

ORDINANCE No. 35 of 1953

Assented to in Her Majesty's name this twenty-seventh day of October, 1953.

E. BARING,
Governor.

SECTION

- 1—Short title and commencement.
- Interpretation.
- Vesting of scheduled lands in the Crown.
- Lease of scheduled lands to the Company.
- 5—Compensation to persons interested in the scheduled lands.
- 6—Authority to Company to operate oil refinery and exemption from liability for nuisance.
- 7—No actions maintainable against the Crown, etc.

SECTION

- 8—Power to declare other lands to be scheduled lands.
 - 9—Compulsory acquisition of easements and rights.
 - 10—Savings of the rights of the Crown, bodies corporate and other persons.
- FIRST SCHEDULE—The Scheduled lands.
SECOND SCHEDULE—Section of the Indian Land Acquisition Act, 1894, applied by and incorporated in this Ordinance and modifications subject to which such sections are so applied and incorporated.

AN ORDINANCE TO EFFECT THE VESTING IN THE CROWN OF CERTAIN LANDS IN THE COAST PROVINCE, SUBJECT TO PAYMENT OF COMPENSATION THEREFOR, AND FOR AUTHORIZING THE GOVERNOR TO GRANT A LEASE THEREOF FOR THE PURPOSE OF THE CONSTRUCTION OF AN OIL REFINERY AND ANCILLARY WORKS; AND FOR PURPOSES CONNECTED THEREWITH AND INCIDENTAL THERETO

By Notice

WHEREAS The Anglo-Saxon Petroleum Company, Limited, a limited liability company incorporated in the United Kingdom and having its registered office at St. Helen's Court, London, has under consideration a project for the construction and operation, at considerable expense, of an oil refinery and ancillary works in the Coast Province and, for that purpose, of securing a lease or leases of, *inter alia* the lands hereinafter described:

AND WHEREAS it is in the public interest that the said Company, or an associate, should be enabled to construct and operate an oil refinery and ancillary works in the Colony:

AND WHEREAS accordingly it is expedient that the said lands should be vested in the Crown, subject to payment of compensation therefor, and that the Governor should be empowered to grant a lease or leases thereof to the said Company or its associate, with power to construct and operate an oil refinery and ancillary works as aforesaid:

Date of commencement.

1953 Land Acquisition (Mombasa Oil Refinery)

No. 35

AND WHEREAS it is desirable to make provision for giving effect to the foregoing purposes under the authority of the Legislative Council:

BE IT THEREFORE ENACTED by the Governor of the Colony and Protectorate of Kenya, by and with the advice of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Land Acquisition (Mombasa Oil Refinery) Ordinance, 1953, and shall come into operation on such day as the Governor may by notice in the Gazette appoint.

2. In this Ordinance unless the context otherwise requires—

“ancillary purposes” includes, subject to the provisions of the East African Railways and Harbours Act and of the East African Posts and Telecommunications Act, the construction or provision of docks, slips, quays, wharves, piers, warehouses, buildings, yards and structures deemed by the Company to be necessary or useful for the purpose of accommodating, storing, loading, discharging, handling, importing or exporting goods, materials and commodities of any kind, and the construction or provision of railways, tramways, bridges, ferries, canals, roads, ways, pipelines, telegraphs, telephones and other means of transport or communication, and the construction or provision of housing and facilities for the recreation or welfare of employees of the Company;

“appointed day” means the day appointed by the Governor under section 1 of this Ordinance;

“appropriate Registrar” means the Registrar of Titles, the Registrar of Crown Lands, or the Registrar of Coast Land Titles, appointed for the purposes of the Registration of Titles Ordinance, the Crown Lands Ordinance, or the Land Titles Ordinance, as the case may require;

“appropriate Register” means the Register maintained under the provisions of the Registration of Titles Ordinance, the Crown Lands Ordinance or the Land Titles Ordinance, as the case may require;

“Her Majesty” includes Her Heirs and Successors;

“lease” means any tenancy however created;

Short title and commencement.

Interpretation.

East Africa High Commission Acts, Cap. 3 and Cap. 4.

Cap. 160.
Cap. 155.
Cap. 159.

Cap. 160.
Cap. 155.
Cap. 159.

“meeting” in relation to the Legislative Council, has the meaning for the time being assigned to it by the Standing Orders of the Legislative Council;

“scheduled lands” means the lands described in the First Schedule to this Ordinance;

“the Company” means, as the case may from time to time require, The Anglo-Saxon Petroleum Company, Limited, as aforesaid, or such other Company, incorporated in the Colony, as the Governor may deem to be an associate of The Anglo-Saxon Petroleum Company, Limited, aforesaid.

3. (1) Immediately upon the appointed day the scheduled lands shall, by virtue of this Ordinance, vest in Her Majesty absolutely, freed and discharged from all estates, rights, titles, interests, encumbrances, claims and demands whatsoever, and such land shall be deemed to be Crown land within the meaning of the Crown Lands Ordinance, and Her Majesty shall be deemed in law to be in actual possession thereof to all intents and purposes whatsoever.

(2) As soon as may be after the appointed day, the appropriate Registrar shall cause to be entered in the appropriate Register, in respect of each piece or parcel of land forming part of the scheduled lands, a memorandum of the vesting thereof in Her Majesty by virtue of this Ordinance.

4. (1) At any time after the appointed day, the Governor may, on behalf of Her Majesty, grant a lease or leases of all or any part of the scheduled lands to the Company with authority to do all or any of the following acts and things thereon—

- (a) to construct and operate an oil refinery and any ancillary works;
- (b) to extend or alter the refinery or any ancillary works;
- (c) to carry out ancillary purposes.

(2) Every such lease shall be granted at such premium and rent and shall be for such period and subject to such terms and conditions as the Governor may deem expedient. The lease may be made assignable to any company, incorporated

Vesting of the scheduled lands in the Crown.

Cap. 155.

Lease of scheduled lands to the Company.

in the Colony, which the Governor may deem to be an associate of The Anglo-Saxon Petroleum Company, Limited.

(3) Nothing herein contained shall—

- (a) be deemed to exempt any lease granted under the provisions of this Ordinance from chargeability to stamp duty under the provisions of the Stamp Ordinance or the Company from liability to payment of any such stamp duty; Cap. 259.
- (b) affect the provisions of section 328 of the Companies Ordinance. Cap. 288.

(4) Every such lease shall be deemed for the purposes of the Crown Lands Ordinance to be a lease granted under the provisions of that Ordinance. Cap. 155.

5. (1) Subject to the provisions of this Ordinance, every person interested in the scheduled lands, or any part thereof, shall be entitled to compensation in respect of the vesting thereof in Her Majesty by virtue of the provisions of section 3 of this Ordinance. Compensation to persons interested in the scheduled lands.

(2) All such compensation shall be payable out of the public funds of the Colony.

(3) The provisions of those sections of the Indian Land Acquisition Act, 1894, as applied to the Colony, which are specified in the First Column of the Second Schedule to this Ordinance shall apply for the purposes of compensating persons interested in the scheduled lands as aforesaid and for regulating all matters connected with the compensation payable under this Ordinance to the persons interested as aforesaid and for those purposes the aforesaid sections of the said Act shall be deemed to be incorporated in and form part of this Ordinance in the same manner as if they were enacted in the body thereof, subject, however, to the following provisions—

- (a) in their application and incorporation as aforesaid, sections 3, 8, 9, 14, 19, 23, 24, 25, 26, 28, 31, 34 and 54 of the said Act shall, subject to the provisions of sub-section (3) of section 8 of this Ordinance, be deemed respectively to be modified in the manner specified in respect of each such section in the Second Column of the Second Schedule to this Ordinance;

(b) every reference in any of the aforesaid sections of the said Act applied and incorporated herein as aforesaid to the provisions of any Act or law in force in India shall be deemed to be a reference to such comparable Ordinance or other law as may, for the time being, be in force in the Colony.

(4) The Governor shall appoint a person, by name or office, to be the Collector for the purposes of those provisions of the Indian Land Acquisition Act, 1894, which are applied and incorporated herein as aforesaid.

6. Subject to the grant of a lease to the Company under the provisions of this Ordinance and to the terms and conditions of any such lease, the Company is hereby authorized to construct and use upon the scheduled lands an oil refinery and ancillary works and to carry on all operations incidental to an oil refinery and ancillary works, and the Company is hereby exonerated from liability for nuisance in respect of such construction and use and all such operations as aforesaid except in so far as any nuisance is caused, or contributed to, by any negligence in the construction or use of such refinery or ancillary works or in the carrying on of such operations as aforesaid.

7. No action, suit or proceeding of any kind shall be brought by any person against the Crown or the Governor or against the Government or any department thereof, or against any officer of the Government as such, in respect of the construction, use or operation of an oil refinery or ancillary works on the scheduled lands, or in respect of any matter or thing done or omitted to be done by the Company under this Ordinance or any lease granted to the Company thereunder.

8. (1) The Governor may, at any time before the expiration of ten years from the appointed day, declare any other lands for the time being within the Mombasa District or the Kwale District of the Coast Province to be scheduled lands for the purposes of this Ordinance.

(2) Where any such other lands are, at the date of a declaration made by the Governor under the provisions of subsection (1) of this section, unalienated Crown land within the meaning of the Crown Lands Ordinance, no compensation shall be payable under this Ordinance in respect of the vesting

Authority to Company to operate oil refinery and exemption from liability for nuisance.

No actions maintainable against the Crown, etc.

Power to declare other lands to be scheduled lands.

Cap. 155.

thereof in Her Majesty, but all the provisions of this Ordinance with the exception of the provisions of section 5 thereof shall apply thereto:

Provided that in relation to such other lands the appointed day for the purposes of this Ordinance shall be deemed to be the date of such declaration as aforesaid.

(3) Where any such other lands are not, at the date of the declaration made by the Governor under the provisions of subsection (1) of this section, unalienated Crown land as aforesaid, compensation shall be payable under this Ordinance in respect of the vesting thereof in Her Majesty and all the provisions of this Ordinance shall apply thereto:

Provided that—

(i) every such declaration shall be laid before the Legislative Council on the first day of the meeting thereof next after the date of the making of the declaration and, unless before the conclusion of such meeting the Legislative Council resolves that the declaration shall not be approved, it shall come into effect on the day following such conclusion, or, if during such meeting the Legislative Council resolves that the declaration be approved with modifications, it shall come into effect on such day but subject to such modifications;

(ii) in relation to such other lands—

(a) the appointed day for the purposes of this Ordinance shall be the day upon which the declaration comes into effect as aforesaid; and

(b) all references in those provisions of the Indian Land Acquisition Act, 1894, which are applied by and incorporated in this Ordinance to the date of the publication of a declaration under section 6 of that Act shall be deemed for the purposes of such application and incorporation, to be references to the day on which the declaration made under this section in respect of such other lands comes into effect as aforesaid.

9. (1) Subject to the provisions of this section, where it appears to the Governor necessary so to do, he may by order, from time to time, provide for compulsorily vesting in the Company all such easements or other rights in, under or over, or in respect of, any lands other than the scheduled lands as

Compulsory acquisition of easements and rights.

appear to him to be necessary or desirable for facilitating the operations of any oil refinery or ancillary works which may for the time be upon the scheduled lands, and, without prejudice to the generality of the foregoing provisions, such easements or rights may comprise easements or rights—

- (a) of support or withdrawal of support;
- (b) of ways of access or conveyance of any material;
- (c) of ventilation or drainage;
- (d) of the use or occupation of any land for the purpose of the erection of any buildings or structure;
- (e) of obtaining water supplies or disposing of water or other liquid matter;
- (f) of discharging into rivers, streams or watercourses of any liquid or solid matter, whether such discharge results in pollution or not;
- (g) of placing any waste materials on any land;
- (h) of overhead ways or pipes or other means of conveyance of any material and the use and occupation of the surface or the underground of any land for the purpose of supporting or maintaining any such overhead ways, pipes or other means of conveyance.

(2) Any order made under this section shall provide for the payment of compensation by the Company in such cases and subject to such conditions as may be specified in the order or determined thereunder, in respect of loss suffered as the result of the acquisition or exercise of easements or rights under the order.

(3) No Order shall be made under this section in relation to land which is unalienated Crown land within the meaning of the Crown Lands Ordinance or in relation to any land forming part of the Native Lands, without prejudice however, to the right of the Governor on behalf of Her Majesty to grant to the Company any easement or exclusive right over any land which is unalienated Crown land as aforesaid under the powers conferred by sub-section (6) of this section.

(4) Every Order made under this section shall be laid before the Legislative Council on the first day of the meeting thereof next after the date of the making of the Order and, unless before the conclusion of such meeting the Legislative Council resolves that the order shall not be approved, it shall come into effect on the day following such conclusion, or, if during such meeting the Legislative Council resolves that the Order be approved with modifications, it shall come into effect on such day but subject to such modifications.

(5) As soon as may be after an order made under this section comes into effect, the appropriate Registrar shall cause a memorandum of the Order to be entered in the appropriate Register in respect of each piece or parcel of land affected by the Order.

(6) The Governor may on behalf of Her Majesty at any time grant to the Company any such easement or other right as is referred to in sub-section (1) of this section in, under or over, or in respect of any unalienated Crown land within the meaning of the Crown Lands Ordinance, on such terms and conditions as he thinks fit. Cap. 155.

10. Save as herein expressly provided nothing in this Ordinance shall in any way prejudice or affect any rights of Her Majesty in any respect, or of any body politic or corporate or of any other person. Savings of the rights of the Crown, bodies corporate and other persons

Section 2.

FIRST SCHEDULE
THE SCHEDULED LANDS

Land Reference No.	Locality	Approximate Area in Acres
SECTION II—		
Plot No. 18	Mombasa Mainland South	1.80
Plot No. 19	Mombasa Mainland South	1.70
Plot No. 20	Mombasa Mainland South	2.10
Plot No. 21	Mombasa Mainland South	0.90
Plot No. 22	Mombasa Mainland South	1.30
Plot No. 51	Mombasa Mainland South	16.30
SECTION I—		
Plot No. 105	Mombasa Mainland South	5.60
Plot No. 106	Mombasa Mainland South	1.90
Plot No. 109	Mombasa Mainland South	10.20
Plot No. 141	Mombasa Mainland South	1.84
Plot No. 139	Mombasa Mainland South	2.00
Plot No. 128	Mombasa Mainland South	2.00
Plot No. 129	Mombasa Mainland South	1.23
Plot No. 130	Mombasa Mainland South	1.00
Plot No. 131	Mombasa Mainland South	1.00
Plot No. 150	Mombasa Mainland South	1.07
Plot No. 157	Mombasa Mainland South	0.3047
Plot No. 158	Mombasa Mainland South	0.315
Plot No. 160	Mombasa Mainland South	0.50
Portion of Plot No. 174	Mombasa Mainland South	6.00
Portion of Plot No. 2 } north-east of road, in- cluding Plot No. 149 }	Mombasa Mainland South	0.857
Plot No. 163	Mombasa Mainland South	9.80
Plot No. 144	Mombasa Mainland South	1.58
Portion of Plot No. 114	Mombasa Mainland South	2.06
Portion of Plot No. 111	Mombasa Mainland South	0.20
Portion of L.R. No. 3855	Mombasa Mainland South	2,160.00

which said lands are more particularly delineated on Survey Map No. 282 deposited in the Survey Records Office, Nairobi.

Section 5

SECOND SCHEDULE

SECTIONS OF THE INDIAN LAND ACQUISITION ACT, 1894, APPLIED AND INCORPORATED IN THIS ORDINANCE AND MODIFICATIONS SUBJECT TO WHICH SUCH SECTIONS ARE SO APPLIED AND INCORPORATED

Sections and Marginal Notes	Modifications
SECTION 3— Definitions	(a) The expression "Collector" shall mean the Collector appointed under section 5 of this Ordinance. (b) The expression "Court" shall mean a subordinate court of the first class, except where the land or subject-matter in dispute exceeds or is claimed to exceed in value the sum of twenty thousand shillings, in which case the expression means the Supreme Court. (c) The definition of "Company" shall be inapplicable. (d) In paragraph (g), the words "in cases to which the English law is applicable" shall be deleted.
SECTION 8— Land to be marked out, measured and planned.	(a) The words "as soon as may be after the appointed day caused the scheduled lands" shall be substituted for the words "thereupon cause the land". (b) The words "cause each piece or parcel of the scheduled lands" shall be substituted for the words "cause it".
SECTION 9— Notice to persons interested.	All references to land to be taken or needed shall be read and construed as references to the scheduled lands, and all references to the Government's intention to take possession of land shall be read as references to the vesting of the scheduled lands in Her Majesty by virtue of this Ordinance.
SECTION 10— Power to require and enforce the making of statements as to names and interests.	_____
SECTION 11— Enquiry and award by Collector.	_____
SECTION 12— Award of Collector, when to be final.	_____
SECTION 13— Adjournment of enquiry ..	_____
SECTION 14— Power to summon and enforce attendance of witnesses and production of documents.	The reference to a Civil Court acting under the Code of Civil Procedure of India shall be read and construed as a reference to the Supreme Court acting under the Civil Procedure Ordinance (Cap. 5).

Sections and Marginal Notes	Modifications
SECTION 15— Matters to be considered and neglected.	_____
SECTION 18— Reference to Court ..	_____
SECTION 19— Collector's statement to the Court.	The references to sections 5 and 17 of the Act shall be inapplicable.
SECTION 20— Service of notice	_____
SECTION 21— Restriction on scope of proceedings.	_____
SECTION 22— Proceedings to be in open Court.	_____
SECTION 23— Matters to be considered in determining compensation.	All references to the date of the publication of a declaration under section 6 of the Act shall be read and construed as references to the date, the 30th day of August, 1952; and all references to the time of the Collector taking possession of land shall be read and construed as references to the appointed day.
SECTION 24— Matters to be neglected in determining compensation.	All references to the date of publication of a declaration as aforesaid shall be read and construed as references to the 30th day of August, 1952.
SECTION 25— Rules as to the amount of compensation.	All references to the Judge shall be read and construed as references to the Judge or Magistrate.
SECTION 26— Form of awards	There shall be substituted for the section the following:— Form of awards. 26. Every award under this Part shall be in writing and signed by the Judge or Magistrate, and shall be in such form as the Judge or Magistrate shall think fit.
SECTION 27— Costs	_____
SECTION 28— Collector may be directed to pay interest on excess compensation.	The reference to interest at the rate of six per centum shall be read and construed as a reference to interest at the rate of four per centum.
SECTION 29— Particulars of apportionment to be specified.	_____
SECTION 30— Dispute as to apportionment.	_____

Sections and Marginal Notes	Modifications
SECTION 31— Payment of compensation or deposit of same in Court.	The reference to the Local Government shall be read and construed as a reference to the Member of Executive Council for the time responsible for Lands.
SECTION 32— Investment of money deposited in respect of lands belonging to persons incompetent to alienate.	_____
SECTION 33— Investment of money in other cases.	_____
SECTION 34— Payment of interest ..	The reference to interest at the rate of six per centum shall be read and construed as a reference to interest at the rate of four per centum.
SECTION 45— Service of notices	_____
SECTION 46— Penalty for obstructing acquisition of land.	_____
SECTION 51— Exemption from stamp duty and fees.	_____
SECTION 52— Notice in case of suits for anything done in pursuance of Act.	_____
SECTION 53— Code of Civil Procedure to apply to proceedings before Court.	_____
SECTION 54— Appeals in proceedings before Court.	There shall be substituted for the section the following:— Appeals in proceedings before Court. 54. (1) An appeal shall lie to the Supreme Court from any award or decree of a Magistrate under this Act. (2) An award or decree of the Supreme Court under this Act shall, whether the same be made or passed on appeal from a subordinate court or otherwise, be final and conclusive both as to law and as to fact.