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GOVERNMENT NOTICE NO 328

The Governor in Council has approved of the following Bill being introduced into the Legislative Council

J H BUTTER,
Acting Clerk to the Legislative Council

ARRANGEMENT OF SECTIONS

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A BILL ENTITLED

AN ORDINANCE TO CONFER UPON CONSULAR OFFICERS OF FOREIGN STATES WITH WHICH CONSULAR CONVENTIONS ARE CONCLUDED BY HER MAJESTY CERTAIN POWERS RELATING TO THE ADMINISTRATION OF THE ESTATES AND PROPERTY OF DECEASED PERSONS; TO RESTRICT THE POWERS OF POLICE OFFICERS AND OTHER PERSONS TO ENTER THE CONSULAR OFFICES OF SUCH STATES; AND TO AMEND SECTION 68 OF THE SHIPPING ORDINANCE

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows —

Short title and commencement

1. This Ordinance may be cited as the Consular Conventions Ordinance, 1952, and shall come into operation on such day as the Governor may, by notice in the Gazette, appoint

Powers of consular officers in relation to property in the Colony of deceased persons

2. (1) Where any person who is a national of a State to which this section applies is named as executor in the will of a deceased person disposing of property in the Colony, or is otherwise a person to whom a grant of representation to the estate in the Colony of a deceased person may be made, then if the court is satisfied, on the application of a consular officer of the said State, that the said national is not resident in the Colony, and if no application for a grant of such representation is made by a person duly authorized by power of attorney to act for him in that behalf, the court shall make to that officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorized as aforesaid

Provided that the court may, if it thinks fit, postpone the making of a grant by virtue of this section during such period as the court considers appropriate, having regard to the circumstances of the case

(2) Where any person who is a national of a State to which this section applies—

(a) is entitled to payment or delivery of any money or property in respect of any interest in the estate of a deceased person, or vesting in possession on the death of any person, or is entitled to payment of any money becoming due on the death of any person, or

(b) is a person to whom any money or property comprised in the estate of a deceased person may be paid or delivered in pursuance of any enactment, rule, or regulation, whether passed or made before or after the commencement of this Ordinance, authorizing the payment or delivery of such money or property

without representation to the estate of the deceased being granted,

then if the said national is not resident in the Colony, a consular officer of that State shall have the like right and power to receive and give a valid discharge for any such money or property in the Colony as if he were duly authorized by power of attorney to act for him in that behalf

Provided that no person shall be authorized or required by this sub-section to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in the Colony has been expressly authorized to receive that money or property on behalf of the said national

(3) A grant of administration made by virtue of this section may be made to the consular officer by his official title, and to his successors in office, and when a grant is so made, the office of administrator, and all the estate, rights, duties and liabilities of the administrator (including liabilities under the administration bond) shall be vested in and imposed on the person for the time being holding the office, and no fresh grant shall be required by reason only of the death or vacation of office of the person to whom the grant was made or in whom it is vested as aforesaid

Provided that nothing in this sub-section shall affect any limitation contained in the grant or any power of the court to revoke the grant

(4) No sureties shall be required to an administration bond given by a consular officer upon the grant to him of administration by virtue of this section

Supplementary provisions as to section 2

3. Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of powers conferred on him by or under section 2 of this Ordinance, or in respect of any document for the time being in his possession relating thereto

Restriction of powers of entry in relation to consular premises

4. (1) Subject to the provisions of this section, a consular office of a State to which this section applies shall not be entered by a police officer or other person acting in the execution of any warrant or other legal process or in the exercise of powers conferred by or under any enactment (whether passed before or after the commencement of this Ordinance), or otherwise, except with the consent of the consular officer in charge of that office or, if that consent is withheld or cannot be obtained, with the consent of the Governor with the concurrence of a Secretary of State

Provided that the foregoing provisions of this sub-section shall not apply in relation to any entry effected—

- (a) in pursuance of any enactment conferring powers to enter premises for the purposes of extinguishing fire,
- (b) by a police officer having reasonable cause to believe that a crime involving violence has been or is being or is about to be committed in the consular office,
- (c) by any person entitled to enter by virtue of any easement contract or other private right

(2) This section shall not apply to any consular office which for the time being is in charge of a consular officer who is a citizen of the United Kingdom and Colonies or is not a national of the State by which that office is maintained

(3) For the purposes of this section, the expression "consular office" means any building or part of a building which is exclusively occupied for the purposes of the official business of a consular officer

Amendment of
the Shipping
Ordinance
Cap 221

5. The powers of a consular officer under sub-section (2) of section 68 of the Shipping Ordinance (which enables a consular officer in certain circumstances to act as the agent of the owner for the purposes of the custody and disposal of articles belonging to or forming part of a foreign ship wrecked on or near the coasts of the Colony) shall extend to the custody of the ship itself as well as to the custody and disposal of such articles as aforesaid 5 10

Application of
sections 2
and 4

6. The Governor in Council may, by order, direct that section 2 or section 4 of this Ordinance shall apply to any foreign State specified in the order, being a State with which a consular convention providing for the matters for which provision is made by those sections has been concluded by Her Majesty 15

MEMORANDUM OF OBJECTS AND REASONS

A Convention making provision for consular privileges to be enjoyed on a reciprocal basis by members of the Consular Service has recently been signed by the Governments of the United Kingdom and the United States, it is expected that the Convention will be ratified shortly. A similar Convention has been entered into with Norway which likewise it is expected will be ratified shortly. Upon examination of our laws it has been found that certain of the matters provided for in the Conventions will not be capable of fulfilment in this Colony unless statutory provision is made therefor. This Bill is necessary, therefore, to give full reciprocal effect to the Conventions and will make provision for these matters.

Clause 2 contains provisions which will in certain circumstances enable the property in the Colony of a national of a State with which a consular convention has been concluded to be dealt with by a consular officer. Under sub-clause (1) a consular officer may receive a grant of administration to the estate of a deceased national if no other person duly authorized by a power of attorney has been appointed and under sub-clause (2) a consular officer is empowered to receive and give a good discharge for money or other property forming part of the estate of a deceased national on behalf of a person entitled thereto.

Clause 4 will give statutory recognition, subject to reasonable and necessary safeguards, to the inviolability of the consular premises of a State with which a convention is in force and to which the provisions of the clause have been extended. The clause will prohibit the entry by a police officer or other person acting in execution of any warrant or other legal process or in exercise of any powers conferred by any enactment except with the consent of the consular officer in charge or if that consent is withheld with the consent of the Governor acting with the concurrence of the Secretary of State. By a proviso to the clause the right of entry for the purpose of extinguishing fire or by a police officer having reasonable cause to believe that a crime of violence is being or is about to be committed or by any person entitled to enter under any easement, contract or other private right is preserved.

Sub-section (2) of section 68 of the Shipping Ordinance (Cap 221) provides that a consular officer of a country to which a wrecked ship or the cargo thereof belonged shall in the absence of the owner and the master or other agent be deemed to be the agent of any articles belonging to or forming part of any wrecked ship or cargo. The section does not, however, make similar provision in respect of the ship itself. *Clause 5* will accordingly extend the provisions of the sub-section to include the wrecked ship.

Since *clauses 2* and *4* provide that they shall only apply in relation to any country to which they have been extended by order, *Clause 6* makes provision for applying the sections by order to countries with which a consular convention has been concluded by the Government of the United Kingdom. Every such order is required to be laid before the Legislative Council after being made.

It is not expected that any additional expenditure of public moneys will be incurred if the provisions of this Bill become law.

Nairobi,
19th March, 1952

JOHN WHYATT,
Attorney General