



ORDINANCE No. 21 of 1953

Assented to in Her Majesty's name this ninth day of June, 1953.

E. BARING,
Governor.

**AN ORDINANCE TO AMEND THE CROWN LANDS
ORDINANCE**

9th June, 1953

Date of
commencement.

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 Crown Lands (Amendment) Ordinance, 1953, and shall be read and construed as one with the Crown Lands Ordinance, hereinafter referred to as the principal Ordinance, and shall be reserved for the signification of Her Majesty's pleasure.

Short title.

Cap. 155.

2. Section 2 of the principal Ordinance is amended in the following respects—

Amendment of
section 2 of
the principal
Ordinance.

(a) by deleting the word "public" where it occurs for the first time in the definition of "Crown land";

(b) by substituting for the definition of "Director of Surveys" the following definition—

"Director of Surveys" includes any officer of the Survey Department authorized by the Director of Surveys to perform the duty in relation to which the term is used;

(c) by placing an asterisk at the end of the definition of "Highlands Board" and by inserting the following footnote—

*See the Kenya (Highlands) Order in Council, 1939;

(d) by substituting for the definition of "licensed surveyor" the following definition—

"licensed surveyor" shall have the meaning assigned to it by the Survey Ordinance, 1951;

No. 22 of 1951.

(e) by placing an asterisk at the end of the definition of "Trust Board" and by inserting the following footnote—

*See the Kenya (Native Areas) Order in Council, 1939.

3. Section 3 of the principal Ordinance is amended by adding next after paragraph (v) thereof the following new paragraph—

(vi) accept the surrender of any freehold conveyance under the Crown Lands Ordinance, 1902, or freehold grant under this Ordinance.

4. There shall be substituted for section 5 of the principal Ordinance the following section—

5. The Governor shall appoint a Commissioner of Lands (hereinafter in this Ordinance referred to as "the Commissioner") who shall have charge of the administration of this Ordinance, and shall further appoint such Assistant Commissioners, land officers, assistant land officers and other officers as the Governor may deem necessary who may, if so authorized by the Commissioner either generally or specially, perform any of the duties or do any of the acts or things required or authorized by this Ordinance, or by any law regulating the sale, letting, disposal and occupation of Crown land, to be done by the Commissioner.

5. There shall be substituted for the proviso to section 7 of the principal Ordinance the following proviso—

Provided, however, that nothing in this section shall be deemed to authorize the Commissioner to exercise any of the powers conferred upon the Governor by sections 3, 5, 6, 15, 22, 23, 36, Parts VI, VIII or IX, or sections 121, 155 or 175 of this Ordinance.

6. Section 8 of the principal Ordinance is amended in the following respects—

(a) in sub-section (1) thereof, by inserting a full stop after the words "in the name of the Commissioner", and by substituting for the words from "and the

Amendment of section 3 of the principal Ordinance.

Accept the surrender of a freehold conveyance.

Repeal and replacement of section 5 of the principal Ordinance.

Commissioner to have charge of administration of Ordinance.

Subordinate officers.

Amendment of section 7 of the principal Ordinance.

Amendment of section 8 of the principal Ordinance.

Commissioner may be the plaintiff" to the end of that sub-section, the words—

"In any such action, suit or proceeding the Commissioner may be represented by any advocate, or by any officer of the Lands Department, or by any Government officer authorized in writing by the Commissioner in that behalf.";

(b) in sub-section (2) thereof, by inserting after the word "may" where it first occurs, the words "in his own name".

7. Sections 9, 10 and 11 of the principal Ordinance are repealed.

8. There shall be substituted for section 21 of the principal Ordinance the following—

21. (1) In every lease of a town plot under this Ordinance there shall be implied by virtue of this Ordinance a covenant by the lessee not to divide the plot and assign or sub-let any portion thereof except with the previous consent of the Governor in writing and in such manner and upon such conditions as he may prescribe or require:

Provided that—

- (i) no application for such consent shall be entertained unless the building conditions (if any) have been complied with;
- (ii) in no case shall the annual rent reserved to the Crown on any such portion be less than ten shillings nor the aggregate annual rent be less than that reserved in the original lease;
- (iii) the immediately foregoing proviso shall apply to every building lease granted under the Crown Lands Ordinance, 1902, in the event of the property held under such lease being subdivided and the portions assigned.

(2) Every application for the consent of the Governor under this section shall be made to the Commissioner and shall—

- (a) contain the applicant's proposals for development of each portion created by the subdivision; and

Repeal of sections 9, 10 and 11 of the principal Ordinance.

Repeal and replacement of section 21 of the principal Ordinance.

Implied covenant restricting division, assignation and sub-letting.

(b) be accompanied by suitable plans in quadruplicate on durable material showing the proposed subdivisions.

(3) Every such applicant shall furnish such further or other information or particulars as the Commissioner may require.

9. Sections 29 and 30 of the principal Ordinance are repealed.

10. There shall be substituted for section 39 of the principal Ordinance the following section—

39. (1) In every lease of land under this Part there shall be implied by virtue of this Ordinance a covenant by the lessee not to divide the land and assign or sublet any portion thereof except with the previous written consent of the Governor and in such manner and upon such conditions as he may prescribe, and subject to the provisions of Part V of this Ordinance:

Provided that—

- (i) no application for such consent shall be entertained unless the whole of the purchase price in respect of such lease shall have been paid;
- (ii) the annual rent reserved for each such portion shall be at the rent prescribed in section 33 of this Ordinance and shall not be less than ten shillings;
- (iii) the immediately foregoing proviso shall apply to every lease granted under the Crown Lands Ordinance, 1902, for grazing or agricultural purposes or both in the event of the property held under such lease being subdivided and the portions assigned.

(2) Every application for the consent of the Governor under this section shall be made to the Commissioner and shall—

- (a) contain the applicant's proposals for apportionment of any development conditions in the original lease and for the development and maintenance of development of each portion of land to be assigned or sublet; and

Repeal of sections 29 and 30 of the principal Ordinance.

Repeal and replacement of section 39 of the principal Ordinance.

Restriction on sub-division, assignment or sub-letting.

(b) be accompanied by suitable plans in quadruplicate on durable material showing the proposed subdivisions.

(3) Every such applicant shall furnish such further or other information or particulars as the Commissioner may require.

11. Sections 40, 41 and 42 of the principal Ordinance are repealed.

12. Part V of the principal Ordinance is amended in the following respects—

- (a) by deleting the sub-heading "(1) LEASES AND LICENCES FOR SPECIAL PURPOSES"; and
- (b) by substituting for sub-heading "(2) LICENCES FOR TEMPORARY OCCUPATION OF SMALL AREAS", the heading "PART VA—LICENCES FOR TEMPORARY OCCUPATION OF LAND".

13. Section 44 of the principal Ordinance is amended by substituting for the word "entertain" the word "grant".

14. Section 47 of the principal Ordinance is amended by inserting next after the words "not to", appearing in paragraph (a) thereof, the word "divide,".

15. Section 48 of the principal Ordinance is amended in the following respects—

- (a) by deleting the words "and to erect thereon a hut or huts or other temporary erection" where they occur in sub-section (1) thereof; and
- (b) by deleting sub-section (2) thereof.

16. Section 55 of the principal Ordinance is amended in the following respects—

- (a) by deleting the commas and words " , save that a rent shall be payable for the occupation of such areas, computed on the fair economic value of the land" where they occur at the end of sub-section (1) thereof; and

Repeal of sections 40, 41 and 42 of the principal Ordinance.

Amendment of Part V of the principal Ordinance.

Amendment of section 44 of the principal Ordinance.

Amendment of section 47 of the principal Ordinance.

Amendment of section 48 of the principal Ordinance.

Amendment of section 55 of the principal Ordinance.

(b) by inserting next after sub-section (2) thereof the following new sub-section—

(3) The Governor may, in any proclamation setting aside an area under the provisions of this section, provide for the payment, by any tribe or tribes, or individual members thereof, for the satisfaction of whose economic needs such area is being so set aside, of a rent for the occupation thereof, computed on the fair economic value of the land, and in such event shall direct by whom and where appropriate in what proportions such rent shall be payable, and to what fund such rent shall be credited.

Amendment of section 67 of the principal Ordinance.

17. Section 67 of the principal Ordinance is amended by re-numbering it as sub-section (1) of section 67 and by adding the following new sub-section—

(2) The Governor may, with the consent of the Highlands Board, and subject to the approval of the Legislative Council, by notice in the Gazette, adjust the boundaries of the Highlands and the Seventh Schedule to this Ordinance shall thereupon be read and construed to give effect to such adjustment:

Provided that no such adjustment shall be made to affect any land which is at the time of the adjustment situated in the native lands except with the consent of the Trust Board.

Amendment of section 81 of the principal Ordinance.

18. Section 81 of the principal Ordinance is amended in the following respects—

(a) by substituting for the word “thirty”, where it occurs in sub-section (1) thereof, the word “ninety”;

(b) by substituting for the word “ninety”, where it occurs in sub-section (2) thereof, the words “one hundred and twenty”, and by substituting for the words “one hundred and twenty” where they occur later in that sub-section, the words “one hundred and fifty”.

Amendment of section 108 of the principal Ordinance.

19. Section 108 of the principal Ordinance is amended in the following respects—

(a) by substituting for the words “two hundred” the words “four hundred”;

(b) by substituting for the figures “200” in the marginal note thereto, the figures “400”;

(c) by substituting for the proviso to the section the following—

Provided that where the area of land so sold or leased exceeds— Proviso as to compensation.

(i) four hundred acres but does not exceed one thousand acres and a proportion greater than two per centum of such area is being taken for any such purpose; or

(ii) one thousand acres and a proportion greater than four per centum of such area is being taken for any such purpose,

there shall be paid to the purchaser or lessee, as the case may be, compensation for the land taken in excess of such proportion, so, however, that no such compensation shall exceed the value of the land taken in excess of the said proportion.

20. Section 109 of the principal Ordinance is amended in the following respects— Amendment of section 109 of the principal Ordinance.

(a) by substituting for the words “two hundred” the words “four hundred”;

(b) by substituting for the figures “200” in the marginal note thereto, the figures “400”.

21. Section 111 of the principal Ordinance is amended by substituting a colon for the full-stop at the end of sub-section (3) thereof and by adding the following proviso thereto— Amendment of section 111 of the principal Ordinance.

Provided that except in cases of emergency certified by the Member of the Executive Council of the Colony for the time being responsible for Lands no officer of the Government or contractor, nor any servant or agent of such officer or contractor, shall enter on any land for the purpose of constructing any road or railway or of taking materials for such construction until there has first been given not less than one month's notice of the intention so to enter. Period of notice.

Insertion of new sections 111A, 111B and 111C in the principal Ordinance.

Compensation for severance and damage to planted trees and bushes.

22. There shall be inserted in the principal Ordinance next after section 111 thereof the following new sections—

111A. Where damage or loss has been occasioned to any land consequent upon the entry upon, or the resumption of, land under any of the provisions of sections 106, 107, 108, 109 and 110 of this Ordinance or of sections 23 to 28 inclusive of the Crown Lands Ordinance, 1902, and any part of such damage or loss is proved to have been occasioned by the severance of the land or by injury or destruction of trees, bushes or shrubs planted thereon, or by reason of the fact that the land so resumed has, before the date of notice of such resumption, been cleared or otherwise developed for the purpose of cultivation, a reasonable sum by way of compensation shall be paid in respect of any damage or loss incurred as aforesaid notwithstanding that compensation is not otherwise payable under the provisions of any of the aforesaid sections:

Provided that any compensation so paid for injury or destruction of such trees, bushes or shrubs, or for loss incurred by reason of such clearance or development having been carried out, shall not exceed, on the one hand, the market value of such trees, bushes or shrubs, and, on the other hand, the expense directly incurred in such clearance or development.

111B. (1) Where any land is entered and resumed for the purpose of constructing or re-aligning—

(a) any railway line, station or siding, the following provisions relating to fencing shall apply—

(i) if such land is at the date of notice of such entry and resumption completely enclosed by a fence, the Commissioner for Transport shall at his own expense, on the request of the owner or occupier of such land, erect and maintain a fence on each side of that portion of such railway line which traverses such land or part thereof, together with such gates, stiles or other devices as may be necessary to give reasonable access to such land;

Responsibility for fencing on entry for construction of railway or road.

(ii) if such land is at any time after the date of such entry and resumption completely enclosed by a fence, the Commissioner for Transport shall, on the request of the owner or occupier of such land, pay half the cost of erecting and maintaining a fence on each side of that portion of such railway line which traverses such land or part thereof, together with such gates, stiles or other devices as may be necessary to give reasonable access to such land;

(b) any public road, if such land is at the date of notice of such entry and resumption completely enclosed by a fence, or so enclosed except for that portion which abuts on the land reserved for such entry and resumption, the Road Authority shall, on the request of the owner or occupier of such land, erect a fence on each side of that portion of such public road which traverses or abuts on such land or part thereof, together with such gates, stiles or other devices as may be necessary to give reasonable access to such land. The cost of erecting any such fences, gates, stiles or other devices as aforesaid shall be borne by the Road Authority, but the cost of the repair and maintenance thereof shall be borne by the owner or occupier of the land.

(2) Any claim by the owner or occupier of such land for work to be done or money paid in pursuance of the provisions of sub-section (1) of this section shall, in default of agreement, be referred to arbitration in the manner required by section 174 of this Ordinance.

111C. Where any holding of land is entered and part thereof resumed for the purpose of constructing or re-aligning a road, any compensation payable under this Ordinance in respect of such resumption shall be reduced by an amount equivalent to any increased value given to such holding by reason of such construction or re-alignment.

Betterment to be set off against compensation for land taken for roads.

23. Section 137 of the principal Ordinance is amended by deleting the words "by a Government or licensed surveyor, and countersigned" where they occur in sub-sections (1) and (2) thereof, and in the marginal note to sub-section (1) thereof.

Amendment of section 137 of the principal Ordinance.

Amendment of section 158 of the principal Ordinance.

24. Section 158 of the principal Ordinance is amended by substituting for the words "Commissioner, Director of Surveys or deputy director" the words "Commissioner or the Director of Surveys".

Repeal and replacement of section 168 of the principal Ordinance.

Power to enter land in execution of duty.

25. There shall be substituted for section 168 of the principal Ordinance the following section—

168. (1) The Commissioner or any person authorized by him in writing in that behalf may at all reasonable times and after giving reasonable notice (save as herein-after provided) enter with any necessary assistants, servants, conveyances and appliances upon any land or premises sold, leased or occupied under licence and may do all such acts thereon as are necessary or incidental to the exercise of the powers or the performance of the duties granted or imposed by this Ordinance, or as may be prescribed in any grant under this Ordinance or the Crown Lands Ordinance, 1902:

Provided that a valuer or land ranger duly appointed and authorized under the provisions of section 5 of this Ordinance entering such land or premises between sunrise and sunset shall not be required to give such notice but shall, if required by the owner or occupier thereof, produce and show the authority under which he claims to enter or has entered such land or premises.

(2) Whenever the exercise or performance of the powers or duties referred to in sub-section (1) of this section render it necessary or desirable so to do, the Commissioner or his duly authorized officers shall be empowered together with his or their other assistants, servants, conveyances and appliances as aforesaid to go upon and encamp on any uncultivated site, not being within one quarter of a mile of a dwelling house, on or in the vicinity of the land or premises in respect of which the powers or duties are being exercised or performed, and shall be allowed access with their servants to the nearest available source of potable water.

(3) Any person who wilfully obstructs, interferes with, or impedes any officer or person in the exercise of his powers under this section, or in the performance of his duties, shall be guilty of an offence and shall be liable

on conviction to a fine not exceeding one thousand shillings, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

26. Section 172 of the principal Ordinance is repealed.

Repeal of section 172 of the principal Ordinance.

27. Sub-section (1) of section 175 of the principal Ordinance is amended in the following respects—

Amendment of section 175 of the principal Ordinance.

(a) by substituting for the words "The Governor in Council shall have power from time to time to make rules for the purposes of this Ordinance" the words "The Governor in Council shall have power to make rules generally for the better carrying out of the provisions of this Ordinance and, without prejudice to the generality of the foregoing power, such rules may make provision—";

(b) by substituting for the words "imposing any reasonable charges for surveys or for computing the work of licensed surveyors, or for", where they occur in paragraph (i) thereof, the word "prescribing".

28. There shall be inserted in the principal Ordinance next after section 177 thereof the following new section—

Insertion of new section 178 in the principal Ordinance.

178. Notwithstanding anything contained in section 177 of this Ordinance or in the Interpretation and General Clauses Ordinance or in any grant, lease or licence under the Crown Lands Ordinance, 1902—

Special provisions relating to land held under the Crown Lands Ordinance, 1902. Cap. 1.

(a) the provisions of paragraph (d) of section 14, and of section 29, of the Crown Lands Ordinance, 1902, shall cease to have effect; and

(b) the provisions of sections 106, 107, 108, 109, 110, 111, 111A and 111B of this Ordinance shall apply in relation to the entry upon and resumption for public purposes of all land the subject of a grant, lease or licence under the Crown Lands Ordinance, 1902, in substitution for the provisions of sections 23 to 28 inclusive of that Ordinance:

Provided that any person who holds any land as owner, lessee, or occupier under licence, under the Crown Lands Ordinance, 1902, may within twelve months of the date of coming into operation of the Crown Lands (Amendment) Ordinance, 1953, by notice in writing addressed to the Commissioner of Lands, elect that the provisions of sections 23 to 28 inclusive of the Crown Lands Ordinance, 1902, shall continue to apply in relation to the resumption of any such land, and upon giving such notice as aforesaid those provisions shall continue to apply. The Commissioner of Lands shall cause the fact of such election to be duly endorsed on the registered title of such landholder.

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Amendment of Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Schedules to the principal Ordinance.

29. The principal Ordinance is amended by substituting for the words "Survey Records Office, Department of Lands, Mines and Surveys, Nairobi" wherever they appear in the Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Schedules thereto the words "Survey Records Office, Survey Office, Nairobi".

Amendment of the Sixth Schedule to the principal Ordinance.

30. The principal Ordinance is amended by deleting the description of boundaries under the sub-heading "ISILOLO" in the Sixth Schedule thereto and by substituting the following—

Commencing at the trigonometrical beacon Mukogodo situate on the northern boundary of North Nyeri District;

thence westerly by a straight line through trigonometrical beacon Lendili extended to its intersection with the Uaso Nyiro River;

thence down-stream by that river to Chanler's Falls;

thence due south by a straight line to its intersection with the generally north-western boundary of the Kikuyu Native Land Unit;

thence south-westerly by that boundary to its intersection with the Ngare Siolo (Isiolo River);

thence up-stream by that river to its intersection with the northern boundary of the Isiolo Township;

thence westerly and southerly by part of the northern and the whole of the western boundaries to the south-western corner of that township;

thence by a straight line north-westerly towards the summit of Ol Donyo Lossos to its intersection with the Ngare Ndare;

thence down-stream by that river to the Ndare Ford on the Isiolo-Kipsing Road;

thence westerly by a straight line to the point of commencement.