



THE OFFICIAL GAZETTE

OF THE COLONY AND PROTECTORATE OF KENYA

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GOVERNMENT NOTICE No 1037

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

ALEX M WILKIE,
Acting Clerk to the Legislative Council

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE INCOME TAX
ORDINANCE, 1940**

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows —

Short title

1. This Ordinance may be cited as the Income Tax (Amendment) (Relief) Ordinance 1949, and shall be read and construed as one with the Income Tax Ordinance, 1940 (hereinafter referred to as the principal Ordinance) and all amendments thereto

5

Date of commencement of application of Ordinance

2. The provisions of this Ordinance shall apply to assessments in respect of the year of assessment commencing on the 1st day of January 1950, and to each subsequent year of assessment

Amendment of section 24 of the principal Ordinance

3. There shall be added to section 24 of the principal Ordinance the following new sub-section —

(4) In the case of an individual resident in the Colony in the year immediately preceding the year of assessment who satisfies the Commissioner that in the year immediately preceding the year of assessment he had attained the age of 65 years or upwards in the case of a man, or the age of 60 years or upwards in the case of a woman, there shall (in addition to any other deduction allowable under sub-section (3) of this section) be allowed a deduction of—

20

(a) in the case of an individual to whom paragraph (a) of sub-section (1) of this section applies, £175

Provided that where the total income of such individual exceeds £350 the amount of such deduction shall be reduced by one-half of the amount by which the total income exceeds £350,

(b) in any other case, £100

Provided that where the total income of such individual exceeds £200 the amount of such deduction shall be reduced by one-half of the amount by which the total income exceeds £200

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Income Tax Ordinance, 1940, so as to afford an additional measure of relief to old people in the lower income brackets. It is considered that such persons, whether in receipt of earned or unearned income, not infrequently by reason of their age have to incur additional expense in procuring for themselves assistance which their age renders them unable to provide for themselves.

Clause 2 of the Bill provides that the relief given by clause 3 shall apply to the assessment in respect of the year of assessment commencing on the 1st January, 1950, and for each subsequent year of assessment.

Clause 3 amends section 24 of the principal Ordinance by adding a new sub-section which provides that an individual who, in the case of a man, has attained the age of 65 years or, in the case of a woman, has attained the age of 60 years, in the year immediately preceding the year of assessment shall be allowed one or other of the following deductions—

(a) in the case of a man with a wife or wives living with or maintained by him a deduction of £175, with provision that where the total income exceeds £350 the deduction shall be reduced by one-half of the amount by which his total income exceeds £350,

(b) in any other case a deduction of £100 but again there is provision that where the total income exceeds £200 the amount of the deduction shall be reduced by one-half of the amount by which the total income exceeds £200

No additional expenditure of public moneys will be incurred if the provisions of this Bill become law, but some small loss in revenue will result

Nairobi,
11th October, 1949

K K O'CONNOR,
Attorney General

GOVERNMENT NOTICE No 1038

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

ALEX M WILKIE,
Acting Clerk to the Legislative Council

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**A BILL ENTITLED
AN ORDINANCE TO CONSOLIDATE AND AMEND
THE LAW RELATING TO ADVOCATES IN
THE COLONY**

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows —

Short title and
commencement

1. This Ordinance may be cited as the Advocates Ordinance, 1949, and shall come into force upon such date as the Governor may, by notice in the Gazette, appoint

Interpretation

2. In this Ordinance, unless the context otherwise requires— 5

“advocate” means any person whose name is duly entered as an advocate upon the Roll,

“client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to re- 10
tain or employ, and retains or employs, or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs,

the “Committee” means the Advocates Committee to be established pursuant to section 4 of this Ordinance, 15

“contentious business” includes any business done by an advocate in any court,

the “Court” means His Majesty’s Supreme Court of Kenya,

“costs” includes fees, charges, disbursements, expenses 20
and remuneration,

“non-contentious business” means any business in which an advocate is employed other than contentious business,

“practising certificate” means a certificate issued by the Registrar to an advocate, authorizing him to practise as such 25
within the Colony pursuant to the provisions of Part IV of this Ordinance,

the “Registrar” means the Registrar of the Supreme Court of Kenya,

the “Remuneration Committee” means the Committee 30
to be established to deal with the remuneration of advocates, pursuant to the provisions of Part VII of this Ordinance,

the “Roll” means the list of advocates kept in accordance with the provisions of this Ordinance

Certain officers
exempt from
provisions of
the Ordinance

3. (1) Every officer to whom this section applies shall, in 35
connexion with the duties of his office, be entitled to practise in any court in the Colony, and shall not, except as in this Ordinance expressly provided, be subject to the provisions of this Ordinance

(2) The officers to whom this section applies are— 40

(a) the Attorney General, the Solicitor General and Crown Counsel, and any person duly qualified as a barrister or solicitor holding office in the Attorney General’s department,

(b) the Legal Secretary of the East Africa High Commis- 45
sion,

(c) any person duly qualified as a barrister or solicitor and holding office in the East African Railways and Harbours Administration, or in any municipality established under the Municipalities Ordinance, 1928, 50

(d) the Registrar General and any person duly qualified as a barrister or solicitor holding office in his department, and

(e) the Native Courts Officer, if duly qualified as a barrister or solicitor

PART I—ADVOCATES COMMITTEE

4. (1) There shall be established for the purposes of this Ordinance a committee to be called the Advocates Committee, consisting of—

Establishment of
an Advocates
Committee

5 (a) the Attorney General and the Solicitor General *ex officio*, and

(b) three unofficial members, being practising advocates nominated by the Law Society of Kenya

(2) Every unofficial member shall hold office for twelve months from the date of his nomination and shall be eligible for re-nomination

(3) During the temporary absence from the Colony of any unofficial member the Committee may nominate any practising advocate to act as a temporary unofficial member in the place of such absentee until his return or until the expiration of his period of office, whichever first occurs

(4) The Attorney General shall be chairman of the Committee and shall preside at all meetings at which he is present. In the absence of the Attorney General from any meeting the Solicitor General shall be chairman of that meeting

(5) Three members of the Committee, one of whom shall be the Attorney General or the Solicitor General, shall form a quorum

(6) Any question before the Committee shall be decided by a majority of votes of the members present and voting and the chairman of the meeting shall, in addition to his own vote as a member of the Committee, have a casting vote in cases where the votes of the members are equally divided

PART II—ROLL OF ADVOCATES

5. The Registrar shall keep, in accordance with the provisions of this Ordinance and of any regulations made thereunder, a Roll of all advocates

The Registrar to
keep the Roll of
advocates

6. The Registrar shall, upon the commencement of this Ordinance, enter upon the Roll the name of every person who was qualified to practise as an advocate immediately prior to such commencement, and the order of entry of such names shall be according to the precedence of such persons as between themselves before such commencement

The Roll and
precedence of
existing
advocates

7. (1) Any of the following persons may if he has resided in the Colony for a period of at least twelve months since obtaining his qualification, apply to the Chief Justice to be admitted as an advocate, that is to say—

Admission and
enrolment of
advocates

(i) Members of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland,

(ii) Persons who have been admitted and are qualified to practise as advocates before the Supreme Court of any Dominion, Commonwealth, or self-governing Colony in the British Empire, or before one of the High Courts in India or Pakistan,

(iii) Solicitors, Attorneys, or Law Agents of a Superior Court in a British Possession to which the Colonial Solicitors Act, 1900, is applied by Order in Council and who by virtue of the said Act and of any Order in Council thereunder may be admitted as Solicitors of the Supreme Court in England, Scotland, Northern Ireland or the Republic of Ireland, without examination and without service of articles of clerkship,

(iv) Solicitors of the Supreme Court in England, Northern Ireland or the Republic of Ireland, Law Agents admitted to practise in Scotland

Sub-section (1)
of section 7

Provided however, that a person may, notwithstanding he has not resided in the Colony for at least twelve months, be admitted as an advocate if the Chief Justice, on the recommendation of the Law Society of Kenya, thinks fit

(2) Every application made under this section shall be by petition to the Chief Justice in such form and manner as may be prescribed and forthwith upon the filing thereof the Registrar shall deliver a copy to the Council of the Law Society of Kenya which body may require the applicant to appear before it for the purposes of an interview, and such Council shall, after making or causing to be made such inquiries into the character, qualification and experience of the applicant as it shall deem necessary, forward to the Chief Justice a confidential report regarding the suitability or otherwise of such applicant for admission as an advocate

(3) Upon an application being made under this section and after considering the confidential report submitted by the Council of the Law Society of Kenya and upon proof to his satisfaction of the qualification and suitability of the applicant and upon production of such testimonials as to character as he may require the Chief Justice, shall, unless cause to the contrary is shown to his satisfaction by the said confidential report or otherwise, by writing under his hand and in such manner and form as he may, from time to time, think fit, admit the applicant to be an advocate

(4) The Registrar, upon production of an admission signed by the Chief Justice, and on payment to the Registrar of a fee of four hundred shillings, shall enter on the Roll the name of the person admitted

(5) Nothing in this section shall prejudice or affect the qualification or status of any person who immediately before the commencement of this Ordinance was qualified to act as an advocate according to the law then in force

(6) All reports and communications under this section shall be absolutely privileged

Precedence of
advocates

8. Advocates will take precedence among themselves according to the order of entry of their respective names on the Roll

Provided that the Attorney General and Solicitor General shall take precedence of all other advocates

PART III—REMOVAL FROM AND RESTORATION TO THE ROLL

45

Removal from
the Roll and
procedure of
Committee

9. (1) Any application—

(a) by an advocate to procure his name to be removed from the Roll, or

(b) by another person to strike the name of an advocate off the Roll, or to require an advocate to answer allegations contained in an affidavit,

shall be made to and heard by the Committee in accordance with rules made under the next succeeding section

(2) On the hearing of an application under paragraph (a) of sub-section (1) of this section the Committee may make an order removing the name of such advocate and may make such other order in relation to the case as it may think fit

(3) On the hearing of an application under paragraph (b) of sub-section (1) of this section—

(i) the Committee shall give the advocate whose conduct is the subject matter of the application an opportunity to appear before it for the purpose of meeting

the charges made against him, and he shall be furnished with a copy of such charges together with a copy of any affidavit made in support of the application, and shall be given an opportunity of inspecting any other relevant document, not less than seven days before the date fixed for the hearing.

(ii) the Committee on the termination of the hearing shall embody their findings in the form of a report to the Court which shall be signed and filed with the Registrar, and shall be open to inspection by the advocate charged and his advocate (if any) and also by the applicant, but shall not be open to public inspection,

(iii) if the Committee is of the opinion that a prima facie case for the application, or a prima facie case of any misconduct on the part of the advocate charged, has been made out, it shall lay a signed copy of the report before the Court, together with the evidence taken and the documents put in evidence at the hearing,

(iv) the Committee shall have power to make any such order as to payment by any party of any costs or witness expenses as it may think fit

10. (1) The Committee, with the concurrence of the Chief Justice, may from time to time make rules for regulating the making, hearing and determining of applications to the Committee under this Part of this Ordinance

Rules governing
Committee

(2) For the purposes of any application made to it under this Part of this Ordinance the Committee may administer oaths and the applicant and the advocate charged may take out a summons to give evidence or to produce documents, but no person shall be compelled under any such summons to produce any document which he could not be compelled to produce on the trial of an action

(3) The hearing of an application under section 9 of this Ordinance shall for the purpose of Chapter XI of the Penal Code be deemed to be a judicial proceeding

11. (1) The powers conferred upon the Court by sections 12, 14 and 15 of this Ordinance shall be exercised by not less than two of the judges of the Court

Power of
Court under
sections 12, 14
and 15 to be
exercised by
two judges

(2) If such powers are exercised by two judges and the Court is equally divided, the matter shall be reheard by three judges

(3) If such powers are exercised by three judges and they do not agree in their opinion the decision of the majority shall be taken to be the decision of the Court

12. The Court may set down for consideration the report of the Committee made under section 9 of this Ordinance Not less than fourteen days' notice of the date for such consideration shall be given to the Committee and to the advocate charged The Registrar shall forward with the notice a copy of the report The notice shall be in such form as may be prescribed

Consideration of
the report by
the Court

13. Both the Committee and the advocate charged may be legally represented before the Court

Representation
by advocate

14. The Court may refer the report back to the Committee with directions for their finding on any specified point

Reference of
report back to
Committee

15. The Court, after considering the evidence taken by the Committee and the report and having heard the advocate for the Committee and the advocate charged or his advocate, and after taking any further evidence, if it thinks fit to do so, may admonish the advocate or suspend him from practising

Power of Court
to admonish or
suspend advocate
or to strike
his name off
Roll

within the jurisdiction of the Court during any specified period, or may order the Registrar to strike his name off the Roll and may make such order as to costs as it thinks fit

Disciplinary powers of Court or judge apart from inquiry by the Committee

16. Nothing in this Ordinance contained shall supersede, lessen or interfere with the powers vested in the Chief Justice 5 or any of the judges of the Court to deal with misconduct or offences by advocates

Power of Registrar to draw up orders

17. Where an order has been made by the Court upon a motion to remove from, or strike off, the Roll the name of an advocate, or to require an advocate to answer allegations con- 10 tained in an affidavit, and has not been drawn up by the applicant within one week after it was made, the Registrar may cause the order to be drawn up, and all future proceedings thereon shall be taken as if the motion had been made by the Registrar 15

Orders of Court to be produced to Registrar

18. Where the name of any advocate is ordered by the Court to be removed from, or struck off, the Roll, the order shall forthwith and before it is acted upon be produced to the Registrar, and the Registrar shall enter a note thereof on the Roll in connexion with the name of the advocate and 20 shall remove or strike off the name and shall mark the order as having been entered

Limitation of time for certain applications to strike names off the Roll

19. Subject as hereinafter provided, no advocate shall be liable to have his name struck off the Roll on account of any defect in his admission and enrolment, unless the appli- 25 cation to strike his name off the Roll is made within twelve months after the date of his enrolment

Provided that this section shall not apply to any case where fraud is proved to have been committed in connexion with the admission or enrolment 30

Restoration to the Roll

20. The Chief Justice may, if he thinks fit, either on his own initiative or on the recommendation of the Committee, at any time order the Registrar to replace on the Roll the name of an advocate whose name has been removed from or struck off the Roll 35

PART IV—PRACTISING CERTIFICATES

Registrar to issue practising certificates

21. It shall be the duty of the Registrar to issue in accordance with the provisions of this Part certificates authorizing the advocates named therein to practise as advocates

Application for practising certificates

22. (1) Every advocate applying for a practising certifi- 40 cate shall, in person or by his agent—

(a) deliver to the Registrar a written declaration in the prescribed form stating the name and place of business of the applicant and the date of his admission and signed by the applicant or his partner, and 45

(b) at the same time produce to the Registrar a duly signed duplicate of the declaration

(2) The Registrar shall cause all the particulars contained in the declaration to be entered in a register kept for that purpose, and any person may inspect such register during 50 office hours without payment

(3) Subject to the provisions of the next succeeding section, the Registrar, if satisfied that the name of the applicant is on the Roll shall, after the expiration of six days from the delivery to him of the declaration, deliver to the applicant 55 or his agent upon demand a practising certificate in such form as may be prescribed

(4) If in any case, not being a case to which the next succeeding section applies, the Registrar on application duly

made to him refuses or neglects to issue a practising certificate, the applicant may apply to the Court or any Judge thereof or the Chief Justice who may make such order in the matter, including an order for payment of costs by or to either the
 5 Registrar or the applicant, as shall be just

23. (1) In any of the following cases, that is to say, where an advocate—

Discretion of
 Registrar to
 refuse certificate
 in special cases

- 10 (a) applies for a practising certificate, having neglected to obtain such a certificate within twelve months after the expiration of the last certificate issued to him, or
- (b) applies for a practising certificate whilst he is an undischarged bankrupt, or
- 15 (c) having been suspended from practice or struck off the Roll, first applies for a practising certificate after the expiration of his suspension or after his re-admission to the Roll, as the case may be,

he shall, unless the Registrar or the Chief Justice otherwise orders, give to the Registrar at least six weeks before the application is made, notice of his intention to make the applica-
 20 tion, and the Registrar may in his discretion refuse the application, subject, however, to an appeal to the Chief Justice who may affirm the decision of the Registrar or may direct him to issue a certificate to the applicant on such terms and conditions, if any, as the Chief Justice may think fit

25 (2) An adjudication in bankruptcy of an advocate shall operate immediately to suspend the practising certificate (if any) of such advocate for the time being in force, and such suspension shall continue in operation until the certificate expires or the adjudication in bankruptcy is annulled and an
 30 office copy of the Order annulling the adjudication has been served upon the Registrar or the suspension is terminated by order of the Registrar or the Chief Justice under the next following sub-section of this section, whichever shall first happen

35 (3) (a) So long as the suspension of the practising certificate of an advocate under the preceding sub-sections of this section shall continue in operation, such advocate shall be deemed to be an "unqualified person" within the meaning given to that expression by
 40 section 26 of this Ordinance for the purposes thereof,

(b) at any time before the certificate and (in the case of adjudication in bankruptcy) the adjudication is annulled, such advocate may apply to the Registrar to terminate the suspension, and the Registrar, in his
 45 discretion, may decide to terminate by order the suspension unconditionally or subject to such terms and conditions as he may in his discretion think fit or may refuse the application,

(c) if the Registrar shall refuse the application to terminate the suspension subject to any terms or conditions, such advocate may appeal against such
 50 decision to the Chief Justice who may either affirm the decision of the Registrar or by order vary any terms or conditions imposed by the Registrar or terminate the suspension unconditionally or subject
 55 to such terms and conditions as he may think fit,

(d) when the practising certificate of an advocate has become suspended by virtue of his adjudication in
 60 bankruptcy or by virtue of an order of the Chief Justice, the Registrar shall forthwith cause a notice of such suspension to be published in the Gazette and shall cause a note thereof to be entered against the name of such advocate in the Roll,

(e) when the suspension of the practising certificate of an advocate has been terminated by annulment of the adjudication in bankruptcy of the advocate and service upon the Registrar of an office copy of the Order annulling the adjudication or by order of the Registrar or Chief Justice under this section, the Registrar shall forthwith cause a note of the termination of the suspension to be entered against the name of such advocate in the Roll, and, if so requested, in writing by such advocate, cause a notice thereof to be published in the Gazette

Date and period
of validity of
practising
certificates

24. (1) Every practising certificate shall, subject as hereinafter provided, take effect on the day on which it is issued by the Registrar

Provided that every practising certificate issued between the first day of January and the first day of February in any year shall have effect for all purposes from the first day of January in that year

(2) Every certificate shall continue in force from the day from or on which it has taken or takes effect in accordance with this section until the 31st day of December next following (both days inclusive) and shall then expire

(3) It shall be the duty of the Registrar to enter upon the Roll a note of the date of issue to any advocate of a practising certificate

List published
by Registrar to
be prima facie
evidence of
advocate holding
certificate

25. (1) Any list purporting to be published by authority of the Registrar and to contain the names of advocates who have obtained practising certificates for the current year before the first day of February in that year shall, until the contrary is proved, be evidence that the persons named therein as advocates holding such certificates as aforesaid for the current year are advocates holding such certificates

(2) The absence from such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as an advocate under a certificate for the current year, but in the case of any such person an extract from the Roll certified as correct by the Registrar shall be evidence of the facts appearing in the extract

PART V—PRIVILEGES RESTRICTIONS AND OFFENCES IN CONNEXION WITH PRACTICE

Qualifications for
practising as
advocate

26. Subject as hereinafter provided, no person shall be qualified to act as an advocate unless his name is on the Roll and he has in force a practising certificate, and a person who is not so qualified is in this Part referred to as an "unqualified person"

Provided that notwithstanding anything to the contrary contained in this Part—

(a) the Chief Justice may, upon payment to the Court of a fee of five pounds admit to practice as an advocate for the purpose of any one case any of the persons mentioned in sub-section (1) of section 7 of this Ordinance who has come or intends to come to the Colony for the purpose of appearing in such case,

(b) in any proceeding in any Muslim subordinate court, a Muslim Arab or Muslim African may be represented by an Arab or African holding a duly registered general vakalla, or a special vakalla to appear in a particular matter, provided that the person holding the vakalla is a member of the family or the husband of the person whom he represents, which relationship must be set out in the vakalla,

(c) the Chief Justice may grant a licence to an Arab vakıl or an African vakıl to practise in the Muslim subordinate courts, but so that—

5 (i) such licence shall be for one year, but shall be revocable at any time at the pleasure of the Chief Justice, and

10 (ii) no such licence shall be granted to an Arab vakıl or African vakıl unless he shall have given security for his good behaviour with two sureties in two thousand shillings each and a personal bond himself in two thousand shillings and have paid an annual registration fee of twenty shillings,

and any such person, so far as acting within the scope of his
15 authority or licence, shall not be deemed to be an "unqualified person" for the purposes of this Part

27. Every person so qualified as aforesaid may practise as an advocate in the Court or in any court subordinate thereto constituted under the Courts Ordinance, 1931

Rights of practising

No 16 of 1931

20 28. (1) No unqualified person shall act as an advocate, or as such sue out any summons or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or act as an advocate in
25 any cause or matter, civil or criminal

Unqualified person not to act as advocate

(2) If any person contravenes the provisions of this section, he shall be guilty of an offence against this Ordinance and of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought
30 or taken and may be punished accordingly, and shall be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and any disability to which he may be subject, be liable on conviction by a subordinate court of the first class for each such offence to a fine
35 of two thousand shillings

29. Any person, not having in force a practising certificate, who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or
40 recognized by law as qualified to act as an advocate, shall be liable on conviction by a subordinate court of the first class to a fine of five hundred shillings for each such offence

Penalty for pretending to be an advocate

30. (1) Any person, not being an advocate, who, unless he proves that the act was not done for, or in expectation of,
45 any fee, gain or reward, either directly or indirectly draws or prepares any instrument—

Penalty for unqualified persons preparing certain instruments

(a) relating to movable or immovable property or any legal proceeding,

50 (b) for or in relation to the formation of any limited liability company whether private or public,

(c) for or in relation to the making of a deed of partnership or the dissolution of a partnership,

shall be liable on conviction by a subordinate court of the first class to a fine of four thousand shillings

55 (2) This section shall not extend to—

(a) any public officer drawing or preparing instruments in the course of his duty, or

(b) any person employed merely to engross any instrument, application or proceeding

(3) For the purposes of this section the expression "instrument" does not include—

- (a) a will or other testamentary instrument, or
- (b) a letter or power of attorney, or
- (c) a transfer of stock or shares containing no trust or limitation thereof

Instruments to be endorsed with name and address of drawer

31. Every person who draws or prepares any instrument referred to in the last preceding section shall endorse or cause to be endorsed thereon his name and address, and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the said requirements shall be liable on conviction by a subordinate court of the first class to a fine of two hundred shillings, and it shall not be lawful for the Registrar, the Registrar of Titles, the Registrar of Crown Lands or any other registering authority to accept or recognize any such instrument unless it purports to bear the name of the person who prepared it endorsed thereon

Penalty on unqualified person acting in preparation of papers for probate, etc

32. Any person, not being an advocate, who unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, or as an agent of any person other than a person qualified as above-mentioned takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or of letters of administration shall, without prejudice to any liability or disability to which he may be subject under any other section of this Ordinance or any other Ordinance, be liable on conviction by a subordinate court of the first class to a fine of two thousand shillings for each offence

No costs recoverable where unqualified person acts as advocate

33. No costs in respect of anything done by any person who acts as an advocate at a time when he has not in force a practising certificate shall be recoverable in any action, suit or matter by any person whomsoever

Advocate not to act as agent for unqualified person

34. (1) No advocate shall wilfully and knowingly act as agent in any action, or in any matter in bankruptcy for any unqualified person, or permit his name to be made use of in any such action, or matter upon the account, or for the profit, of any unqualified person, or send any process to any unqualified person, or do any other act enabling any unqualified person to appear, act or practise in any respect as an advocate in any such action or matter

(2) Where it appears to the Court that an advocate has acted in contravention of this section, the Court may, in the absence of a satisfactory explanation from such advocate, order his name to be struck off the Roll

(3) Where the Court orders the name of an advocate to be struck off the Roll in respect of an offence under this section, it may further order that the unqualified person who was enabled by the conduct of the offender to act or practise as an advocate shall pay a fine of four thousand shillings or in default of payment to undergo imprisonment for a term not exceeding one year

Employment by advocate of persons struck off the Roll or suspended

35. (1) No advocate shall, in connexion with his practice as an advocate, without the written permission of the Committee, which may be given for such period and subject to such conditions as the Committee thinks fit, employ or remunerate any person who to his knowledge is disqualified from practising as an advocate by reason of the fact that his name has been struck off the Roll, otherwise than at his own request, or is suspended from practising as an advocate

(2) An advocate aggrieved by the refusal of the Committee to grant any such permission as aforesaid, or by any conditions attached by the Committee to the grant thereof,

may appeal to the Chief Justice who may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Committee, grant such permission for such period and subject to such conditions as he thinks fit

5 (3) If any advocate acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder his name shall be struck off the Roll or he shall be suspended from practice for such period as the Court thinks fit

10 36. (1) Any person who, whilst he is disqualified from practising as an advocate by reason of the fact that he has been struck off the Roll, otherwise than at his own request, or is suspended from practising as an advocate, seeks or accepts employment by an advocate in connexion with that
15 advocate's practice without previously informing him that he is so disqualified as aforesaid, shall, on conviction by a subordinate court of the first class, be liable, for each offence, to a fine of five hundred shillings

Penalty on failure to disclose fact of having been struck off, etc

(2) Proceedings under this section may be commenced
20 at any time before the expiration of six months after the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced except by, or with the consent of, the Attorney General

25 37. (1) If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as an advocate, the body corporate shall be liable on conviction by a subordinate court of the first class to a fine
30 of five hundred shillings for each such offence and, in the case of an act done by any director, officer or servant of the corporation, he shall be liable on conviction by the said court to a fine of five hundred shillings for each offence

Offences by bodies corporate

(2) In this Part, wherever the context so admits, reference
35 to unqualified persons and reference to persons include references to bodies corporate

38. (1) No advocate shall—

Offences by advocates

40 (a) take instructions in any case except from the party on whose behalf he is retained or some person who is the recognized agent of such party within the meaning of the Civil Procedure Ordinance, and any rules made thereunder for the time being in force, or some servant, relation or friend authorized by the party to give such instructions, or

Cap 5

45 (b) mislead or allow any court to be misled, so that such court makes an order which such advocate knows to be wrong or improper, or

50 (c) tender, or give or consent to the retention out of any fee paid or payable to him for his services of any gratuity for procuring or having procured the employment in any legal business of himself or any other advocate, or

55 (d) directly or indirectly procure or attempt to procure the employment of himself or his partner or assistant as an advocate, through or by the intervention of any person to whom remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

60 (e) accept any employment in any legal business through a person who has been proclaimed as a tout, as in the next succeeding section mentioned, or

- (f) advertise himself in any wise in relation to his profession or business as an advocate, except so far as may be necessary to mark his office or to give his address to persons having business communications or dealings with him, or 5
- (g) directly or indirectly hold himself out or permit himself to be held out, whether by name or otherwise, as being prepared to undertake professional business for any fee or consideration which shall be less than the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee, or 10
- (h) agree with his client either before, during or after the conduct of any non-contentious professional business to undertake such business for any fee or consideration whatsoever that shall be less than that set out in the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee, or 15
- (i) commit any breach of any of the provisions of Part VI of this Ordinance, or 20
- (j) deceive or mislead any client or allow him to be deceived or misled in any respect material to such client, or
- (k) commit any contempt of court 25

(2) Any advocate who contravenes any of the provisions of sub-section (1) of this section shall be deemed to be guilty of professional misconduct, and the Court may, in its discretion, either admonish such advocate, or suspend him from practice, or cause his name to be struck off the Roll pursuant to section 15 of this Ordinance 30

Provided that nothing in this section contained shall supersede, lessen or interfere with the powers vested in the Court, under or by virtue of section 15 of this Ordinance or otherwise, to deal with misconduct or offences by advocates of whatsoever nature or kind, whether mentioned in subsection (1) of this section or otherwise 35

Power to
exclude touts
from precincts
of Courts

39. (1) The Chief Justice may, by general or special order, exclude from the precincts of the Court or any court subordinate thereto any person declared by him to be a tout 40

Provided that no such order shall be made unless the party concerned shall have had opportunity of showing cause against such order

(2) For the purposes of this section "tout" means a person who procures the employment in any legal business of any advocate in consideration of any remuneration moving from such advocate, or proposes to an advocate to procure his employment in any legal business in consideration of such remuneration 45

PART VI—THE KEEPING OF ACCOUNTS BY ADVOCATES 50

Interpretation

40. In this Part of this Ordinance the word "client" means any person or body of persons corporate or unincorporate, on whose behalf an advocate in connexion with his practice receives money, and the word "advocate" includes an advocate acting as an agent, bailee, stakeholder, or in any capacity in connexion with his practice as an advocate 55

Interpretation
Advocates'
accounts

41. Every advocate shall keep such books and accounts as may be necessary to show and distinguish in connexion with his practice as an advocate— 60

- (a) the moneys received from or on account of and the moneys paid to or on account of each of his clients, and

(b) the moneys received and the moneys paid on his own account

Client's money
to be paid in
bank

42. Every advocate, who holds or receives money on account of a client (save money hereinafter expressly exempted
5 from the application of this section), shall without undue delay pay such money into a current or deposit account at a bank, to be kept in the name of the advocate in the title of which the word "Client" or the word "Trust" shall appear (hereinafter referred to as "a client account") Any advocate
10 may keep one client account or as many such accounts as he thinks fit

Provided that, when an advocate receives a cheque or draft representing in part money belonging to the client and in part money due to the advocate, he may where practicable
15 split the cheque or draft and pay to the client account that part only which represents money belonging to the client In any other case he shall pay the whole of such cheque or draft into the client account

43. No money shall be paid into a client account other
20 than—

What money to
be paid into
client account

- (i) money held or received on account of a client,
- (ii) such money belonging to the advocate as may be necessary for the purpose of opening or maintaining the account,
- 25 (iii) money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of section 44 of this Ordinance,
- 30 (iv) a cheque or draft received by the advocate representing in part money belonging to the client and in part money due to the advocate where such cheque or draft has not been split as provided for in section 42 of this Ordinance

44. No money shall be drawn from a client account
35 other than—

Withdrawing of
money from
client account

- (i) money properly required for payment to or on behalf of a client or for or towards payment of a debt due to the advocate from a client or money drawn on the client's authority, or money in respect of which
40 there is a liability of the client to the advocate, provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for such client,
- 45 (ii) such money belonging to the advocate as may have been paid into the account under paragraph (ii) or paragraph (iv) of section 43 of this Ordinance,
- (iii) money which may by mistake or accident have been paid into such account in contravention of section 43 of this Ordinance

45. Sections 42, 43 and 44 of this Ordinance shall not
50 apply to money which—

What money
may not be
paid into client
account

- (i) the client, for his own convenience, requests an advocate to withhold from a client account,
- 55 (ii) an advocate pays into a separate account or to be opened in the name of a client or some person named by that client or the duly authorized agent of that client,
- (iii) in the ordinary course of business upon receipt is paid on behalf of the client to a third party,
- 60 (iv) is upon receipt paid to the client,
- (v) is paid to an advocate expressly on account of costs,

(vi) the Committee upon an application made to it in writing by an advocate specifically authorizes to be withheld or withdrawn from a client account

Complaint in respect of advocate's failure to comply with provisions

46. (1) If an advocate fails to comply with any of the provisions made under the preceding sections of this Part of this Ordinance any person aggrieved thereby may make a complaint in writing in respect of that failure to the Committee 5

(2) In order to consider, pursuant to section 9 of this Ordinance, whether the provisions of this Part of this Ordinance have been complied with the Committee, acting either on its own motion or on written complaint lodged with it as provided for in sub-section (1) of this section, may require any advocate to produce at some convenient time and place, his books of account, bank pass books, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Committee, and any such person shall prepare for the information of the Committee a report on the result of such inspection. Such report may be used as a basis for any report by the Committee pursuant to sub-section (3) of section 9 of this Ordinance 10 15 20

(3) Before making any such appointment the Committee shall consider any objection made by any such advocate to the appointment of a particular person on personal or other proper grounds 25

Evidence and deposit of costs before instituting inspection of accounts

47. Before instituting an inspection on a complaint made by a third person, the Committee shall require prima facie evidence that a ground of complaint exists, and may require the payment by such person to the Committee of a reasonable sum to be fixed by it to cover the costs of inspection, and the costs of the advocate against whom the complaint is made. The Committee may deal with any sum so paid in such manner as it thinks fit 30

Notice to advocate how made

48. Every requirement, authorization and notification to be made or given by the Committee to an advocate under this Part of this Ordinance shall be made in writing under the hand of such person as may be appointed by the Committee for the purpose and left at or sent by registered post to the last address of the advocate appearing in the Roll and when so made and sent shall be deemed to have been received by the advocate within forty-eight hours of the time of posting 35 40

Penalty for breach of Part VI

49. In addition to the powers conferred by section 15 of this Ordinance the Court shall have the power to impose on an advocate a fine not exceeding ten thousand shillings in respect of any breach of the provisions of this Part of this Ordinance 45

Saving

50. Nothing in this Part of this Ordinance shall deprive an advocate of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against moneys standing to the credit of a client account 50

Power to refuse to issue certificate until penalty paid

51. Section 23 of this Ordinance (which gives a discretion to the Registrar to refuse to issue certificates in special cases) shall, in addition to the cases mentioned therein, apply to the case where an advocate applies for a certificate to practise without having paid any penalty imposed upon him under section 49 of this Ordinance or any costs lawfully ordered to be paid by him either by the Committee or by the Court. 55

52. (1) Subject to the provisions of this section no bank shall, in connexion with any transaction on any account of any advocate kept with it or with any other bank (other than an account kept by an advocate as trustee for a specified beneficiary) incur any liability or be under any obligation to make an inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it

Relief to banks

Provided that nothing in this sub-section contained shall relieve a bank from any liability or obligation to which it would be subject apart from this Ordinance

(2) Notwithstanding anything in the preceding sub-section contained, a bank at which an advocate keeps an account for clients' moneys shall not, in respect of any liability of the advocate to the bank, not being a liability in connexion with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim charge or otherwise, against moneys standing to the credit of that account

Provided that nothing in this sub-section contained shall deprive a bank of any right existing at the commencement of this Ordinance

PART VII—REMUNERATION OF ADVOCATES

53. (1) For the purposes of this Part there shall be a committee to be known as the Remuneration Committee which shall consist of five advocates to be nominated by the Law Society of Kenya, of whom three shall form a quorum

Power to make general orders as to remuneration of advocates

(2) The Chief Justice on the recommendation of the Remuneration Committee may make general orders prescribing and regulating in such manner as he thinks fit the remuneration of advocates in regard to both contentious and non-contentious business and may revoke or alter any such order or any order, made before the commencement of this Ordinance, which provides for the remuneration of advocates

(3) Any order made under the provisions of this section shall be submitted to the Governor in Council for approval, and, if approved, it shall be published in the Gazette and shall come into force on the date of such publication unless some later date is specified in such order

54. Any order made under section 53 of this Ordinance in respect of non-contentious business may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

Scale of rates of commission and percentage

- (i) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, chargor or chargee, and the like,
- (ii) the place where, and the circumstances in which, the business or any part thereof is transacted,
- (iii) the skill, labour and responsibility involved therein on the part of the advocate,
- (iv) the number and importance of the documents prepared or perused, without regard to length,

Security for
payment of
remuneration,
and regulating
interests

55. An order made in respect of non-contentious business may authorize and regulate—

- (i) the taking by an advocate from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order and
- (ii) the allowance of interest

Taxation of bills
of costs

56. As long as any order made as aforesaid is in operation the taxation of bills of costs of advocates shall, subject to the provisions of the next succeeding section with respect to agreements as to remuneration, be regulated by that order

Agreements with
respect to
remuneration
for non-contentious business

57. (1) Whether or not any order is in force under the last preceding section, an advocate and his client may, either before or after or in the course of the transaction of any non-contentious business by the advocate, make an agreement as to the remuneration of the advocate in respect thereof

(2) The agreement may provide for the remuneration of the advocate by a gross sum, or by commission or percentage, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration therein stipulated for either shall or shall not include all or any disbursements made by the advocate in respect of searches, plans, travelling, stamps, fees or other matters

(3) The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf

(4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate

Provided that if on any taxation of costs the agreement is relied on by the advocate and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court and if on that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit

(5) This section shall be read subject to the provisions of section 38 of this Ordinance

Remuneration
an advocate
who is a
mortgagee

58. (1) If a mortgage is made to an advocate, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or them in negotiating the loan, deducting and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage had been made to a person who was not an advocate and that person had retained and employed him or them to transact the said business and do the said acts

(2) If, whether before or after the commencement of this Ordinance, a mortgage has been made to, or has become vested by transfer or transmission in an advocate, either alone or jointly with any other person, and if after the commencement of this Ordinance any business is transacted or acts are done by that advocate, or by the firm of which he is a member, in relation to that mortgage, or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security such usual costs as he or they would have been entitled to receive if the mortgage had been

made to and had remained vested in a person who was not an advocate and that person had retained and employed him or them to transact the said business and do the said acts

(3) In this section the expression "mortgage" includes any charge on any property for securing money or money's worth

CONTENTIOUS BUSINESS

59. Notwithstanding anything to the contrary in section 53 of this Ordinance, an advocate may make an agreement in writing with his client as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated either by a gross sum or by salary, or otherwise

Power to make agreements as to remuneration for contentious business

60. (1) Such an agreement—
 (i) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof

Miscellaneous provisions as to agreements with respect to costs of contentious business

Provided that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his advocate in respect thereof under the agreement,

(ii) shall be deemed to exclude any claim by the advocate in respect of the business to which it relates other than—

(a) a claim for the agreed costs, or

(b) a claim for such costs as are expressly excepted therefrom

(2) A provision in such an agreement that the advocate shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as an advocate, shall be void

(3) No action shall be brought upon any such agreement, but the Remuneration Committee may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof

(4) On any such application, the Remuneration Committee—

(a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it,

(b) if it is of opinion that the agreement is in any respects unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made,

(c) in any case, may make such orders as to the costs of the application as it thinks fit

61. (1) If the business covered by any such agreement is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the advocate until the agreement has been examined and allowed

In certain circumstances taxing officer may reduce amount payable under agreement

by a taxing officer of the Court, and if the taxing officer is of opinion that the agreement is unfair or unreasonable he may require the opinion of the Remuneration Committee to be taken thereon and may on receipt of such opinion reduce the amount payable thereunder, or order the agreement to be cancelled and the costs recovered thereby to be taxed as if the agreement had never been made 5

(2) When the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may at any time within twelve months after payment apply to the Court and the Court, if it appears to it that the special circumstances of the case require the agreement to be re-opened, may, on such terms as may be just, re-open the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the advocate to be repaid by him 10 15

(3) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the Court, and that officer shall examine the agreement and may disallow any part thereof, or may require the opinion of the Court to be taken thereon 20 25

(4) Any such client as is mentioned in the last preceding sub-section who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the officer or by the Court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the advocate who accepts the payment may be ordered by the Court to refund the amount received by him 30

Death,
incapability, or
change of
advocate, etc

62. (1) If, after some business has been done under an agreement made in pursuance of the provisions of section 59 of this Ordinance but before the advocate has wholly performed it, the advocate dies or becomes incapable of acting, then any party to, or the representative of any party to, the agreement, may apply to the Court and the Court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed or setting it aside, as it would have had if the advocate had not died or become incapable of acting 35 40

Provided that the Court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case— 45

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the *agreement, and 50
- (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed 55

(2) The provisions of the last preceding sub-section shall apply in the event of the client changing his advocate (as, notwithstanding the agreement, he shall be entitled to do) before the conclusion of the business to which the agreement relates in the same manner as they apply when the advocate dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the advocate in respect of the business done under the agreement, 60

the Court shall direct the taxing officer to have regard to the circumstances under which the change of advocate has taken place, and the taxing officer unless he is of opinion that there has been no default, negligence, improper delay or other
5 conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall not allow to the advocate the full amount of the remuneration agreed to be paid to him

63. Subject to the provisions of the two last preceding
10 sections, the costs of an advocate in any case where an agree-
ment has been made in pursuance of the provisions of section
59 of this Ordinance shall not be subject to taxation nor to
the subsequent provisions of this Part of this Ordinance with
respect to the signing and delivery of an advocate's bill

Agreement
excludes
taxation

64. (1) Nothing in sections 59, 60, 61, 62 or 63 of this
15 Ordinance shall give validity to—

Miscellaneous
provisions as to
remuneration for
contentious
business

(a) any purchase by an advocate of the interest, or any
part of the interest, of his client in any action, suit
or other contentious proceeding, or

20 (b) any agreement by which an advocate retained or em-
ployed to prosecute any action, suit or other
contentious proceeding stipulates for payment only
in the event of success of that action, suit or
proceeding, or

25 (c) any disposition, contract, settlement, conveyance,
delivery, dealing or transfer which is under the law
relating to bankruptcy invalid against a trustee or
creditor in any bankruptcy or composition

(2) An advocate may, with respect to any contentious
30 business to be done by him, take security from his client for
his costs to be ascertained by taxation or otherwise

(3) Subject to the provisions of any rules of court, upon
every taxation of costs with respect to any contentious
business, the taxing officer may—

35 (a) allow interest at such rate and from such time as he
thinks just on moneys disbursed by the advocate for
the client, and on moneys of the client in the hands
of, and improperly retained by, the advocate,

40 (b) in determining the remuneration of the advocate, have
regard to the skill, labour and responsibility in-
volved in the business done by him

GENERAL PROVISIONS AS TO REMUNERATION

65. (1) The jurisdiction of the Court to make orders
for the delivery by an advocate of a bill of costs and for the
45 delivery up of, or otherwise in relation to, any deeds, docu-
ments or papers in his possession, custody or power, is hereby
declared to extend to cases in which no business has been
done by him in the Court

Power of Court
to order
advocate to
deliver his bill
and to deliver
up deeds

(2) In this and the three next succeeding sections the
50 expression "advocate" includes the executors, administrators,
and assignees of the advocate in question

66. (1) Subject to the provisions of this Ordinance, no
action shall be brought to recover any costs due to an
advocate until one month after a bill thereof has been
55 delivered in accordance with the requirements of this section

Action to
recover
advocates costs

Provided that, if there is probable cause for believing
that the party chargeable with the costs is about to quit the
Colony, or to become a bankrupt, or to compound with his
creditors, or to do any other act which would tend to prevent
or delay the advocate obtaining payment, the Court may, not-

withstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence an action to recover his costs and may order those costs to be taxed

(2) The said requirements are as follows— 5

(i) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill, and 10

(ii) the bill must be delivered to the party to be charged therewith, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house, or last known place of abode, 15

and where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill, which shall be presumed until the contrary is shown, to be a bill bona fide complying with this Ordinance 20

Taxation of
bills on the
application of
the party
chargeable or
the advocate

67. (1) On the application, made within one month of the delivery of an advocate's bill, of the party chargeable therewith, the Court shall, without requiring any sum to be paid into court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is 25 completed

(2) If no such application is made within the period mentioned in the last preceding sub-section, then, on the application either of the advocate, or of the party chargeable with the bill, the Court may, upon such terms, if any, as it 30 thinks fit (not being terms as to the costs of the taxation), order—

(a) that the bill shall be taxed,

(b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already 35 commenced be stayed

Provided that—

(i) if twelve months have expired from the delivery of the bill, or if the bill has been paid, or if a decree, judgment or order has been obtained 40 in a suit for the recovery of the costs covered thereby, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards 45 the costs of the taxation as the Court may think fit,

(ii) in no event shall any such order be made after the expiration of twelve months from the payment of the bill 50

(3) Every order for the taxation of a bill shall require the taxing officer to tax not only the bill but also the costs of the taxation and to certify what is due to or from the advocate in respect of the bill and in respect of the costs of the taxation 55

(4) If after due notice of any taxation, either party thereto fails to attend, the officer may proceed with the taxation *ex parte*

(5) Unless—

(a) the order for taxation was made on the application of the advocate and the party chargeable does not attend the taxation, or

5 (b) the order for taxation otherwise provides,

the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth of the amount of the bill is taxed off, the advocate shall pay the costs, but otherwise the party chargeable shall pay the costs

10 Provided that the taxing officer may certify any special circumstances relating to the bill or the taxation thereof to the Court, and the Court may make thereon any such order as it thinks fit respecting the payment of the costs of the taxation

15 **68.** (1) Where a person other than the person who is the party chargeable with the bill for the purposes of the last preceding section, has paid, or is, or was, liable to pay, the bill either to the advocate or to the party chargeable with the bill, that person or his administrators, executors or assignees
20 may apply to the Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the Court may make thereon the same order, if any, as it might have made if the application had been made by that party

Taxation on application of third parties and beneficiaries under trusts, etc

Provided that in cases where the Court has no power to
25 make an order except in special circumstances the Court may, in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant, but which do not affect the party chargeable with the bill

30 (2) If a trustee, executor or administrator has become liable to pay the bill of an advocate, the Court may, upon the application of any person interested in the property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it
35 thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or from the advocate, or to the executor, administrator or trustee, as it thinks fit

Provided that, in considering any such application, the
40 Court shall have regard to—

(a) the provisions of the last preceding section as to applications by the party chargeable with the taxation of an advocate's bill so far as they are capable of being applied to an application made
45 under this sub-section,

(b) the extent and nature of the interest of the applicant

(3) If an applicant under the last preceding sub-section pays any money to the advocate, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate had
50

(4) The following provisions shall apply to applications made under this section—

(a) except in special circumstances no order shall be made for the taxation of a bill which has already been
55 taxed,

(b) the Court may, if it orders taxation of the bill, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy

60 **69.** (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate

General provisions as to taxation

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs 5

Charging
orders

70. Any court in which an advocate has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay or for paying, the said costs out of the said property as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate 10 15

Provided that no order shall be made if the right to recover the costs is barred by limitation 20

PART VIII—MISCELLANEOUS

Advocates to
be officers of
Court

71. Any person duly admitted as an advocate shall be an officer of the Court and shall be subject to the jurisdiction thereof 25

Payment of
expenses of
Committee

72. (1) The Court may on the application of the Committee order that any expenses incurred by the Committee in carrying out any provisions of this Ordinance, or in supporting any report before the Court, shall be paid by the advocate concerned or by any party on whose application such expenses have been incurred 30

(2) Where any such expenses have been ordered to be paid and are not paid within twelve months from the date of the order they shall, provided the Attorney General certifies that such expenses are not likely to be recovered, be paid out of general revenue by the Financial Secretary on the warrant of the Governor 35

Authentication
of regulations
and other
documents

73. All regulations, certificates, notices and other documents made or issued by the Committee for any purpose whatsoever may be signed on behalf of the Committee by such member or other person as the Committee may for that purpose appoint 40

Power to make
general
regulations

74. The Committee, with the concurrence of the Chief Justice, may for the purposes of this Ordinance make general regulations with respect to the following matters or any of them— 45

(i) the keeping of accounts by advocates,

(ii) the determination of what acts or omissions shall constitute misconduct on the part of an advocate,

(iii) practice and etiquette, 50

and all such further or other general regulations as may be deemed necessary or proper for giving full force and effect to the provisions of this Ordinance

Saving of other
laws

75. Nothing in this Ordinance shall prejudice or affect— 55

(a) the provisions of any Ordinance or rules made thereunder, empowering any person, not being an advocate, to conduct, defend or otherwise act in relation to any proceedings, or

- (b) any existing rules or regulations touching the remuneration of advocates, except only so far as they conflict or are inconsistent with any of the provisions of this Ordinance. Such existing rules and regulations shall be revoked upon the request of the Remuneration Committee, but shall, pending any such request, except only as aforesaid, be deemed to represent an order made by the Remuneration Committee pursuant to the provisions of section 53 of this Ordinance.

76. The following Ordinance and rules are hereby respectively repealed and revoked, that is to say—

- (i) The Legal Practitioners Ordinance, and
 (ii) The Rules of Court (Legal Practitioners), being Part I of the Rules of His Majesty's Supreme Court of Kenya
- Repeal
Cap 10
Orders,
Proclamations
Rules and
Regulations,
Vol I

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill, which has been prepared in collaboration with the Law Society of the Colony of Kenya, is to consolidate and amend the law relating to advocates in the Colony.

The law on the subject is at present contained in the Rules of Court (Legal Practitioners) made by the Chief Justice under the powers vested in him by the Kenya Colony Order in Council, 1921, and in the Legal Practitioners Ordinance (Chapter 10 of the Revised Edition) as amended by the Legal Practitioners (Amendment) Ordinance, 1929.

It is considered desirable that the existing law in Kenya should be replaced on the lines of recent English legislation and the law in force in other colonies on the subject.

The principal amendments which will be effected by this Bill are—

- (a) extension from six months to twelve months of the period of residence in the Colony which is a prerequisite to admission as an advocate (Clause 7 (1)),
- (b) provision whereby a copy of every application for enrolment as an advocate shall be forwarded to the Council of the Law Society which is empowered to require the applicant to appear before it for an interview and to make such other inquiries as to his character, qualification and experience as it may deem necessary. Thereafter the Council is required to make a confidential report to the Chief Justice as to the suitability of the applicant for admission (Clause 7 (2)),
- (c) provision whereby adjudication in bankruptcy of an advocate operates to suspend his practising certificate (Clause 23),
- (d) the increase of the penalty—
 - (i) for unqualified persons acting as or pretending to be advocates (Clauses 28 to 30), and
 - (ii) for offences by advocates (Clauses 34 and 36),
- (e) the establishment of a Remuneration Committee to make recommendations for the making by the Chief Justice, subject to the approval of the Governor in Council, of general orders dealing with the remuneration of advocates (Clause 53), and
- (f) provision whereby the Advocates Committee established under clause 4 of the Bill, in addition to its duties under the Bill, is empowered to make general regulations for the practice and etiquette of the profession (Clause 74).

No expenditure of public moneys will be involved if the provisions of this Bill become law.

Nairobi,
12th October, 1949

K K O'CONNOR,
Attorney General

GOVERNMENT NOTICE No 1039

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

ALEX M WILKIE,
Acting Clerk to the Legislative Council

A BILL ENTITLED

AN ORDINANCE TO AMEND THE EUROPEAN AGRICULTURAL SETTLEMENT ORDINANCE, 1948

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows —

Short title

No 38 of 1948

Repeal and replacement of section 5 of the principal Ordinance

European Agricultural Settlement Fund

Amendment of section 6 of the principal Ordinance

1. This Ordinance may be cited as the European Agricultural Settlement (Amendment) Ordinance, 1949, and shall be read and construed as one with the European Agricultural Settlement Ordinance, 1948 (hereinafter referred to as the principal Ordinance) 5

2. There shall be substituted for section 5 of the principal Ordinance the following section —

5 (1) There shall be established a European Agricultural Settlement Fund, which shall, subject to any special directions of the Governor in Council, be under 10 the control of the Member, and out of which shall be paid all expenditure (including the repayment of any loans and any interest thereon) which may be incurred in carrying into effect the provisions of this Ordinance

(2) There shall be paid into the Fund established 15 under sub-section (1) of this section—

- (a) all moneys allocated by the Legislative Council for the purpose,
- (b) all rentals, interest on advances, repayments of advances or instalments thereof, 20
- (c) all moneys derived from the sale of any land acquired by the Member for the purpose of any approved settlement scheme,
- (d) the proceeds derived from the sale of any surplus assets which may have been acquired by the Member in the exercise of any of the powers 25 contained in this Ordinance,
- (e) all moneys derived from the re-sale to any person of any land,
- (f) all other payments or receipts of whatsoever 30 description derived from or arising out of the operation of any approved settlement scheme

3. Section 6 of the principal Ordinance is amended by—

- (a) inserting immediately after sub-paragraph (iv) of paragraph (b) of sub-section (1) the following new 35 sub-paragraph —
 - (v) the purchase of any land for re-sale to any person,
 - and
- (b) inserting immediately after sub-section (2) the follow- 40 ing new sub-section —

(3) The Member may dispose of any surplus assets which may have been acquired in the exercise of any of the powers contained in this Ordinance, and shall pay the proceeds of such disposal into 45 the Fund

4. There shall be substituted for section 7 of the principal Ordinance the following new section —

Repeal and replacement of section 7 of the principal Ordinance

6 7 (1) All moneys advanced to an assisted owner under the provisions of this Ordinance, together with interest thereon and all charges incidental thereto and to the repayment thereof, shall, subject to any prior mortgage or charge, duly registered in accordance with the provisions of the Crown Lands Ordinance or the Registration of Titles Ordinance, as the case may be, be
10 a first charge upon the interest of such assisted owner in the land in respect of which the advance has been made and shall be secured by a legal mortgage or charge duly registered or by an agreement to execute a legal mortgage or charge entered into by such assisted owner

Security for any advances and registration thereof

Cap 140

Cap 142

15 (2) (a) All moneys advanced to a tenant farmer under the provisions of this Ordinance together with interest thereon and all charges incidental thereto and to the repayment thereof shall, subject to any prior charge duly registered under the provisions of the
20 Chattels Transfer Ordinance, 1930, be a first charge on the chattels of such tenant farmer and shall be secured by a notification in the prescribed form of such advance which shall be forwarded by the Chairman of the Board to the Registrar General who shall, forth-
25 with upon receipt thereof, and without charge, register such notification as if it were an instrument within the meaning of the Chattels Transfer Ordinance, 1930, and the provisions of that Ordinance as modified by the provisions of this section shall apply

No 24 of 1930

No 24 of 1930

30 (b) Notwithstanding the provisions of section 10 of the Chattels Transfer Ordinance, 1930, registration of the notification pursuant to paragraph (a) of this sub-section shall remain in force until cancelled

No 24 of 1930

35 (3) No portion of any advance to an assisted owner or to a tenant farmer shall be made until the security for such advance has been completed and, except where any such advance is secured by an agreement to execute a legal mortgage or charge, registered

5. There shall be inserted next after section 19 of the principal Ordinance the following new section —

Insertion of new section to the principal Ordinance

20 Notwithstanding anything to the contrary contained in the Limitation Ordinance, 1934, or in any other law in force in the Colony, no suit, application or proceeding by the Board shall be rejected or dismissed on the grounds only that such suit, application or proceeding is barred by limitation under any of the provisions of such Ordinance or other law

Limitation Ordinance, 1934, not to apply No 21 of 1934

MEMORANDUM OF OBJECTS AND REASONS

The European Agricultural Settlement Ordinance, 1948 (referred to as "the principal Ordinance"), requires amendment so as to confer on the Member powers to purchase land for re-sale and to dispose of surplus assets. New provisions are also required to enable more adequate security for loans to be taken from assisted owners or tenant farmers.

2 Section 6 of the principal Ordinance will be amended so as to confer upon the Member power to purchase land for re-sale and to dispose of surplus assets (*Clause 3*)

As a corollary, section 5 will be amended so as to provide for the proceeds of the sale of surplus assets and any moneys derived from the re-sale of any land to be paid into the Fund established under that section

3 *Clause 4* of the Bill will amend section 7 of the principal Ordinance by providing—

- (a) in the case of a loan to an assisted owner, that such loan shall be a first charge on the interest of such assisted owner in the land in respect of which the loan is made and shall be secured by a legal mortgage or charge duly registered, or by an agreement to execute such a mortgage or charge At present section 7 only provides that an advance to an assisted owner shall be a first charge on his interest in the land
- (b) in the case of a loan to a tenant farmer, that such loan shall be a first charge on the chattels of such tenant farmer and shall be secured by a notification in the prescribed form of such loan which shall be registered with the Registrar General as if it were an instrument within the meaning of the Chattels Transfer Ordinance, 1930 At present section 7 provides that a loan to a tenant farmer shall be a first charge upon his chattels, subject to any prior charge duly registered under the Chattels Transfer Ordinance, 1930 The section, as amended, also provides that no portion of an advance may be made, either to an assisted owner or to a tenant farmer, until the security has been completed and, where registration is necessary, registered

4 The opportunity has been taken to insert a new section providing that the Limitation Ordinance, 1934, shall not apply to any suit, application or proceeding by the Board

5 It is not possible to estimate the amount of public moneys which will be required if the provisions of this Bill become law

Nairobi,
1st October, 1949

K K O'CONNOR,
Attorney General