

1925

*JK*

E. AFRICA  
KENYA

C.O.  
20681  
7 MAY 25

FROM  
A.G.'S DEP NORTHCOLE.  
596

DATE  
6th April 1925.

155

REGULATION ---  
Mr. *Chamberlain*  
Mr. *Spence*  
Mr. *Belmont*  
Asst. U.S. of S.  
*In Strangely*  
Perm. U.S. of S.  
Part. U.S. of S.  
Secretary of State.

JUDGES OF COURT OF APPEAL.  
ORDER OF PRECEDENCE.

Fwds draft Notice showing order of precedence  
for approval.

Previous Paper  
*O.A.C. 12500/25 b.A.  
Kyp*

MINUTES

May we have your views on this case?

*SA  
8/5/25*

Sir J. *Finlay*,

The proposed <sup>fixes a low</sup> ~~status~~ <sup>position</sup> in the order of precedence <sup>for T.T.</sup> ~~for T.T.~~  
which seems likely to give rise to trouble in  
the future. If e.g. the judge of Zanzibar should  
become C.J. of T.T., it wd be anomalous that  
he should rank below his successor at Zanzibar.  
<sup>I may suggest tentatively that</sup>  
Perhaps the Court might be presided over  
by the C.J. or <sup>the</sup> J. of the territory in which  
it is sitting & that the other members, <sup>if not presiding judge</sup> ~~should rank~~  
(1) C.J. of Kenya, ~~for C.J. of T.T.~~ <sup>Algeria</sup>

Subsequent Paper  
*O.A.C. 29103  
50  
Kyp*

to date of appointment, (2) judge of Nyasa + E.I. of  
Zanzibar according to date of appointment, (3) others  
as provided in (6) (7) (8) + (9) in the draft.

A.E. 2 date

Mr. Bottomley

Mr. Bottomley.

We are fairly committed to two  
arrangements (1) that the Chief Justice of Kenya  
is to be President of the Court wherever it sits  
and (2) that the Chief Justice of Tanganyika must  
come in last of the Chief Justices according to  
the principle of the "last-joined tribunal".

I do not think we can now alter  
these arrangements as proposed by Mr. Ehrhardt, but  
there is a good deal to be said for giving the  
Chief Justice of any territory other than Kenya  
in which the Court happens to sit precedence for  
such sittings next after the President, so that  
in the absence of the latter he would act as  
President.

I have recently had a letter from  
Mr. Alison Russell in which he says that it is  
proposed that the Court shall sit at Dar-es-  
Salaam next September, and with this example of  
possible friction in view I think we should do  
well to adopt the above suggestion.

The simplest and neatest way that  
occurs to me of doing this is to provide for a  
Vice-President and I would suggest the insertion  
of the following paragraph numbered (2) after  
(1), re-numbering (2) to (9) accordingly with  
consequential alteration of the references in  
(7) and (8) which will become (8) and (9).

" (2) The Vice-President, who when the  
Court is sitting in any territory other than  
Kenya

Kenya shall be the [substantive] Chief  
Justice or Judge, as the case may be,  
of such territory if sitting as a  
member of the Court and [failing] such  
Chief Justice or Judge shall be the  
next Senior Judge after the President  
sitting as a member of the Court, and  
when the Court is sitting in Kenya  
shall be such next Senior Judge as  
aforesaid according to the following  
order."

not

It is/really necessary to provide for a  
Vice-President when the Court is sitting in Kenya.  
When the Chief Justice is not available the next  
Senior Judge will necessarily preside without  
being labelled "Vice-President", but it gives  
the new paragraph (2) an appearance of complete-  
ness to include provision as to Kenya.

KJR

12/5/25

JMG 13/5/25

Gen. In view of (6) - Sh(7) - I think the  
word "substantive" should be retained.

13/5/25

Devec - 13/5/25

Article prohibited  
in Kenya  
9 July 1925  
First Article 146

to date of appointment, (2) judge of Appeal & J. of  
Zanzibar according to date of appointment, (3) others  
as provided in (6) (7) (8) & (9) in the draft.

A.E. 9 Date

Mr. Bottomley.

We are fairly committed to two arrangements (1) that the Chief Justice of Kenya is to be President of the Court wherever it sits and (2) that the Chief Justice of Tanganyika must come in last of the Chief Justices according to the principle of the "last-joined tribunal".

I do not think we can now alter these arrangements as proposed by Mr. Ehrhardt, but there is a good deal to be said for giving the Chief Justice of any territory other than Kenya in which the Court happens to sit precedence for such sittings next after the President, so that in the absence of the latter he would act as President.

I have recently had a letter from Mr. Alison Russell in which he says that it is proposed that the Court shall sit at Dar-es-Salaam next September, and with this example of possible friction in view I think we should do well to adopt the above suggestion.

The simplest and neatest way that occurs to me of doing this is to provide for a Vice-President and I would suggest the insertion of the following paragraph numbered (2) after (1), re-numbering (2) to (9) accordingly with consequential alteration of the references in (7) and (8) which will become (8) and (9).

(2) The Vice-President, who when the Court is sitting in any territory other than Kenya

of 2728

Kenya shall be the [substantive] Chief Justice or Judge, as the case may be, of such territory if sitting as a member of the Court and [in the absence of] such Chief Justice or Judge shall be the next Senior Judge after the President sitting as a member of the Court, and when the Court is sitting in Kenya shall be such next Senior Judge as aforesaid according to the following order."

not  
It is really necessary to provide for a Vice-President when the Court is sitting in Kenya. When the Chief Justice is not available the next Senior Judge will necessarily preside without being labelled "Vice-President", but it gives the new paragraph (2) an appearance of completeness to include provision as to Kenya.

KJA  
12/5/25

Gen. In view of (6) - (8) (7) - I think the word "substantive" should be retained.

Col. 13.5.25

Deputy - Col. 13/5/25

Subs. Amended  
in Kenya Gazette  
of July 1. 1925  
First Edition 246



THE SECRETARIAT,  
NAIROBI,  
KENYA.

April 27th, 1925.

WHEN REPLYING  
PLEASE QUOTE  
No. S 8205/43.  
AND DATE

*O.A.C. 208180*

The Acting Colonial Secretary, Kenya,  
presents his compliments to the Under  
Secretary of State for the Colonies,  
and with reference to Kenya despatch  
No.396 of the 6th April, 1925, begs to  
request that the reference given in  
the second paragraph thereof be altered  
to read: "No.484 of May 20th, 1914", and  
not as shewn therein.

*Yes  
29/5  
29/5  
29/5  
29/5*



THE SECRETARIAT,  
NAIROBI,  
KENYA.

April 27th, 1925.

WHEN REPLYING  
PLEASE QUOTE  
No. S 8205/43.  
AND DATE

*OAC, Robert 8a*

The Acting Colonial Secretary, Kenya,  
presents his compliments to the Under  
Secretary of State for the Colonies,  
and with reference to Kenya despatch  
No.396 of the 6th April, 1925, begs to  
request that the reference given in  
the second paragraph thereof be altered  
to read: "No.484 of May 20th, 1914", and  
not as shewn therein.

*REA*  
*yes*  
*29/5*  
*29/5*  
*29/5*  
*29/5*



THE SECRETARIAT,  
NAIROBI,  
KENYA.

April 27th, 1925.

WHEN REPLYING  
PLEASE QUOTE  
No. S. 8205/43.  
AND DATE

*O.A.C. 20681/80*

The Acting Colonial Secretary, Kenya,  
presents his compliments to the Under  
Secretary of State for the Colonies,  
and with reference to Kenya despatch  
No.396 of the 6th April, 1925, begs to  
request that the reference given in  
the second paragraph thereof be altered  
to read: "No.484 of May 20th, 1914", and  
not as shown therein.

*See [unclear] 29/5*  
*2. Attach. [unclear] 29/5*  
*yes [unclear] 29/5*

AS.  
KENYA.  
No. 396.



C. O.  
20681  
7 MAY 25

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

April 6th, 1925.

Sir,

With reference to your despatch No. 95, of 29th January last, on the subject of the order of precedence of the Judges of the Court of Appeal for Eastern Africa, I have the honour to forward for your approval a draft Notice, which it is proposed to publish in the Official Gazette.

*Jan. 27 28 '14*  
*CA*  
Draft Notice.

2. It is assumed that no alteration in the order laid down in Viscount Harcourt's despatch No. 484 of May 20th, 1924, is desired by you, other than the inclusion of the Chief Justice of Tanganyika, but as no general instructions under Article 7 of the Order in Council 1921 have been received, I am advised that reference to you is desirable prior to the publication of a formal notice.

*Jan. 16 1925 '14*

I have the honour to be,

Sir,

Your most obedient, humble servant,

*J. G. V. ...*

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE  
LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W.

THE EASTERN AFRICAN COURT OF APPEAL ORDER-IN-COUNCIL,  
1921.

NOTICE.

NOTICE IS HEREBY GIVEN that in accordance with Article 7 of the Eastern African Court of Appeal Order-in-Council 1921 His Majesty's Principal Secretary of State for the Colonies has been pleased to issue instructions regarding the seniority of the Judges of the Court of Appeal whereby such seniority shall be in the following order:-

- (1) The President who shall be the Chief Justice of Kenya.
- (2) The Chief Justice of Uganda.
- (3) The Judge of His Majesty's High Court of Nyasaland.
- (4) The Chief Justice of Zanzibar.
- (5) The Chief Justice of Tanganyika Territory.
- (6) Persons acting for the above according to the priority of their respective permanent appointments.
- (7) Judges other than those enumerated in (1) to (6) according to the priority of their respective permanent appointments.
- (8) Persons acting for those included in (7) according to the priority of their respective acting appointments.
- (9) Such other persons as may be appointed by the Secretary of State under Article (6) of the Eastern African Court of Appeal Order-in-Council 1921 according to the priority of their respective appointments.

ACTING COLONIAL SECRETARY.

NAIROBI,

this day of 1925.



THE EASTERN AFRICAN COURT OF APPEAL ORDER-IN-COUNCIL,  
1921.

NOTICE.

NOTICE IS HEREBY GIVEN that in accordance with Article 7 of the Eastern African Court of Appeal Order-in-Council 1921 His Majesty's Principal Secretary of State for the Colonies has been pleased to issue instructions regarding the seniority of the Judges of the Court of Appeal whereby such seniority shall be in the following order:-

- (1) The President who shall be the Chief Justice of Kenya.
- (2) The Chief Justice of Uganda.
- (3) The Judge of His Majesty's High Court of Nyasaland.
- (4) The Chief Justice of Zanzibar.
- (5) The Chief Justice of Tanganyika Territory.
- (6) Persons acting for the above according to the priority of their respective permanent appointments.
- (7) Judges other than those enumerated in (1) to (6) according to the priority of their respective permanent appointments.
- (8) Persons acting for those included in (7) according to the priority of their respective acting appointments.
- (9) Such other persons as may be appointed by the Secretary of State under Article (6) of the Eastern African Court of Appeal Order-in-Council 1921 according to the priority of their respective appointments.

ACTING COLONIAL SECRETARY.

NAIROBI,

this day of 1925.

For: 20681/25 East Africa  
Kenya

160

C. D.  
18 MAY  
1925

Ind

£3

18 May 1925.

Sir,

DRAFT.

1471  
oal  
MINUTE.

- Mr. Breen 14
- Mr. Allen 15
- Mr. Hussey 15
- Mr. Bottomley 16 5/8
- Sir J. Shuckburgh.
- Sir G. Davis.
- Sir G. Grindle.
- Sir J. Masterton Smith.
- Lord Arnold.
- Mr. Thomas.

I have to ack the recd of  
your despatch No 396 of the 6<sup>th</sup> of  
April, regarding the order of  
precedence of the Judges of  
the Court of Appeal for  
Eastern Africa, to inform  
you that I have decided that

2. Although as provided in  
draft notice this C. J. to  
Kenya is to be President  
of the Court wherever it sits  
I conceive that

the Chief Justice of any  
territory other than Kenya  
in which the Court happens  
(which includes the Judge in the case of New Zealand)  
to sit should be given

precedence for such sittings  
next after the President,  
so that in the absence of  
the latter he would act  
as President.

3 } <sup>most suitable</sup>  
The best way to  
give effect to this <sup>such an arrangement</sup> ~~decision~~

appears to be to provide

for a Vice President of the  
<sup>by inserting the</sup>  
Court, the following

para. should accordingly  
be inserted after para.

<sup>draft</sup>  
(1) of the Notice of sit.  
~~you submit a draft:~~

"(2). The Vice President,  
who when the Court is  
sitting

161  
sitting in any Territory  
other than Kenya shall  
be the substantive Chief  
Justice or Judge, as the  
case may be, of such  
Territory if sitting as a  
member of the Court and  
in the absence of <sup>failing</sup> such  
Chief Justice or Judge shall  
be the next senior Judge  
after the President sitting  
as a member of the  
Court, and when the Court  
is sitting in Kenya shall  
be such next senior  
Judge as aforesaid  
according to the following

DRAFT.

\* or ? "failing"  
- see minute

MINUTE.

Perhaps "failing"  
is best  
XN

- Mr.
- Mr.
- Mr.
- Sir J. Shuckburgh.
- Sir G. Davis.
- Sir G. Grindle.
- Sir J. Masterion Smith.
- Lord Arnould.
- Mr. Thomas.

order."

43. This <sup>addition</sup> decision will of course

necessitate the re-numbering

of paras (2) to (9) of the

draft, with consequential

alteration of the references

in (7) and (8) which

will become (8) & (9).

5. ~~4~~ Subject to these  
amendts I approve the draft

Notes submitted as to

Dispatch

I have etc

(Signed) L. S. AMERY