

1935

1935

38199

KENYA
CO. 533/461

38199

Civil Procedure Ordinances & Rules

Previous

Library (Legal) 8/1
R 297

3185/33

Subsequent

1937

Leg 297

Krom 309

Dr. Deane 299

304

299

R 297

Library Legal

R 297

309

Mr Dale

Mr Flood

Dr. L. Cottonley

K. 308

299

R 297

19/1
18
29
26/1
30/1
29/1
40
30/1
6/1/36
91
91
2-1
10/1
13/1
17/1

FILE A.

C.S.
Title

1. A/Gov's Deputy Walsh 1147 _____ 29 Aug '55
Trans. 2 authenticated & 12 plain copies of the Civil Procedure
(Amnt.) Ordinance No 19 of 1935.

● authenticated
11 plain copies to
Lhangy

Subject to legal loan

G3

No legal loan

18/9 Jom

To [unclear] Lhangy
11/11

Noted
file
to library
7/10/55

Library (Legal) [unclear]

2 To Kenya 782 (1 unrecd) G/3 30 SEP 1935

Spares to Library.

GOV. KENYA... 515...
Three copies of Ordinance of 1935 "Civil Procedure
(Amendment No. 8) Ordinance, 1935", together with legal
report thereon by the Attorney-General, and states
that it passed its third reading in Leg. Co. on 27.11.35
and that he assented to it in H.M.'s name on 29.11.35.

Section 3. In the Principal Ordinance
the limit of the protection from
attachment in the case of
debts due to the State.
The present Order extends the
protection from attachment of
live stock & implements of
husbandry and agriculture up to
£500.

With so many hard-up farmers
in Kenya, the amendment is
desirable. Subject

Subject to legal advice

Sanction G3

C. J. G. Smith

9/1/36

£500 is an exceedingly high limit
the general limit

In England at £500 (but about 500000 here)

any need for us to enquire on this ground

At all events

(W. J. Doe)

29/1

The Kenya settler is by way of being a
capitalist and £25 was far too low - as a
man with only that much stuff could not
carry any.

But it seems that we should
be likely to find any group in a settlement
where we might be working. It would be best to
settle as normal. That may be no bad result.

29/1/36

It is very little use asking
a Kenya farmer in two days
the results of sale would be
unreliable.

The limit is rather high and
we have no need to increase our
outburst by questioning it.

W. J. Doe

29/1

Noted
C. J. G. Smith
18/1/36

4 To Kenya 22 (3 answered) & 13 JAN 1936

John Doe

KENYA.



GOVERNMENT HOUSE
NAIROBI,
KENYA

No. 4 RECEIVED

27 DEC 1935

G. O. REGI

DECEMBER, 1935.

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. XXXIX of 1935 entitled "An Ordinance to amend the Civil Procedure Ordinance, 1924" together with a Legal Report thereon by the Attorney General.

Handwritten: No. 26352/24

This Ordinance passed its third reading in the Legislative Council on the 27th day of November, 1935, and I assented to it in His Majesty's name on the 29th November, 1935.

Vertical handwritten note: Approved (C)

I have the honour to be,

Sir,

Your most obedient,

Humble servant,

Brigadier General,
GOVERNOR.

THE RIGHT HONOURABLE

J. H. THOMAS, P.C. & P.

SECRETARY OF STATE AND THE HONORABLE

DOWNING STREET,

LONDON, S.W.1.

LEGAL REPORT

~~THE~~ CIVIL PROCEDURE (AMENDMENT NO.2) BILL, 1935

Clause 2 - Under the law as it stands at present a person wishing to appeal from a decision must await until a formal decree has been drawn up, the law here being different from the practice in England where he may appeal on being supplied with the judgment. All that is necessary for an appeal is the decision obtained in the action and that is contained in the judgment. The formal decree which is necessary for purposes of executing the judgment is of no assistance to a Court of Appeal save where the appeal is from the formal decree itself and is based on a contention that it is not in conformity with the judgment, and to insist on its production by an appellant is a hardship entailing delay, further expense, and serving no purpose.

Clause 3 - The object of this Clause is to extend the protection from attachment of live stock and implements of husbandry and agriculture up to £500.

Opportunity has also been taken to define more clearly the meaning of the expression "implements of husbandry and agriculture".

Clause 4 - This Clause provides -

- (a) that in computing the period of limitation the time requisite for obtaining the necessary papers shall be excluded; and
- (b) that the appellant may be allowed to appeal out of time on his showing cause, thus conforming to the procedure regulating appeals from the Supreme Court to the Court of Appeal for Eastern Africa.

A Comparative Table together with a copy of the Bill showing the sections of the Principal Ordinance which are proposed to be amended or replaced are enclosed for transmission to the Secretary of State.

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

Nairobi,
27th November, 1935.

W. H. Murray
ATTORNEY GENERAL

COMPARATIVE TABLE

THE CIVIL PROCEDURE (AMENDMENT NO.2) BILL, 1935

No. of
Clause.

REMARKS.

1. Short title.
2. New.
3. New.
4. Cf. Rule 8 of the Eastern African Court of Appeal Rules, 1925 - page 64 of the Revised Subsidiary Legislation.

See 12500/25. Enfr.

7

COPY
OF
THE CIVIL PROCEDURE (AMENDMENT NO. 2)
BILL SHOWING THE SECTIONS OF
THE PRINCIPAL ORDINANCE
WHICH ARE PROPOSED
TO BE AMENDED.

Colony and Protectorate of Kenya

Government Notice No. 761

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council. This Bill is in substitution of the Bill published in the Official Gazette of the 6th October, 1935, as Government Notice No. 676.

J. F. G. TROUGHTON,
Acting Clerk of the Legislative Council.

A Bill to Amend the Civil Procedure Ordinance, 1924.

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

1. This Ordinance may be cited as the Civil Procedure Ordinance, 1935, and shall be read as one with the Civil Procedure Ordinance, 1924, hereinafter referred to as the Principal Ordinance.

2. Sub-section (4) of section 2 of the Principal Ordinance is hereby amended by adding immediately after paragraph (b) thereof the following proviso:—

Provided that for the purposes of appeal the word "decree" shall include judgment and a judgment shall be appealable notwithstanding the fact that a formal decree in pursuance of such judgment may not have been drawn up or may not be capable of being drawn up.

3. Section 44 of the Principal Ordinance is hereby amended by the deletion of paragraph (c) of sub-section (1) thereof and by the substitution thereof of the following paragraph:—

(c) the tools of artisans;

Sub-section (3) of section 2 of the Principal Ordinance which it is proposed to amend:—

2. In this Ordinance, unless there is anything repugnant in the subject or context:—

(A) "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint or writ and the determination of any question within section 34 or section 35, but shall not include:—

- (a) any adjudication from which an appeal lies as an appeal from an order;
- (b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

Section 44 of the Principal Ordinance which it is proposed to amend:—

44. (1) The following property is liable to attachment and sale in execution of a decree, namely:—

Property liable to attachment and sale in execution of a decree

(a) immovable property; (b) movable property, other than jewelry, ornaments, and other articles of value; (c) the tools of artisans;

change, promissory notes, Government securities, bonds or other securities for money, debts due or accruing due, salary accrued or to become due, shares in a corporation, and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, viz:—

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, and of his wife and children and such personal ornaments as in accordance with religious usage cannot be parted with by any woman;
- (b) tools of artisans: and where the judgment-debtor is an agriculturalist such implements of husbandry and such live stock and agricultural produce not exceeding in value Sh. 500 as may, in the opinion of the Court, be necessary to enable him to earn his livelihood;
- (c) books of accounts;
- (d) a mere right to sue for damages;
- (e) any right of personal service;
- (f) allowances and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette by the Governor-in-Council in this behalf, and political pensions;
- (g) the salary of any public officer, servant of a railway company or local authority, or any person privately employed to the extent of
 - (i) the whole of the salary, where the salary does not exceed two pounds monthly;
 - (ii) two pounds monthly, where the salary exceeds two pounds and does not exceed four pounds monthly; and
 - (iii) one moiety of the salary in any other case;
- (h) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (i) a right of future maintenance;

(ii) where the judgment-debtor is an agriculturalist, such live stock and implements of husbandry and agriculture not exceeding in value £500 and such agricultural produce not exceeding in value £25 as may, in the opinion of the Court, be necessary to enable him to earn his livelihood.

For the purposes of this paragraph the expression 'implements of husbandry and agriculture' shall include all implements, tools, utensils, plant and machinery used in connection with agricultural, stock or dairy farming or the production of crops or plants."

(j) any fund or allowance declared by law to be exempt from attachment or sale in execution of a decree.

Explanation.—The particulars mentioned in clauses (f), (g) and (j) are exempt from attachment and sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed to affect the provisions of the Army Act or of any similar law for the time being in force.

Sub-section (2) of section 65 of the Principal Ordinance which it is proposed to replace:—

(2) Notwithstanding anything contained in the Indian Limitation Act, 1877, as applied to the Colony, every appeal from a Subordinate Court to the Supreme Court shall be filed within thirty days from the date of the decree or order appealed against.

4. Sub-section (2) of section 65 of the Principal Ordinance is hereby repealed and the following sub-section is substituted therefor:—

Repeal and replacement of section 65 (2) of the Principal Ordinance

(2) Every appeal from a subordinate court to the Supreme Court shall be filed within the period of thirty days from the date of the decree or order appealed against.

Provided however that such time as the Registrar shall certify as having been requisite for preparation of and delivery to the appellant of a copy of the ~~decrees~~ shall be excluded from the said period; and provided also that an appeal may be admitted out of time when the appellant satisfies the Court that he had good and sufficient cause for not preferring the appeal within such period.

OBJECTS AND REASONS.

Clause 2.—Under the law as it stands at present a person wishing to appeal from a decision must await until a formal decree has been drawn up, the law here being different from the practice in England where he may appeal on being supplied with the judgment. All that is necessary for an appeal is the decision obtained in the action and that is contained in the judgment. The formal decree which is necessary for purposes of executing the judgment is of no assistance to a Court of Appeal save where the appeal is from the formal decree itself and is based on a contention that it is not in conformity with the judgment, and to insist on its production by an appellant is a hardship entailing delay, further expense, and serving no purpose.

Clause 3.—The object of this clause is to extend the protection from attachment of live stock and implements of husbandry and agriculture up to £500.

Opportunity has also been taken to define more clearly the meaning of the expression "implements of husbandry and agriculture."

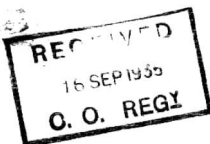
Clause 4.—This clause provides (a) that in computing the period of limitation the time requisite for obtaining the necessary papers shall be excluded, and (b) that the appellant may be allowed to appeal out of time on his showing cause, thus conforming to the procedure regulating appeals from the Supreme Court to the Court of Appeal for Eastern Africa.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

KENYA
No. 447



GOVERNMENT HOUSE
NAIROBI
KENYA



24 AUGUST, 1955.

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. XIX of 1955 entitled "An Ordinance to amend the Civil Procedure Ordinance, 1924" together with a Legal Report thereon by the Attorney General.

This Ordinance passed its third reading in the Legislative Council on the 29th day of July, 1955, and the Acting Governor assented to it in His Majesty's name on the 23rd of August, 1955.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

Malcolm MacDonald
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 CIVIL PROCEDURE (AMENDMENT) BILL, 1935

21 352/24
47242/31

The object of this Bill is to remove a conflict between the Civil Procedure Ordinance and the Courts Ordinance

3-143/13
6/10/33

Section 11 of the Civil Procedure Ordinance, 1934, was repealed and replaced by the Civil Procedure (Amendment) Ordinance, 1935, which was amended by the Civil Procedure (Amendment No. 2) Ordinance, 1935, by inserting the words "or in a case where the plaintiff is a native not exceeding Shs.3,000".

1744/1

The object of this amendment is to alter these words to read "or in a case where the defendant is a native, not exceeding Shs.3,000" in order to bring the section into conformity with section 18 of the Courts Ordinance, 1931.

7-24-31

The position at the moment is that in a case over Shs.3,000 - if the plaintiff is a native and the defendant is a non-native the plaintiff must, according to section 18 of the Courts Ordinance, 1931, sue in the Supreme Court, while according to section 11 of the Civil Procedure Ordinance, should he recover, he is only entitled to subordinate court costs.

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. M. G. - -
ATTORNEY GENERAL

29th July, 1935.

COMPARATIVE TABLE

THE CIVIL PROCEDURE (AMENDMENT) BILL, 1935

No. of Clause	Remarks.
1.	Short title.
2.	New.
3.	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 23rd day of August
1935.

A. DE V. WADE
Acting Governor.

AN ORDINANCE TO AMEND THE CIVIL
PROCEDURE ORDINANCE, 1924

ORDINANCE No. XIX of 1935

An Ordinance to Amend the Civil Procedure Ordinance, 1924.

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 Civil Procedure (Amendment) Ordinance, 1935, and shall be read as one with the Civil Procedure Ordinance, 1924, hereinafter referred to as the Principal Ordinance.

Short title.
No. 3 of 1935.

2. Section 11 of the Principal Ordinance is hereby repealed and the following is substituted therefor:—

Repeal and replacement of section 11 of the Principal Ordinance.

11. Every suit shall be instituted in the court of the lowest grade competent to try it, provided that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts: Provided that if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court: Provided further that nothing in this section contained shall be deemed to limit or affect the power of the Supreme Court to direct the distribution of business where there is more than one subordinate court in the

Courts in which suits to be instituted.

same district: And provided further that any suit may be instituted in the Supreme Court which could have been commenced in a subordinate court, then and in every such case the following provisions shall apply:—

Subject to the proviso hereinafter contained, should the plaintiff recover a sum less than Sh. 400 he shall not be entitled to any costs, and if he shall recover a sum of Sh. 400 or upwards, but not exceeding Sh. 1,500 or in the case where the defendant is a native not exceeding Sh. 3,000 he shall not be entitled to any more costs than he would have been entitled to if the suit had been brought in such subordinate court. Provided that in any suit a judge of the Supreme Court may, if satisfied that there was good reason for bringing such suit in that court, make such order as to costs as to him may seem just.

Repealed
No. 21 of 1933
No. 47 of 1933

The Civil Procedure (Amendment) Ordinance, 1933, and section 2 of the Civil Procedure (Amendment No. 2) Ordinance, 1933, are hereby repealed.

Passed in the Legislative Council the twenty-ninth day of July, 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.