1962 No. 2599

EAST AFRICA

The Kenya (Constitution) (Amendment) Order in Council 1962

Made - - - - 28*th November* 1962
Laid before Parliament 4*th December* 1962
Coming into Operation 9*th December* 1962

At the Court at Buckingham Palace, the 28th day of November 1962

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts 1887 and 1945(a), the Foreign Jurisdiction Act 1890(b) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

1.—(1) This Order may be cited as the Kenya (Constitution) (Amendment) Order in Council 1962, and the Kenya (Constitution) Orders in Council 1958 to 1961(c) and this Order may be cited together as the Kenya (Constitution) Orders in Council 1958 to 1962.

(2) This Order shall come into operation on 9th December 1962.

Amendment of section 64C of Order of 1958.

2. Section 64C of the Kenya (Constitution) Order in Council 1958(d) (as set out in section 15 of the Kenya (Constitution) (Amendment No. 2) Order in Council 1960(e)) is amended by the deletion of subsection (5).

Insertion of Part VIIB in Order of 1958.

3. The Kenya (Constitution) Order in Council 1958 is amended by the insertion after Part VIIA (as set out in section 15 of the Kenya (Constitution) (Amendment No. 2) Order in Council 1960) of the following Part:—

"PART VIIB

APPEALS TO PRIVY COUNCIL AND QUESTIONS OF INTERPRETATION

Appeals to Her Majesty in Council from Court of Appeal for Eastern Africa.

64D.—(1) An appeal from decisions of the Court of Appeal for Eastern Africa given in the exercise of any jurisdiction conferred upon that court by any law in force in Kenya shall lie to Her Majesty in Council as of right in the following cases—

(*a*) where the matter in dispute on the appeal to Her Majesty in Council is of the value of five hundred pounds or upwards or where the appeal involves

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 53 & 54 Vict. c. 37.
(c) S.I. 1958/600, 1959/1302, 1960/703, 2201, 1961/2036, 2273 (1958 I, p. 961; 1959 I, p. 982; 1960 I, pp. 1218, 1219; 1961 III, pp. 3707, 3984).
(d) S.I. 1958/600 (1958 I, p. 961). (e) S.I. 1960/2201 (1960 I, p. 1219).

directly or indirectly a claim to or question respecting property or a right of the value of five hundred pounds or upwards, final decisions in any civil proceedings;

(*b*) final decisions in proceedings for dissolution or nullity of marriage; and

(*c*) such other cases as may be prescribed by any law in force in Kenya.

(2) An appeal from decisions of the Court of Appeal for Eastern Africa given in the exercise of any jurisdiction conferred upon that court by any law in force in Kenya shall lie to Her Majesty in Council with the leave of the Court of Appeal for Eastern Africa in the following cases—

(*a*) where in the opinion of the Court of Appeal for Eastern Africa the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and

(*b*) such other cases as may be prescribed by any law in force in Kenya.

(3) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal from decisions of the Court of Appeal for Eastern Africa to Her Majesty in Council in any civil or criminal matter.

Appeals to Her Majesty in Council from Supreme Court.

64E.—(1) Subject to the provisions of subsection (2) of this section, an appeal from decisions of the Supreme Court shall lie as of right direct to Her Majesty in Council in the following cases—

(*a*) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Order; or

(*b*) final decisions given in exercise of the jurisdiction conferred on the Supreme Court by section 64C of this Order; and

(*c*) final decisions given in exercise of the jurisdiction conferred on the Supreme Court by any law having effect for the purposes of section 10 (1) (*c*) of Schedule 4 to this Order.

(2) There shall be no right of appeal to Her Majesty in Council from decisions of the Supreme Court given in exercise of any jurisdiction conferred on that court by any law or regulation made in pursuance of section 30B of this Order.

Reference to Supreme Court.

64F.—(1) Where any question as to the interpretation of this Order arises in any proceedings in any court of law in Kenya (other than the Court of Appeal for Eastern Africa, the Supreme Court or a court-martial) and the court is of opinion that the question involves a substantial question of law the court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.".

Amendment of section 10 of Schedule 4 to Order of 1958.

4. Section 10 of Schedule 4 to the Kenya (Constitution) Order in Council 1958 (as set out in the Schedule to the Kenya (Constitution) (Amendment No. 2) Order in Council 1960) is amended—

(*a*) by the deletion of sub-paragraph (iii) from subsection (1) (*c*); and

(*b*) by the deletion of the words "or sub-paragraph (iii)" from subsection 2 (*b*) (iv).

Pending proceedings.

5.—(1) In respect of any decision of Her Majesty's Court of Appeal for Eastern Africa given in the exercise of any jurisdiction conferred upon it by any law in force in Kenya before the commencement of this Order, an appeal may be commenced, continued and concluded or continued and concluded, as the case may be, in accordance with the provisions of Part VIIB of the Kenya (Constitution) Order in Council 1958 (as inserted by section 3 of this Order) as nearly as may be as if it were an appeal from a decision of the Court of Appeal for Eastern Africa.

(2) Any Order that Her Majesty in Council may see fit to make on any such appeal or any Order made by Her Majesty before the commencement of this Order on an appeal from a decision of Her Majesty's Court of Appeal for Eastern Africa given in the exercise of such jurisdiction, but not enforced before such commencement, may be enforced as if it were an Order made on appeal from a decision of the Court of Appeal for Eastern Africa.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order amends the Kenya (Constitution) Order in Council 1958 by providing for appeals to lie to Her Majesty in Council from decisions of the Court of Appeal for Eastern Africa in certain cases and direct from the Supreme Court of Kenya in other cases.