

1929

Kenya

No. 15624

SUBJECT

CO 533/387

The Subordinate Courts
(Separation & Maintenance)
Ordinance, 1928

Previous

Subsequent

38093/35

X.E. Africa ~~to~~

Please see 2 on this file
 I doubt if it is properly regd. Genl
 The Genl subject is the provision for
 enforcement in a lobby a Pool of
 Maintenance Orders made in the UK
 or in another part of the Empire which
 (which Kenya has already dealt with)
 reciprocates. This Genl creates
 machinery for making orders in
 Kenya I should I think be
 regd Kenya. Do you agree?

Yes; let it be regd.

[Signature]
 26.2.29

Kenya note being made
 on the Genl file 61119/29 Genl.
 slip being attached to the Reg. file

Q.E. 11/4/29

X.E. Africa ~~to~~

Please see 2 in this file.

I doubt if it is properly regd. Genl
 The Genl subject is the provision for
 enforcement in a colony or Pool of
 Maintenance Orders made in the UK
 or in another part of the Empire where
 (which Kenya has already shall well)
 reciprocates. This Order created
 machinery for making orders in
 Kenya. I should I think be
 regd Kenya. Do you agree

J.R. Smith

26.2.29

Yes; let it be regd.
 The Kenya note being made
 on the Genl file (6/11/29 Genl.)
 slip being attached to the Reg. file
 R.E. 11/2/29

I. O.A.G. Barth. 50. 24th Jan 29.

One authenticated copy to Library.

The authenticated copies of an Ordinance entitled "The Subordinate Courts (Separation and Maintenance) Ordinance 1928", together with the legal report.

Mr. E. Barthe

May we have any legal views, please

CAC Cliffe

16/11/29

no legal views

AC

15/3

Mr. Cliffe

An obviously desirable Ordinance. The point at the bottom of page 3 & the top of page 4 of the A-G's Memo regarding the non-limitation of the amount of allowance to be paid, is interesting. In the Imperial Act, the limit is set at £2 a week.

? Sanction G3.

CAC Cliffe

16/11/29

to Under Secy to Govt

10/13/29

16/3/29

Send copy of Ord. to Secy
to Govt. for info.

24/3/29

all

20/3/29

done

to Secy. / w copy. Ordinance is copy sent. (Legal)

To Secy. 203-1 and G3

23 Jan 1929

4. Col. Sec. 3 p.8.19th August, 29.
Trans. 12 copies of Order. No. 34.

(Spare copies to Library)

140 sent & library sent on 19th

sent by

Mr. Caff

140

Col. Sec. 3 p.m. 19th August, 29
Trans. 12 copies of Ords. No. 34.

(Spare copies to Library)

H.C. sent 1 copy to [unclear] 29/8

Put by

C.M. [unclear]

ad



Colony and Protectorate of Kenya.

IN THE NINETEENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
JACOB WILLIAM BARTH,

Acting Governor:

[31st DECEMBER, 1928.] Date of assent.

An Ordinance to confer Jurisdiction on certain
Magistrates in reference to married women.

By Proclamation.

Date of
commencement.

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 Subordinate Courts (Separation and Maintenance) Ordinance, 1928." Short title.

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

"Court" means a subordinate court of the first class;

"Habitual drunkard" or "habitual drug-taker" means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor or habitual taking or using, except upon

No. XXXIV.

1928



Colony and Protectorate of Kenya.

IN THE NINETEENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
JACOB WILLIAM BARTH,

Acting Governor.

[31ST DECEMBER, 1928.] Date of assent.

An Ordinance to confer Jurisdiction on certain
Magistrates in reference to married women.

By Proclamation.

Date of
commencement.

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 Subordinate Short title.
Courts (Separation and Maintenance) Ordinance, 1928."

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

"Court" means a subordinate court of the first class;

"Habitual drunkard" or "habitual drug-taker" means
a person who, not being amenable to any jurisdiction in lunacy,
is notwithstanding, by reason of habitual intemperate drinking
of intoxicating liquor or habitual taking or using, except upon

No. XXXIV. Subordinate Courts (Separation and Maintenance) 1928

Cap. 121.
No. 10 of 1928.

medical advice, of any opiate within the meaning of the Abuse of Opiates Prevention Ordinance as amended by the Abuse of Opiates Prevention (Amendment) Ordinance, 1926, at times dangerous to himself or to others or incapable of managing himself or his affairs.

Application
for order.

3. (1) Any woman may apply to the Court for an order or orders under this Ordinance on any of the following grounds, namely:—

- (a) that her husband has been convicted of any offence against her under sections 323 to 326 (both inclusive) of the Indian Penal Code or under the corresponding provisions of any enactment substituted therefor;
 - (b) that her husband has deserted her;
 - (c) that her husband has been guilty of persistent cruelty to her or her children or of wilful neglect to provide reasonable maintenance for her or her children whom he is legally liable to maintain;
 - (d) that he has, while suffering from a venereal disease and knowing that he was so suffering, insisted upon having sexual intercourse with her;
 - (e) that her husband has compelled her to submit herself to prostitution;
 - (f) that her husband is a habitual drunkard or habitual drug-taker.
- (2) When the husband has in the opinion of the Court been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution, he shall for the purposes of this Ordinance be deemed to have compelled her so to submit herself.
- (3) An application under this Ordinance shall be made to the Court having jurisdiction within the area in which any such conviction has taken place or in which the cause of complaint shall have wholly or partially arisen.
- (4) For the purposes of this Ordinance, the expression "children whom he is legally liable to maintain" shall include, in addition to children of the marriage, any child of the wife born before such marriage (whether such child be legitimate or illegitimate) until such child attains the age of sixteen years or until the death of its mother, whichever event shall first occur.

No. XXXIV. Subordinate Courts (Separation and Maintenance) 1928

4. The Court to which any application under this Ordinance is made may make an order or orders containing all or any of the following provisions, namely:—

- (a) a provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty);
- (b) a provision that the legal custody of any children of the marriage between the applicant and her husband while under the age of sixteen years be committed to the applicant;
- (c) a provision that the husband shall pay to the applicant personally or for her use to any officer of the Court or third person on her behalf such monthly sum as the Court shall, having regard to the means both of the husband and wife, consider reasonable;
- (d) a provision for payment by the applicant or the husband or both of them of the costs of the Court and such reasonable costs of either of the parties as the Court may think fit.

5. No orders shall be made under this Ordinance on the application of a married woman if it shall be proved that such married woman has committed an act of adultery: Provided that the husband has not condoned or connived at or by his wilful neglect or misconduct condoned to such act of adultery.

6. (1) The Court may, on the application of the married woman or of the husband and upon cause being shown upon fresh evidence to the satisfaction of the Court, at any time alter, vary or discharge any such order and may upon any such application from time to time increase or diminish the amount of any payment ordered to be made.

(2) If any married woman upon whose application an order shall have been made under this Ordinance shall voluntarily resume cohabitation with her husband the order shall cease to have effect on the resumption of such cohabitation and if she commit an act of adultery such order shall on proof thereof be discharged: Provided that the Court may, if the Court thinks fit—

- (a) refuse to discharge the order if in the opinion of the Court such act of adultery as aforesaid was condoned

to by the failure of the husband to make such payments as in the opinion of the Court he was able to make; and

- (b) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall continue to be committed to the wife and that the husband shall pay to the wife or to any officer of the Court or third person on her behalf such monthly sum as the Court shall consider reasonable in the circumstances of the case for the maintenance of each such child until the child attains the age of sixteen years: Provided that the total monthly sum ordered to be paid under this paragraph shall not exceed twenty pounds. In making such an order the Court shall have regard primarily to the interests of the children.

Procedure.

7. In the case of the conviction of a husband under sections 323 to 326 (both inclusive) of the Indian Penal Code or under the corresponding provisions of any enactment substituted therefor, of any offence against his wife, her application may by leave of the Court be made by summons to be issued and made returnable immediately upon such conviction.

Order not enforceable if parties reside together.

8. No order made under this Ordinance shall be enforceable and no liability shall accrue under any such order whilst the married woman with respect to whom such order was made resides with her husband, and any such order shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband.

Change of address.

9. Any person for the time being under an obligation to make payments (including costs) under an order made under this Ordinance shall give notice to such person (if any) as may be specified in the order of any change of address, and any person failing to give such notice without reasonable excuse shall be liable to a fine not exceeding five pounds.

Interim order for maintenance.

10. Where on the hearing of an application for an order of maintenance the application is adjourned for any period exceeding one week, the Court may order that the husband do pay to the wife or to an officer of the Court or third person on her behalf such weekly sum as the Court shall consider reasonable in the circumstances of the case for the maintenance of the wife and any child or children in her custody until the

final determination of the case: Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made. Any such order shall be enforced in like manner as if it were a final order of the Court.

Enforcement of orders. Cap. 6.

11. (1) Any sum ordered to be paid under the provisions of this Ordinance shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance.

(2) A person making default in complying with an order made by a Court under this Ordinance in relation to any matter other than the payment of money may be sentenced to simple imprisonment until he has remedied his default: Provided always that a person shall not for non-compliance with an order of a Court, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this subsection to imprisonment for a period or periods amounting in the aggregate to more than six months.

Custody and maintenance of children.

12. When a woman, who might have applied for an order or orders under this Ordinance, is dead or has committed an act of adultery, and the Attorney General is satisfied that she would, if alive or if she had not committed an act of adultery, have had reasonable grounds for applying for an order or orders under this Ordinance, he may apply to the Court for an order or orders giving directions as to the legal custody of and the reasonable maintenance by the husband of such woman or her children whom he is legally liable to maintain, and the Court may, on such application, make such order or orders giving such directions as to the matters mentioned above as it may, in its discretion, think fit.

Any such order or orders shall, when made, be enforceable in the same way as any other order or orders is enforceable under this Ordinance.

Saving clause. Cap. 170. No. 7 of 1926.

13. Nothing in this Ordinance shall be deemed to affect the provisions of the Divorce Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926.

Residence.

14. A Court shall entertain proceedings under this Ordinance only in cases where one of the parties has at the time of the issue of the summons his or her usual place of residence in the Colony.

No. XXXIV. Subordinate Courts (Separation and Maintenance) 1928

Application of Ordinance.

15. This Ordinance shall apply only in cases where the husband and wife have been married within the definition of the word "marriage" contained in section 3 of the Divorce Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926.

Cap. 170.
No. 7 of 1926.

Power to make Rules.

16. The Chief Justice may make Rules of Court—

- (a) prescribing the forms to be used and the fees to be paid in proceedings under this Ordinance;
- (b) prescribing the procedure to be followed on applications under this Ordinance; and
- (c) generally for the carrying out of the provisions of this Ordinance.

Commencement of Ordinance.

17. This Ordinance shall come into force on such date as the Governor shall by proclamation in the Gazette appoint.

KENYA.

No. 50



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
18 FEB 1929
COL. OFFICE

24 January, 1929.

Sir,

Ordinance

I have the honour to forward two authenticated copies of an Ordinance intituled "the Subordinate Courts (Separation and Maintenance) Ordinance, 1928", which passed its third reading in the Legislative Council on the 21st December, 1928, and to which I duly assented on 31st December, 1928. The Legal Report is also enclosed.

Legal Report

2. While provision exists in Chapter 169 of the Revised Edition of the Laws to enforce in the Colony Maintenance Orders made in Great Britain and in British Possessions where reciprocal provisions were made, there was no legal machinery for making and enforcing similar orders in this Colony; this need has been filled by the Ordinance under reference.

3. Ten printed copies of the Ordinance will be forwarded in due course.

I have the honour to be,
Sir,

Your most obedient, humble servant,


ACTING GOVERNOR.

THE RIGHT HONOURABLE,
LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

Copy Ordinance & Legal Report to Mr. C. H. C. D. 23 MAR 1929
Recd 203 9/3 29 MAR 1929

9

LEGAL REPORT.

THE SUBORDINATE COURTS (SEPARATION AND MAINTENANCE) BILL, 1926.

The object of this Bill is to enable maintenance orders to be made and enforced in the Colony and will supply a want which is daily becoming more urgent.

The Maintenance Orders Enforcement Ordinance (Chapter 169 of the Revised Edition), was enacted to provide for the enforcement in the Colony of maintenance orders made by magistrates in Great Britain and in British possessions to which such legislation had been applied, but, at present there is no power to make and enforce orders in the Colony and this Bill will fill the gap.

X | The Bill is based very largely upon the Summary Jurisdiction (Married Women) Act, 1895, and the Summary Jurisdiction (Separation and Maintenance) Act, 1925, and generally the provisions of this Bill are similar to the law in force at the present time in England.

The Bill provides that a woman may apply to a subordinate court of the first class for an order under the Bill on certain grounds, the most noteworthy of which are the following, namely:-

- (a) that her husband has been convicted of any offence involving violence against her;
- (b) that her husband has deserted her;
- (c) that her husband has been guilty of persistent cruelty to her or her children or of wilful neglect to provide reasonable maintenance for her or her children;
- (d) and that her husband is a habitual drunkard or habitual drug-taker.

On an application being made to it by a married woman under this Bill, a court has power to make an order or orders containing all or any of the following provisions, namely:-

- (a) a provision that the applicant shall be no longer bound to cohabit with her husband;
- (b) a provision that the legal custody of any children of the marriage between the applicant and her husband while under the age of sixteen years be committed to the applicant;
- (c) a provision that the husband shall pay to the applicant such monthly sum as the Court shall in all the circumstances of the case consider reasonable;

and

- (d) a provision for payment by the applicant, or the husband or both of them of the costs of the application.

No order can be made under this Bill on the application of a married woman if it shall be proved that she has committed an act of adultery.

The Court may vary or discharge an order from time to time as it sees fit, and no order made under this Bill shall be enforceable, if the parties continue to reside together.

Clause 11 provides that any sum ordered to be paid under this Bill shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance (Chapter 6 of the Revised Edition), which means that a person against whom an order has been made may be sentenced by the magistrate to imprisonment not exceeding six weeks for failure to pay the sum ordered to be paid.

The Chief Justice may make Rules of Court -

(a)

- (a) prescribing the forms to be used and the fees to be paid in proceedings under this Bill;
- (b) prescribing the procedure to be followed on applications under this Bill;
- and
- (c) generally for the carrying out of the provisions of this Bill.

I am informed that the Registrar of the Supreme Court has, during the last year or so, had a number of applications from deserted wives seeking maintenance, whom he has had to advise that nothing can be done to help them.

It is also a fact that the burden upon several charitable leagues and institutions is made much greater by the lack of some such Ordinance as this, because, when a deserted wife comes to one of these leagues or institutions and asks for help, for very humanity's sake the league has very often to support her, whereas, when this Bill has become law, a woman will be able to make an application to the Court and force her husband to support her.

Clause 12 is new and was inserted in order to meet the case of the custody and maintenance of the children of a woman who is either dead or has committed an act of adultery and, therefore, is not able to apply herself in person.

In these circumstances, it is provided that the Attorney General may take the woman's place and apply to the Court for orders in connection with the custody and maintenance of the children.

It will be observed that in Clauses 4 (c), 6 (1), 6 (2)(b) and 10, no sum is mentioned as is the case under section 5 (c) of the Summary Jurisdiction (Married Women) Act, 1895.

12

The reason for this is that it sometimes happens out here that a rich man deserts his wife and in these circumstances it is thought that there should not be any limit placed upon the amount which he may be ordered to pay.

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

J. D. H. M. M.

Nairobi,

ACTING ATTORNEY GENERAL.

31st December, 1928.

As often as the contravention of or failure to comply with any such regulation causes damage to any property under the management or control of the High Commissioner, the person causing the damage shall, in addition to any penalty which may be imposed under the regulation, be liable to the High Commissioner for the amount of the damage done.

A copy of all regulations for the time being in force shall be published in the Gazette and kept at the Port Office at each harbour and any person shall be allowed to inspect the same free of charge.

The Port Captain or other authorised officer shall on demand cause to be delivered to the master of any ship arriving at any harbour a copy of this Ordinance and of such harbour and quarantine regulations as may be in force in the harbour.

51. (1) The Port Ordinance (Chapter 107 of the Revised Repeal Edition) is hereby repealed.

Provided that all rules, regulations, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under the said Ordinance or under any other Ordinance or Order in Council relating to harbours shall, so far as they are consistent with this Ordinance, be deemed to have been respectively made, given, approved, conferred, and published under this Ordinance.

(2) All reference in any enactment or document to the Ordinance hereby repealed shall, as far as may be, be construed as references to this Ordinance.

AN ORDINANCE

No. 34 of 1928.

Assented to in His Majesty's name this thirty-first day of December, 1928.

J. W. BARTH,
Acting Governor.

[31ST DECEMBER, 1928.] *Date of assent.*

An Ordinance to confer Jurisdiction on certain Magistrates in reference to married women.

By Proclamation.

Date of commencement.

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 Subordinate (Short title) Courts (Separation and Maintenance) Ordinance, 1928."

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

"Court" means a subordinate court of the first class.

"Habitual drunkard" or "habitual drug-taker" means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor or habitual taking or using, except upon medical advice, of any opiate within the meaning of the Abuse of Opiates Prevention Ordinance as amended by the Abuse of Opiates Prevention (Amendment) Ordinance, 1926, at times dangerous to himself or to others or incapable of managing himself or his affairs.

Cap. 121,
No. 10 of 1926.

Application
for order.

3. (1) Any woman may apply to the Court for an order or orders under this Ordinance on any of the following grounds, namely:—

- (a) that her husband has been convicted of any offence against her under sections 323 to 326 (both inclusive) of the Indian Penal Code or under the corresponding provisions of any enactment substituted therefor;
- (b) that her husband has deserted her;
- (c) that her husband has been guilty of persistent cruelty to her or her children or of wilful neglect to provide reasonable maintenance for her or her children whom he is legally liable to maintain;
- (d) that he has, while suffering from a venereal disease and knowing that he was so suffering, insisted upon having sexual intercourse with her;
- (e) that her husband has compelled her to submit herself to prostitution;
- (f) that her husband is a habitual drunkard or habitual drug-taker.

(2) When the husband has in the opinion of the Court been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution, he shall for the purposes of this Ordinance be deemed to have compelled her so to submit herself.

(3) An application under this Ordinance shall be made to the Court having jurisdiction within the area in which any such conviction has taken place or in which the cause of complaint shall have wholly or partially arisen.

(4) For the purposes of this Ordinance, the expression "children whom he is legally liable to maintain" shall include, in addition to children of the marriage, any child of the wife born before such marriage (whether such child be legitimate or illegitimate) until such child attains the age of sixteen years or until the death of its mother, whichever event shall first occur.

Power of
Court.

4. The Court to which any application under this Ordinance is made may make an order or orders containing all or any of the following provisions, namely:—

- (a) a provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty);
- (b) a provision that the legal custody of any children of the marriage between the applicant and her husband while under the age of sixteen years be committed to the applicant;

(c) a provision that the husband shall pay to the applicant personally or for her use to any officer of the Court or third person on her behalf such monthly sum as the Court shall, having regard to the means both of the husband and wife, consider reasonable;

(d) a provision for payment by the applicant or the husband or both of them of the costs of the Court and such reasonable costs of either of the parties as the Court may think fit.

5. No orders shall be made under this Ordinance on the application of a married woman if it shall be proved that such married woman has committed an act of adultery. Provided that this husband has not condoned or connived at or by his wilful neglect or misconduct condoned to such act of adultery.

Limitation of
powers of
Court.

6. (1) The Court may, on the application of the married woman or of the husband and upon cause being shown upon fresh evidence to the satisfaction of the Court, at any time alter, vary or discharge any such order and may upon any such application from time to time increase or diminish the amount of any payment ordered to be made.

Court may vary
or discharge
order.

(2) If any married woman upon whose application an order shall have been made under this Ordinance shall voluntarily resume cohabitation with her husband the order shall cease to have effect on the resumption of such cohabitation and if she commit an act of adultery such order shall on proof thereof be discharged: Provided that the Court may, if the Court thinks fit—

(a) refuse to discharge the order if in the opinion of the Court such act of adultery as aforesaid was condoned to by the failure of the husband to make such payments as in the opinion of the Court he was able to make; and

(b) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall continue to be committed to the wife and that the husband shall pay to the wife or to any officer of the Court or third person on her behalf such monthly sum as the Court shall consider reasonable in the circumstances of the case for the maintenance of such child until the child attains the age of sixteen years: Provided that the total monthly sum ordered to be paid under this paragraph shall not exceed twenty pounds. In making such an order the Court shall have regard primarily to the interests of the children.

7. In the case of the conviction of a husband under sections 323 to 326 (both inclusive) of the Indian Penal Code or under the corresponding provisions of any enactment substituted therefor, of any offence against his wife, her application may by leave of the Court be made by summons to be issued and made returnable immediately upon such conviction.

Procedure.

8. No order made under this Ordinance shall be enforceable and no liability shall accrue under any such order whilst the married woman with respect to whom such order was made resides with her husband, and any such order shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband.

Order not
enforceable if
parties reside
together.

Change of address.

9. Any person for the time being under an obligation to make payments (including costs) under an order made under this Ordinance shall give notice to such person (if any) as may be specified in the order of any change of address, and any person failing to give such notice without reasonable excuse shall be liable to a fine not exceeding five pounds.

Interim order for maintenance.

10. Where on the hearing of an application for an order of maintenance the application is adjourned for any period exceeding one week, the Court may order that the husband do pay to the wife or to an officer of the Court or third person on her behalf such weekly sum as the Court shall consider reasonable in the circumstances of the case for the maintenance of the wife and any child or children in her custody until the final determination of the case: Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made. Any such order shall be enforced in like manner as if it were a final order of the Court.

Enforcement of orders.

Cap. 6.

11. (1) Any sum ordered to be paid under the provisions of this Ordinance shall be a civil debt recoverable summarily under the Civil Debt (Summary Recovery) Ordinance.

(2) A person making default in complying with an order made by a Court under this Ordinance in relation to any matter other than the payment of money may be sentenced to simple imprisonment until he has remedied his default: Provided always that a person shall not for non-compliance with an order of a Court, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this subsection to imprisonment for a period or periods amounting in the aggregate to more than six months.

Custody and maintenance of children.

12. When a woman, who might have applied for an order or orders under this Ordinance, is dead or has committed an act of adultery, and the Attorney General is satisfied that she would, if alive or if she had not committed an act of adultery, have had reasonable grounds for applying for an order or orders under this Ordinance, he may apply to the Court for an order or orders giving directions as to the legal custody of and the reasonable maintenance by the husband of such woman of her children whom he is legally liable to maintain, and the Court may, on such application, make such order or orders giving such directions as to the matters mentioned above as it may, in its discretion, think fit.

Any such order or orders shall, when made, be enforceable in the same way as any other order or orders it enforceable under this Ordinance.

Savings clause.

Cap. 170.

No. 7 of 1926.

13. Nothing in this Ordinance shall be deemed to affect the provisions of the Divorce Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926.

Residence.

14. A Court shall entertain proceedings under this Ordinance only in cases where one of the parties has at the time of the issue of the summons his or her usual place of residence in the Colony.

15. This Ordinance shall apply only in cases where the husband and wife have been married within the definition of the word "marriage" contained in section 3 of the Divorce Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926.

Application of Ordinance.

Cap. 170.

No. 7 of 1926.

16. The Chief Justice may make Rules of Court—

Power to make Rules.

(a) prescribing the forms to be used and the fees to be paid in proceedings under this Ordinance;

(b) prescribing the procedure to be followed on applications under this Ordinance; and

(c) generally for the carrying out of the provisions of this Ordinance.

17. This Ordinance shall come into force on such date as the Governor shall by proclamation in the Gazette appoint.

Commencement of Ordinance.

AN ORDINANCE

No. 35 OF 1928.

Assented to in His Majesty's name this thirty-first day of December, 1928.

J. W. BARTH,
Acting Governor.

[31st December, 1928.] Date of assent.

An Ordinance to Provide for the Punishment of Departmental Offences.

31st December, 1928.

Date of commencement.

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 "Departmental Offences Ordinance, 1928."

Short title.

2. (1) In this Ordinance, unless the context otherwise requires, the term "subordinate officer of Government" means, in the case of an officer appointed under the conditions of service ordinarily applicable to Europeans, an officer whose salary does not exceed £500 per annum, and, in the case of any other officer, an officer whose salary does not exceed £225 per annum.

Interpretation.

(2) The powers by this Ordinance conferred upon the Head of a Department shall be exercised only by such Heads of Departments, Senior Commissioners, and other European officers as the Governor may by notice in the Gazette from time to time determine.

3. If any subordinate officer of Government—

Offences.

(1) contravenes any regulation or instruction in force in the department in which he is serving; or

- 33
- (2) disobeys or neglects to obey any lawful order of any officer in authority over him; or
 - (3) is impertinent or disrespectful to any officer in authority over him or to any member of the public; or
 - (4) is intoxicated or is under the influence of drink or drugs while on duty; or
 - (5) in general, conducts himself or acts in a manner calculated to prejudice the work or the efficiency of the department in which he is serving or unnecessarily to interfere with the work of another department.

he may, after due investigation by the Head of the Department in which he is serving, be fined by such Head of Department a sum not exceeding one quarter of a month's pay.

Provided that in no case shall the aggregate amount of fines inflicted in any one month exceed one quarter of a month's pay:

Provided further that an offender under this section may, in lieu, wholly or partly, of a fine, be allotted extra duty without remuneration, so only that the value of such extra duty, or of such fine and extra duty, shall not exceed one quarter of a month's pay.

Evidence.

4. A Head of Department may convict upon such evidence, not given upon oath or affirmation, as he shall think fit.

Pay may be stopped.

5. A fine imposed under section 3 may be enforced by deduction from the officer's salary.

Returns to be made every month.

6. A Head of Department or other officer authorised to exercise the powers of a Head of Department under this Ordinance shall, at the end of every month, submit to the Governor, through the Colonial Secretary, a return, in such form as the Governor may require, of all fines inflicted during the month. Such return shall operate as an appeal against the fines inflicted, and the Governor may, after calling for such information, if any, as he may require, cancel or reduce any fine and order the refund of the whole or part of the same.

Ordinance not to affect powers otherwise conferred.

7. Nothing in this Ordinance contained shall be deemed to derogate from the powers otherwise conferred upon any Government officer to impose a fine upon any persons in the service of Government or shall apply to any fine so imposed.

Saving clause.

8. Nothing in this Ordinance shall relieve any person from any of the consequences of any act or default punishable both under this Ordinance and under any other Ordinance or law.

Provided that no person shall be twice punished for the same offence:

Provided also that where the Governor shall have declared by writing under his hand that he has cancelled the penalty imposed on a person convicted of an offence against

- (2) disobeys or neglects to obey any lawful order of any officer in authority over him; or
- (3) is impertinent or disrespectful to any officer in authority over him or to any member of the public; or
- (4) is intoxicated or is under the influence of drink or drugs while on duty; or
- (5) in general, conducts himself or acts in a manner calculated to prejudice the work or the efficiency of the department in which he is serving or unnecessarily to interfere with the work of another department;

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1929

Kenya

No. 15629

SUBJECT

CO 533/387

G. H. L. Murray

Payment of pension to
mental hospital.

Previous

54825/21

Subsequent