

B. 249

535

X. 4989  
12 JUN 1926

1926

KENYA

FROM  
GOV'S DEPT  
WORTHCOTE

DATE  
510 15th May 1926

INCUBATION  
U.S. of S.  
Perm U.S. of S.  
Part U.S. of S.  
County of State

REGISTRATION OF TITLES BILL

States that it is desired to insert in the Registration of Titles Bill, a clause delegating to the Registrar General of Titles or his Deputy, the power to sign and seal dispositions of Crown Land, trusts that in the circa. agreement will be accorded to an amendment of Article XI of the O in C.1906.

Previous Paper  
H.C. 31785  
23 (a.c.)  
10-3182  
21

x (a)  
GAP  
R. Herbert  
Mr. B. H. H. H.  
Rooney

29/6  
2/7  
3/7  
3/7

Subsequent Paper  
7086F  
26

536

The Governor's desire to be able to delegate the duty of signing Land Grants is natural, and I think, perfectly harmless. There is no more reason for personal signature by the Gov. in Kenya than in Uganda.

I am not anxious that we should amend Orders in Council too frequently, and the local Govt. would appear to have overlooked that not only Article XI of the 1906 Order in Council is concerned, but also Article XV of the Kenya Protectorate Order in Council of 1920, where the provisions of the 1906 Order on this point are exactly repeated.

The point on which we need legal advice is whether an amendment of the Order in Council is really necessary for this purpose. Each Article which I have mentioned provides that the Gov. may make grants in conformity either with some Order in Council or law now or hereafter in force in the Protectorate. This means that he is bound to make <sup>his</sup> grants personally because he derives authority to make them from the Order in Council which provides for him making them personally subject to an Order in Council, it is simply going round in circles, and the provision that the grant may be governed by local ordinance is not effective so far as this point of execution is concerned. The only real difference between the Colony and the Protectorate Orders is that the Colony Order does not say "make and execute", but only "make".

*W.C.A. ...*  
29.6.26.

*In my opinion an amendment of the O. in C. is not necessary. The 'common form' provision gives*

The Gov. power to make grants of land, of which  
Art. XI of O. in C. 1906 + Art. XI of O. in C. 1920  
are examples, is, in my opinion, an enabling +  
not a restrictive provision. ~~It is~~

The legislator power conferred on the Leg. Co.  
include the power to deal with the land in  
Kenya +, so far as it is consistent with any  
provision of that of enactment passed in pursuance  
of that power, the provisions of the  
Act must be regarded as an addition +  
not restriction of any general provision as to  
grants.

The Act itself, as you find out, recognises the  
power to make grants of land + of  
There is any inconsistency between the law + the  
power under the O. in C., it is the Gov. power  
that is restricted, not the general law.

A. L.

4/7

After reading of - let me see 3/11

11/11/26

3/11/26

6k



As to points.

The Article in question

is Article 21 of the Order itself

requires the power to make things  
regarding points of land, and if

there is any uncertainty between

the two and your power under

the Order, it is your power

that is restricted and not

the General power law

(Signed) L. S. AMERY



GOVERNMENT HOUSE,

NAIROBI:

KENYA.

KENYA.

No. 570

X. 4989  
15-5  
12 JUN 1926

15-5  
May, 1926.

Sir,

With reference to my despatch No. 40 of the 11th January 1921 transmitting the Registration of Titles (Amendment) Ordinance 1920, I have the honour to invite your attention to the objects and reasons which were enclosed with the Ordinance and which pointed out that the necessity for the amendment arose from the fact that, although the Registration of Titles Ordinance 1919 empowered the Commissioner of Lands to make grants of Crown Lands, any such action on his part is "ultra vires" because under Article 11 of the Order-in-Council 1906 such grants can only be made by the Governor.

2. Now that the Order-in-Council 1906 has been repealed by the Kenya Colony Order-in-Council 1921 so far as the Colony of Kenya is concerned, I am advised that under Article 2 (2) of the latter it will be possible to take the action which has already been taken in Uganda in Ordinance No. 17 of 1906 of that dependence, to delegate the power of signing and sealing the necessary documents in respect of Crown Lands which now vests solely in the Governor.

3. The position as regards the Colony therefore seems to present no difficulty, but as the Order-in-Council 1906, still remains in force in the Protectorate it is not possible, without an amendment of Article XI of the Order-in-Council, to provide by Ordinance for the delegation of

the/

F. G. C. HABLE

COL. L. C. S. ANEPPY, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.

-12:-

the Governor's powers to execute grants and dispositions of land within that area.

The present procedure is cumbersome and entails delay, and it is desired therefore to insert in a consolidating Registration of Titles Bill which is now under consideration a clause delegating to the Registrar-General or Deputy Registrar-General of Titles the power to sign and seal dispositions of Crown land both in the Colony and Protectorate.

In the circumstances I trust that you will agree to amend Article III of the Order-in-Council, 1906, in view that the procedure in regard to dispositions of Crown land in the Colony and Protectorate may be identical.

I have the honour to be,

Your obedient, humble servant,

*J. H. S. Northcote*  
GOVERNOR'S DEPUTY.