

GOVERNMENT NOTICE NO. 120 published on 09/03/2018

THE ADVOCATES ACT
(CAP.341)

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RULES
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(Made under section 14(1))
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THE ADVOCATES (DISCIPLINARY AND OTHER PROCEEDINGS) RULES, 2018

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THE ADVOCATES ACT
(CAP.341)

RULES

(Made under section 14(1))

THE ADVOCATES (DISCIPLINARY AND OTHER PROCEEDINGS) RULES, 2018

PART I
PRELIMINARY PROVISIONS

- Citation 1. These Rules may be cited as the Advocates (Disciplinary and Other Proceedings) Rules, 2018.
- Application 2. These Rules shall apply in respect of any applications or complaints against an advocate and at the instance of an advocate to the Committee.
- Interpretation
Cap. 341 3. In these Rules unless the context requires otherwise-
“Act” means the Advocates Act;
“application” means an application made under section 13(1)(a) and (b) of the Act;
“Chairman” means the Chairman of the Committee specified under section 4(4) of the Act;
“Committee” means the Advocates Committee established under section 4 of the Act;
“complaint” means an allegation made under section 13 (1) (c) of the Act;
“duly recognized agent” includes an advocate, a legal representative, next friend or guardian *ad litem*;
“Secretary” means the Secretary to the Advocates Committee appointed under section 4 (8) of the Act;
- Cap. 307 “Society” means the Tanganyika Law Society established by the Tanganyika Law Society Act.

PART II
PROCEEDINGS AGAINST AN ADVOCATE

Application or
complaints
against an
advocate

4.-(1) A person who is aggrieved by the conduct of an advocate or believes that an advocate has-

- (a) committed a professional misconduct;
 - (b) failed to discharge his duty to the client in a professional manner;
 - (c) engaged in a business which is inconsistent with the dignity of the profession;
 - (d) permitted his professional service or his name to be used by an unauthorized person; or
 - (e) committed any act prohibited by the Act, or any other law regulating the professional conduct of an advocate,
- may, in writing, apply to the Committee for removal of the advocate's name from the Roll or that advocate be required to answer the allegation against him.

(2) The application shall be either in English or Kiswahili in the Form 1 set out in the First Schedule supported by an affidavit addressed to the Secretary.

(3) Notwithstanding the provisions of sub-rule (2), an application or complaint to require an advocate to answer the allegation may be by way of a letter.

(4) The complaint commenced by way of a letter, shall contain the following details-

- (a) the physical and postal addresses of the complainant and the respondent including their phone numbers and email addresses, if any or known;
- (b) a clear description of the substance of the complaint leveled against the respondent without including arguments or conclusions;
- (c) the complainant's prayers against the respondent; and
- (d) the signature of the complainant or his advocate, if represented.

(5) The Secretary shall, upon receipt of the complaint or the application and after being satisfied that, the application or complaint is in order, open a file and assign a number to that application or complaint.

(6) The Secretary shall keep a register of all applications and complaints filed.

Service

5.-(1) The application or complaint shall, within twenty one days after being admitted by the Secretary, be served on the advocate against whom the application or complaint is made with a notice to file a reply.

(2) The notice shall be in the Form 2 set out in the First Schedule to these rules.

(3) Service of application or complaint shall be effected by-

- (a) delivery at the advocate's physical address;
- (b) sending through the advocate's postal address or registered mail;
- (c) serving to an advocate working in the same firm with that advocate or an employee or authorized agent of that advocate; where the Advocate can not be found;
- (d) serving electronically by way of email or facsimile using the addresses previously disclosed by the advocate found in any official document including the Directory published by the Society; or
- (e) servicing through the Registrar of the High Court, if the Committee so directs.

(4) Service of the process on a party may be effected by the Secretariat or the other party,

Provided that substituted service by publication, affixation or any other mode shall be carried out by the party desiring that mode of service.

Reply to the application or complaint

6.-(1) An advocate against whom an application or complaint has been made shall, within twenty one days after being served with a copy of the application or complaint, file his reply to the Committee.

(2) The reply shall be by way of-

- (a) counter affidavit where the application was commenced by way of Form No. 1 set out in the First Schedule; or
- (b) a statement of reply under the hand of the respondent where the complaint was commenced by way of a letter.

(3) A statement of reply shall contain-

- (a) a title of the complaint;
- (b) the physical and postal addresses of the respondent including his email address;
- (c) a brief statements of denials of the allegations contained in the letter without arguments;
- (d) matters that the respondent admits, if any;

(e) a statement of the position maintained by the respondent on the allegations; and

(f) the prayer or prayers of the respondent.

(4) Where the advocate denies the allegations, such statements have to be numbered consecutively;

(5) The statement of reply shall be attached with the respondent's most current renewed practising certificate.

(6) There are preliminary objections, they shall be raised in the statement of reply.

(7) The statement of reply shall be signed by the respondent and his advocate if he is represented.

(8) The applicant or complainant may, within seven (7) days of receipt of the counter affidavit or the statement of reply, file a rejoinder thereto.

(9) A rejoinder filed shall be, in case of-

(a) the statement of reply, a rejoinder statement; and

(b) the counter affidavit, a rejoinder affidavit.

Rejection

7.-(1) Where the applicant or complainant files an application or complaint which is in form or substance not in accordance with these Rules or any relevant law, the Secretary in consultation with a Chairman may reject the application or complaint and inform the applicant or complainant in writing together with reasons therefor.

(2) An application or complaint rejected may be filed afresh within thirty days after being notified of the rejection or within such time as the Committee may extend upon application.

Date of hearing

8. Where the Committee after scrutinizing the application or complaint is of the opinion that a *prima facie* case-

(a) has not been established, it shall refuse the application or dismiss the complaint and notify the applicant or the complainant accordingly; or

(b) has been established, it shall fix a date of hearing and notify the complainant or applicant and the advocate against whom the application or complaint is made of that date.

Appearance

9.-(1) A party to an application or a complaint may appear before the Committee in person or by duly recognized agent.

(2) Where a party is-

- (a) not a resident of the United Republic or for good cause is unable to appear, he may be represented by a lawfully authorised attorney; or
- (b) a body corporate, it may be represented either by a duly recognized agent, a director, manager or secretary, who is appointed by resolution under the seal of the company and a sealed copy of the resolution shall be lodged to the Secretary.

Effect of non-appearance

10.-(1) Where on a day fixed for the hearing, the applicant or complainant does not appear, the Committee may-

- (a) dismiss the application or complaint, unless it deems fit to adjourn the hearing; or
- (b) where the applicant or complainant is dead, direct the Attorney General, the Society or legal representative to proceed with the application or complaint.

(2) Where the applicant or complainant appears and the advocate fails to appear, the hearing of the application or complaint shall proceed in the absence of the advocate, unless the Committee deems fit to adjourn the hearing.

(3) Where an application or complaint has been dismissed or allowed the party in whose absence the application or complaint was determined may apply to the Committee to restore the application or complaint for hearing, as the case may be, if he can show that he was prevented by good cause from appearing when the application or complaint was called on for hearing.

(4) An application made under sub-rule (3) shall be made within thirty days of the decision of the Committee or in the case of a party who has been served with notice of the hearing but was not present when the decision was made within thirty days from the date he became aware of such decision.

(5) Non-appearance includes circumstances where a party enters appearance physically before the Committee but is substantially unprepared and or unable to proceed with the hearing for no good cause.

(6) Where both the applicant or complaint and the respondent do not appear when the application or complaint is called on for hearing, the Committee may dismiss the application or complaint for non-appearance, if it is satisfied that the applicant had knowledge of the date of hearing.

Preliminary hearing

11.-(1) The Committee may hold a preliminary hearing at any time before the commencement of trial to ascertain and record matters and documents in dispute and not in dispute, and shall call upon parties to sign a memorandum of undisputed facts.

(2) The undisputed matters or documents recorded shall be deemed to have been duly proved and have to be marked accordingly.

Hearing

12.-(1) The hearing before the Committee shall be by way of oral or written evidence to be followed by submissions, if any.

(2) Where an application or a complaint has been fixed for hearing and the applicant or complainant and the advocate against whom the application or complaint is made are both present, the Committee shall accord the applicant or complainant a right to begin.

(3) On the day fixed for the hearing, the applicant or complainant having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(4) The advocate against whom the application or complaint is made shall then state his case and produce his evidence and may address the Committee generally on the whole case.

(5) The applicant or complainant may reply generally on the whole case.

Evidence and language

13.-(1) The evidence before the Committee may be adduced by a party to the application or complaint or any other person who has been called upon to testify.

(2) The Committee may direct that the evidence adduced before it be adduced orally or by way of witness statement subject to cross examination and re-examination.

(3) The evidence may be adduced through video-conference.

(4) The language of the Committee shall be either English or Kiswahili or such other language as the Committee may direct but the record and decision of the Committee shall be in English.

(5) The Committee may issue summons to appear and shall have power to compel the attendance of the witness through Form 3 as set out in the First Schedule of these Rules.

- Application of the Evidence Act Cap. 6 14. Where these Rules do not provide the manner of handling any aspect pertaining to evidence, then the Committee shall invoke the provisions of the Evidence Act.
- Burden of proof 15.-(1) It shall be the duty of the applicant or complainant to prove his application or complaint against the advocate.
(2) The standard of proof shall be-
(a) beyond reasonable doubt, where the allegations involve elements of deceit or moral turpitude; or
(b) on a balance of probabilities, where the allegations involve elements other than those referred to under paragraph (a).
- Determination 16.-(1) The Committee shall deliver its ruling within ninety days after closure of hearing of the application or complaint or after filing the closing submissions, if any.
(2) Where the Committee orders removal of advocate from the Roll or his suspension from practice, the Secretary shall, as soon as practicable after delivery of the ruling, circulate a copy thereof to the Attorney General, the Registrar of the Court of Appeal, the Registrar of the High Court, the Secretary of the Society, the registrars or secretaries of all statutory tribunals in which advocates have a right of audience.
- Appeal 17.-(1) A person who desires to appeal to the High Court against the decision of the Committee shall lodge a written notice to the Secretary within fourteen days from the date of the decision.
(2) The appeal shall be by way of a petition of appeal accompanied by a certified copy of the judgment, ruling or order of the Committee appealed against.
(3) The Chairman or the Secretary, or their successors in office may certify copies of decision of the Committee and furnish such copies to the parties.
(4) In computing the time within which the appeal is to be lodged, there shall be excluded such time as may be certified by the Secretary as having been required for the preparation and delivery of certified copies of the judgment, ruling or order of the Committee appealed against.
(5) On receipt of a petition of appeal lodged the Secretary shall, within thirty days transmit the petition of appeal together

with all records of proceedings to the High Court in quintuplicate and serve a copy thereof to the respondent.

(6) The Secretary may attend proceedings of the High Court on hearing of appeals or any proceedings emanating from the Committee.

PART III
APPLICATIONS AT THE INSTANCE OF AN ADVOCATE

Applications at instance of an advocate

18.-(1) An advocate who intends to require the Registrar of the High Court to remove his name from the Roll of Advocates shall apply in writing in Form 5 as set out in the First Schedule to these Rules.

(2) The application shall be accompanied by an affidavit and be addressed to the Secretary.

(3) A copy of the application shall be served upon the Attorney General and the Secretary to the Society.

(4) Where the Attorney General does not intend to object to the application he may, within fourteen days file a notice of *non contendere* with the Secretary.

(5) An application under this Part shall be accompanied by a proof of payment of fee as set out in the Second Schedule to these Rules.

Notice of application

19. The Committee shall, unless orders otherwise, require the advocate to give notice of his application and the date of hearing by advertisement in two newspapers of wide circulation as it may direct.

Notice of objection

20. A person who intends to object to the application made by an advocate shall give notice in writing to the advocate and to the Secretary which specify the grounds of objections at least seven days before the day fixed for hearing, specifying the grounds of his objection.

Inquiry

21.-(1) Where a person who objects an application by an advocate appears before the Committee on the date fixed for hearing and the Committee, after considering the objection and hearing of the advocate, is of the opinion that the objection discloses a *prima facie* case for inquiry, it shall direct an inquiry to take place and give directions relating thereto,

including directions as to the party on whom the burden of proof shall lie.

(2) A inquiry directed shall be held in accordance with the rules contained in Part II of these Rules.

Determination of application

22.-(1) The Committee shall, after the receipt of an application or complaint, determine that application or complaint and deliver its ruling within seven days after the hearing.

(2) A right to appeal shall lie in the same manner as set forth in rule 18.

PART IV GENERAL PROVISIONS

Proceedings in camera

23. All the proceedings before the Committee shall be conducted in camera.

Recording of proceedings

24.-(1) The proceedings of the Committee shall be taken or recorded by the Secretary or a person appointed by the Committee or by shorthand notes or electronically or stenographically recorded.

(2) Any party who appeared at the proceedings shall be entitled to inspect the transcript thereof or as the committee may direct.

Dismissal

25. Where an application or complaint is filed and the same remains unattended for twenty four months by the applicant, the Committee may dismiss the application *suo mottu* or upon application by the respondent.

Withdrawal

26. The Committee may at any time grant the applicant or complainant a leave to withdraw an application or complaint upon such terms and conditions as it deems fit.

Adjournment

27. The Committee, may on its own motion, or upon application by either party, adjourn the hearing upon such terms or as it shall appear just.

Amendment

28. The Committee may, during hearing or before commencement of hearing, if it is of the opinion that, the allegations in the affidavit in support of such application or complaint has to be amended, or added to, permit such

amendment or addition to be made, and may require the same to be made within the scope of the original affidavit.

Provided that, if such amendment or addition may take the advocate by surprise or prejudice the conduct of his case, the Committee shall grant an adjournment of the hearing or allow the respondent to file amended counter affidavit upon such terms, as it shall appear just to the Committee.

Effect of death

29.-(1) In the event of the death of an applicant or a complainant, and his application or complaint is pending before the Committee and there is no representative who is willing to further prosecute the application or complaint on his behalf, the Committee may, having regard to the allegations made in the application or complaint and the evidence available, make a suitable order either to proceed with the enquiry or to drop it.

(2) Where an application or complaint-

- (a) is against an advocate and the advocate is dead, the Committee shall record the fact of such death and drop the proceedings, unless according to the nature of the application or complaint and the stage at which it has reached, the Committee is of a different opinion;
- (b) is against more than one advocate and one of the advocate is dead, the Committee may continue the application or complaint against the other advocates unless it has a reason to decide otherwise.

Dress code

30. An advocate against whom the application or complaint is made or who has filed an application to the Committee shall, when appearing before the Committee, be dressed in an attire prescribed for advocates when appearing before subordinate courts.

Extension of time

31. The Committee may, upon good cause shown, extend the time limited by these Rules for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time.

Custody of filed documents

32. All documents shall be filed to and kept by the Secretary.

Advocates (Disciplinary and other Proceedings)

GN. No. 120 (contd.)

Copies of
rulings,
judgments or
orders

33. The Secretary shall send or provide to each of the parties to the proceedings, a certified copy of the ruling, judgment or order free of charge.

Committee may
dispense with
requirements

34.-(1) The Committee may dispense with any requirements of these Rules in respect of notices, affidavits, documents, service, or time, in any case where it appears to the Committee is just to do so.

Power to regulate
procedure

35.-(1) The Committee shall have power to regulate its own procedures.

Cap 33 and
Cap 20

(2) Notwithstanding the provisions of sub-rule (1), the Committee shall be at liberty to borrow the practice from the Civil Procedure Code Act or the Criminal Procedure Act on matters for which the procedure is not provided for under these Rules.

Revocation
GN. No. 135 of
1955

36. The Advocates (Disciplinary and Other Proceedings) Rules, 1955 are hereby revoked.

Savings

37. Notwithstanding the revocation of the Advocates (Disciplinary and Other Proceeding) Rules, anything done or any action taken or purported to have been done under the revoked Rules shall in so far as it is not inconsistent with the provisions of these Rules, be deemed to have been done or taken under the corresponding provisions of these Rules.

FIRST SCHEDULE

FORMS

(Made under rule 4(2))

FORM 1

APPLICATION FORM

IN THE ADVOCATES COMMITTEE

APPLICATION/ COMPLAINT NO.20.....

1. Name and Address of Applicant
2. P. O. Box
E-Mail
Phone:
3. Name and address of the Respondent:-
P. O. Box
E-Mail
Phone:
4. (a) Cause of action/ brief statement of facts constituting the claim;
.....
.....
(b) List of relevant documents to be annexed, if any.
1.
2.
3.etc.
5. Relief's claimed: -
1.
2.etc..
6. Verification:-
I, being the in this case, hereby certify that
what has been stated above is true to the best of my knowledge/information supplied to me by
the applicant.
(Signed)

APPLICANT / REPRESENTATIVE / ADVOCATE FOR APPLICANT

Fees paid TshsERV. No. Date.....

Presented for filing this Day of.....

Secretary

Advocates (Disciplinary and other Proceedings)

GN. No. 120 (contd.)

FORM 2

NOTICE OF HEARING

IN THE ADVOCATES COMMITTEE

APPLICATION/ COMPLAINT NO.....20.....

(Made under rule 5(2))

In the matter of C.D. an advocate
And
In the matter of the Advocates' Act
To A.B. of

The day of is the day fixed for the hearing of the above named application/ complaint in the matter of C.D. advocate, by the Committee constituted under the Advocates' Act.

The Committee will sit at at o'clock in the noon.

You are required by the Advocates (Disciplinary and Other Proceedings) Rules, to furnish to the said C.D. and to me at at least days before the said day of a list of all the documents on which you propose to rely.

Either party may inspect the documents included in the list furnished by the other, and a copy of any document mentioned in the list of either party must, on the application and at the expense of the party requiring it, be furnished to that party by the other within three days after receipt of the application.

In the event of the advocate complained of not appearing, and of the Committee being asked to proceed in his absence, you must be prepared to prove service in accordance with the Rules of the list of documents and any other notice or correspondence since the lodging of the application.

You are requested to acknowledge receipt of this notice without delay.

Dated this day of 20.....

.....
Secretary to the Committee

(N.B. A copy of the Rules may be inspected at the office of the Secretary.)

Advocates (Disciplinary and other Proceedings)

GN. No. 120 (contd.)

FORM 3

FORM OF SUMMONS TO GIVE EVIDENCE

IN THE ADVOCATES COMMITTEE

APPLICATION/ COMPLAINT NO.....20.....

(Made under rule 14(5))

In the matter of C.D. an advocate
And
In the matter of the Advocates' Act

Whereas your attendance is required to give evidence on behalf of
..... in the above matter, you are hereby required to appear before the
Committee on the day of 20..... at o'clock

I (and to bring with you the under mentioned document(s))
And herein fail not.

Given under my hand at Dar es Salaam this day of 20.....

.....
Secretary

Advocates (Disciplinary and other Proceedings)

GN. No. 120 (contd.)

FORM 4

FORM OF SUMMONS TO PRODUCE DOCUMENTS

(Made under rule 9)

IN THE ADVOCATES COMMITTEE

APPLICATION/ COMPLAINT NO.....20.....

In the matter of C.D. an advocate
And
In the matter of the Advocates' Act

You are required in the above matter to:-

1. (a) attend and produce personally before the Committee on the day of 20..... at o'clock the under mentioned document(s); or
2. (b) cause to be produced to the Advocates Committee on or before the day of 20..... at o'clock the under mentioned document(s).

And herein fail not.

.....
Secretary

Advocates (Disciplinary and other Proceedings)

GN. No. 120 (contd.)

FORM 5

FORM OF AFFIDAVIT BY AN APPLICANT,

(Made under rule 20(1))

IN THE ADVOCATES COMMITTEE

APPLICATION/ COMPLAINT NO.....20.....

In the matter of C.D. an advocate

And

In the matter of the Advocates' Act

I, C.D. of make oath and say as follows—

1. I was admitted as an advocate on the day of and practised under certificate from the year to the year
2. The reasons set out in my application that my name be removed from the Roll of Advocates, which application is now produced by me and marked A, are true.
3. I am not aware of, and do not know of any cause for, any other application to the Court or to the Committee constituted under the Advocates' Act, that my name be removed from the Roll, or that I may be required to answer allegations contained in an affidavit.
4. I do not make this application for the purpose of evading any adverse application, or of defeating or delaying any claim against me as an advocate.

Sworn by the said CD... at on the day of 20.....

before me

Advocates (Disciplinary and other Proceedings)

GN. No. 120 (contd.)

SECOND SCHEDULE

(Made under rule 18(5))

APPLICATION FEE

Content.	Tshs.
On filing application under these Rules	20,000/=

Dar es Salaam ,
29th January, 2018

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Chairman Advocates Committee

Dar es Salaam,
5th February, 2018

IBRAHIM H. JUMA,
Chief Justice