

1921-22

KENYA

2435

GOVERNOR  
NORTHEY  
S.O.  
CCNY

DATE  
31ST DECEMBER 1921

Rec'd  
456

Mr. Gredle  
Sir H. Lambert  
Sir J. Wood  
Messrs. Smith.  
Mr. Wood  
Mr. Churchill

SUBJECT  
COURT OF APPEAL FOR E. AFRICA  
PRECEDENCE OF JUDGES  
Petition against suspension of Judge Barth  
as President by Judge Sir W.M. Carter and  
subtle order should be revoked.

Previous Paper  
C/53623/21

MINUTES

Mr. Plesley

Will you please advise?

[This is not my committee to deal  
with a matter of this kind  
semi-officially]

Dr. H. R. ...  
Mr. ...

6 Dec 1921

The subject of the matter is shelled at "A"  
in your minute with 53623/21

This explanation of Sir W.M. Carter's personal  
claim might be expressed to Sir S. Northey  
re: Barth; with an assurance that  
the latter shall retain the full confidence  
of the S.O.S. also appropriate to  
appear with in S.A. form and which  
upon the basis of cooperation in order  
to reduce to a minimum any difficulties  
arising from the absence of the President  
of the Court from its leading members

P.T.D.

in Kenya  
25/12/21

Handwritten notes and signatures on the left margin, including "C/53623/21" and "P.T.D."

Subsequent Paper

Mr. Barth has this amount  
of grounds for complaint - that  
when he was designated as  
Chief Justice of Kenya no  
indication was given to him  
that personal precedence  
would be given to Sir W. Carter,  
than C. J. of Uganda. Next  
then & when the pledge  
was given to Sir W. Carter  
(in let. of 17 July '20 or no.  
47 in his file) he failed  
to look up the 1914 order of  
precedence which, strictly,  
gives the C. J. Kenya the  
precedence (in preference of  
my personal claims).

In writing to Sir C. Northey  
on the lines which Sir R. Kirby  
suggests we must put in  
an apology on this point.

at 19.1.22  
to Sir R. Kirby & Sir C. Northey

at once.

J. D.

19.1.22

No.

*Confidential*

2495

21st December 1921.

Rf

P

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Dear Bottomley,

I have been expecting a despatch from the Colonial Office in amplification of the telegram of November 2nd and giving reasons for the Secretary of State's decision to allot personal precedence in the Court of Appeal for Eastern Africa to Judge Carter of Tanganyika Territory. As nothing has arrived I feel that I can no longer delay transmitting the views of Judge Barth and of this Government on the supersession.

Judge Barth's personal protest is vehement. He has been President of the Court since August 1st 1920, and has now been superseded without being given either the reasons for this decision or an opportunity of stating his views. In 1914, the Secretary of State laid down the seniority of the Judges of the Court of Appeal by reference to posts and not to persons, and while he admits the justification of giving personal seniority on the inception of the principle, to two Judges (neither of whom is now in East Africa) he protests against any further exception being made now the principle is established.

This Government considers that the supersession is more than a personal matter. It presumes that the office of Chief Justice of Kenya is regarded...

NO

(3)

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I am unable to guess the reasons which led to the decision but I submit that the order making Sir William Morris Carter President of the Court of Appeal should be revoked. If this cannot now be done, I should like to impress upon you the real nature of the personal grievance under which Judge Barth labours, and to suggest that it be made clear to him that he still retains the confidence of the Secretary of State. His work in this Colony is of the highest order and I am not myself aware that any adverse opinion has ever been passed on it, but you will readily understand that he regards his supersession without reasons given, as both arbitrary and derogatory.

Yours sincerely,

Edward Northey

N. 2495/1892

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9 February 1922

My dear Mr. [unclear],

I was sorry to learn from your letter of Dec 21<sup>st</sup> that Sir Williams Ansell's personal appointment as a former member of the Court of Appeal has given cause for so much protest, and so far as Mr. Baillie himself is concerned he must admit that there is ground for it. Will you please convey them our regret that he was not informed that he was to leave in 1920 that this was in fact decided then and at the same time as your letter - as you can see by the copy - that he still retains the full confidence of the S. B., who appoints his best work in last office and relies on his loyal cooperation in order to reduce to a minimum any difficulties arising from the absence of the President of the Court from its headquarters in

Personal

DRAFT.

Encl

Sir E. [unclear]  
[unclear] 1892/23

MINUTE.

Mr. [unclear] 9/2/22

Mr. [unclear] 9/2/22

Mr.

Mr. Grinelle

Sir H. Lambert

Sir H. Read

Sir J. Masterton Smith

Mr. Wood

Mr. Churchill

+ pl. fr.

Henry

As I am of the point of personal  
preference for, rather than the  
fact of, Cortes, I am  
not in favour of the  
Hoyt case, but I would, when  
it is brought before the  
Federal court, be the President.  
If I could explain to both sides  
full confidence that no opportunity  
would have arisen, as the matter  
does not affect in any way the  
position of Henry as the leading  
advocate of the Court and having  
requiring the very much more  
of it in the East African judicial  
staff, of which he has been a member  
in Cameroon since 1903, with rank as  
Chief Justice since 1912. He was the  
very distinguished senior member of the  
Court as constituted in 1914.

I am afraid that there is no  
chance of a reversal of the decision  
without before the bench of four with  
Cortes.

I speak from the personal position,  
I don't of this since the very  
under especially in looking - I

... all have  
two copies, but that is a  
course after dinner in the  
conference and put into  
... 261

DRAFT.

Eda will

MINUTE.

- Mr.
- Mr.
- Mr.
- Mr. Grindle
- Sir H. Lambert.
- Sir H. Read.
- Sir J. Masterton Smith.
- Mr. Wood.
- Mr. ...