

1933
3294

CO 533/439

KENYA

1933

3294

Acidly

Importation of Foreign Labour into Kenya.

Previous

12518/37

Subsequent

8809/1/6

Reg 247

29/8

Room 304

59

Mr. Kibuka's room

259

Mr. Elwood

254

Mr. Elwood's

57x

Mr. Hood

6/3

297

Mr. Hood Mr. Elwood

3294

FILE

Acting Sec. Moore 463

8 Aug. 33.

State that in view of the desirability of providing a means of control of importation of labour should necessity arise a draft Bill has been prepared & is enclosed for comment.

Mr Roberts - Wray

This is only preparing a draft to use if necessary - which is not expected.

I don't much like it but would you please examine the thing. There is nothing to show on what it is based.

J. W. K. D.

3-7-33

Mr Flood

Please see a note from Mr Thacker (C.I. & Vincent) comments thereon. Before it is done with the draft ought to consult - P.O. & R.T.

J. W. K. D. Wray
15.9.

General Dept.

I think you ought to see this. The position is that Kenya wants to be in a position to stop the importation of outside labour for work principally on mines or ^{less} possibly on farms. To that end a draft Ordinance has been hatched but it is not proposed to enact it unless the need arises.

As Mr Roberts-Wray points out it lays heavy penalties on the masters & owners of ships and this may be thought undesirable though I have an idea that such penalties are usual in similar Ordinances.

Mr Roberts - Wray
Kenya.

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Immigrant Labourers (Proposed Bill)

I have framed the Bill solely from a legal point of view.

There already exists in Kenya the "Restriction of Immigration Ordinance" Cap 62 in volume I of the Laws of Kenya 1926 to which you might care to refer. The powers taken under the proposed Bill are much wider than those in the existing Ordinance, and the definition in the existing Ordinance of "prohibited immigrant" is much less wide than that of "immigrant labourer" in the proposed Bill.

Drake gives the bill itself

Interpretation

Section 2

At first sight, but in
when read with the rest of
the order I think

The prosecution ought to
show a prima facie case, for
which the order might provide,
that certain facts are sufficient,
leaving the prison concerned
to rebut the presumption arising
from those facts.

We need not
bother about
these details.

(a) Has Kenya the power to
legislate for Uganda &
Tanganyika, as it appears to
do, in the definition of
"immigrant labourer"?

(b) The onus of proving that a
person is not an immigrant
labourer is on the person
suspected of being one.
Is there any special reason for
varying the usual rule of law
that the onus is on the
prosecution?

(c) "alleging the same" is, of course,
not explicit, & bad drafting.

(d) The expression "first or second
class passenger" seems
a little loose & possibly
ineffective.

(e) "A" place of detention
should be better than "his"
place etc.

Point out that
there is ambiguity

Practically for
Unauthorized
landing

6 (1) "The master and the
owner, charterer or agent of
the ship or vessel they are
jointly or severally liable
or what?"

Two
matters

Notice to
immigrant
officer

7 "shall give notice"
notice of what?
presumably of the fact
that a ship has arrived
having immigrant labourers
on board, but it does not
expressly say so

No
Constitution
was ship

8 (1) after 'permission' the
word 'so to do' might
be inserted.

Point out

8 (2) 'Enter' should be 'Enter'
(c) 'Enter' should be 'Enter'

Ed Shackel
21.9.33

5.3. Unless this is so administered as
to avoid discrimination between foreign
states, I have little doubt that
commercial treaties will be infringed.

3.6. Is it fair to punish the master, owner,
charterer or agent to this extent? I agree
that it accords with principle to say that
ignorance of the law is no excuse but
should any liability attach when the
master (& for less the owner etc) does not
know that the person is an unqualified labourer,
or that he comes from a colour country, or
that he does not come within the quota from
that country, or that he intended to land,
& finally, when the master has done his best
to prevent landing?

Shackel

A BILL
TO RESTRICT IN CERTAIN CIRCUMSTANCES THE IMMIGRATION
OF LABOURERS INTO THE COLONY AND TO PROVIDE FOR THE
REMOVAL FROM THE COLONY OF PROHIBITED IMMIGRANT
LABOURERS.

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

Short
title.

1. This Ordinance may be cited as "the Foreign Labourers Ordinance, 1933".

Inter-
pretation.

2. In this Ordinance, unless the context otherwise requires:-

Cap. 62

"Immigration Officer" means any officer appointed by the Governor under section 3 of the

Immigration Restriction Ordinance;

"immigrant labourer" means any person who arrives travelling by sea or land from any port or place outside the Colony or the Uganda Protectorate or the Tanganyika Territory to his place of destination in the Colony or the Uganda Protectorate or the Tanganyika Territory for the purpose of procuring or performing any handicraft or menial labour in agriculture or otherwise, or in or upon any mines, manufactures, roads, tunnels, ways, railways, canals or waterworks therein.

For the purposes of this Ordinance the onus of proving that a person is not an immigrant labourer shall be on the person alleging the same: Provided that neither a first or a second class passenger on any ship, nor the personal servant of such passenger, nor a person on the articles of a ship, shall be deemed to be an immigrant labourer.

signature?

Power to
restrict
immigration
of labourers.

3. (1). The Governor in Council may by proclamation in the Gazette restrict or prohibit the entry into the Colony of immigrant labourers from any country, territory or place specified in such proclamation in such

~~such proclamation~~ in such number and subject to such condition or limitations as he may deem fit.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the Governor in Council may in such proclamation -

- (a) limit the number of immigrant labourers that may, during a specified period of time, enter the Colony from such country, territory, or place; and
- (b) limit the number of immigrant labourers that may, during a specified period of time, be brought to the Colony by any ship, and such limitation may be based on registered tonnage or any other basis whatsoever.

(3) Upon the issue of any such proclamation the provisions of sections 4 to 10, both inclusive, shall come into and remain in operation until such proclamation lapses or is revoked.

Arrival of
ship to be
signalled.

4. (1) Any ship having immigrant labourers on board shall, on arrival within signalling distance of a port hoist such signal as signified that there are passengers on board together with a flag or flag denoting the number of immigrant labourers on board, and shall keep the same flying until the arrival on board of the Immigration Officer.

(2) A master omitting to comply with the provisions of this section shall be liable on conviction before a magistrate to a fine not exceeding one hundred pounds.

Ports at
which
immigrant
labourers
may land.

5. No immigrant labourer shall land or disembark in the Colony except at the ports or places as the Governor may appoint for that purpose, nor shall he land or disembark unless permitted by the Immigration Officer, nor shall any immigrant labourer otherwise

enter/

● Penalty for
unauthorized
landing.

enter the Colony without such permission.

6. (1). The master and the owner, charterer or agent of a ship from which an immigrant labourer within the territorial waters of the Colony disembarks or lands or attempts to disembark or land contrary to the terms of any proclamation under section 3 or to the provisions of section 5 shall be liable on conviction before a magistrate to a fine not exceeding fifty pounds in respect of each immigrant labourer so brought or so disembarked or landed, or so attempting to disembark or land.

(2) It shall be no defence to a prosecution under this section that the master, owner, charterer or agent did not know the terms of any proclamation issued under this Ordinance or did not permit or do anything to facilitate the disembarking or landing of any immigrant labourer.

(3) A subordinate court of the first class shall have power to impose the full fine to which any person may become liable under sub-section (1).

7. On the arrival of a ship having immigrant labourers on board the Port Captain or other officer in charge of the port shall give immediate notice to the Immigration Officer.

8. (1) No person other than those hereinafter exempted shall within the territorial waters of the Colony board or communicate with any ship carrying immigrant labourers until permission is given by the Immigration Officer, and no immigrant labourer shall disembark or land or attempt to disembark or land except as provided by this Ordinance.

(2) Any person who -

(a) boards or communicates with or attempts to

board/

Notice to
Immigration
Officer.

No communic-
ation with
ship.

board or communicate with such ship contrary to the provisions of this section;

- (b) being an immigrant labourer, disembarks or lands from such ship or otherwise enters the Colony or attempts so to disembark, land or enter contrary to the terms of any proclamation issued under this Ordinance or to the provisions of this section or of section 5;
- (c) aids or abets any immigrant labourer so to disembark or land from such ship or otherwise enters the Colony,

may be taken into custody without warrant and shall be liable on conviction before a magistrate to a fine not exceeding two hundred pounds and in default of payment to imprisonment for a term not exceeding six months.

(3) For the purposes of this section any person on any vessel or boat of any description who hangs on to or attaches his vessel or boat to or approaches within one cable's length of any such ship except for the purpose of enabling the persons hereinafter exempted to board such ship shall be deemed to communicate with such ship.

(4) The following persons shall be exempted from the provisions of this section -

- (a) the Port Captain, Port Health Officer, Post Master, and any of their subordinate officers and any police or customs officers;
- (b) the owner, charterer or agent of the ship;
- (c) the Consul General, Consul, Vice-Consul or Consular Agent representing the State under the flag of which the country is sailing.

Removal of prohibited immigrant labourers.

9. (1) If any immigrant labourer shall be brought by any vessel into the Colony and shall land in the Colony contrary to the provisions of this Ordinance the master of such vessel shall upon the order of the Immigration Officer be bound to re-embark such immigrant labourer upon his said vessel and if such vessel shall have left the port of disembarkation before such immigrant labourer shall have re-embarked thereon, such immigrant labourer may be detained in a place of detention specified by the Immigration Officer and shall be returned as soon as possible to the country of his birth or citizenship or his port of embarkation, and the master, owner, charterer and agent of the said vessel shall jointly and severally be liable to pay to the Government all costs incurred by the Government for the maintenance of such immigrant labourer and his return to his country of birth or citizenship or his port of embarkation.

(2) All costs and charges payable under subsection (1) shall in case of dispute or neglect to pay be summarily ascertained by a subordinate court of the first class and may be recovered in the same manner as if they were fines imposed by such court, notwithstanding that such costs and charges or the aggregate amount thereof may exceed the amount of fine which it is competent for such court in the exercise of its ordinary summary jurisdiction to impose.

(3) If any immigrant labourer shall enter the Colony by land contrary to the provisions of this Ordinance such immigrant labourer may be detained in a place of detention specified by the Immigration Officer and shall be returned as soon as possible to the country of his birth or citizenship.

Detention of ship.

10. (1). The Governor may by writing under his hand/

and authorise the Port Captain to detain any ship from which an immigrant labourer is suspected to have landed contrary to this Ordinance and the ship may then be detained either at the place where she is found or at any place to which the Governor may order her to be brought. The Port Captain shall forthwith give notice to the master or owner or charterer or agent of the ship of the detention of such ship.

(2) For the purposes of the detention and other lawful dealing with the ship the Port Captain shall have power to muster the crew and may, if he thinks it necessary so to do, place a police guard on board.

(3) The detention shall be for a limited period only, and shall cease if a bond with two sufficient sureties to the satisfaction of the Governor be given by the master, owner or charterer or agent of the ship for the payment of any fine or costs or charges incurred by the Government under this Ordinance or which may be adjudged to be paid for or in respect of any offence or default hereunder.

(4) If default is made in the payment of any such fine, costs or charges the ship shall be liable to forfeiture and may be seized and detained by the Commissioner of Police until adjudicated on according to law.

(5) Proceedings to enforce any forfeiture under this section may be taken in the name of the Attorney General.

(6) The proceeds of sale of any ship adjudicated to be forfeited shall be applied first in payment of the fine or costs or charges as aforesaid and of all costs incurred in and about the sale and the proceedings leading thereto, and the balance shall be paid to the owners or other persons lawfully entitled to the ship before/

7.

before forfeiture.

Saving.
Cap. 62.

11. Nothing in this Ordinance shall be deemed to over-ride the provisions of the Immigration Restriction Ordinance.