

1931

Kenya

No. 17306.

SUBJECT

C0533/415

Local Government (Eldoret European Hospital Rate) Ordinance.

(District Councils (Amendment))

(Municipalities (Amendment))

Previous

16206/30.

800/39962/23.

Subsequent

18102/32.

12
END

LEGAL DEPARTMENT

TELEGRAPHIC ADDRESS:
"ORDINANCES, NAIROBI"
TELEPHONE No. 29.
IN REPLY PLEASE QUOTE
No. L. 5/18/...
AND DATE.

ATTORNEY GENERAL'S OFFICE,
(P. O. Box No. 112),
NAIROBI.
KENYA.

25th September, 1931.

Sir,

I have the honour to acknowledge
the receipt of your letter dated the 23rd September,
relative to the Native Tribunals Ordinance, 1930, and
in reply thereto have to inform you that the Attorney
General is not in a position to advise private
persons.

I have the honour to be,

Sir,

Your obedient servant,

R.R. EYISON, ESQR.,
ADVOCATE,
NAIROBI.

R. Harris
CROWN COUNSEL,
for ATTORNEY GENERAL.

HES/APS

23rd September,

1

The Attorney-General,
Old Secretariat,
NAIROBI.

Sir,

I have the honour to request that the Attorney General will personally favour me with a Ruling on the undermentioned points, in respect of "The Native Tribunals Ordinance, 1930".

- (1) It is apparently clear from Sec.NO.24 that no Advocate may appear or act in any of the Courts mentioned in that Sec., but it is presumed that those Courts are successively connected by way of Appeal only.
- (2) Sec.NO.30(c) apparently lays down an alternative procedure, where the Applicant wishes to remove his case out of the Jurisdiction of Native Courts, and to have the same heard by a Subordinate(or European) Court of the first or second Class. If this procedure be adopted, it is presumed that an Advocate may then appear and act.
- (3) Is an Advocate, instructed by the Applicant to act under the provisions of Sec.NO.30(c) a "person concerned" in the sense that he may prepare and forward the Application, and make the ordinary charges therein?
- (4) In the event of an Application under Sec.NO.30(c) (whether made by the Applicant personally or by his Advocate) being refused, is there any right of Appeal, and if so to what Court?
- (5) The same(with regard to Appeal) in respect of Sec. NO.31.
- (6) Is there any right of Appeal from the Revision provided for under Sec. NO.30(a) of the Ordinance?

I have the honour to be,
Sir,
Your obedient Servant,
(Sgd) R.R.Evison.

COLONY AND PROTECTORATE OF KENYA.

No. J.C. /284 /36-16 Vol.II.

ACKNOWLEDGMENT.

To

R.R. Evison, Esqr.,

Advocate, KISUMU.

SUPREME COURT OF KENYA,

NAIROBI,

5TH August, 1931.

Sir,

I have the honour to acknowledge receipt of your letter dated 1st August, 1931 on the subject of Rulings or directions under NATIVE TRIBUNALS ORDINANCE - 1930. I am directed by H.H. the Chief Justice to inform you that he regrets he does not consider it part of his duty to advise you; rulings or directions are not given outside - ~~which shall receive attention.~~ - proceedings.

I have the honour to be,

Sr;

Your obedient servant,



REGISTRAR,
SUPREME COURT OF KENYA.

NG.

1st August,

1

The Registrar,
The Supreme Court,
NAIROBI.

Sir,

I have the honour to request that a Ruling, or some directions of a helpful nature, may be given on the following points arising out of the Provisions of the Native Tribunals Ordinance, 1930.

I was today instructed by a Native to make Application to the District Commissioner, Central Kavirondo, to have his case transferred under Sec.30(c). The D.C.refused the Application, and also refused to state his reasons.

In view of Sec.24 of the Ordinance, am I entitled to charge for services rendered in connection with the above mentioned Application?

Is there any right of Appeal from the decision of the D.C.?

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd) R.R.Evison.

R. R. Evison, B.A.
Barrister at Law
Attends H. M. Supreme Court.

RECEIVED
OCT-1931
CL. OFFICE

Niameu,
Kouya Colony.

8

29th September, 1931

The Legal Department,
The Colonial Office,
Downing Street,
LONDON.

3c

Dear Sir,

The attached correspondence is forwarded with a request for directions as to the procedure to be adopted in the circumstances disclosed.

It has generally been recognised in English Courts that a Barrister in practice is an Ex-Officio Member of the High Court, and it is, therefore, presumed that an Advocate of the Supreme Court of this Colony is not a "private person", to be excluded from the benefit of rulings, directions or advice by the Attorney-General on points requiring elucidation.

If, however, the decision of Crown Counsel (enclosed) accurately states the position, would you kindly advise me as to where the information required may be obtained?

In view of the acute financial and general trade-depression from which the Colony is now suffering, it will be, I am sure, readily appreciated that Natives have no money to spare on futile litigation; and where an Ordinance directly affecting their rights and privileges requires some preliminary interpretation, there should be a less expensive and more expeditious avenue of enquiry than that afforded by Appeals to the Supreme Court.

Yours faithfully,

R. R. Evison

Copy of file to Cor 783 19 NOV 1931

R. R. Evison, B.A.
Barrister at Law
Attacks H. M. Supreme Court.

RECEIVED
SEP 1931
OFFICE

Hispanic
Kango Colony

29th September, 1931

The Legal Department,
The Colonial Office,
Downing Street,
L O N D O N.

3c ✓

Dear Sir,

The attached correspondence is forwarded with a request for directions as to the procedure to be adopted in the circumstances disclosed.

It has generally been recognised in English Courts that a Barrister in practice is an Ex-Officio Member of the High Court, and it is, therefore, presumed that an Advocate of the Supreme Court of this Colony is not a "private person", to be excluded from the benefit of rulings, directions or advice by the Attorney-General on points requiring elucidation.

If, however, the decision of Crown Counsel (enclosed) accurately states the position, would you kindly advise me as to where the information required may be obtained?

In view of the acute financial and general trade-depression from which the Colony is now suffering, it will be, I am sure, readily appreciated that Natives have no money to spare on futile litigation; and where an Ordinance directly affecting their rights and privileges requires some preliminary interpretation, there should be a less expensive and more expeditious avenue of enquiry than that afforded by Appeals to the Supreme Court.

Yours faithfully,

R. R. Evison

copy of/ will to Gov 783 1931

5. You may wish to consider the matter generally in connection with any amendment of

Section 30 of the Ordinance, + ~~Section 30~~

I have, etc.

~~Section 30 of the Ordinance~~

... in accordance with
the suggestions of my predecessors
... the 17th Nov, 1936,
...
... by the ...
... at the same time.

(11074
on 16/9/30)

5. You may wish to consider the matter generally in connection with any amendment of

Section 30 of the Ordinance, *& Lands*

~~I have, etc.~~

subject that the Order is

in accordance with

the provisions in my predecessors

in No 299 of the 17th Nov, 1930,

*(1074
in 1697/30)*

in which I have a ~~reference~~ ^{reference}

in the present case by the return

of the 22nd of the same time.

11

7
would ^{it is} have ~~nothing to say~~ on this question, as regards the charging of fees, although, if the District Commr. was of the opinion that a barrister had no right of audience, it would, of course, be for him to say so.

4 I am further advised that there is nothing in section 34 ^{or} of the Ordinance or elsewhere which gives a right of appeal from the refusal of a District Commr. to comply with an application under section 30(c) or section 31 of the Ordinance. Under the latter section it is possible that if an application to the District Commr. fails, a fresh application might be made to the Provincial Commr. As regards Section 30(a), there is a right of appeal from the District Commr. to the Provincial Commr, and thence, under Section 34(4), by case stated to the Supreme Court, where a sentence is increased. There appears to be no right of appeal against a revision in a civil case.

5

would ^{rather} have ~~something to say~~ on this question, as regards the charging of fees; although, if the District Commr. was of the opinion that a barrister had no right of audience, it would, of course, be for him to say so.

4 I am further advised that there is nothing in section 34 ⁱⁿ of the Ordinance, or elsewhere, which gives a right of appeal from the refusal of a District Commr. to comply with an application under section 30(c) or section 31 of the Ordinance. Under the latter section it is possible that if an application to the District Commr. fails, a fresh application might be made to the Provincial Commr. As regards Section 30(a), there is a right of appeal from the District Commr. to the Provincial Commr, and thence, under Section 34(4), by case stated to the Supreme Court, where a sentence is increased. There appears to be no right of appeal against a revision in a civil case.

Attorney General would not be binding, and
apparently
that, so far as he is aware, the only way of

obtaining a satisfactory ruling on the question
whether or not an appeal lies is to lodge an
appeal.

3. The substance of Mr. Evison's letter has
been considered *by my legal advisers,* ~~in the Colonial Office,~~ and it
would appear ~~that if the Native Tribunals Ordinance~~
~~is amended in accordance with the suggestions made in~~
~~my predecessor's despatch No. 899 of the 17th November~~
~~1930, it might perhaps be useful for the points~~

(No. 14 on
16092/30)

~~raised by Mr. Evison to be settled at the same time.~~
I am advised *law* that as the Ordinance stands at present,
of the Native Tribunals Ordinance
Section 24 does not prevent a barrister from appearing
before the District Commissioner in an application
made under Section 30(c) *and that an advocate is*
hardly "a person concerned"; *but* although he could appear
as being identified with the person concerned, just as
in England a barrister can make an application where a
statute or rule provides that the Court may do so
sometimes
on the application of a party. *P. prepared the charge of this,*
My Legal Adviser

it is probable that the Law Society in Kenya
points out that the local Law Society would probably

have

C. O.

17803/B/31. Kenya.

C.D.
R 13NOV
D 18

886
26

Mr. Pooley. 6/11/31.

Mr. Venning

Mr. Bushe

Mr. Allen

Mr. Tomlinson.

Sir O. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

19 November, 1931.

Sir,

I have etc. to transmit

to you a copy of a letter, with

enclosures, which has been addressed to
~~the Legal Dept., Colonial Office~~

me by Mr. R.R. Evison, a barrister residing

at Kisumu, regarding the Kenya Native

Tribunals Ordinance. In accordance with

Col. Regn. 202, Mr. Evison's letter should

have been addressed to ^{me through} you, in the first

instance, and I have to request that you

will cause him to be so informed.

2. With regard to the second para.

of Mr. Evison's letter, my Legal Adviser,

^{Law}
^{advised}
has expressed the opinion that even if in

Kenya a barrister is, ex-officio, a member

of the High Court, there is no reason

why he should consider ^{that it is} it the Attorney-

General's duty to advise him on points

of law. My legal Adviser states that.

In any case, a ruling given by the
Attorney

DRAFT.

K E N Y A

NO. 783

Gov.

Hand 3

Fr. Mr. Evison 29.9.31
(with encll).

FOOTING
LONDON

35



KENYA

No. 40

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

22nd January 1932.

RECEIVED
15 JAN 1932
OFFICE

Sir,

102

I have the honour to acknowledge the receipt of your despatch No. 783 dated the 19th November, 1931, on the subject of a communication, with enclosures, addressed to you on the 29th September 1931, by Mr. R. R. Evison, an Advocate of this Colony, and to inform you that I have informed Mr. Evison, as you desired, that his letter should have been addressed to yourself through me.

2. I note the opinions of your Legal Advisers as conveyed in paragraphs 2 to 5 of that despatch.

3. With regard to an amendment of Section 30 of the Native Tribunals Ordinance, 1930, I do not consider that any amendment of this Section is necessary. The present provisions are working well, and I do not consider that there should be a right of appeal from the refusal of a District Commissioner to comply with an application under Section 30 (c) of the Ordinance.

As regards Section 30 (a) I am strongly of opinion that the right of appeal there given is amply wide enough, and should not be increased.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL.

G O V E R N O R .

THE RIGHT HONOURABLE
MAJOR SIR PHILIP GUILFORD LISTER, P.C. G.B.E. M.C. M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

Brought up for further coron. of Nos.

[Handwritten initials] 14/2

Put by *[Handwritten initials]*
29-5-55 *[Handwritten]*

[Handwritten initials]

[Handwritten mark]

had no right of audience, it would of course be for him to say so;

(b) I see nothing in section 34 or elsewhere to give a right of appeal from the refusal of a District Commissioner to comply with an application under section 30(c) or section 31. Under the latter section it is possible that if an application to the District Commissioner fails, a fresh application might lie to the Provincial Commissioner.

(c) As regards section 30(a), there is a right of appeal from the District Commissioner to the Provincial Commissioner, and thence by case stated (section 34(4)), where a sentence is increased; there seems to be no right of appeal against a revision in a civil case.

J.R. Roberts-Wray
22.10.31.
L. M. ...
23/11

I should feel inclined to reply (1) by indicating the proper method of communication; (2) by saying that we see no reason to criticise the attitude of the Attorney General's office, commenting as in (1) of Mr. Roberts-Wray's minute; and (3) by saying that the substance of this communication was considered here, and that the position, as it seems to us, is as in the other part of Mr. Roberts-Wray's minute; and suggest that the Governor may like to consider the matter generally in connection with any amendment of section 30.

Dr aff
J.R. Roberts-Wray
25.10.31

Noted ...

Receipts to note
Lect
AG
F
AG + 3
Gov. Kenya

To Gov. Kenya (4/c + small) 19 NOV 1931

Gov. Kenya — 40 — 11/32
Has informed the Ex-Officio as desired in No. 2. Does not consider Amendment of Section 30 of Native Tribunals Order 1920 necessary

This can now be left for consideration when the Order comes up for revision in 1933 as has been decided at 4 in 1807 of 32 in regard to appeals to the general jurisdiction of appeals from Provincial Commissioners to the Supreme Court which the Governor which is not at present provided for in the Native Tribunals Order.

Notes on 1/2000/5

J.R. Roberts-Wray
11/3/32

L. M. ...
2/3/32

A copy of the Ordinance is filed on
16092/30

To (G.D.) as to W
to Legal Advisors
as to both points.

J. E. E. (Signature)
12. X. 51

I agree that we cannot advise
Mr. Evison, but he should not
address the C.D. direct, he should
approach the SogS through the Gov,
and the Gov should be requested to
inform him of the correct channel of
communication.

I would merely send copy of Mr. E's
letter to the Gov for reasons adding
a request that he will inform Mr. E as at

A

J. E. E. (Signature)

13/10/51

If the procedure suggested by Mr. Bigg
is usual in such cases, I have no observations to
make, but I see that Mr. Bushe wishes to see the
proposed reply.

It may, however, be useful to make
a few observations on the questions raised by
Mr. Evison.

(1) Even if in Kenya a barrister is,
ex officio, a member of the High Court (whatever
that may mean), I see no reason why he should
consider it the Attorney-General's duty to advise
him on points of law. In any case, a ruling by the
Attorney-General would not be binding, and, so far
as I am aware, the only way of getting a satisfactory
ruling on the question of whether an appeal lies or
not is to lodge an appeal. I know of no "less
expensive and more expeditious avenue of enquiry".

(2) If the Ordinance is being amended in
accordance with No. 14 on 16092/30, it might perhaps
be useful for the points raised by Mr. Evison to be
settled by amendments made at the same time. As
the law is at present, (a) I do not think
section 24 prevents a barrister appearing before the
District Commissioner in an application under
section 30(c). An advocate is hardly "a person
concerned", but he could appear as a person being
identified with the person concerned, just as in
England a barrister can make an application where a
statute or rule provides that the Court may do so and
so on the application of the party. Mr. Turton has
pointed out to me that the Local Law Society may have
something to say on this question, especially as
regards the charging of fees, and I think this is
probably the case, though, if the District
Commissioner was of opinion that the barrister had

A copy of the Order is filed on
16092/30

To (C), as to (U)

Parsons
12.7.51

To Legal Admins
as to both points.

I agree that we cannot advise
Mr Einstein, but he should not
address the C.D. direct, he should
approach the SoS through the Gov,
and the Gov should be requested to
inform him of the correct channel of
communication.

A.

I would merely send copy of Mr E's
letter to the Gov for obvious reasons adding
a request that he will inform Mr E. as at

A.

W. J. Bugg
13/10/51

Each case with Coun. Council or requests advise
as to where information requested may be obtained.
Expresses opinion that there should be a less expensive
& more expeditious avenue of enquiry than that afforded
by Appeals to the Supreme Court.

1. A general question of principle
is involved which it is I think
for G.P. & the legal advisors to
consider. I imagine the
line to take is to ask the
Gov. to tell MRG. That even
the G.P.s cannot undertake
to advise him.

2. But I think MRG.
has got hold of distinct points
in his letter of the 23rd Sept.
We have asked the Gov. in
work on 16052/30 to consider
various certain amendments to
§30. but these will not cover all
the ground. It is for common
practice we do not invite his
objections on the points raised -