

GOVERNMENT NOTICE NO. 109 published on 1/2/2019

THE LEGAL AID ACT,
(No.1 of 2017)

RULES

(Made under section 33(3))

THE LEGAL AID (REMUNERATION OF ADVOCATES) RULES, 2019

ARRANGEMENT OF RULES

PART I
PRELIMINARY PROVISIONS

1. Citation.
2. Interpretation.

PART II
PROVISION OF LEGAL AID

3. Order certifying legal aid.
4. List of advocates and legal aid providers.
5. Remuneration of advocate.
6. Registrar to prepare summary of remuneration.
7. Expenditure incurred by advocate.

GOVERNMENT NOTICE NO. 109 published on 1/2/2019

THE LEGAL AID ACT,
(No.1 of 2017)

—
RULES
—

(Made under section 33(3))

THE LEGAL AID (REMUNERATION OF ADVOCATES) RULES, 2019

PART I
PRELIMINARY PROVISIONS

- | | |
|------------------------------|---|
| Citation | 1. These Rules may be cited as the Legal Aid (Remuneration of Advocates) Rules, 2019. |
| Interpretation | 2. In these Rules unless the context otherwise requires- |
| Act No.1 of 2017
Cap. 341 | “Act” means the Legal Aid Act; |
| | “advocate” has the meaning ascribed to it under the Advocates Act; |
| | “aided person” means a person who has been granted legal aid under the Act; |
| Act No.
4 of 2011 | “Chief Court Administrator” has the meaning ascribed to it under the Judiciary Administration Act and any other person acting in that capacity; |
| | “determining authority” means- |
| | (a) in the case of proceedings before the High Court, the presiding judge; or |
| | (b) in the case of proceedings before a district court, Juvenile Court or a court of a Resident Magistrate, the presiding magistrate; |
| | “indigent person” has the meaning ascribed to it under section 3 of the Act; |

“legal aid provider” means an institution registered under section 9 of the Act;

“legal aid services” has the meaning ascribed to it under section 3 of the Act;

“Registrar” means the Registrar of the High Court, and includes a Deputy Registrar or acting Deputy Registrar.

PART II PROVISION OF LEGAL AID

Order certifying
legal aid

3.-(1) Pursuant to the provisions of section 33 of the Act, the presiding judge or magistrate, after inquiry and upon being satisfied that the accused person is in need of legal aid, shall give an order to that effect.

(2) Upon receipt of the order, the Registrar or magistrate in charge shall assign to the accused person a legal aid provider in the LA Form No.1 set out in the First Schedule to these Rules.

List of advocates
and legal aid
providers

4. The Registrar and magistrate in charge shall keep and maintain a comprehensive list of advocates and legal aid providers offering legal aid in their respective areas.

Remuneration of
advocate

5.-(1) Subject to section 33(3) of the Act, remuneration of an advocate assigned to represent an accused person in terms of subsections (1) and (2) of section 33 of the Act shall be as follows-

- (a) daily subsistence allowance at the rate payable to a judge, when an advocate is assigned to provide legal services to a person outside the geographical boundaries of the district, township, municipality or city in which he resides;
- (b) reimbursement of transport costs as shall be determined by the Registrar or the magistrate in charge in accordance with the Second Schedule

to these Rules;

(c) upon determination of the case involving an aided person on merit, the assigned advocate shall be entitled to a sum-

(i) in the case of the High Court, not exceeding five hundred thousand shillings; or

(ii) in the case of a court of a Resident Magistrate or district court, not exceeding one hundred thousand shillings:

Provided that, in the case of proceedings before the High Court, the Judge hearing the proceeding and, in the case of proceedings before any other court, the Chief Justice, or the Principal Judge may for special reasons, regard being had to the complexity of the proceedings or the duration thereof, authorize the payment of a higher remuneration not exceeding one million shillings in respect of each proceeding, or in respect of each accused person, as the case may be.

(2) The presiding judge or magistrate shall endorse the final determination of the case on merit or otherwise.

(3) Where the case is determined other than on merit, the presiding judge or magistrate shall certify an amount payable to an advocate.

Registrar to
prepare summary
of remuneration

6.-(1) Upon final determination of a case, the Registrar or magistrate in charge shall, as soon as practicable but in any event not later than thirty days from the date of certification, prepare a summary of the remuneration due to the advocate in the LA Form No. 2 set out in the First Schedule to these Rules and submit it to the Chief Court Administrator for payment.

(2) The Chief Court Administrator shall, as soon as practicable, after receiving the Form referred to under sub rule (1), remit the payment to a bank account provided by the assigned advocate.

Expenditure
incurred by
advocate

7.-(1) An advocate who incurs special expenditure referred to in section 34 of the Act shall submit his claim to the Chief Court Administrator through LA Form No. 3 set out in the First Schedule to these Rules.

(2) The Chief Court Administrator shall, within fourteen days from the date of receiving the claim, determine whether the advocate is entitled to the sum claimed.

(3) Where the Chief Court Administrator is satisfied that the advocate has reasonably incurred the special expenditure claimed or portion of it, he shall certify the special expenditure in the LA Form No. 4 set out in the First Schedule to these Rules and effect payment into the bank account provided by the assigned advocate as soon as practicable.

Legal Aid (Remuneration of Advocates)

GN. No. 109 (Contd)

FIRST SCHEDULE

LA FORM No.1

LEGAL AID CERTIFICATE

(Made under rule 3(2))

This is to certify that (*name*) who stands charged with an offence/offences or is appearing in a criminal proceeding in respect of Criminal Case/Sessions Case/Appeal/Application No.....before the High Court/Resident Magistrate's Court/ District Court* of at..... has been assigned, a legal aid provider for the purpose of preparation and conduct of his case.

DATED this.....day of20.....

Name:

Signature.....

Judge/Magistrate*

*Delete whichever is not applicable.

Legal Aid (Remuneration of Advocates)

GN. No. 109 (Contd)

LA FORM No.2

LEGAL AID PAYMENT FORM

(Made under rule 6 (1))

To Chief Court Administrator.....(*indicate which zone/registry*)

This is to certify that advocate.....from....., legal aid provider, has provided legal aid to(the aided person) in respect of Criminal Case/Sessions Case/Appeal/Application* No.....before the High Court/Resident Magistrate's Court/District Court* of..... at

The advocate is entitled to the following payments:

1. DSA at the rate of TZS..... per day times.....(*number of days spent in conducting the case*) Total TZS.....
2. Transport costs TZS.....
3. Amount as determined by presiding judge/magistrate in terms of rule 5(2) or 5(3) TZS.....

Total under this Part.....

Less amount paid in advance (if any).....

Amount due.....

I approve that the above information is true and that the advocate is entitled to the above said payment.

Dated.....

Signature.....

Registrar/magistrate in charge.

*Delete whichever is not applicable.

Legal Aid (Remuneration of Advocates)

GN. No. 109 (Contd)

LA
FORM No.3

CLAIM FOR SPECIAL EXPENSES

(Made under rule 7(1))

This is to certify that I, (name of the advocate *)

was assigned to provide legal aid to who
was granted legal aid in respect of the Criminal Case/Sessions Case/Appeal/Application* No
..... which was before the High Court/Resident
Magistrate's /District Court* of
..... at.....

I,....., advocate, of....., legal aid provider, who was assigned
Criminal Case/Sessions Case/Appeal/Application* No before the High Court/Resident
Magistrate's /District Court* of at do hereby declare
that I provided legal aid services to....., and in the course of rendering the
said services I incurred special expenses (excluding DSA and Transport) as follows:

Summary:

S/N	PARTICULARS OF CLAIM <i>(Special Expenses)</i>	AMOUNT
1	(i)..... (ii)..... (iii)..... (iv).....	Total amount of claim <i>(words)</i> <i>(Number)</i>
2.	Amount approved by Chief Court Administrator	
3.	Amount refused by Chief Court Administrator	
3.	<i>Amount claimed and reasons thereof:</i>	

Legal Aid (Remuneration of Advocates)

GN. No. 109 (Contd)

	
	
	
	
	

I declare that, all particulars stated herein above are true to the best of my own knowledge.

Name.....

Signature.....

**Delete whichever is not applicable.*

Legal Aid (Remuneration of Advocates)

GN. No. 109 (Contd)

LA FORM NO. 4

CERTIFICATE OF SPECIAL EXPENSES

(Made under rule 7(3))

(To be completed by the Chief Court Administrator only).

That the advocate is further entitled to the following extra payment due to the special expenses he has incurred in the course of provision of legal aid services:

S/N	PARTICULARS OF CLAIM (Special Expenses)	AMOUNT APPROVED
1	(i).....	Total Amount of Claim
		
	(ii).....	
		
	(iii).....	

Total under this Part.....

Approved this.....day of 20....

Signature

Legal Aid (Remuneration of Advocates)

GN. No. 109 (Contd)

SECOND SCHEDULE

(Made under rule 5(1)(b))

REIMBURSEMENT OF TRANSPORT COSTS

S/N	TRANSPORT BY	CLASS
1	Air	Economy Class
2	Sea	First Class
3	Train	First Class
4	Road	Luxury Class
5	In case of private transport	The advocate shall be entitled to mileage allowance at the applicable government rate

Dar es Salaam,
22nd January, 2019

IBRAHIM HAMIS JUMA
Chief Justice