

1936

1935.

28250

KENYA

38250

CO 533/474

Series Ordinance

Previous

See 38172/35

38020/36 (Nyangi
Budget)

Subsequent

R. 297 22/6

R. 309 24/6

R 297 20/7

Room 309 6/8

(2 files)
Mr. Jaskin

Mr. Dale 208

Mr. 2/000 20

Mr. C. Cottonley 21/8

R. 303 22/8

299 22/8

R. 297 24/8

Hilary (Legal) 25/8

R 297

- 1. Government Notice No. 295 of 1936----- 5th May, 1936
Bill of Ferries Ordinance, 1936.
- 2. 331. Sec. 3p.n. (under cover).----- 5th May, 1936.
Transmits 12 copies of Report of Select Committee
Spares to Liby. appointed to consider Ferries Bill.

When the Ordinance arrives the Nyali Bridge App should be circulated with the order

*A. J. ...
24/6/36*

wait.

2. Gov. N^o. 320 - 22 June, 1936.

In Order 15 of 1936 The Ferries Ordinance with Legal Report, & comments on its provisions

Col. Sec. 3p.n. - 29 June, 1936

NB

has to rely on 12 plain copies of Ordinance

DESTROYED UNDER STATUTE

*Return to ...
380/36*

See 5877/35

No. 3. In 1935 an Ordinance to amend the Local Government (Municipalities) Ordinance 1928 and an Ordinance to amend the Harbours Regulation Ordinance 1928 were passed for the express purpose of enabling the Railway Administration to divest itself of the management of the Likoni Ferry, and to enable the Municipal Board of Mombasa to take it over. The Local Government (Municipalities) (Amendment) Ordinance did three things. It empowered the Mombasa Municipality to establish and maintain the ferry, it gave them power, if they wished to exercise it, to let out ferries to contract rather than to run them departmentally, and thirdly, where a contract had been made it authorised them to prohibit

prohibit competition against the contractor for such areas and such periods of time as the Governor might approve.

It appears that subsequent to the passing of the legislation the Municipality expressed their unwillingness to take over the ferry; possibly on the ground of the capital expenditure involved - it is admitted that "not inconsiderable capital expenditure" is necessary - or possibly because they became aware that the Overseas Motor Transport Company Ltd. were making enquiries with a view to obtaining an exclusive licence to operate not only the Likoni Ferry but the Mtongwe Ferry as well.

It is necessary to point out here that these ferries connect Mombasa Island with the mainland south, so that no question arises of competition with the Nyali Bridge which joins the Island to the mainland north. In fact Govt. has no intention of instituting or entering into any agreement with any person for the carrying on of a ferry service which would compete with the bridge so long as the bridge is open to traffic.

As the port authorities have given up the management of the ferry services of Mombasa and the Municipality refuses to take over the management in spite of any arguments advanced that the Municipality is the proper body to run the ferries, it is left to Govt. to maintain the services, since it is clear that the ferries must continue to be operated. Govt.

can do this in one of two ways, either departmentally or by contract. The Central Roads and Traffic Board when consulted on the matter advised that Govt. should enter into a contract with the Overseas Motor Transport Co.Ltd.

The present Ordinance enables Govt. to enter into an agreement with any person for the carrying on of the ferry boat service. The Ordinance contains almost exactly the provisions of the Local Government (Municipalities) (Amendment) Ordinance, 1935.

If the exclusive licence is granted, to the Overseas Motor Transport Company or any other person, small boats will be able to ply for hire provided that they are not capable of carrying more than three passengers and/or 300 lbs. in goods, and this is said to cover all the private boats and native canoes being used as ferries at present.

There is no clause in this Ordinance similar to that in the Local Government (Municipalities) (Amendment) Ordinance which empowered the Municipality to guarantee capital and interest in favour of the person who is to establish and carry on the ferry service.

I see no special objection to the grant of an exclusive licence in the circumstances, provided that the licence is restricted to the ferries at Mtongwe and Likoni, so as not to prejudice the operation of the Nyali Bridge, and so long as the exclusive licence is properly put out to tender.

Subject to legal observations the Ordinance may be sanctioned.

See page 115
2112/35

See in 2nd
connection
No 3/3817/35

See page 115
No 10/3600/35

J.P. Baines
7/5

See also Report on
3/20/36
Nyali Bridge as below

C. J. Swain

See my minutes of today's date re
Kenya 38020/36.

15/8/36

J. Duncan

No. 03007 on the way

to Doe

20.8

There was much hot air in Council but they
finally agreed that reference to the Board (§ 3(1))
would meet the objections. See p. 202.

? Signify non disallowance

J. W. H. D.

The main point seems to have been
that the ferry plant had been
so much neglected that substantial
capital expenditure was

required. This had discouraged
the Municipality. His intention,
I would think, to effect the
scale of charge for which a
contractor would be willing to
undertake the work. There is
no point in disallowing, so
as proposed, Lt.

W.D.

21.8.36

W.D.

To Kenya, 6445 (3 Unwind) 6/3 22 AUG 1936

10/8/36
W.D.

N

KENYA
No. 320



GOVERNMENT HOUSE
NAIROBI
KENYA
22 JUNE, 1936.

RECEIVED
20 JUL 1936
C. O. REGY

Sir,

I have the honour to transmit two authenticated copies of Ordinance No. XV of 1936 entitled "An Ordinance relating to ferries", which passed its third reading in the Legislative Council on the 23rd May and was assented to in His Majesty's name on the 10th June, together with the Legal Report in duplicate prepared by the Attorney General. Twelve printed copies of the Ordinance are being forwarded separately.

Amended (S)

2. This Ordinance empowers the Director of Public works, subject to the approval of the Governor after consulting the ~~Central~~ Roads and Traffic Board, to enter into an agreement with any person for the carrying on of a ferry-boat service, and to prohibit any person, without the consent of the Director of Public works, carrying on a ferry-boat service within such area or areas as may be prescribed.

3. Since 1926 the Transport Administration has operated the ferries at Mtongwe and Likoni, which connect Mombasa island with the mainland south. These are the only regular public ferry services now in operation at Mombasa, the Makupa bridge providing access to the west and the Nyali bridge to the north. For some years the Transport Administration has expressed a desire to divest itself of these ferries and in 1935 informed the Government that it was not prepared to continue their operation.

the/.....

THE RIGHT HONOURABLE,
W. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

38172/25
(3)

The Mombasa Municipal Board had in the meantime been considering the question of taking over and maintaining the ferries itself, and it was to enable the board to do so that the Local Government (Municipalities)(Amendment) Ordinance, 1935 was passed. Mr. Macdonald's despatch No. 858 of the 21st October, 1935, relating to that Ordinance contained certain observations to which I shall refer later in this despatch.

4. The municipal board was unwilling, however, to take over the management of the ferry services. At about the same time a proposal was received from the Overseas Motor Transport Company, Limited for the operation of the ferries under a licence from the Government providing for the prohibition of competitive services on lines similar to the prohibition contemplated in the Local Government (Municipalities)(Amendment) Ordinance, 1935. This Company operates motor bus services in Nairobi and Mombasa under agreements with the municipal authorities amounting in effect to exclusive licences, and proposes to operate the Mombasa ferries in conjunction with the road services which it already conducts on the island.

5. Negotiations with the Company have reached the stage at which it is proposed shortly to call for tenders for the right to operate the two ferries under an agreement as provided for in Section 3 of the ferries Ordinance. The agreement would be for a term of ten years, renewable for a further period of five years, and at any time during its currency the Government would be entitled to take over the ferry services and acquire the assets at a valuation on giving six months' notice. The licensee would be required to maintain a proper, regular and efficient service under bond of £1,000 to the Government, and the maximum fares permitted would be prescribed. Competitive services

in/.....

in the immediate neighbourhood would be prohibited by order under Section 3 (2) of the Ferries Ordinance.

38172/35
(3)

6. In paragraph 4 of Mr. Macdonald's despatch No. 658 of the 21st October, 1935 the opinion was expressed that such general powers of prohibition should not be used to interfere with whatever ferrying activities might exist between the island and the mainland, save in so far as necessary regulation and control were concerned. It will be observed from the definition of "ferry-boat" in Section 2 of the Ferries Ordinance that the power of prohibition does not extend to a vessel which is not capable of carrying more than three passengers and/or 300 lbs. in goods. Small boats and native canoes are not, therefore, affected, and there is no other private ferrying activity being carried on at the present time. At the same time it is clear that neither the Municipal Board nor a private concern could fairly be expected to incur the not inconsiderable capital expenditure which is now required on these ferries and to operate them efficiently, unless exclusive ferrying rights were granted as a protection against damaging 'pirate' competition.

7. It is still possible that the Municipal Board, which has been invited to reconsider its decision, may agree to take over the ferries, raising funds for capital expenditure by way of loan. Failing this, the best solution appears to be to grant the ferrying rights to a contractor in the manner provided for in the Ordinance now transmitted.

I trust that His Majesty may not be advised to exercise his power of disallowance in respect of this measure.

I have the honour to be,
Sir,
your most obedient, humble servant,

BRIGADIER-GENERAL
GOVERNOR

LEGAL REPORT

THE FERRIES BILL, 1936

During the year 1935 an amendment was made to the Local Government (Municipalities) Ordinance, 1928, to provide that the Mombasa Board might acquire ferry services, and either run such services themselves or enter into an agreement with some other person or corporation to run them. Power was also given to the Board to make by-laws dealing with the regulation, etc., of the ferry services. The Board has declined to take over the ferry services at Mombasa, the operation of which has been given up by the Harbours Administration.

This Bill empowers the Director of Public Works, subject to the approval of the Governor after consulting the Central Roads and Traffic Board, to enter into an agreement with any person for the carrying on of a ferry-boat service, and to prohibit any person, without the consent of the Director of Public Works, carrying on a ferry-boat service within such area or areas as may be prescribed by the Director of Public Works.

Comparative table is attached herewith.

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

Nairobi,

23rd May, 1936.

W. H. Angier
ATTORNEY GENERAL

COMPARATIVE TABLE

THE FERRIES BILL, 1936

Clause of the Bill	Remarks
1.	Short title.
2.	For the definition of "ferry boat" cf. paragraph (h) of section 2 of Ordinance No.29 of 1935.
3.	Cf. Section 2 of Ordinance No.29 of 1935.
4.	Cf. section 3 -do-

No. XV.

1936



Colony and Protectorate of Kenya.

IN THE FIRST YEAR OF THE REIGN OF
HIS MAJESTY KING EDWARD VIII.

JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.,
Governor.

Assented to in His Majesty's
name this 10 day of June
1936.

J. BYRNE.

Governor.

AN ORDINANCE RELATING TO FERRIES

ORDINANCE No. XV of 1936

An Ordinance Relating to Ferries.

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 Ferries Ordinance, 1936, and shall come into operation upon such date as the Governor may by notice in the Gazette appoint. Short title and commencement

2. In this Ordinance, unless the context otherwise requires— Interpretation

“Director” means the Director of Public Works;

“ferry boat” means any floating vessel, propelled by any means whatsoever, plying for hire for the purpose of carrying passengers, animals, goods or vehicles between any two points from one side of a waterway to another :

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. Notwithstanding anything in any other Ordinance or law contained the Director shall have power to do all or any of the following things, namely :— Power of Director relating to ferries.

(1) Subject to the approval of the Governor, after consulting the Central Roads and Traffic Board, 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.

(2) Whenever any service of ferry boats is established, acquired, maintained, or carried on by any person under an agreement entered into between such person and the Director under the powers conferred

upon the Director by this section, by order under his hand with the approval of the Governor, to prohibit any person, except with the consent of the Director signified in writing under his hand, carrying on a ferry-boat service within such area or areas 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 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.

- (3) (a) Before making an order of prohibition under the provisions of the last preceding sub-section, the Director shall cause notice of his intention to do so to be published in the Gazette and in at least one newspaper circulating within the district.
- (b) Such notice shall be given once in each week for four succeeding weeks, and any objections received shall be laid before the Governor.
- (4) 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 Director, shall be published in the Gazette and in at least one newspaper circulating within the district, and shall come into force on such date as may be specified in such order.
- (5) The Director may by order revoke an order of prohibition made under the provisions of this Ordinance, 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 described in sub-sections (3) and (4) of this

section as if such order of revocation or variation were an order being made under sub-section (2) of this section.

- (6) Save as is provided in sub-section (3) of this section, any person who, without the written consent of the Director, 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 section.

4. The Governor in Council may make rules for regulating ferry boats, 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.

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

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.

R. W. C. BAKER-BEALL

Acting Clerk of the Legislative Council

E

GOVERNMENT NOTICE No. 295

HIS Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER-BEALL,
Acting Clerk of the Legislative Council.

A Bill Relating to Ferries.

BE IT 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 Ferries Ordinance, 1936, and shall come into operation upon such date as the Governor may by notice in the Gazette appoint. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

"Director" means the Director of Public Works;

"ferry boat" means any floating vessel, propelled by any means whatsoever, plying for hire for the purpose of carrying passengers, animals, goods or vehicles between any two points from one side of a waterway to another;

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. Notwithstanding anything in any other Ordinance or law contained the Director shall have power to do all or any of the following things, namely:— Power of Director relating to ferries.

(1) 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.

(2) Whenever any service of ferry boats is established, acquired, maintained, or carried on by any person under an agreement entered into between such person and the Director under the powers conferred upon the Director by this section, by order under his hand with the approval of the Governor, to prohibit any person, except with the consent of the

Director signified in writing under his hand, carrying on a ferry-boat service within such area or areas 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 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.

- (3) (a) Before making an order of prohibition under the provisions of the last preceding sub-section, the Director shall cause notice of his intention to do so to be published in the Gazette and in at least one newspaper circulating within the district.
- (b) Such notice shall be given once in each week for four succeeding weeks, and any objections received shall be laid before the Governor.
- (4) 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 Director, shall be published in the Gazette and in at least one newspaper circulating within the district, and shall come into force on such date as may be specified in such order.
- (5) The Director may by order revoke an order of prohibition made under the provisions of this Ordinance, 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 described in sub-sections (3) and (4) of this section as if such order of revocation or variation were an order being made under sub-section (2) of this section.

- (6) Save as is provided in sub-section (2) of this section, any person who, without the written consent of the Director, 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 section.

4. The Governor in Council may make rules for regulating ferry boats, 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.

OBJECTS AND REASONS.

During the year 1935 an amendment was made to the Local Government (Municipalities) Ordinance, 1928, to provide that the Mombasa Board might acquire ferry services, and either run such services themselves or enter into an agreement with some other person or corporation to run them. Power was also given to the Board to make by-laws dealing with the regulation, etc., of the ferry services. The Board has declined to take over the ferry services at Mombasa, the operation of which has been given up by the Harbours Administration.

This Bill empowers the Director of Public Works, subject to the approval of the Governor, to enter into an agreement with any person for the carrying on of a ferry-boat service, and to prohibit any person, without the consent of the Director of Public Works, carrying on a ferry-boat service within such area or areas as may be prescribed by the Director of Public Works.

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

GOVERNMENT NOTICE No. 204

HIS Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER-BEALL,
Acting Clerk of the Legislative Council.

A Bill to Regulate the Control of Belligerents who during the Neutrality of the Colony have taken Refuge therein.

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 Control of Fugitive Belligerents Ordinance, 1936.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“belligerent” means any member of the Abyssinian or Italian troops who, during the period of hostilities between Abyssinia and Italy, crosses the neutral frontier and takes refuge in the Colony;

“Commandant” means the officer in charge of an internment camp;

“Commander” means the Commander of the Northern Brigade of the King's African Rifles;

“internee” means a belligerent who has been placed in an internment camp in accordance with the provisions of this Ordinance;

“officer” means any administrative officer, officer of the King's African Rifles, officer of the King's African Rifles Reserve of Officers, or police officer of or above the rank of Assistant Inspector.

GENERAL PROVISIONS.

Disarming of belligerents in accordance with International Law. Belligerents not permitted to leave Colony to resume hostilities.

3. All belligerents shall, in accordance with the custom, practice and usage of International Law, be disarmed and their military equipment and papers shall be taken from them.

4. No belligerent shall be permitted to leave the Colony in order to resume hostilities.