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NOTICE

The Bill following hereunder shall be presented before the House of Representatives for the first reading which will start its session on 27th November, 2019, and is gazetted for the public notice incorporating together with their object and reasons.

ZANZIBAR
06th November, 2019

(Dr. ABDULHAMID Y. MZEE)
*Secretary to the Revolutionary
Council and Chief Secretary*

A BILL

for

**AN ACT TO REPEAL THE LEGAL PRACTITIONERS
DECREE CAP. 28 AND THE NOTARIES PUBLIC DECREE
CAP. 29 AND ENACT THE ADVOCATES ACT AND OTHER
MATTER RELATED THERETO**

ENACTED by the House of the Representatives of Zanzibar.

PART ONE
PRELIMINARY PROVISIONS

Short title
and
Commence-
ment.

1. This Act may be cited as the Advocates Act, 2019 and shall come into operation immediately after being assented to by the President.

Application.

2. This Act shall apply to all advocates, Vakils and Notaries public in Zanzibar.

Interpreta-
tion.

3. In this Act, unless the context otherwise requires:

“Advocate” means a person enrolled and admitted as an advocate as such under the provisions of this Act;

“Bar Council” means the Council established under section 4 of this Act;

“Chairperson” means the Chairperson of the Bar Council or any person acting on his behalf;

“Client” includes any person who, as a principal or on behalf of another, or as a trustee or person representative, or in any other capacity, has power, express or implied, to retain or employ, or is about to retain or employ, an advocate or vakil and any person who is or may be liable to pay an advocate or vakil any costs;

“Costs” includes fees, charges, disbursements, expenses and remuneration;

“Contentious business” includes any business done by an advocate or vakil in any court or in the course of any suit or legal proceedings;

“Court” means the High Court of Zanzibar and courts subordinate thereto;

“Document” means any document relating to any legal proceeding or any document purporting or operating to create, declare, assign, limit, or extinguish any right, title or interest, whether vested or contingent to, in or over immovable property other than:

- (a) a will or testamentary instrument;
- (b) a document relating to immovable property drawn up on a printed form being the appropriate form prescribed by the Registration of Documents Rules;
- (c) a document relating to immovable property the registration whereof is optional under the Laws of the Registration of Documents or any other law applicable;

“Examination” means the bar examination organized by the Bar Council under this Act;

“Foreign advocate” means an individual who is duly authorized or registered to practice law in any country other than the United Republic of Tanzania;

“Government” means the Revolutionary Government of Zanzibar;

“Judicial Fund” means the Judicial Fund established under the Judiciary Administration Act;

“Legal services” means the services which an advocate or vakil can lawfully provide under this Act;

“Minister” means the Minister responsible for justice;

“Non-contentious business” includes any business connected with sales, purchases, leases, mortgages, settlements and other matters of conveyance;

“Notary public” means any practicing advocate who is admitted by the Chief Justice as notary public;

“Practicing certificate” means a certificate issued by the Registrar under section 26 of this Act;

“President” means President of Zanzibar and Chairman of the Revolutionary Council;

“Registrar” means the Registrar of the High Court and where appropriate shall include deputy registrar;

“Taxing Officer” means the Registrar or an officer who is appointed either specially or generally by the Chief Justice for taxation of costs;

“Vakil” means any person admitted by the Chief Justice to practice as such under the rules as the Chief Justice may prescribe.

PART TWO THE BAR COUNCIL

Establishment and Composition of the Bar Council

4.-(1) There is hereby established a Bar Council which consist of the following members:

- (a) a Judge of the High Court appointed by the Chief Justice who shall be Chairperson;
- (b) Attorney General or his representative;
- (c) Director of Public Prosecutions or his representative;
- (d) Principal of Law School of Zanzibar or his representative;
- (e) the President of the Zanzibar Law Society or his representative.

(2) The Registrar shall be the Secretary of the Bar Council.

5. The Chairperson shall hold office for a period of three years but may be eligible for re-appointment.

Tenure of the Office of Chairperson.

6. The functions of the Bar Council shall be as follows:

Functions of the Bar Council.

- (a) to lay down standards of professional conduct and etiquette for an advocate and vakil;
- (b) to conduct bar examination for persons intending to practice the profession of law in Zanzibar;
- (c) to recommend to the Chief Justice names of persons seeking admission as an advocate or vakil;
- (d) in collaboration with the Law School of Zanzibar or the Zanzibar Law Society, to conduct seminars and organise talks on legal topics by eminent jurists; and
- (e) to perform all other functions under this Act.

7. The Bar Council shall exercise powers:

Powers of the Bar Council.

- (a) to oversee the regulation of the advocates and vakils in relation to their legal practice and profession;
- (b) to form committees; and
- (c) as may be conferred upon it by this Act or any other written law.

8. The Chairperson shall cease to hold the office by reason of:

Cessation of Chairperson.

- (a) expiry of his tenure;
- (b) being removed by his appointing authority;
- (c) resignation; or
- (d) death.

Bar Council
may delegate.

9.-(1) Subject to the provisions of this Act, the Bar Council may delegate the performance of any function to committees which may be established by the Bar Council.

(2) The Bar Council may perform any of such functions aforesaid notwithstanding the delegation of the performance under sub-section (1) of this section to its committee.

Meetings
of the Bar
Council.

10. The Bar Council shall meet once in every three months and may meet at any times when a need arises.

Quorum.

11.-(1) Four members present at the meeting shall constitute a quorum.

(2) The Chairperson shall preside at all meetings of the Bar Council, in his absence, the members present shall elect one member to be acting Chairperson.

(3) All questions arising at the meetings shall be decided by a majority of the votes of the members present.

(4) The Chairperson at the meeting shall have a deliberative vote and shall, in the event of an equality of votes, have a casting vote.

Meeting
Procedures.

12. The Bar Council may regulate its own procedures and, in particular, holding of meetings, notices of meetings, proceedings thereat, recording of minutes, custody, production and inspection of those minutes.

Expenses
of the Bar
Council.

13. Expenses incurred by the Bar Council in the performance of its functions under this Act shall be defrayed out of the Judiciary Fund.

PART THREE ADMISSION AND ENROLMENT OF PERSONS AS AN ADVOCATE OR VAKIL

Application
for admission
as an advoc-
cate.

14.-(1) A person may apply to the Chief Justice to be admitted as an advocate if he holds the following qualifications:

- (a) Degree in Law from a university recognized by the Government;
- (b) Post -Graduate Diploma in legal practice from the Law School of Zanzibar or similar law school recognized by the Bar Council; and
- (c) other qualifications as the Bar Council may prescribe.

(2) Notwithstanding the provisions of sub section (1) of this section, a person who has been in continuous practice as an advocate in Tanzania Mainland, Kenya, Uganda, Rwanda, Burundi or other Commonwealth country for period of not less than five years, may apply to the Chief Justice to be admitted as an advocate in Zanzibar.

(3) A person, other than an advocate in Tanzania Mainland, shall, in addition to the requirements of sub section (2) of this section, undergo such training for a period not exceeding three months, as the Bar Council may prescribe for the purpose of adapting to the practice of law in Zanzibar.

15.-(1) A person may apply to the Chief Justice to be admitted as a Vakil if he:

Application for admission as a Vakil.

- (a) holds a Diploma in Law from a university or an institution recognized by the Government;
- (b) has undergone special training on legal matters for a period of not less than three months from the Law School of Zanzibar or similar law school recognized by the Bar Council; and
- (c) other qualifications as the Chief Justice may prescribe.

16.-(1) A foreign advocate who is not enrolled in Zanzibar but has come or intends to come to Zanzibar for the purpose of appearing in a case as an advocate, may apply to the Chief Justice for permission to appear in that case.

Application for permission by a foreign advocate for a case.

(2) The advocate referred to in sub section (1) of this section, in his application, shall submit a name of an advocate of the High Court of Zanzibar who will accompany him in that case.

(3) In this section, “case” includes an interlocutory, appeal or execution proceedings connected with a case.

Chief Justice to refer application to the Bar Council.

17. The Chief Justice shall, upon receipt of an application for admission under section 14 or 15 of this Act, refer the application to the Bar Council for recommendations.

Bar examination.

18.-(1) The Bar Council shall, after receiving the application referred to in section 17 of this Act, conduct examination for person intending to be admitted as advocate or vakil.

(2) The Bar Council shall, if satisfied that the person intending to be admitted as advocate or vakil has met the requirements under section 14 or 15 of this Act, and has acquired adequate knowledge and professional experience in practicing law in Zanzibar, recommend that person to the Chief Justice to be admitted as advocate or vakil.

Admission as advocate or vakil.

19.-(1) Subject to provisions of section 14 or 15 of this Act the Chief Justice may, upon:

- (a) recommendations from the Bar Council; and
- (b) production of testimonials of the character as he may require, admit the person as an advocate or vakil.

Permission granted to a foreign advocate.

20.-(1) The Chief Justice may, if satisfied that the advocate intending to appear in a case as advocate has met the requirements under section 16(1) and (2) of this Act, permit him to appear for the purpose of that case.

(2) The Chief Justice may withdraw the permission granted under subsection (1) of this section, if there are reasonable grounds to do so.

21.-(1) The Registrar shall maintain a Roll of advocates and a separate Roll of vakils admitted to practice with the dates of their respective admissions. The Roll.

(2) The name, with the date of admission, of a person admitted shall be entered upon the Roll in order of admission.

(3) A person admitted as an advocate or vakil shall pay the fee prescribed, and the Registrar shall deliver to him an instrument of admission signed by the Chief Justice.

(4) If, at any time after the admission of any person as an advocate, it is shown to the satisfaction of the Chief Justice that any:

(a) application, affidavit, certificate or other document filed by the person contains any substantially false statement or a suppression of any material fact; or

(b) certificate was obtained by fraud or misrepresentation,

he shall strike off the name of the person from the Roll.

22. The Registrar shall maintain such particulars relating to the enrolled advocates and vakils as may be prescribed and make such alterations as may be necessary by reason of any change in the name or other particulars of the enrolled advocate and vakil under this Act. Duty of registrar.

23. A person admitted and enrolled to practice as an advocate or vakil under this Act, subject to the jurisdiction admitted and obtaining a valid practicing certificate, shall have the rights to practice unless. Rights of an advocate or vakil.

- (a) his name has been struck off or removed from the Roll; or
- (b) he is subject to an order of any court suspending him from practice.

Authority to
render legal
services.

24.-(1) Subject to this Act and any other law, a person other than an advocate or vakil shall not, in expectation of any fee, commission, gain or reward.

- (a) appear in any court of law or before any board, tribunal or similar institution in which only an advocate or vakil is entitled to appear; or
- (b) draw up or execute any instruments or documents relating to or required or intended for use in any action, suit or criminal proceedings in any court.

(2) A person, other than an advocate or vakil, shall not hold himself out as an advocate or vakil or make any representation or use any type or description indicating or implying that he is an advocate or vakil.

(3) Nothing herein contained shall affect the right which is hereby declared of:

- (a) any person whose duties require him to do so to appear and plead before the courts on behalf of the government;
- (b) the public trustee, official assignee or any person on behalf thereof to appear and plead before the court under any written law relating to such offices;
- (c) any member of the public service, statutory bodies, corporate bodies or civil societies drawing or preparing any instrument or document in the course of such duty;

- (d) any person employed merely to copy, engross or translate any instrument or document; and
- (e) any trustee or assignee under the laws relating to insolvency, or any executor, administrator or curator, or any liquidator or official receiver drawing or preparing any instrument or document in the course of such statutory duties and receiving thereof such fees as may be allowed by law.

(4) A person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine of not less than One Million Shillings or imprisonment for a term of not less than six months or both.

25.-(1) Any admitted advocate or vakil may apply to the Chief Justice for his name to be removed from the Roll. Removal.

(2) The Chief Justice may, and if satisfied, grant the application and direct the Registrar to remove the name of the applicant from the Roll.

PART FOUR PRACTISING CERTIFICATE

26.-(1) There shall be a practicing certificate issued by the Registrar authorizing a person to practice as an advocate or a vakil. Practicing Certificate.

(2) An advocate or vakil shall apply for practicing certificate to the Registrar in such form and manner as prescribed in the Rules.

(3) The Registrar shall, upon being satisfied and payment of prescribed fees, issue a practicing certificate to an advocate or a vakil.

(4) An advocate or vakil shall take out yearly an annual practicing certificate and pay the prescribed fee.

(5) A practicing certificate shall be valid from the date of issue to the 31st day of December of the year in which it is issued.

(6) When a practicing certificate granted under this section has been lost, destroyed or mutilated, it shall be replaced by a fresh certificate upon application made to the Registrar by an advocate or vakil entitled thereto and payment of the fees prescribed in the rules.

Refusal of practicing certificate.

27.-(1) Notwithstanding the provisions of section 26, the Registrar may refuse to issue a practicing certificate to any advocate or vakil who, on the date of application for the certificate:

- (a) is an undischarged bankrupt in respect of whom a receiving order in bankruptcy is in force;
- (b) is adjudged to be of unsound mind under the Mental Health Act;
- (c) has not paid any compensation awarded against such applicant under this Act;
- (d) has not paid prescribed fees; or
- (e) has been convicted of an offence involving moral turpitude.

(2) Notwithstanding anything contained in subsection (1) of this section, in the case of an applicant falling under paragraph (e) the Registrar may, if such applicant has been granted unconditional pardon, issue such practicing certificate.

(3) In this section the term “moral turpitude” includes fraud and dishonesty.

(4) Any advocate or vakil aggrieved by a decision of the Registrar refusing to issue a practicing certificate under subsection (1) of this section may appeal to the Chief Justice.

Clients Account.

28.-(1) An advocate or vakil shall open and keep a bank account for clients and a separate account of his own.

(2) The Chief Justice may make rules relating to bank accounts under this section.

(3) Such rules may provide for the manner in which the matters referred to in subsection (2) shall apply to law firms.

(4) Disciplinary proceedings may be taken against any person who contravenes any rules made under this section.

PART FIVE REMUNERATION OF AN ADVOCATE OR VAKIL

29. For the purposes of this Part, there shall be a Committee to be known as the Remuneration Advisory Committee which shall consist of:

Establishment of the Remuneration Advisory Committee.

- (a) the Registrar of the High Court as a Chairperson of the Remuneration Advisory Committee;
- (b) a Director responsible for legal aid;
- (c) at least a Senior State Attorney from the Attorney General's Chambers; and
- (d) three advocates elected by the Zanzibar Law Society.

30.-(1) The Remuneration Advisory Committee shall recommend to the Chief Justice mode and scale of rates of remuneration of an advocates and vakils.

Functions of the Remuneration Advisory Committee.

(2) In making recommendations under subsection (1) of this section, the Remuneration Advisory Committee shall have regard to contentious and non-contentious business.

(3) For the purposes of performing its functions under this section, the Remuneration Advisory Committee shall meet at such places and at such times as the Chairperson of the Remuneration Advisory Committee may direct.

31. Expenses incurred by the Remuneration Advisory Committee in the performance of its functions under this Act shall be defrayed out of the Judiciary Fund.

Expenses of the Remuneration Advisory Committee.

Remuneration rules and publication.

32.-(1) The Chief Justice may, upon receiving the recommendations from the Remuneration Advisory Committee, make rules on remuneration of an advocates and vakils.

(2) The Chief Justice shall publish the rules made under subsection (1) of this section in the Gazette.

Security from client for an advocate or vakils' remuneration.

33.-(1) An advocate or vakils may, with respect to both non-contentious and contentious business to be done, take security from a client for the amount to become due to an advocate or vakils for remuneration and disbursements in business to be transacted and for interest.

(2) The interest referred to in subsection (1) of this section, shall not commence until the amount due is ascertained by agreement or taxation.

(3) For the purpose of this section, the amount of such remuneration and disbursements shall be deemed to have been agreed, unless the client shall, within one month from the delivery of the bill, have disputed the same or required an advocate or vakils to have the same taxed.

(4) The Chief Justice may make rules prescribing the percentage of interest rate to be charged on costs.

Death, incapacity or change, of an advocate or vakils.

34.-(1) If, after some business has been done under an agreement made under section 33 but before an advocate or vakils has wholly performed it, an advocate or vakils dies or becomes incapable of acting, then any party, or the representative of any party, to the agreement may apply to the court for an order of ascertainment by taxation.

(2) The court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done under it to be ascertained by taxation, and in that case:

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and

- (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.

(3) The provisions of subsection (1) and (2) of this Act, shall apply in the event of the client changing his advocate or vakil before the conclusion of the transaction.

35. Subject to the provisions contained in the law of Limitation or any other law for the time being in force, a court shall, in the absence of any express agreement as to the time when such costs are to be paid, dismiss every suit by an advocate or vakil for costs of a suit or a particular transaction instituted:

Limitation of proceedings.

- (a) after a period of three years from the date of the determination of such suit or transaction; or
- (b) from the date of discontinuance where an advocate or vakil has properly discontinued such suit of transaction.

PART SIX NOTARIES PUBLIC

36. The Chief Justice may, upon application and payment of the fee prescribed in the rules, admit a practicing advocate of the High Court of Zanzibar of not less than five years experience to be a notary public.

Admission of notaries public.

37.-(1) The practicing advocate specified under section 36 of this Act shall, if the Chief Justice satisfied that it is proper to admit him to practice as notary public in Zanzibar, and upon payment of the fees prescribed in the rules and upon signing a Roll to be kept by the Registrar, be granted a notary public certificate in the form prescribed in the rules.

Enrollment and granting of notary public certificate.

(2) A practicing advocate shall take out yearly an annual notary public certificate and pay the prescribed fee.

(3) Any notary public certificate shall be valid from the date of issue to the 31st day of December of the year in which it is issued.

(4) The granting of every notary public certificate under this section shall be recorded in the Roll of notaries public.

(5) When a notary public certificate granted under this section has been lost, destroyed or mutilated, it shall be replaced by a fresh certificate upon application made to the Registrar by the notary public entitled thereto and payment of the fees prescribed in the rules.

Penalty for unlawfully practicing.

38. Subject to the provision of section 40 of this Act, a person who holds himself out to be a notary public, or receives any fee or reward as a notary public without being the holder of notary public certificate granted under this Act and still in force, shall be guilty of an offence against this Act, and liable to a fine of not exceeding One Million Shillings and, for a second and subsequent conviction, to a fine of not exceeding Two Million Shillings or to imprisonment for a term not exceeding six months or both such fine or such imprisonment.

Jurats to state place and date.

39. A notary public shall, before whom any oath or affidavit is taken or made under this Act, state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.

Judge or Regional Magistrate to have certain powers of notaries public.

40.-(1) A Judge or a Regional Magistrate shall have, by virtue of his office, the powers and duties of a notary public, and shall exercise and perform the same in like manner in respect of the following matters:

- (a) noting marine protests;
- (b) administering oaths;
- (c) taking affidavits;
- (d) attesting signatures; and
- (e) certifying copies of documents.

(2) The fees to be charged for discharge of notarial duties under this section shall form part of the Government revenue.

PART SEVEN
ETHICS AND DISCIPLINE OF ADVOCATES AND VAKILS

41.-(1) There is hereby established a Committee to be known as the Ethics and Disciplinary Committee which consist of the following members:

Ethics and
Disciplinary
Committee.

- (a) a Judge or retired Judge of the High Court of Zanzibar or Court of Appeal nominated by the Chief Justice;
- (b) the Attorney General;
- (c) the Director of Public Prosecutions; and
- (d) the President of the Zanzibar Law Society.

(2) The Judge of the High Court or retired Judge of the High Court of Zanzibar or Court of Appeal shall be the Chairperson of the Ethics and Disciplinary Committee and in his absence the Attorney General shall preside at the meetings.

(3) Where the conduct of the President of the Zanzibar Law Society is the subject matter of any complaints before the Ethics and Disciplinary Committee, the President of the Zanzibar Law Society shall be excluded from such meeting of the Ethics and Disciplinary Committee and instead the Chief Justice shall require the Zanzibar Law Society to appoint a temporary member who is an advocate of the High Court of Zanzibar.

(4) The Ethics and Disciplinary Committee shall appoint a senior public officer to be a Secretary to the Ethics and Disciplinary Committee.

42.-(1) Meetings of the Ethics and Disciplinary Committee shall be held at such times and places as the Chairperson of the Ethics and Disciplinary Committee may determine.

Meetings of
the Ethics
and Dis-
ciplinary
Committee.

(2) All proceedings before the Ethics and Disciplinary Committee shall be deemed to be administrative proceedings subject to judicial review.

Quorum.

43.-(1) Majority of the members present at the meeting shall constitute a quorum.

(2) All questions arising at the meetings shall be decided by a majority of the votes of the members present.

(3) The Chairperson of the Ethics and Disciplinary Committee at the meeting shall have a deliberative vote and shall, in the event of an equality of votes, have a casting vote.

Meeting procedure.

44. The Ethics and Disciplinary Committee may make its own procedures for the purposes of proceedings of its meetings.

Expenses of the Disciplinary Committee.

45. Expenses incurred by the Ethics and Disciplinary Committee in the performance of its functions under this Act shall be defrayed out of the Judiciary Fund.

Saving disciplinary powers of the court.

46. Nothing in this Part shall supersede, lessen or interfere with the jurisdiction of any court, inherent or otherwise, to deal with any professional misconduct or other offenses against any advocate or vakil committed during, in the course of, or relating to, any proceedings before the court.

Complaints against an advocate or vakil.

47.-(1) Without prejudice to other provisions of this Act, any aggrieved person may lodge any complaint against an advocate or vakil to the Ethics and Disciplinary Committee.

(2) Upon receipt of a complaint, the Secretary to the Ethics and Disciplinary Committee shall, as soon as is practicable, refer the complaint to the Ethics and Disciplinary Committee.

Powers of the Ethics and Disciplinary Committee.

48.-(1) The Ethics and Disciplinary Committee may, after hearing both parties, order the complaint be dismissed, or if in the opinion of the Ethics and Disciplinary Committee, the complaint has been proved against the other party, the Disciplinary Committee may order:

- (a) that party be admonished;
- (b) that party be suspended from practice for specific period not exceeding two years;

- (c) that name of the party be struck off the Roll;
- (d) that party pay compensation as determined by the Ethics and Disciplinary Committee to any person aggrieved by the misconduct complained of; or
- (e) such combination of the above orders as the Ethics and Disciplinary Committee may think fit.

(2) Any order made by the Ethics and Disciplinary Committee under the provisions of this section relating to the payment of compensation shall be drawn up by the Ethics and Disciplinary Committee and shall thereupon be executable as if it were a decree of the court.

(3) At the time of awarding any damages in any subsequent civil proceedings relating to the same matter, the court determining the civil suit shall take into account any sum recovered in the pursuance of an order made under subsection (1) (d) of this section.

49.-(1) On the termination of the hearing of a complaint, if the Ethics and Disciplinary Committee does not dismiss the complaint, the Ethics and Disciplinary Committee shall embody its findings and the order or orders made by it in the form of a report to the High Court.

Report and action on a complaint.

(2) The report referred to in subsection (1) of this section, shall be delivered to the Registrar together with the record of evidence taken and any documents put in evidence.

(3) The Registrar shall give to the complainant and to the party against whom the complaint relates notice of delivery of the report, which shall be open to inspection by the complainant, the said party and their respective advocates, if any, but shall not be open to public inspection.

50.-(1) A report and an order made by the Ethics and Disciplinary Committee under this Act shall be signed by the Chairperson of the Ethics and Disciplinary Committee.

Order of the Ethics and Disciplinary Committee to be received in evidence.

(2) Any document purporting to be a report or an order so signed under subsection (1) of this section, shall be received in evidence in any judicial proceedings or in any proceedings under this Act, and shall be deemed to be such a report or an order without further proof of its contents unless the contrary is shown.

Application
for judicial
review.

51. Any party aggrieved by any order of the Ethics and Disciplinary Committee made under section 48 may, within fourteen days after the receipt by such party of the notice to be given under section 49(3), apply to the High Court for judicial review.

Representa-
tion before
the High
Court.

52. The party to whom a complaint relates may be represented by an advocate before the High Court, and the Ethics and Disciplinary Committee shall have the right to appear by itself or by advocate for the purpose of presenting to the High Court the findings of the Ethics and Disciplinary Committee as contained in the report.

Restoration
to the Roll.

53. If the order of the Ethics and Disciplinary Committee is quashed by judicial review, the High Court may order the Registrar to restore to the Roll the name of an advocate or vakil whose name has been struck off or to revoke any order made suspending an advocate or vakil's right to practice.

Professional
misconduct.

54.-(1) An advocate or vakil may commit a professional misconduct if he:

- (a) takes instructions in any case from a person other than the party on his behalf an advocate or vakil is retained, or from another person who is not the recognized agent of the party, or a person who is not servant, relation or friend authorized by the party to give such instruction;
- (b) is found of fraudulent or improper conduct in the discharge of professional duty, or misleads the court or allowed the court to be misled, so that the court makes an order which he knows to be wrong or improper;

- (c) tenders, gives or consents to the retention out of any fee paid or payable to him for his services of any gratification for procuring or having procure the employment in any legal business of himself or any other an advocate or vakil;
- (d) directly or indirectly procures, or attempts to procure, the employment of himself as such an advocate or vakil, through or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given;
- (e) accepts any employment in any legal business through a person who is tout;
- (f) is otherwise guilty of unprofessional conduct;
- (g) allows his name with any of his qualifications as an advocate or vakil to appear by way of advertisement or notification; or
- (h) contravenes or fails to comply with any provisions of this Act or any rules made thereunder.

55.-(1) The Chief Justice may suspend an advocate or vakil for misconduct and may refer that matter to the Ethics and Disciplinary Committee. Power of suspension.

(2) The Chief Justice may cancel the suspension under subsection (1) at any time.

(3) The suspension under this section shall not exceed a period of six months.

PART EIGHT MISCELLANEOUS PROVISIONS

56. Any person duly admitted as an advocate or vakil shall be an officer of the court and shall be subject to the jurisdiction thereof. Advocates and vakils to be officers of the Court.

Precedence.

57.-(1) Advocates will take precedence as between themselves according to the date of their signing the Roll.

(2) The Attorney General, State Attorney or any advocate appointed to represent the government under whatever designation shall take precedence over all other advocates.

(3) Vakils shall take precedence after advocates and as between themselves in accordance with their seniority.

Endorsement
of
documents.

58.-(1) Every document drawn or prepared by an advocate or vakil shall be endorsed with the name of such advocate or vakil by whom such document shall have been drawn up or prepared

(2) This section shall not apply to:

- (a) any public officer in the service of the Government drawing or preparing documents in the course of official duties; and
- (b) any person employed merely to engross or copy any document.

Applica-
tion to be
supported by
affidavit.

59. An application made under this Act shall be supported by affidavit.

Jurisdiction
to try of-
fences.

60. Except as otherwise expressly provided in this Act, all offences under this Act shall be tried by the Regional Magistrates Court.

General
Penalty.

61. A person who contravenes any provision of this Act for which no penalty is provided, commits an offence and shall upon conviction be liable to a fine not less than Six Hundred Thousand Shillings or to imprisonment for a term not less than three months or to both.

Agreements
exempting
an advocate
or vakil from
negligence to
be void.

62. Any provision in any agreement between an advocate or vakil a client exempting an advocate or vakil from negligence or be relieved from any responsibility shall be wholly void.

63.-(1) The Chief Justice may make rules for the implementation of the provisions of this Act.

(2) Without prejudice to the generality of provisions under subsection (1) of this section, the Chief Justice may make rules with regard to:

- (a) the appropriate dress or robe of advocates and vakils for their appearance before a court;
- (b) the safeguarding of the interest or property of the clients of an advocate or vakil:
 - (i) whose names have been struck off the Roll;
 - (ii) whose right to practice has been suspended; or
 - (iii) who are unable for any other cause to practice.
- (c) conditions and procedures relating to application of practicing certificate and notary public certificate;
- (d) prescription of fees;
- (e) an advocate and vakils' remuneration; and
- (f) keeping of bank accounts by an advocate or vakil.

64.-(1) The following Decrees are hereby repealed:

Repeal and
Saving.

- (a) The Legal Practitioners Decree, Cap. 28 of 1941; and
- (b) The Notaries Public Decree, Cap. 29 of 1948.

(2) Notwithstanding the repeal of the Decrees referred to in subsection (1) of this section, a legal practitioner or a notary public who was admitted and licensed to practice before the coming into force of this Act, shall be deemed to have been duly admitted and licensed to practice under the provisions of this Act.

(3) Any certificate and document issued under the repealed Decrees shall be deemed to have been issued under the corresponding provisions of this Act.

OBJECTS AND REASONS

The objects and reason of enacting this Bill is to repeal the Legal Practitioners Decree Cap. 28 and Notaries Public Cap. 29 and enact the Advocate Act of Zanzibar to govern and administer matters relating to Wakils, Vakils and Notaries Public. this bill among other things contained herein is the establishment of the Bar Council which shall be responsible to deal with the admission and enrolment of persons as Advocates in Zanzibar, to provide the criteria for a person seeking to become an Advocate, to ensure that all advocates who practice law or provide legal services in Zanzibar meet the standards of learning, professional ethics and conduct that are appropriate for the legal services they provide for interest of justice in Zanzibar.

This Bill divided into eight Parts:

Part One: starts from section 1 - 3 which includes the preliminary provisions which include short title and commencement; and interpretation of words.

Part Two: starts from section 4 - 13 which includes the establishment of the Bar Council of Zanzibar. It explains functions and powers of the Bar Council, procedures to the meeting of the Bar Council, powers of the Bar Council and tenure of the Chairperson.

Part Three: starts from section 14 - 25 which includes the administration, admission and enrolment of Advocates or Vakils, application for admission as a vakil, application for permission by foreign advocates for a case, referring of application to bar Council by the Chief Justice, bar examination, admission as advocate or vakil, permission for foreign advocate, the roll, duty of Registrar, rights of advocate or vakil, authority to refer legal services and removal of advocate or vakil from the roll.

Part Four: starts from section 26 - 28 which includes the matter relating to issuing of the practicing certificate, refusal of practicing certificate, and clients accounts.

Part Five: starts from section 29 - 35 which includes remuneration of an advocate or vakil, it examines the establishment of the remuneration Advisory Committee., functions of remuneration Advisory Committee, expenses of remuneration advisory committee, remuneration rules publication, security from client for an Advocate or Vakils remuneration, death, incapacity or change, of an advocate or vakil, limitation of proceedings.

Part Six: starts from section 36 - 40 which includes the matter relating to Notaries Public. It examines admission of Notaries Public, enrolment and granting a Notary Public certificate, penalty for unlawful practicing, Jurats to state place and date, judge or Regional Magistrate to have certain powers of notaries public.

Part Seven: starts from section 41 - 55 which includes the matter relating to ethics and discipline of Advocates and Vakils. It examines the ethics and disciplinary committee, meetings of the ethics and disciplinary committee, Quorum, meeting procedure, expenses of the disciplinary powers of the court, complains against an advocate or vakil, powers of the ethics and disciplinary committee, report and action on the complainant, order of the ethics and disciplinary committee to be received in evidence, application for judicial review, representation before the High Court, restoration to the roll, professional misconduct and power of suspension.

Part Eight: is the miscellaneous provisions which starts from section 56 - 64 and includes the advocates and vakils to be officers of the court, precedence, endorsement of documents, application to be supported by affidavit, jurisdiction to try offences, general penalty, agreement exempting an advocate or vakil from negligence to be void, rules by the chief justice and repeal and saving.

ZANZIBAR
06th November, 2019

(KHAMIS JUMA MWALIM)
**MINISTER FOR CONSTITUTION
AND LEGAL AFFAIRS
ZANZIBAR**

