

EAST COAST
22163

C. O.
R.
E.

033

427

Date
1912

June

Previous Paper

COAST LANDS SETTLEMENT
EMPLOYMENT

States circumstances in which it is necessary to employ persons and the amount to be paid for the time his services are required, and the source from which the Coast Land Settlement

W. Read

Copy to Treasury & ask for approval

WAB

July 19

at once

W. R. R.

18/12

R

Coast Lands & Mining
Records

Previous Paper

24082

R
GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE.

June 10th 1912.

No. 427

Sir.

I have the honour to invite your attention to a matter connected with the working of the Land Titles Board at Mombasa.

2. A large number of registered deeds referring to the lands acquired by the Imperial British East Africa Company are on record in the office of the Principal Registrar of Documents, but as no survey of the lands in question has been carried out, there are no maps attaching to them.

3. A survey of these lands is now being undertaken but the task is a difficult and at times an extremely delicate one, and the Board will require to have the assistance of the best available local knowledge.

4. The only person in any way qualified to give this help is Abdul Wanid bin Athman, who holds the position of Government Land Inspector in the Conservancy Department at a salary of Rs. 60 per mensem. His intimate and unique experience in all land questions at Mombasa and particularly his personal knowledge of the actual

Yours

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

- 2 -

lands as bought in the time of the Company, particularly fit him to assist and expedite the work of the Board.

5. He is, however, a man of an advanced age, and as the work which will fall upon him will be extremely arduous for a man of his years and will have to be carried out when his other duties permit, it will be necessary to find him some remuneration as a reward for his services.

6. I have accordingly the honour to report that I propose with your concurrence to pay him a sum of Rs.40 per mensem for the time that his services are required in this connection. This amount will be met from savings on the Coast Land Settlement Vote.

I have the honour to be,
Sir,

Your humble, obedient servant,

W. J. ...
in the absence of the
ACTING GOVERNOR.

C 2
R 22 JUL
D

OMG 22/6/12

Edg.

612

21st July 1912

Copy to J. D. G. C.

Sir,

DRAFT.

The Secretary
to the Treasury

MINUTE.

- Mr. Kenning 22/7
- Mr. Parbles 22
- Mr. G. Fulder.
- Mr. H. Just.
- Mr. J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

I am to transmit to you, to be laid before the L.C. of the Treasury, the accompanying copy of a despatch from the O.M.G. of the E.A.P., & to request that you will be good enough to sanction the payment at the rate of Rs. 40 per mensem to

Abdul Wahid bin Akhbar, in addition to his salary of Rs. 60 per mensem, for the maintenance of his family & for the purchase of books & other articles

as required in connection with the working of the Land Revenue Board at Mombasa.

27/7/12

The undersigned

under which the payment
would be made and that
the work would be performed only
when Abdal wished in
the manner desired in
the contract and the
cost of the work at year
will be as shown on
the account provided
for Coast Land Settlement

J. [Signature]

29 May 1912

6.3

Conf 80

Date 1912

Previous Paper

24544 76

... the ... of ... in relation to ... also in ... and ... in ... policy.

Mr. Langdon
Mr. Butler

17/2/13

The ... of his ...
legal ... to his ...
Mr. ... of 6 Dec 1900 ...
... his ... should be ...
... and ...
...
...
I am glad to have ...
...
...
...

should, I think, give due credit to the
Government for maintaining this system in
the matter of public administration. However
experience has shown that the policy of
prolonging business by business through
business is not the right one. The policy
followed by previous governments had been
now to be general break up of the
tribal system. As it is the power
of the chief affairs that have heretofore
undermined, and the discipline of
the groups practically completely impaired
and it was probably like some time
before the end effects of the abolition
policy of the last few years has been
to ~~bring~~ ^{bring} ~~down~~ ^{down} the ~~tribal~~ ^{tribal} ~~system~~ ^{system} part of
para 3 of the President's report of 6 Dec 1900
poses a most difficult problem.

The question that
should be left to

hand permanent, for the nation
Communal System requires the most
careful concern. The policy of the
States will probably have to be revised
to the extent of the recommendations of
the West African Lands Committee which
has today reports. It will probably
be found that in course of time we
shall have to grant the nations
something in the nature of an occupancy
right, but we must avoid giving
them anything in the shape of freehold.
It would be well to ask Sir
Belphair to keep an eye on this question.
In Ashanti the question has been
prejudiced by the local authorities
allowing a system of land deal tenure
to spring up without consulting the S.F.S.
So far as the provisions of the

which may be thought
desirable to call attention
to begin with there is a provision
as to the procedure & powers of
all the members, although the
provisions of the general provisions
concerning attendance before such
tribunal are not present for any purpose
Presumably the provisions of this
tribunal will be regulated under
§ 34 of 1907 which makes the power
to make rules
the jurisdiction of these tribunals
is apparent except § 9 & 10
concerning what extrajurisdictional
orders may be made under the code
There is no saving clause for
existing valid native custom (see
§ 29 of Gold Coast Ord 1903)
Now in these early days since the
Headman's native tribunals
jurisdiction with regard to the
any part of the law is given
usually to the Pool. The Gold
Coast Ord 1903 § 26 (b) - under the Gold
Coast Ord 1903 section 3, in the present order
there is no provision as
to appeal from Native Tribunals
Again, although § 2(2) provides that

power to direct the cancellation
of Headman's orders, there is no
machinery provided for the
admission to them or either of
them of orders issued
Probably all these 3 points have
been considered & perhaps
omitted & I hardly think it
is worth while calling attention
to them as detailed
But I should like to include
a copy of Gold Coast
Ord 1903 § 7, 10 for their consideration
directing them to consider whether
provision should be made for
any of the matters dealt with
in these orders & omitted from
the present code
I submit to you a copy
for their consideration
The contents of the report
is of 1/2
W. Read
Mr. Belfield had better see, but it is
hardly necessary to consult Sir P. Girouard.
Submit to anything that ^{Mr. Belfield} may have to
say. Affirm enclosure, witness as

which may possibly be thought
desirable to call attention
to begin with there is provision
as to the procedure & powers of
advising tribunals, although it is
the Headman's duty of general power
empowering tribunals before such
tribunals is empowered to any purpose
presumably the provisions of which
tribunals which are regulated under
section 18(1) which states that no power
to make rules
the jurisdiction of these tribunals
is apparently confined to the
making of rules & regulations of
advising tribunals under the order
There is no saving clause for
existing valid native customs (see
sec 29 of Gold Coast Ord 1933)
Nor is there anything in the
Headman's order which would
restrict the jurisdiction with regard to the
making of rules of the law in force
generally in the Gold Coast
or (see sec 26) - under the Gold
Coast Ord 1933 section 3 under the present order
there is no provision as to
to appeal from Native Tribunals
Again, although section 18(2) gives P.C.C.

power to direct the cancellation
of Headman orders, there is no
machinery provided for the
admission to them or either of
them of orders issued

But all these points have
been considered & properly
settled & I hardly think it
is worth while calling attention
to them in detail.

But I should like to mention
a few points of Gold Coast
Ord 1933 & 1934 for which I am
directing attention to consider whether
provision should be made for
any of the matters dealt with
in these orders & omitted from
the present order.

For me to submit to the P.C.C.
for advice as to whether
the last part of Ord 1933
is to be included.

W. Read
Mr. Belfield had better see but it is
hardly necessary to consult Sir P. Grouard.
Subject to anything that ^{Mr. Belfield} may have to
say I approve enclosure, which is

W. Tennyson proposes, (but specifying, by way of instance, the omissions to which he calls attention), & will also send A + B. in W. Batterbee's minute

2/13

For the
Week

Aug 7

The object of the measure is excellent but I think it may be possible to add to its utility by some further alterations in the form indicated by Mr Tennyson.

It is desirable that the measure should be as complete as possible in itself, definitely prescribing the powers to be conferred and the procedure by which they are to be exercised. All essential provisions should be incorporated in the text of an Ordinance and should not be left open for subsequent promulgation by Rules.

So soon
is written
to the

H. D.

14.8.12

H. J. R.

14/8

Off for review

at once P. 15

C:7 C.O

GOVERNMENT HOUSE,
NAIROBI.
BRITISH EAST AFRICA.

AFRICA PROTECTORATE

INITIAL No. 88

June 30th 1912.

Sir,

I have the honour to transmit herewith two copies of the Native Authority Ordinance 1912, as passed by the Legislative Council on the 29th ultimo, together with a copy of a legal report on the objects of the Ordinance by the Attorney General. The purpose of the Ordinance, as stated by Mr Combs, is to regulate the powers, duties and authority of Native Chiefs and Councils in relation to the members of the Native Communities over which they, with the sanction of the Government, exercise jurisdiction.

2. Sir Percy Girouard in his Confidential Report on the Protectorate of May 26th 1910, commented under the heading "Native Courts and Councils" on a system which had sprung up prior to his arrival of encouraging natives to have most, if not all, their disputes adjudicated upon in District Courts instead of by the natural heads of the tribes. This system, as he remarked, was having the widest disintegrating influence upon the natural organization of some of the tribes, and in consequence that organization

RIGHT HONOURABLE
SIR HARCOURT, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

Ordinance
Legal Report

organization was rapidly becoming atrophied by disease, whilst the authority of the chiefs and elders over their young men had gradually decreased until in some parts of the Protectorate it had almost disappeared. Sir Percy Girouard concluded his remarks by saying that unless we developed the East African tribes on their own lines and in accordance with their own ideas and customs, purified in so far as might be necessary, we should before long find ourselves obliged to deal with an undisciplined rabble, with thousands of persons in a savage or semi-savage state, all acting on their own impulses and making themselves a danger to society generally. The only possible end to such a policy must be the eventual destruction of the rabble.

3. As a result of Sir Percy Girouard's representations you confirmed in your Confidential despatch of December 6th 1910 Lord Greve's statement of the policy of His Majesty's Government on this subject, viz: that Native Chiefs should be used in the administration of purely native reserves, and you agreed that so long as the natives remained in their primitive state they should be governed through the Native Chiefs and according to native law and custom.

4. This policy has since been followed, and we are now in a position to review the results attained. On the whole the system has worked well and has given wide-felt satisfaction to the natives, whilst the relief afforded to the District Courts has been very great. As the District Commissioners in native reserves are no longer required to spend a great part

3.

of their time settling petty cases, they are able to pay more attention to their administrative duties, such as instilling into the minds of the Chiefs ideas of responsibility, guiding and correcting the procedure of the Councils in their dealings with the people, and advising and encouraging the native authorities in methods of economic development, road construction, irrigation, and other similar matters. But it has become evident that it is necessary to define the powers and duties of the Chiefs and Councils and to supplement native custom by express legal enactment in order to empower the responsible native authority to enforce proper orders issued by them under the supervision of the officers of the Administration for the good government of their people. The only legislation hitherto enacted to deal with this matter is the Village Headmen's Ordinance 1902, which is wholly inadequate as its provisions merely give power to the Government to require Headmen to keep order in their villages and to clean the roads of those villages, whilst no punishment can be imposed under the Ordinance unless an outrage occurs in a village which might have been prevented by reasonable vigilance on the part of the Headman and the villagers. In some districts, as mentioned above, the authority of the Chiefs over their young men has been so weakened that it has almost disappeared.

5. As a result of being ignored the chiefs have become apathetic and indifferent, whilst the peasantry have become callous and disobedient, and the younger generation are disregarding native prohibitions in connection with drinking assemblies, bang cultivation,

5c. It is imperative that discipline should be maintained and enforced amongst the class who before our advent provided the fighting element of the tribes, and this can only be done by supporting the authority of the natural native government or by largely increasing the police force. A people cannot be developed by repressive measures, and it is only by encouraging the growth of a civic spirit, and by educating the Chiefs in the principles of self-government that we can induce them to eliminate corruption and undesirable practices. There is little doubt that had this Ordinance been in force last year the hysterical mania which occurred in the Macheke District would never have spread in the manner it did, necessitating the despatch of a company of the King's African Rifles to the affected area in order to restore order.

6. The Native Authority Ordinance is divided into two parts, first to provide for the enforcement of the legitimate orders of the Chiefs and Councils, and second to ensure that the Chiefs and Councils do their duty. It is just as essential to insist on the Native Authorities undertaking their due share of the burdens of government as to regulate their powers and duties.

7. I submit that the Ordinance is a proper and necessary law to give effect to the approved policy of the administration of natives within their reserves through their tribal authorities, and I trust that it will receive your approval.

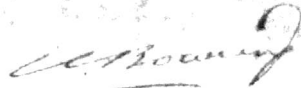
8. As the Ordinance was drafted on the instructions

instructions of Sir Percy Girouard I venture to suggest that advantage be taken of his presence in England to discuss with him any points on which you may require further information.

I have the honour to be,

Sir,

Your humble, obedient servant,



ACTING GOVERNOR.

Section 5. Headman prevention and the of offenders.

The first two Sub-sections are based on provisions in the Indian Criminal Procedure Code, and extend the powers and duties of the Police under the Code to Headman.

Sub-sections two and three expressly impose the duty on a Headman to arrest Natives who have committed offences outside Native Reserves, and to seize and restore stolen property. The provision is necessary in view of the Collective Punishment Ordinance under which a Community can be punished for harbouring offenders or condoning stolen property.

Section 6. Headman may compel the attendance of persons before the tribunals. of person attending to and when.

This is necessary to enable a Native Tribunal to compel through Headmen the attendance before itself of a Native who has left the local area of the jurisdiction of the Tribunal and is residing within the jurisdiction of some other Native Tribunal.

Section 7. of Headman the orders certain cases.

Cases have arisen in which, when Native Tribunals have convicted and punished Natives subject to their jurisdiction, or discharged orders issued by Headman or other Native Authorities, the High Court has set aside the conviction on the ground that there was no evidence to show that the order issued and disobeyed was a lawful order which the Headman or Native Authority could issue. To prevent a recurrence of such cases, which can but render the position of the Native Authority extremely difficult, it has been

sought to prescribe by this Section the purposes for which orders may be lawfully issued by Headmen.

Provision is made by this Section to enable Administrative Officers to control Headmen in the exercise of the powers conferred upon them by the preceding Section.

To compel the issue of proper and necessary orders, and to prevent abuse of powers conferred by the issue of any improper orders.

Section 8 (1)

Administrative Officers may issue orders of the kind enumerated in Section 7.

in case of neglect Headmen Administrative Officers may issue orders.

Section 8 (2)

Power to direct cessation of order.

Section 9

Prohibition on Natives disobeying orders.

Section 10

Administrative Officers may order Natives occupying land outside Reserve to remove to the Reserve.

It is hereby provided to be a necessary provision in order to prevent Natives leaving their Reserves ^{with the object of} ~~and thereby~~ violating obligations towards their Chiefs and Native Communities.

Section 11

Administrative Officers may issue orders to compel compliance of Natives before

THE NATIVE AUTHORITY ORDINANCE, 1912.

651

Section 1.
Title.

Section 2.
Interpretation.

Under this section the Governor is empowered to appoint as Headman for the purposes of this Ordinance the recognised tribal authorities, such as the Chiefs and Sub-Chiefs, Councils of Elders, or where there is no recognised tribal authority, competent to carry out the duties of Headmen, such other Natives as may be selected for the office. The recognised Native authority can be maintained by appointing a paramount chief as Headman over all his people, and the Sub-Chiefs and Councils Headman subordinate to the paramount chief with jurisdiction over sections of the tribe or community.

Section 3.
Duties of Headmen.

This localises the appointment by Headmen of tribal retainers, performing the duties of police in Native Reserves.

Section 4.
How duties may be carried out.

This Section imposes penalties on Headmen who wilfully neglect to perform the duties imposed by this Ordinance and exercise the powers conferred to enable them to maintain order within the areas for which they are appointed.

The provisions of paragraph (a) of Sub-section (1) and of Sub-section (3) have been shown to be necessary in order that the authority of Administrative Officers over all Headmen and the authority of Chiefs and other superior Headmen over subordinate Headmen may be maintained. Cases have been in which Sub-Chiefs and members of Native Councils have neglected without sufficient excuse to attend meetings summoned by Administrative Officers or Chiefs with the purpose of discussing matters of importance affecting the Native Community.

Section 7 of the Village Headmen Ordinance 1903.

Although no order has been issued under this Section, it has been considered advisable to re-enact the Section.

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Gov/22291/1912.
East Africa Protectorate.

DRAFT.

EAST AFRICA PROTECTORATE

CONFIDENTIAL

The Officer Administering
the Government of

Downing Street,

23 August, 1912.

MINUTE.

Mr. H.F.B. 17/8.

Sir,

Mr. Tennyson 19.

Mr. Read 19.

X Mr. Piddes. 20

Sir H. Just.

Sir J. Anderson.

Lord Emmott.

X Mr. Harcourt. 20/8/12

for Consideration.

Conf. Ord. No. 5
1883

No. No. 7 1910

I have the honour to acknowledge the receipt of your Confidential despatch (No. 60) of the 20th of June transmitting copies of the Native Authority Ordinance 1912 as passed by the Legislative Council, and to inform you that I approve the Ordinance subject to the following observations.

2. I am glad to learn that the native policy approved in my Confidential despatch of the 6th of December 1910 has on the whole worked well and has given general satisfaction

to

to the natives, and I desire to be kept informed from time to time of the future working of the system. Subject to the criticism below, the Ordinance appears to be well conceived to give effect to the approved policy and I trust that it will be found to have a beneficial effect on native administration. I consider it desirable that the Ordinance should be as complete as possible in itself, definitely prescribing the powers to be conferred and the procedure by which they are to be exercised. All essential provisions should be incorporated in the text of the Ordinance, and should not be left over for subsequent promulgation by Rules.

3. I recognise that the framing of an Ordinance of this nature must so closely depend upon local circumstances that the

precedents

precedents afforded by other Colonies and Protectorates may not be of much value. It would appear, however, to be worthwhile for your legal advisers to study the provisions of Gold Coast Ordinances No. 1 of 1891 and No. 7 of 1910 of which I enclose copies, and to consider whether provision should be made for any of the matters dealt with in these Ordinances and omitted from the present Ordinance. For instance, there is no provision as to the procedure or powers of "Native Tribunals", although Section 6 of the Ordinance gives the Headman an absolutely general power of enforcing attendance before such Tribunals, apparently for any purpose. Presumably the procedure of these Tribunals will be regulated under Section 10 of Ordinance No. XIII of 1907 which gives the Governor power to make rules. The jurisdiction of these Tribunals is apparently confined by

Section

Section 9 to dealing with contraventions of orders issued under this Ordinance. There is no clause in the Ordinance saving existing and valid native customs, ^{see} of Section 9 of Gold Coast Ordinance No. 5 of 1883.

Nor is there any provision giving the Headman or the Native Tribunal jurisdiction with regard to the carrying out of the laws in force generally in the Protectorate ^{see} of Section 26 (b) of the Gold Coast 1883 Ordinance. Further there is no provision for appeal from the Native Tribunals. Again, although Section 8 ⁽²⁾ ~~(1)~~ gives Provincial and District Commissioners power to direct the cancellation of a Headman's orders, there is no machinery provided for the submission to them or either of them of orders issued. Possibly all these points have been considered and purposely omitted, but they appear to merit consideration.

As regards
4. ~~To turn to~~ the actual provisions of the Ordinance I see no objection to the provision in Section 13 for the remuneration of Headmen by a rate to be levied on the natives under Rules made by the Governor, but the Governor before making any Rule under this Section should take careful cognisance of any advantage or emolument derived by the Headman from his position otherwise than by a rate. I observe that Section 14 of the Ordinance does not include any definition of the term "Native". Seeing that the interpretation Ordinance does not at present contain any definition of the word, I think that it is important to include a definition in the present ordinance.

I have, etc.,

(Sd.)

DRAFT.

EAST AFR. PROT.
UGANDA
19166

19166
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File 107
Date 1912
June
Previous Paper
2440
2013 Taylor
1669

POLICE PROMOTIONS

I.G. Police urges great undesirability of promotions from n.c.o. ranks to Asst Supt in same Prot. and recommends that Waters should come here and Taylor go to Uganda I agree entirely and Govr of Uga. does not object Do you approve.

Mr. Butler

As a general rule it is inadvisable to promote the n.c.o. to the commissioned ranks of the other Protectorate. But this cannot always be done & in the present case I would make no alteration in the approved promotions.

Originally, W.D. Waters of Uganda should have filled an East vacancy. This later occurred in Uganda. A vacancy which took effect earlier than the East vacancy. It is better the senior n.c.o. on the 2nd pt suitable for promotion, was (in accordance with the arrangement for these promotions) filled

sequent Paper
1224