

EAST AFR. PROT.  
No. L3746

43746  
30. 08

No. 586  
1908  
Nov

(Subject.)

Eastern African Protectorate Court of Appeal  
Order in Council

previous Paper.

Submits draft Order repealing existing  
O. in C. & reconstituting the Court of Appeal

To  
2/11/08

(Minutes.)

N: Cox

H. J. R

1/12

M. R. v. J

1/12

2/12

We must wait for her and consensus in the  
Office. It is presumably the work of the  
Judge of both Protectorates and of course will  
apply to both & also to Nyasaland. See 16875

J. R. 10/12

has Read  
has Cox

Cor. now has her under consensus - see 47485 - and  
can proceed with the O. in C. & Nyasaland consensus  
is not necessary (see minute & off on 3122/07)

The Off. O. in C.

This records minute submitted the question, O. in C.  
of 1902, as amended in 1908

Document of the C. to the O. in C. 2319/08

\* This problem is  
not at all  
officially the  
work of  
the Court  
of Appeal

A. E. W. 1908

Subsequent Paper

47485  
1/12

The Off Diric is all right & I think the new article  
9 (3) is desirable. (Art 11 comes out 70 articles)

[This has inadvertently, whereas articles 10-12 of  
the 1902 Diric relating to appeals to the P.C. through  
according to the drop para & these judgments to have  
been eliminated.]

Case will be taken in copying for the P.C. to meet  
these articles 10-12 through which I have seen  
and printed, art 9 being followed by the 3 new  
articles numbered 10-12

Arts 10-12 of the 1902 Diric are to be replaced by  
the new (separate) Diric dealing with appeals  
to the P.C. - see 43822 hereafter.

It is obvious that these 2 Diric should be  
drafted with some regard to one transaction  
and should come into force on the same day.  
I therefore send on the Appellate Diric with  
this.

I think it is important that the General Diric  
should deal with both Diric - it will be highly  
convenient for the African Dept to deal with  
the Off Diric and in Court Diric to deal with  
the Appellate to the P.C. rules. (This dealing  
with the whole series of similar orders from  
the same column & prob.)

Hope that African Dept is seriously  
concerned in this arrangement?

If so I will be glad that we send <sup>the receipt of the</sup> both  
Off Diric together with an covering letter

(from Gen. Diric) explaining with regard  
to this Diric that with F.O. concurrence  
has been returned to establish a

1st appeal for our 3 Procs in the  
Place of the present Court at Gungah  
and writing with regard to the other  
Diric as proposed in my minute  
on 43822.

The Off Rules of Court

I have several ideas to make up these

In order to  
to make it  
possible to  
press into  
the Diric

do these Off  
of Court concern  
the as they do not  
the Diric  
to PC 251

Probably  
4/22

A

Off Rules but I think that the best course will be  
to receive them until the 2 Diric have been  
passed.

It will then be for the African Dept to send out  
the Diric to the 3 Procs and at the same time  
to transmit our criticisms upon the Off Rules  
of Court which the judges will then be able  
to settle & publish in due course.

Final ? Proceed as at "A"

J.S.R. 7/1

[I do not think that we require F.O. concurrence  
in this Off Diric or in the Off Rules of Court, and  
henceforth (from date to be fixed) neither the Court  
nor its rules will concern the F.O.

All that we shall require F.O. concurrence in is  
the date of commencement to be fixed under  
Art 11, and we can set this when the Diric  
is passed - see 251 letter para 4, on 16/9/02  
in compliance with which not to have been  
inserted in the Off Diric.]

J.S.R.

4/22

7/1

Content of agree on all points

about Diric

I find no basis for the suggestion  
a request & when the Diric is sent  
for copy for final concurrence

Off Diric only  
not the Off  
Rules of Court  
251

As to the Off Rules of Court

553 not para J.S.R.

171  
The Rules of Court for the Court of Appeal  
for Eastern Africa

his hand  
for Con

I may as well deal with these Rules of Court now  
but, as I expected at the end of my first month on  
these papers, we did not strike out our criticisms  
on the Rules together with the new DMC when  
passed after fixing with 2-0. occurrence the  
date of commencement of the latter (art 11)

No doubt the date will be sufficiently far ahead  
to enable the judges to review or publish the Rules  
of Court as soon as the new Court comes into  
being, or not long afterwards.

The heading on the 14 Rules shows which of them are  
new so I need not draw special attention to  
innovations to which I see no objection.

Rule 9. In view of the alteration (Rule 8/1) I substituted the  
"stand upon" for "go to" in line 1, & also in  
line 6, of Rule 9.

Rule 12. By an error in copying, in the last line but one the  
following words have been omitted after "made" -  
"and thereupon copies of such papers or exhibits  
shall be made". They should be inserted.

Rules 17 & 18. of Crim Appeal Act 1907 sec 1(2) & (4)

Rule 19. I agree with the omission at the end of the Rule  
(see old Rule no 17)

Rule 20. In (b) they have left out "in a civil case" - so that  
by consent of the parties any civil appeal may be  
heard by a judge. It is an objection to this  
that, if a judge, who is not a judge of the Court, can refer  
his consent.

Rule 21. So far as it is necessary to provide for the  
reference of cases to the Court of Appeal in accordance  
with the provisions of the Act.

nothing Rules are  
to accompany you  
p. 26  
27th



Rule 22: It is intended to carry out an intention but not  
 left unaltered  
 It might be considered that under it S. Africa &  
 the courts might reach suitable or wrong judge,  
 so that a court might consist of one judge and  
 two others, judges - the one being one wished to  
 avoid (para 4 of our draft in 1970)  
 \* Point this out as suggested measure of the words  
 of a High Court which are not readily necessary  
 and lead to the confusion pointed out above

Rule 23: View of Com. Appeal Act 1997 s. 1(2) & 9(3)

Rule 25: I have considered the draft about time of location  
 from the Com. Appeal Act 1997 s. 1(5) and it is con-  
 sidered a proper provision as to criminal appeals  
 But it extends also to civil appeals and under it  
 unless the Court directs to the contrary, there will  
 be only one judge and delivered by the Court as  
 a whole. Presumably if the Court is divided  
 in opinion it will "direct to the contrary" so  
 that the judge in a minority may deliver  
 his dissenting judgment. But I incline  
 to think that the Rule in its present form  
 should be confined to Criminal appeals.

Rule 24: See  
 7396/29

\* And the importance  
 when to do so  
 they are "the la"  
 (Rule 19)

Jayce H.M.

Rule 26: It is necessary provision and as the Rules are to have  
 effect as if contained in the O.S.C. (see O.S.C. 59(2))  
 it needs to be made in this way

Rule 27: taken from the Indian Criminal Procedure Code  
 s. 422

Rule 28: 25 - of Com. Appeal Act 1997, s. 10 & 13(1)  
 In Rule 29, it will be simpler if the words "and  
 of the year of revision of the Act" for words to  
 that effect were substituted for "according to  
 matters to be given from time to time by  
 the Act"

Jayce H.M.

Perhaps the Dept. will consider this point  
 Rule 29: The time provided by the 1997 Rules (2007) has  
 been replaced by another language in  
 1906 (the old draft was in 1997)

The fees remain substantially the same (in other circumstances)  
 on the 4th Rule of

\* A decision might be taken now on the various points  
 referred to above action thereon being postponed  
 until the O.S.C. is passed as suggested at the  
 beginning of this month

J.H.  
 H.P.R.  
 10/1

Jayce note points  
 above  
 H.P.R.  
 15/1

98



EAST AFRICA PROTECTORATE.

November 4th 1905.

No. 558

(Incl. 1)

173

My Lord,

With reference to paragraph 2 of Your Lordship's despatch No. 258 of the 21st of May last, I have the honour to submit for Your Lordship's consideration a draft Order in Council providing for the repeal of the existing Order in Council and the proposed re-constitution of the Court of Appeal.

2. The draft of this Order in Council was ready for transmission to Your Lordship some little time ago, but the receipt of Your Lordship's Confidential Circular of the 27th of August necessitated a further delay in order to eliminate all that portion of the draft Order in Council which related to appeals to the Privy Council.

3. The draft Order in Council relating to Appeals to the Privy Council was forwarded for Your Lordship's consideration in my despatch Confidential (115) of the 29th ultimo.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

*21/11/16878*  
Order in Council

*43822*  
*(Circular)*  
*Separate*  
*(with this)*

Memorandum on draft of new Eastern African Protectorate Court of Appeal Order-in-Council

174

New Draft O. in C. 1902

Preamble	-	Nyasaland inserted
Article 2	2	'Britannic' omitted. This article has been slightly amplified on basis of VII Ed: cap. 25.
"	3	new Taken from the Eastern African Protectorates Court of Appeal Order-in-Council 1906.
"	4	3 'Acting Judges' added to remove doubts.
"	5	4
"	6	5 <i>Amended for "in addition"</i> 'Members' used throughout to cover all persons who may sit on the Court.
"	7	6 Varied to suit new circumstances.
"	8	7
"	9	8

(1) For Court read '3 members one of whom shall be the Senior Member'. Otherwise it might be necessary for rules to be made for all the members of the Court.

(2) is now.

Rules are to have effect as contained in the order, provision should therefore be taken in the order for varying them.

Memorandum on draft of new Eastern Division  
Protectorate Court of Appeal Order-in-Council.

	O. in C. 1902	
Revised inserted	-	
'Articles' omitted. This article has been	2	
slightly modified on basis of VII 1902		
cap. 23.		
Taken from the Eastern Division Protectorate	new	
Court of Appeal Order-in-Council 1902.	2	
'Acting Judges' added to remove doubts.	2	
	2	
	2	
Members' name throughout to cover all	2	
persons who are fit on the Court.	2	
Added to fill new circumstances.	2	
	2	
	2	
(1) For Court rule 12 number one of which	2	
shall be the Eastern Division. Otherwise the		
right is necessary for rules to be made by		
all the members of the Court.		
(2) In new.		
Rules are to have effect as if made		
under the order. Provision made		
therefore be taken in the order for		

Draft O. in. C.1902

- 9.10.11.
- 10. -
- 11. -

These articles will go out as they are provided for in the appeal to the Privy Council Order-in-Council.

Necessary repairs

Fixes date for commencement of order.



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 over the territories of Africa known as the East Africa, Uganda, and Nyassaland 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.



3. The Court of Appeal shall have a seal bearing the style of the Court and a device approved by the Secretary of State; and until such a seal is provided the existing stamp and seal bearing the words H.M. Court of Appeal for Eastern Africa may be used instead thereof.

*at the meeting of the Council 18 Jan 1906*

A Court shall be constituted...  
 The Court of Appeal shall have a seal bearing the style of the Court and a device approved by the Secretary of State; and until such a seal is provided the existing stamp and seal bearing the words H.M. Court of Appeal for Eastern Africa may be used instead thereof.



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, each 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.

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

§ 4. The seniority of the Members  
 of the Court of Appeal shall be  
 determined according to the instruc-  
 tions to be given from time to time  
 by the Secretary of State.

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

6. 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.



6. For the purpose of 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  
 special cases of appeal by less  
 than three members of the Court of

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

The Court of Appeal may  
at such places as may be fixed by  
Protectors as may be fixed by  
of Court.

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

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  
 28. 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 which shall be heard by the Court of Appeal established under this Order in the place where the former Court of Appeal was held, any appeal which shall have been commenced or have been commenced before the commencement of this Order, and which shall not have been perfected at the commencement of this Order, may, at the discretion of the Court of Appeal, be continued as if it had been commenced after the commencement of this Order, and shall be heard and determined as if it had been commenced after the commencement of this Order.

(2) In all appeals and proceedings which shall be heard by the Court of Appeal established under this Order, any appeal which shall have been commenced or have been commenced before the commencement of this Order, and which shall not have been perfected at the commencement of this Order, may, at the discretion of the Court of Appeal, be continued as if it had been commenced after the commencement of this Order, and shall be heard and determined as if it had been commenced after the commencement of this Order.

80  
 Continued and amended from the Eastern African Protectorates (Court of Appeal) Order in Council 1902 and 1906.

(1) In all appeals and proceedings which shall be heard by the Court of Appeal established under this Order in the place where the former Court of Appeal was held, any appeal which shall have been commenced or have been commenced before the commencement of this Order, and which shall not have been perfected at the commencement of this Order, may, at the discretion of the Court of Appeal, be continued as if it had been commenced after the commencement of this Order, and shall be heard and determined as if it had been commenced after the commencement of this Order.

(2) In all appeals and proceedings which shall be heard by the Court of Appeal established under this Order in the place where the former Court of Appeal was held, any appeal which shall have been commenced or have been commenced before the commencement of this Order, and which shall not have been perfected at the commencement of this Order, may, at the discretion of the Court of Appeal, be continued as if it had been commenced after the commencement of this Order, and shall be heard and determined as if it had been commenced after the commencement of this Order.

(3) In all appeals and proceedings which shall be heard by the Court of Appeal established under this Order in the place where the former Court of Appeal was held, any appeal which shall have been commenced or have been commenced before the commencement of this Order, and which shall not have been perfected at the commencement of this Order, may, at the discretion of the Court of Appeal, be continued as if it had been commenced after the commencement of this Order, and shall be heard and determined as if it had been commenced after the commencement of this Order.

15. 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 1902 shall be repealed.

14. 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 said *John K. Brown*  
of His Majesty's Principal Secretaries  
of State, is to give the necessary  
directions herein. *accomplish*

10. In civil appeals when a final judgment or order of the Court of Appeal has been made

(1) Involving the amount or value of 10,000 rupees or upwards any party aggrieved thereby may, within such time as may be prescribed by Rules of Court or, if no time is prescribed, within three months after the same is made or given, apply by petition to the Court of Appeal for leave to appeal to His Majesty the King in Council.

(2) The applicant shall give security to the satisfaction of the Court of Appeal to an amount not exceeding the amount <sup>or</sup> value of 5,000 rupees for prosecution of the appeal, and for such costs in the event of the dismissal of the appeal for want of prosecution as the Court of Appeal may award, and for payment of all such costs as may be awarded to any respondent by His Majesty in Council.

(3) He shall also pay into the Court of Appeal a sum estimated by that Court to be the amount of the expense of the making up and transmission to England of the transcript of the record;

(4)

CC  
11/2/20  
PL



...in civil appeals when a final judgment or order of the Court of Appeal has been made

(1) Involving the amount of ... to 100,000 ... as may be prescribed by Rules of Court ... three months after the date at which ... to appeal to the Court of Appeal for leave to appeal to His Majesty in Council

(2) The appellant shall give security to the satisfaction of the Court of Appeal ... for want of prosecution the Court of Appeal may award, and for payment of all such costs as may be awarded by His Majesty in Council

(3) He shall also pay into the Court of Appeal a sum ... of the costs

(4) If security and payment are so given and made within such time as may be prescribed by Rules of Court, then, and not otherwise, the Court of Appeal shall give leave to appeal, and the appellant shall be at liberty to prefer and prosecute his appeal to His Majesty in Council according to the Rules for the time being in force respecting appeals to His Majesty in Council from his Colonies, or such other Rules as His Majesty in Council from time to time thinks fit to make concerning appeals from the Court of Appeal

(5) In any case the Court of Appeal if it considers it just or expedient to do so, may give leave to appeal on the terms and in the manner aforesaid.

(4) Where leave to appeal to

His Majesty in Council is applied for by a person ordered to pay money or do any other act, the Court of Appeal shall direct either that the order appealed from be carried into execution or that the execution thereof be suspended pending the appeal, as the Court thinks just.

(2) If the Court of Appeal

directs the order to be carried into execution, the person in whose favour it is made shall, before the execution of it, give security to the satisfaction of the Court for performance of such Order as His Majesty in Council think fit to make.

(3) If the Court of Appeal directs the execution of the order to be suspended, the party against whom it is given shall before an order for suspension is made, give security to the satisfaction of the Court for performance of such Order as His Majesty in Council may think fit to make.

(5) In any case the Court of Appeal if it considers it just or expedient to do so may give leave to appeal on the facts and in the manner stated.

11. If Where leave is granted to  
 His Majesty in Council is applied for  
 by a person ordered to pay money or  
 to do other work, the Court of Appeal  
 shall direct either that the order  
 appealed from be carried into execution  
 or that the execution thereof be  
 suspended pending the appeal, as the  
 Court think just.

12. If the Court of Appeal  
 directs the order to be carried into  
 execution, the person in whose favour  
 it is made shall, before the execution  
 of it, give security to the satisfaction  
 of the Court for performance of  
 such Order as His Majesty in Council  
 think fit to make.

13. If the Court of Appeal  
 directs the execution of the order to  
 be suspended, the Court may direct  
 if it is given shall before an order for  
 suspension is made, give security to  
 the satisfaction of the Court for  
 performance of such Order as His  
 Majesty in Council may think fit to  
 make.

12. This Order shall not affect  
 the right of His Majesty at any time,  
 on the humble petition of any person  
 aggrieved by a decision of the Court  
 of Appeal, to admit his appeal on such  
 terms and in such manner as His Majesty  
 in Council may think fit, and to deal  
 with the decision appealed from in  
 such manner as may be just.

## Memorandum on draft Appeal Court Rules of Court

New rules	Old Rules
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10

Amended to include filing copy of decree appealed against.

Last paragraph amended to bring it in line with rule 8.

Ten days time for filing criminal appeals has been increased to 30 as in practice 10 days has been found too little.

For presented read 'filed' in the first line as the memo is not filed until leave is given.

Subsections (2) and (3) are new and designed to meet cases where security is not given, and to provide automatically for lapsing of security and repayment of deposits by way of security.

The first paragraph has been verbally amended. The second is new to provide for service on a person not within the jurisdiction of the High Court.



Old Rules	New Rules
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22

Amended with reference to rule 8 service by notice in the Gazette.

New. Previously there was no rule as to the formation of the Court.

New-taken from VII Ed: Cap. 25 to prevent possibility of doubt.

Amended, omitting the last two lines. An interim order made by two members of the Appeal Court should stand till the hearing of the Appeal.

Amended, to make it clear that a Court of two is in certain civil appeals only. In the past rule 18 has been held to cover criminal appeals.

New. There was previously only an instruction to this effect.

New. This has reference to article 4 of the Order-in-Council and has been inserted to meet the objection raised by the Secretary of State in Colonial Office despatch 235 Section 4.

New. To provide for the Presidency of the Court  
 and the power to call in assessors VII  
 Cap. 22.

Amended. The last paragraph which provided for  
 summary and summary method is deleted.

New. With effect from 1st January 1952 there has been no rule as to the  
 manner of pronouncing judgments.  
 We have followed VII 11. Cap. 22.

New. It has been provided that this  
 should be done.

The old rule 21 and 22 have been entirely revised  
 clearly defining the powers of the court in  
 civil and criminal cases.

This power was formerly contained in rule 21.

The words 'in civil matters' added.

This is provided for in the new Appendix to  
 Privy Council Order in Council.

New. Taken from VII 11. Cap. 22.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

New  
Rules

Old  
Rules

New. A rule of this nature appears to be required

This is the existing fee list with certain minor  
 verbal amendments, also substituting in last  
 paragraph High Court of East Africa for H.E.C.  
 Court for Zanzibar.

New address.

Place of sitting altered from Zanzibar

The dates of ordinary sessions have been altered  
 from September to November as being more  
 convenient as well as the manner of publication of  
 the case list.



RULES OF COURT

Issued by the High Court of Appeal for Eastern Africa with the sanction of the Secretary of State, under the provisions of the Eastern African Protectorate (Court of Appeal) Order in Council, 1901.

For the purpose of every appeal to the Court of Appeal, the appellant shall file with the Registrar of the High Court of the Protectorate from which the appeal is brought a Memorandum in writing setting forth concisely and briefly the grounds of appeal and the relief sought against the decree or order appealed against. A certified copy of such Memorandum, signed and attested by the Registrar, shall be filed in the High Court of the Protectorate from which the appeal is brought.

2. The appellant may appeal against the whole or any part of a decree, and the Memorandum of Appeal shall state whether the whole or part only of such decree is complained of and in the latter case shall specify such part. The Memorandum of Appeal shall also state the nature of the relief which is sought.

For the purpose of these Rules, a decree shall include a judgment order or sentence.



Appellant confined to the grounds of appeal.

8. The appellant shall not, without the leave of the Court of Appeal, urge or be heard in support of any ground of objection not mentioned in the Memorandum, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant.

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

In these Rules the term respondent shall include any person who has been served with notice of appeal or who is entitled to be so served.

Time for filing Memorandum of Appeal.

4. The Memorandum of Appeal shall be filed in civil cases within three months, and in criminal cases within thirty days from the date of the decree appealed against. Provided that in criminal cases, if the appellant is in gaol, he may present his Memorandum of Appeal to the officer in charge of the gaol, within such thirty days, who shall thereupon file such Memorandum in the High Court.

Time for filing Memorandum of Appeal.

4.

The Memorandum of Appeal shall be filed in civil cases within three months, and in criminal cases within thirty days from the date of the decree appealed against. Provided that in criminal cases, if the appellant is in gaol, he may present his Memorandum of Appeal to the officer in charge of the gaol, within such thirty days, who shall thereupon file such Memorandum in the High Court.

Leave to file out of time necessary.

5. If a Memorandum of Appeal is presented out of time, the High Court shall require the appellant to file a petition for leave to file the Memorandum of Appeal out of time, supported by an affidavit giving reasons for the delay, and the High Court, on forwarding the application to the Court of Appeal, may make such remarks as it thinks fit in regard to the facts contained in the affidavit, and until such petition shall have been granted, and a notification thereof forwarded to the said High Court, all proceedings in the appeal shall be stayed.

Fees payable, and security on appeal.

1. (1) On filing the Memorandum of Appeal, the appellant shall pay to the High Court such fees as may be payable locally. The appellant shall also, within such time as the High Court directs, give reasonable security to the satisfaction of the said Court for the prosecution of the appeal and for payment of the fees of the Court of Appeal, and of any costs that may be ordered by the Court of Appeal to be paid by the appellant, and shall pay such sum as the High Court thinks reasonable to defray the expense of the making up and transmission of the record to the Court of Appeal.

(2) In the event of the fees or charges payable, or the security to be given, not being paid or given or being only partly paid or given, within the time directed by the High Court, all proceedings in the appeal shall be stayed (subject to the Rules with regard to proper appeals) unless the High Court or the Appeal Court shall otherwise order for reasons to be stated in the order.

(3) Should the Court of Appeal not claim payment of fees within one month

...to file out of time...  
...of a Memorandum of Appeal...  
...out of time, the High Court...  
...shall require the appellant to file a...  
...petition for leave to file the...  
...Memorandum of Appeal out of time...  
...supported by an affidavit giving reasons...  
...for the delay, and the High Court, on...  
...forwarding the application to the...  
...Court of Appeal, may make such remarks...  
...as it thinks fit in regard to the...  
...statements contained in the affidavit...  
...and will upon petition shall have...  
...been granted, and a notification...  
...thereof forwarded to the said High...  
...Court all proceedings in the appeal...  
...shall be stayed.



Test payable and security on appeal.

6. (1) On filing the Memorandum of Appeal, the appellant shall pay to the High Court such sum as may be payable locally. The appellant shall also within such time as the High Court directs, give reasonable security for the satisfaction of the said Court for the prosecution of the appeal and for payment of the fees of the Court of Appeal, and of any costs that may be ordered by the Court of Appeal to be paid by the appellant, and shall pay thereon as the High Court thinks reasonable to defray the expenses of the making of the translation of the record to the Court of Appeal.

(2) In the event of the loss or charges payable, or the security to be given, not being paid or given or being only partly paid or given, within the time directed by the High Court, all proceedings in the appeal shall be stayed (subject to the Rules with regard to further appeals) until the High Court or the Court of Appeal otherwise order for removal of the stay in the order.

(3) Should the Court of Appeal not claim payment of fees within the

month of the decision in appeal or should it make no order as to costs the security given shall lapse and the High Court may refund any deposit made by way of security.

105

20 =

to issue a writ of habeas corpus to those  
persons who are in custody of the State  
and who are entitled to their liberty  
and who are entitled to their property  
and who are entitled to their rights  
and who are entitled to their freedom.

*and arguments*  
Declarations, etc. may be filed with  
Memorandum.

9. The appellant may, with his  
Memorandum of Appeal, file a declara-  
tion in writing that he does not wish  
to be present in person or by pleader  
on the hearing of the appeal, together  
with such arguments as he desires to  
submit to the Court of Appeal.

Service of Notice.

8. (1) The High Court shall serve notice of the appeal together with a duplicate copy of the Memorandum of Appeal, and also of the declaration and arguments (if any) mentioned in Rule 7.

(2) When a person to be served with any notice under these Rules cannot be found within the jurisdiction of the High Court, the notice shall be advertised in the Official Gazette and no further service shall be necessary.

Notice to Parties

(1) The High Court shall serve

notice of the appeal together with a

duplicate copy of the Memorandum of

Appeal, and also of the decision

in question (and if any argument is

made in support of the appeal)

(2) When a person is to be served

with any notice under these rules

it shall be deemed to have been served

if the notice is delivered to the

person at his last known address

and no further notice shall be necessary.

Persons to be served with notice

Such notice shall be given to all parties directly affected by the

appeal, and it shall not be necessary

to serve parties not so affected; but

the Court of Appeal may direct notice

to be given to any person and in the

meantime may postpone or adjourn the

hearing of the appeal upon such terms

as may be just, and may give such

judgment and make such order as might

have been given or made if the person

served with such notice had been

parties directly affected by the

appeal and originally served with

notice.





10. The respondent may, within seven days after receiving such notice, file a declaration in writing, and if such declaration is filed in person does not wish to be present in person at the hearing on the hearing of the appeal, together with such arguments as he desires to submit to the Court of Appeal.

11. The High Court shall have full power to allow amendment of the Memorandum of Appeal, declarations, and arguments, upon such terms as to service of notice of such amendment, costs and otherwise, as it may think fit.

High Court to make up record.

12. The High Court shall, with all convenient speed after the expiration of seven days from the date of service of notice on the respondent or notification in the Official Gazette as the case may be, and without the application of either party, make up the record of appeal which shall consist of the Memorandum of Appeal, declaration and arguments (if any), and copies of material proceedings, including a copy of the evidence and decree and forward the same to the Registrar of the Court of Appeal. Provided that the High Court may forward any portion of the documentary evidence in original, if for special reasons it sees fit.

Any person, whether appellant or respondent, may apply to the High Court and specify any of the papers or exhibits in the case, copies of which he requires to be made for him at his expense and given to him.

and the number copies of each paper or exhibit shall be specified

How Court to make up record

12. The High Court shall, with all  
 convenience, after the expiration  
 of seven days from the date of service  
 of notice on the respondent or parties  
 called in the Official Gazette as the  
 case may be, and without the applica-  
 tion of either party, make up the  
 record of appeal which shall consist  
 of the Memorandum of Appeal, declara-  
 tion and arguments (if any), and  
 copies of material proceedings,  
 including a copy of the evidence and  
 depositions and forward the same to the  
 Registrar of the Court of Appeal.  
 Provided that the High Court may  
 forward any portion of the documents  
 referred to in original, if for special  
 reasons it sees fit.  
 Any person, whether applicant or  
 respondent, may apply to the High Court  
 and modify any of the papers or  
 exhibits in the case, before or after  
 its removal to be made for appeal, at his  
 expense and given to him.

13. After receipt of the record as  
 aforesaid, all applications regarding  
 the appeal must be made to the Court  
 of Appeal.



After receipt of the record the  
Registrar of the Court of Appeal will  
serve notice of the date of hearing  
upon the appellant and respondent.

Notice of hearing.

14. On receipt of the record the  
Registrar of the Court of Appeal will  
serve notice of the date of hearing  
upon the appellant and respondent.

Such notice will ordinarily be  
served through the High Court.

Notice of hearing

At the receipt of the record the

Register of the Court of Appeal will

be notified to give notice of the date of hearing

upon the appellant and respondent.

Such notice will ordinarily be

given through the High Court.

15. The Court of Appeal may hear and determine an appeal without giving notice of the date of hearing to any person who has declared that he does not wish to attend the hearing.

Pauper appellant.

16. If any appellant alleges that he is unable to pay the fees on appeal, the High Court, upon application being made for that purpose, shall enquire into the question of the poverty of the appellant, and, if it is satisfied that the allegation of poverty is true, it shall forward to the Court of Appeal the record of appeal, together with a declaration to that effect and a statement of the proportion of the fees, if any, the appellant is able to pay, and no fees other than the above shall be payable either in the Court of Appeal or in the High Court. If the High Court is not satisfied as to the poverty of the appellant, it shall forward the application to the Court of Appeal with report as to the appellant's means, but shall take no other steps in the appeal without orders from the Court of Appeal.

Formation of the Court of Appeal.

16. If any appellant alleges that he is unable to pay the cost of his appeal, the High Court, upon application being made for that purpose, shall take into the question of the power of the appellant, and, if it is satisfied that the allegation of poverty is true, it shall refer to the Court of Appeal the record of appeal, together with a declaration of the facts and a statement of the grounds of the law if any, the appellant is able to pay, and no less than the above shall be payable either to the Court of Appeal or in the High Court. If the High Court is not satisfied as to the state of the appellant, it shall forward the application to the Court of Appeal with report as to the appellant's means, but shall take no account of the amount of the appellant's means in the usual manner.

Formation of the Court of Appeal.

17. The Court of Appeal shall be summoned in accordance with directions to be given by the Senior Member of the Court.



18. All appeals except as otherwise provided by these Rules shall be heard and decided by three members of the Court of Appeal; and the determination of any question before such Court shall be according to the opinion of the majority of the members of the Court hearing the appeal.

19. If any appeal, whether civil or criminal, pending before the Court of Appeal, ~~and~~ <sup>in</sup> direction incidental thereto, not involving the decision of the appeal, may be given by two members of the Court of Appeal; and two members of the Court of Appeal may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal as they may think fit.



The following provisions shall apply to appeals from the decisions of the Board of Tax Appeals:

(a) Appeals from the decisions of the Board of Tax Appeals shall be taken to the Court of Appeals within the time prescribed by law.

(b) Appeals from the decisions of the Board of Tax Appeals shall be taken to the Court of Appeals within the time prescribed by law.

(c) Appeals from the decisions of the Board of Tax Appeals shall be taken to the Court of Appeals within the time prescribed by law.

21. No member of the Court of Appeal shall sit for the hearing and determination of an appeal from a decree made by himself alone or jointly with others.



22. The number of acting Judges [of a  
High Court] who may sit at any one time  
in the Court of Appeal shall not  
exceed one.

23. Of the members forming a Court of Appeal the senior member shall be president of the Court, and shall have power to appoint any person or persons with special expert knowledge to act as assessor or assessors to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case.

23. Of the members forming a Court of

Appeal the senior member shall be  
President of the Court, and shall have

power to appoint any person or persons

of special expert knowledge to act

as assessors or assessors of the Court

in any case where it appears to the

Court that such special knowledge is

required for the proper determination

of the case.

Where Court equally divided in opinion.

24. If on the hearing of an appeal the  
Court is equally divided in opinion,  
the appeal shall be dismissed.

If on the hearing of an inter-  
locutory application, the Court is  
equally divided in opinion, the opinion  
of the senior member of such Court  
shall prevail.

25. Unless a Court hearing an appeal direct to the contrary in cases where, in the opinion of such Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of such Court the judgment of such Court shall be pronounced by the President of the Court or such other member of the Court hearing the appeal as the President of the Court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of such Court.

When Court equally divided in opinion  
 If on the hearing of an appeal  
 Court is equally divided in opinion  
 the appeal shall be dismissed.  
 If on the hearing of an appeal  
 the Court is  
 equally divided in opinion, the  
 President of the Court shall  
 pronounce the judgment of the Court.

Powers of the Court of Appeal.

26. If for any reason it appears right to adjourn an appeal or application, the Court of Appeal shall have full power to do so upon such terms and for such time as seems fit.

28. Unless a Court hearing an appeal direct to the contrary in each case, in the opinion of such Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of such Court the judgment of such Court shall be pronounced by the President of the Court or such other member of the Court hearing the appeal as the President of the Court directs and no judgment with respect to the determination of any question shall be separately pronounced by any other member of such Court.



Power of the Court of Appeal

26. It is the duty of the Court of Appeal to

to determine an appeal or application

the Court of Appeal shall have full

power to do so upon such terms and for

such purposes as may seem fit.

27. The Court of Appeal shall have the same powers to deal with cases of contempt of its authority as the High Court of Justice in England.

28. In civil appeals the Court of Appeal shall have power:-

- a. To dismiss an appeal
- b. To reverse a decree on a preliminary point and on such reversal to remand the case to the Court against whose decree the appeal is made with directions to proceed to determine the case on the merits.
- c. To re-settle issues and finally to determine a case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly on some other ground than that on which the Court of Appeal proceeds.
- d. To call additional evidence or to direct the Court against whose decree the appeal is made or any other subordinate Court to take additional evidence.
- e. To make any amendment or any consequential or incidental order that may be just and proper.
- f. To confirm, reverse or vary the decree against which the appeal is made.
- g. To make such order as to costs in the appeal Court and in the Court or Courts below as may be just.

PUBLIC RECORD OFFICE LONDON



I am at the same time  
 to recommend for your  
 consideration the draft of an  
 Order in Council for regulating  
 the practice and procedure in  
 Appeals to it in the Council  
 from the <sup>Court of Appeal for East Africa</sup> ~~three Proconsuls~~  
 as constituted by the first mentioned Order  
 with regard to the said  
 am to observe that appeal to it  
 in Council lies from the Court of  
 Appeal for East Africa and not from  
 the Courts in the three Proconsuls  
 and I am accordingly to suggest that  
 the following two recitals be  
 substituted for the second recital  
 that is to say  
 And whereas by an Order in  
 Council bearing date the 1st day of  
 January has been made for the purpose

of being in the  
 (for relation)  
 Her  
 43822  
 08

to inform the Lord President  
 that it has been determined, with  
 the concurrence of the Secretary of  
 State for Foreign Affairs, to establish  
 a Court of Appeal for the three  
 Proconsuls in the place of the  
 present Court at Lagos. It is  
 accordingly suggested that provision should  
 be made with regard to pending  
 appeals to it as shown in the  
 proviso added in red ink to  
 Article 11 of the draft Order,  
 and I am to enquire whether  
 the Lord President of the Council  
 in the opinion of the draft



I have thought on the said Substantive to  
the Court of Appeal to Eastern Officers  
and whether it is expedient that  
further provision should be made for  
regulating appeals from the Court of  
Appeal from Eastern Officers to the King in  
Council.

I have also to make the following further suggestions.  
Clause 3 £650 has been <sup>as the preferable amount,</sup>  
substituted for £10000, and it  
is suggested that the latter sum  
should be restored.

W. Read.  
Please see me, usual in  
L. point <sup>to</sup> in regard  
12A

Clause 4 After three months  
more of the Court and for three  
months Judge of the Court substitute  
members of the Court and members of

Clause 5 After 21 days and  
in the case of applications from East Africa  
or Uganda and within three months  
in the case of applications from Abyssinia.

Clause 6(a) substitute £5000  
for £500

Clause 10 insert "any of" before  
"the said Protectorate" and introduce  
the same words in clauses 11, 12, 14,  
25 and 27.

Clause 26  
I am to please that

DRAFT.

MINUTE

- Mr.
- Mr.
- Mr. Justice
- Mr. Ansell.
- Mr. C. G.
- Sir G. Lewis
- Sir R. Hodgson
- Col. Selby.
- The Earl of Cecil.

It is important that the Order  
in Council and the Order  
constituting the Court of Appeal  
for Eastern Africa should be passed  
simultaneously and come into  
force on the same day, and I  
am therefore to suggest that a  
clause should be added to the  
said Order <sup>to the effect of</sup> clause 11 of  
the latter Order, namely -  
"30 This Order shall  
commence and have effect on such  
day as may be fixed by  
notification <sup>in the London Gazette</sup> by one of His  
Majesty's Secretaries of State.

I am to request  
that the Enclosures to this Order  
may be returned with your reply.

W. Read