

1935

1935

38172

KENYA  
CO 533/460

38172

The Local Govt. (Municipalities) Ordinance.

Previous

3066/53.

R 98  
M. Savage  
R. 78

13/6

13/6

Subsequent

1936

see 38250/56

(Fines Card)

Reg 297 8/8

Room 309 8/8

R 29 12/9

Room 309 -

M. Preston 23

M. Preston 25/9

M. Wood 10-10

M. Roberts - Gray 11-10

M. Flood 15

M. Roberts - Gray 16

M. Flood 17

S. C. Bottomley 18

R. 297 25/10

Railway (Boys) 28/10

R. 297

FILE A.

C.S. Title

1. A/Lt. Secretary 3hr (annexes) \_\_\_\_\_ 11<sup>th</sup> July 35.  
Trans. 12 copies of Report of Select Committee on a Bill to amend  
the Local Govt (Municipalities) Ordinance 1928.

Share to Library

Put by M. Morrison  
1935

at recd

2. A/Comm. Schuty Walok 441 \_\_\_\_\_ 25 Aug 35

Trans. 2 authenticated & 12 plain copies of the Local Govt.  
(Municipalities) Ordinance No 29 of 1934 the Harbours Regulation (Amend)  
Ordinance No 30 of 1935.

1 authenticated &  
11 plain copies of each  
Ordinance to Library

There appears to be no principle at  
stake. The interests of the Nyah Bridge  
people (38020/35) will not be psychically  
affected.

Subject to legal opinion

? Or is this the end?

in 38,120/35

J. A. ...  
25/9

No legal opinion given.

J. A. ...  
25/9

This is an innocent-looking pair of  
Ordinances but I am not quite happy about it. The  
proposal afoot is that the Likoni ferry which is now  
being worked by the Railway Administration should be  
handed over to the Municipal Board of Mombasa. The

Railway

Railway Administration want to get rid of it and suggest that it be taken over either by Govt. or by the Municipality. The latter body is willing to take it over but only on condition that it gets powers to prohibit competition and to let out the ferry to contract.

The Harbour Regulation Ordinance gave various powers to the High Commissioner for Transport and these were all set out in detail in Clause 3 of the Harbours Regulation Ordinance. Sub-section (d) thereof gave power "to construct, procure, maintain, and repair ferries and other ships to carry passengers and goods", and it is now proposed to amend this by inserting the words "except where some other person, body of persons or authority is under any law for the time being in force empowered or authorised to do so." The effect of the amendment is thus to allow the High Commissioner to work a ferry except where someone else is authorised to do so, and this will obviously prevent the Railway from competing with the Municipality. But what it will also do is to prevent the Railway from ever hereafter trying to run a ferry in Mombasa Harbour or anywhere else where there is a ferry working under <sup>any</sup> sort of statutory authority.

This is no doubt the intention, but it does seem rather to tie up the Railway, because they might want to work a ferry in some other part of Mombasa Harbour or elsewhere else.

Parallel to this is an amendment of the Local Government Municipalities Ordinance, which appears to be required in order to enable

The Order would not be that proposed the running of the Harbour of a ferry ~~to be taken over~~ <sup>to be taken over</sup> ~~to be taken over~~ <sup>to be taken over</sup> on a different journey, was in Mombasa Harbour. *AGL*

X Perhaps but there is an element of doubt if it would not of course, enable them to proceed satisfactorily. *AGL*

Suggest to the Govt. *AGL*

They have similar powers as to an omnibus service under S. 52 (3a) *AGL*

I agree that this should vary from person to person but I don't like the provision under (d) & (e) should suffice to prevent that hardship. *AGL*

a Municipality to run a ferry. The powers of Municipalities are prescribed in Section 52 of the Ordinance, which has no less than 47 sub-sections, and the amendment takes the form of adding an enormous provision for the regulation of ferries. New sub-section 34 empowers Municipalities to acquire and carry on omnibus services and Section 35 empowers them to "acquire, equip and maintain boats and boating establishments", and I should think the running of a ferry service could come in very nicely under that sub-section. However, they do not think so in Kenya. The provisions are very fairly wide; sub-section 4 allows the Municipality, subject to the approval of the Governor, to acquire and maintain a service of ferry boats. Sub-section (b) allows them to enter into agreement with anyone for establishing ..... maintaining and carrying on a service of ferry boats and for guaranteeing the capital cost and interest on the capital cost thereof. The effect of this is to give the Mombasa Municipality power to <sup>allow</sup> one of its friends to run a ferry service, and further to guarantee the interest on the capital that he may borrow for the purpose of running the same. This strikes me as rather far-reaching and unnecessary. Sub-section (c) gives the Municipality power, with the Governor's approval, to prohibit anyone carrying on a ferry service within any area and expressly safeguards the right of any person to ply for hire for the unexpired period of any licence issued before a monopoly order is made. Sub-section (d) requires the Council to give notice of its intention to prohibit (existing) ferries. Sub-section (e) requires the Governor's approval, after considering any objections.

but only

an ...

objections. Sub-section (f) gives the Municipality power to vary and revoke its orders, and sub-section (g) puts on a penalty of a fine not exceeding £100 or six months, plus £10 a day for every day on which <sup>an unauthorised</sup> the ferry is being run. These provisions are all pretty drastic and high-handed. I should have thought that it would be enough to empower the Municipality to work the ferry, for which purpose I very much doubt whether legislation was really necessary, and to leave matters to go on as they were. Sub-section (h) does provide that boats which cannot carry more than three passengers or 300 lbs. weight of goods are not included in the term "ferry boats" which may go far to safeguard any small, (presumably native or Arab) ferry owners who may be plying their trade perfectly lawfully in the waters around Mombasa Island. But I should like to draw attention to the report of the Select Committee of Council which considered the thing. The four official members recommended that the thing be passed as drafted, but two of the Unofficials, Mr. Bemister and Mr. Pandya, proposed to omit the clause giving the Council power to arrange with somebody else for the running of ferries and to guarantee capital and interest, though they did not object to the monopoly provisions. The late Major Robertson-Eustace, however, opposed the whole Bill and said there was no need for it, and I must say that I am disposed to agree with him. There is quite a little risk of corruption and gerrymandering

\* which would then only operate in favour of the Municipality

\* and he was the member for Mombasa!

With the Gov's consent  
No. 11

4

gerrymandering with this legislation, and in particular it might be used to prohibit any ferries in Mombasa Harbour in the interests of the Nyali Bridge (see 38020/35). The exemption of small boats does not really go very far because the exempted vessels are only those which "is not capable of carrying more than three passengers" and it could very well be argued that almost anything was capable (at a pinch) of holding <sup>three</sup> three passengers, so that the exemption might easily be a dead letter.

I think we might send a despatch saying that His Majesty will not be advised to exercise the power of disallowance but that the Secretary of State has noticed that the unofficial members raised some objections to the Municipalities Amendment Ordinance and that in particular Mr. Robertson-Eustace objected to the whole thing. Say that the powers given appear very wide, especially those empowering the Municipality to guarantee capital and interest in favour of the person who is to carry on a service of ferry boats and that the provisions for enabling the Municipality to abolish competition are capable of being used oppressively, which the Secretary of State trusts will not be the case. (I do not for a moment imagine that anything harsh will be done, but it might be, and one's experience of the Kenya Municipalities rather leads one to think that, if there are any Naboths about, their vineyards have a very precarious title.)

J. E. G. Hand  
10.10.

Mr. Roberts - Gray

would you mind looking at the above in case I have gone astray anywhere.

J. E. G.

the flood

I have made a few marginal comments which appear to be relevant.

I think we must keep in mind that it is very far from unusual for ferry rights to be granted by way of complicity. Indeed, I imagine it is the general rule for that to be done.

C. J. Spinks-Wing

11/10

True but what worries me is the risk that existing small boat-owners who run ferries (I don't know whether there are any or not) may find themselves prohibited in the interests of some owner like the Nyali Bridge.

That this is the intention seems clear from the despatch now received (38020/35 No 9). It is there stated that Govt. will pay careful attention to the question whether the owners of the boats which <sup>at present</sup> compete with the bridge have any equitable claim to be allowed to continue such competition. This has a rather ominous ring about it and if I owned a boat I should be uneasy. I should not feel any too confident in the Kenya Govt. regarding pressure from the Nyali ferry people and I have even less confidence in the Nairobi Road authorities firm.

I submit a draft.

C. J. Spinks-Wing

X Actually, it appears, on a rider to the possibility of the Municipality "clobbering the ferries". And it has to be remembered that there is substantial current-objection-claim any (pre-bridge) vested interests.

C. J. Spinks-Wing

10/10/35

acira

Noted.  
L. H. ...  
28/10/35

To Kenya, 858 (2 ans) 21 Oct 1935 ✓

Kea copy

38120/35

Liber (Kea) Joudi

2 Heison 7/11

On 38120/35 ✓



C. O.

38172/35. Kenya. 6

Mr. Flood. 15 10.35.

Mr. Roberts-Wray 16.10.

Mr. Flood 17

Sir C. Parkinson.

Sir G. Tomlinson

X Sir C. Bottomley 18

Sir J. Shuckburgh

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.  
R 18 OCT  
D 19

Downing Street.

21 October, 1935.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 441 of the 28th of August, and to inform you that His Majesty will not be advised to exercise his power of disallowance in respect of Ordinances 21 and 30 of 1935 of the legislature of Kenya, entitled respectively "An Ordinance to Amend the Local Government (Municipalities) Ordinance, 1928" and "An Ordinance to Amend the Harbours Regulation Ordinance, 1928".

2. I note that the object of the legislation in question is to enable the Railway administration to

divest

DRAFT.

KENYA.

NO. 858

GOVERNOR.

*reference in paper copy*

FURTHER ACTION.

divest itself of the management of the Likoni ferry and to enable the Municipal Board of Mombasa to take it over, and I am advised that the powers conferred by the Ordinances are adequate for the intended purpose. I observe, however, from the Report of the Select Committee of <sup>legislative</sup> Council which considered the Bills, that Mr. Bemister and Mr. Pandya proposed to delete the new Clause 48(b), the effect of which <sup>(alteration)</sup> would be that the <sup>(Municipal)</sup> Council would not have power to enter into an agreement with any person for carrying on ferry services, and I am particularly impressed with the fact that the late Major Robertson-Eustace objected to the Bill altogether and thought it was unnecessary.

3. The powers conferred are wide but <sup>exclusive ferry rights</sup> are, <sup>of course,</sup> I am advised, not unusual, though I could hardly consider it necessary <sup>however</sup> that a municipality should <sup>take</sup> have power to guarantee capital and interest in favour of the person who is to establish and carry on a service of ferry boats, and though it may be

desirable

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottemley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

**DRAFT.**

FURTHER ACTION.

7  
desirable to protect the municipality against unfair competition, yet the provisions of the Ordinance are at any rate capable of being used oppressively so as to drive out of business anyone who is at present operating a ferry or deriving his livelihood by plying boats for hire. In particular, it would, I think, be unjustifiable to use the general powers now conferred in favour of the Nyali Bridge, as to which I shall address you in a separate despatch.

4. I have no objection to <sup>equitable</sup> the regulation or prevention of competition with the ferry now worked by the Railway and Harbours administration which is to be taken over by the municipality, but I am of opinion that the general powers now conferred should not be used to interfere with whatever other

ferrying

ferrying activities may exist between Mombasa

Island and the mainland, <sup>save in so far as necessary</sup> ~~under circumstances~~

I have, etc.  
regulation and control are involved.

(Sgd.) MALCOLM MacDONALD



Duplicate registered on 38120/35 Kenya

28

KENYA.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

No. 44

RECEIVED  
16 SEP 1935  
C. O. REGY

28 AUGUST 1935.

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. LXX of 1935 entitled "An Ordinance to amend the Local Government (Municipalities) Ordinance, 1928" and Ordinance No. LXX of 1935 entitled "An Ordinance to amend the harbours regulation Ordinance, 1928" together with the Legal Reports and Comparative Tables thereon by the Attorney General.

1/15407/28  
1/15616/29

2. These Ordinances passed their third reading in the Legislative Council on the 3rd August 1935, and the Acting Governor assented to them in His Majesty's name on the 23rd August 1935.

I have the honour to be,

Sir

Your most obedient, humble servant,

ACTING GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE,  
MALCOLM MACDONALD, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S. W. 1.

LEGAL REPORT

THE LOCAL GOVERNMENT (MUNICIPALITIES)(AMENDMENT)  
BILL, 1935

The Likoni Ferry connecting Mombasa Island with the Mainland was in 1928 handed over by Government to the Kenya and Uganda Railways and Harbours, and has since then been managed by that authority. The General Manager has now for some time urged that the Municipal Board should take over the ferry, or that Government should resume ownership of it. The Board is willing to take over and to use the ferry provided that it can be empowered (a) to prohibit competition with itself, and (b) to let out the ferry on contract.

The Bill sets out more clearly than in the present Ordinance the powers of a Council in regard to ferries and will enable an exclusive licence to be issued to a company. It also introduces a provision for a prohibited area within which competing ferries may be prohibited.

*1/10/40/ps*  
The Bill, by means of an amendment to section 69 of the Local Government (Municipalities) Ordinance, 1926, provides power to make by-laws in respect of the operation of the ferries and in respect of passengers using the ferries.

A Comparative Table is attached.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

*W. H. G. G.*  
ATTORNEY GENERAL

3rd August, 1935

## COMPARATIVE TABLE

THE LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT)  
BILL, 1935.

No. of Clause	Remarks.
1.	Short title.
2.	New.
3.	New.

LEGAL REPORT

THE HARBOURS REGULATION (AMENDMENT) BILL, 1935

This Bill is complementary to the Local Government (Municipalities) (Amendment) Bill, 1935, which provides for the operation of ferries in Mombasa by the Municipality of Mombasa. That body, before taking over the ferries, requires to be protected from competition from the Railways and Harbours Administration, which has operated the ferries for the last eight years.

A Comparative Table is attached.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

3rd August, 1935.

*W. H. Murray*  
ATTORNEY GENERAL



## COMPARATIVE TABLE

THE HARBOURS REGULATION (AMENDMENT) BILL, 1935.

---

**No. of Clause****Remarks.**

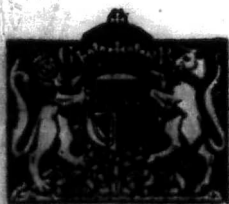
---

1.

Short title.

2.

New.



Colony and Protectorate of Kenya.

IN THE TWENTY-SIXTH YEAR OF THE REIGN OF  
**HIS MAJESTY KING GEORGE V.**

**ARMIGEL DE VINS WADE, C.M.G., O.B.E.,**

*Acting Governor.*

Assented to in His Majesty's  
name this 23<sup>rd</sup> day of August  
1935.

**A. DE V. WADE**

*Acting Governor.*

**AN ORDINANCE TO AMEND THE LOCAL  
GOVERNMENT (MUNICIPALITIES) ORDINANCE,**

**1928**

**ORDINANCE No. XXIX of 1935**

**An Ordinance to Amend the Local Government  
(Municipalities) Ordinance, 1928.**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Local Government (Municipalities) (Amendment) Ordinance, 1935, and shall be read as one with the Local Government (Municipalities) Ordinance, 1928, hereinafter referred to as the Principal Ordinance.

Short title.  
No. 19 of 1928.

2. Section 52 of the Principal Ordinance is hereby amended by the addition after sub-section (47) thereof of the following new sub-section:—

Amendment of section 52 of the Principal Ordinance.

"(48) (a) Subject to the approval of the Governor, to establish, acquire and maintain within the municipality a service of ferry boats, together with landing places, approaches, ramps and other essential appurtenances, for the carriage of passengers, animals, goods or vehicles and to carry on such service.

(b) Subject to the approval of the Governor, to enter into an agreement with any person for the establishment, acquisition, construction, laying down, equipment, maintenance and carrying on of a service of ferry boats, and for guaranteeing the capital cost and interest on the capital cost thereof.

(c) Whenever any service of ferry boats is established, acquired, maintained, or carried on by the Council, or by any person under an agreement entered into between such person and the Council under the powers conferred upon the Council by this sub-section, by order under the

hand of the Town Clerk with the approval of the Governor, to prohibit any person, except with the consent of the Council signified in writing under the hand of the Town Clerk, carrying on a ferry boat service within such area or areas within the municipality and for such period and within such hours as may be prescribed in such order :

Provided that the right of any person to ply for hire within the municipality with any ferry boat for the unexpired period of any licence granted under any law in force in the Colony and issued to him prior to the date of the coming into force of an order of prohibition made under this sub-section, and the right of any person to carry for hire or reward passengers departing to or arriving from any place outside the limits of any prohibited area, shall not be affected.

(d) (i) Before making an order of prohibition under the provisions of the last preceding paragraph, the Council shall cause notice of its intention to introduce and pass a resolution for that purpose to be published in the Gazette and in at least one newspaper circulating within the municipality.

(ii) Such notice shall be given once in each week for four succeeding weeks, and any objections received shall be laid before the Council at the meeting appointed to consider such resolution and copies of such objections and of the resolution together with a notification of the adoption of such resolution shall be forwarded to the Governor.

(e) If and when the Governor, after considering the objections, if any, approves of the making of the order, such order shall be made under the hand of the Town Clerk, shall be published in the Gazette and in at least one newspaper circulating within the municipality, and shall come into force on such date as may be specified in such order.

(f) The Council may by order revoke an order of prohibition made under the provisions of this sub-section, and may in like manner vary any such order by extending or reducing the period of the operation thereof or by extending or reducing the area to which the order of prohibition applies.

Provided that the making of any such order of revocation or variation shall be subject to the procedure prescribed in paragraphs (d) and (e) of this sub-section as if such order of revocation or variation were an order being made under paragraph (e) of this sub-section.

(g) Save as is provided in paragraph (e) of this sub-section any person who, without the written consent of the Council, carries on within a prohibited area any service of ferry boats, or who plies for hire or reward any ferry boat within a prohibited area, shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months, and, in addition, to a fine not exceeding ten pounds in respect of each and every day upon which he contravenes the provisions of this sub-section.

(h) For the purposes of the application of this section to the Municipality of Mombasa the term "ferry boat" means any floating vessel, propelled by any means whatsoever, plying for hire within the municipality for the purpose of carrying passengers, animals, goods or vehicles between any two points one of which is a point on the Island of Mombasa and the other of which is a point on the coast of the Protectorate of Kenya within a radial distance of one mile from the Island of Mombasa : Provided that the term "ferry boat" shall not include any such floating vessel which is not capable of carrying more than three passengers and/or 300 lb. of goods."

3. Section 69 of the Principal Ordinance is hereby amended by the addition after sub-section (86) thereof of the following sub-section :-

Amendment of section 69 of the Principal Ordinance.

"(87) For regulating and licensing ferry boats within the municipality, for fixing the amount of the licence fees to be paid, the charges or fares whether by distance or by time, for regulating and controlling the conduct of persons using ferry boats and the embarkation and disembarkation of persons, animals, goods and vehicles, and for regulating or prohibiting the use of the landing places, approaches and ramps maintained in connection with any service of ferry boats."



No. XXIX

Local Government (Municipalities) 1905

Passed in the Legislative Council the third day of August,  
in the year of our Lord one thousand nine hundred and  
thirty-five.

This printed impression has been carefully compared by  
me with the Bill which passed the Legislative Council and is  
presented for authentication and assent as a true and correct  
copy of the said Bill.

J. F. G. TROUGHTON

*Acting Clerk of the Legislative Council.*

17  
end

REPORT  
OF  
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL  
APPOINTED TO CONSIDER AND REPORT UPON A  
BILL TO AMEND THE LOCAL GOVERNMENT  
(MUNICIPALITIES) ORDINANCE, 1928.

Your Excellency,

We, the majority of the Members of the above Select Committee who have signed this Report, have the honour to recommend that no amendments be made to the above Bill but that it be passed as drafted.

We have the honour to be,  
Your Excellency's obedient servants,

SD. J. H. LAGAN (CHAIRMAN)  
SD. G. D. KISSOP (MEMBER)  
SD. G. H. O. BOULDARSON (MEMBER)  
SD. T. D. H. BRUCE (MEMBER)

2. We, the undersigned Members of the above Select Committee, recommend that the above Bill should be amended by the deletion of the proposed sub-section (48)(b) which forms part of Clause 2 thereof and by the necessary re-figuring of the subsequent sub-sections, and by the deletion of the words "or by any person under an agreement entered into between such person and the Council, under the powers conferred upon the Council by this sub-section" which occur in lines 3, 4 and 5 of the present proposed sub-section (48)(c) which forms part of Clause 2 thereof.

SD. P. A. B. MITTER (MEMBER)  
SD. J. B. PANDYA (MEMBER)

3. I, the undersigned Member of the above Select Committee, oppose the above Bill in toto, holding that there is no need for such measure.

SD. R. V. B. ROBERTSON-EUSTACE (MEMBER)

4. The Honourable Sheriff bin Abdulla did not attend the final meeting of the Select Committee and has not signed this report.