

THE
SPECIAL
OFFICIAL GAZETTE

OF THE

EAST AFRICA



PROTECTORATE.

Published under the authority of His Excellency the Governor of East Africa.

Vol. XII.—No. 250*a*.]

NAIROBI, APRIL 7, 1910.

[PRICE 20 CENTS.

His Excellency has approved of the following bills being introduced at the next meeting of the Legislative Council.

*H. W. GRAY,
Clerk to the Legislative Council.*

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A Bill

Intituled

An Ordinance to amend the Penal Code Ordinance, 1910.

A Bill

Intituled.

An Ordinance to amend the Penal Code Ordinance, 1910.

1. This Ordinance may be cited as "The Penal Code Amendment Ordinance, 1910," and shall be read as one with "The Penal Code Ordinance, 1909". Short Title.

2. Section 3 of the Penal Code Ordinance, 1909, shall be and is hereby amended by the insertion of the words "who in the opinion of the Court is" between the words "person" and "under" in the said Section. Amendment of
Penal Code Ordinance, 1909.

A Bill

Intituled.

An Ordinance to Amend the Land Titles Ordinance 1908.

Printed by the Govt. Printer, Nairobi.

A Bill

Intituled.

An Ordinance to Amend the Land Titles Ordinance 1908.

1. This Ordinance may be cited as "The Land Titles Amendment Ordinance 1910" and shall be read as one with the Land Titles Ordinance 1908 hereinafter referred to as the Principal Ordinance. Short Title.

PART I.

2. The Principal Ordinance shall be and is hereby amended as follows:— Amendments in Land Titles Ordinance 1908.
- (1) By omitting in Section 4 of the said Ordinance the words "who shall be a Barrister or Solicitor of not less than five years standing."
 - (2) By substituting the word "six" for the word "twelve" in Subsection (1) of Section 15 of the said Ordinance.
 - (3) By substituting the word "six" for the word "twelve" in Subsection (1) of Section 20 of the said Ordinance.
 - (4) By substituting the word "six" for the word "twelve" in Section 37 of the said Ordinance.

Provided, however, that the foregoing amendments (2) (3) and (4) shall not apply in the case of any District area or place to which the Principal Ordinance shall have been applied before the commencement of this Ordinance and in such case the Principal Ordinance shall be read and interpreted as if such amendments had not been made.

3. Whenever the Recorder of Titles shall, in the course of dealing with any claim or claims under the Principal Ordinance, be satisfied that any person who shall have made a claim for a certificate of ownership under the said Ordinance has agreed with the Government to surrender to the Government his rights and interests in or over the immovable property claimed in consideration of the Government granting to him a certificate of ownership in respect of other immovable property in the District area or place to which the said Ordinance shall have been applied, he may issue to such person a certificate of ownership in respect of such area of Crown land as the Government shall have agreed to grant to him and he shall have agreed to accept. In every such case as aforesaid the Recorder of Titles shall record in the file relating to the claim made by the claimant the fact that he has surrendered to the Government all his rights and interest in and over the immovable property claimed and that the certificate granted has been granted in consideration of such surrender. Such record shall for all purposes, be conclusive evidence of the facts therein set forth. Where claimant has surrendered to the Government the immovable property claimed for other immovable property to be granted by the Government the Recorder may grant certificate for such last mentioned property.

4. If the Recorder of Titles shall, in the course of dealing with any claim or claims under the Principal Ordinance, be satisfied that any person has any interest in any Crown land subject to the Ordinance but is prevented from asserting such claim by reason only that he has not made a claim in respect thereof in the manner or within the time specified by the said Ordinance the Recorder of Titles may, with the consent of the Governor or of such officer as the Governor may appoint on that behalf, grant to such person such certificate as the Recorder of Titles may be satisfied that he would have been entitled to had he made a claim under and in accordance with the provisions of the said Ordinance. When certificate may be granted notwithstanding that a claim has not been made in the manner or within the time prescribed.

PART II.

Registration of Documents Affecting Holdings in Respect of which a Certificate of Ownership shall have been granted.

5. This Part shall apply to all holdings in respect of which a certificate of ownership shall have been issued by the Recorder of Titles. Application of this Part.
6. For the purposes of this part Definition of the term "holding."
- (1) Each parcel of land the subject of a certificate of ownership shall be deemed to be a separate holding, and
 - (2) The term "holding" shall include the land and the cocoanut trees, houses and buildings for the time being on the land.

7. (1) The Governor may, from time to time, appoint by notification in the "Official Gazette" such person as he may think fit to be the Principal Registrar for the purposes of this Part. Governor may appoint Principal Registrar.
- (2) It shall be lawful for the Governor from time to time, to appoint by notification in the "Official Gazette" such person or persons as he may think fit to perform the duties of the "Registrar" under this Part and in like manner to define the area or areas in respect of which such person or persons shall perform such duties. Governor may appoint Registrars for the purposes of this Part.
- (3) A Registrar appointed under the preceding Sub-section shall have, for and on behalf of the Recorder of Titles, the custody of the "Register Book," provided for by Section 26 of the Principal Ordinance, relating to the area in respect of which he shall have been so appointed. Registrars to have custody of Register Book.
8. After the issue of a certificate of ownership under this Ordinance or the Principal Ordinance every document affecting any holding or any interest in any holding may, subject to the provisions hereinafter contained, be registered in the "Register Book." Registration of documents affecting immovable property in respect of which a certificate of ownership shall have been given.
9. Every document, unless so registered, shall be deemed void against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent document which shall have been duly registered as aforesaid. Effect of non-registration.
 Provided that
- (1) Fraud or collusion in obtaining such last mentioned deed, or in securing such prior registration, shall defeat the priority of the person claiming thereunder;
 - (2) Priority shall not be lost merely in consequence of the person claiming under the registration having been affected with actual or constructive notice of the document first executed, except in case of actual fraud; and
 - (3) Nothing herein contained shall be deemed to give any greater effect or different construction to any document registered in pursuance thereof, save the priority hereby conferred on it.
 - (4) Such priority shall not be affected by the subsequent registration of any document executed before the document first registered.
 - (5) Nothing in this Section shall apply to:—
 - (a) any composition deed.
 - (b) any document relating to shares in a joint stock company, notwithstanding that the assets of such company consists in whole or in part of immovable property subject to this Part; or
 - (c) any debenture issued by such company, and not creating, declaring; assigning, limiting or extinguishing any right, title, or interest to or in immovable property subject to this Part, except in so far as it entitles the holder to the security afforded by a registered instrument, whereby the company has mortgaged, conveyed, or otherwise transferred the whole or part of its immovable property, or any interest therein, to trustees upon trust for the benefit of the holders of such debentures; or
 - (d) any endorsement upon or transfer of any debenture issued by any such company.
 - (e) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title, or interest to or in immovable property subject to this Part, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit, or extinguish any such right, title or interest.
10. No lien, charge, mortgage or hypothec (other than such as may arise or be created in favour of the Crown or the Government under or by virtue of any Ordinance or other enactment) shall be created or affected so as to be of any legal validity upon or in respect of a holding or interest therein, unless the same be created or affected by a last will, of which probate is registered under this Ordinance, or by the order of a competent Court, or by a duly executed instrument, such order or instrument being duly registered under this Part. No lien etc., to be created except by registered document.

Provided, however, nothing in this section shall be deemed to affect the provisions of "The Equitable Mortgages Ordinance 1909" or the lien of any Solicitor or Pleader in respect of taxable costs, charges or expenses incurred by him in connection with the holding or an interest therein. Proviso.

11. (1) It shall be lawful for the party gaining an interest or benefit under any document registrable under this Ordinance, personally or by his agent, to produce or send the same, or a duplicate, or authenticated copy thereof to the Registrar of the area in which the immovable property thereby affected is situate. Production of documents for Registration.
- (2) Such Registrar shall forthwith, upon receipt of the document with the proper fee for registration, enter the document consecutively according to the order of its receipt in a book to be kept substantially in the Form A hereto, and which shall be called "The Day Book" and he shall thereafter, subject to the provisions of this Ordinance, register the deed on the appointed page of the "Register Book".
- (3) Upon such registration the deed shall, save as hereinafter provided, be deemed to have been registered at the time of its entering in the "Day Book".

12. It shall be the duty of any Court in which a judgment decree or order has been pronounced granted or made relating to or affecting any immovable property subject to this Part or any right, title or interest therein to transmit a copy thereof to the Registrar for the purposes of registration along with any map or plan which may have been put in evidence and referred to in judgment decree or order. Provided, however, such judgment, decree or order shall not be registered unless and until the prescribed fee shall have been paid. Registration of judgment decrees and orders of a Court.

13. (1) On the death of any person possessed of or entitled to any immovable property or interest therein subject to this Part every person to whom probate of a will or letters of Administration shall have been granted, and every Wasi or Court administering an estate of a deceased native, shall:— Registration of Probates and letters of Administration.
- (a) Forthwith apply to the Registrar for the registration of the will or letters of Administration or of the order of the Court appointing the Wasi or declaring that the estate shall be administered by the Court.
- (b) Transmit to the Registrar for registration a document in which shall be set forth the names of the person or persons on whom the immovable property subject to this Part, of the estate of the Testator or Intestate shall have devolved together with a sufficient description, for the purposes of identification, of such immovable property and a statement as to the estate or interest therein of each such person.
- (2) Any person who shall fail to comply with the requirements of the preceding Sub-section shall, on conviction, be liable to a fine not exceeding three hundred Rupees. Provided, however, that no proceedings under this Sub-section shall be taken except on an information or complaint laid by the Principal Registrar.

14. (1) Every Registrar shall be entitled, if he sees fit so to do, to require any person applying for the registration of any document to prove its due execution, the identity of the immovable property affected by the deed or of the parties to it, and in case of an authenticated copy, other than the copy of a judgment decree or order of a Court, the loss or destruction of the original. And where he may have reason to apprehend that a fraud has been or is about to be committed on any person, he shall give notice to such person of the intended registration in order to prevent the same being effected to his prejudice. Registrar may call for proof and give notice to third parties.
- (2) If the Registrar is satisfied upon enquiry that the document was duly made and, in the case of an authenticated copy, of the loss or destruction of the original, and as to the identity of the immovable property or the parties, and that there is no reason to believe that a fraud has been or is about to be committed, he shall register the document, and the registration shall take effect from the time of the entry in the "Day Book".
- (3) If he is not satisfied he shall refuse to register the document, and shall return the same unregistered, together with a statement of his reasons in writing and shall record his refusal in the "Day Book".

15. (1) A document other than a judgment decree or order of a Court, to which there is attached a map or plan which is not signed by a Government or Licensed Surveyor shall not be accepted for registration. Plans attached to documents presented for registration to be signed by a Government or licensed surveyor.
- (2) Whenever the Registrar shall consider that in regard to any document presented for registration a description of the boundaries of any land, sufficiently clear and accurate to prevent confusion cannot be obtained unless a plan is attached to the document he may refuse to register the document until a plan of the land the subject of the document signed by a Government or Licensed Surveyor is attached to the document and presented for registration therewith. Registrar may require a plan to be attached to a document presented for registration.
- Provided, however, in the case of such refusal if the document is represented for registration together with a plan to the satisfaction of the Registrar within such time as the Registrar shall consider reasonable under the circumstances of the case the registration of the document shall take effect as from the time when it was first presented for registration.
16. (1) Every document or copy thereof produced for registration shall contain embodied therein, or in a Schedule annexed thereto, an accurate and clear description of the property affected thereby, its boundaries, extent and situation, and a reference to the volume and folio of the Register Book in which such property has been previously registered. Mode of description of lands in documents.
- (2) If such property consists of a divided portion of land, the property of the person alienating the same or any interest therein, such portion shall be clearly and accurately defined by its particular boundaries and extent.
- (3) If such property consists of an undivided share in immovable property, the proportion which the same bears to the entire property shall be stated, and a description of such property shall be given as required by Sub-section (1).
17. No document which does not state the particulars required by the preceding section shall be admitted to registration except with the sanction of the Principal Registrar, upon the necessary particulars being supplied by affidavit by the person producing the document for registration, and on such other terms as the Principal Registrar may think expedient. Treatment of documents executed in violation of preceding Section.
18. (1) If a Registrar is in doubt as to whether a document should be registered, or as to whether it is liable to a fee for its registration, and if liable, to what fee it is liable he shall, after entering the deed in the Day Book, apply in writing to the Principal Registrar for his decision thereon. The Principal Registrar shall thereupon declare his decision. Registrar in case of doubt may apply to the Recorder of Titles.
- (2) Any person dissatisfied with such decision may appeal against the same to the High Court within ten days from the decision being communicated to him. The Registrar shall, in terms of the decision of the Principal Registrar or in case of an appeal being taken, of the High Court in appeal, register or refuse to register the same.
19. (1) If the registration of the document be ordered by the Principal Registrar or the High Court to be made on condition of payment of a fee for registration or other terms, then upon the compliance of the person seeking registration with such condition or terms the Registrar shall register such document in the Register Book, and the same shall be deemed to have been registered on the date of such compliance. Registration ordered conditionally should take effect from time of compliance with condition.
- (2) If the Principal Registrar or the High Court in appeal shall decide that the document should have been registered when originally tendered to the Registrar, the document shall, upon registration, be deemed to have been registered at the time of its entry in the Day Book.
20. If any document presented for registration is not written in English, Arabic, or Kiswakili, or such other language as may, from time to time, be prescribed, either generally or locally, the Registrar shall refuse to register the same unless it is accompanied by a true translation in English, certified to the satisfaction of the Registrar. As to documents not written in specific language.

21. (1) It shall be competent to any person to lodge with the Registrar a caveat substantially in the Form **B** in the Schedule hereto to prevent the registration of any deed affecting any immovable property subject to this Ordinance, and such caveat shall state a postal address within the Protectorate of the person lodging the same, and upon payment of the prescribed fee shall be registered in the "Register Book". Caveat against Registration of Document
- (2) On such caveat being registered the party lodging the same shall be entitled to notice of any application for registration as regards such immovable property, which notice shall be deemed to have been duly given if posted to the address stated in the caveat.
- (3) Where the caveat limits the time of its operation it shall cease to have any force upon the lapse of such time.
- (4) No caveat shall be sufficient to prevent a registration applied for unless it be followed up within thirty days after the posting of the notice of application for such registration by an action before some competent Court and notice thereof to the Registrar, in which case the Registrar shall suspend the registration until the final adjudication of such action, and shall then give effect to such adjudication.
22. No document shall be registered unless the fee prescribed has been paid and, if the document is one which is liable to stamp duty under the provisions of the Indian Stamp Act 1879 or other enactment for the time being in force in the Protectorate, the document is duly and sufficiently stamped. Fee and stamp duty to be paid before registration.
23. Save as may be otherwise prescribed by rule under this Ordinance, the Registrar shall cause a complete copy to be made of every document to be registered, and in the case of a document within Section 20 also of the translation, in such part of the volume of the Register Book as relates to the immovable property affected by such instrument. Every such copy shall bear the number of the volume and folium in which the same is registered and the date of Registration. Registered Document to be copied into Register Book.
- Provided, however, whenever any document to be registered affects more holdings than one such document shall be copied into such part of the volume of the Register Book as relates to any one of such holdings, provided that a note referring to the registered instrument shall be made by the Registrar in the part or parts of the volume of the Register Book in which the other holding or holdings have been previously registered.
24. The Registrar shall, immediately after registration, make and sign an endorsement thereof on the document registered, and deliver the same to the person who presented it for registration, or his agent or representative, and the endorsement shall be substantially in the Form **C** hereto. Document when registered to be endorsed by Registrar.
25. Documents affecting holdings lying in the areas of two or more Registrars shall be registered in the Office of the Registrar of each such area. Documents affecting holdings lying in areas of two or more Registrars.
26. For the purposes of enquiries under this Part any Registrar shall have power to cite and examine witnesses upon oath or affirmation and to call for the production of any document material to the enquiry from the person having custody of the document. Power of Registrar to hold enquiry.
27. Every appeal to the High Court under this Part shall be dealt with and disposed of in such manner as the High Court shall, by rules of Court, prescribe. Appeals to High Court.
28. A Registrar or a person acting under his orders shall not be liable to any action, suit or proceeding for or in respect of any matter *bona fide* done or omitted to be done under this Ordinance. Registrar not to be liable for anything done in good faith.
29. Subject to such precautionary directions as may be given by the Principal Registrar, and on payment of the prescribed fees the Registrar Book and Day Book shall, at all times at which the Office of the Registrar is open for the transactions of business, be open to be searched and examined by any applicant and certified copies of any document or extract therefrom or of any entry in the Registrar Book may be obtained on application to the Registrar. Register to be open to inspection.
- But no person shall be permitted to copy any document or to make any note or memorandum relating thereto or to any entry, except the registered number and the date of registration.

30. (1) The Governor may, from time to time by order published in the "Official Gazette", specify the fees and charges which shall be levied in respect of any act, matter or thing to be done by or in the office of the Principal Registrar or of a Registrar under this Ordinance. Fees chargeable.
- (2) Nothing in this Ordinance contained shall make it obligatory on any Registrar to do any act or permit any act to be done, in respect of which such fee is specified and fixed, except on payment of the fee.
- (3) The Principal Registrar may, in special cases and with the consent of the Governor, remit or reduce any of the prescribed fees.

31. The Governor may, from time to time, make, alter or cancel rules for the better carrying out of the purposes of this Ordinance. Power to make rules.

32. The East Africa Registration Regulations 1901 and the East Africa Registration of Documents Ordinance 1902 shall not apply to any document registrable under this Ordinance. Provided, however, if any document shall relate both to immovable property which is subject to this Part, and to other immovable property not so subject, such document shall be registered under this Ordinance and, if the document is one the registration whereof is compulsory under the first mentioned Regulations, also under the said Regulations. The Registration Regulations 1901 and the Registration of Documents Ordinance 1902 not to apply to documents registrable under this Ordinance. Proviso.

DAY BOOK.

[illegible]

FORM B.

FORM OF CAVEAT FORBIDDING THE REGISTRATION OF
ANY DEED AFFECTING ANY LAND.

(Section 21.)

To the Registrar of.....

Take notice that I, ⁽¹⁾.....⁽²⁾ of.....

- (1) Insert full name. ⁽³⁾ claiming.....⁽⁴⁾ in..... situated in the
 (2) Postal address.
 (3) State nature of the estate or interest claimed. District of..... in the..... Province
 (4) Name or description of Land. and registered in Volume..... Folio..... forbid the registration
 (5) Adding if the Caveator wishes, the words in brackets. of any deed or other instrument affecting the said land. ⁽⁵⁾ (executed or about
 to be executed by..... of..... until.....)

Dated the..... day of..... 19... ..

(Signature).....

FORM C.

FORM OF REGISTRAR'S ENDORSEMENT.

EAST AFRICA PROTECTORATE.

Registered at.....

Volume No..... Folio.....

Date..... 19..... Hour..... m.

.....
Registrar.