

(Legislative Supplement No. 18)

CORRIGENDUM

Legal Notice No. 158 of 1958, page 199:—

- (i) in the first line of section 40 (2) (b) for the word "moton" read "motion"; and
- (ii) in the third line of section 73 (2) (b) for the figures "1930" read "1920".

This corrigendum replaces the corrigendum published in the Supplement of 15th April, 1958.

LEGAL NOTICE NO. 182

(L. 1101/2110)

THE KENYA (CONSTITUTION) ORDER IN COUNCIL, 1958

(L.N. 158 of 1958)

IN EXERCISE of the powers conferred by section 78 of the Kenya (Constitution) Order in Council, 1958, and of all other powers hereunto me enabling, I, Evelyn Baring, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Royal Victorian Order, Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, do hereby make the following Order:—

THE KENYA (CONSTITUTION) (ADAPTATION OF LAWS)
ORDER, 1958

1. This Order may be cited as the Kenya (Constitution) (Adaptation of Laws) Order, 1958, and shall be deemed to have come into operation on the 5th day of April, 1958. Citation and commencement.
2. The Legislative Council Ordinance, as from time to time amended, shall be read and construed as if— Adaptation of Cap. 38.
 - (a) there were substituted for the word "Indian", wherever the same appears therein, the word "Asian";
 - (b) there were inserted in section 2 thereof two new definitions as follows—
 - "Asian" does not include Arab;
 - "Constituency Elected Member" means a member elected under this Ordinance;
 - (c) section 2 of the Legislative Council (Temporary Provisions) Ordinance, 1951, were repealed. No. 67 of 1951

(d) in sub-section (1) and paragraph (d) of sub-section (2) of section 3 thereof, there were substituted for the words "one Arab member" the words "two Arab members";

(e) in the proviso to sub-section (2) of section 18 thereof, there were substituted for the words "the Central electoral area described in Part B of Schedule I to this Ordinance" the words "the election of two members for an electoral area";

(f) there were substituted for section 19 thereof, the following section—

Appointment of Substitute Elected Members. 19. Whenever the Governor has, under this Ordinance, appointed a nomination day for the election of one or more Constituency Elected Members, and no candidate or, as the case may be, an insufficient number of candidates has been nominated to fill the vacancy or all the vacancies available to be filled by the election, the Governor may in his discretion, by instrument under the public seal, appoint as a Substitute Elected Member, to fill any such vacancy for which no candidate has been nominated, any person who would be eligible under the provisions of this Ordinance for election to that vacancy.;

(g) there were substituted for section 21 thereof, the following section—

Appointment of Temporary Members. 21. Whenever there is a vacancy in the number of persons sitting in the Legislative Council as Constituency Elected Members by reason of the fact that any such member is absent from the Colony, the Governor may, in his discretion, by instrument under the public seal, appoint to be a Temporary Member of the Legislative Council any person who would, under the provisions of this Ordinance, be eligible for election to the seat of the member who is absent.;

(h) there were added to section 22 thereof a new sub-section as follows—

(3) For the purposes of sub-section (1) of this section a seat for one Arab Constituency Elected Member in the electoral area described in Part D of Schedule I to this Ordinance shall be deemed to have become vacant on the commencement of the Kenya (Constitution) Order in Council, 1958.

(i) there were inserted, next after section 31 thereof, the following new section—

Questions as to membership or vacation of seats. 31A. Where any question arises whether any person has become a Constituency Elected Member, or a Substitute Elected Member appointed under section 19, or a Temporary Member appointed under section 21, of this Ordinance, or whether the seat of any such member has become vacant, the question shall be determined by the Governor in Council of Ministers, whose decision thereon shall be final and shall not be enquired into in any court.:

(j) in the proviso to rule 28 of the rules contained in Schedule III thereto, there were substituted for the words "the election of members for the Central electoral area" the words "the election of two members for an electoral area";

(k) in paragraph (b) of rule 32 of the rules contained in Schedule III thereto, there were substituted for the words "in the case of the Central electoral area", the words "in the case of the election of two members for an electoral area,".

3. Section 20 of the Legislative Council (African Representation) Ordinance, 1956, shall be read and construed as if for the words "nomination and election", in both places where those words appear therein, there were substituted the words "election and appointment".

Adaptation of Ordinance No. 10 of 1956.

4. Sub-section (2) of section 329 of the Criminal Procedure Code shall be read and construed as if the words "in Executive Council", appearing therein were deleted.

Adaptation of Cap. 27.

Made this 18th day of April, 1958.

E. BARING,
Governor.

EXPLANATORY NOTE

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

This Order has the effect of modifying certain existing laws so as to bring them into conformity with the constitutional changes introduced by the Kenya (Constitution) Order in Council, 1958, and to enable effect to be given to the Order in Council.

Apart from making minor and formal modifications, this Order reconciles the existing law with the Order in Council in relation to the following matters—

- (a) *the increase in Arab Constituency Elected Members from one to two, provision being made that the vacancy thus caused is deemed to have arisen on 5th April, 1958, the date on which the Order in Council came into operation;*
- (b) *the power to appoint a Substitute Elected Member on a failure of nomination for election to a vacancy as a Constituency Elected Member;*
- (c) *the power to appoint a Temporary Member where a Constituency Elected Member is absent from Kenya;*
- (d) *the final determination by the Governor in Council of Ministers of questions arising as to membership or vacation of seats.*

The Order also removes from the Criminal Procedure Code a reference to the Executive Council, which no longer exists.