STATUTORY INSTRUMENTS

1962 No. 2600

JUDICIAL COMMITTEE

The Kenya (Procedure in Appeals to Privy Council) Order in Council 1962

Made - - - -	*28th November* 1962
Laid before Parliament	*4th December* 1962
Coming into Operation	*9th 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 the exercise of the powers in that behalf by section 1 of the Judicial Committee Act 1844(a), by 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. This Order may be cited as the Kenya (Procedure in Appeals to Privy Council) Order in Council 1962 and shall come into operation on 9th December 1962.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"appeal" means an appeal to Her Majesty in Council from a judgment:

Provided that, for the purposes of sections 4, 5, 11 and 14 (1) of this Order, it does not include an appeal direct to Her Majesty in Council from a judgment of the Supreme Court of Kenya;

"Court" means—

(*a*) in relation to judgments of the Court of Appeal for Eastern Africa established by the Constitution of the East African Common Services Organisation, that court; and

(*b*) in relation to judgments of the Supreme Court of Kenya, that court;

"judgment" means—

(*a*) a decision given by the Court of Appeal for Eastern Africa in any of the cases referred to in section 64D (1) and (2) of the Kenya (Constitution) Order in Council 1958(c) as set out in section 3 of the Kenya (Constitution) (Amendment) Order in Council 1962(d); or

(*b*) a decision given by the Supreme Court of Kenya in any of the cases referred to in section 64E (1) of the Kenya (Constitution) Order in Council 1958 (as set out in section 3 of the Kenya (Constitution) (Amendment) Order in Council 1962);

(a) 7 & 8 Vict. c. 69.
(b) 53 & 54 Vict. c. 37.
(c) S.I. 1958/600 (1958 I, p. 961).
(d) S.I. 1962/2599 (1962 III, p. 3488).

"record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before Her Majesty in Council on the hearing of an appeal;

"Registrar" means the Registrar of the Court or other proper officer having custody of the records of the Court.

(2) The Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Order or otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of Parliament.

Application for leave to appeal.

3. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

Conditional leave to appeal.

4. Leave to appeal to Her Majesty in Council in pursuance of the provisions of any law relating to such appeals shall, in the first instance, be granted by the Court only—

(*a*) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and

(*b*) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Powers of a single judge.

5. A single judge of the Court shall have power and jurisdiction—

(*a*) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;

(*b*) generally in respect of any appeal pending before Her Majesty in Council, to make such order and to give such other directions as he shall consider the interests of justice or circumstances of the case require:

Provided that any order, directions or decisions made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decision.

Stay of execution.

6. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction

(a) 52 & 53 Vict. c. 63.

of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

Manner of providing security.

7. For the purposes of sections 4 and 6 of this Order, a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

Preparation of record.

8.—(1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

(3) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed (whether in Kenya or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(4) The reasons given by any Judge of the Court for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall be communicated by him in writing to the Registrar, and shall be included in the record.

Printing of the record.

9.—(1) The record may be printed in Kenya or may be printed in England if the parties agree to its being printed but in the absence of such agreement shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed it shall be printed in accordance with the Rules set forth in the Schedule to this Order.

(2) Where the record is printed in Kenya the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

(4) Where part of the record is printed in Kenya and part is to be printed or duplicated in England, subjections (2) and (3) of this section shall, as far as possible, apply to such parts as are printed in Kenya and such as are to be printed or duplicated in England respectively.

Consolidation of appeals.

10. Where there are two or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

Failure to prosecute appeal.

11. Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

Notice to other parties.

12.—(1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

Prosecution of appeal.

13. An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

Withdrawal of appeal.

14.—(1) An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal, desires, prior to the dispatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Dismissal for non-prosecution.

15. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the

purpose of procuring the dispatch of the record to England, any respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Substituting parties.

16.—(1) Where at any time between the order granting final leave to appeal and the dispatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of Her Majesty in Council.

(2) Where the record subsequently to its dispatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

Printing of case.

17. The case of each party to the appeal may be printed in Kenya or printed or duplicated in England and shall, in either event, be printed in accordance with the Rules set forth in the Schedule to this Order, and shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

Form of case.

18. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case, and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer in taxing the costs of the appeal shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

Costs in Kenya.

19. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in Kenya, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

Enforcing judgment.

20. Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the Court may be enforced in like manner as any judgment of the Court should or might have been executed.

W. G. Agnew.

THE SCHEDULE

Sections 9 (1) and 17.

I. Records and cases in appeals to Her Majesty in Council shall be printed in the form known as demy quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.

IV. The number of lines in each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

EXPLANATORY NOTE

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

This Order makes provision for the procedure in appeals to Her Majesty in Council in respect of proceedings and matters originating in the Courts of Kenya.