

1937

33172

CO 533/482

33172

KENYA

LOCAL GOVERNMENT (MUNICIPALITIES) LEGISLATION.

Previous

1936

Mr. Boyd	14/5
Leon De la Warr	21/5
S. J. S.	21/5
Mr. Flood	

Subsequent

1938

Leon De la Warr	21/5
S. J. S.	21/5
298	1/6
291	7/5
309	8/5

R. 297

29/1/37

Mr. P. A. M.

R. 309

4/2

Mr. Davis

Mr. Flood

1/2

247

Mr. Flood

11

S. C. Bostrom

11/2

S. J. S.

11/2

S. J. S.

14/2

Mr. G. M. P.

17/2

R. 299

16/2

297

4/5/37

~~R. 299~~

11/5

Mr. Flood

13/5

Mr. Flood

13

S. C. Bostrom

14/5

S. J. S.

13/5

TITLE.

Drafts of two Proclamations which it is proposed to issue under Section 13(1) of the Ordinance and comments thereon.

According to paragraph 2 of the despatch, the sole effect of these Proclamations will be to provide that of the 3 Indian members of the Municipal Board of Nakuru & Eldoret, who are at present nominated members, two shall in future be elected and one nominated. The actual composition of the Boards will not be changed.

There seems no reason to anticipate any objections on the part of Indians on this point.

? The issue of the Proclamations may be approved.

The proposed Draft rules for the elections & the qualifications of voters and candidates will follow, mutatis mutandis, the European Councillors Election Rules 1929, and the former works to refer the Rules to the S.P.S. after publication instead of in Draft form.

The only point in this connection

W.H.S.

Which calls for special
consideration as to the
proper qualifications of
Indian voters.

of Rule 4 (A) (b) (c) etc.
of the European Councils
Election Rules 1929.

It will perhaps be sufficient
if we ask the Governor to
ensure that the rules, relating
to the proper qualifications
of Indian voters are framed
with due regard to the
(financial) position of the
Indian population of Malabar
and Eldoret.

C. J. Gammell
4/2/37

I also say that in the
case of the Rules without submission
of a Spt. unless it is proposed that they
be different from those for European
voters, in which case the Spt. will be
glad to be informed of the proposals on
this point.

J. J. Pannin
4/2

I expect the qualifications will be different. They will
have to be.

So I would reply as Mr Gammell suggests

and send a copy of the rules to the P.O. to ensure that
that Kenya can be placed in its substance

V. S. W. Hunt
4/18/37

Mr. J. Sheehy

Sent on as a matter of political
interest. A dozen years ago the
grant of election to the Councils of the
Governor was being reviewed at that
for a common roll, but I do
not think that will happen now.
As to the best part of the proposal
there is some advantage to be
taken the rules be open to
local comment before they
are sent home.

As proposed?

4/2/37

4/11/37

Clearly the rules should be open
to local comment before they are
sent home. But might not we
to ask whether the grant of "election"
at Malabar will lead to
political repercussions in Malabar
and other municipalities. I would
not send to the Indian office until
the whole thing is more definite.

4/16/37

AIR MAIL

To Kenya - KSS - (1 ansd) - 15/2/37

3. A GOV'S DEPUTY..... 201..... 5.4.37.
(2 ansd.) No political repercussions need be expected in Nairobi and Mombasa as a result of the partial appln. of the elective principle in Nakuru and Eldoret.

It will be seen that the elective principle is being applied to the Mombasa Municipal Board & the Nairobi Municipal Council.

In the case of Mombasa, Sir Joseph Byrne agrees with the advice of Executive Council, agreed that all 7 of the Indian members should be elected instead of nominated as hitherto. But for the Nairobi Munic. Cill it has only been agreed so far that 5 of the 7 Indian members should be elected.

Nairobi is being treated the same as Nakuru & Eldoret, in that a proportion of the Indian members are to be elected.

? Put by
A. G. Smith
11/5/37

Except for the outstanding part at Nairobi this was all seems plain & simple. I might have said again of 1, 2 & 3. @ 20. 27

J. G. Brown
11/5

yes. in fact they are (at election for Indians in Nairobi & Mombasa but can't agree yet as to how many). This would clear in my first despatch.

J. G. Brown
13.

The S. M. will work better. They are going cautiously, and I think that the S. M. was not to plunge into an election at Nairobi. It would be better to be sure what the Government is doing, and what they think about it.

13. 10. 37.

? to J. G. as per. P. S. M. 11/5/37

11/5/37

11/5/37

4 To I.O. (1, 2, 3) @ 11. 1. 6 37

5. Extract from Gazette No 48 of 12.10.37.

These rules are of an administrative nature and do not appear to call for comment.

It might be noted that the property qualification is ~~£~~¹² annual value and the earnings qualification £5 per annum (—see para 4 (3) & and para 4 (3) c (iii)), whereas in the last para of the draft at No 7³ it had been proposed to make these figures £8 and £7.10.0 respectively.

? Put by

Clough White 8/2

See to see inside.

you may

J. B. B. 8/2.

(H. M.)

L. J. B. 9.2

Extract from *Kerala Gazette* No. 48 of 12-10-37

GOVERNMENT NOTICE No. 775

His Excellency the Governor in Council has approved of the following draft Rules being published for information and criticism.

R. W. BAKER-BEALL,
Clerk to the Executive Council.

THE LOCAL GOVERNMENT (MUNICIPALITIES) ORDINANCE, 1928

RULES

IN EXERCISE of the powers conferred upon him by section 15 of the Local Government (Municipalities) Ordinance, 1928, His Excellency the Governor in Council has been pleased to make the following Rules:—

1. These Rules may be cited as the Indian Councillors Election Rules, 1937, and shall apply to every municipality established under the Local Government (Municipalities) Ordinance, 1928, in every case where elected Indian councillors or members have been included in the constitution of the Council or Board for such municipality.

2. (1) As soon as possible after elected councillors or members have been included in the constitution of the Council or Board of any municipality, and thereafter once in every three years, by a date to be fixed by the Commissioner for Local Government, the Council or Board shall cause a list to be made of all persons who are qualified to be enrolled as voters under these Rules. Such list shall show in alphabetical order the full name, residential address, occupation and nature of the qualification of every voter qualified to vote. In preparing such list the Council or Board shall classify the names of all voters into alphabetical divisions in accordance with the initial letter of the surname of each voter and shall allot a serial number to each name listed. The first serial number shall, in the case of each alphabetical division, be unity. The alphabetical letter of the division together with such serial number shall form the number of the voter, provided that if a municipality has been divided into wards or polling districts such list shall be subdivided into as many parts as there are wards or polling districts within the municipality.

(2) Whenever the boundaries of any municipality have been altered, or whenever the number of wards in a municipality has been increased or decreased or the boundaries thereof altered, the Council or Board, as the case may be, shall, as soon as possible after such alteration, increase or decrease, cause such alterations to be made in the respective voters' rolls as may be necessary to show correctly the particulars of voters resident in the municipality or in each ward, as the case may be.

(3) Whenever any municipality or any ward in a municipality has been divided into polling districts, or any increase, decrease, alteration or adjustment of such districts has been lawfully made, the Council or Board, as the case may be, shall compile from the voters' roll of such municipality or ward a register of voters for each such polling district, consisting of the voters for the municipality or ward who are entitled to vote in such polling district.

GOVERNMENT NOTICE No. 771

THE MINING ORDINANCE, 1933

NOTICE is hereby given in accordance with the Mining Regulations, Regulation 32, that the following claims have been abandoned:

Mining Location No.	Class	Cause of Abandonment	Date from which Location or part thereof shall be deemed to be Abandoned	Name of Registered Holder
Kakamega 2924/1.	Alluvial	Voluntary	9th September, 1937	H. C. Curwen, Esq.
No. II Area 1223/3; 1224/1-5; 1224/8.	Lode	Voluntary	8th September, 1937	K. M. K. Syndicate
1285/1-7; 1286/1-6.	Lode	Voluntary	10th September, 1937	Major F. Starnes
1352/1-2.	Alluvial	Voluntary	23rd September, 1937	Messrs. Alouor Limited
1357/1-6.	Lode	Voluntary		

Nairobi,
This 29th day of September, 1937.

E. B. HOSKING,
Commissioner of Mines.

GOVERNMENT NOTICE No. 772

THE MINING ORDINANCE, 1933

NOTICE is hereby given in accordance with the Mining Regulations, Regulation 32, that the following Exclusive Prospecting Licence has been abandoned:—

Exclusive Prospecting Licence No.	Situation	Cause of Abandonment	Date from which the Licence shall be deemed to be Abandoned	Registered Holder
No. 39	Approximately 7.4 sq. miles, situated in the Kakamega district of North Kavirondo as more fully described in the Schedule to Govt. Notice 761 of 13th November, 1934.	Voluntary	26th July, 1937	Mitchell Cotts & Co., Ltd.

Nairobi,
This 5th day of October, 1937.

W. J. BAILEY,
for Commissioner of Mines

GOVERNMENT NOTICE No. 773

THE TEA CESS ORDINANCE, 1937

NOTICE

IT is hereby notified for public information that the Kenya Tea Growers' Association has nominated the following persons to be members with effect from the 1st October, 1937, of the Board constituted under section 4 of the Tea Cess Ordinance, 1937:—

Mr. J. Butterfield,
Mr. W. A. Lee,
Captain P. S. Brindley,
Lt.-Col. W. F. Brayne,
Mr. D. McWilliam,
Mr. H. O. Thomas.

5th October, 1937.

H. G. PILLING,
Acting Colonial Secretary.

GOVERNMENT NOTICE No. 774

THE FARMERS ASSISTANCE ORDINANCE, 1936

IN THE MATTER OF THE APPLICATION OF ROBERT EVANS OF ELDORET UNDER THE ABOVE-NAMED ORDINANCE

PURSUANT to the provisions of section 18 of the above-named Ordinance, notice is hereby given that the appointment of Mr. G. R. Pembridge of Eldoret as Temporary Supervisor of the estate of Robert Evans has been terminated.

Dated at Nairobi this 5th day of October, 1937.

The Land and Agricultural Bank of Kenya,

T. L. HATELY,
Secretary,
Secretaries, The Farmers Conciliation Board.

3. The registering officer for the purpose of the preparation of voters' rolls under these Rules shall be the Town Clerk, or such other person as the Council or Board, as the case may be, may, with the approval of the Commissioner for Local Government, appoint.

4. Subject to the provisions of these Rules every person shall be entitled upon application to the registering officer in the form prescribed in the First Schedule hereto, to be enrolled in the Indian Municipal voters' roll who is—

- (1) of Indian origin or descent; and
- (2) of not less than twenty-one years of age; and
- (3) (a) is an owner (as defined in the Local Government (Rating) Ordinance, 1928), of property within the Municipality of which the value as appearing in the Municipal Valuation Roll is not less than one hundred pounds which is rateable under the provisions of the said Ordinance; or
- (b) has been for twelve months out of the twenty-four months preceding the date of application for enrolment in occupation of business premises in the municipality of an annual value of twenty-four pounds or more; or
- (c) (i) has resided in the municipality for twelve months out of the twenty-four months preceding the date of application for enrolment and either
- (ii) has been in occupation for a like period of residential premises in the municipality of an annual value of twelve pounds or more; or
- (iii) is, at the date aforesaid, and has been for six months out of the preceding twelve months, in receipt of earnings at the rate of not less than five pounds per month.

A married woman who is qualified for enrolment under paragraphs (1), (2) and (3) (c) (i) of this Rule shall be entitled to be enrolled notwithstanding that she does not possess either of the qualifications numbered (ii) and (iii) in paragraph 3 (c), provided that her husband is so qualified.

For the purposes of this Rule the expression "business premises" means any premises which are occupied by persons for purposes of carrying on their profession, trade or business, and the expression "in occupation of" relates only to occupation by persons who are liable for payment of rent in respect of premises of which they are in actual occupation and does not include occupation by the clerks, servants, agents or workmen of such persons, and the word "persons" means individuals and the partners and directors of a company or partnership.

The expression "annual value" means the actual annual rental paid in respect of the premises.

5. Notwithstanding anything in the preceding Rule contained, no person shall be entitled to have his name entered upon an Indian voters' roll or to vote at any election if such person—

- (a) has been found by a competent court to be of unsound mind; or
- (b) has been convicted of a criminal offence, whether in the Colony or elsewhere, and has been sentenced to imprisonment for a term of not less than twelve

months and has not received a free pardon: Provided that such disqualification shall cease two years after the date of the expiration of the sentence; or

- (c) has received relief from any public funds within twelve months prior to the date of his application to have his name entered upon the voters' roll; or
- (d) has been declared bankrupt or insolvent by a competent court, whether in the Colony or elsewhere, and has not received his discharge; or
- (e) is suffering from any disqualification provided by any enactment for the time being in force.

6. No person whose name does not appear on the Indian voters' roll for the time being in force shall be entitled to vote at any election under these Rules.

7. Where any municipality is divided into wards every person who is enrolled in the Indian Municipal voters' roll in respect of a property qualification shall be entitled to be enrolled once in each ward in which he owns rateable property of the capital value of not less than one hundred pounds; and every person who is enrolled in respect of a residential qualification shall be enrolled in the ward in which he resides; and every person who is enrolled in respect of a business premises qualification shall be enrolled in the ward in which the business premises in respect of which such qualification is derived are situate:

Provided that no person shall be enrolled in the same ward in respect of both a property and a residential qualification, or in respect of both a property and a business premises qualification or in respect of both a residential and a business premises qualification.

8. The registering officer shall cause every voters' roll framed under the provisions of these Rules to be deposited in the municipal offices for inspection by the public, and shall cause to be published in the Gazette and in one or more newspapers (if any) circulating in the municipality a notice that all objections and claims to be enrolled will be heard at some time and place to be therein stated:

Provided that such time shall not be less than fourteen days after the publication of such notice.

9. (1) The first class magistrate having jurisdiction shall hear and determine all claims and objections, and may enrol the names of any persons qualified which have been omitted from the appropriate voters' roll, and shall strike out the names of all persons not entitled to be enrolled:

Provided that the name of any person shall not be struck out until such person shall have had not less than two days' notice of the investigation of his qualification, and such person shall, if he shall so desire, be heard in regard thereto either personally or by an advocate.

(2) The hearing and determination of any claim or objection under this section may be adjourned from time to time, and the decision upon any such claim or objection shall be subject to appeal to a judge in chambers if notice thereof be given by any interested person within two days after the declaration of such decision. The judge in chambers hearing such appeal may uphold or reverse the decision and may make such order as to costs as may seem just.

10. Subject to the provisions of the next succeeding Rule the voters' rolls when so amended shall be the voters' rolls for the municipality and the next voters' rolls shall in like manner be completed, and such voters' rolls shall be deemed to be conclusive and the only proof of the right of every person enrolled thereon to vote at the election of members of the Council or Board as the case may be.

11. Any person who is not on the voters' roll in force for the time being in a municipality or particular ward thereof may at any time apply to the registering officer to be enrolled as a voter, and the registering officer upon being satisfied that such person is qualified under these Rules to be so enrolled shall cause the name of such person to be placed on the voters' roll. If the registering officer shall refuse any application under this section the applicant may appeal to the first class magistrate having jurisdiction, and the application shall be disposed of in the manner provided by Rule 9 hereof.

Provided that no person shall be enrolled under this Rule as a voter upon an application made after the date of publication of a notice of any election under Rule 21 until such election shall have been held.

12. Every voters' roll framed or amended under the provisions of this Ordinance shall be deposited at the municipal offices for inspection by the public during office hours.

13. Any person who wilfully makes any false statement on an application to be enrolled upon any voters' roll under these Rules shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

14. (1) Subject to the provisions of section '98 of the Bankruptcy Ordinance, 1930, and to any of the disqualifications mentioned in sub-section (2) of this Rule any person who is and who is entitled to be enrolled as an Indian voter in any municipality in respect of a property or residential qualification shall be eligible for election as an Indian councillor or member of the Municipal Council or Board, as the case may be, of such municipality.

(2) A person shall be disqualified for election as an Indian councillor or member of any Municipal Council or Municipal Board if such person—

- (a) is not a British subject of Indian origin or descent or an Indian under the suzerainty or protection of His Majesty; or
- (b) cannot read, write and speak the English language; or
- (c) is, or the wife or husband of such person is, in the employment of, or holds any office or place of profit under or in the gift of, the Council or Board; or
- (d) has been convicted of a criminal offence, whether in the Colony or elsewhere, and has been sentenced to imprisonment for a term of not less than six months and has not received a free pardon; or
- (e) has received relief from any public funds within twelve months prior to the date of his nomination as a candidate for election.

15. (3) The first election of Indian councillors or members of any municipality shall take place on a date to be notified by the Commissioner for Local Government in the Gazette.

(2) Of the councillors or members so elected, one-third, or as near as may be, shall retire on the thirtieth day of June of the year immediately following the year in which the first election is held, and one-third, or as near as may be, shall retire on the thirtieth day of June next ensuing, and the remaining one-third, or as near as may be, shall retire on the thirtieth day of June next again ensuing.

Provided, however, that where the municipality is divided into wards, and each ward is represented by more than one councillor or member, an equal proportion (or as near as may be) of the number of councillors or members representing each ward shall retire on each succeeding thirtieth day of June.

(3) The order of retirement of councillors or members under this section shall be determined by lot at any time before the annual election.

16. (1) After the first election of councillors or members as aforesaid, an annual election shall be held upon the first day in June which is neither a Sunday nor a public holiday in each and every year for the purpose of electing Indian councillors or members to replace those whose terms of office expire upon the thirtieth day of the same month.

(2) The councillors or members elected at every such annual election shall hold office for a period of three years.

17. (1) Any vacancy caused by the death of an elected Indian councillor or member or by an elected Indian councillor or member vacating his seat for any reason other than the expiration of his term of office shall be deemed to be a casual vacancy.

(2) Whenever a casual vacancy shall occur, an election shall, for the purpose of filling such vacancy, be held as soon as possible in the manner provided for the election of candidates at the annual election. Any councillor or member elected to fill a casual vacancy under this section shall hold office for the remainder of the term for which the councillor or member whose place he has taken would have been entitled to remain in office.

Provided that a casual vacancy caused by the death or retirement of a councillor or member within three months of the date of expiry of his period of office may be filled at the annual election next ensuing.

18. Any election Indian councillor or member who ceases to possess the qualifications by these Rules prescribed, or who is a paid agent for any candidate at an election under these Rules, or who becomes disqualified under these Rules shall *ipso facto* vacate his office, and the mayor or chairman, as the case may be, shall at the next meeting of the Council or Board declare the seat of such councillor or member to be vacant, and the Town Clerk shall forthwith notify the Commissioner for Local Government of such vacancy. In any such case such vacancy shall be filled by election in the manner prescribed by the last preceding Rule:

Provided, however, that an Indian councillor or member whose seat shall have been declared vacant under this Rule may, within fourteen days after the date of such declaration, apply to a judge of the Supreme Court in chambers to have such declaration set aside. Notice of the intention to make such application and the grounds thereof shall be given to the Town Clerk within two days after such declaration. The order of the judge in chambers as to the disqualification or otherwise of the councillor or member shall be final and without appeal.

19. If at any election no person is nominated or elected, or the number of persons who are elected is less than the number of vacancies to be filled, a second election shall be held as soon as possible for the purpose of filling any such remaining vacancy or vacancies.

20. The Town Clerk or such other person as the Council or Board, as the case may be, may, with the approval of the Commissioner for Local Government, appoint shall be the returning officer at every election held under these Rules.

21. (1) For the purpose of any election under these Rules the Town Clerk or such other person as may have been appointed as returning officer under the last preceding Rule shall, as soon as may be, cause to be published in the Gazette and in one or more newspapers (if any) circulating in the municipality, and to be posted at such conspicuous places as he shall think fit within the municipality or within the ward or wards for which the election is to be held, a notice of such election, and in such notice he shall specify the day and place on and at which he will receive the nomination of candidates for the seat or seats to be filled by election.

(2) The day so fixed shall be not less than ten days from the date of the publication of the notice.

22. (1) On the day and at the place fixed under the last preceding Rule the returning officer shall attend at eleven o'clock in the forenoon and for sixty minutes thereafter and shall receive the nomination of any duly qualified candidate for the seat or seats to be filled.

(2) Every candidate shall be proposed and seconded and shall be supported by not less than seven persons other than the proposer and seconder. The proposer and seconder and supporters shall be persons whose names appear on the appropriate voters' rolls for the municipality or ward, as the case may be, for which the candidate seeks election.

(3) Every nomination paper shall be in the form prescribed in the Second Schedule to these Rules and the signatures of the proposer and seconder and supporters shall be witnessed by a magistrate, justice of the peace, notary-public, bank manager or the Town Clerk.

(4) Every nomination paper subscribed and witnessed as aforesaid shall be delivered to the returning officer by the candidate or by his proposer or seconder at the time and at the place appointed, and any nomination paper which is not so delivered shall be rejected.

23. (1) Every candidate shall be described in his nomination paper in such manner as in the opinion of the returning officer is calculated sufficiently to identify such candidate. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or on

the ground that such nomination paper does not comply with the provisions of these Rules, shall be valid unless such objection is made to the returning officer at or immediately after the time of delivery of the nomination paper. The decision of the returning officer as to sufficiency of any nomination paper shall be final.

(2) The returning officer shall permit any candidate and his proposer and seconder to examine the nomination paper of any other candidate.

24. (1) If, at the expiration of the time appointed for the election, the number of duly nominated candidates for any municipality or ward, as the case may be, does not exceed the number of councillors or members to be elected for such municipality or ward, the returning officer shall forthwith declare such candidate or candidates to be elected, and shall publish the result of the election in the Gazette.

(2) If the number of duly nominated candidates exceeds the number of councillors or members to be elected as aforesaid, the returning officer shall forthwith adjourn the election for the purpose of taking a poll and shall publish immediately in the Gazette and in one or more newspapers circulating in the municipality, and cause to be posted at such conspicuous places as he shall think fit within the ward or wards for which a poll is to be taken, a notice of poll specifying—

- (a) the ward or wards for which a poll will be taken;
- (b) the date on which the poll will be taken, which shall be not less than fourteen days from the date of the publication of the notice;
- (c) the names of the candidates as described in their respective nomination papers and the names of their proposers and seconders;
- (d) the place or places at which the poll will be taken, and the portion of the municipality or ward, as the case may be, allotted to each polling station.

(3) No election which is adjourned for the purpose of taking a poll shall be declared invalid for the reason that the poll was not held or completed before the 30th day of June in the year in which such election was held.

25. If after an election has been adjourned for the purpose of taking a poll, one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and in such case all the proceedings with reference to the election shall be commenced afresh:

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

26. If after a poll has been appointed at any election, any candidate nominated for election shall be desirous of retiring from the candidature, he may, not later than three days before the day of polling, sign and deliver a notice of his retirement to the returning officer, who, on receipt of such notice, shall, if the number of candidates is by such retirement reduced to the number of persons to be elected at such election, declare the remaining candidates to be on that date duly elected, and if the said number is not so reduced shall omit the name of the person so retiring from the list of candidates and such person shall not be capable of being elected at such election.

27. (1) The poll at every election shall, unless otherwise ordered by the Commissioner for Local Government, commence at eight o'clock in the forenoon of the day appointed and shall close at six o'clock in the afternoon of the same day.

(2) Every voter who, on the close of the poll, is present in the polling station for the purpose of voting shall be entitled to receive a ballot paper, and to mark and deposit it in the same manner as if he had voted before the close of the poll.

28. (1) Where the municipality is divided into wards but not into polling districts there shall be one polling station only for each ward.

(2) Where the municipality or wards (if any) of the municipality have been divided into polling districts there shall be one polling station only for each polling district.

(3) Where the municipality has not been divided into either wards or polling districts, there shall be one polling station only within the municipality.

29. The returning officer shall provide such compartments, desks, ballot boxes, ballot papers, stamping instruments, copies of the voters' roll and any other things which may be necessary; he shall appoint presiding officers and polling officers and shall do such other acts and things and make such arrangements to facilitate the taking of the poll as he may deem advisable; and any expenditure necessarily incurred by the returning officer under these Rules shall be met from the funds of the municipality.

30. The presiding officer at each polling station shall keep order thereat, and shall regulate the number of voters to be admitted at one time, and shall exclude all other persons except the returning officer, the clerks, the candidates, their agents and the police officers on duty.

31. Every candidate may, if he think fit, appoint by writing under his hand a person to represent him at the polling station to see that the votes are fairly taken and may also appoint in writing an agent to represent him at the counting of the votes by the returning officer.

32. (1) No inquiry shall be made at any election as to the right of any person to vote except that the polling officer shall, if the right of any person to vote is challenged, put to such voter the following questions:—

- (a) Are you the person whose name appears as AB on the voters' roll of voters in this municipality, ward or polling district as the case may be?
- (b) Have you already voted at this election in the capacity in which you now claim to vote?

And no person who shall refuse to answer such questions, or who shall not answer the first of such questions in the affirmative and the second of such questions in the negative shall be permitted to vote.

(2) Any person who wilfully makes a false answer to either of these questions shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding two months, or to both such fine and imprisonment.

33. Every voter coming to record his vote shall vote without undue delay and any voter who delays unduly in recording his vote may, unless he shall forthwith proceed to vote upon being required to do so by the presiding officer, be compelled to hand to the presiding officer any ballot paper which he may have received and may be removed from the polling station upon the instruction of the presiding officer. Such voter shall not be entitled to vote at such election, but such ballot paper shall be treated as a spoiled paper under Rule 37 hereof.

34. (1) If the municipality is not divided into wards, every voter shall be entitled to record one vote in respect of each vacancy to be filled.

(2) If the municipality is divided into wards every voter shall be entitled to record one vote in respect of each vacancy to be filled for the ward or wards in which he is enrolled as a voter.

(3) Any ballot paper shall be invalid upon which is recorded—

(a) votes in excess of the number of councillors or members to be elected for the municipality or ward, as the case may be; or

(b) more than one vote for any one candidate.

35. Every voter shall vote at the polling station appointed for the municipality, ward or polling district, as the case may be, in respect of which his or her name appears upon the voters' roll, and at no other place.

36. The voting at all elections held under these Rules shall be by ballot which shall be conducted in substance and as nearly as is material in the following manner:—

(a) the presiding officer at each polling station shall ascertain that the person coming to vote is a voter enrolled upon the voters' roll for the municipality, ward or polling district, as the case may be, and having ascertained that such person is so enrolled shall enter the number appearing against his name in the voters' roll upon the counterfoil of the ballot paper, and shall tear out the ballot paper corresponding with such counterfoil and mark the same with an official mark either stamped or perforated and shall then hand such ballot paper to the voter and place a mark against the number of the voter in the voters' roll to denote that such voter has received a ballot paper. Every ballot paper shall be in the form set forth in the Third Schedule to these Rules, and such instructions may be printed thereon as the Council or Board may approve. Every ballot paper shall contain the names of the candidates printed in English, Gujarati and Urdu.

Provided that where there is only one polling station within the municipality or ward, as the case may be, the returning officer may divide the voters' roll in such manner as may be most convenient, and may appoint such number of additional presiding officers as may be necessary for holding the poll. In every such case each presiding officer shall be responsible for the issue of ballot papers, in the manner prescribed herein, to those persons only whose names appear in the division of the voters' roll allotted to him by the returning officer.

(b) When the voter has received such ballot paper on which shall be printed in alphabetical order the names of all duly nominated candidates at such election he shall take the same to the compartment and desk provided for that purpose and signify for whom he desires to vote by secretly placing a cross against the name of every candidate whom he wishes elected, not exceeding the number to be elected at such election. He shall then fold the ballot paper so that the official mark shall be visible and having held up the ballot paper so that the polling officer can recognize such mark shall drop the ballot paper in the ballot box placed in front of the polling officer.

(c) Should the voter either sign his name on the ballot paper, or any mark or word by which his ballot paper would become recognizable, then such ballot paper shall be considered blank and shall not be taken into account.

37. If a voter inadvertently spoils a ballot paper he may return it to the presiding officer from whom he received it, who shall, if satisfied of such inadvertence, give him another paper and retain the spoiled paper, and the spoiled paper shall be immediately cancelled and the fact of such cancellation shall be entered upon the counterfoil.

38. The presiding officer on the application of any voter who is unable to read or who is incapacitated by blindness or other physical cause from voting in the manner prescribed by these Rules, shall before such agents of the candidates as may be present cause the vote or votes of such voter to be marked on a ballot paper or papers in a manner directed by such voter and the ballot paper or papers to be placed in the ballot box and the name and number on the voters' roll of every voter whose vote is marked in pursuance of the terms of this Rule and the reason why it is so marked shall be entered on a list in these Rules called the "list of votes marked by the presiding officer".

39. If a person representing himself to be a particular voter applies for a ballot paper after another person has voted as such voter, the applicant shall, upon duly answering the questions permitted by these Rules to be asked of voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper thereafter called a "tendered ballot paper" shall not be put in the ballot box, but shall be given to the presiding officer and endorsed by him with the name of the voter and his number on the voters' roll and set aside in a separate packet, and shall not be counted by the returning officer, and the name of the voter and his number on the roll shall be entered in a list in these Rules called the "tendered votes list".

40. Every presiding officer shall as soon as practicable after the close of the poll, before such of the candidates or their agents as shall be present, make up into separate packets sealed with his own seal and the seals of such candidates or their agents who desire to affix their seals—

(a) each ballot box entrusted to him unopened but with the key attached;

(b) the unused and spoiled ballot papers placed together;

(c) the tendered ballot papers;

(d) the marked copies of the voters' roll and the counter-foils of the ballot papers;

(e) the tendered votes list and the list of votes marked by him as presiding officer and a statement of the number of voters whose votes are so marked by the presiding officer under the head "Physical incapacity";

and shall deliver such packets to the returning officer.

The packets shall be accompanied by a statement made by each presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box, unused, spoiled and tendered ballot papers.

41. Upon receipt of the aforesaid packets from the presiding officers by the returning officer the latter shall take charge of the same shall in the presence of such of the candidates or their agents as may be in attendance open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate and shall forthwith declare those candidates, not exceeding the number of vacancies to be filled, who have received the highest number of votes, to be duly elected. In the event of the number of votes being found to be equal for any two or more candidates all of whom cannot be declared elected to fill vacancies in the Council or Board, the returning officer shall by lot immediately determine the election. The decision of the returning officer shall be final subject to the provisions of section 31 of the Legislative Council Ordinance, 1935.

The result of the election shall be published by the returning officer in the Gazette.

42. The returning officer shall reject and not count any ballot papers which—

- (a) do not bear the official mark;
- (b) give votes to more candidates than the voter is entitled to vote for;
- (c) bear any writing or mark by which a voter can be identified otherwise than in these Rules prescribed;
- (d) are unmarked or void for uncertainty;
- (e) are returned under Rule 33;
- (f) are invalid under Rule 34.

43. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid and shall add to the endorsement "rejection objected to" if an objection be in fact made by or on behalf of any candidate to his decision. He shall endorse "returned under Rule 33" on any ballot papers returned under that Rule.

44. The returning officer shall immediately after the declaration of the poll seal up the voting papers and all other documents relating to the election and shall deliver them to the Town Clerk who shall safely keep such sealed packet for six months, after the expiration whereof the said packet and all papers contained therein shall be destroyed in the presence of two councillors or members.

45. No such sealed packet as aforesaid shall be opened during the said period of six months unless by order of the Supreme Court or any judge thereof, and if any person shall, contrary to the provisions hereof, wilfully break the seal or

open any such packet or shall upon conviction be liable to a fine of fifty pounds or to imprisonment of either description for a period not exceeding two months or to both such fine and imprisonment.

46. The Commissioner for Local Government shall have power from time to time to issue instructions for the purpose of more effectually carrying out the provisions of these Rules as to the proceedings for election by ballot provided that such instructions are not inconsistent with such Rules.

47. No election shall be declared invalid by reason of any mistake or non-compliance with the terms of these Rules if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in the Rules and that such mistake or non-compliance did not affect the result of the election.

48. Sections 22 to 29 (both inclusive) and section 31 of the Legislative Council Ordinance, 1935, shall apply *mutatis mutandis* to any election held under the provisions of these Rules.

FIRST SCHEDULE

(RULE 4)

FORM OF APPLICATION FOR ENROLMENT AS VOTER

To the Registering Officer,

Municipality of

I hereby apply to have my name placed upon the Indian Voters' Roll for the Municipality of

I certify that I am qualified to be enrolled under Rule 4 of the Indian Councillors' Election Rules, 1917, that I do not suffer from any of the disqualifications set out in Rule 5 of the said Rules, and that the following particulars are correct:—

Name in full

in block capitals

Surname (if any)

in block capitals

Father's name in full

in block capitals

In the case of married women or widows, husband's name in full

in block capitals

Address (residential or postal)

Occupation

Nature of qualification

(Property, Residential or business premises)

Section and Plot number of rateable property in respect of which applicant claims a property or business premises qualification

Date

Signature of Applicant

FOR OFFICIAL USE ONLY

Applicant registered in—

Ward

Polling District

Number on Voters' Roll

Note.—The Council may at its discretion require further particulars in regard to qualifications to be entered on this form.

INSTRUCTIONS TO APPLICANT

Before signing this application, the applicant should carefully examine the qualifications and disqualifications of voters set out in this form.

Any person who wilfully makes any false statement on an application to be enrolled on any voters' roll is liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment of either description for a period not exceeding two months or to both such fine and imprisonment.

If the municipality is divided into wards, a separate application form must be completed in respect of each ward in which the applicant claims to be qualified.

QUALIFICATIONS OF VOTERS

4. Subject to the provisions of these Rules every person shall be entitled upon application to the registering officer in the form prescribed in the First Schedule hereof, to be enrolled in the Indian Municipal Voters' Roll who is—

- (1) of Indian origin or descent; and
- (2) of not less than twenty-one years of age; and
- (3) (a) is an owner (as defined in the Local Government (Rating) Ordinance, 1928) of property within the Municipality of which the value as appearing in the Municipal Valuation Roll is not less than one hundred pounds which is rateable under the provisions of the said Ordinance; or
- (b) has been for twelve months out of the twenty-four months preceding the date of application for enrolment in occupation of business premises in the municipality of an annual value of twenty-four pounds or more; or
- (c) (i) has resided in the municipality for twelve months out of the twenty-four months preceding the date of application for enrolment and either
- (ii) has been in occupation for a like period of residential premises in the municipality of an annual value of twelve pounds or more; or
- (iii) is, at the date aforesaid, and has been for six months out of the preceding twelve months, in receipt of earnings at the rate of not less than five pounds per month.

A married woman who is qualified for enrolment under paragraphs (1), (2) and (3) (c) (i) of this Rule shall be entitled to be enrolled notwithstanding that she does not possess either of the qualifications numbered (ii) and (iii) in paragraph (3) (c), provided that her husband is so qualified.

For the purposes of this Rule the expression "business premises" means any premises which are occupied by persons for purposes of carrying on their profession, trade or business, and the expression "in occupation of" relates only to occupation by persons who are liable for payment of rent in respect of premises of which they are an actual occupation and does not include occupation by the clerks, servants, agents or workmen of such persons, and the word "persons" means individuals and the partners and directors of a company or partnership.

The expression "annual value" means the actual annual rental paid in respect of the premises.

7. Where any municipality is divided into wards every person who is enrolled in the Indian Municipal voters' roll in respect of a property qualification shall be entitled to be enrolled once in each ward in which he owns rateable property of the capital value of not less than one hundred pounds; and every person who is enrolled in respect of a residential qualification shall be enrolled in the ward in which he resides; and every person who is enrolled in respect of a business premises qualification shall be enrolled in the ward in which the business premises in respect of which such qualification is derived are situate:

Provided that no person shall be enrolled in the same ward in respect of both a property and a residential qualification, or in respect of both a property and a business premises qualification or in respect of both a residential and a business premises qualification.

DISQUALIFICATION OF VOTERS

The disqualification of voters under Rule 5 of the Indian Councils Elections Rules, 1937, are as follows:—

- (a) has been found by a competent court to be of unsound mind; or
- (b) has been convicted of a criminal offence, whether in the Colony or elsewhere, and has been sentenced to imprisonment for a term of not less than twelve months and has not received a free pardon. Provided that such disqualification shall cease two years after the date of the expiration of the sentence; or
- (c) has received relief from any public funds within twelve months prior to the date of his application to have his name entered upon the voters' roll; or
- (d) has been declared bankrupt or insolvent by a competent court, whether in this Colony or elsewhere, and has not received his discharge; or
- (e) is suffering from any disqualification provided by any enactment for the time being in force.

SECOND SCHEDULE

(RULE 22)

NOMINATION PAPER

Nomination of an Indian candidate for election to the
Municipal Council of.....

Ward.....

1. Name in full.....
2. Address
3. Occupation

(Signature of proposer).....

Signed by the above-named.....

..... (Proposer) in my presence this
..... day of..... 19.....AB (a Magistrate, Justice of the Peace, Notary-Public,
Bank Manager, or the Town Clerk).

(Signature of seconder).....

Signed by the above-named.....

..... (Secunder) in my presence this
..... day of..... 19.....CD (a Magistrate, Justice of the Peace, Notary-Public,
Bank Manager, or the Town Clerk).To be followed by signatures of not less than seven
supporters and their witnesses.

I agree to accept nomination:—

(Signature of candidate).....

THIRD SCHEDULE

(RULE 36)

FORM OF FRONT OF BALLOT PAPER

COUNTERFOIL No. (Note: The counterfoil is to have a number to cor- respond with that on the back of the ballot paper.)	1. of (Merchant):
	2. of (Solicitor):
	3. of (Accountant):
	4. of (Doctor):
	5. of (Doctor):

FORM OF BACK OF BALLOT PAPER

No.		
Election for Municipal Council/Board of		
.....		

KENYA

No. 201



RECEIVED
3 MAY 1937
REGY

GOVERNMENT HOUSE,
NAIROBI,
KENYA

3.

5 APRIL 1937.

Sir,

2

Copy to D.O. (H)

1. I have the honour to refer to your despatch no. 180 of the 18th February in which you ask for re-assurance in connection with the proposal that a proportion of the Indian members of the Municipal Boards of Nakuru and Eldoret should be elected.

2. I have no hesitation in assuring you that no political repercussions need be expected in Nairobi and Mombasa as a result of the partial application of the elective principle in Nakuru and Eldoret. There is generally a demand on the part of the Hindu majority, who claim to represent Indian opinion, for the elective principle to be applied without reservation to all Municipal Boards and to the Municipal Council of Nairobi.

In October last, having consulted Executive Council, Sir Joseph Byrne acceded to a request preferred by the Municipal Board of Mombasa that all the Indian members of the Board should be elected instead of nominated as hitherto, in accordance with the terms of the proviso to section 9 of the Local Government (Municipalities) Ordinance. The issue of a directive under this proviso and the preparation of rules.

As regards Nairobi, the Acting Governor on the advice of his Executive Council expressed his willingness to approve the election of five out of the seven Indian members at present nominated to the Municipal Council. The Council

THE RIGHT HONOURABLE,
J. CRISPIEN GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES
DOWNING STREET,
LONDON. S.W. 1.

however, pressed for the election of all Indian members and based its case on the contention that there is a general consensus of opinion among the Indian community in favour of the adoption of the elective principle in full. The Acting Governor was not satisfied that the consensus of opinion is so general as is alleged and is not at present prepared to approve the election of all Indian members of the Nairobi Municipal Council.

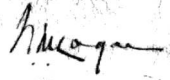
3. In regard to paragraph 3 of your despatch, the draft Rules provide for a residential property qualification of £18 per annum as against £36 per annum in the European Councillors Election Rules, while the 'earnings' qualification is £7.10.0. per mensem as against £10 (£15 in Nairobi and Mombasa) for European Councillors. The draft Rules have already been referred to the Nairobi Municipal Council and the Mombasa Municipal Board and are now being submitted to the Municipal authorities at Nakuru and Eldoret. In accordance with your suggestion they will also be published in the Gazette for information and criticism.

I have the honour to be,

Sir,

Your most obedient,

humble servant,



ACTING GOVERNOR'S DEPUTY.

Said to be / think this comes out -
de S. off's intentions.
38172/37 (3)
Jant

C. O.

Mr. Grosmith.

Mr. Pashin

Mr. Howard

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,
18 February, 1937.

18 FEB
18

Sir,

I have etc., to acknowledge receipt of your despatch No. 710 of the 31st December, transmitting the drafts of two Proclamations which it is proposed to issue under Section 13 (1) of the Local Government (Municipalities) Ordinance, 1928.

2. I note that the effect of the proclamations will be to provide that of the three Indian Members of the Municipal Boards of Nakuru and Eldoret, who are at present nominated, members two shall in future be elected and one nominated. In the third paragraph of your despatch you mentioned, however, that the application of the elective principle to the Indian seats in the Nairobi Municipal Council and the Municipal Board of Mombasa ~~has not yet been agreed upon.~~ I presume therefore that consideration has been given to the question of possible political repercussions ⁱⁿ at Nairobi and Mombasa as a result of the application of the elective principle ⁱⁿ to Nakuru and Eldoret. While I have no desire to withhold my approval of the draft Proclamations enclosed

DRAFT.

KENYA.

NO. 155

O.A.G.

Copy to I.O. (H)

agreement has not yet been reached as to

I assume from ^{this note} that the question is under discussion and that no

FURTHER ACTION.

may be expected

enclosed in your despatch, I should be ^{able} to be re-assured
~~obliged~~ for your observations on this
point.

3. As regards the ^{proposed} draft rules
providing for the conduct of the
elections and the qualifications of
the voters and candidates, I have no
^{assure that} doubt that you will ensure that the
provisions relating to the ~~property~~
qualifications of voters will ~~be~~ ^{not be identical with those prescribed for Europeans but}

^{will be}
framed with due regard to the ^{position}
of the Indian population ^(circumstances - financial and other -) at Nakuru and
Eldoret. I agree therefore that the
rules need not be referred to me in
draft form. It would, however, in
my opinion, be an advantage if the
rules were ^{to be} published ^{in draft} for information ^{and possible criticism}
prior to their being brought into force.

I am, etc.,
(Signed) W. ORMBY GORE.

KENYA.

No. 710



GOVERNMENT HOUSE,
NAIROBI.

KENYA.

31 December, 1936.

Sir,

With reference to paragraph 2 of Mr. Amery's despatch No. 136 of the 25th February, 1929, in which it was requested that any proclamations or rules under Sections 11, 13 (1) and 15 (a) of the Local Government (Municipalities) Ordinance, 1928 might be referred to the Secretary of State for approval in draft before issue, I have the honour to transmit to you, for your approval, the drafts of two Proclamations which it is proposed to issue under Section 13 (a) of the Ordinance.

2. The sole effect of these Proclamations will be to provide that of the three Indian members of the Municipal Boards of Nakuru and Eldoret, who are at present nominated members, two shall in future be elected and one nominated.

3. Since the establishment of the Nairobi Municipal Council and of the Municipal Boards of Mombasa, Nakuru and Eldoret all the Indian members of these bodies have been nominated. Agreement has not yet been reached regarding the application of the elective principle to the Indian seats in Nairobi and Mombasa, but there is a demand from the Indian communities at Nakuru and Eldoret that their representatives should be elected and there appears to be no reason why this should not now be met to the extent of two of the three seats. The Local

Government ...

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

(2) on 15407/28

Copy to IO (4)

Amey. (2)

Government Commission (Report, Volume II, page 136)

expressed the view that, where there are three Indian members, two should be elected and one nominated. It is considered desirable that one nominated seat should be retained, in order that the Indian members may be representative of the local Indian community as a whole, including both Hindus and Moslems.

4. Draft Rules providing for the conduct of the elections and the qualifications of the voters and candidates are under consideration. These will follow, mutatis mutandis, the European Councillors Election Rules, 1929, mentioned in Sir Philip Cunliffe-Lister's (5) or 3066/33 (now Lord Swinton's) despatch No. 226 of the 31st March, 1933. It is proposed that the 1st June should be the election date, as it is for European candidates. After the Rules are published there is a considerable amount of work to be done in the preparation of electoral rolls, and it would therefore be convenient if, should considerations of time so require, the Rules might be referred to you after publication instead of in draft form.

I have the honour to be,

Sir,

Your most obedient, humble servant,

C. A. G. I.

ACTING GOVERNOR.

PROCLAMATION NO.

COLONY AND PROTECTORATE OF KENYA.

A. R. H. S.

THE LOCAL GOVERNMENT (MUNICIPALITIES) ORDINANCE, 1928.

PROCLAMATION.

I. S. BY His Excellency Amical de Vins Wade, Companion of the Most Distinguished Order of Saint Michael and Saint George, Officer of the Most Excellent Order of the British Empire, Acting Governor and Commander-in-Chief of the Colony and Protectorate of Kenya.

IN EXERCISE of the powers conferred upon me by section 18 (1) of the Local Government (Municipalities) Ordinance, 1928, I do hereby appoint that the Municipal Board constituted for the Municipality of Eldoret shall consist of:

- ✓ (a) Two official members.
- ✓ (b) Eight European members, of whom six shall be elected and two nominated.
- ✓ (c) Three Indian members, of whom two shall be elected and one nominated.
- ✓ (d) One representative of the Uasin Gishu District Council to be nominated.

Proclamation No. 35 dated the 1st. day of April, 1930 is hereby amended accordingly.

G O D S A V E T H E K I N G .

Given under my hand and the Public Seal of the Colony this day of December, 1930.

BY COMMAND of His Excellency the Acting Governor.

COLONIAL SECRETARY.

See No 1
18102/32
CK