STATUTORY INSTRUMENTS

1961 No. 2323

EAST AFRICA

The Eastern Africa Court of Appeal Order in Council, 1961

Made - - - - 6*th December*, 1961
Laid before Parliament 7*th December*, 1961
Coming into Operation *Immediately before* 9*th December*, 1961

At the Court of Saint James, the 6th day of December, 1961

Present,

Her Majesty Queen Elizabeth The Queen Mother
Her Royal Highness The Princess Margaret, Countess of Snowdon

Lord President — **Lord John Hope**
Earl of Perth — **Mr. Erroll**

Whereas Her Majesty, in pursuance of the Regency Acts, 1937 to 1953, was pleased, by Letters Patent dated the eight day of November, 1961, to delegate to the following Counsellors of State (subject to the exceptions hereinafter mentioned) or any two or more of them, that is to say, His Royal Highness Prince Philip, Duke of Edinburgh, Her Majesty Queen Elizabeth The Queen Mother, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester, His Royal Highness The Duke of Kent and Her Royal Highness The Princess Alexandra of Kent, full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas Her Majesty was further pleased to except from the number of the said Counsellors of State His Royal Highness Prince Philip, Duke of Edinburgh, and Her Royal Highness The Princess Alexandra of Kent while absent from the United Kingdom:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and Her Royal Highness The Princess Margaret, Countess of Snowdon, being authorised thereto by the said Letters Patent, and in pursuance of the powers vested in Her Majesty by Section 112 of the Government of India Act, 1833(a), the British Settlements Acts, 1887 and 1945(b), the Foreign Jurisdiction Act, 1890(c), and of all other powers enabling Her Majesty in that behalf do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf order, and it is hereby ordered, as follows:—

Citation and commencement.

1.—(1) This Order may be cited as the Eastern Africa Court of Appeal Order in Council, 1961.

(a) 3 & 4 Will. 4 c. 85. (b) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(c) 53 & 54 Vict. c. 37.

(2) This Order shall come into operation immediately before the ninth day of December, 1961.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"the Court" means the Court constituted by this Order;

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"the existing Court" means the Court constituted by the existing Orders;

"the existing Orders" means the Eastern African Court of Appeal Order in Council, 1950(a), the Eastern African Court of Appeal Order in Council, 1953(b), the Eastern African Court of Appeal (Amendment) Order in Council, 1955(c), and the Eastern African Court of Appeal (Amendment) Order in Council, 1958(d);

"the Territories" means the following territories, that is to say—

(*a*) the Colony of Aden (which includes the Island of Perim and the Kuria Muria Islands),

(*b*) the Colony and Protectorate of Kenya,

(*c*) St. Helena and its dependencies,

(*d*) Seychelles,

(*e*) Uganda, and

(*f*) Zanzibar,

and "Territory" means any of the territories aforesaid.

(2) In this Order, unless the context otherwise requires, references to the holder of an office by the term designating his office include references to any person lawfully discharging the functions of that office.

(3) Where by this Order a power is conferred to make appointments to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, if such other person is on leave of absence pending his relinquishment of that office; and when two or more persons are holding the same office by reason of an appointment made in pursuance of this paragraph, then for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of that office.

(4) The Interpretation Act, 1889(e), shall apply, with the necessary adaptations, for the purpose of interpreting this Order or otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

The Court.

3.—(1) There shall be a court of appeal for the Territories which shall be styled Her Majesty's Court of Appeal for Eastern Africa.

(2) The judges of the Court shall be—

(*a*) a President, a Vice-President and one or more Justices of Appeal, who shall be appointed by Her Majesty by Letters Patent; and

(*b*) the Chief Justice and the other judges of the High Court or Supreme Court of each Territory, who shall be members of the Court *ex officio*.

(a) S.I. 1950/1968 (1950 I, p. 551). (b) S.I. 1953/1202 (1953 I, p. 591).
(c) S.I. 1955/1217 (1955 I, p. 708). (d) S.I. 1958/1255 (1958 I, p. 1003).
(e) 52 & 53 Vict. c. 63.

(3) A person shall be qualified for appointment to the office of President, Vice-President or Justice of Appeal of the Court if, and shall not be so qualified unless, he is qualified for appointment as a judge of the High Court or Supreme Court of one of the Territories.

(4) At any time when the office of President of the Court is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by the Vice-President.

(5) At any time when the office of Vice-President of the Court is vacant or the Vice-President is acting as President or is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the Justices of Appeal as may from time to time be designated in that behalf by the President.

(6) The President may, in accordance with such instructions as he may receive from Her Majesty through a Secretary of State, as occasion may require appoint any person qualified to be a Justice of Appeal to act as a Justice of Appeal and may in accordance with any such instructions terminate any such appointment.

(7) The President shall take precedence of all other Judges of the Court, and the Vice-President shall take precedence immediately after the President.

(8) The Court shall have and use a seal bearing the style of the Court and a device approved by a Secretary of State.

Tenure of office of judges.

4.—(1) Subject to the provisions of this article, a person holding the office of President, Vice-President or Justice of Appeal of the Court shall vacate his office on attaining the age of sixty-five years:

Provided that a Secretary of State may permit any such person to continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A person holding the office of President, Vice-President or Justice of Appeal of the Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this article.

(3) A person holding the office of President, Vice-President or Justice of Appeal of the Court shall be removed from office by a Secretary of State if the question of his removal has been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that that person ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If a Secretary of State considers that the question of removing a person holding the office of President, Vice-President or a Justice of Appeal of the Court under this article ought to be investigated then—

(*a*) the Secretary of State shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and

(*b*) the tribunal shall enquire into the facts of the case and report thereon to the Secretary of State, and shall state whether, in the opinion of the tribunal, there are grounds for referring the question of the removal of that person from office to the Judicial Committee.

(5) If the question of removing a person holding the office of President, Vice-President or Justice of Appeal of the Court from office has been referred to a tribunal under paragraph (4) of this article, a Secretary of State may suspend that person from performing the functions of his office and any such suspension may at any time be revoked by the Secretary of State and shall in any case cease to have effect if the Judicial Committee advises Her Majesty that that person ought not to be removed from office.

Jurisdiction in the Territories.

5.—(1) The Court shall have jurisdiction to hear and determine such appeals from the courts of each Territory as may be prescribed by any law in force in that Territory.

(2) In connection with any appeal from a court of a Territory the Court shall, subject to the provisions of this Order and any law in force in the Territory, have all the powers and jurisdiction that are possessed by that court under any law in force in the Territory; and decisions of the Court in respect of any appeal from a court of a Territory shall, subject as aforesaid, be enforced in the Territory in the same way as decisions of that court.

(3) (*a*) The jurisdiction of the Court in relation to the Colony of Aden shall extend to the hearing and determination of such appeals from decisions of the courts of the Colony of Aden given—

(i) in the exercise of their jurisdiction in respect of matters arising in the Aden Protectorate, and

(ii) in appeals from the courts of Kamaran

as may be prescribed, in the case of the Aden Protectorate, by rules or orders made by the Governor of Aden, and in the case of Kamaran, by any law in force therein.

(*b*) In relation to the exercise by the Court of jurisdiction under this paragraph, references in paragraph (2) of this article to any law in force in a Territory shall be construed as references to any law in force in the Aden Protectorate or in Kamaran, as the case may be.

(4) The Court may sit in any Territory for the purpose of exercising any jurisdiction and powers conferred upon it by or under this article or by any rule made under Article 6 of this Order; and for that purpose it shall be a superior court of record having in each Territory similar powers relating to contempts of itself as are possessed under the law of that Territory by such a court.

Practice and procedure on appeals from the Territories.

6.—(1) Subject to the provisions of this Order, the President and any two other judges of the Court selected by the President may make rules for regulating the practice and procedure of the Court with respect to appeals from the courts of the Territories and, in connection with such appeals, for regulating the practice and procedure in any court of a Territory from which such appeals are brought.

(2) Without prejudice to the generality of paragraph (1) of this article rules of court may be made for the following purposes:—

(*a*) for regulating the sittings of the Court, whether in divisions or otherwise, and the selection of judges for any purpose;

(*b*) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;

(*d*) for providing for, and regulating, the hearing of appeals with the assistance of one or more assessors and prescribing their remuneration;

(*e*) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay;

(*f*) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;

(*g*) for prescribing and regulating the powers and duties of officers of the Court;

(*h*) for prescribing the time within which any requirement of the rules is to be complied with;

(*i*) for providing for a reference from a decision of a single judge to the Court:

Provided that a rule prescribing or affecting the amount of any fee or the recovery thereof shall not come into operation unless the rule or a draft thereof has been approved by a Secretary of State.

(3) Rules made under this article may fix the number of judges of the Court who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less than three; and

(*b*) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

Officers of the Court.

7. There shall be such Registrars, officers and servants of the Court, appointed in such manner, as a Secretary of State may direct.

Terms of service of judges and other officers.

8. Subject to the provisions of this Order, the President, the Vice-President and the Justices of Appeal of the Court and the Registrars, officers and servants of the Court shall receive such emoluments and be subject to such other terms and conditions of service as may be prescribed by a Secretary of State:

Provided that the emoluments and terms and conditions of service of such a judge, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during his continuance in office.

Financial provisions.

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9.—(1) The expenses of the Court shall be defrayed in such manner as a Secretary of State may direct; and any authority by which those expenses are defrayed shall be fully re-imbursed by the Governments of the Territories, which shall make such contributions for that purpose as may be determined by those Governments with the approval of a Secretary of State:

Provided that the Government of Tanganyika may make such contributions towards the expenses of the Court as may be agreed between that Government and Her Majesty's Government in the United Kingdom.

(2) All fees and other moneys payable in respect of the proceedings of the Court shall be dealt with in such manner as a Secretary of State may direct.

Jurisdiction in Tanganyika.

10. If it is so provided in any law in force in Tanganyika, the Court shall be a court of appeal for Tanganyika, and for that purpose—

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(*a*) the Chief Justice and the other judges of the High Court of Tanganyika shall be judges of the Court ex-officio;

(*b*) the Court may sit in Tanganyika or elsewhere; and

(*c*) the Court may exercise such jurisdiction and powers as may be prescribed by any law in force in Tanganyika.

Transitional provisions.

11.—(1) The persons who immediately before the commencement of this Order hold the offices of President, Vice-President and Justices of Appeal of the existing Court shall be deemed to have been respectively appointed at the commencement of this Order and in accordance with its provisions to be the President, the Vice-President and the Justices of Appeal of the Court constituted by this Order.

(2) Save as a Secretary of State may otherwise direct, any person who immediately before the commencement of this Order holds office or is acting as a Registrar, officer or servant of the existing Court shall be deemed to have been appointed at the commencement of this Order and in accordance with its provisions to hold or act in the corresponding office of the Court constituted by this Order.

(3) Any person who by virtue of paragraph (1) or paragraph (2) of this article is deemed to have been appointed to hold or act in any office shall, subject to the provisions of this Order, be deemed to have been so appointed with the same emoluments and on the same terms and conditions of service as were applicable to him immediately before the commencement of this Order:

Provided that any such office which immediately before the date on which the East African Common Services Organization is established is, by virtue of the foregoing provisions of this paragraph, a pensionable office in the service of the Government of Kenya shall on that date, unless a Secretary of State otherwise directs, cease to be such an office in the service of that Government and shall, for the purpose of pensions and other like benefits, on that date become a pensionable office in the service of that Organization.

(4) Until other provision is made in accordance with this Order—

(*a*) the expenses of the Court shall be defrayed by the East African Common Services Organization in the same manner, so far as may be, as that in which, immediately before the commencement of this Order, the expenses of the existing Court were defrayed by the Government of Kenya ;

(*b*) each territory shall bear the same proportion of the expenses of the Court as, under the arrangements in force immediately before the commencement of this Order, it bore of the expenses of the existing Court ;

(*c*) all fees payable in respect of proceedings in the Court shall be paid into the general revenues of the Territory wherein the proceedings giving rise to the appeal were commenced ; and in the case of proceedings commenced in Kamaran, such fees shall be paid into the general revenues of Aden.

Pending proceedings.

12.—(1) Any proceedings relating to appeals from the courts of the Territories that are pending immediately before the commencement of this Order in the existing Court may be continued after the commencement of this Order in the court constituted by this Order.

(2) Any judgment of the existing Court given, but not satisfied, before the commencement of this Order, may be enforced after the commencement of this Order as if it were a judgment of the court constituted by this Order.

Saving of existing appeal laws, Rules of Court, etc.

13.—(1) Any law in force in any Territory, the Aden Protectorate or Kamaran immediately before the commencement of this Order providing for appeals to the existing Court and matters incidental thereto shall, subject to amendment or repeal, continue in force after the commencement of this Order, but shall have effect as if it was a law enacted in pursuance of article 5 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

(2) All Rules of Court made under the existing Orders and in force immediately before the commencement of this Order shall, subject to amendment or revocation by rules made under article 6 of this Order, continue in force after the commencement of this Order and shall have effect as if they were rules made under article 6 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

(3) Notwithstanding the revocation of the Eastern African Court of Appeal Order in Council, 1950, the provisions contained in sections 11, 12, 13 and 14 of that Order shall, subject to revocation or amendment by rules made under article 6 of this Order, continue to have effect after the commencement of this Order as if they were contained in rules made under article 6 of this Order and for that purpose references in those provisions to the existing Court shall be construed as references to the Court constituted by this Order.

Revocation of existing Orders.

14. The existing Orders are revoked.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order makes fresh provision in relation to the Court of Appeal for Eastern Africa. The Court will have jurisdiction in respect of Aden, St. Helena and its dependencies, Kenya, Seychelles, Uganda and Zanzibar and it may also exercise jurisdiction in respect of Tanganyika if the law of Tanganyika so provides. The Order provides for the assumption of certain administrative functions of the Court by the East African Common Services Organization.