



THE
OFFICIAL GAZETTE
OF THE
COLONY AND PROTECTORATE OF KENYA.
(SPECIAL ISSUE).

Published under the Authority of His Excellency the Governor of the
Colony and Protectorate of Kenya.

[Vol. XXVII.—No. 1,044] NAIROBI, November 20, 1925. [PRICE 50 CENTS]

Registered as a Newspaper at the G. P. O.

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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

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1950

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COLONY AND PROTECTORATE OF KENYA.

AN ORDINANCE.

No. 23 OF 1925.

Assented to in His Majesty's name this 12th day of November, 1925.

EDWARD GRIGG,
Governor.

An Ordinance to Consolidate and Amend the Law Relating to Witchcraft.

ENACTED by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof :

1. This Ordinance may be cited as "the Witchcraft Ordinance, 1925." Short title.

2. Any person who holds himself out as a witch-doctor able to cause fear, annoyance, or injury to another in mind, person, or property, or who pretends to exercise any kind of supernatural power, witchcraft, sorcery or enchantment calculated to cause such fear, annoyance or injury shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding five years. Persons pretending to exercise witchcraft, etc.

3. Any person, professing a knowledge of so-called witchcraft or the use of charms, who shall advise any person applying to him how to bewitch or injure persons, animals or other property, or who shall supply any person with any article purporting to be a means of witchcraft, shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding ten years. Witch-doctor supplying advice or article for witchcraft with intent to injure.

4. Any person who of his pretended knowledge of so-called witchcraft, shall with intent to injure, use or assist to use or cause to be put into operation such means or processes as may be calculated to cause fear, annoyance, or injury in mind, person, or property to any person shall be guilty of an offence and shall be liable to the like punishment as in the preceding section provided. Persons using witch medicine with intent to injure.

5. Any person who is in possession of a charm or other article usually used in the exercise of witchcraft, sorcery, or enchantment for the purpose of causing fear, annoyance or injury to another in mind, person or property and who fails to show reasonable cause why he should retain any such charm or other article in his possession shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding one year or to a fine not exceeding one thousand shillings or to both and the charm or other article shall be forfeited and destroyed or otherwise dealt with in such a way as the magistrate may direct. Possession of charms an offence.

Charging persons with witchcraft.

6. Any person who accuses or threatens to accuse any person with being a witch or with practising witchcraft shall be guilty of an offence and shall be liable to a fine not exceeding five hundred shillings or to imprisonment of either description for any term not exceeding five years :

Provided that this section shall not apply to any person who makes an accusation to a district commissioner, a police officer, an official headman or any other person in authority.

Attempt to discover crime by witchcraft.

7. Any person who employs or solicits any other person to name or indicate by the use of any non-natural means any person as the perpetrator of any alleged crime or other act complained of shall be guilty of an offence and shall be liable to a fine not exceeding five hundred shillings or to imprisonment of either description for any term not exceeding five years.

Official headman permitting etc., the practice of witchcraft.

8. Any official headman who directly or indirectly permits, promotes, encourages or facilitates the practice of witchcraft or the doing of any act contrary to the provisions of this Ordinance or who knowing of the practice or pretended practice of witchcraft by any person does not forthwith report the same to a district commissioner shall be guilty of an offence and shall be liable to a fine not exceeding five hundred shillings or to imprisonment of either description for a term not exceeding three years.

District commissioners may order persons practising witchcraft to reside in certain places.

9. (1) When it is reported to a district commissioner that a person is suspected of practising witchcraft, the district commissioner, after due inquiry and having satisfied himself that the person so suspected causes or is likely to cause fear, annoyance or injury in mind, person or property to any other person by means of pretended witchcraft, may for reasons to be recorded order the person so suspected to reside in any locality within his district to be named by the district commissioner and alternatively or in addition to report at the office of the district commissioner every seven days or at longer intervals until further orders.

(2) Any order issued under this section shall with the reasons therefor be forthwith reported by the district commissioner issuing the same to the senior commissioner of his province. Every such report shall be accompanied by a record of the inquiry. The senior commissioner shall have power to suspend, reverse or alter any such order and shall report such order and the action taken thereon to the Chief Native Commissioner, who shall also have power to suspend, reverse or alter any such order, and any such order shall at any time be subject to disallowance or variation by the Governor.

Penalty for refusing to obey.

(3) Any person who shall without lawful excuse refuse or neglect to obey an order issued under this section shall be guilty of an offence and on conviction before a magistrate, not being the district commissioner who made the order, shall be liable to a fine not exceeding one hundred and fifty shillings or to imprisonment of either description for a term not exceeding two months.

10. When a person has been convicted of any offence under this Ordinance in addition to awarding any other punishment the trial judge or magistrate may recommend to the Governor that such person be deported and the provisions of sections 5 to 10 of the Deportation Ordinance, 1923, shall then apply.

Deportation
after conviction
under this
Ordinance.

11. Nothing in this Ordinance shall affect the liability to the death penalty of any person who by the use of witchcraft or under a pretence of trial by ordeal or of using any lot or charm commits wilful murder.

Ordinance not
to affect
liability for
wilful murder.

12. The Witchcraft Ordinance, 1909, and the Witchcraft (Amendment) Ordinance, 1918, are hereby repealed without prejudice to anything lawfully done thereunder.

Repeals.

AN ORDINANCE.

No. 24 OF 1925

Assented to in His Majesty's name this 12th day of November, 1925.

EDWARD GRIGG,
Governor.

An Ordinance to Regulate Shop Hours and to Regulate the Employment of Shop Assistants.

ENACTED by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof :--

1. This Ordinance may be cited as "the Shop Hours Ordinance, 1925."

Short title.

2. This Ordinance shall come into operation on such date and in such townships or other areas as the Governor in Council may by proclamation appoint.

Application of
Ordinance

3. In this Ordinance the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

Interpretation.

"Local authority" means the council of any municipality constituted under the Municipal Corporations Ordinance, 1922, and in any township or other area where no such council exists the district commissioner.

“ Occupier ” means the person, company, association, or partnership having charge of any shop or owning the business thereof or employing any person in or in connection with any shop, and includes the manager, agent or other person acting or apparently acting in the general management or control of any shop.

“ Public holiday ” means any public holiday established under the provisions of the Public Holidays Ordinance, 1912, or any amendment thereof.

“ Retail trade or business ” includes the business of a barber or hair-dresser, the sale of refreshments or intoxicating liquors and retail sales by auction; but does not include the sale of programmes, catalogues, refreshments, intoxicating liquors and other similar sales at theatres and places of amusement.

“ Shop ” includes any premises where any retail trade or business is carried on.

“ Shop assistant ” means any person employed in or about a shop; but does not include an occupier or any person employed solely as a caretaker or as cleaner or other domestic servant: Provided that in any shop where not more than three persons are employed, the occupier of that shop not being the owner or part owner of the business shall for the purposes of this Ordinance be deemed to be a shop assistant.

“ Week ” means the period between midnight on Saturday and midnight on the succeeding Saturday thereof.

Conditions of
employment
and meals.

4. (1) On at least one weekday in each week a shop assistant shall not be employed about the business of a shop after one o'clock in the afternoon.

This provision shall not apply to the week preceding a public holiday if the shop assistant is not employed on the public holiday and if on one weekday in the following week in addition to the public holiday the employment of the shop assistant ceases not later than one o'clock in the afternoon.

(2) The occupier of a shop shall fix and shall specify in a notice in the prescribed form, which must be affixed in the shop in such manner and at such time as may be prescribed, the day of the week on which his shop assistants are not employed after one o'clock, and may fix different days for different shop assistants.

(3) Intervals for meals shall be allowed to each shop assistant in accordance with the first schedule to this Ordinance.

This provision shall not apply to any shop if the only persons employed therein as shop assistants are members of the family of the occupier of the shop, maintained by him and dwelling in his house.

Hours of
employment.

5. (1) No shop assistant shall be employed in or about a shop for more than fifty hours including meal times in any one week or more than nine hours in any one day:

Provided that for the purpose of stocktaking or other special emergency work that cannot be done during the usual hours, the working hours of shop assistants may be extended on days other than public holidays for periods not exceeding a total of one hundred hours in any year.

(2) In each year of continuous service from the commencement of this Ordinance under the same employer a shop assistant shall be granted leave of absence on full pay for twelve clear working days to be taken in a consecutive period: Provided that the employer may fix the time of leave for the different shop assistants with reasonable regard to the exigencies of his business.

(3) For the purpose of this section the expression "the same employer" shall include in case of the death of an employer, the legal representative, heir or legatee of that employer or in the case of insolvency or liquidation of the employer the receiver or liquidator, so long as such representative, heir, legatee, receiver or liquidator continues to carry on the business of that shop and to employ that shop assistant therein.

6. In all rooms of a shop where female shop assistants are employed in the serving of customers the occupier of the shop shall provide seats behind the counter or in such other position as may be suitable for the purpose; and such seats shall be in the proportion of not less than one seat to every three shop assistants employed in such room.

Seats for
female staff.

7. (1) Every shop shall, save as otherwise provided by this Ordinance, be closed for the serving of customers not later than one o'clock in the afternoon on one weekday in every week.

Closing of shops
on weekly half-
holiday.

(2) The local authority may by order fix the day on which a shop is to be closed (in this Ordinance referred to as "the weekly half-holiday") and any such order may either fix the same day for all shops or may fix:—

(a) Different days for different classes of shops; or

(b) Different days for different parts of the township or area:

Provided that no such order shall be made unless the local authority after such inquiry as shall be prescribed are satisfied that the occupiers of a majority of shops affected by the order approve the order.

(3) Unless and until such an order is made affecting a shop the weekly half-holiday as respects the shop shall be such day as the occupier may specify in a notice affixed in the shop, but it shall not be lawful for the occupier of the shop to change the day oftener than once in any period of three months.

(4) Where a shop is closed for a whole day on the occasion of a public holiday, it shall be lawful for the occupier of the shop to keep the shop open for the serving of customers after the hour it is required under this section to be closed on the half-holiday immediately preceding the public holiday.

(5) This section shall not apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the second schedule to this Ordinance; but the local authority may by order made and revocable in the manner hereinafter provided with respect to closing orders extend the provisions of this section to shops of any class exempted under the second schedule if satisfied that the occupiers of a majority of the shops of that class approve the order.

Sunday closing.

8. All shops in townships and other areas to which this Ordinance applies shall be closed for the serving of customers on Sundays: Provided that where any local authority applies for exemption from Sunday closing the Governor in Council may grant such exemption either as to the whole or part of Sunday and either generally or in respect of any particular class of shops or trades.

Closing order.

9. (1) A local authority may make an order (in this Ordinance referred to as "a closing order") fixing the hours on the several days of the week at which either throughout the area of the local authority or in any specified part thereof all shops or shops of any specified class are to be closed for serving customers.

(2) The hour fixed by a closing order (in this Ordinance referred to as "the closing order") shall not be earlier than 4 o'clock or later than 4.30 o'clock in the afternoon, unless it be shown to the satisfaction of the Governor in Council that special reasons exist for specifying a later closing hour but the closing hour shall not in any case be later than 6 o'clock in the afternoon, and every closing order shall specify the hour of opening which shall not be earlier than 6 o'clock in the morning.

(3) Until a closing order is made no shop shall be opened earlier than 6 o'clock in the morning and all shops shall be closed not later than 6 o'clock in the afternoon: Provided that this subsection shall not apply to any shop in which the only trade or business carried on is a trade or business of any of the classes included in the third schedule to this Ordinance.

(4) A closing order may:—

(a) Define the shops and trades to which the order applies; and

(b) Authorise sales after the closing hour in cases of emergency and in such other circumstances as may be specified or indicated in the order; and

(c) Contain any incidental, supplemental or consequential provisions which may appear necessary or proper.

(5) Nothing in a closing order shall apply to any shop in which the only trade or business carried on is a trade or business of any of the classes mentioned in the third schedule to this Ordinance.

(6) Notwithstanding anything contained in this section any shop may remain open until 7 o'clock in the afternoon on one day in each week. The day on which shops of any particular class may so remain open may be specified in a closing order. In the absence of any such order affecting a particular shop the occupier of such shop shall specify the day by a notice affixed in the shop, but it shall not be lawful for him to change the day oftener than once in any period of three months.

Procedure of making orders.

10. A local authority shall give notice of the intention to make a closing order and shall specify the terms to be fixed by the order. A period shall be stated during which objections may be made to the proposed order. After considering any objections the local authority may make the order.

11. (1) After any order has been passed by a local authority it shall be submitted for the approval of the Governor in Council who shall consider any objections to the order and may either disallow the order or confirm the order with or without amendment. Every order so confirmed shall be published in the Gazette and thereupon shall have the force of law.

Approval of Governor in Council.

(2) The Governor in Council may, at any time on the application of a local authority sanction the revocation, alteration or amendment of an order made by a local authority.

Revocation of orders.

12. It shall not be lawful in any locality to which this Ordinance applies to carry on in any place, not being a shop, retail trade or business of any class at any time when it would be unlawful in that locality to keep a shop open for the purpose of retail trade or business of that class, and, if any person carries on any trade or business in contravention of this section, this Ordinance shall apply as if he were the occupier of a shop and the shop were being kept open in contravention of the Ordinance :

Special provisions as to trading elsewhere than in shops.

Provided that :—

(a) The prohibition imposed by this section shall as respects any day other than the weekly half-holiday be subject to such exemptions and conditions (if any) as may be contained in any closing order ; and

(b) Nothing in this section shall be construed as preventing a barber or hair-dresser from attending a customer in the customer's own residence, or the holding of an auction sale of private effects in a private dwelling-house ; and

(c) Nothing in this section shall apply to the sale of newspapers ;

(d) Nothing in this section shall apply to theatres or places of public entertainment.

13. Where several trades or businesses are carried on in the same shop and any of those trades or businesses is of such a nature that if it were the only trade or business carried on in the shop a closing order would not apply to the shop or the shop would be exempt from the obligation to be closed for the weekly half-holiday the shop may be kept open after the closing hour for the purposes of those trades or businesses alone ; but on such terms and on such conditions as may be prescribed and the exemption from the obligation to be closed for the weekly half-holiday or under the closing order shall apply to the shop so far as the purposes of those trades or businesses alone are concerned.

Provisions as to shops in which more than one business is carried on.

14. (1) Notwithstanding anything contained in the Criminal Procedure Ordinance it shall be the duty of the police to investigate and prosecute all offences under this Ordinance.

Powers of police.

(2) Any police officer or constable thereto authorised by any officer in charge of a police station may enter any shop in any township or area to which this Ordinance applies and demand information to ascertain whether or not the provisions of this Ordinance are being observed.

Penalties.

15. In the case of any contravention of or failure to comply with the provisions of this Ordinance the occupier of the shop shall be guilty of an offence punishable with a fine not exceeding :—

(a) In the case of a first conviction five pounds (or in default of payment to simple imprisonment for a period not exceeding fourteen days) ;

(b) In the case of a second conviction ten pounds (or in default of payment to simple imprisonment for a period not exceeding one month) ;

(c) In the case of a third or subsequent conviction thirty pounds (or in default of payment to simple imprisonment for a period not exceeding two months) :

Provided that in the case of a shop assistant employed after hours in contravention of the Ordinance the occupier shall not be guilty of an offence against the Ordinance if he proves that his shop assistant was engaged only in serving customers whom he was already serving or who were in the shop before the closing hour or that there was reasonable ground for believing that the article supplied to the customer was required in case of illness.

Provisions with respect to offences.

16. (1) Where an offence for which the occupier of a shop is liable under this Ordinance has in fact been committed by some manager, agent, servant, or other person, the manager, agent, servant or other person shall be liable to the like penalty as if he were the occupier.

(2) Where the occupier of a shop is charged with an offence against this Ordinance he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge ; and if, after the commission of the offence has been proved, he proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Ordinance and the said other person has committed the offence in question without his knowledge, consent or connivance, the said other person shall be convicted of such offence and the occupier shall be exempt from any fine.

Power to make rules.

17. The Governor in Council may make rules :—

(a) For prescribing anything which under this Ordinance is to be prescribed ;

(b) As to the mode of ascertaining the opinion of occupiers of shops ;

(c) As to the conduct of local inquiries and matters incidental thereto ;

(d) As to the procedure for obtaining the revocation of a closing order ;

(e) To add any business or trade to or remove any business or trade from the second or third schedule to this Ordinance ;

(f) For exempting from the provisions of this Ordinance, subject to such conditions as may be prescribed, the sale of foodstuffs and other necessaries to travellers ; and

(g) Generally for carrying into effect the provisions of this Ordinance.

18. Nothing in this Ordinance :—

Exemptions.

(1) Shall apply to any bazaar or sale of work for charitable or other purposes from which no private profit is derived, nor to the hawking of newspapers nor to the business of an undertaker.

(2) Shall apply to the delivery of ice to hospitals and nursing institutions or in case of sickness to private persons.

(3) Shall apply to any bookstall or refreshment room at any railway station: Provided that the provisions affecting the hours of employment of shop assistants shall apply to the assistants at bookstalls and refreshment rooms at railway stations.

(4) Shall prevent customers from being served with victuals, stores or other necessaries for a ship on her arrival at or immediately before her departure from a port, at a time when the shop in which they are sold is required to be closed.

FIRST SCHEDULE.

INTERVALS FOR MEALS.

(See Section 4 (3)).

Intervals for meals shall be arranged so as to secure that no person shall be employed for more than six hours without an interval of at least twenty minutes being allowed during the course thereof.

Without prejudice to the foregoing provision where the hours of employment include the hours from 11.30 a.m. to 2.30 p.m. an interval of not less than three-quarters of an hour shall be allowed between those hours for a meal and the interval for a meal shall be increased to one hour in cases where that meal is not taken in the shop, or in a building of which the shop forms part or to which the shop is attached:

Provided that an assistant employed in the sale of refreshments or in the sale by retail of intoxicating liquors need not be allowed the interval for a meal between 11.30 a.m. and 2.30 p.m. if he is allowed the same interval so arranged as either to end not earlier than 11.30 a.m. or to commence not later than 2.30 p.m.

SECOND SCHEDULE.

TRADES AND BUSINESSES EXEMPTED FROM THE PROVISIONS AS TO WEEKLY HALF-HOLIDAYS.

(See Section 7 (5)).

The sale by retail of intoxicating liquors.

The sale of refreshments.

The sale of motor, cycle, and air-craft supplies and accessories to travellers.

The sale of newspapers and periodicals.

The sale of meat, fish, milk, cream, bread, confectionery, fruit, vegetables, flowers and other articles of a perishable nature.

The sale of tobacco and smokers' requisites and of the preparation locally known as "pansopari."

The sale of medicines and medical and surgical appliances.

Retail trade carried on at an exhibition or show, if the local authority certify that such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show.

THIRD SCHEDULE

TRADES AND BUSINESSES EXEMPTED FROM PROVISIONS OF CLOSING ORDERS.

(See Section 9).

The sale by retail of intoxicating liquors.

The sale of refreshments for consumption on the premises.

The sale of newspapers.

The sale of tobacco and smokers' requisites and of the preparation locally known as "pansopari."

The sale of medicines and medical and surgical appliances.

Post Office business.