

1933

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KENYA

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CO 533/437

REVISION OF RECORDS SECTION

This file should be returned to Queen Street when no longer required

City Ordinance

Previous

18024/32.

Fig 297
Room 309
R 297

4/8
4/16

Subsequent

23099/34.

Fig 297	26/6
Room 309	26/6
Mc Neilson	27
Blackburn	1/7
Dr. King	2
Home	27
11. Floor	10
Room 111	27
297	27
297	1/7
Library Card	27
297	27
Resident Records	

1
/ authenticated
+ 11 printed
Copies to
Library

Governor Burma 334 — 27. May 1933
The 2 authenticated + 12 printed copies
of the Native Authority (Amend) Order 1933
No 19, + furnishes explanation thereof.

This refers to ^{Chapter} Section 129
of the Revised Edition as
Amended by the Revised Edition
of the Laws (Operation) Ordinance
1926. ? This word
Section 1 need not contain
a reference to the Revised
Edition of the Laws (Operation)
Ordinance 1926.

Section 2 seems unobjectionable.
Note the suggestion in paragraph 2
of the Report as to the
desirability of amending the
Ordinance later with regard
to the status of Local Native
Councils.

Subject to legal objections
? Sanction G. S.

C.A. Grossmiller
26/7/33.

Apart from any legal points, there is an
important question of principle which should
not, I think, be overlooked.

The declared object of the Henney
Report in recent years has been

To extend the activities and foster the responsibility of Local Native Councils.

The Joint Committee devoted much attention to this question; and S.F.S. found himself in substantial agreement with their recommendation. Lord Mayo advised that they shd. be allowed to develop on their own lines (§ 88) and that certain increased responsibilities should gradually be devolved upon them (§ 91).

By the present Ordinance Govt is given the power of overriding the wishes and interfering with the proper functions of the L.N. Councils. No doubt, such interference is to the immediate interest of the Council concerned; but it is a precept of any system of education that the pupil learn most from his own mistakes.

It may reasonably be suggested that interference of the type contemplated under the Ord. would be a retrograde step, calculated to diminish rather than to develop the Councils' sense of financial responsibility.

In sanctioning the Ord. something might be said on the above lines, and the O.A.C. might be asked to ensure that its powers are invoked only on the rarest occasions. It might further be suggested that the real remedy should be sought on the lines foreshadowed in the second sub-para of para. 2.

J.A. Dwyer
3/7/32

I am not quite convinced that "A" of Mr. Freeston's minute is a fair estimate of the position. As I understand the Governor's despatch and the legal report, this measure has largely become necessary in the interests of the members of the general public who have dealings with Local Native Councils. With the law as it stood, a state of affairs which amounted almost to a scandal could, and in some cases did, occur, inasmuch as a Local Native Council either could not lawfully - or would not, because of its recalcitrance - honour its lawful obligations. It seems to me that the primary purpose of the Ordinance is rather to deal with the position which arises when a Local Native Council does not exercise its functions properly.

Whether the present amending Ordinance is the best solution of the difficulty which has arisen is a matter of some ~~complexity~~ ^{complexity}. Arising out of the statements made in the second paragraph of the Governor's despatch, it is as well to explain that the legal consequence of the Local Native Councils not being

See paras. 78-80 and 102-5 of this Report

(p. 53 of Cont. 4144)

A

The paper was not to pay the bills of the Councils - I

being corporate bodies is that anyone wishing to take the Council to Court is obliged to proceed against all the members of the Council severally and jointly as co-defendants. Having got judgment, the plaintiff would only be entitled to proceed in execution of his decree against the property of the individual defendants, and the Council funds, as such, could not strictly be got at. Not only is it cumbersome to have to proceed against a number of individuals, but it is expensive, and exposes the litigant to innumerable delays.

Further, even if a Council is desirous of voting money from its funds in satisfaction of a judgment obtained against the several members of the Council, it would not be lawful for the Council to do so unless the amount which formed the subject matter of the action was due in respect of one or other of the items enumerated in section 24(1). Indeed, I think it is open to argument that the money could not be voted in any event, inasmuch as the original cause of action is merged in the judgment of the Court, and that any resolution to satisfy it would be voting money in satisfaction of a decree, and not for one of the purposes enumerated in the section referred to.

The amending Ordinance, therefore, remedies some of the above difficulties, and to this extent it may be said to be to the good.

The second category of cases to which the Governor refers in paragraph 3 of his despatch presents more difficulty, but the amending Ordinance says that the Governor-in-Council must be satisfied that the money is due and payable,

and

and in arriving at such conclusion, we may be certain that the advice of the Law Officers of the Crown would be followed. I think, therefore, that in practice there would be no danger of the proper functions of the Council being usurped, as Mr. Freeston fears.

On general legal grounds I agree that it is desirable to make these Councils bodies corporate. The main objection to this arises in those instances to which the Governor refers, where Councils are definitely litigious. If they are made bodies corporate, they will then have a free hand to go to law and pile up costs for which their funds will be liable, and the individual members will have no pecuniary responsibility; on this account the Governor may well be justified in not hurrying the step.

A. Lawton

6.7.33.

Mr. Home

the thing puzzles me. Do you very rightly remark at present a local council can be sued as such, only each individual jointly & severally. I suppose the law is that the council is not liable. If any one needs from § 18 of the Ordinance which provides that council discharges its duties of business (and are not local councils) can be sued jointly & severally.

The whole law of local bodies is in its amending Ordinance (Cap VIII of 1921) and there is nothing at all in it about suing or being sued. The thing is, how can cases have arisen where a decree for payment has been made by a Court of Law against a local body council - one part of the despatch? The Council is an incorporated body therefore it has no body to be sued, how can a judgment hold? In practice of course it could be paid out.

This may be all removed, of course, but can you

resolves my puzzlement.

The reference in the preamble to "Chapter 129 of the Revised Edition" is odd as it doesn't say revised edition of what. It might mean the Revised Version of the Bible. But the form is in common use in Kenya & we need hardly query it.

J.L.O. Hand
7-7-53

M. Flood.

I was also a little puzzled - the expression used in para 1. of the despatch must be a loose one. If a writ were filed agt the individual members of the Council it would probably be framed agt A, B, C & D "as members of the X local Native Council" & may be forgiven for referring to this as being "agt a local native council". Another possible explanation is that someone may have filed an action agt the "L.N.C" simpliciter & judge may have been given by default of the defendants appearance. Since the defendants did not appear there was no one to take the point as to the ^{status of} corporate entity of the Council & in civil matters, the court would not be concerned to take the point of its own motion. If

The expression "local edition" appears to have no statutory authority but I agree we need not query it.
A.L.S.
87

however, the judgment creditor in such a case were to try to execute, the fatal defect would at once come into issue so that the L.N.C. could get away with it as the Court points out.

2. (over then)
8/7.

I think the first explanation is more likely to be right. Anyhow I agree that the defendants - all to be sued -

Group of defendants etc

11/2/53

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To Govt S12 (1 amended) & p 10 JUN 1953

Precedents for Government Gazette Notice 225
Bill to amend Ordinance.

Part 2
C.A. Committee
11/2/53
at once

and

Colony and Protectorate of Kenya

GOVERNMENT NOTICE No. 223

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

H. E. BADER,
Acting Clerk of the Legislative Council

A Bill to Amend the Native Authority Ordinance.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "the Native Authority (Amendment) Ordinance, 1933," and shall be read as one with the Native Authority Ordinance (Chapter 129 of the Revised Edition), hereinafter referred to as "the Principal Ordinance."

2. Section 30 of the Principal Ordinance, as amended by section 7 of the Native Authority (Amendment) Ordinance, 1928, is hereby further amended by adding the following proviso at the end of sub-section (b) thereof:—

Amendment of
section 30 of
the Principal
Ordinance.
No. 16 of 1928

Provided further that if the Governor in Council is satisfied that a decree for the payment of money has been made by a competent court against a local native council, or that for other good and sufficient reason money is due and payable from a local native council and such local native council refuses or fails to make due payment, he may order that such payment be made from such local native fund, and may further order that any rate necessary to produce the sum required be levied on and collected from the inhabitants of the area in which such local native council is established."

OBJECTS AND REASONS

There is no legal provision for meeting the case of a local native council refusing to pay a sum lawfully due. A recent case has shown the need for such provision.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

GOVERNMENT NOTICE No. 224

DEPARTURES

Name	Rank	On leave or termination of appointment	Date of Departure
H. G. Watkins	Clerk, Registrar General's Dept.	Leave	22nd March, 1933
B. Markendale	Education Officer	do	do
Capt. R. Whitlat, R.C.	Assistant Game Warden	do	do
T. L. McClelland, R.C.	Plant Inspector, Agricultural Dept.	do	do
A. Roberts	Leading Artisan, Education Dept.	do	do
F. C. Bradish	Clerk & Storekeeper, Kenya Defence Force	do	do
Lieut. M. L. Vernon	Subaltern, S. & T. Corps, Military	do	do
A. P. Ling	Chief Sanitary Inspector	do	do
H. Hubble	Clerk, Education Department	do	do
W. H. Smith	Auditor	do	do
J. Ogg	Clerk, Postal Department	do	do
C. T. Davenport	District Officer	do	do
Mrs. E. Southey	Education Officer	Leave pending retirement	do
J. T. Thornham	Inspector, Class II, K. U. R. & H.	Leave	do
Miss F. Fuchs	Clerk, Class IV, K. U. R. & H.	do	do
H. G. A. McDonald	Survey Assistant, K. U. R. & H.	Termination	do
C. E. Lee	Junior Clerk, K. U. R. & H.	Leave	do
W. W. Plenderleith	Ticket Examiner, K. U. R. & H.	Termination	do
F. A. de Lange	Driver, K. U. R. & H.	Leave	do
E. H. Jones	Driver, K. U. R. & H.	do	do

APPOINTMENTS.

SIR HOWARD GRAHAM ELPHINSTONE, BART., to be District Commissioner, Kilifi District, Coast Province, with effect from the 16th March, 1933.

PHILIP FORSTER FORSTER, to be Native Affairs Officer, Mombasa District, Coast Province, with effect from the 21st March, 1933.

KENYA AND UGANDA RAILWAYS AND HARBOURS.

ALEXANDER ABERDEEN CONN, Engineer-in-Charge, Marine, to be Senior Marine Engineer, with Headquarters at Kisumu, with effect from 1st January, 1933.

RONALD McEARLANE, Chief Engineer, Marine, to be Engineer-in-Charge, with Headquarters at Namasagali, with effect from 11th January, 1933.

GEORGE FRANK FISHER, Second Engineer, Marine, to be Chief Engineer, Marine, with effect from 11th January, 1933.

HERRERT WILLIAM COX, Port Accountant, to be Senior Assistant Accountant, with effect from 1st January, 1933.

REGINALD LOFTUS BRIANS, Deputy Stores Superintendent, to be Assistant Stores Superintendent, with effect from 1st January, 1933.

MAGISTERIAL WARRANT.

PHILIP FORSTER FORSTER, to be a Magistrate of the Second Class, with power to hold a Subordinate Court of the Second Class in the Mombasa District, whilst holding his present appointment as Native Affairs Officer, Mombasa District, Coast Province.

C. W. HAYES-SADLER,
for Colonial Secretary.

KENYA.

No. 554.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED

23 JUN 1933

C. O. REGY

3/01 MAY, 1933.

Sir,

I have the honour to transmit two authenticated and twelve unauthenticated copies of an Ordinance intituled "the Native Authority (Amendment) Ordinance, 1933" together with the Legal Report thereon.

2. The object of the Ordinance is to empower Government to compel Local Native Councils in certain cases to pay their just debts. Such cases fall into two categories. The first category is comprised of cases which have been the subject of litigation and in respect of which a decree for payment of money has been made by a Court of Law against a Local Native Council. Before the enactment of the amending Ordinance a Council was under no obligation to pay a judgment debt and payment could not be made unless the Council voted the necessary money by Resolution.

I am considering the desirability of so amending the Ordinance at a later date as to constitute all Local Native Councils bodies corporate capable in law of suing and being sued, on the lines of Section 7 of the Local Government (District Councils) Ordinance, 1928.

5. To the second category belong claims which have not come into Court but in respect of which it is manifest that the Council should pay.

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.1.

- Such -

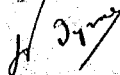
Amend (2)

Such claims may arise from a variety of causes such as damage by transport oxen or other property of a Council, mistakes made in good faith by servants of the Council, or disputes as to the specific performance of contracts. In such cases the advice of the Attorney General is sought and it is to the advantage of the Native inhabitants of the area that his advice should be accepted rather than that their money should be dissipated in futile litigation. One case has already occurred in which the Council concerned has rejected the Attorney-General's advice and is apparently prepared to lose a series of expensive law suits rather than submit.

I have the honour to be,

Sir,

Your most obedient humble servant,

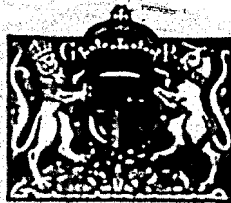


BRIGADIER-GENERAL.

GOVERNOR.

No. XIX.

1933



Colony and Protectorate of Kenya.

IN THE TWENTY-THIRD YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
JOSEPH ALOYSIUS BYRNE, K.O.M.G., K.B.E., O.B.
Governor

Assented to in His Majesty's
name this 1st day of May,
1933.

J. BYRNE

Governor.

**AN ORDINANCE TO AMEND THE NATIVE
AUTHORITY ORDINANCE**

ORDINANCE No. XIX of 1933

An Ordinance to Amend the Native Authority Ordinance.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "the Native Authority (Amendment) Ordinance, 1933," and shall be read as one with the Native Authority Ordinance (Chapter 129 of the Revised Edition), hereinafter referred to as "the Principal Ordinance."

short title

2. Section 30 of the Principal Ordinance, as amended by section 7 of the Native Authority (Amendment) Ordinance, 1935, is hereby further amended by adding the following proviso at the end of sub-section (1) thereof:—

Amendment of section 30 of the Principal Ordinance. No. 18 of 1935.

"Provided further that if the Governor in Council is satisfied that a decree for the payment of money has been made by a competent court against a local native council, or that for other good and sufficient reason money is due and payable from a local native council and such local native council refuses or fails to make due payment, he may order that such payment be made from such local native fund, and may further order that any rate necessary to produce the sum required be levied on and collected from the inhabitants of the area in which such local native council is established."

Passed in the Legislative Council the third day of May, in the year of Our Lord one thousand nine hundred and thirty-three.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

H. E. BADER

Acting Clerk of the Legislative Council.