

EAST AFR. PROT.
 UGANDA
 ZANZIBAR
 No. 84

C.O.
 8426
 Recd
 9 MAR 08

Governor No.
 Sadler 80

(Subject.)

1908

12 Feb

Court of appeal

Last previous Paper

Copy memo by E. A. P. Judges. Best solution is considered to be the creation of a court of appeal for mainland, composed of 2 of Uganda judges without a Zanzibar judge. Uganda judges & Gov agree.

(Minutes.)

Mr. Riley

H. J. R.

9/3

Mr. Cox
 Mr. Kitchener

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The Uganda reply on 5703 was somewhat misleading. That desk appeared to imply that Uganda & E. Africa were in favour of a 2 judge Court of appeal. It is stated in minutes of 26/1/08 that the proposed court was suggested on 26/1/08. This however, is not the case, and without any award - and, more important still, without the consent of the E. Africa judges, an appeal court constituted by the judges of the Uganda & E. Africa on the mainland to the exclusion of Zanzibar & its judges. This is the reform which I have always advocated if it is a practically one (see minutes on 7/5/07) and it was only due to F.O. obstruction that the more limited proposal on 3/6/07 was put forward.

It would now press the F.O. to consent in order

Subsequent Paper.
 11678

original proposal (in view of the uncertainty of the
in Africa & regards Court & judges on the subject) without
waiting to make other provision for these three
Zanzibar judges (see 14307/07)

Our original proposal included Nyasaland, and
although it is not mentioned in the memo by the
in Africa judges Nyasaland must be included
in the scheme on the terms as indicated
on 31228/07

The L.A. Protectorate/Protectorate of Africa Bill 1902 will
have to be amended or better still, repealed & re-enacted
and as amended shall contain a provision for the
appointment of one or more acting
judges who are required to complete a Court

By the Secy
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I think

J.R.
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in the
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W.H. Smith & Co.
at once

C. J. A.
Governor's Office,

Nairobi,

February 12th 1908.

EAST AFRICA PROTECTORATE.

No. 80

(Incl. 2)

8426

My Lord,

To
30-08

In reply to Your Lordship's despatch No. 588 of October 29th last, instructing me to consult the Judges of the East Africa and Uganda Protectorates as to the possibility of dealing with some of the appeal cases by a Court consisting of two Judges sitting in East Africa or Uganda without the assistance of a Zanzibar Judge, I have the honour to transmit herewith a copy of a Memorandum by the Judges of this Protectorate on the subject.

2. Your Lordship will observe that they are of opinion that the present unsatisfactory arrangement would not be improved by a change in the direction proposed by Your Lordship. They consider that the

difficulty

MEMORANDUM
FOR THE PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

difficulty will be best solved by the immediate creation of a Court of appeal for the mainland composed of East Africa and Uganda Judges, which would dispense with the assistance of a Zanzibar Judge.

3. In accordance with Your Lordship's instructions I consulted the Governor of Uganda on the subject and have the honour to transmit herewith a copy of his reply from which Your Lordship will observe that the Uganda Judges concur with the Memorandum drawn up by the Judges of the East Africa Protectorate, with which both Mr. Hesketh Bell and myself agree.

I have the honour to be,
with the highest respect,

My Lord,

Your Lordship's most obedient,
humble servant,

George Bell

COPY.

ENCLOSURE No. 1
Despatch No. 40 of 16.12.1907

C. 537
8426

Recd
Dec 9 1907

MEMORANDUM IN REPLY TO HIS EXCELLENCY'S
MINUTE OF 28th NOVEMBER 1907 ON THE TRANSFER OF
THE COURT OF APPEAL TO THE MAINLAND .

1. This matter first took definite shape in January 1907, when the recommendations of the Pleaders practising in East Africa were forwarded for the consideration of the Government.
2. In March 1907 the proposal to transfer the Court of Appeal from Zanzibar to the mainland was agreed to by the Colonial Office who proposed to form a Court of Appeal on the mainland dispensing with the assistance of the Zanzibar Judges, but out of courtesy to the Foreign Office they were prepared to postpone the change for a period not exceeding three years to allow time for the transfer of the third Judge at Zanzibar.
3. In October 1907 the Foreign Office raised objections to the Zanzibar Judges coming to Mombasa for the Appeal Court, suggesting that so long as the Court existed in its present form it would be more convenient that it should sit only in Zanzibar.
4. The Colonial Office now ask if it could not be arranged for two Judges from East Africa and Uganda to take some appeals or classes of appeals on the mainland.
5. We would state that we do not consider the present unsatisfactory arrangement would improve by an alteration in this direction.
6. We consider that the highest local Court of Appeal should

should be made as strong as possible in every class of case and consequently do not favour a bench of two Judges only as suggested, which might lead to the views of a minority of Judges prevailing against the majority. We prefer therefore that the Court should consist of three Judges, though interlocutory applications might be dealt with by two or even one Judge.

7. The objections to making any change now are based on the supposition that the Registry of the Court of Appeal would remain at Zanzibar, but that the Zanzibar Judges could not afford time to come to the mainland. Under such an arrangement it would undoubtedly ^{be} inconvenient that a certain class or classes of appeals should be dealt with by the mainland Judges only on the mainland while the Appeal Court Office and Registrar remained at Zanzibar.

8. The solution of the difficulty we believe lies in pressing forward the step decided on last March of creating a Court of Appeal on the mainland and dispensing with the assistance of the Zanzibar Judges.

9. With three Judges in East Africa and two in Uganda and easy communication between the two Protectorates there should be no difficulty in forming a three Judge Court to hold two definite sessions a year, and special sessions besides if occasion arises. In the event of there being appeals from the decisions of all three East Africa Judges for hearing at one session a Court could be formed with the assistance of one Judge from Uganda which could deal with them all.

10. It seems that at times there might be only three Judges available in both Protectorates and there might then be a difficulty in holding a special session to deal with

(5)

an urgent appeal from a sentence or judgment passed by one of them. This difficulty might, however, be met by appointing an acting Judge to take the place of one of the Judges on leave.

11. Under these circumstances we are of opinion that there are no insuperable difficulties in the way of at once creating a working Court of Appeal composed of East Africa and Uganda Judges on the mainland, and think that the arguments already admitted in favour of the change are so strong that they should outweigh any further postponement dependent merely on whether the Foreign Office may decide to retain of their Officers in Zanzibar or transfer him elsewhere.

12. We would suggest, therefore, that pending the creation of a definite separate Court of Appeal for the mainland the permanent address of the existing Court be removed from Zanzibar to Mombasa forthwith, and the arrangement of business and sittings be placed in the hands of the Principal Judge of the East Africa Protectorate.

Sd/- R.W.HAMILTON.

" J.W.BARTH

" A.T.B.CARTER.

Mombasa,
December 9th 1907.

In D. No. 80 of Feb. 12, 1908

No. 824/07

Government House,

Uganda,

January 20th 1908.

Sir,

I have the honour to acknowledge the receipt of Your Excellency's despatch, unnumbered, of the 14th ultimo relative to the formation of a Court of Appeal for these two Protectorates.

The Judges of the High Court of Uganda have expressed their entire accord with the opinion expressed by the Judiciary of British East Africa. In this I agree, and I beg to suggest that Your Excellency should inform the Secretary of State accordingly, so that the necessary arrangements may be completed as soon as possible.

I have so.,

Sd/- H. HESKETH BELL.

Governor.

His Excellency

The Governor,

E. E. A. Protectorate,

Nairobi.

Gov
8426

E.H.P.

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26
30

5 Copies

DRAFT.

The U.S.P.S.

F.O.

ansd 16378

Jan 11

31 March 08

Sir

Re. to your letter
of the 14th Oct, No
18501/04 I am directed

Mr. Ellis 25/3
Mr. Bailey 26/3
Mr. Reed 26/3
36448

by the Earl of El-
-gird to transmit to you
to be laid before Her
His Edward Grey the
accompanying copies of
further records on the
subject of the Court
of Appeal for East-

in common

1891)
to Gov. Uxbridge E.H.P.
to P.P. H...
to P.P. H... 1891

Copy for { Pa.P. 23 8 } 21 May 1898
 { Ux. 133 }
 { Vyasa 114 } 22 May

the Gov. of Uganda & the
C.A.P. it will be seen
that the Judges of those
Prots. are unanimously
of opinion that appeals
from them shd. be
heard by a Court
sitting at Montreal,
and that this Court
can & should be constituted
of the Judges of Uganda
& the C.A.P. without
requiring any assistance
from the Judges of
the Court of Zanzibar.

3. This is the course
which was recommended
in the letter from
this Dept. of the 23rd
of March 1907

7455

or for 3 years at most

when the arguments in its
favour were fully stated
542
4. In view of the objection
raised in your letter
of the 22nd April
H.L. stated that he
was prepared to allow
the matter to remain in
abeyance until opportunity
could be found to get
notice of the Zanzibar
judges, but in view of
the & necessity to
arrange for some of
the cases arising in
the C.A.P. of Uganda to
be dealt with by a
Court sitting in their
Prots.
5. It appears, however,
that this modification
would not give