STATUTORY INSTRUMENTS

1961 No. 1507

EAST AFRICA

The Zanzibar Order in Council, 1961

Made - - - -	*2nd August*, 1961
Laid before Parliament	*9th August*, 1961
Coming into Operation	*10th August*, 1961

At the Court at Buckingham Palace, the 2nd day of August, 1961

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of powers by the Foreign Jurisdiction Act, 1890(a), 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, construction and commencement.

1.—(1) This Order may be cited as the Zanzibar Order in Council, 1961, and shall be construed as one with the Zanzibar Orders in Council, 1924 to 1953.

(2) This Order and the Zanzibar Orders in Council, 1924 to 1953, may be cited together as the Zanzibar Orders in Council, 1924 to 1961.

(3) This Order shall come into operation on the tenth day of August, 1961.

Amendment of Article 17 of Order of 1924.

2. Article 17 of the Zanzibar Order in Council, 1924(b) (as set out in Article 4 of the Zanzibar Order in Council, 1925(c), and as amended by the Zanzibar Order in Council, 1939(d),) is amended by the deletion of paragraphs (3), (4), (5), (6) and (7) and the substitution of the following paragraphs:—

"(3) The Judges of the High Court shall consist of a Chief Justice (in this Order also referred to as the principal Judge) and such number of Judges as may from time to time be appointed under this Order.

(4) The Judges shall be appointed by the British Resident by instrument under his official seal in pursuance of instructions given by Her Majesty through a Secretary of State.

(a) 53 & 54 Vict. c. 37.
(b) S.R. & O. 1924/1401 (Rev. VIII, p. 313: 1924, p. 434).
(c) S.R. & O. 1925/932 (Rev. VIII, p. 327: 1925, p. 374).
(d) S.R. & O. 1939/292 (Rev. VIII, p. 313: 1939 II, p. 1703).

(5) (*a*) A person shall not be qualified for appointment as a Judge unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, or he is qualified to practise as an advocate in such a court and he has been qualified for not less than five years to practise as an advocate or solicitor in such a court.

(*b*) In computing, for the purposes of this paragraph, the period during which any person has been qualified to practise as an advocate or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

(*c*) The reference in this paragraph to a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth and to a court having jurisdiction in appeals from any such court shall be construed as if it included a reference to a court having such jurisdiction in the Republic of Ireland.

(6) (*a*) If the office of Chief Justice is vacant, or if the Chief Justice is for any reason unable to perform the functions of his office, then until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the Judges or such other person qualified for appointment as a judge of the High Court as the British Resident may appoint to act as Chief Justice.

(*b*) If a Judge vacates his office or is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his office, or if the British Resident after consultation with the Chief Justice, is satisfied that the state of business in the High Court requires that the number of Judges should be temporarily increased, the British Resident after consultation with the Chief Justice, may appoint a person to act as a Judge.

(*c*) Without prejudice to the provisions of the following paragraph, a person appointed under this Article to act as Chief Justice or as a Judge shall, unless he earlier resigns his acting office or is removed therefrom under Article 18 of this Order, continue so to act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by the British Resident, after consultation with the Chief Justice.

(*d*) Any Judge may, notwithstanding that he has attained the age at which he is required by or under the provisions of this Order or any other law to vacate his office, and any person appointed to act as a Judge may, notwithstanding that the period of his appointment has expired or his appointment has been revoked, sit as a Judge for the purpose of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting.

(*e*) Any appointment of a person to act as the Chief Justice or to act as a Judge under this Article shall be made by instrument under the hand and seal of the British Resident except in the case of an appointment of a Judge to perform the functions of the Chief Justice."

Replacement of Article 18 of Order of 1924.

3. Article 18 of the Zanzibar Order in Council, 1924 (as set out in Article 4 of the Zanzibar Order in Council, 1925) is revoked and the following Article is substituted:—

"18.—(1) Subject to the following provisions of this Article a Judge shall hold office until he attains the age of sixty-two years:

Provided that the British Resident may permit a Judge who has attained the age of sixty-two years to remain in office for such fixed period not exceeding one year as may have been agreed between the Judge and the British Resident.

(2) A Judge may at any time resign his office by writing under his hand addressed to the British Resident.

(3) The office of a Judge shall not be abolished during his continuance in office.

(4) A Judge may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with the provisions of paragraph (5) of this Article.

(5) A Judge shall be removed from office by the British Resident by instrument under his hand and official seal if the question of the removal of that Judge from office has, at the request of the British Resident made in pursuance of paragraph (6) of this Article been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under Section 4 of the Judicial Committee Act, 1833(a), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the Judge ought to be removed from office for inability as aforesaid or misbehaviour.

(6) If the British Resident considers that the question of removing a Judge from Office for inability as aforesaid or misbehaviour ought to be investigated then—

(*a*) the British Resident shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the British Resident from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters, in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(*b*) the Tribunal shall enquire into the matter and report on the facts thereof to the British Resident and recommend to the British Resident whether he should request that the question of the removal of that Judge should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends the British Resident shall request that the question should be referred accordingly.

(7) The provisions of Section 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Commission of Inquiry Decree of Zanzibar(b) as in force on the 1st day of January, 1961, shall apply in relation to a tribunal appointed under paragraph (6) of this Article as they apply in relation to Commisions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this Order.

(a) 3 & 4 Will. 4. c. 41. (b) Laws of Zanzibar. cap. 32.

(8) If the question of removing a Judge from his office has been referred to a tribunal under paragraph (6) of this Article, the British Resident may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the British Resident and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the British Resident that he should not request that the question of the removal of the Judge from office should be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises Her Majesty that the Judge ought not to be removed from office.

(9) The provisions of paragraph (1) of this Article shall not apply to a person who is a Judge by virtue only of an acting appointment."

Amendment of Part VIII of Order of 1924.

4. Part VIII of the Zanzibar Order in Council, 1924, is amended by the insertion immediately before Article 39 of the following new Article:—

"38A.—(1) There shall be paid to the holders of the offices to which this Article applies such salary and allowances as may be prescribed by the Legislature of Zanzibar.

(2) The salary and allowances payable to the holder of any office to which this Article applies and his terms of office shall not be altered to his disadvantage after his appointment.

Provided that where the holder of any such office is entitled to exercise an option in relation to his salary, allowances or terms of office, the option as exercised by him shall be deemed for the purposes of this paragraph to be to his advantage.

(3) The salary and allowances payable to the holders of the offices to which this Article applies shall be a charge on and paid out of the revenues of Zanzibar.

(4) This Article applies to the office of British Resident and Judge of the High Court."

W. G. Agnew.

EXPLANATORY NOTE

(*This note is not a part of the Order but is intended to indicate its general purport.*)

This Order makes fresh provision for the appointment of Judges of the High Court of Zanzibar and for the tenure of their office; and safeguards the salaries and terms of service of the British Resident and the Judges of the High Court.