

29. 1931

No. 8 of 1930.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

THE COMMISSIONER FOR LOCAL GOVERNMENT LANDS AND SETTLEMENT (Original Respondent) - - - - - *Appellant*

AND

10 ABDULHUSEIN KADERBHAI (Original Applicant) - - - - - *Respondent*

AND BETWEEN

ABDULHUSEIN KADERBHAI (Original Applicant) - - - - - *Appellant*

AND

THE COMMISSIONER FOR LOCAL GOVERNMENT LANDS AND SETTLEMENT (Original Respondent) - - - - - *Respondent.*

Appendix to Record.

20 COLONY AND PROTECTORATE OF KENYA.
CROWN LANDS.
Ordinance No. 12 of 1915.
PART I.

PRELIMINARY.

(1) TITLE, DIVISIONS AND REPEALS.

1. This Ordinance may be cited as "The Crown Lands Ordinance." Short title.
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3. The Crown Lands Ordinance, 1902, is repealed. Repeal.

4. (1) So far as consistent with this Ordinance, the repeal of the Crown Lands Ordinance, 1902, shall not affect:— Saving.

30 (i) The past operation of the Ordinance.

- (ii) Any agreement, lease or licence heretofore granted or agreed to be granted under the said Ordinance.
- (iii) Any estate, right, title, interest, power, duty, obligation, liability or burden of proof created or imposed by or acquired or exercisable under the said Ordinance in respect of or under or in relation to such agreement, lease or licence.
- (iv) Anything lawfully done or commenced or agreed or authorised to be done under or in pursuance of the said Ordinance in respect of or under or in relation to any such agreement, lease or licence. 10
- (v) Any divisions, exchanges, proclamations, reservations, rules, grants, appointments, payments, surveys, surrenders, disabilities, acts, proceedings, matters and things lawfully made, had, done, created or authorised by, under or in pursuance of the said Ordinance.

(2) All such matters and things mentioned in the foregoing subdivisions of sub-section (1) of this section are, so far as consistent with this Ordinance, hereby preserved and continued and declared to be of the same force and effect as if the said Ordinance were still in force, or as if they were under this Ordinance, as the case may require. 20

(3) Provided, however, anything in the preceding sub-sections to the contrary notwithstanding, land sold under the provisions of the Crown Lands Ordinance, 1902, shall not be liable to forfeiture under the provisions of section nine of such Ordinance.

(4) Any proceeding which at the time of the commencement of this Ordinance may be pending in any court, or before any arbitrator or other authority shall be proceeded with, heard and determined and the decision or award enforced as if the said Ordinance repealed by this Ordinance was still in force.

(5) Except where otherwise provided, all offences committed, and 30 penalties, forfeitures and liabilities incurred before the commencement of this Ordinance or which may hereafter be committed or incurred in respect of any matter or thing under or against the said Ordinance repealed by this Ordinance may be tried, punished, inquired into, and enforced as if the said Ordinance were still in force.

(6) All fees chargeable under the said Ordinance repealed by this Ordinance shall, until other provision is made, continue to be payable for the like matters done under this Ordinance.

(7) Whenever in any ordinance, regulations, rules, proclamation or document any reference is made to the Crown Lands Ordinance, 1902, 40 such reference shall be read and construed as if this Ordinance had been included in such reference.

(2) INTERPRETATION.

5. In this Ordinance and all conveyances, leases and licences and in all agreements, notices and documents relating to Crown Land, unless inconsistent with the context:—

Interpretation.

“ Agricultural purpose ” shall include grazing and stock-raising ;

10 “ Crown Land ” shall mean all public lands in the Colony which are for the time being subject to the control of His Majesty by virtue of any treaty, convention, or agreement, or by virtue of His Majesty’s protectorate, and all lands which shall have been acquired by His Majesty for the public service or otherwise howsoever, and shall include all lands occupied by the native tribes of the Colony and all lands reserved for the use of the members of any native tribe ;

“ Director of Surveys ” shall include a deputy director of surveys and any officer of the Survey Department authorised by the Director of Surveys to perform the duty in relation to which the term is used ;

“ European ” shall mean a person of European origin ;

“ Farm ” shall mean an area leased for agricultural purposes ;

20 “ Licensed surveyor ” shall mean a surveyor registered under the Land Surveyors Ordinance ;

“ Livestock ” shall include horses, cattle, sheep, goats, swine, camels, mules, donkeys, ostriches and poultry ;

“ Purchaser,” “ lessee,” and “ licensee ” shall include personal representatives, heirs and assigns ;

“ Principal Registrar ” shall mean the Principal Registrar of Crown Lands ;

“ Race ” shall mean persons of European, Asiatic or African origin as the case may be ;

30 “ Registrar ” shall mean a Registrar of Crown lands, and shall include the Principal Registrar ;

“ Registry ” shall mean the Registry of Crown lands ;

“ Township ” shall include a township within the meaning of the Townships Ordinance, a municipality established under the Municipal Corporations Ordinance and an area reserved for a township.

PART II.
ADMINISTRATION.

(1) GOVERNOR.

6. The Governor, in additional to, but without limiting any other right, power or authority vested in him under this Ordinance, may :—

(i) Subject to the provisions of any Order in Council or to any general or special instructions of the Secretary of State, grant, lease or otherwise alienate in His Majesty's behalf any Crown Lands for any purpose and on any terms and conditions as he may think fit ;

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(2) COMMISSIONER OF LANDS.

8. The Governor shall appoint a Commissioner of Lands who shall have charge of the administration of this Ordinance and shall further appoint such assistant land officers as the Governor may deem necessary to transact the administration of the Ordinance and of any law regulating the sale, letting, disposal and occupation of Crown land.

An assistant land officer may, subject to any general or special directions from the Commissioner of Lands, perform any of the duties or do any of the acts or things required or authorised by this Ordinance to be done by the Commissioner of Lands.

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10. The Commissioner of Lands may, subject to any general or special directions from the Governor, execute for, and on behalf of the Governor any conveyance, lease or licence of or for the occupation of Crown lands, and do any act or thing, exercise any power, and give any order or direction and sign or give any document which may be done, exercised, given or signed by the Governor under this Ordinance : Provided however, that nothing in this section shall be deemed to authorise the Commissioner of Lands to exercise any of the powers conferred upon the Governor by sections 6, 8, 9, 12, 18, 25, 26, 39, Part VI, Part VII, or sections 96, 130, or 151.

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11. (1) All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor or the Government respecting Crown lands, or respecting any contract relating thereto, or any breach of any such contract or any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents, purchase money or other monies in respect of such land, or in respect of any damages or wrongs whatsoever in any way suffered by the Crown in respect of Crown lands or for the recovery of any fine or the enforcement of any penalty under this Ordinance, may be commenced,

Special powers of Governor. Subject to directions of Secretary of State may alienate lands on any terms and for any purpose.

Commissioner of Lands to have charge of the administration of this Ordinance. Assistant land officers.

Duties of assistant land officer.

Commissioner of Lands may execute conveyances and leases and do certain other acts under this Ordinance for and on behalf of the Governor.

Actions relating to Crown Land to be brought by and in the name of the Commissioner of Lands.

prosecuted and carried on by and in the name of the Commissioner of Lands and the Commissioner of Lands may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding. In any such action, suit or proceeding the Commissioner of Lands may be represented by any advocate, or by any officer of the Land Department, or by any administrative officer.

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PART III.

DISPOSAL OF LAND WITHIN TOWNSHIPS.

(1) OFFERING OF TOWN PLOTS.

10 15. The Commissioner of Lands may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the manner hereinafter prescribed.

Commissioner of Lands may cause land in township to be divided into suitable building plots.

16. Leases of town plots may be granted for any term not exceeding ninety-nine years.

Lease may be granted for ninety-nine years.

17. Before any town plot is disposed of under the next succeeding section the Commissioner of Lands shall determine :

Rent, etc. to be determined by Commissioner of Lands.

- 20 (a) The rent which shall be payable in respect of such plot ;
 (b) The upset price at which the lease of such plot will be sold ;
 (c) The building conditions to be inserted in the lease of the plot ; and
 (d) The special covenants, if any, which shall be inserted in the lease.

18. Leases of town plots shall, unless the Governor shall otherwise order, in any particular case or cases, be sold by auction.

Leases to be sold by auction unless Governor shall otherwise order.

19. The place and time of sale shall be notified in the Gazette not less than four weeks or more than three months prior to the day of sale, and the notice shall state :—

Notice of sale and conditions to be published in the Gazette.

- 30 (a) The number of plots and the situation and area of each plot ;
 (b) The upset price at which the lease of each plot will be sold ;
 (c) The amount of survey fees and the cost of the deeds for each plot ;
 (d) The term of the lease and the rent payable in respect of each plot ; and

- (e) The building conditions and the special covenants, if any, to be inserted in the lease to be granted in respect of any plot :

Provided, however, that the lease of any plot may be withdrawn from sale by the Commissioner of Lands at any time prior to the same being offered for sale.

Auctioneer to read the terms and conditions of sale.

20. The auctioneer shall, before the commencement of the sale, read the terms and conditions of the sale, and all persons bidding at the sale shall be bound by the terms and conditions so read.

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PART IV.

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DISPOSAL OF AGRICULTURAL LAND.

(1) OFFERING OF LAND FOR AGRICULTURAL PURPOSES.

Agricultural land to be divided into farms.

25. The Commissioner of Lands may cause land available for leasing for agricultural purposes to be surveyed and divided into farms which shall not, except with the consent of the Governor, exceed five thousand acres, or except with the consent of the Secretary of State, exceed seven thousand five hundred acres.

Leases to be sold by auction except when Governor shall otherwise order.

26. Leases of farms shall, unless the Governor shall otherwise order in any particular case or cases, be sold by auction.

Notice of auction.

27. When land available for leasing for agricultural purposes shall have been surveyed and divided into farms and it is proposed that leases thereof shall be sold by auction, the Commissioner of Lands shall give notice in the Gazette of the place and time which shall not be within three months of the date of the publication of such notice at which leases in respect of such farms will be offered for sale by auction. 20

Such notice shall state :—

- (a) The situation of the farms and the approximate area of each farm and the time when and place where the plan of each farm may be seen ;
- (b) The upset price at which the lease of each farm will be sold ; 30
- (c) Whether persons other than Europeans will be permitted to bid for the lease of the farms ;
- (d) Any special covenant or condition to be inserted in any lease to be granted ;
- (e) The annual rent to be paid for each farm for the first period of the lease, as hereinafter defined ; and

(f) The survey fees and the cost of the deeds to be paid in respect of each farm :

Provided, however, that the Commissioner of Lands may withdraw any lease from sale at any time before the same is offered for sale.

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(4) COVENANT AS TO OCCUPATION.

39. There shall by virtue of this Ordinance be implied in every lease granted under this part to a European a covenant that he shall not without the consent of the Governor in Council appoint or allow a non-European to be manager or otherwise to occupy or be in control of the land leased.

Covenant against occupation by non-European.

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PART V.

DISPOSAL OF LAND FOR SPECIAL PURPOSES.

(1) LEASES AND LICENCES FOR SPECIAL PURPOSES.

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47. Save as in this part under this Ordinance otherwise provided, the Commissioner of Lands shall not entertain any application under this part without the sanction of the Governor first obtained.

Governor's sanction for lease or licence under this part.

48. The rent to be reserved under any lease or licence under this part, the period and the covenants and conditions of the lease or licence shall be such as may be prescribed by rules under this Ordinance or as may be determined by the Governor.

Rent, etc. to be as prescribed by rules or determined by the Governor.

49. The Commissioner of Lands may, with the approval of the Governor, cause a lease or licence under this part to be sold by auction.

Sale by auction of leases for special purposes.

The provisions of sections nineteen to twenty-three (both inclusive) of this Ordinance shall, so far as applicable, apply to every sale by auction under this part.

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PART XII.

MISCELLANEOUS.

(1) LEGAL PROCEDURE, ETC.

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138. All actions, unless brought on behalf of the Crown or Government for anything done under this Ordinance shall be commenced within six months after the cause of action shall have arisen, and not afterwards. Notice in writing of such action, and the cause thereof, shall be given to the defendant one month at least before the commencement of the action. In every such action the defendant may plead the general issue, and give this Ordinance and the special matter in evidence at the trial to be had thereupon. No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before action brought, or

Procedure in action against the Crown.

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if a sufficient sum of money shall have been paid into court by or on behalf of the defendant after action brought, together with the costs incurred up to that time.

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(4) POWER TO MAKE RULES.

Power to
make rules.

151. (1) Whenever in any section of this Ordinance the expression "prescribed" is used in connection with any matter referred to in the context the Governor in Council may in every such case make rules for the purpose of giving effect to the provisions of such section.

The Governor in Council shall have power from time to time to make rules for the purposes of this Ordinance :—

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- (i) For imposing any reasonable charges for surveys or for computing the work of licensed surveyors, or for fees for any document or thing issued or done under the authority of this Ordinance or under any rule thereunder.
- (ii) For prescribing the form of and the condition and mode of applying for land or for licences and leases to be issued under this Ordinance.
- (iii) For providing for all proceedings, forms of leases, licences, and other instruments, and for the execution of all other matters and things arising under and not inconsistent with this Ordinance and not herein expressly provided for. 20
- (iv) For the care, management and protection in every manner of all unoccupied Crown lands.
- (v) Prescribing the fees and charges which shall be levied in respect of any act, matter or thing to be done by a registrar or in the registry and generally for the better carrying out of the purposes of Part XI.
- (vi) For prescribing or regulating any matter or thing in relation to any sale, lease, licence or agreement under the Crown Lands Ordinance, 1902, or anything done or to be done under the said Ordinance which might lawfully have been prescribed under the said Ordinance. 30

(2) Any rules under this Ordinance may provide for their enforcement by penalties not exceeding in any case seventy-five pounds.

(3) All rules under this Ordinance shall be signed by the Governor and upon being published in the Gazette shall, subject to disallowance by His Majesty, be valid in law, as if the same were enacted in this Ordinance, and shall be judicially noted ; and all such rules shall be laid before the Legislative Council within fourteen days after the making thereof, if the Council be then sitting, and if the Council be not then sitting as soon as conveniently may be after the commencement of the next session of the Council. 40

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EXTRACT FROM THE OFFICIAL GAZETTE OF THE COLONY AND
PROTECTORATE OF KENYA. 3rd July 1928.

General Notice No. 714.

CROWN LANDS ORDINANCE.
(CHAPTER 140, LAWS OF KENYA.)

NOTICE.

MOMBASA ISLAND RESIDENTIAL PLOTS.

NOTICE is hereby given that grants in respect of the plots at Mombasa specified in the Schedule hereto will be sold by auction in the Jubilee Hall, 10 Mombasa, on Saturday, 11th August, 1928, commencing at 10 a.m.

Plans of the plots may be seen at the offices of the Survey and Registration Department at Nairobi and Mombasa, or may be obtained on application on payment of Shs. 5, post free.

The right to withdraw any plot from the auction is reserved to the Commissioner for Local Government, Lands and Settlement.

GENERAL CONDITIONS OF SALE.

1. Europeans only will be allowed to bid and purchase, and no person will be allowed to purchase more than one plot.
2. Each plot will be auctioned separately.
- 20 3. The amount of the advance of each bid will be regulated by the auctioneer, and no bidding shall be retracted.
4. The highest bidder will be the purchaser, but if any dispute arise as to any bid, the plot will be reoffered at the last undisputed bid.
5. Each purchaser shall pay to the auctioneer immediately on the fall of the hammer a deposit of 25% of the purchase money. In default of such payment the plot may be immediately reoffered for sale and any subsequent bid by the person who has made default may be ignored or refused.
- 30 6. Each purchaser shall on paying the deposit inform the auctioneer of the name or names of the person or persons on whose behalf the plot is purchased ; the grant will be issued in accordance with this information.
7. The balance of the purchase money, together with the rent due to the 31st December, 1928, the survey fees, the fees payable for the preparation and registration of the grant (Shs. 110), and the stamp duty payable in respect of the grant and all other expenses, if any, shall be paid to the Resident Commissioner, Mombasa, within seven days from the date of the sale, and upon such payments being duly made the purchaser shall, subject to the provisions of the Crown Lands Ordinance,

1915, and if the conditions of sale have been complied with, be entitled to a grant of the plot, which grant shall be presented to him duly executed as soon as conveniently may be. Provided that the balance of the purchase money shall not be payable within the time stated or thereafter unless and until the Commissioner for Local Government, Lands and Settlement can present to the purchaser the grant of the plot duly executed.

8. Subject to the proviso contained in Condition No. 7, if the amounts therein mentioned are not paid to the Resident Commissioner, Mombasa, within seven days from the date of sale, the Commissioner for Local Government, Lands and Settlement may order the deposit made by the purchaser to be forfeited, and the purchaser shall have no further claim to a grant of the plot. 10

9. The Government or such person or authority as may be appointed for the purpose shall have the right to enter upon any plot and lay and have access to water mains, service pipes, telegraph or telephone wires, and electric mains of all descriptions whether overhead or underground and the grantees shall not erect any building in such a way as to cover or interfere with any existing routes, main or service pipes or the telegraph or telephone wires and electric mains aforementioned. 20

10. No building shall be erected on any plot unless plans (including block plans showing the position of the buildings) drawings, elevations and specifications thereof shall have been previously approved by the Commissioner for Local Government, Lands and Settlement or such other person as he may appoint. Such plans, etc., shall be submitted in triplicate to the Resident Commissioner for necessary action.

11. The term of each grant will be 99 years from the 1st September, 1928.

SPECIAL CONDITIONS.

1. In these special conditions the term "The Authority" means the Resident Commissioner, Mombasa, or such other municipal authority as may be hereafter established by law. 30

2. Each grantee shall erect within two years of the commencement of his grant a dwelling-house with suitable outbuildings of approved design suitable to the locality.

3. The grantee shall in addition enclose his plot with a fence or wall of suitable design to be approved by the Authority.

4. No building shall at any time during the term of the grant be used for any purpose other than a dwelling-house. 40

5. Not at any time during the term of the grant shall the grantee permit the dwelling-house or outbuildings to be used as a place of residence for any Asiatic or African who is not a domestic servant employed by him.

6. At no time during the term of the grant shall more than one dwelling-house with the necessary offices and outbuildings be erected on any plot without written consent of the Governor, and the grantee shall not without such written consent sub-divide the plot or assign or sublet any portion of the plot.

7. The grantee shall not at any time during the term of the grant erect any building or buildings so as to cover more than one-half of the area of the plot.

8. Any building erected shall conform to a building line approved 10 by the Authority.

9. All outbuildings, offices, etc., shall be properly sited and screened from view to the satisfaction of the Authority and shall be kept so screened during the term of the grant.

10. The grantee shall maintain and keep in good and substantial repair at all times during the term of his grant all buildings, fences, drains and works of every description erected or constructed by him, and shall deliver up the same in such repair at the expiration or sooner determination of his grant.

11. Each grantee is liable to be held responsible by the Authority 20 for the proportionate cost of the construction of roads and drains on which his plot fronts or abuts when construction is completed.

SCHEDULE.

MOMBASA ISLAND SOUTHERN RESIDENTIAL AREA.
SECTION XXVI.

Plot No.	Area.	Rent per annum.	Upset price.	Survey Fees.	Prop. Rent from 1st September to 31st December, 1928.		
		Shs.	Shs.	Shs.	Shs.	cts.	
30	92	1·121	1,076 /-	4,484 /-	100 /-	358	66
	91	1·160	1,114 /-	4,640 /-	100 /-	371	33
	90	1·160	1,114 /-	4,640 /-	100 /-	371	33
	89	1·130	1,085 /-	4,520 /-	100 /-	361	66
	82	0·852	818 /-	3,408 /-	87 /50	272	66
	81	0·920	883 /-	3,680 /-	87 /50	294	33
	80	0·918	881 /-	3,672 /-	87 /50	293	66

NAIROBI.

28th June, 1928.

C. E. MORTIMER,
for Commissioner of Local Government
Lands and Settlement.

In the Privy Council.

ON APPEAL

From the Court of Appeal for Eastern Africa

BETWEEN

**THE COMMISSIONER FOR
LOCAL GOVERNMENT
LANDS & SETTLEMENT**
(Original Respondent) -

Appellant

AND

**ABDULHUSEIN KADER-
BHAI** (Original Applicant)

Respondent

AND BETWEEN

**ABDULHUSEIN KADER-
BHAI** (Original Applicant)

Appellant

AND

**THE COMMISSIONER FOR
LOCAL GOVERNMENT
LANDS & SETTLEMENT**
(Original Respondent) -

Respondent.

Appendix to Record.

BURCHELLS,

5 The Sanctuary,

Westminster, S.W.1.