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TABLE OF CONTENTS.

	PAGE
Govt. Notice No. 203—The Native Lands Trust Ordinance, 1928	409

Colony and Protectorate of Kenya.

GOVERNMENT NOTICE No. 203.

NOTICE.

HIS EXCELLENCY the Governor has approved of the following Bill being introduced into Legislative Council :—

R. W. LAMBERT,
Clerk to the Executive Council.

A Bill to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as “ the Native Lands Trust Ordinance, 1928.”

2. (1) The areas of Crown land described in Government Notice No. 394, published in the Official Gazette of the Colony dated the thirteenth day of October, 1926, are hereby declared to be Native Reserves and are reserved and set aside for the use and benefit of the native tribes of the Colony for ever.

Reservation of
land for
natives.

(2) It shall be lawful for the Governor, with the approval of the Legislative Council, from time to time to reserve for the use and benefit of the native tribes of the Colony such further areas of Crown land as in his opinion may be required for their maintenance and support. Any areas so reserved shall be deemed for the purposes of this Ordinance to be a Native Reserve.

(3) Notice of every reservation under sub-section (2) shall be published in the Gazette and shall specify—

- (a) the boundaries of the Native Reserve; and
- (b) the tribe or tribal unit for whose use and benefit such reservation has been made.

3. (1) There shall be established a Native Lands Trust Board (hereinafter referred to as the “ Central Board ”) which shall consist of :—

Establishment
of Native
Lands Trust
Board.

- (a) The Governor as President;
- (b) The Colonial Secretary as Vice-President;
- (c) The Attorney General;
- (d) The Chief Native Commissioner;
- (e) The Commissioner of Lands;
- (f) Four unofficial members, to be nominated by the Governor.

(2) The Central Board may from time to time, if it should deem it desirable, co-opt one or more Africans as members of the Board for the purpose of the consideration of any particular matter.

Power to
co-opt.

(3) The President or Vice-President and four other members shall form a quorum.

Quorum.

Procedure at
meetings.

(4) Questions before the Central Board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the President or Vice-President, as the case may be, shall have a second or casting vote.

Native Reserves
to be under the
control and
management of
the Central
Board.

4. Subject to the provisions of this Ordinance, all lands in Native Reserves and all matters relating thereto are hereby declared to be under the management and control of the Central Board, and all such lands shall be administered for the use and benefit of the native tribes for which they have, respectively, been reserved.

Establishment
of Advisory
Boards.

5. (1) There shall be established in every administrative district in which one or more Native Reserves may be situated an Advisory Board (hereinafter referred to as a "Local Board") which shall consist of:—

- (a) The Provincial Commissioner as Chairman;
- (b) The District Commissioner as Deputy Chairman;
- (c) One European unofficial member, to be nominated by the Governor; Provided that for the purpose of the consideration of any matter relating to a particular Native Reserve a Local Board may from time to time co-opt as an additional member any European who in the opinion of the Board possesses special knowledge of such Native Reserve;
- (d) One African member, to be nominated by the Governor, who shall, so far as practicable, be selected from the members of some Local Native Council established within the said administrative district: Provided that for the purpose of the consideration of any particular matter a Local Board may from time to time co-opt one or more additional African or Africans as a member or members of the Board.

(2) The Chief Native Commissioner shall *ex officio* be a member of every Local Board.

(3) The Chairman or Deputy Chairman and three other members shall form a quorum.

Functions of
Local Boards.

6. It shall be the duty of each Local Board to advise the Central Board in regard to the following matters relating to any Native Reserve included in the administrative district for which such Local Board has been established:—

- (a) Matters relating to the granting of leases or licences under section 8 of this Ordinance;
- (b) Matters relating to and arising out of the exercise of the powers of the Governor under sections 16 and 17 of this Ordinance;
- (c) Rules relating to occupation rights of native individuals, families and communities;
- (d) All matters relating to the management and development of land in a Native Reserve.

7. Notwithstanding anything in any other Ordinance contained, no land in any Native Reserve shall be leased or otherwise disposed of except under and in accordance with the provisions of this Ordinance, and no lease or licence of or in respect of any such land shall be granted unless the Central Board is satisfied, after reference to the appropriate Local Board, that the following condition has been complied with, namely :—

Disposal of
land in Native
Reserves.

10 (a) That the proposal to grant such lease or licence has been brought to the notice of the natives concerned and that such natives have had an opportunity of expressing their views upon the proposal;

and in the case of a lease, that the following further conditions have been complied with, namely :—

15 (b) That there is reason to believe that the natives of the tribe for which such land has been reserved will derive benefit, apart from any revenue which may accrue therefrom, from the grant of such lease;

20 (c) That the land to be leased is not being beneficially occupied by the natives of the tribe for which such land has been reserved, and is not likely, during the currency of the proposed lease, to be required for the use or support of such natives :

25 Provided that in no case shall any lease or licence be granted which is objected to by the African member or members of the Local Board concerned without the prior approval of the Secretary of State.

30 8. (1) Subject to the provisions of the last preceding section, it shall be lawful for the Governor, with the advice and consent of the Central Board :—

Alienation or
other disposal
of land in
Native
Reserves.

(a) To lease any land in the Native Reserve;

(b) To fix the rent payable in respect thereof;

35 (c) To revise such rent in accordance with the provisions of section 11 of this Ordinance at such periods or intervals as may be prescribed by Rules made under this Ordinance.

(d) To grant licences to and to enter into contracts with non-natives relating to—

(i) the grazing of cattle in a Native Reserve;

40 (ii) the removal of timber or other forest produce from a Native Reserve;

(iii) the taking of sand, lime, stone and other common minerals (excluding salt) from a Native Reserve :

45 Provided that in the case of a lease or licence relating to any lands reserved for the occupation of the Masai tribe by virtue of the agreements dated, respectively, the ninth day of August, 1904, and the twenty-sixth day of April, 1911, regard shall be had to the terms of the said agreements and any subsequent agreements.

(2) Subject as aforesaid, the Governor may also, with the advice and consent of the Central Board, grant leases for special purposes. Every such lease shall *ipso facto* terminate as soon as the special purpose or purposes for which it was granted has or have been accomplished, notwithstanding that the term of the lease has not expired; and in every such lease there shall be implied a covenant by the lessee not to use the land leased for any purpose other than the purpose or purposes specified in the lease. 5

(3) All rents, stand premia, grazing fees or other profits whatsoever accruing from land in a Native Reserve, or from timber or other forest produce or from sand, lime, stone or other materials removed or taken from a Native Reserve, shall be paid to the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund, or to any member or members of the tribe concerned who may be considered by the Central Board to be entitled thereto. 10 15

(4) The Governor shall at the end of each year forward to the Secretary of State a return of all leases and licences granted under this Ordinance during such year. 20

Leases of land
in actual
occupation of
natives.

9. (1) Leases of land containing native villages or settlements may be granted under the last preceding section without specially excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease. 25

(2) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be so occupied, pass to the lessee :

Provided that the Chief Native Commissioner or such person as may be authorised by him for that purpose shall certify after special enquiry that the natives have ceased to occupy such land of their own free will and accord and without any duress on the part of the lessee. 30

(3) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Central Board whose decision shall be final. 35

Form of
leases.

10. (1) Leases under section 8 of this Ordinance may be for any period not exceeding ninety-nine years, and shall be granted subject to such terms and conditions as the Governor, with the advice and consent of the Central Board, may think fit. 40

Conditions
implied in
leases.

(2) Every such lease shall be deemed to contain provisions to the following effect :— 45

- (a) That the lessee binds himself to pay the rent fixed by the Governor under section 8 of this Ordinance and any rent which may be fixed on revision;
- (b) That the lessee binds himself to pay compensation for any damage caused to native individuals or communities in the exercise of the rights granted to him. 50

Chief Native
Commissioner to
execute leases.

(3) It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to execute for and on behalf of the Governor any lease granted under this Ordinance.

11. In determining the rent to be demanded for any land in a Native Reserve, and upon any revision of rent, the Central Board shall take into consideration the rent obtained or obtainable in respect of any other land in the immediate neighbourhood, and shall fix the rent at the highest amount that can reasonably be expected to be obtained for the land, having regard to all the circumstances of the case :

Principles to be observed in fixing and revising rent.

Provided that upon any revision of rent, the Central Board shall not take into consideration any value due to capital expended upon the land by the same occupier during his term of occupancy or any increase in the value of the land due to the employment of such capital.

12. Except as may be otherwise provided by Rules under section 22 of this Ordinance, it shall not be lawful for any lessee under this Ordinance to alienate the land comprised in his lease or any part thereof by sale, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent of the Central Board first had and obtained, and any such sale, mortgage, transfer of possession, sub-lease, bequest or other alienation effected without the consent of the Central Board shall be null and void.

Lessees not to alienate land without consent.

13. If the rent or any part thereof reserved in a lease under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if there shall be any breach of the lessee's covenants, whether express or implied, the Chief Native Commissioner or any person authorised by him in writing may serve a notice upon the lessee specifying the rent in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the Supreme Court for the recovery of the premises; and, on proof of the facts, the Court shall, subject to relief upon such terms as may appear just, declare the land forfeited, and may order that possession of the land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

Forfeiture of lease for non-payment of rent or breach of covenant.

14. (1) If the rent or any part thereof payable under a licence granted under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if the licensee shall fail to comply with, or shall commit any breach of, any of the conditions of his licence, the Chief Native Commissioner may cause an application to be made to a magistrate of the first class within whose local jurisdiction the land the subject of the licence is situate, to declare the licence forfeited.

Forfeiture of licences.

(2) Upon receipt of such application together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed, the magistrate shall cause to be served upon the licensee a copy of such statement together with a notice of the date, not being less than fourteen days from the date of such notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which such hearing has been adjourned it shall be proved to the satisfaction of the magistrate that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may appear just, declare the licence forfeited.

Debt not
extinguished by
forfeiture.

15. No forfeiture under either of the two last preceding sections shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

Power of
Governor to
exclude from
Native Reserve
land required
for public
purposes.

16. (1) The Governor may at any time, with the advice 5
and consent of the Central Board, by notice in the Gazette, exclude from a Native Reserve any land which may be required for any of the following purposes :—

- (a) Public roads or bridges;
- (b) Public reservoirs, aqueducts, canals, water-courses or 10
water pipe-lines;
- (c) Public quays, wharves or landing places;
- (d) Public railways or tramways;
- (e) Public aerodromes;
- (f) Development of electric power for public purposes 15
from any lake, river or stream;
- (g) Development of the mineral resources of the Colony;
- (h) Government camps or stations;
- (i) Buildings or works in connection with any of the fore-
going purposes; 20
- (j) The establishment of townships :

Provided, however, that no land shall be excluded from a Native Reserve under this section unless the Central Board is satisfied that the proposed exclusion has been brought to the notice of the natives concerned and that representatives 25
of the location or section concerned have been co-opted on the Local Board for the purpose of the discussion upon such proposed exclusion.

Provided further that in any case where the area of land proposed to be excluded from a Native Reserve under this 30
section exceeds two hundred acres and the African member or members of the Local Board object to the exclusion of such area, then and in such case such area shall not be excluded from such Native Reserve unless and until the approval of the Secretary of State to such exclusion has been 35
obtained.

(2) Compensation shall be payable in respect of any buildings or crops destroyed or damaged, and in respect of any disturbance or other loss to natives caused by such exclusion. 40

(3) Where the area of any land excluded from a Native Reserve under this section exceeds two hundred acres, it shall be lawful for the Governor, by notice in the Gazette, to add to such Native Reserve, from contiguous unalienated and unreserved Crown land, an area equivalent to the area 45
excluded, and any area so added shall be deemed for the purposes of this Ordinance to be part of such Native Reserve.

Powers of
Governor in
regard to land
in Native
Reserves.

17. (1) It shall be lawful for the Governor—

- (a) at any time to enter upon any land in a Native Reserve and to take therefrom stone and other materials for 50
the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not, upon payment of compensation for buildings and crops destroyed or damaged and for disturbance or other loss; 55
- (b) at any time to enter upon such land and to set up poles and carry electric lines across such land and to lay sewers, water pipes or electric lines therein, without paying compensation but making good all damage;

- (c) at any time to enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream on such land, and to construct dams, and to divert any river or stream, upon payment of compensation for buildings and crops destroyed or damaged and for disturbance or other loss;
- (d) by writing under his hand to authorise officers of the Government and Government contractors, their servants and agents, to exercise any of the powers conferred upon him by this section.

(2) Whenever compensation is payable under this section, such compensation shall not in any case exceed, in the case of buildings and crops destroyed or damaged, the fair value of the buildings or crops.

(3) The powers conferred by this section may be exercised before the compensation is paid.

18. Notwithstanding anything contained in either of the two last preceding sections, it shall not be lawful for the Governor, in the exercise of any of the powers thereby conferred, to deprive the natives concerned, or allow them to be deprived, of the use of any water, unless the Chief Native Commissioner shall first certify that in his opinion such water or the quantity thereof proposed to be taken is not, and is not likely to be, required for the use or support of such natives.

Natives not to be deprived of use of water.

19. (1) All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor respecting land in a Native Reserve, or respecting any lease or licence relating thereto, or the breach of any covenant contained in any such lease or licence, or any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name of the Chief Native Commissioner, and he may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding.

Actions to be brought in name of Chief Native Commissioner.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any advocate or by any officer of the Native Affairs Department or by any administrative officer duly authorised by him in writing.

20. (1) It shall be lawful for the Governor or any person acting under his directions or in the execution of his duty as an officer of the Colony to enter upon any land leased or occupied under a licence under this Ordinance.

Power of officers to enter upon lands in execution of duty.

(2) Any person who wilfully prevents or attempts to prevent any such person from entering upon land as aforesaid, or who obstructs or hinders such person in the execution of his duty, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

21. Any person who unlawfully occupies land in a Native Reserve, in any manner whatsoever, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

Penalty for unauthorised occupation of land in Native Reserve.

22. It shall be lawful for the Governor, with the advice and consent of the Central Board, and subject to the disallowance thereof by His Majesty, to make Rules, which may

Power to make Rules.

be of general or special application, for the purpose of carrying this Ordinance into effect and particularly with regard to all or any of the following matters :—

- (a) The convening and holding of meetings of the Central Board and of Local Boards, the procedure at such meetings, the term during which unofficial members of such Boards, respectively, shall hold office, and the circumstances in which such members shall vacate office; 5
- (b) The management and control of land in Native Reserves; 10
- (c) The management and control of water, forest and timber in Native Reserves;
- (d) The conduct of surveys and the erection and maintenance of boundary marks; 15
- (e) The reservation of existing easements and of means of access to neighbouring lands, and the compensation, if any, to be paid therefor;
- (f) The limitation of areas to be leased for building purposes; 20
- (g) The procedure to be adopted in regard to applications for leases and licences under this Ordinance;
- (h) The prescribing of the periods or intervals at which rents payable under leases granted under this Ordinance shall be revised; 25
- (i) The registration of leases granted under this Ordinance;
- (j) The reservation of areas of land in Native Reserves for townships and trading centres, and the management and control of such townships and trading centres; 30
- (k) The reservation of areas of land in Native Reserves for the purpose of establishing schools, churches, hospitals and other institutions of a similar character, and the management and control of such areas and institutions; 35
- (l) The granting of occupation licences to individual natives or to families;
- (m) The individual, family, or communal rights of user and the settlement of all disputes arising therefrom between the members of a tribe or tribal unit for whose benefit a Native Reserve has been set aside; 40
- (n) The procedure for the assessment and allocation of compensation payable under this Ordinance;
- (o) The fees to be paid for any matter or thing done under this Ordinance. 45

Saving of
existing rights

23. Nothing in this Ordinance contained shall be deemed to affect the validity of any title to land within the area of a Native Reserve granted before the commencement of this Ordinance, and all such titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinances under which such titles were granted as if this Ordinance has not been enacted; 50

Provided, however, that all land comprised in any such title shall be deemed to be included in the Native Reserve in which it is geographically situated, and all rents accruing therefrom shall be paid to the credit of the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund.

24. Subject to the provisions of the last preceding section, Part VI of the Crown Lands Ordinance, as amended by the Crown Lands (Amendment) Ordinance, 1926, is hereby repealed.

Repeal.
Cap. 140.
No. 22 of 1926.