

A KNOWLEDGE HUB PUBLICATION

THE ADVOCATES ACT

[Cap. 341 R.E. 2023]



UPHOLDING RULE OF LAW OF IN THE COMMONWEALTH
TRADITION

LYSON LAW GROUP

A Knowledge Hub Publication

This summary will be eyeing “The Advocates Act [Cap. 341 R.E. 2023]”

1.0. Introduction

Lawyers, as officers of the court within the Commonwealth tradition, play a vital and dignified role in upholding the rule of law and ensuring that justice remains both accessible and accountable. They stand as the living link between the law and the people, translating complex legal principles into the language of fairness, equity, and rights. Beyond advocacy, lawyers safeguard the integrity of judicial processes ensuring that every voice, however small, finds lawful expression before the courts. Their duty extends not merely to their clients, but to the court itself and to the broader cause of justice, truth, and public confidence in the legal system. By advising, representing, and at times restraining the excesses of power, they fortify democracy, protect liberties, and ensure that the law remains a living instrument of order and justice. In essence, Commonwealth lawyers embody the noble calling of service guided by ethics, discipline, and an unwavering commitment to the administration of justice.

This Article summarizes the coverage of the Advocates Act [Cap. 341] in terms of what it aims to do, how it is arranged, what parts of the statute have been amended or consolidated, and notable cases where courts have deliberated on the Act.

The Act bears the following long title,

“An Act to make provision for regulating the engagement and practice of advocates, for the admission and enrolment of advocates, for establishment of the Roll of Advocates and for matters connected therewith and incidental thereto.”

1.1. Original Aim of Enactment

As the long title states the purpose was plainly to provide the law relating to advocates and matters connected therewith among other things, to regulate criteria for admission of advocates, practice, discipline, remuneration and privileges of advocates in Tanzania.

1.2. Arrangement and Coverage of the Act

The current revised edition shows the classic text of the statute as follows:

Part I – Preliminary provisions which are essentially definitions; and application of the statute.

Part II – The Roll and Admission (roll of advocates; qualifications; admission procedures)

Part III – Right of Audience & Precedence (who may appear; seniority/precedence)

Part IV – Disciplinary Committee & Proceedings (establishment; powers; procedure)

Part V – Practicing Certificates (issue, renewal, endorsement; offences for practicing while uncertificated)

Part VI – Privileges & Duties of Advocates (lien, confidentiality, etc.)

Part VII – Remuneration & Taxation of Costs (agreements; remuneration/taxation rules; charging orders)

Part VIII – Special Provisions as to Certain Proceedings.

Part IX – Miscellaneous (offences by unqualified persons; rules; repeals & savings).

1.3. Consolidation history and Present Text of the Legislation

Cap. 341, Revised Edition (R.E.) 2019 published by the Government Printer (Office of the Solicitor-General), consolidating prior amendments up to 2019. Earlier consolidations include R.E. 2002, 2019 (still widely cited), but R.E. 2023 is now the working baseline.

1.4. Recent Amendments Since 2019

Legal Sector Laws (Miscellaneous Amendments) Act, 2023 (No. 11 of 2023) amended Part II of the Advocates Act. **s.4A:** replaced the “State Attorney in-charge” with “Regional State Attorney.” Instead **s.8(1)(a):** tightens entry route into the legal practice requiring LL. B (accredited) individuals only plus Post-Graduate Diploma in Legal Practice from the Law School of Tanzania. **s.41(2) & s.42:** stiffer penalties for unqualified practice/holding out (fine bands and custodial terms raised).

Written Laws (Miscellaneous Amendments) (No. 2) Act, 2025 also amended Part II (Advocates Act). **s.4** specifically addressed the composition of the Advocates Committee by adding the Executive Secretary of the Law Reform Commission of Tanzania to the list of members (in several subsections).

1.4.1. Relevant Subsidiary Legislations

- a. *Advocates’ Remuneration and Taxation of Costs Rules, G.N. No. 515 of 1991* (still cited for taxation mechanics).
- b. *Advocates (Professional Conduct and Etiquette) Regulations, 2018* (discipline/ethics code).
- c. *Advocates Remuneration Order, 2015 (G.N. No. 264 of 2015)* updated remuneration scales referenced in recent practice materials.

2.0. Repeals and Savings and Judicial Articulation of the Act

The Act’s **Part IX** contains the repeals and savings clause (savings of prior acts and formal repeal of earlier instruments governing advocates). The current revised text bundles those savings; practitioners treat Cap. 341 as the live code with the above amendments layered in.

These are representative, citable decisions showing how the Act—especially unqualified practice (s.41) and practicing-certificate issues are enforced:

- a. *Standard Chartered Bank (T) Ltd v Best Travel Co. Ltd & 2 Others, Civil Application No. 15 of 2012 (CAT, 23 Apr 2020):* the Court addressed documents drawn/steps taken by unqualified/uncertificated persons, reiterating the strict approach under s.41.
- b. *Edson Osward Mbogoro v Dr. Emmanuel John Nchimbi & Another (Civil Appeal No. 140 of 2006).* The Court of Appeal held that where an advocate

practices without a valid practicing certificate—thus rendering him unqualified under the Advocates Act the documents he prepares, and files (including pleadings or submissions) are legally invalid and must be expunged from the court record.

3.0. Practice Checklist for Advocates

- I. Legality of Representation has witnessed the Court of Appeal often stress that only an advocate with a valid practicing certificate may appear and represent parties in court. If an advocate without one act, proceedings can be declared defective.
- II. Authority to Act – The likelihood of whether pleadings, submissions, or representations made by an advocate who does not hold a current practicing certificate were valid. Tanzanian courts have repeatedly held that lacking a practicing certificate means the advocate is not “duly qualified,” and thus has no *locus standi* to represent clients.
- III. Enforcement of the Advocates Act – Section 39 of the Advocates Act (Cap. 341), which provides that to practice law an advocate must be on the Roll, hold a practicing certificate, and have a business licence. Several judgments reinforce this statutory requirement.
- IV. Client’s Rights. The court may also consider whether a litigant suffers prejudice if their lawyer is later found to have no practicing certificate. In earlier cases for instance in Tanzania *Cigarette Co. Ltd v. Tanzania Revenue Authority*, the Court has had to decide whether such defects vitiate the entire proceedings.
- V. Professional Misconduct. It underscores that appearing without a practicing certificate is not just an administrative lapse but professional misconduct sometimes leading to sanctions from the Tanganyika Law Society.

4.0. Ramifications for Practicing as an Advocate without qualifications

The consequences are severe and include:

I. Criminal Sanction

It is a **criminal offence** to practice without being qualified.

A person found guilty may face a fine **or even** imprisonment, depending on the seriousness of the case.

II. Striking Out of Pleadings

If a case is filed or argued by an unqualified person, the court will strike out all pleadings and documents prepared by that person.

This means the whole case could collapse simply because it was handled by someone without the right qualifications.

III. Contempt of Court Risk

Pretending to be an advocate can also be treated as contempt of court, since it amounts to misleading the court and the client.

IV. Civil Liability

The fake advocate can also be sued by clients for losses suffered due to their unlawful conduct (for example, if the client loses land or money because the case was struck out).

V. Professional Consequences

If the person is actually a law graduate or someone in the legal system but not yet admitted, they may be barred from ever being admitted as an advocate because of dishonesty.

5.0. Conclusion

Tanzanian courts routinely expunge documents drawn or signed by “unqualified persons” and may strike out the matter altogether an approach traceable to s.41 (as strengthened in 2023) and reinforced across recent Court of Appeal and High Court decisions. Counsel should verify in-force practicing certificates and business licenses before signing any pleading.

REFERENCES

Advocates Remuneration Order, 2015 (G.N. No. 264 of 2015)

Advocates (Professional Conduct and Etiquette) Regulations, 2018 (discipline/ethics code).

Edson Oswald Mbogoro v Dr. Emmanuel John Nchimbi & Another (Civil Appeal No. 140 of The Advocates Act [Cap. 341 R.E. 2023]

Standard Chartered Bank (T) Ltd v Best Travel Co. Ltd & 2 Others, Civil Application No. 15 of 2012 (CAT, 23 Apr 2020)

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