	225
(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 .. .. .	135
(2) for the second registered trade mark .. .. .	90
(3) for the third registered trade mark .. .. .	60
(4) for the fourth and each subsequent trade mark, applications being filed simultaneously .. .. .	30
(e) Drawing application and statement of grounds depending on amount of work involved but not less than .. .. .	75
(f) And for each subsequent registered trade mark the grounds for cancellation being the same .. .. .	25
(g) Instructions to file an application for variation of terms of appointment of a registered user including drawing application .. .. .	150
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 .. .. .	95
(2) for the second registered trade mark .. .. .	45
(3) for each subsequent registered trade mark .. .. .	30

## SCHEDULE IV—(Contd.)

	<i>Sh.</i>
(b) Instruction 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 .. .. .	90
(2) for every other registered trade mark assigned under the same devolution of title filed simultaneously .. .. .	25
(c) Instructions to apply for extensions of time in which to apply for directions to advertise, from .. .. .	65
<b>4. RENEWALS—</b>	
(a) Instructions to renew the registration of one trade mark in one class including drawing the prescribed form and form of authorization .. .. .	110
(b) Instructions to renew the registration of second and further trade marks in the name of the same proprietor simultaneously including drawing the prescribed form and form of authorization per mark in one class .. .. .	75
(c) Instructions to renew the registration of one trade mark in one class under the provisions of rule 68 of the Trade Marks Rules, including drawing the prescribed forms and forms of authorization .. .. .	110
<b>5. CHANGE OF NAME—</b>	
(a) Instructions to register change of name of the registered proprietor in respect of one trade mark in one class including drawing the prescribed form and form of authorization .. .. .	90
(b) Instructions to register change of name of the registered proprietor in respect of second and further trade marks simultaneously, including drawing the prescribed form and form of authorization for each change of name per trade mark in one class .. .. .	40
<b>6. CHANGE OF ADDRESS—</b>	
(a) Instructions to register change of address of the registered proprietor in respect of one trade mark in one class including drawing the prescribed form and form of authorization .. .. .	90
(b) Instructions to register change of address of the registered proprietor in respect of second and further trade marks simultaneously, including the drawing of the prescribed form and form of authorization, for each change of address per trade mark in one class .. .. .	40
<b>7. ALTERATIONS OR AMENDMENTS—</b>	
(a) Instructions to amend or alter one registered trade mark in one class including the drawing of the prescribed form and form of authorization .. .. .	150
(b) Instructions to amend or alter second and further registered trade marks simultaneously in one class, including the drawing of the prescribed form and form of authorization for amendment or alteration per trade mark per class .. .. .	40
<b>8. SEARCHES—</b>	
(a) Instructions to search the register .. .. .	65
(b) Instructions to advise on the registrability of a proposed trade mark in one class including all correspondence .. .. .	110
(c) Instructions to obtain Registrar's preliminary advice on Form TM.27 or TM.28 including drawing the prescribed form and all correspondence in connexion therewith .. .. .	50
(d) Instructions to search a trade mark file for particulars thereof per trade mark in one class .. .. .	40

## SCHEDULE IV—(Contd.)

	<i>Sh. cts.</i>
<b>9. OPPOSITION AND RECTIFICATION PROCEEDINGS—</b>	
(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 preparation thereof, the general conduct of the proceedings and all other relevant circumstances shall decide but not less than .. .. .	750 00
(b) Attendance before the Registrar conducting opposition or rectification proceedings every whole day .. .. .	630 00
(c) Every half-day or part thereof .. .. .	315 00
(d) On interlocutory matters, taking judgments, etc., for every 15 minutes or part thereof .. .. .	30 00
<b>10. MISCELLANEOUS MATTERS—</b>	
(a) Attendance on the Registrar for every 15 minutes or part thereof ..	30 00
(b) Correspondence, letters re infringement, opposition, etc., but not concerned with applications, renewals, etc., per letter .. ..	12 50
or per folio .. .. .	7 50
(c) Receiving and perusing letters: per letter .. .. .	5 50
or per folio .. .. .	2 00
(d) Drawing all other necessary documents (notices of opposition, statutory, declarations, counter statements, etc., per folio ..	10 00
file copies: per folio .. .. .	1 50
(e) Perusing documents, pleadings, statutory declarations, etc., to be charged for as for perusals at Item (7) (a) of Schedule VI ..	
<i>Note.</i> —The fee for instructions in each case enumerated other than that for oppositions or rectification, includes the drawing and lodging of all forms of disclaimer, request for correction of clerical error or for amendment of an application, the payment of association fees, stamping of documents and all other correspondence.	

*B—Patents*

	<i>Sh.</i>
(a) Instructions to register a patent including drawing form of authorization and stamping it, drawing and lodging application and all correspondence .. .. .	135
(b) Instructions to register an assignment of a patent including drawing form of authorization and stamping it and assignment, drawing and lodging application and all correspondence .. .. .	105
(c) Instructions to register an extension of a patent including drawing form of authorization and stamping it and making application for extension .. .. .	105
(d) Attending at the Registry searching Register of Patents—for every 15 minutes .. .. .	30
<i>Note.</i> —All instruction fees prescribed in paragraph "A" and "B" of this Schedule may in any case be increased by the Registrar in his discretion.	

## C—Chattels Transfer

The charge shall be that set out under the scale in Schedule III 4 for a single unsecured debenture.

13. Schedule VI of the Order is amended as follows:—

(1) by substituting in paragraph (1) for the words "Instructions fees—The fee for instructions in suits shall be as follows unless the taxing officer in his discretion shall increase the same" the words "Instructions fees—The fee for instructions in suits shall be as follows unless the taxing officer in his discretion shall increase or reduce the same.";

(2) by substituting for the words and figures in item (a) paragraph (1) the following—

(a) To sue or defend in a suit on a bill of exchange, promissory note or cheque, for goods sold and delivered, or for work done and materials supplied, or for the recovery of money lent or advanced with or without security, or on a guarantee, or for the recovery of money on an account stated, or for the recovery of rent of premises without possession, or for salary due, or for fees for services rendered, or to defend proceedings against a second or subsequent mortgagee where the defendant substantially adopts the defence of the first defendant, where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties and—

Such value exceeds	But does not exceed	Sh.
—	Sh. 3,000	275
Sh. 3,000	Sh. 5,000	350
Sh. 5,000	Sh. 10,000	450
Sh. 10,000	Sh. 20,000	550
Sh. 20,000	Sh. 50,000	850
Sh. 50,000	Sh. 100,000	1,100
Sh. 100,000	Sh. 200,000	1,650
Sh. 200,000	—	1,900

(3) by substituting for the words and figures in item (g) of paragraph (1) the following—

(g) To sue or defend any other proceedings commenced by plaint or originating notice of motion, summons or petition 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—

Such value exceeds	But does not exceed	Sh.
—	Sh. 3,000	350
Sh. 3,000	Sh. 5,000	550
Sh. 5,000	Sh. 10,000	850
Sh. 10,000	Sh. 20,000	1,100
Sh. 20,000	Sh. 50,000	2,200
Sh. 50,000	Sh. 100,000	3,300
Sh. 100,000	Sh. 200,000	4,400
Sh. 200,000	—	5,500



## SCHEDULE VII—(Contd.)

	Lower Scale	Higher Scale
	<i>Sh.</i>	<i>Sh.</i>
exceeds Sh. 600 but does not exceed Sh. 800 ..	100	160
exceeds Sh. 800 but does not exceed Sh. 1,000 ..	125	200
exceeds Sh. 1,000 but does not exceed Sh. 1,500 ..	175	275
exceeds Sh. 1,500 but does not exceed Sh. 2,000 ..	200	350
exceeds Sh. 2,000 but does not exceed Sh. 2,500 ..	225	400
exceeds Sh. 2,500 but does not exceed Sh. 3,000 ..	250	450
exceeds Sh. 3,000 but does not exceed Sh. 5,000 ..	300	575
exceeds Sh. 5,000 but does not exceed Sh. 7,500 ..	450	850
exceeds Sh. 7,500 but does not exceed Sh. 10,000 ..	560	1,000
exceeds Sh. 10,000 a fee as for Sh. 10,000 plus an additional 5 per cent in respect of such excess.		

*Note.*—The “Lower Scale” shall be applied in all cases where no defence denying 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: such costs as the Court in its discretion awards, but not less than Sh. 250 if undefended or unopposed and (subject to any special order) not to exceed Sh. 1,000.
- (3) On any application, notice of motion, chamber summons or execution proceedings, to include taking instructions to proceed or oppose, drawing applications, engrossing same and filing .. .. . 50
- (4) Attendance in Court or chambers in support thereof or in opposition thereto .. .. . 30
- (5) Where the hearing of a suit lasts for more than one full day, for each full day after the first day .. .. . 315  
for each part day after the first day .. .. . 150
- (6) Where the costs of adjournment of the case are awarded .. .. . 50

*B—Advocate and Client Costs*

Costs as between advocate and client shall be taxed by a taxing officer of the High Court upon the application either of the advocate or of the client pursuant to paragraph 13 of this Order. In such cases the minimum fee shall be the fee prescribed above or the fee ordered by the Court increased in either event by one-third.

*Transitional provisions*

15. In the application of this Order to work commenced before but not finally completed at the date on which this Order comes into force the following provisions shall have effect in the absence of any agreement to the contrary—

- (a) where the work is being charged under Schedule I, II or IV the provisions of this Order shall apply unless in the opinion of the taxing officer the work could have been completed before this Order came into force but for unnecessary delay attributable to the advocate;
- (b) where the work is being charged for under Schedule VI or VII the provisions of this Order shall apply save that the portions (if any) thereof which were completed on the day upon which this Order came into force shall be charged as if the Advocates (Remuneration) Order had not been amended by this Order:

Provided always that in computing the fee for instructions for any such work the work may be apportioned by the taxing officer in his discretion as between the period prior to this Order coming into force and the period after its coming into force.

Made this 3rd day of February, 1977.

JAMES WICKS,  
*Chief Justice.*