

Circular
EAST AFR. PROT
 No. *43822*

DESPATCH
 C O
43822
 30.10.08

Governor No.
115

(Subject)

1908
24 Oct

Appeals to Privy Council

Last previous paper.

Send draft O.C. to observe by Crown

Case 27/10/08

General Dept

(Minutes)

noted

*H J R
 1/11*

*See Head
 See Cox*

Present - record noted

There is no appeal to H.M. in Council from the Courts of the 3 Provs. The appeal lies from the Court of Appeal for S. Africa. For this reason, therefore, what the following is

And whereas by an Order in Council bearing even date with this Order provision has been made for appeals from H.M.S. Courts in the said Protectorates to H.M.'s Court of Appeal for Eastern Africa.

And whereas it is expedient that similar provision should be made for regulating appeals from H.M.'s Court of Appeal for Eastern Africa to His Majesty in Council.

§2 Definition of "Court" in all respects, amended

§3 Appeal to Council. They have submitted above showing for the 10/10/08 (in the Section O.C.)

This leads with any other this is

Annexed to Privy Council & P.C. by 20/10/08

*What does it
 suggest in
 regard to appeal
 O.C.*

43822

Governor's Office

Nairobi,

30 OCT 1908

October 29th 1908.

EAST AFRICA PROTECTORATE.

~~CONFIDENTIAL~~ (115)

(Incl. 2)

My Lord,

In accordance with the instructions contained in Your Lordship's Confidential Circular of the 27th of August last, I have the honour to transmit herewith a draft Order for submission to His Majesty in Council.

E. The Order has been prepared in accordance with the "Draft Colonial Appeal Rules" which accompanied Your Lordship's Circular under reply, but has been adapted to local requirements.

E. The observations of the Crown advocate on the departure from the model Rules are contained in the accompanying Schedule.

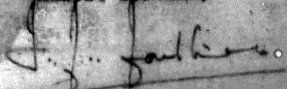
I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,



(In the absence of H.E. the Governor)

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWING STREET,

LONDON, S.W.

Order

Memorandum
by Mr. Coombe

INCLOSURE

In Despatch No. 77 of

1907

80

43822

EASTERN AFRICAN PROTECTORATES (APPEAL
TO PRIVY COUNCIL) ORDER-IN-COUNCIL, 1907

This Order follows the Colonial Appeal Rules with only such alterations as are in my opinion necessary for applying these Rules to this Protectorate.

The Order like the "Eastern African Protectorate (Court of Appeal) Order in Council 1907" is drafted as a general order applicable to the three Protectorates of Eastern Africa.

My observations on any departure in the Order from the Rules to which I have referred will be found in the attached Schedule.

J. H. [Signature]
29 11 07

SCHEDULE

Article 2.

"This Order" has been substituted for "these Rules".

The definition of "Court" has been deleted and a new definition inserted.

Under the existing Practice of the Court of Appeal for Eastern Africa some appeals are heard by two Judges and there is no reason to believe that practice will have to be continued in the event of the Court of Appeal being removed from Zanzibar to the Mainland. It is therefore necessary that "Court" should be so defined as to include a Court consisting of two Judges.

Article 3.

"This Order" has been substituted for "these Rules".

77

£650 has been inserted as the appealable amount.

In the East Africa Protectorate (Court of Appeal) Order in Council, 1902, Article 9, Rs.10,000 = £656.15.4 was made the appealable amount.

Article 4.

"Senior Member" has been substituted for "Chief Justice"

There is no Chief Justice in this Protectorate. I understand that in the proposed new Court of Appeal Order in Council which is being drafted by Judge Hamilton and Minie the President of the Court of Appeal is referred to throughout as the "Senior Member".

Handwritten note: Must have been a court of the Judge 1893 1894
the Court of Appeal

Article 5.

Twenty one days has been inserted as the time within which the motion or petition for leave to appeal shall be made.

This period which is that fixed by the Principal Judge in Uganda and, I believe, approved by Judge Hamilton, is quite sufficient in any case coming to the Court of Appeal from the East African or Uganda Courts. I would, however, point out that as regards an appeal coming from the Nyasaland Courts the period is insufficient to allow a pleader in Mombasa or Zanzibar to communicate with his client in Nyasaland and receive instructions with regard to an appeal except by telegram.

As the costs which would be incurred by a party obtaining conditional leave to appeal under Article 5 and withdrawing his appeal before complying with the conditions imposed by Article 5, would be very small, I do not think that any real hardship would be imposed by fixing the period at three weeks for all three Protectorates should however it be thought that sufficient time should be allowed to enable a party to an appeal resident in Nyasaland to receive and consider a copy of the judgment of the Court and to communicate with his pleader or agent in Mombasa the period allowed for the petition should be extended to three months for Nyasaland retaining the period of three weeks for East Africa and Uganda.

Article 6.

"Article 5" has been substituted for
"Rule 2".

Articles 10

11

12

14

25

27

The words "the said Protectorates" have
been inserted in the blank spaces in these
Articles.

In Article 14 the words "Articles 12 and
13" have been substituted for "Rules 11 and
12".

Article 28.

"This Order" has been substituted for
"these Rules".

A. D. Cook

CROWN ADVOCATE

ORDER IN COUNCIL.

Eastern African Protectorate (Appeal to Privy Council)
Order in Council 190 .

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction within the East Africa, Uganda and Nyasaland Protectorates (in this Order referred to as "the said Protectorates");

AND WHEREAS it is expedient that provision should be made for regulating appeals to His Majesty in Council from His Majesty's Courts in the said Protectorates;

NOW THEREFORE, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act 1880", or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to Order, and it is hereby Ordered as follows:-

1. This Order may be cited as the "Eastern African Protectorates (Appeal to Privy Council) Order in Council 190 .

*And Whereas upon Order in Council bearing even date with the Order
 provision has been made for appeals from His Majesty's Courts in the said
 Protectorates to His Majesty's Court of Appeal for Eastern Africa;
 and whereas it is expedient that further provision should be made for regulating
 appeals from His Majesty's Court of Appeal for Eastern Africa to His
 Majesty in Council;*

2. In this Order, unless the context otherwise requires:
- "Appeal" means Appeal to His Majesty in Council;
 - "His Majesty" includes His Majesty's heirs and successors;
 - "Judgment" includes decree, order, sentence, or decision;
 - "Court" means either the Full Court or one or more Judges of His Majesty's Court of Appeal for Eastern Africa according as the matter in question is one which under the Rules and Practices of His Majesty's Court of Appeal for Eastern Africa, properly appertains to a Full Court or to one or more Judges;
 - "Record" means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal;
 - "Registrar" means the Registrar or other proper Officer having the custody of the Records in the Court appealed from;
 - "Month" means calendar month;
- Words in the singular include the plural, and words in the plural include the singular.

3. Subject to the provisions of this Order, an Appeal shall lie

(a) as of right, from any final judgment of the Court, where the matter in dispute on the Appeal amounts to or is of the value of £.650 sterling or upwards, or where the Appeal involves directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of ^{Rs. 10,000} ~~£.650 sterling~~ or upwards; and

(b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the Appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

4. Where in an action or other proceeding no final judgment can be duly given in consequence of a difference of opinion between the Judges, the final judgment may be entered pro forma on the application of any party in such action or other proceeding according to the opinion of the Senior Member, or in his absence, of the Senior puisne Judge of the Court, but such judgment shall only be deemed final for purposes of an appeal therefrom, and not for any other purpose.

5.

5. Applications to the Court for leave to

appeal shall be made by motion or petition within

in the case of applications from East Africa or Uganda and within three months in the case of applications from Nigeria and
21 days from the date of the judgment to be

appealed from, and the Applicant shall give the

opposite party notice of his intended application

A?

6. Leave to appeal under Article 3 shall only be granted by the Court in the first instance-

(a) upon ~~the~~ condition of the Appellant, within a period to be fixed by the Court but not exceeding three months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding ^{Rs. 5000} ~~£.500~~, for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining ~~the~~ an order granting him final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty's Council ordering the Appellant to pay the Respondent's costs of the Appeal (as the case may be); and

(b) upon such other conditions (if any) as to the time or times within which the Appellant shall take the necessary steps for the purpose of procuring the preparation of the Record and the dispatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

7. Where the judgment appealed from requires the Appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the Appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such order as His Majesty in Council shall think fit to make thereon.

8.

8. The preparation of the Record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

9. The Registrar, as well as the parties and their legal Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the Appeal, and, generally, to reduce the bulk of the record as far as possible, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the Record.

10. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record, as finally printed (whether ^{any of} in the said Protectorates or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

11. The Record shall be printed in accordance
with the Rules set forth in the Schedule hereto.
It may be so printed either in the said Protec-
torate, or in England.

13. Where the Record is to be printed in England the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal

14. Where part of the Record is printed in
the said Protectorate and part ^{is} to be printed
in England, Articles 12 and 13 shall, as far as
practicable, apply to such parts as are printed
in the said Protectorate and such as are to be
printed in England respectively.

15. The reasons given by the Judge, or any of the Judges, for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises shall by such Judge or Judges be communicated in writing to the Registrar, and shall by him be transmitted to the Registrar of the Privy Council at the same time when the Record is transmitted.

16. Where there are two or more applications, for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the Appeals should be consolidated, the Court may direct the Appeals to be consolidated and grant leave to appeal by a single Order.

17. An Appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his Appeal on such terms as to costs and otherwise as the Court may direct.

18. Where an Appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such Order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the Respondent, rescind the order granting conditional leave to appeal, notwithstanding the Appellant's compliance with the conditions imposed by such Order, and may give such directions as to the costs of the Appeal and the security entered into by the Appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

19. On an application for final leave to appeal, the Court may inquire whether notice, or sufficient notice, of the application has been given by the Appellant to all parties concerned, and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

20. An Appellant who has obtained final leave to appeal shall prosecute his Appeal in accordance with the Rules for the time being regulating the general practice and procedure in Appeals to His Majesty in Council.

Where an Appellant, having obtained final leave to appeal, desires, prior to the dispatch of the Record to England, to withdraw his Appeal, the Court may, upon an application in that behalf made by the Appellant, grant him a certificate to the effect that the Appeal has been withdrawn, and the Appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the cost of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

22. Where an Appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the Record to England, the Respondent may, after giving the Appellant due notice of his intended application, apply to the Court for a certificate that the Appeal has not been effectually prosecuted by the Appellant, and if the Court sees fit to grant such a certificate the Appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the Costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

23. Where at any time between the order granting final leave to appeal and the dispatch of the Record to England, the Record becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court may, notwithstanding the order granting final leave to appeal on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the Record in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express Order of His Majesty in Council.

24.

24.

Where the Record subsequently to its dispatch to England becomes defective by reason of the death or change of status, of a party to the Appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council shewing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the Record, in place of, or in addition to, the party who has died or undergone a change of status.

26. The Case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, ~~the~~ circumstances out of which the Appeal arise, the contentions to be urged by the party lodging the same, and the reasons ~~for~~ of Appeal. Reference by page and line to the relevant portions of the Record as printed shall, as far as practicable be printed in the margin, and care shall be taken to avoid, as far as possible, the reprinting in the Case of long extracts from the Record. The taxing officer, in taxing the costs of the Appeal, shall, either of his own motion, or at the instance of the opposite party, inquire into any unnecessary prolixity in the Case, and shall disallow the costs occasioned thereby

27. Where the Judicial Committee directs a party to bear the costs of an Appeal incurred in the said Protectorate, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

28. The Court shall conform with, and execute, any order which His Majesty in Council may think fit to make on an Appeal from a judgment of the Court in like manner as any original judgment of the Court should or might have been executed.

29.

29. Nothing in this Order contained shall be deemed to interfere with the right of His Majesty upon the humble Petition of any person aggrieved by any judgment of the Court to admit his Appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose.

7 ~~30~~ ~~See an act~~

*And the said Order shall be given to the
 His Majesty's Principal Secretaries of
 State, to give the necessary directions
 thereon accordingly.*

30 This Order shall commence and have effect
 on such day as may be fixed by notification
 in the London Gazette by one of His
 Majesty's Principal Secretaries of State

SCHEDULE.

- I. Records and Cases in Appeals to His Majesty in Council shall be printed in the form known as Bemy Quarto (i.e., 54 cms in length and 42 in width).
- II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8 1/2 inches in width.
- III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter, and notes.
- IV. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

ORDER IN COUNCIL.

Eastern African Protectorates (Court of Appeal) Order in Council, 1900.

Whereas by Treaty, grant, usage, sufferance, and other lawful means His Majesty has power and jurisdiction with in the territories of Africa known as the East Africa, Uganda, and Nyasaland Protectorates (in this Order referred to as "the said Protectorates");

And whereas it is expedient that a Court should be established for the hearing and determining of appeals from His Majesty's Courts in the said Protectorates:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the "Eastern African Protectorates (Court of Appeal) Order in Council, 1900".

2. A Court shall be constituted, called His Majesty's Court of Appeal for Eastern Africa (in this Order referred to as "The Court of Appeal"), which shall be a superior Court of record, and shall, for the purposes of and subject to the provisions of this Order, have full power to determine in accordance with this Order any questions necessary to be determined for the purpose of doing justice in the case before the Court, and shall exercise such appellate jurisdiction and such other powers in relation to the High Courts and other Courts in the said Protectorates as may from time to time be conferred by Ordinances passed under the provisions of the Orders in Council relating to the said Protectorates respectively.

3. The

3. The Court of Appeal shall have a seal bearing the style of the Court and a device approved by H.M.'s Principal Secretary of State for the Colonies (in this Order referred to as "the Sec. of State") and until such a seal is provided the existing stamp and seal bearing the words H.M.M. Court of Appeal for Eastern Africa may be used instead thereof.

4. The

4. The members of the Court of Appeal shall be the Judges and Acting Judges for the time being of His Majesty's High Courts of the said Protectorates respectively, and such other competent person or persons, if any, and being a member of the Bar of England, Scotland or Ireland, of not less than five years' standing, as the Secretary of State may from time to time appoint.

5. The

5. The seniority of the Members of the Court of Appeal shall be determined according to the instructions to be given from time to time by the Secretary of State.

6. For

8. For the hearing and determining of appeals, three members of the Court of Appeal shall sit together: but provision may be made by Rules of Court for the hearing of any specified classes of cases by less than three members of the Court of Appeal.

9. The

7. The Court of Appeal may sit
at such places in any of the said
Protectorates as may be fixed by Rules
of Court.

G. 120

8. The Secretary of State may appoint a Registrar and such other officers of the Court of Appeal as may be necessary.

9. (1)

9. (1) Three members of the Court of Appeal one of whom shall be the senior member may make Rules of Court with respect to all matters of procedure relating to the exercise of its jurisdiction.

(2) Rules of Court when allowed by the Secretary of State shall have effect as if contained in this Order: Provided that in case of urgency declared in the Rules, the same shall take effect before such allowance, and shall continue to have effect unless and until they are modified or altered by the Secretary of State, and are published by the Court of Appeal as so modified or altered.

(3) Rules of Court made under this Order and allowed by the Secretary of State, may, with the approval of the Secretary of State, be rescinded, revoked, amended or varied by Rules of Court.

10. On the commencement of this Order the Eastern African Protectorates (Court of Appeal) Order in Council 1902, and the Eastern African Protectorates (Court of Appeal) Order in Council 1906 shall be repealed. Provided as follows:-

(1) In all appeals and proceedings whatsoever which shall have been fully heard by the Court of Appeal established under the Said Orders (in this Article referred to as "the former Court") and in which judgment shall not have been given, or having been given shall not have been signed drawn up or otherwise perfected at the commencement of this Order, any judgment decree rule or order may be given or made signed drawn up or perfected respectively after the commencement of this Order in the name of the former Court by the Court of Appeal established by this Order, and shall take effect for all intents and purposes as if the same had been duly perfected before the commencement of this Order.

(11)

(II) Every judgment decree rule or order of the former Court which shall have been duly perfected at any time before the commencement of this Order may be executed and enforced and, if necessary, amended or discharged by the Court of Appeal in the same manner as if it had been a judgment decree rule or order of the said Court of Appeal.

(III) All appeals matters and proceedings whatsoever, whether civil or criminal, which shall be pending in the former Court at the commencement of this Order shall be continued and concluded before the Court of Appeal according to the form and manner of procedure of the said Court of Appeal.

11. This

11. This Order shall commence and have effect on such day as may be fixed by notification by the Secretary of State, published in the London Gazette.

And the Earl of Crewe K.G. one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.