

I presume
you have satisfied
yourself that in
the tables in the
lectorate have
suitable forms
all

EAST AFR. PROT.
No. 17657

17687
Recd
Reg. 18 MAR 06

No. 906
Paper

(Subject)

Judiciary

Submits report on article in 'East African Standard' as to over working of judges - necessity for appointment of a third judge at one

(Minutes)

~~Mr. Head~~
Mr. Head

This will be more convincing if
we were given more details of
the work of the judges: but I think being
at present referred to the great size of the E.A.P.
system of laws
there is probably more work than
2 judges can do allowing for
leave. On the other hand
I have heard that the judges
are very little to be
in the front line there is a
great room, they are not to be
employed in the

On the whole I think there is general
feeling to transfer for the effort
of the Judge - at the
same rate as the present
District £600 to
1895

Superior 1895

at Antioch

to present
to R.
2/5

1895
6/5

10.6
4.0

Commis. Office,

NA

April

AFRICA PROTECTORATE

No. 782

(Incl. ...)

1763
REC^d
18 MA. 06

My Lord,

I have the honour to acknowledge the receipt of
Your Lordship's despatch No. 161 of the 26th ultimo regard-
ing the overworking of the Judges in the Protectorate.

A copy of the article referred to was sent to me
by the editor of the "East African Standard", and I have
now the honour to submit the report which I then asked the
Principal Judge to furnish me on the observations contained
therein.

It will be observed that there is a great deal of
truth in the comments of the article in question. For some
eighteen months the Judicial work of this Protectorate has
been carried on by one Judge of the High Court. Admirably

Principal Secretary of State

for the Colonies,

Bowling Street,

LONDON, S.W.

as Judge Hamilton has performed the heavy task imposed upon him, it is too much to expect of one man, and the wonder is that he has been able to do what he has. The position is one which calls for serious attention. I think it will be admitted that the work of the High Court in East Africa is far heavier than in Uganda or Zanzibar, yet there are three Judges of the High Court in Zanzibar, and Uganda has two Judges, the same number as East Africa.

I would urge the immediate appointment of a third Judge for this Protectorate, and there is little doubt that he will be able to meet his salary from savings at the end of the year. With two Judges in Uganda and three in East Africa we shall then be able to establish a Court of Appeal in the Vicariate which will be more convenient than relying on the present arrangements by which the Appellate Court generally sits at Zanzibar. There would be then no objection to the third Judge acting as Administrator General, in addition to his duties in the High Court otherwise it will be necessary to create a separate post of Administrator General and the difference in cost between such a new appointment and the appointment of a third Judge need hardly be taken into account when reconsidering the question of putting the Judiciary on a footing commensurate with the work it has to do which is steadily on the increase.

140

The inconvenience of the arrangement by which one of our Judges carries on the duties of Administrator General was recently brought to notice in my despatch No. 145 of March 27th. With the appointment of a third Judge those objections will be removed.

It must also be remembered that leave vacancies have to be taken into account, for which a proportion of the stipend should be allowed. With five Judges between the two Protectorates, there should be, between the two Protectorates, always present for duty and never less than three. Mr. Justice Hamilton is due for leave on 1st Sept. He requires a change and relaxation, and I am sorry to see his leave postponed; but we cannot leave the Protectorate again with only one Judge, who has lately been appointed to the High Court, and Judge Hamilton tells me that unless another Judge can be found to act in the High Court during his absence he will be unable to avail himself of his leave. I have referred to Uganda to ask if a Judge can be spared to act from that Protectorate, and I am informed that this could only be done with very serious inconvenience, in view of inspections at out-stations and new special duties being undertaken such as the Commission on Native land tenure. If Your

Lordsburg

Lord is it arrives by my proposal to at once appoint a
 Mr. Judge I would ask that this may be done in time to
 allow Mr. Judge Hamilton having leave in July next; if this
 cannot be done in the next financial year then I would
 request that the Foreign Office be addressed with a view
 to our being sent the services of Mr. Judge from Can. Libar.
 I trust, however, that the question of the Judiciary
 that a necessary provision will be made by the Government
 to meet the same. I have already said that the judicial
 system in the Colonies is very important and is steadily
 increasing. It is of great interest that we are being
 asked to contribute to the maintenance of this, I anticipate that
 the Government will be able to do so very rapidly, and
 that it will be well worth our while to do so.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

Humble servant,



Lordship approves of my proposal to at once appoint a third Judge I would ask that this may be done in time to allow of Judge Hamilton taking leave in July next, if that cannot be done till the next financial year then I would request that the Foreign Office be addressed with a view to our being lent the services of a Judge from Zanzibar.

I trust, however, that the question of the Judiciary in East Africa may be settled at once by the appointment of a third Judge. I have already said that the Judicial work in this Protectorate is heavy and that it is steadily increasing. With the interests that are now being developed especially in land and trade, I anticipate that the increase of work will be not only continuous but rapid, and it will be well that we should face it at once.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,



Lordship approves of my proposal to at once appoint a third Judge I would ask that this may be done in time to allow of Judge Hamilton taking leave in July next: if this cannot be done till the next financial year then I would request that the Foreign Office be addressed with a view to our being lent the services of a Judge from Zanzibar.

6. I trust, however, that the question of the Judiciary in East Africa may be settled at once by the appointment of a third Judge. I have already said that the Judicial work in this Protectorate is heavy and that it is steadily increasing. With the interests that are now being developed especially in land and trade, I anticipate that the increase of work will be not only continuous but rapid, and it will be well that we should face it at once.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

Frederick Jackson



Dear African Department,

It is feared that the enclosures
to our despatch No 185, were omitted
In case that was so copies are sent
herewith.

Yours sincerely

Secretariat

Mombasa

May 11th 1906

I have read the article in question and it is a fact that the Judicial work of the Protectorate at present in the hands of the Principal Judge is more than one man can properly carry out.

Mr. [redacted] was taken ill in November 1904 and left [redacted] in February 1905, and from the former date [redacted] have, with the exception of two occasions on which Mr Barth acted as Judge, been endeavouring to carry on the work single-handed.

In the summer of last year I informed the late Commissioner that the work was getting out of hand and that some of it was likely to suffer from my inability to devote all the time to it that it deserved.

In the early autumn I wrote to him privately on the same subject and in October I again referred to it in the joint memorandum of Mr. Barth and myself drawn up for the information of the Colonial Office, in the following terms c.f.p.13. :-

"It may in fact soon become necessary to appoint an additional Judge, and when one of the Judges is on leave it has already become necessary that an acting appointment should be made during his absence."

I was unwilling to press the matter on your attention immediately on your arrival in the Protectorate, but as the opportunity now offers I can only reiterate what I have already said, and that with greater force as the work of the position steadily increases.

It is difficult to give in writing a description of the work which would convey an accurate idea of the amount or the time it requires. A case may take an hour or two

as it may take several weeks. Of the cases I have heard during the past year several have been heavy, the heaviest being one in which I sat 20 times before going on last circuit and in which I understand there are likely to be 30 more sittings. As all judgments too have to be written before delivery a considerable amount of time is necessarily required for their elaboration.

150

The heaviest part of the Judge's work however apart from actual case work arises from his duties of supervision over all the Courts in the Protectorate, which means a constant and active correspondence with no less than 61 Courts presided over by European and Native officers.

The work of the Administrator General which has hitherto been the chief duty of the second Judge entails a considerable correspondence and many interviews. Apart from this there is the ordinary administrative work which falls to the head of a large Department which differs from other departments in the fact that the head besides being directly responsible for the working of his department is also responsible for the regulation of the conduct of pleaders practising at the Bar, a matter which demands constant attention.

Finally there remains the duty of inspecting the work and records at out stations, a duty to which in a country like this I attach from experience great importance. More will be done by one such visit than by frequent correspondence, the difficulties of an officer in an out station can thus be appreciated by the Judge in a way not otherwise possible and probably explained or removed. The result is nearly always an increase of interest and a better discharge of his duties by the

and an increased revenue and a more satisfied public. I regret, however, that the time at my disposal has compelled me to curtail these visits of inspection, and there are still many Courts in the Protectorate which have not yet been visited since.

I attach a resume of the work I have been able to accomplish in the past year, but I naturally do not include in this the reports and memoranda which the Judge is asked to supply from time to time for the information of the Commissioner or the Colonial Office, the compilation of which often requires considerable time. Nor do I include the work entailed on the Principal Judge as Chairman of the Board of Visiting Justices Mombasa and *ex officio* Visiting Justice of all the jails in the Protectorate, nor on myself as a Commissioner of Wakf Property, nor the extra-judicial work of commissions and Departmental Boards.

In making this detailed report at your request I do not wish it to be thought that I complain of having a large amount of work to do. Hitherto when Judge Cator went on leave I have always ^{gladly} done his work as well as my own, and my only request now is that as the increase of work prevents me doing any longer the work of two judges with satisfaction to myself or the public, an arrangement may be made to take some of it off my shoulders.

On the question of providing a remedy I do not think it would be possible for Zanzibar to lend a Judge. They must have two there, and the third place is at present vacant.

Uganda might be more likely to lend one for a short time.

But unless we have a third judge here the same

difficulty will arise again when I go on leave as I hope
to do in July after Mr Barth's return.

(Sgd.) R. W. HAMILTON

16. 2. 1908.

Resume of work done during 1905

	{	heard at Mombasa	13.	
Sessions	{	.. Nairobi	4	
cases	{	.. Lamu	2	
	{	.. Kisumu	2	
Criminal.	{	.. Malvasha	1	
				<u>22</u>
		Proceedings under Fugitive Offenders' Act		1
	{	heard at Mombasa	7	
Appeals	{	.. Nairobi	4	
Criminal.	{	.. Malvasha	2	
	{	.. Kisumu	1	
				<u>14</u>
		Sitting on Court of Appeal For Eastern Africa		1
	{	heard at Mombasa	24	
Appeals	{	.. Nairobi	2	
Civil.	{	.. Kisumu	2	
				<u>28</u>
heard & returned as not included	{	heard at Mombasa	42	
Civil cases	{	.. Kisumu	1	
Original	{	.. Nairobi	7	
				<u>50</u>
				<u>125</u>
In Chambers	{	Criminal Revision		29
	{	Confirmation		<u>112</u>
				<u>266</u>

Total No. of cases 266

Inspected Returns of 4008 Civil Cases
 2558 Crim. Cases
 In 142 of which correspondence resulted.

Supervision

Enrolment
 Travelling

{	Distance travelled by rail	2540 miles
{	1000 ..
{	200 ..
		<u>3740</u>

Administration of Estates in 1908.

Native New cases	94
.. .. old cases continuing	71
Non native new cases	48
.. .. old cases continuing	45
	<u>258</u>

In the majority of these cases the Judge has personally acted as administrator, of the remainder he has supervised the administration.

Outward correspondence 881 letters.

(Initialed, E. W. H.)

R. M. Commissioner.

I have read the article in question and it is a fact that the Judicial work of the Protectorate at present in the hands of the Principal Judge is more than one man can properly carry out.

Judge Cator was taken ill in November 1904 and left the Protectorate in February 1905, and from the former date till the present time I have, with the exception of two occasions on which Mr Barth acted as Judge, been endeavouring to carry on the work single-handed.

In the summer of last year I informed the late Commissioner that the work was getting out of hand and that some of it was likely to suffer from my inability to devote all the time to it that it deserved.

In the early autumn I wrote to him privately on the same subject and in October I again referred to it in the joint memorandum of Mr. Barth and myself drawn up for the information of the Colonial Office, in the following terms c.f.p.13. :-

"It may in fact soon become necessary to appoint an additional Judge, and when one of the Judges is on leave it has already become necessary that an acting appointment should be made during his absence."

I was unwilling to press the matter on your attention immediately on your arrival in the Protectorate, but as the opportunity now offers I can only reiterate what I have already said, and that with greater force as the work of the Protectorate steadily increases.

It is very difficult to give in writing a description of the work which would convey an accurate idea of the amount or the time it requires. A case may take an hour or two

of it may take several weeks. Of the cases I have heard during the past year several have been heavy, the heaviest being one in which I sat 20 times before going on last circuit and in which I understand there are likely to be 30 more sittings. As all judgments now have to be written before delivery a considerable amount of time is necessarily required for their elaboration.

The heaviest part of the Judge's work however apart from actual case work arises from his duties of supervision over all the Courts of the Provinces, which means a constant and active correspondence with no less than 51 Courts presided over by European and Native officers.

The work of the administrator himself which has hitherto been the duty of the second Judge entails a considerable correspondence and many interviews. Apart from this there is the ordinary administrative work which falls to the head of a large Department which differs from other departments in the fact that the head besides being directly responsible for the working of his department is also responsible for the regulation of the conduct of pleaders practising at the Bar, a matter which demands constant attention.

Finally there remains the duty of inspecting the work and records of out stations, a duty to which in a country like this is attached from experience great importance. More will be done by one such visit than by frequent correspondence, the difficulties of an officer in an out station can thus be appreciated by the Judge in a way not otherwise possible and probably explained or removed. The result is nearly always an increase of interest and a better discharge of his duties by the officer,

and an increased revenue and a more satisfied public. I regret, however, that the time at my disposal has compelled me to curtail these visits of inspection, and there are still many Courts in the Protectorate which have not yet been visited once.

I attach a resume of the work I have been able to accomplish in the past year, but I naturally do not include in this the reports and memoranda which the Judge is asked to supply from time to time for the information of the Commissioner or the Colonial Office, the compilation of which often requires considerable time. Nor do I include the work entailed on the Principal Judge as Chairman of the Board of Visiting Justices Mombasa and ex officio Visiting Justice of all the Courts in the Protectorate, nor on myself as a Commissioner of Wakf Property, nor the extra-judicial work of Commissions and Departmental Boards.

In making this detailed report at your request I do not wish it to be thought that I complain of having a large amount of work to do. Hitherto when Judge Gator went on leave I have always ^{gladly} done his work as well as my own, and my only request now is that as the increase of work prevents me doing any longer the work of two judges with satisfaction to myself or the public, an arrangement may be made to take some of it off my shoulders.

On the question of providing a remedy I do not think it would be possible for Zanzibar to lend a Judge. They must have two there, and the third place is at present vacant.

Uganda might be more likely to lend one for a short time.

But unless we have a third judge here the same

difficulty will arise again when I go on leave as I hope
to do in July after Mr Barth's return.

(Sgd.) R. W. HAMILTON

16. 2. 1906.

Resume of work done during 1905

	heard at Mombasa	18.	
Sessions cases Criminal.	.. Nairobi	4	
	.. Lamu	2	
	.. Kisumu	5	
	.. Naivasha	1	
			20

Proceedings under Fugitive Offenders' Act 1

	heard at Mombasa	7	
Appeals Criminal.	.. Nairobi	4	
	.. Naivasha	2	
	.. Kisumu	1	

Sitting on Court of Appeal for Eastern Africa 1

Appeals Civil.	heard at Mombasa	24	
	.. Nairobi	2	
	.. Kisumu	2	28
Civil cases Original	heard at Mombasa	42	
	.. Kisumu	1	
	.. Nairobi	7	50

heard &
returned
as not
cluded

In Chambers	Criminal Revision	28	
	Confirmation	12	40

Total No. of cases 225

Inspected Returns of 4000 Civil Cases
 6500 Crim. Cases
 In 148 of which correspondence resulted.

Distance travelling	Distance travelled by rail	2540 miles
 sea	940 ..
 Road	220 ..
		3700

Administration of Estates in 1905.

Native new cases	94
.. <u>old cases continuing</u>	71
Non native new cases	46
.. <u>old cases continuing</u>	45
	<u>256.</u>

In the majority of these cases the Judge has personally acted as administrator, of the remainder he has supervised the administration.

Outward correspondence 681 letters.

(Initialed) R. W. H.

Comrs
17887

DRAFT:

The Sec to the
Treasury

Ans'd R5120

(S)

19 June 06

MINUTE.

Mr. *W. H. R. 15 June*
Read 18

Mr. Antrobus.

Mr. Cox, 15 June

Mr. Lucas.

Mr. Graham.

Sir M. O'Malley.

Mr. Churchill.

The Earl of Elgin.

Per
I am directed by
the Sec of the
Treasury to you to
be laid before the L.C.
of the Treasury the
accompanying copies
of reports on the
subject of the need for
an increase in the
Judicial staff of the
Ireland.

It will be seen that
without an addition
to the staff it is not
possible for the
existing officers to
do the work properly

W. H. R. 15 June
Ans'd R5120
15 June
18
15 June
18

for the maintenance
of their health &
efficiency, more to
be made properly for
the discharge of the
duties of Administrators
General which devolve
on one of the judges.

Complaints have needed
Lord Eldon with regard
both to the good service
& the administration
functions of the Court:
which would

and in H. L.'s opinion
the delay & mistakes the difficulties
which have given rise to
these matters complaints
are largely due to the
time of the Judges
being too fully occupied.
For their convenience
Lord Eldon would be glad
if Mr. J. C. would give

In the Blue Book
Judge Hamilton
appears as receiving
£600, but in the
Whitaker's £400.

their early service to
the effect of an 182
additional Judge
with salary at the
rate of £400 p.a.

It will be seen
that Ch. Peckham reports
to be able to meet the
additional cost for
the current year out
of savings in the
various branches.

See

RJA