



LAWS OF KENYA

THE SUPREME COURT ACT

No. 7 OF 2011

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THE SUPREME COURT ACT

No. 7 of 2011

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THE SUPREME COURT ACT

No. 7 of 2011

Commencement: 23rd June, 2011

AN ACT of Parliament to make further provision with respect to the operation of the Supreme Court pursuant to Article 163 (9) of the Constitution, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Supreme Court Act, 2011.

Interpretation.

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

“Chief Justice” means the Chief Justice appointed under Article 166 of the Constitution;

“Chief Registrar” means the Chief Registrar of the Judiciary referred to in Article 161 of the Constitution;

“Court” means the Supreme Court;

“Deputy Chief Justice” means the Deputy Chief Justice appointed under Article 166 of the Constitution;

“Registry” means the registry where all pleadings and supporting documents and all orders and decisions of the Court are recorded and maintained in accordance with the rules;

“Registrar” means the Registrar of the Supreme Court appointed pursuant to section 9;

“rules” mean the rules of the Supreme Court made pursuant to Article 163 (8) of the Constitution;

“Supreme Court” means the Supreme Court of Kenya established by Article 163 of the Constitution.

Object of the Act.

3. The object of this Act is to make further provision with respect to the operation of the Supreme Court as a court of final judicial authority to, among other things—

- (a) assert the supremacy of the Constitution and the sovereignty of the people of Kenya;
- (b) provide authoritative and impartial interpretation of the Constitution;
- (c) develop rich jurisprudence that respects Kenya’s history and traditions and facilitates its social, economic and political growth;
- (d) enable important constitutional and other legal matters, including matters relating to the transition from the former to the present constitutional dispensation, to be determined having due regard to the circumstances, history and cultures of the people of Kenya;
- (e) improve access to justice; and
- (f) provide for the administration of the Supreme Court and related matters.

PART II—ADMINISTRATION OF THE SUPREME COURT

4. A vacancy in the Supreme Court as constituted under Article 163(1) of the Constitution shall not affect the jurisdiction of the Court. Vacancy not to affect jurisdiction.

5. (1) As the head of the Judiciary, the Chief Justice shall have precedence over the other judges of the Supreme Court. Order of precedence of judges of the Supreme Court.

(2) The Deputy Chief Justice shall take precedence immediately after the Chief Justice.

(3) The other judges of the Supreme Court shall take precedence among themselves, according to the dates on which they respectively took office as judges of the Supreme Court.

(4) Where, under subsection (3), two or more judges of the Supreme Court took office on the same day, precedence among them shall be determined according to professional seniority with the most senior judge taking precedence.

6. (1) The Chief Justice shall preside over the Supreme Court and in the absence of the Chief Justice, the Deputy Chief Justice shall preside. Presiding judge.

(2) If the Chief Justice and the Deputy Chief Justice are absent or unable to preside, or the offices of Chief Justice and the Deputy Chief

Justice are vacant, the most senior available judge of the Supreme Court shall preside over the Court.

(3) The presiding by a judge over the Supreme Court pursuant to subsection (2) shall be conclusive proof of the judge's authority to do so and no action of the Judge, and no judgment or decision of the Court shall be questioned on the ground that the necessity for the judge to preside over the Court had not arisen or had ceased.

Procedure if judges absent.

7. (1) If at the time appointed for a sitting of the Supreme Court one or more judges are absent, the judge or judges present may adjourn the sitting on such terms as the Court thinks fit.

(2) If at the time appointed for a sitting of the Supreme Court all the judges are absent, the Registrar shall adjourn the sitting until such time as the Court shall next convene.

Manner of arriving at decisions.

8. (1) The judgment of the majority of the judges of the Supreme Court shall be the judgment of the Court.

(2) A judge of the Supreme Court shall not sit at a hearing of an appeal against a judgment or order given in a case previously heard before the judge.

Registrar of the Supreme Court.

9. (1) There shall be a Registrar of the Supreme Court who shall, pursuant to Article 161(3) of the Constitution, be appointed by the Judicial Service Commission.

(2) The Registrar and other officers appointed shall exercise such powers and perform such duties as may be conferred upon them upon directions of the Court, the rules of court and the directions of the Chief Justice.

Functions of the Registrar.

10. (1) In relation to proceedings before the Supreme Court, the Registrar shall act in accordance with the directions of the Chief Justice, the Court and the rules and shall, in particular, be responsible for—

- (a) the establishment and maintenance of the Registry;
- (b) the acceptance, transmission, service and custody of documents in accordance with the rules;
- (c) the enforcement of decisions of the Court;
- (d) certifying that any order, direction or decision is an order, direction or decision of the Court, or of the Chief Justice or other judge, as the case may be;

- (e) causing to be kept records of the proceedings and the minutes of the meetings of the Court and such other records as the Court may direct;
- (f) the management and supervision of the staff of the Court;
- (g) the day to day administration of the Court;
- (h) the management of the library of the Court;
- (i) ensuring the publication of the judgments of the Court; and
- (j) undertaking any duties assigned by the Court.

(2) The Registrar may consider and dispose of procedural or administrative matters in accordance with the rules or on the direction of the Chief Justice.

11. (1) A person aggrieved by a decision of the Registrar made in accordance with the rules may apply to a judge of the Supreme Court for a review of such decision. Reviews of decisions of the Registrar.

(2) The judge may confirm, modify, or reverse the decision in issue.

(3) No fee shall be payable for an application under this section.

PART III—JURISDICTION OF THE SUPREME COURT

12. An application to the Supreme Court in respect of a dispute to which Article 163(3)(a) of the Constitution applies shall be submitted by petition and shall further comply with the procedures prescribed by the rules. Determination of disputes arising out of presidential elections.

13. An advisory opinion by the Supreme Court under Article 163(6) of the Constitution shall contain the reasons for the opinion and any judges who differ with the opinion of the majority shall give their opinions and their respective reasons. Advisory role.

14. (1) To ensure that the ends of justice are met, the Supreme Court shall, within twelve months of the commencement of this Act, either on its own motion or on the application of any person, review the judgements and decisions of any judge— Special jurisdiction.

- (a) removed from office on account of a recommendation by a tribunal appointed by the President, whether before or after the commencement of this Act; or

- (b) removed from office pursuant to the Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011); or
- (c) who resigns or opts to retire, whether before or after the commencement of this Act, in consequence of a complaint of misconduct or misbehaviour.

(2) To qualify for review under subsection (1), the judgment or decision shall have been the basis of the removal, resignation or retirement of, or complaint against, the judge.

(3) The Court shall, in exercise of its powers under this section—

- (a) conduct a preliminary enquiry to determine the admissibility of the matter; and
- (b) have all the necessary powers to determine the review under this section, including calling for evidence.

(4) An application for review in respect of a judgment or decision made before the commencement of this Act shall not be entertained two years after the commencement of this Act.

(5) Nothing in this section shall be construed as limiting or otherwise affecting the inherent power of the Court, either on its own motion or on the application of a party, to make such orders as may be necessary for the ends of justice to be met or to prevent abuse of the due process of the Court.

PART IV — APPEALS TO THE SUPREME COURT

Appeals to be by leave.

15. (1) Appeals to the Supreme Court shall be heard only with the leave of the Court.

(2) Subsection (1) shall not apply to appeals from the Court of Appeal in respect of matters relating to the interpretation or application of the Constitution.

(3) References in any written law, other than this Act, to the leave of the Supreme Court shall be construed subject to the provisions of sections 17 and 18 of this Act.

Criteria for leave to appeal.

16. (1) The Supreme Court shall not grant leave to appeal to the Court unless it is satisfied that it is in the interests of justice for the Court to hear and determine the proposed appeal.

(2) It shall be in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—

- (a) the appeal involves a matter of general public importance; or
- (b) a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.

(3) The Supreme Court shall not grant leave to appeal against an order made by the Court of Appeal or any other court or tribunal on an interlocutory application unless satisfied that it is necessary, in the interests of justice, for the Supreme Court to hear and determine the proposed appeal before the proceedings concerned is concluded.

(4) The Supreme Court may grant leave to appeal subject to such conditions as it may determine.

(5) The Supreme Court may, on application, vary any conditions imposed under subsection (4) if it considers it fit.

17. The Supreme Court shall not grant leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed in proceedings in any court or tribunal, other than the Court of Appeal, unless in addition to being satisfied that it is necessary, in the interests of justice, for the Supreme Court to hear and determine the proposed appeal, it is also satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

Direct appeals only in exceptional circumstances.

18. (1) The Supreme Court shall state its reasons for refusing to grant leave to appeal to the Court.

Reasons for refusal of leave to appeal.

(2) The reasons under subsection (1) may be stated briefly and in general terms.

19. The Supreme Court shall hear and determine appeals from the Court of Appeal or any other court or tribunal against any decision made in proceedings, only to the extent that—

Extent of appellate jurisdiction of the Supreme Court.

- (a) a written law, other than this Act, provides for the bringing of an appeal to the Supreme Court against such decision; or
- (b) the decision is not a refusal to grant leave to appeal to the Court of Appeal.

PART V—GENERAL

Appeals to proceed
by fresh hearing.

20. Appeals to the Supreme Court may, where the Court considers it necessary, proceed by way of a fresh hearing.

General powers.

21. (1) On an appeal in proceedings heard in any court or tribunal, the Supreme Court—

(a) may make any order, or grant any relief, that could have been made or granted by that court or tribunal; and

(b) may exercise the appellate jurisdiction of the Court of Appeal according to Article 163(4) (b) of the Constitution.

(2) In any proceedings, the Supreme Court may make any ancillary or interlocutory orders, including any orders as to costs that it thinks fit to award.

(3) The Supreme Court may make any order necessary for determining the real question in issue in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgment in the appeal.

(4) Within fourteen days of delivery of its judgment, ruling or order, the Court may, on its own motion or on application by any party with notice to the other or others, correct any oversight or clerical error of computation or other error apparent on such judgment, ruling or order and such correction shall constitute part of the judgment, ruling or order of the Court.

Power to remit
proceedings.

22. The Supreme Court may remit proceedings that began in a court or tribunal to any court that has jurisdiction to deal with the matter.

Exercise of powers of
the Court.

23. (1) For the purposes of the hearing and determination of any proceedings, the Supreme Court shall comprise five Judges.

(2) Any two or more judges of the Supreme Court may act as the Court—

(a) to decide if an oral hearing of an application for leave to appeal to the Court should be held, or whether the application should be determined solely on the basis of written submissions; or

(b) to determine an application for leave to appeal to the Court.

24. (1) In any proceeding before the Supreme Court, any judge of the Court may make any interlocutory orders and give any interlocutory directions as the judge thinks fit, other than an order or direction that determines the proceeding or disposes of a question or issue before the Court in the proceeding.

Interlocutory orders and directions by the Court.

(2) Any person dissatisfied with the decision of one judge in the exercise of a power under subsection (1) is entitled to have the matter determined by a bench of five judges.

(3) Any judge of the Supreme Court may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by the rules, and may confirm, modify, or revoke that decision as the judge thinks fit.

(4) The judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—

(a) discharge or vary an order or direction made or given under subsection (1); or

(b) confirm, modify, or revoke a decision confirmed or modified under subsection (2).

25. (1) The judgment of the Supreme Court shall be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.

Judgment of the court.

(2) If the judges are equally divided in opinion, the decision appealed from or under review shall be considered as having been affirmed.

26. (1) A judgment of the Supreme Court shall be delivered in open court.

Delivery of judgment.

(2) Where a matter is heard before the Supreme Court and judgment reserved for delivery on another day, it shall not be necessary for all the judges before whom the matter was heard to be present in court on the day appointed for the delivery of judgment.

(3) A judge who has heard a case and who is absent from the delivery of judgment may sign a copy of the judgment with which the judge concurs or, where the judge has written an opinion, give the opinion to a judge present at the delivery of judgment to announce or read the concurrence or opinion in open court.

(4) Where a judgment is delivered pursuant to subsection (3), a majority of the judges who have heard the case shall be present.

Decisions of the court may be enforced by the High Court.

27. A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court.

Contempt of court.

28. (1) A person who—

- (a) assaults, threatens, intimidates, or willfully insults a judge of the Supreme Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court; or
- (b) willfully interrupts or obstructs the proceedings of the Supreme Court, in the Court; or
- (c) willfully and without lawful excuse disobeys an order or direction of the Supreme Court in the course of the hearing of a proceeding, commits an offence.

(2) A police officer, with or without the assistance of any other person, may, by order of a judge of the Supreme Court, take into custody and detain a person who commits an offence under subsection (1) until the rising of the Court.

(3) The Supreme Court may sentence a person who commits an offence under subsection (1) to imprisonment for a period not exceeding five days, or to pay a fine not exceeding five hundred thousand shillings, or both, for every offence.

(4) The Supreme Court shall have the same power and authority as the High Court to punish any person for contempt of Court in any case to which subsection (1) does not apply.

(5) Nothing in subsections (1) to (3) shall limit or affect the power and authority referred to in subsection (4).

Seal of the Supreme Court.

29. The seal of the Supreme Court shall be such device as may be determined by the Supreme Court and shall be kept in the custody of the Registrar.

Representation before the Supreme Court.

30. Parties may appear in person or be represented by an advocate in all proceedings before the Supreme Court.

31. Without limiting the generality of Article 163(8) of the Constitution, the rules made by the Supreme Court under that Article may make provision for—

Rules.

- (a) regulating the sittings of the Supreme Court and the selection of judges for any particular purpose;
- (b) regulating the right of any person other than an advocate of the High Court of Kenya to practise before the Supreme Court and the representation of persons concerned in any proceedings in the Supreme Court;
- (c) prescribing forms and fees in respect of proceedings in the Supreme Court and regulating the costs of and incidental to any such proceedings;
- (d) prescribing the time within which any requirement of the rules shall be complied with;
- (e) empowering the Registrar, in order to promote access to justice, to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria prescribed under paragraph (f) that—
 - (i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
 - (ii) unless one or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued;
- (f) prescribing, for the purposes of the exercise of a power under paragraph (e), the criteria—
 - (i) for assessing a person's ability to pay a fee; and
 - (ii) for identifying proceedings that concern matters of genuine public interest; and
- (g) any other matter required under the Constitution, this Act or any other written law.

[Subsidiary]

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THE SUPREME COURT RULES, 2011

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THE SUPREME COURT RULES, 2011

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L.N. 141/2011.

PART ONE—PRELIMINARY

1. These Rules may be cited as the Supreme Court Rules, 2011 Short title.

2. In these Rules, unless the context otherwise requires— Interpretation.

“Act” means the Supreme Court Act No.7 of 2011.;

“advocate on record” means an advocate under rule 12; “appeal” in relation to appeals to the Court, includes an intended appeal from the Court of Appeal or any other court or tribunal as prescribed by national legislation;

“*amicus curiae*” means a person who is not a party to a suit, but has been allowed by the Court to appear as a friend of the Court; “appellant” includes an intending appellant;

“Court” means the Supreme Court;

“Full Bench” means a Bench of the Court comprising of the Chief Justice, the Deputy Chief Justice and five judges of the Court;

“*in forma pauperis*” means proceedings instituted by a person who cannot afford to pay the prescribed fee for the proceedings;

“Judge” means a judge of the Court;

“party” includes an appellant, a petitioner or a respondent;

“Registrar” means the Registrar of the Court and includes a deputy or assistant registrar; and

“Rules” means these Rules and as amended from time to time.

3. (1) These Rules apply to petitions, references, applications and appeals under the Court’s original, appellate and special jurisdiction. Scope and Objectives.

(2) The overriding objective of these Rules is to ensure that the Court is accessible, fair and efficient.

(3) The Court may use appropriate technology in its proceedings and operations.

[Subsidiary]

(4) The Court shall interpret and apply these Rules without undue regard to procedural technicalities.

(5) Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders or give directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

PART TWO—ADMINISTRATION OF THE COURT

Sittings of the Court. 4. The Chief Justice shall co-ordinate the work of the Court, including—

(a) constituting the Benches to hear and determine matters filed before the Court;

(b) determining the sittings of the Court and the matters to be disposed of at such sittings; and

(c) determining the vacations of the Court.

Registry of the Court. 5. (1) The Registry of the Court shall be at Nairobi.

(2) The Registrar shall keep and maintain a register of all advocates on record.

Language of the Court. 6. The language of the Court shall be English.

PART THREE—CASE MANAGEMENT

Pleadings, affidavits etc. 7. (1) All pleadings, affidavits, reports or any documents filed in the Court shall be in hard and electronic form.

(2) The Court may limit the number of pages of any set of documents to be filed.

Contents of a petition. 8. (1) A petition shall be in the Form D set out in the First Schedule and shall contain—

(a) a concise statement of the facts;

(b) a summary of the grounds for the petition, identifying in particular—

(i) the statutory provision under which the petition is brought; and

[Subsidiary]

- (ii) the extent to which the petitioner contends that the issue under review was based on an error of fact or law;
- (c) a concise presentation of arguments supporting each of the grounds of the petition;
- (d) the relief sought in the petition and any directions sought pursuant to these Rules; and
- (e) a Schedule listing all the documents annexed to the petition.
- (2) A petition shall be supported by one or more affidavits.
9. (1) Where under these Rules any document is required to be served on any person, service may be effected—
- Service and transmission of documents.
- (a) personally on the person to be served by hand or through a licensed courier service provider approved by Court or as last resort by registered post; or
- (b) on any person entitled to appear on his behalf; or
- (c) by electronic means, in accordance with the practice directions; or
- (d) in such other manner as the Registrar may direct.
- (2) Proof of service may be given where necessary by affidavit, unless where the Court requires proof by oral evidence.
- (3) Notice of the date for hearing of reference proceeding or for the delivery of judgment or the reasons for any decision may be given by telephone or other electronic means approved by the Court.
10. (1) Unless otherwise provided in these Rules or directed by the Court, a respondent may file grounds of objection or an affidavit or both within fourteen days of service.
- Responses to petitions.
- (2) A party may, with the consent of the other party or with leave of the Court, lodge further pleadings or affidavit and the application for leave may be made orally.
11. The Court may refer any matter for hearing and determination by alternative dispute resolution mechanism.
- Use of alternative dispute resolution.
12. (1) A party may in any proceedings before the Court—
- Representation in Court.
- (a) appear in person; or

[Subsidiary]

- (b) be represented by an advocate on record of not less than seven years standing; or
- (c) with leave of Court, be represented by any other person.
- (2) A party may change representation with leave of Court.
- (3) Notwithstanding the generality of sub-rule (1)—
 - (a) no advocate other than an advocate on record is entitled to file an appearance or act for a party in the Court;
 - (b) no advocate other than an advocate on record can appear and plead in any matter unless instructed by an advocate on record;
 - (c) an advocate on record shall be accompanied by an advocate of not less than two years standing provided that the accompanying advocate shall not have right of audience before the Court;
 - (d) no advocate on record may without leave of the Court withdraw from the conduct of any case;
 - (e) no party having an advocate on record shall be heard in person except by leave of the Court

Assignment of advocates by the Court.

13. (1) The Chief Justice may in an appropriate case in the interest of justice assign an advocate to represent a party.

(2) The fees and expenses of an advocate assigned under the sub-rule (1) may be paid out of the Judiciary Fund on a scale as shall be determined by the Chief Justice from time to time.

Consolidation of proceedings.

14. The Court may, on an application or on its own motion, for sufficient reason order any proceedings to be consolidated on such terms as it may deem just.

List of authorities.

15. (1) A party shall file and serve a list of authorities at least two working days before the hearing.

(2) The list of authorities under sub rule (1) shall contain a summarized analysis of each of the listed authorities specifying the *ratio decidendi*, relevance and applicability to the matter before the Court.

16. (1) The Registrar shall give all parties to any proceedings not less than seven days notice of the date fixed for the hearing, unless the Court otherwise directs.

[Subsidiary]
Hearing in Court.

(2) Proceedings shall be in open court or in chambers as the Court may direct.

(3) Evidence including additional evidence before the Court may be oral or by affidavit and the Court may allow the cross-examination of a witness.

(4) A party may, with leave of the Court, file written submissions in addition to, or *in lieu* of, oral submissions.

(5) The Court may, in its discretion, prescribe the time allowed for addresses by the parties, their advocates or other recognized representatives.

17. (1) The Court may in proceedings under section 14 of the Act call for fresh evidence.

Fresh evidence in proceedings under section 14.

(2) A party seeking to adduce fresh, evidence under this rule, may apply orally in Court.

(3) The Court may call for or receive from any court or tribunal any record on any matter connected with the proceedings before it.

18. A party may at any time before judgment with leave of the Court withdraw any proceedings and the application for leave may be made orally.

Withdrawals of proceedings.

19. (1) Unless otherwise provided for in these Rules, the Court shall deliver a ruling or judgment within sixty days from the last day of hearing unless the Court for reasons to be recorded orders otherwise.

Judgment.

(2) Notwithstanding sub-rule (1), the Court may, at the close of any hearing, give its decision but reserve its reasons and in any such case the reasons may be delivered in court by any judge whether or not he sat at the hearing.

(3) The Court may, in exceptional circumstances on application by any party or on its own motion, review any of its decisions.

(4) The Full Bench of the Court may, in a subsequent matter, depart from a previous decision of the Court.

[Subsidiary]

Decrees and Orders.

20. (1) Except for an advisory opinion, every decision of the Court on any proceeding shall be embodied in a decree or an order as appropriate.

(2) A decree of the Court shall be in Form J set out in the First Schedule and an Order of the Court shall be in Form H set out in the First Schedule.

(3) A successful party may prepare a draft order and submit it to other party for approval before presenting it to Court for certification.

(4) Where parties do not agree on the content of the Order, the presiding judge or any judge who sat at the hearing shall settle the terms of the Order.

(5) The Registrar shall, upon the request of a party, certify the decision of the Court for transmission to the High Court for execution.

(6) An advisory opinion shall be delivered by the Court in the form of a written statement.

PART FOUR—APPLICATIONS

Interlocutory applications.

21. (1) An interlocutory application to the Court shall be by Notice of Motion in Form A set out in the First Schedule and supported by an affidavit.

(2) An applicant may, with the leave of the Court or with the consent of the other party, file a supplementary affidavit.

(3) An application for leave under sub-rule (2) may be made orally.

Application for review of grant of leave from the Court Appeal.

22. (1) Where the Court of Appeal has certified a matter to be of general public importance an aggrieved party may apply to the Supreme Court for review within fourteen days of the certification .

(2) An application under this rule shall be by originating motion in Form K set out in the First Schedule.

Interventions.

23. (1) Any person entitled to join as a party or liable to be joined as a party in any proceedings before the Court may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a party.

(2) An application under this rule shall contain information on—

[Subsidiary]

- (a) identity of the person interested in the proceeding;
- (b) a description of that person's interest in the proceeding;
- (c) any prejudice that the person interested in the proceeding would suffer if the intervention were denied; and
- (d) the grounds or submissions to be advanced by the person interested in the proceeding, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

24. (1) A party seeking to have an application heard on priority basis shall file the application accompanied by a certificate of urgency supported by an affidavit setting out the urgency. Urgent applications.

(2) A single judge of the court may grant or decline to certify the application as urgent.

(3) Where the single judge declines to certify an application as urgent the applicant may apply orally for hearing *inter partes* on the question of urgency before the judge.

(4) The provisions of this rule shall apply to the hearing of urgent applications during the Court term and in vacation.

25. (1) Any person served with a notice of motion may lodge one or more affidavits in reply and shall within seven days serve a copy or copies on the applicant. Service of Notice of Motion.

(2) A party may, with the consent of the parties or with the leave of the Court, file one or more supplementary affidavits.

26. (1) If on any day fixed for the hearing of an application, and either the applicant or the respondent does not appear, the court may proceed in any manner as it shall deem fit. Procedure on non-appearance.

(2) Where an application has been dismissed or allowed under sub-rule (1) a party in whose absence the application was determined may apply to the Court to restore the application for hearing or to hear it, as the case may be.

(3) An application made under sub-rule (2) shall be made within fourteen days of the decision of the Court.

[Subsidiary]
Abatement of
Proceedings.

27. (1) Any proceedings which is—

- (a) criminal in nature shall abate, where the applicant is the State, on the death of the respondent and, in any other case on the death of the applicant; or
- (b) civil in nature shall not abate on the death of any party but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

(2) If no application is made under sub-rule (1) (b), within six months, the proceedings shall abate.

PART FIVE—PETITIONS RELATING TO PRESIDENTIAL ELECTIONS

Procedure for
disputes relating to
Presidential elections
under Article 140 of
the Constitution.

28. (1) A person may petition the Court for determination of a dispute relating to a presidential election within seven days of the declaration of the results.

(2) The petition under this rule shall be served upon the respondent within three days of filing.

(3) Upon receipt of the petition under sub-rule (2), the respondent shall file a response within three days.

(4) The petition under this rule may be served personally upon a respondent or by advertisement in at least two newspapers with the widest national circulation.

(5) A party may, with the consent of the other party or with leave of the Court, lodge further pleadings or affidavit and an application for such leave may be made orally.

(6) The petitioner shall, within seven days of filing the petition, deposit security for costs as specified under section 78 of the Elections Act No. 24 of 2011.

PART SIX—PETITIONS RELATING TO VALIDITY OF STATE OF EMERGENCY

Petition in respect of
state of emergency
under Article 58 of
the Constitution.

29. (1) A person may petition the Court for determination of the validity of matters relating to a state of emergency within seven days of its declaration or extension.

(2) A petition under this rule shall be served upon the respondent within three days of filing.

[Subsidiary]

(3) Upon receipt of the petition, the respondent shall file a response by way of grounds of objection or replying affidavit, or both within three days.

(4) A party may, with the consent of the other party or with leave of the Court, lodge further pleadings or affidavit and an application for such leave may be made orally.

(5) Where a party has filed further pleadings under sub-rule (4), the pleadings shall be served in accordance with rule 9.

PART SEVEN—APPEALS

30. (1) A person who intends to appeal to the Court shall file a notice of appeal, in Form B set out in the First Schedule, with the Registrar of the court or tribunal against whose decision it is desired to appeal. Notice of appeal.

(2) Where an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall be necessary to obtain such leave or certificate before lodging the notice of appeal.

(3) A notice under sub-rule (1) shall be lodged within fourteen days of the decision appealed from and under sub-rule (2), as the court may direct.

(4) Upon receipt of notice of appeal of the court or tribunal against whose decision it is intended to appeal, that court or tribunal shall transmit a copy of the notice to the Registrar of the Supreme Court.

31. An appellant shall, before or within seven days after lodging notice of appeal, serve copies thereof on all persons directly affected by the appeal. Service of notice of appeal.

32. (1) An appeal to the Court shall be instituted by lodging in the registry within thirty days of the date of filing of the Notice of Appeal— Institution of Appeals.

(a) a petition of appeal;

(b) a record of appeal;

(c) the prescribed fee; and

(d) security for costs of the appeal.

[Subsidiary]

(2) A petition for purposes of appeal shall be in the Form D set out in the First Schedule and shall contain—

- (a) concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against;
- (b) points which are alleged to have been wrongly decided;
- (c) the nature of the order which it is proposed to ask the court to make.

(3) The Record of Appeal shall contain—

- (a) an index of all the documents in the record with the numbers of pages at which they appear;
- (b) notice of appeal;
- (c) the order, if any, giving leave to appeal;
- (d) a statement showing the address for service of the appellant and the address for service furnished by the respondent and as regards any respondent who has not furnished an address or service, the address and proof of service on him of the notice of appeal;
- (e) the pleadings;
- (f) record of proceedings;
- (g) the record of appeal, where applicable;
- (h) the trial judge's notes of the hearing;
- (i) the transcript of any shorthand notes taken at the trial;
- (j) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;
- (k) the judgment or order;
- (l) the certified decree or order; and

[Subsidiary]

(m) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant.

(4) For the purpose of an appeal from a court or tribunal in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (2) and shall contain also the following documents relating to the appeal to the first appellate court—

(a) the order, if any, giving leave to appeal;

(b) the memorandum of appeal;

(c) the record of proceedings; and

(d) the certified decree or order.

(5) The court may, on the application of any party, direct which documents or parts of documents should be excluded from the record and an application for such direction may be made orally.

(6) Where a document referred to in sub-rule (2) (b) and (4) is omitted from the record of appeal the appellant may within fifteen days of lodging the record of appeal, without leave, include the document in a supplementary record of appeal.

33. (1) The appellant shall, within seven days after lodging the petition of appeal and the record of appeal in the registry, serve the copies on each respondent.

Service of petition of appeal.

(2) The appellant shall also serve copies of the petition and record of appeal on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may direct.

34. A notice of appeal shall not be incompetent by reason only that the person on whom it is required to be served was dead at the time when the notice was lodged but a copy of the notice shall be served as soon as practicable on the legal representative of the deceased.

Death of respondent before service of notice.

35. (1) A person on whom a notice of appeal is served shall within fourteen days after the service lodge in the registry and serve on the appellant and every other person named in the notice, a full and sufficient address for service.

Respondent to give address for service.

[Subsidiary]

(2) A notice of address for service shall be substantially in the Form C set out in the First Schedule.

Default in instituting Appeal.

36. (1) Where a party has lodged a notice of appeal but fails to institute the appeal within the prescribed time, the notice of appeal shall be deemed to have been withdrawn and the court may on its own motion or on application by any party make such orders as may be necessary.

(2) The party in default shall be liable to pay the costs arising therefrom to any person on whom the notice of appeal was served.

Notice of cross-appeal.

37. A respondent who intends to cross-appeal shall file a notice in Form F set out in the First Schedule, giving notice to that effect, specifying the grounds of contention and the nature of the relief which the respondent seeks.

Notice of grounds for affirming decision and service.

38. (1) A respondent who contends on an appeal that a decision of a court or tribunal should be affirmed on grounds other than or additional to those relied upon by that court, shall give notice to that effect in Form H set out in the First Schedule specifying the grounds of the contention.

(2) A respondent who intends to contend at the hearing of the appeal that part of the decision of the court should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court may include both such contentions in a notice of cross-appeal under rule 37 and shall not be required to give notice also under this rule.

(3) The provisions of sub-rules (1) and (2) shall apply, with necessary changes, to an appellant who desires to contend in opposition to a cross-appeal should be affirmed on grounds other than or additional to those relied on by that court.

(4) A notice under this rule shall be served to the other parties within seven days after lodging.

Withdrawal of notice of cross appeal or notice of grounds for affirming decision.

39. Withdrawal of notice of cross appeal or notice of grounds for affirming decision shall be in the manner provided under rule 18.

PART EIGHT—ADVISORY OPINIONS

Reference for an advisory opinion.

40. (1) The national government, state organ or county government may apply to the Court by way of reference for an advisory opinion under Article 163 (6) of the Constitution.

(2) The reference under this rule shall—

- (a) be in Form E set out in the First Schedule;
 - (b) be signed by a duly authorized officer; and
 - (c) specify the questions or issues for determination by the Court.
- (3) Upon filing of a reference the Registrar shall give—
- (a) notice to the applicant to appear before the Court for directions on the persons to be served with notice of such reference; and
 - (b) notice of the reference to all parties, if any inviting them to attend the Court for directions on the mode and date of hearing.
- (4) A two Judge Bench may after giving the parties an opportunity to be heard reject a reference in whole or in part if—
- (a) it is incompetent within the meaning of Article 163 (6);
 - (b) it considers that the applicant does not have or does not represent those who have sufficient interest in the opinion;
 - (c) the matter in respect of which the reference is made can be in the opinion of the Court be resolved by the Attorney-General and such advise has not been sought;
 - (d) it is satisfied that the applicant has habitually and persistently and without reasonable grounds—
 - (i) instituted vexatious proceedings before the Court, whether against the same respondent or different respondent;
 - (ii) made vexatious applications in any proceedings before the Court;
 - (iii) failed to comply with any rule, direction or order of the Court;
 - (e) it is materially incomplete or lacking in clarity and the applicant has failed to remedy the defects as directed by the Court.
- (5) Where the two judge bench fails to agree as to the admissibility of the reference, the matter shall be referred to a five Judge Bench of the Court.

[Subsidiary]

(6) A party aggrieved by the decision of the two Judge Bench under sub-rule (4) may apply to the Court for review.

(7) The Court shall within sixty days, after the close of hearing, deliver its opinion and the Registrar shall within seven days transmit a certified copy to the parties.

PART NINE—SPECIAL JURISDICTION

Petition for review of judgment under section 14 of the Act.

41. (1) An application under section 14 of the Act, shall be by petition in Form D set out in the First Schedule.

(2) The applicant shall serve the petition upon the Attorney General and the parties to the proceeding in which the judgment or decision was made.

Review by Court on its own motion.

42. (1) The Court may, on its own motion, call for any judgment or decision made by a judge who has resigned or has been removed from office and upon hearing the parties review the judgment or decision.

(2) The Registrar shall issue a notice, to the Attorney General and the parties to the proceedings in which the judgment or decision was made, inviting them to attend the Court for directions as to the mode and date of hearing.

Preliminary inquiry by the Court.

43. A two Judge Bench shall, before hearing the petition under this Part, conduct a preliminary inquiry to determine the admissibility of the matter and may direct the parties to submit any factual information, documents or other material considered by the Court to be relevant.

PART TEN—FEES AND COSTS

Fees payable.

44. Subject to section 11 of the Act, there shall be payable to the Court such fees, including fees for service by the Court of any application, petition, statement or process as are prescribed in the Second Schedule to these Rules.

Security for costs in proceedings.

45. (1) Subject to rules 28 and 50, there shall be lodged in Court upon institution of any proceedings security for costs as may be determined by the Court.

(2) The Court may at any time as it deems fit, direct that further security for costs be given.

(3) Where security for costs has been lodged, the Registrar may pay out the same either by consent of the parties or in conformity with

[Subsidiary]

the decision of the Court.

46. Any costs payable by a party shall be assessed by the Court when making its decision or be taxed by the Registrar or by consent of the parties. Assessment or taxation of costs.

47. (1) The Registrar shall be a taxing officer with power to tax the costs arising out of any proceedings before the Court. Taxation.

(2) Such costs shall be taxed in accordance with the rules and scale set out in the Third Schedule.

(3) The remuneration of an advocate by his clients in respect of any proceedings shall be governed by the rules and scales of costs in the High Court.

48. If it shall appear to the Court that costs have been incurred improperly or without reasonable cause, or that by reason of any undue delay in proceedings, or of any misconduct or default of the advocate or other recognized representative, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may call on the advocate or the representative by whom such costs have been so incurred to show cause why such costs should not be borne by the advocate or the representative personally, and thereupon may make such order as the justice of the case may require. Costs improperly incurred.

49. (1) Any person who is dissatisfied with a decision of the Registrar as the taxing officer may refer the matter in writing within seven days to a single judge for determination. Reference on taxation.

(2) Any person dissatisfied by the decision of a judge given under sub-rule (1) may apply to the Court to vary, discharge or reverse the same and such application, may be made in writing to the Registrar within seven days of the decision.

50. (1) A party may apply in any proceedings in the Court to proceed *in forma pauperis*. Proceedings in *forma pauperis*.

(2) Where the Registrar of the court is satisfied in any proceedings that a party lacks the means to pay the required fees, the Registrar may by order direct that the matter be lodged—

(a) without prior payment of fees of Court, or on payment of any specified amount less than the required fees;

[Subsidiary]

(b) without security for costs being lodged, or on lodging of any specified sum less than the amount fixed under this rule ; or

(c) on condition that the applicant undertakes to pay the fees or the balance of the fees out of any money or property that may be recovered in or consequence of the proceedings.

(3) In considering an application under sub-rule (2), the Registrar shall be guided by the practice directions made by the Chief Justice.

(4) No fee shall be payable on the lodging of an application under sub-rule (1).

PART ELEVEN—GENERAL PROVISIONS

Practice Directions.

51. (1) The Chief Justice may issue practice directions for the better carrying out of the provisions of these Rules.

(2) Whenever these Rules contain no provision for exercising a right or procedure the Court may adopt any procedure that is not inconsistent with the Act, these Rules or practice directions.

Review of Rules.

52. The Court may review these Rules from time to time.

Extension of time.

53. The Court may extend the time limited by these Rules, or by any decision of the Court.

Amicus curiae,
experts or advocates.

54. (1) The Court may —

(a) in any matter allow an *amicus curiae*;

(b) appoint an advocate to assist the Court in legal submissions;
or

(c) at the request of a party or on its own initiative, appoint an independent specially qualified expert to assist the Court on any technical matter.

(2) The fees and expenses of any advocate or expert appointed by the Court on its own initiative shall be paid out of the Judiciary Fund in accordance to the scale of fees set by the Chief Justice from time to time.

Effect of non
compliance with the
Rules.

55. (1) Any failure by a party to comply with these Rules or any relevant practice direction shall not have the effect of rendering the proceedings a nullity.

[Subsidiary]

(2) Where any provision in these Rules or any relevant practice direction is not complied with, the Court may give whatever directions appear appropriate, having regard to the seriousness of the non-compliance and generally to the circumstances of the case.

(3) Directions given under this rule may include the dismissal of the petition, reference or application.

PART TWELVE—TRANSITIONAL PROVISIONS

56. Unless the Court directs otherwise, these rules shall apply, with any necessary modifications, to any proceedings, lodged in the Court of Appeal pursuant to section 21(2) of the Sixth Schedule of the Constitution. Transition.

[Subsidiary]

THE FIRST SCHEDULE

FORMS

FORM A

(Rule 21)

In the Supreme Court

Application No. of, 20....

Between

..... Applicant

and

..... Respondent

NOTICE OF MOTION

TAKE NOTICE that on, theday of,

20, at o'clock

or soon thereafter as he can be heard, the Advocate for.....
.....

the above-named applicant, will move the Honourable Court for an order that.....

on the grounds that.....

And for an order that the cost of and incidental to this application abide the result of the said proceeding.

The application will be supported by the affidavit of
.....

sworn on the, day of, 20.....

The address for service of the applicant is
.....

Dated this day of....., 20.....

Applicant

Signed.....

Advocate for the applicant

Lodged in the Registry on theday of.....20.....

.....
Registrar

FORM B

(Rule 30)

(Heading as in proceeding appealed from)

NOTICE OF APPEAL

TAKE NOTICE thatbeing dissatisfied with the decision of..... (Court or Tribunal) given at on the day of 20..... intends to appeal to the Supreme Court against the whole of the said decision or such part of the said decision as decided that.....

The address for service of the appellant is

It is intended to serve copies of this notice on

Dated this day of 20.....

Appellant

Signed.....

Advocate for the appellant

To:
The Registrar of the Supreme Court

Lodged in the..... (Court or Tribunal) at thisday of 20.....

.....
Registrar

[Subsidiary]

FORM C

(Rule 35)

(Heading as in proceeding appealed from)

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of a respondent served with notice of appeal, is.....

.....

.....

Dated thisday of, 20.....

Signed..... Respondent

Advocate for the respondent

To:-

The Registrar /Deputy Registrar of the Supreme Court of Kenya
Copies to be served on lodged in the registry/sub-
registry at of, 20.....

.....
Registrar

FORM D

(Rule 8, 32 & 41)

IN THE SUPREME COURT OF KENYA

Petition No... ..of 20.....

..... Appellant
Respondent
Between
and.....

[Subsidiary]

FORM E

(Rule 40)

In the Supreme Court of Kenya

Reference No...of 20.....

In the matter of an application by (National Government, State Organ or County Government) for Advisory Opinion under Article 163(6) of the Constitution

Between

..... Applicant

The Advisory Opinion of the Court is sought on the following issues:

- 1.
- 2.
- 3.
- 4.

Dated thisday.....of..... 2011.

Petitioner

Signed..... _____

Advocate for the appellant

To:

The Supreme Court of Kenya

Copies to be served on
.....

Lodged in the Registry at on the..... day of, 20.....

.....
Registrar

FORM F

(Rule 37)

(Headings as in Form D)

NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal the above-named respondent will contend that the, above-mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely—

- 1.
- 2.

It is proposed to ask the Court for an order that

It is intended to serve copies of this notice on

Dated thisday of. 20.....

Respondent

Signed.....

Advocate for the respondent

To:
The Supreme Court of Kenya

Lodged in the Registry aton theday
of 20.....

.....
Registrar

FORM G

(Rule 38)

(Heading as in Form D)

**NOTICE OF GROUNDS FOR AFFIRMING THE
DECISION**

TAKE NOTICE that on the hearing of this appeal, the above-named respondent, will contend that the above-mentioned decision ought to be affirmed upon grounds other than those relied upon by the Court of Appeal, namely—

[Subsidiary]

1.

2.

It is intended to serve copies of this notice on

Dated this. day of....., 20.....

Signed..... Respondent
Advocate for the respondent

To:

The Supreme Court of Kenya

Lodged in the Registry at on the day
of, 20.....

Registrar

FORM H

(Rule 20)

(Heading as in the proceeding)

ORDER

Before..... in Chambers/in Court

Upon hearing.....

and upon reading the affidavit of.....

filed herein on the.....

IT IS ORDERED that

and that the costs of this application be.....

Dated this..... day of.....

ISSUED on.....

.....
Registrar

FORM J

(Rule 20)

(Heading as in the proceeding)

DECREE

CLAIM FOR:

(a)

(b)

(c)

(d)

THIS PETITION COMING UP FOR HEARING ON THE.....DAY
OF..... and for orders and upon hearing counsel for the....
..... and counsel for.....

IT IS HEREBY ORDERED THAT:

1.

2.

GIVEN under my hand and seal of the Court this.....
day of.....

ISSUED on

.....
Registrar

[Subsidiary]

SUPREME COURT OF KENYA

FORM K

(Rule 22)

Motion No. of, 20.....

Between

.....Applicant

and

.....Respondent

ORIGINATING MOTION

Let of within days after service of this motion on him which is issued on the application of..... who claims to (state the nature of the claim).....for the determination of the following questions (state questions).

Dated the day of 20.....

This motion was taken out by of..... advocate for the above-named.....

Appearance may be effected personally or advocate.

Note.—If the respondent does not enter appearance within the time above mentioned such order may be made and proceedings taken as the Court may think just and expedient.

SECOND SCHEDULE

(r. 44)

FEES

Part 1.

Fees in connection with application *KSh.*

1. Upon lodging a notice of motion 500

[Subsidiary]

2. Upon lodging a notice of motion under certificate of urgency	750
For each subsequent day of hearing or part thereof excluding the first day	800
3. Upon lodging an affidavit, other than an affidavit annexed to a notice of motion	150
4. Upon giving notice under rule 30	3,000

PART 2

FEES IN CONNECTION WITH PETITIONS AND REFERENCES

5. Upon lodging a notice of appeal	450
6. Upon lodging a notice of address for service or a notice of change of address	100
7. Upon lodging a petition, reference or application	1,500

- (1) Where the appeal is against an award or the refusal to make an award, of money, or against a decision as to the ownership of or entitlement to the possession of property, if the amount of money (exclusive of any interest awarded thereon) or the value of property—

(a) Exceeds KSh. 10,000 but does not exceed KSh. 210,000	2000
	2000 and KSh. 100 for each KSh.
(b) exceeds KSh. 210,000 but does not exceed KSh. 310,000	2000 or part thereof, of the value over KSh.10, 000
(c) exceeds KSh. 310,000	KSh.3, 000 and KSh.100 for each KSh. 2,000 or part

[Subsidiary]

15. Upon applying to inspect the proceedings or an application or appeal that has been determined 300

*Part 4***FEES IN CONNECTION WITH THE TAXATION OF COSTS**

16. Upon lodging a bill of costs for taxation 750
17. For applying for the certificate of the result of taxation KSh. 500 and Ksh.5 for each KSh. 100 or part of the amount allowed excluding the fee.
18. Upon applying for a reference under rule 40 1,000

THE THIRD SCHEDULE*(Rule 47)***TAXATION OF COSTS**

1. In this Schedule, a folio means one hundred words, and a single figure or a group of figures up to seven shall count as one word. Interpretation.

2. (1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his bill with the taxing officer and shall before or within seven days after lodging it, serve a copy of it on the advocate for the party liable to pay it. Lodging and service of bill of costs.

(2) A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one days after a request in writing therefor by the party liable, or such further time as the Registrar may allow.

(3) A bill of costs may not be lodged by an advocate who is not on the record.

3. (1) A bill of costs shall be instituted and filed in the proceedings and shall be prepared in five columns as follows— Form of bill.

(a) the first or left hand column for the dates of the items;

[Subsidiary]

- (b) the second column for the serial numbers of the items;
- (c) the third column for the particulars of the services charged for;
- (d) the fourth column for the professional or scale charges;
- (e) the fifth column for the taxing officer's deductions.

(2) Every bill of costs shall be endorsed with—

- (a) the name and address of the advocate lodging the same;
- (b) the name and address of every party to be served or his advocate;
- (c) a certificate signed by the advocate lodging the bill that the number of folios in respect of any item in the bill charged for by the folio, is correct. If such certificate is found to be incorrect the item may be disallowed.

(3) Every bill of costs shall be endorsed at the end thereof with a form of certificate for signature by the taxing officer certifying the result of the taxation.

Bills not to be altered after lodging.

4. (1) Disbursements shall be shown separately at the foot of the bill of costs.

(2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation.

(3) No disbursement shall be allowed which has not been paid at the time of taxation.

Disbursements.

5. No alteration or addition to a bill of costs once lodged shall be made except by consent of the parties or by permission of the taxing officer or a judge.

Notice of taxation.

6. When a bill of costs has been lodged as aforesaid, the taxing officer shall issue a notice to all parties concerned or their advocates giving the date, time and place at which the bill will be taxed.

Time and adjournment.

7. The taxing officer shall have power to limit or extend the time for proceedings before him, and to adjourn the same from time to time and from place to place.

8. If any party or advocate who has been duly served with a notice of taxation fails to appear at the date and time specified in such notice, the taxing officer may proceed to tax the bill notwithstanding such absence.

[Subsidiary]
Failure to attend
taxation.

9. (1) The fee to be allowed for instruction to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than one thousand shillings.

Quantum of costs.

(2) The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.

(3) The sum allowed under sub-paragraph (2) shall include all works necessary and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence, perusals, and consulting authorities

(4) Other costs shall, subject to the provisions of paragraphs 10, 11 and 12, be awarded in accordance with the scale set out below or, in respect of any matter for which no provision is made in those scales, in accordance with the scales applicable in the High Court.

10. The fee for drawing a document shall include the preparation of all copies for the use of the party drawing it and for filing and service when only one other party or one advocate for other parties has to be served; where there are additional parties, fees may be charged for making the necessary additional copies.

Fees for drawing
Documents.

11. (1) On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to him to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, over caution, negligence or mistake or payment of special charges or expenses to witnesses or other persons or by other unusual expenses.

Taxation of bills.

(2) In taxing the costs of any civil appeal, the taxing officer shall disallow the costs of any matter improperly included in the record of appeal or in any supplementary record of appeal.

12. If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all the circumstances, the total of the bill before signing the certificate of taxation is excessive, he may make

Over-riding
discretion.

[Subsidiary]

such a deduction from the total as will in his opinion render the sum reasonable.

Excessive claims.

13. If more than one quarter of the profit costs claimed is disallowed on taxation the costs of drawing, filing and serving the bill and of attending taxation shall be disallowed.

Set-off of costs.

14. Where a party entitled to receive costs is also liable to pay costs, the taxing officer may tax the costs which that party is liable to pay and adjust them by way of deduction or set-off and direct payment of any balance.

Costs of more than one advocate.

15. (1) Costs of more than one advocate shall not be allowed unless the Court has so directed:

Provided that if an advocate has instructed another advocate to appear at the hearing of an appeal, the fee paid to the latter, or so much thereof as the taxing officer considers reasonable, may be allowed but so that the total of such fee and the instructions fee allowed to the instructing advocate shall not be greater than it would have been if one advocate only had acted in the matter.

(2) Where the Court has directed that the costs of two advocates be allowed—

(a) where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in court, or so much thereof as the taxing officer shall consider reasonable;

(b) where the senior advocate is a member of the same firm as the advocate on the record, he shall be allowed such fee as would have been allowed in the case of an advocate not a member of that firm; and

(c) the advocate on record shall be allowed the usual instruction, hearing and other fees.

(3) The fee paid to another advocate by the advocate on the record shall be shown as a disbursement.

Costs where advocate changed during proceedings.

16. If there has been a change of advocates the bill of costs of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement and the bill will be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the first advocate to attend.

[Subsidiary]

17. Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two such parties, the taxing officer shall consider in the taxation of such advocate's bill of costs whether such separate proceedings were necessary and proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Two or more parties.

18. In taxing the costs as between party and party or for payment out of a trust fund of joint executors or trustees who are separately represented, the taxing officer shall, unless otherwise ordered by the Court or a Judge, allow only one set of costs for such parties, such costs to be apportioned among them as the taxing officer shall deem fit.

Costs where trustees defend separately.

19. The taxing officer shall allow the reasonable expenses of a party who appeared in person at the hearing of an application or appeal and those of a witness who gave evidence at any such hearing but shall not allow the expenses of any other person who may have attended the hearing, unless the Court has so ordered.

Expenses of persons attending hearing.

SCALE OF COSTS

	<i>KSh</i>
1. For instructions to file a notice of appeal	1,500
2. For instructions to act for a respondent-	
<i>a.</i> in any petition, reference or application	1,500
<i>b.</i> where no appeal is subsequently instituted, to cover all costs arising out of the notice of appeal, other than disbursements and those of any application to the court or tribunal appealed from or the Court	750
3. For drawing a petition, reference, originating motion or notice of motion	1,000
4. For drawing an affidavit, for each folio or part thereof, exclusive of exhibits	100
5. For drawing a notice of appeal	500

[Subsidiary]

6. For drawing a notice of address for service	500
7. For drawing Petition of appeal	2,000
8. For drawing a notice of cross-appeal	1,000
9. For drawing a notice of grounds for affirming a decision	1,000
10. For drawing an order, for each folio or part thereof	100
11. For drawing a bill of costs, for each folio or part thereof	100
12. For drawing any other necessary documents to be filed or used in the court, for each folio or part thereof	100
13. For making any necessary copies, for each folio or part thereof—	
(a) For the first copy	20
(b) For each subsequent copy	20
14. For attendance at the Registry	200
15. For attendance on the Registrar—	
(a) For the first 15 minutes	300
(b) For each subsequent 15 minutes	100
16. For attending on a judge in chambers—	
(a) For the first 30 minutes	1,000
(b) For each subsequent 30 minutes	500
17. For attending in court, where the matter was listed but not reached, for each day	750
18. For attending in court on the hearing of any petition, reference or application—	

			[Subsidiary]
(a) For the first 30 minutes		1,000	
(b) For each subsequent 30 minutes		500	
19. For attending in court to take judgment		1,000	

