

(Legislative Supplement No. 16)

LEGAL NOTICE NO. 35

THE ADVOCATES ACT

(Cap. 16)

IN EXERCISE of the powers conferred by section 44 of the Advocates Act, the Chief Justice AND President of the Supreme Court of Kenya makes the following Order:—

THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER,  
2014

1. This Order may be cited as the Advocates (Remuneration) (Amendment) Order, 2014.

2. In this Order, unless the context otherwise requires—

“principal Order” means the Advocates Remuneration Order, 2009.

3. The principal Order is amended by changing all the references in the Order from Roman numbers to numeric references.

4. An advocate shall not agree or accept his remuneration at less than provided by this Order

5. The principal Order is amended by replacing paragraph 18 with the following new paragraph—

“18. 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.”

6. The principal Order is amended by inserting a new paragraph immediately after paragraph 51C as follows—

“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.”

7. The principal Order is amended by deleting all Schedules and

substituting therefor the following new Schedules—

SCHEDULE 1  
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 sub-paragraph (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. (a) The scale fees for the creation of an equitable mortgage by deposit of documents 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 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

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.3,000,000the 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

##### *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 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 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

<i>Particulars</i>	<i>KSh.</i>
<i>1. Applications</i>	
(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
<i>2. Registered users</i>	
(a) Instructions to file an application to enter one registered user of one registered trade mark or more than one registered trade mark of the same proprietor incorporated in the same set of documents and subject to the same conditions and restrictions in each case—	
(i) for the first 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	12,600
(iv) For the fourth and each subsequent registered trade mark applications being filled 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 filed simultaneously | 20,000 |
- (c) Instructions to apply for extensions of time in which to apply for directions to advertise an assignment without goodwill
- |  |        |
|--|--------|
|  | 12,600 |
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### 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*

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|---|--------|
| (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
<i>8. Searches and copies</i>	
(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
(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
<i>9. Opposition and rectification proceedings</i>	
(a) Instruction to enter opposition or to defend opposition proceedings or to apply for rectification or to defend rectification proceedings where such opposition or proceedings are conducted before the Registrar, such fee as the taxing officer 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
<i>10. Miscellaneous matters</i>	
(a) Instructions to advise on registrability of a mark or on a point of law or practice, such fee as may be reasonable in the circumstances but not less than 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, but 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

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.	
	Kshs.
For drawing	250
For engrossing	50
For fair copying	30
For perusing	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	150
In other cases the taxing officer may increase or diminish the above charges for any special reason.	
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	
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.100,000but does not exceed Kshs.500,000	Kshs. 10,000 plus 5% of the amount over Kshs 100,000
Where the amount of the debt exceeds Kshs. 500,000 but does not exceed Kshs. 2,000,000	Kshs. 50,000 plus 3% of the amount over Kshs 500,000
Where the amount of the debt exceeds Kshs. 2,000,000	Kshs.100,000 plus 1.5% of the amount 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

##### 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 appearance 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—

<i>That value exceeds</i>	<i>But does not exceed</i>	
Kshs	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—

<i>That value exceeds</i>	<i>But does not exceed</i>	
Kshs.	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 sub-paragraph 1(b).

(e) *Bankruptcy proceedings*

	<i>Kshs</i>
(i) Debtors application:	
To present or oppose a debtor's petition	12,000
To apply or oppose discharge	12,000
(ii) Creditor's application—	
To apply for issue of a bankruptcy notice	2,000
To apply or oppose a creditors petition to	12,000
Apply for or oppose a discharge	12,000

(f) <i>Companies</i>	
(i) to present or oppose proceedings under Rule 5(1) of the Companies (Winding-up) Rules	25,200
(ii) to support a petition for winding-up of a company	10,000
(iii) to present or oppose any other proceedings under the Companies Act	15,000
(g) <i>Matrimonial causes</i>	
(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) <i>Adoption and guardianship</i>	
(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) <i>Election petitions</i>	
To present or oppose an election petition; such sum as may be reasonable but not less than	500,000
(j) <i>Constitutional petitions and prerogative orders</i>	

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—

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|--|---------|
| (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, 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 per folio 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
(d) All other documents (including proofs of witnesses and evidence) so far as necessary per folio	Kshs 180
(d) 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 plaint, 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 by the trial court	Kshs 25 per page or folio
(c) Printing actual costs, supported by vouchers of all necessary printing	
(d) Photostat copies per page; actual costs, supported by vouchers of all necessary photocopying	Kshs 10
(e) All other necessary copies	Kshs 25 per folio

#### 6. Correspondence

Letters before action or other necessary letters	Kshs 1,000
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or per folio	Kshs 118
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#### 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—		
	<i>Ordinary Scale</i>	<i>Higher Scale</i>
	<i>Kshs</i>	<i>Kshs</i>
Half-hour or less	1,100	1,900
One hour	2,300	3,000
Half-day	5,000	7,100
Whole day	10,000	15,000
(e) Routine telephone calls each necessary telephone call allowed per three minutes or part thereof		Kshs 120
(f) With a judge on a view, if in court hours, the same fees for attending in court conducting case; if out of court hours per hour including traveling time, in addition to all expenses properly incurred in getting to and from the place viewed		Kshs 2,200
(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.		Kshs 600
 <i>8. Perusals</i>		
(a) Of pleadings, memorandum of appeal, record of appeal, affidavits, interrogatives 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		Kshs 50
(b) Of notices and other routine documents		Kshs 50
(c) Of necessary letter; per folio		Kshs 50
 <i>9. SERVICE</i>		
(a) within three kilometers of the High Court or 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

##### 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 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.

<i>Exceeds Kshs</i>	<i>Does not exceed Kshs</i>	<i>Lower scale Kshs</i>
—	50,000	10,000
50,000	100,000	15,000
100,000	200,000	30,000

200,000	500,000	45,000
500,000	1,000,000	65,000
1,000,000	2,000,000	90000

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

*Note*

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

2. In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the 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.

4. (a) In proceedings for dissolution of marriage, nullity, Judicial separation or restitution of conjugal rights:-	(i) where the proceedings are undefended	Kshs. 10,000
	(ii) where the proceedings are defended	Kshs 18,000
(b) In proceedings for ancillary relief:-	(i) if heard together with petition or 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

## 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 Kshs.	Lower scale Kshs.	Higher scale Kshs.
-	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
	over 250,000		the fee for 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.

8. (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—	(i) for first four folios	Kshs 500
	(ii) 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 TRIBUNAL 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 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—

<i>Exceeds Kshs.</i>	<i>Does not exceed Kshs.</i>	<i>Lower scale Kshs.</i>	<i>Higher scale Kshs.</i>
—	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.

7. (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

	(i) For the first whole day	Kshs 4,000
	(ii) For each part of the day after the first	Kshs 2,100

hearing—		
(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 thereafter per folio	Kshs 500 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

#### 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.	
<b>2. DRAWING</b>		
(a)	Each form or document— prescribed under or required by the law or per folio	Kshs 1,200 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.	
<b>3. COPIES</b>		
(a)	Each form or document prescribed under or required by the law or per folio	Kshs 1,200 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	
<b>4. PERUSING</b>		
	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
<b>5. LETTERS AND ATTENDANCES</b>		
(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

Including those necessary in ascertaining the particulars and extent of an estate, identities concerned, the raising and settlement of estate duty and all other work referred to in paragraphs 18(e) and 51(c) of this Order (other than that included in item 6 of this Schedule)—

(a) Letter 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.**

**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 may be allowed in accordance with Rule 74A of the Advocates Remuneration Order.



## 8. (a) Where the value of the subject matter can be ascertained—

That value exceeds	But does not exceed	
Kshs.	Kshs.	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	100,000
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%

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.

10. (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 may be, such increase to include all proper attendance on the client and all necessary correspondence.

## SCHEDULE 12

## PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

	Kshs
1. INITIAL APPLICATIONS FOR REGISTRATION	
(a) Instructions to register one patent	42,000
(b) Instructions to register one industrial design	42,000
(c) Instructions to register one utility model	42,000
(d) Instructions to enter a national phase of international application	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	15,120
(b) Application to convert pending patent application into a utility model application or vice versa and preliminary advice thereon	15,120
(c) Application for substantive examination for patents and preliminary advice thereon	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	21,000
(e) Drawing an application	6,300
(f) Drawing a licence agreement, depending on the amount of work involved but not less than	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	21,000
ANNUITY APPLICATIONS	
Instructions to pay annual maintenance fees for a patent or utility model and drafting and filing an annuity application	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	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,	15,000

utility model or industrial design and supporting affidavits

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 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

(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
<b>MISCELLANEOUS MATTERS</b>	
(j) 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
(k) 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	10,500
(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)—	294
(i) Per letter	176
(ii) per folio	
(g) Receiving and perusing letters, documents, pleadings, statutory declarations, etc. —	
(i) Per letter	294
(ii) Or 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

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(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.

Dated the 1st April, 2014.

WILLY MUTUNGA,  
*Chief Justice and President  
of the Supreme Court of Kenya.*