



LAWS OF KENYA

OATHS AND STATUTORY DECLARATIONS ACT

CHAPTER 15

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CHAPTER 15

OATHS AND STATUTORY DECLARATIONS ACT

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SCHEDULE

CHAPTER 15

OATHS AND STATUTORY DECLARATIONS ACT

[Date of commencement: 22nd March 1919 — Parts I and II, 30th November, 1926 — Part III, 10th July, 1931 — Part IV 27th March, 1906 — Part V, 18th October, 1954 — Part VI.]

An Act of Parliament to provide for the appointment of commissioners for oaths, and to make provision in regard to the administering of oaths and the taking of statutory declarations

[Cap. 20 of 1948, Act No. 42 of 1954, Act No. 20 of 1956, Act No. 27 of 1961, Act No. 46 of 1963, Act No. 10 of 1983.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Oaths and Statutory Declarations Act.

PART II – COMMISSIONERS FOR OATHS

2. Appointment of commissioners for oaths

(1) The Chief Justice may, by commission signed by him, appoint persons being practising advocates to be commissioners for oaths, and may revoke any such appointment.

(2) Each commission by which any commissioner for oaths is appointed shall bear a stamp of the value of thirty shillings, to be paid for by the commissioner for oaths therein named; but no other charge or fee shall be made or be payable in respect of the appointment or in respect of anything required to be done to perfect it.

(3) After the commission has been signed and stamped the appointment of the person therein named as a commissioner for oaths shall be forthwith published in the *Gazette*.

3. Commissioner for oaths to sign roll

Every advocate appointed a commissioner for oaths shall, on appointment, sign a roll, which shall be kept by the Registrar of the High Court.

4. Powers of commissioner for oaths

(1) A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such advocate, or in which he is interested.

(2) A commissioner for oaths shall, in the exercise of any of the powers mentioned in subsection (1), be entitled to charge and be paid such fees as may be authorized by any rules of court for the time being.

5. Particulars to be stated in jurat or attestation clause

Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.

6. Rules of court under Part

The Chief Justice may make rules of court for the better carrying into effect of this Part and for fixing the amount of the fees payable to commissioners for oaths.

7. Penalty for unlawfully acting as commissioner for oaths

Any person who holds himself out as a commissioner for oaths or receives any fee or reward as a commissioner for oaths shall, unless he has been appointed as such under this Act, be guilty of an offence and, in addition to any other penalty or punishment to which he may be liable by any law in force, be liable to a fine not exceeding six hundred shillings, and for a second offence, in addition to any other penalty or punishment, shall be liable to a fine of two thousand shillings or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

PART III – STATUTORY DECLARATIONS

8. Power to take declarations

A magistrate or commissioner for oaths may take the declaration of any person voluntarily making and subscribing it before him in the form in the Schedule.

[Act No. 10 of 1983, Sch.]

9. Fees payable on declarations

Whenever any declaration is made and subscribed by any person under this Act, the same fees or fee shall be payable as would have been payable on the taking or making of any legal oath, solemn affirmation or affidavit.

10. Mode of referring to declaration

A declaration made under this Act may be referred to in any Act or other legal document as a statutory declaration.

11. Penalty for false declaration

If any person knowingly and wilfully makes any statement which is false in a material particular in a statutory declaration he shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand shillings, or to both such imprisonment and fine.

PART IV – POWERS OF MAGISTRATES AND CERTAIN COURT OFFICERS

12. Powers of magistrates and certain court officers to administer oaths

A magistrate, the Registrar of the High Court, a deputy registrar and a district registrar may administer any oath or affirmation or take any affidavit or statutory declaration (voluntarily made and subscribed in accordance with the provisions of Part III) which might lawfully be administered or taken by a commissioner for oaths appointed under Part II.

[Act No. 20 of 1956, s. 2.]

PART V – OATHS BY AFRICANS

13. Oaths by Africans

Any African, not being a Christian or a Mohammedan, required by law to take an oath shall take the oath in the form common among and held binding by the members of the tribe to which such African belongs, and when such African belongs to a tribe the members of which hold no form of oath binding upon them he shall be required to make solemn affirmation in the form now in use.

PART VI – OATHS AND AFFIRMATIONS

14. Authority to administer oaths and affirmations

All courts and persons having by law or consent of the parties authority to receive evidence are authorized to administer, by themselves or by an officer empowered by them in that behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them by law.

[Act No. 42 of 1954, s. 2.]

15. When affirmation may be made instead of oath

Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is required by law, which affirmation shall be of the same effect as if he had taken the oath.

[Act No. 42 of 1954, s. 2.]

16. Form of affirmation

Every affirmation shall be as follows: "I, A.B., do solemnly, sincerely and truly declare and affirm," and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

[Act No. 42 of 1954, s. 2.]

17. Persons by whom oaths and affirmations to be made

Subject to the provisions of section 19, oaths or affirmations shall be made by—

- (a) all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

- (b) interpreters of questions put to, and evidence given by, witnesses.

[Act No. 42 of 1954, s. 2.]

18. Forms of oath

All oaths made under section 17 of this Act or section 151 of the Criminal Procedure Code (Cap. 75) shall be administered according to such forms as the Chief Justice may by rules of court prescribe, and until any such forms are so prescribed such oaths shall be administered according to the forms now in use.

[Act No. 42 of 1954, s. 2, Act No. 27 of 1961, Sch.]

19. Evidence of children of tender years

(1) Where, in any proceedings before any court or person having by law or consent of parties authority to receive evidence, any child of tender years called as a witness does not, in the opinion of the court or such person, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court or such person, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and his evidence in any proceedings against any person for any offence, though not given on oath, but otherwise taken and reduced into writing in accordance with section 233 of the Criminal Procedure Code (Cap. 75), shall be deemed to be a deposition within the meaning of that section.

[Act No. 42 of 1954, s. 2, Act No. 46 of 1963, Second Sch.]

(2) If any child whose evidence is received under subsection (1) wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence and liable to be dealt with as if he had been guilty of an offence punishable in the case of an adult with imprisonment.

20. Power of court to tender certain oaths

If any party to, or witness in, any judicial proceedings offers to give evidence on oath or affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs and not repugnant to justice or decency, and not purporting to affect any third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

[Act No. 42 of 1954, s. 2.]

21. Validity of oath not affected by absence of religious belief

Where an oath has been duly administered and taken, the fact that the person to whom it was administered had, at the time of taking the oath, no religious belief shall not for any purpose affect the validity of the oath.

[Act No. 42 of 1954, s. 2.]

Oaths and Statutory Declarations

SCHEDULE

[Section 8.]

I, *A.B.*, do solemnly and sincerely declare as follows—

..... [here state the matters declared]

I make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

CHAPTER 15

OATHS AND STATUTORY DECLARATIONS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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OATHS AND STATUTORY DECLARATIONS RULES

[Cap. 20 of 1948, Sub. Leg. L.N. 374/1956, L.N. 320/1957, L.N. 37/1974, L.N. 113/1980, L.N. 117/1983.]

RULES OF COURT UNDER SECTION 6

1. These Rules may be cited as the Oaths and Statutory Declarations Rules.
2. An advocate who has practised in Kenya for not less than three years may apply to the Chief Justice to be appointed a commissioner for oaths.
3. All applications under rule 2 shall be in writing, shall state the period during which the applicant has practised in Kenya and the date upon which his name was entered upon the Roll of Advocates, and shall be accompanied by a certificate signed by two other practising advocates and two householders to the effect that the applicant is a fit and proper person to be so appointed.
4. Applications shall be lodged with the Registrar of the High Court, who shall notify the applicant of the decision of the Chief Justice thereon.
5. On an advocate paying the prescribed fees and signing the Roll of Commissioners, a commission shall be issued to him in the form in the First Schedule.
6. A commissioner for oaths shall be entitled to charge fees in accordance with those prescribed in the Second Schedule in respect of the matters therein mentioned.
7. A commissioner for oaths before administering an oath must satisfy himself that the person named as the deponent and the person before him are the same, and that such person is outwardly in a fit state to understand what he is doing.
8. The power to revoke a commission conferred by section 2 of the Act shall not be exercised until the commissioner whose conduct is in question has been given an opportunity of being heard against any such order of revocation.
9. All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification.
10. The forms of jurat and of identification of exhibits shall be those set out in the Third Schedule.

FIRST SCHEDULE

[Rule 5.]

OATHS AND STATUTORY DECLARATIONS ACT

A COMMISSION

TO ALL TO WHOM THESE PRESENTS MAY COME GREETING

Be it known that on the day of, 20, X.Y.Z., an Advocate of the High Court, has been appointed to be a Commissioner for Oaths under the above-mentioned Act for so long as he continues to practise as such Advocate and this Commission is not revoked.

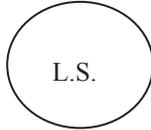
Given under my hand and the Seal of the Court this day of

[Subsidiary]

....., 20

FIRST SCHEDULE—continued

Chief Justice



SECOND SCHEDULE

[Rule 6.]

FEES

	<i>KSh.</i>	<i>cts.</i>
1. For taking an affidavit or declaration	17	50
2. For every exhibit thereto	6	50
3. For attending to administer an oath or affirmation or to take a declaration elsewhere than at the office of the commissioner, in addition to the ordinary fee thereon, for every quarter-hour or part thereof	85	00
4. For attending to administer an oath or to take a declaration outside of the town of the commissioner's practice		

Fee at the same rate and allowance as an advocate may charge for a journey from home.

[L.N. 117/1983, s. 2.]

THIRD SCHEDULE

[Rule 10.]

FORM OF JURAT

Sworn before me

Declared

this day of, 20, at

Commissioner for Oaths

FORM OF IDENTIFICATION OF EXHIBIT

This is the exhibit marked "....." referred to in the annexed affidavit of

Oaths and Statutory Declarations

[Subsidiary]

THIRD SCHEDULE—*continued*

Sworn
Declared before me
this day of, 20, at

.....
Commissioner for Oaths
