

THE KENYA PORTS AUTHORITY ACT, 1978

No. 2 of 1978

Date of Assent: 11th January, 1978

Date of Commencement: 20th January, 1978

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FIRST SCHEDULE.

SECOND SCHEDULE.

An Act of Parliament to provide for the establishment of an Authority to be known as the Kenya Ports Authority, for the transfer to the Authority of the undertakings, within Kenya, of the East African Harbours Corporation, for the functions of the Authority and for purposes connected therewith

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY AND INTERPRETATION

Short title.

1. This Act may be cited as the Kenya Ports Authority Act, 1978.

Interpretation and application.

2. (1) In this Act, except where the context otherwise requires—

“animals” means animate things of every kind except human beings;

“authorized employee” means an employee authorized by the Managing Director to exercise the powers or perform the duties in respect of which the expression is used;

“beacon” means any light, mark or other structure erected by the Authority for the purposes of navigation;

“Chairman” means the Chairman of the Board appointed under section 4;

“charges” means all sums received or receivable, charged or chargeable for, or in respect of, any ship or port or the handling or warehousing of goods by the Authority or for, or in respect of, any other service performed or facilities provided by the Authority;

“customs law” means any law in force imposing or relating to the collection of customs or excise duties or transfer tax;

“employee” means any person in the service of the Authority;

“ferry” means any vessel plying within a port, or the approaches thereto, for the purpose of the carriage of passengers or goods;

“goods” includes luggage, animals (whether alive or dead) and all other movable property of any description;

“port” means any of the ports set out in Parts I and II of the Second Schedule;

Second
Schedule.

“port office” means any office in a port where rates and charges may be paid to the Authority;

“Managing Director” means the Managing Director of the Authority appointed under section 5;

“master” in relation to a ship, means any person other than a pilot having charge of that ship;

“perishable goods” means goods liable to rapid deterioration and, in particular, means fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, birds, poultry, small animals and any other thing which the Managing Director may by notice in the Gazette declare to be perishable goods;

“the purposes of the Authority” means any purpose necessary or desirable for the performance of the services, or the provision of any facilities, which the Authority is authorized to perform or provide under this Act;

“rates” includes all sums which may, under the provisions of this Act, be levied for, or in respect of, any ship or port or the handling or warehousing of goods by the Authority or for, or in respect of, any other service performed or facility provided by the Authority;

“ship” includes any vessel, tug, lighter, or boat of any kind whatsoever whether propelled by steam or otherwise or towed;

“Tariff Book” means the tariff book published by the Authority under section 30;

“vehicle” means any vehicle other than a ship;

“warehouse” includes any building, place, wagon, ship or vehicle when used by the Authority for the purpose of warehousing or depositing goods;

“waterworks” includes boreholes, wells, reservoirs, dams, weirs, tanks, cisterns, conduits, aqueducts, pipes, hydrants, taps, pumps, engines and all other structures, plant and appliances used or constructed for obtaining, storing, purifying, conveying, distributing, measuring or regulating water;

(2) In this Act and in all documents issued under this Act, unless the context otherwise requires—

- (a) “premises occupied by the Authority” means premises vested in or placed at the disposal of the Authority for the purposes of the Authority;
- (b) “property of the Authority” means property vested in the Authority for the purposes of the Authority;
- (c) “the possession of the Authority” means the possession by any employee in the course of his duty;
- (d) “accepted by the Authority” means accepted by an employee or agent of the Authority for handling or warehousing by the Authority in accordance with the provisions of this Act:

Provided that acceptance shall not be deemed to have been affected until a document of receipt in respect of the goods accepted, signed by an authorized employee or agent of the Authority, has been issued;

- (e) “operated by the Authority” means operated by the Authority in accordance with the provisions of this Act;
 - (f) “vehicle of the Authority” includes vehicles operated on behalf of the Authority.
- (3) This Act shall not apply to inland waterways ports run by the Kenya Railways Corporation.

PART II—ESTABLISHMENT OF THE AUTHORITY

Establishment and incorporation of the Kenya Ports Authority.

3. (1) There shall be established an Authority to be known as the Kenya Ports Authority, in this Act referred to as the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Authority.

(3) The headquarters of the Authority shall be at Mombasa.

PART III—MANAGEMENT OF THE AUTHORITY

4. There shall be a board of directors of the Authority, in this Act referred to as the Board, which shall consist of—
- Board of Directors.
- (a) a Chairman of the Board who shall be appointed by the Minister;
 - (b) the Managing Director;
 - (c) the Permanent Secretary of the Ministry for the time being responsible for ports;
 - (d) the Permanent Secretary to the Treasury;
 - (e) the Managing Director of the Kenya Railways Corporation; and
 - (f) not more than two persons, not being public officers or employees of the Authority, to be appointed by the Minister by virtue of their knowledge of shipping and port operation or of commerce, industry, finance or administration generally.

5. (1) There shall be a Managing Director who shall be appointed by the Minister after consultation with the Board and whose terms and conditions of service shall be determined by the Minister in the instrument of appointment or otherwise in writing from time to time.

Managing Director.

(2) Subject to this Act, the control and executive management of the Authority shall be vested in the Managing Director.

6. The Authority shall pay to the directors such remuneration, fees or allowances for expenses as may be determined by the Minister:

Remuneration of Directors of the Board.

Provided that no remuneration, fees or allowances shall be paid to any director who is a public officer in receipt of a salary.

7. The First Schedule shall have effect with respect to the constitution or organization of the Board and otherwise in relation thereto.

Further provision as to the Board.
First Schedule.

PART IV—FUNCTIONS AND POWERS OF THE AUTHORITY, ETC.

8. (1) It shall be the duty of the Board to provide by means of the undertaking of the Authority a co-ordinated system of ports and facilities relating thereto.

General duty of the Board.

(2) The performance of the duty referred to in subsection (1) shall include a general duty to secure—

- (a) the fullest development, consistent with economy, of the undertaking of the Authority;
- (b) that the undertaking of the Authority is operated efficiently, economically and with due regard to safety;
- (c) that the financial administration of the Authority is conducted in accordance with Part V;
- (d) that the Authority provides all reasonable facilities for handling and warehousing of cargo and other goods; and
- (e) that no particular person or body is given any undue preference or is subjected to any undue disadvantage.

Powers of
Managing
Director.

9. Subject to the directions of the Board, the Managing Director may—

- (a) establish and operate port services and facilities relating thereto;
- (b) approve recurrent expenditure within limits determined by the Board;
- (c) approve any individual capital work of which the estimated cost does not exceed four hundred thousand shillings or such other sum as the Minister may, by order, determine;
- (d) approve any alteration in salaries, wages or other terms and conditions of service of employees not involving expenditure in excess of the limits determined by the Board within its powers under paragraph (b) of section 10;
- (e) approve any alteration in the establishment of the Authority other than an alteration involving a major reorganization or a substantial reduction in the number of employees; and
- (f) allocate functions to employees.

Powers of
the Board.

10. In the exercise of its duty under section 8, and subject to any directions of a general nature which may be given to it by the Minister, the Board may—

- (a) approve any minor alteration in the tariffs, rates, fares and other charges;

- (b) approve any minor alteration in salaries, wages or other terms and conditions of service of employees of the Authority;
- (c) approve any individual capital work for the purpose of the Authority, not included within a programme of works approved by the Minister, of which the estimated cost does not exceed five million shillings or such other sum as the Minister may, from time to time, by order determine;
- (d) establish, from among its members, committees for the purposes of the Authority and delegate functions thereto;
- (e) consider legislative proposals and recommend their enactment to the Minister;
- (f) approve any alteration in the organization or establishment of the Authority other than an alteration referred to in section 9 (e); and
- (g) give directions to the Managing Director.

11. The Minister may—

- (a) give directions of a general nature to the Board relating to the operation of the undertaking of the Authority;
- (b) in consultation with the Minister responsible for finance, approve any major alterations in the tariffs, rates, fares and other charges made for the services provided by the Authority;
- (c) approve any major alterations in salaries, wages or other terms and conditions of service of employees;
- (d) in consultation with the Minister responsible for finance, approve any individual capital work, for the purposes of the Authority, of which the estimated cost exceeds five million shillings;
- (e) give particular directions to the Board concerning any matter involving agreement with, or the interest of, any other country; and
- (f) determine the limits of minor alterations for the purposes of paragraphs (a) and (b) of section 10.

Powers of the Minister.

12. (1) The Authority shall have power—

- (a) to maintain, operate, improve and regulate the ports set out in the Second Schedule;

Powers of the Authority as a statutory body.

- (b) to construct, operate and maintain beacons and other navigational aids;
- (c) to construct new ports;
- (d) to carry on the business of stevedore, wharfinger or lighterman;
- (e) to act as warehousemen and to store goods whether or not such goods have been or are to be handled as cargo or carried by the Authority;
- (f) to the extent determined by the Minister, to act as carriers of goods or passengers by land or sea;
- (g) to consign goods on behalf of other persons to any places whether within Kenya or elsewhere;
- (h) to provide such amenities or facilities for persons making use of the services performed or the facilities provided by the Authority as may appear to the Board necessary or desirable.

(2) Subject to this Act, the powers conferred by subsection (1) shall include all such powers as are necessary or advantageous and proper for the purposes of the Authority and in particular, without prejudice to the generality of the foregoing, shall include power—

- (a) to construct any wharf, pier, landing stage, road, bridge, building or any other necessary or desirable works required for the purposes of the Authority;
- (b) to clean, deepen, improve or alter any port or the approaches thereto;
- (c) to provide and use, within ports and elsewhere, ships—
 - (i) for the towage, protection, or salvage of life or property;
 - (ii) for the carriage of goods and passengers;
- (d) to appoint, license and manage pilots;
- (e) to control the erection and use of wharves in any port or the approaches thereto;
- (f) to operate trains and road transport;
- (g) to carry on any business necessary or desirable to be carried on for the purposes of the Authority and to act as agent for the Government in the provision of any agreed functions;

- (h) to acquire, construct, manufacture, maintain, or repair, any waterworks or electric generating plant or any other works, plant or apparatus necessary or desirable for the supply or transmission of water or of electric energy to any person;
- (i) to determine, impose and levy rates, fares, charges, dues or fees for any service performed by the Authority or for the use by any person of the facilities provided by the Authority or for the grant to any person of a licence, permit or certificate;
- (j) to prohibit, control or regulate—
- (i) the use by any person of the services performed, or the facilities provided, by the Authority; or
 - (ii) the presence of any person, ship, vehicle or goods within any port or on any premises occupied by the Authority;
- (k) to sell, let or otherwise dispose of any property, movable or immovable, which in the opinion of the Board is not necessary for the purposes of the Authority:
- Provided that the Authority shall not so sell, let or otherwise dispose of any building or land placed at its disposal by the Government otherwise than with the consent of, and under conditions agreed by, the Government;
- (l) to provide houses and other accommodation for employees;
- (m) to act as agent for any person engaged, whether within Kenya or elsewhere, in the performance of services, or the provision of facilities, of a kind similar or complementary to those performed or provided by the Authority;
- (n) to enter into agreements with any person—
- (i) for the supply, construction, manufacture, maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the purposes of the Authority;

- (ii) for the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Authority;
- (iii) for the payment, collection or apportionment of any fares, rates, charges or other receipts arising out of the performance or the provision by that person of any such services or facilities and, for such purposes, to finance or assist in financing the activities of the person whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interest or the retention of any stocks, shares or securities or otherwise;
- (o) to enter into an agreement with any person carrying on business as a carrier of passengers or goods, whether within Kenya or elsewhere, providing for the carriage of passengers or goods by or on behalf of the Authority and of that person under one contract or at a through fare or rate;
- (p) to hold shares in any corporation and to establish or acquire any subsidiary corporation; and
- (q) to enter into any arrangement with the Kenya Railways Corporation which, in the opinion of the Board, will promote or secure the provision, or improved provision, of any service or facilities which they may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to—
 - (i) the use by either party of the facilities or equipment maintained by the other;
 - (ii) the temporary employment of staff of one party by the other on secondment or otherwise;
 - (iii) the charges made in respect of the use of any service or facility to which the arrangement or agreement relates;
 - (iv) the financing of any project by either or both parties;

- (v) research connected with any existing service or facility provided by either party or in relation to any service or facility under consideration; and
- (vi) the joinder in the arrangement or agreement by any other person.

(3) For the avoidance of doubt, it is hereby declared that subsections (1) and (2) relate only to the capacity of the Authority as a statutory authority and nothing in those provisions shall be construed as authorizing the disregard by the Authority of any law.

(4) The powers conferred on the Authority under this section to construct or improve any port shall empower the construction or execution of any works necessary thereto on land vested in the Authority or on land placed at its disposal by the Government for the purposes of the Authority or, in the case of land not so vested in, or placed at the disposal of, the Authority, only with the agreement of the owner of the land on which such works are to be constructed or executed, and where any land is required by the Authority for the purposes of the Authority, the Authority shall proceed in accordance with section 13.

13. (1) Where land is required by the Authority for the purposes of the Authority, it may either—

- (a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof:

Provided that, notwithstanding the provisions of section 6 of the Land Control Act, the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or

- (b) if such land is public land, or if the Authority is unable to acquire it by agreement in accordance with paragraph (a) of this subsection, notify the Minister responsible for public lands that the land specified in the notice is required for the purposes of the Authority.

Acquisition of land for the purposes of the Authority.

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(2) When notice has been given under subsection (1) (b), then—

(a) if the land is public land, the Minister responsible for lands may, in his discretion and upon such terms and conditions as he may think fit, place such land at the disposal of the Authority for the purposes of the Authority;

(b) if the land is not public land, any provision in any written law which empowers the President or the Minister responsible for lands to acquire or direct the acquisition of such land for any specific purpose shall be deemed to include a power enabling the President or the Minister responsible for lands to acquire or direct the acquisition of such land for the purposes of the Authority.

(3) Where any compensation is payable to any person in respect of any land, specified in the notice given under subsection (1) (b), acquired by the President or the Minister responsible for lands, and such land after being so acquired is placed at the disposal of the Authority in accordance with subsection (2) (a), the amount of compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Authority.

(4) The Authority may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without, consideration:

Provided that land which was public land or trust land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the Minister responsible for lands shall consent and so direct.

(5) The provisions of subsection (4) shall apply to land vested in the Authority by any written law, including this Act, as well as land conveyed to it or otherwise placed at its disposal.

(6) In this section—

“public land” means all public land in Kenya, excluding trust land, which is vested in the Government for public purposes or for the purposes of the Authority or its predecessors in title and for the purposes of the proviso to subsection (4) includes land previously so vested;

“trust land” means land which is or which was previously vested in a County Council by virtue of section 115 of the Constitution or any previous written law.

14. (1) Any authorized employee of the Authority may, for the purposes of the Authority, enter upon any land and survey such land or any portion thereof.

Power to enter and survey land

(2) Where any damage to land is caused, by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation therefor in accordance with this Act.

15. (1) Any authorized employee of the Authority may for the purposes of preventing the occurrence of any accident, preserving the safety of navigation or the safe operation of any service provided by the Authority, or repairing any damage caused by an accident, enter upon any land and—

Power to enter land to prevent accidents, etc.

(a) cut down or remove any tree or other obstruction, not being a building, which obscures the view of any beacon or other fixed signal which is likely to cause any obstruction or any danger to the safety of navigation or of any such service;

(b) execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident.

(2) If any tree or other obstruction cut down or removed under subsection (1) (a) came into existence subsequent to the erection of any beacon or fixed signal or to the service being provided at that place, no compensation shall be payable in respect of such entry, or the cutting down or removal of such tree or other obstruction.

(3) Where any person erects any building which obscures the view of any beacon or other fixed signal or is likely to cause any obstruction or any danger to navigation or to the operation of any service provided by the Authority, the Authority may, unless such person has previously obtained the approval of the Managing Director to the erection of such building or has modified it to the satisfaction of the Managing Director, apply to a judge of High Court for an order for the demolition or modification of such building or, as the case may require, for the payment to the Authority of the cost

incurred in resiting or replacing any fixed beacon, signalling or other equipment which is necessary to prevent such obstruction or danger and the court, at its discretion, may grant such order and may make such order as to the payment of compensation and costs as it thinks fit.

Power to enter land to alter position of pipes, etc.

16. (1) Subject to the provisions of this section the Authority, or any authorized employee, may, for the purposes of the Authority, enter upon any land and alter the position of any pipe for the supply of gas, oil, water or compressed air or the position of any electric, telephone or telegraphic wire or the position of any drain.

(2) Where the Authority intends to exercise any power under subsection (1) it shall give reasonable notice of its intention so to do to the authority or person having control of the pipe, water or drain and—

- (a) such authority or person may authorize a representative to superintend such work and may require the Authority to execute such work to the satisfaction of such representative;
- (b) the Authority shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, for the continuance of the telephone or telegraph communications or for the maintenance of the drainage, as the case may be, during the execution of such work.

(3) Where any damage is caused by reason of the exercise of the powers conferred by this section, the person suffering such damage shall be entitled to compensation therefor in accordance with this Act.

(4) This section shall not apply to any oil pipeline owned or operated by the Kenya Pipeline Company Limited.

Power to take water.

17. The Authority may, for its purposes, take any water from any natural watercourse subject—

- (a) if there is any law regulating the taking of any such water, to the provisions of that law; or
- (b) if there is no such law, to the approval of the Minister responsible for water development.

PART V—FINANCIAL PROVISIONS

18. (1) It shall be the duty of the Authority to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that, taking one year with another, its gross revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account including proper allocations to the general reserve and provision in respect of depreciation of capital assets, pension liabilities and interest and other provision for the repayment of loans and further to ensure that, taking one year with another, its net operating income is not less than sufficient to secure an annual return on the value of the net fixed assets in operation by the Authority of such a percentage as the Minister may, from time to time, direct.

Principles of operation.

(2) For the purposes of subsection (1)—

(a) “net operating income” shall be determined by subtracting from gross operating revenue all operating and administrative expenses including adequate provision for maintenance and depreciation but excluding interest and other charges on debt;

(b) “value of the net fixed assets in operation” shall be the gross value of such assets less the amount of accumulated depreciation shown in the statement of accounts of the Authority:

Provided that, if the amounts shown in such statements of accounts do not reflect a true measure of the value of the assets concerned because of currency revaluations, changes in prices or similar factors, the value of the fixed assets shall be adjusted adequately to reflect such currency revaluations, changes in prices or similar factors.

(3) In the exercise of its duty under subsection (1), the Authority may, subject to any direction of a general nature which may be given to the Board by the Minister responsible for finance, invest moneys standing to the credit of the Authority in such securities as the Board thinks fit.

19. (1) The Authority may borrow money by the issue of loan stock on such terms as may be approved by the Minister responsible for finance.

Borrowing powers.

(2) The Authority may otherwise borrow money or obtain credit in Kenya or abroad for its purposes with the concurrence of, and subject to such limitations as may be imposed by the Minister responsible for finance.

(3) Such stock issued under the provisions of subsection (1), and such moneys borrowed or credit obtained under the provisions of subsection (2), as the Minister responsible for finance shall approve for the purposes of this subsection, and all interest and other charges payable in respect of such stock, moneys or credit, shall, unless the instrument or note evidencing or supporting such borrowing shall otherwise provide, be charged upon all the property, undertaking and revenue of the Authority by operation of this section and without further charge or instrument.

(4) Any stock issued by the East African Harbours Corporation which, by virtue of any order made under subsection (4) of section 74, becomes the liability of the Authority shall, subject to the terms of such order, be deemed to be stock issued by the Authority and shall be held in the same right and on the same trusts and subject to the same powers, privileges, provisions and charges as those in, on or subject to which such stock was issued.

(5) Except as provided in this section, the Authority shall not give or execute any mortgage or charge over any of its property or assign its property by way of security for borrowed money.

PART VI—ACCOUNTS AND REPORTS

Annual
accounts.

20. (1) The Board shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Authority and shall ensure that within six months of the end of each financial year of the Authority or such longer period as the Minister may allow in any particular case, a statement of accounts of the Authority is prepared in accordance with the best commercial standards and any directions which may be issued by the Minister, and transmitted to the Controller and Auditor-General.

(2) The accounts of the Authority and of all officers and authorities of the Authority shall be audited by the Controller and Auditor-General and for that purpose the Controller and

Auditor-General and any person authorized by him in that behalf, whether or not a public officer, shall have access to all books, records, returns and other documents relating to those accounts and upon receipt of a statement of accounts transmitted to him under subsection (1) the Controller and Auditor-General shall examine it, certify it and report on it and shall return the statement with his certificate and report to the Board within sufficient time to enable compliance with subsection (3).

(3) Upon the return of the statement of accounts certified by the Controller and Auditor-General, and the receipt of his report thereon, the Board shall immediately transmit that statement of accounts and report to the Minister who shall cause the same to be presented to Parliament without delay and in any event before the expiry of nine months from the end of the financial year to which they relate or such longer period as the Minister may in any particular case allow.

21. (1) The Board shall, within nine months after the end of each financial year, prepare a report upon the operation of the Authority during that year and shall transmit such report to the Minister who shall cause the same to be presented to Parliament together with the statement of accounts and report of the Controller and Auditor-General referred to in section 20.

Annual report
and financial
year.

(2) The financial year of the Authority shall run from the 1st January to the 31st December in each year:

Provided that the first financial year shall be from the commencement of this Act to the 31st December, 1978.

PART VII—RESPONSIBILITY AS A WAREHOUSEMAN

22. Subject to this Act or any contract, the Authority shall not be liable for the loss, misdelivery or detention of, or damage to, goods delivered to, or in the custody of the Authority except where such loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the Authority or any employee:

Liability
for loss of
goods, etc.

Provided that:

(i) The authority shall in no case be liable for such loss, misdelivery, detention or damage arising from—

(a) act of God;

- (b) act of war;
 - (c) seizure under legal process;
 - (d) act or order of the Government;
 - (e) act or omission of the consignor, consignee, depositor or of the servant or agent of any such person;
 - (f) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause whether partial or general;
 - (g) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
 - (h) deficiency in the contents of unbroken packages; or
 - (i) insufficient or improper packing or leakage from defective drums, containers or packages;
- (ii) the liability of the Authority for loss, misdelivery or detention of or damage to goods accepted by the Authority for warehousing in relation to which an account false in any material particular has been given under section 25 shall not in any case exceed the value of the goods as calculated in accordance with the description contained in such false account.

Limitation of liability for loss, etc., of goods deposited in cloakroom.

23. (1) The liability of the Authority for any loss or misdelivery of, damage to, or delay in the delivery of any goods deposited in a cloakroom shall not in any case exceed two hundred shillings unless at the time of such deposit the person depositing the goods declared that the value thereof exceeded that amount and paid, or agreed to pay, such additional charge as may be determined in the Tariff Book in respect of such excess value; and thereupon the liability of the Authority shall not in any case exceed such declared value.

(2) For the purpose of this section the expression "cloak-room" means any place provided by the Authority as a facility for the temporary deposit of goods by persons using the services provided by the Authority.

PART VIII—OPERATION OF THE AUTHORITY

Goods

24. (1) The Authority may, subject to this Act—

- (a) determine the conditions upon which goods shall be handled or warehoused by the Authority and different conditions may be determined in different cases, and such conditions shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein;
- (b) determine the rates and charges for the handling or warehousing of goods and for any other service or facility; and such rates and charges shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein.

(2) Notwithstanding subsection (1) the Authority may, in relation to the special circumstances or any particular case, determine conditions, rates and charges applicable to such case for the handling or warehousing of goods by the Authority or for any other service or facility and such conditions, rates and charges shall have immediate effect in relation to such cases:

Provided that—

- (i) such conditions, rates and charges shall, if they are of a continuing nature, be available to the public on request;
- (ii) the determination of such conditions, rates and charges shall not of itself constitute an undue preference under section 8 (2) (e).

25. (1) The consignor of, or the person tendering, any goods to the Authority for handling or warehousing, and, on request by an authorized employee, the consignee of, or person receiving, any goods which have been handled or warehoused by the Authority shall deliver to an authorized employee an account in writing signed by such consignor, person or consignee, as the case may be, containing such description of the goods as may be sufficient to enable such

Authority may determine conditions for handling and warehousing of goods.

Description, etc., of goods to be delivered.

employee to determine the rates and charges payable in respect of the handling or warehousing thereof by the Authority.

(2) Any authorized employee may, for the purpose of checking any account delivered under subsection (1), require such consignor, person or consignee, as the case may be, to permit him to examine such goods.

(3) If such consignor, person or consignee fails to deliver the account referred to in subsection (1) or to permit such goods to be examined as required under subsection (2), an authorized employee may refuse to accept the goods for such handling or warehousing unless in respect thereof a rate or charge not exceeding the highest rate or charge payable for any class of goods is paid; or in respect of goods which have been handled or warehoused the Authority may refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate or charge is paid.

(4) If, in respect of goods which have been handled or warehoused by the Authority, an account delivered under subsection (1) is found to be false in any material particular with respect to the description of any goods to which it purports to relate, an authorized employee may refuse to deliver such goods unless, in respect of the handling or warehousing of such goods, a rate or charge not exceeding double the highest rate or charge payable for any class of goods is paid.

Goods may be
sold to pay
rates, etc.

26. (1) Where any person fails to pay on demand made by an authorized employee any rate or charge due from him in respect of any goods, the Authority may detain the whole or any part of the goods or, if they have been removed from the possession of the Authority, any other goods of such person which may be in, or may thereafter come into, the possession of the Authority.

(2) Where any goods have been detained under subsection (1), the Authority may, if the rate or charge due is not sooner paid, sell by public auction sufficient of the goods to produce the rate or charge so owing and all the expenses of such detention and sale; and in the case of—

(a) perishable goods, such auction may take place at once; or

(b) any other goods, such auction may take place on the expiration of at least fifteen days' notice published in one or more local newspapers, of the intended auction:

Provided that no imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of the customs law.

(3) The Authority may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the rate or charge due and the expenses of the detention and sale; and shall deliver the balance, if any, of such proceeds together with such of the goods, if any, as remain unsold to the person appearing to the Managing Director to be entitled thereto:

Provided that if such person fails, after notice so to do, to remove within a reasonable time the goods, if any, remaining unsold, the Authority may sell such goods, and dispose of the proceeds of such sale in accordance with this section.

(4) Nothing in this section shall prejudice the right of the Authority to recover any such rate or charge, or any part thereof, by any other lawful means.

27. (1) Where any goods in the possession of the Authority are not claimed by the owner or any other person appearing to the Authority to be entitled thereto, the Authority shall, if such owner or person is known, take all reasonable steps to cause a notice to be served upon him requiring him to remove the goods.

Unclaimed
goods in
possession of
the Authority.

(2) If—

- (a) the owner of any goods in the possession of the Authority is not known and no person appears to be entitled thereto; or
- (b) the notice referred to in subsection (1) cannot for any reason be served; or
- (c) there has been a non-compliance with the provisions of any notice served under subsection (1),

the Authority may, within a reasonable time not being less (except in the case of perishable goods) than three months, sell the goods and dispose of the proceeds of sale thereof:

Provided that no imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of the customs law.

Indemnity
where goods
claimed by
two persons,
etc.

28. Where—

- (a) any goods, or the proceeds of the sale of any goods, are in the possession of the Authority and such goods, or proceeds, are claimed by two or more persons; or
- (b) any person claiming any goods in the possession of the Authority does not produce the documents showing that he is entitled to take delivery thereof,

the Authority may withhold delivery of such goods or proceeds until the person appearing to the Managing Director to be entitled thereto has given an indemnity to his satisfaction against the claim of any other person with respect to such goods or proceeds.

Dangerous or
offensive
goods, etc.

29. (1) No person shall tender to the Authority for handling or warehousing any dangerous or offensive goods or any goods which are likely to cause damage to any persons or property without giving notice of the nature of such goods to the employee to whom such goods are so tendered.

(2) An authorized employee may—

- (a) refuse to accept such goods for handling or warehousing or accept them only under, and in accordance with, any special provisions dealing with the handling or warehousing of any such goods;
- (b) require any such goods to be marked and packed in such manner as he may reasonably direct.

(3) Where any authorized employee has reason to believe that any goods to which this section applies are being handled or warehoused, or have been accepted for handling or warehousing, in contravention of subsections (1) or (2), he may examine such goods and if, on examination, they are found to be goods to which this section applies, he may order their removal from any vehicle or premises occupied by the Authority.

(4) Nothing in this section shall derogate from the provisions of any law in force relating to the possession or transport of explosives, petroleum, fire-arms or ammunition.

General

30. (1) The Authority shall cause to be prepared and published in such manner as it may think fit—

(a) a Tariff Book containing all matters which under this Act are required to be contained therein together with such other matters as, under this Act, may be determined by the Authority and such other matters as the Authority may think fit;

(b) such other books and other documents as under this Act are required to be kept.

(2) There shall be available for public inspection at every port office a copy of the Tariff Book containing all amendments for the time being in force.

Authority
to prepare
Tariff Book,
etc.

Accidents

31. Where any accident occurs in any port, then if that accident—

(a) is attended, or is of a kind usually attended, with loss of human life or with serious injury to any person or property;

(b) involves any collision between ships or vehicles carrying passengers;

(c) involves the derailment of any train, or any part thereof, carrying passengers;

(d) is of such other kind as the Minister may specify in directions given to the Managing Director,

the Managing Director shall, as soon as practicable, give notice of the occurrence of such accident to the Board and, in the case of any such accident involving injury to any person, also to the police station or administrative authority nearest to the scene of such accident.

Accidents to
be reported.

32. (1) The Board may order such inquiry into any accident which occurs in any port as it may think fit.

(2) The Board shall submit to the Minister a report of any accident of a kind referred to in section 31 setting out *inter alia* the probable cause of such accident and the steps, if any, which have been taken, or it has directed shall be taken, with a view to avoiding a repetition thereof.

(3) The Managing Director shall make to the Board a return, in such form and at such intervals as the Board may

The Board
may order
inquiry, etc.

direct, of all accidents occurring in any port whether or not any such accident is attended with injury to any person.

Shipping
casualties.

33. Sections 31 and 32 shall not apply where, in respect of any shipping casualty under any law relating to merchant shipping, a formal investigation is, under any such law, held.

PART IX—CONTROL OF PORTS

Port limits.

34. The Minister may, by order, define the limits of any port.

Power to amend
the Second
Schedule.

35. The Minister may, by order, amend the provisions of the Second Schedule.

Compulsory
pilotage
ports.

36. (1) The ports specified in Part II of the Second Schedule shall be compulsory pilotage ports and all ships, other than excepted ships, navigating, whether by entering, leaving or moving within the limits of a compulsory pilotage port, shall be under the pilotage of a pilot.

(2) For the purposes of this section, the following ships shall be excepted ships—

- (a) ships owned or operated by the Government;
- (b) ships owned or operated by the Authority;
- (c) authorized ferries plying as such exclusively within the limits of a port;
- (d) ships of less than two hundred tons net register;
- (e) ships trading exclusively between ports in Kenya;
- (f) tugs, dredgers, barges or similar vessels whose ordinary course of navigation does not extend beyond the limits of the port.

(3) The Minister may, by notice in the Gazette, exempt from compulsory pilotage any class of ship either generally or in relation to any particular port.

(4) The Managing Director may exempt from compulsory pilotage any ship in any particular case.

(5) Where any port is a compulsory pilotage port the Minister may, by order, define the limits of such port for the purpose of compulsory pilotage.

(6) The Authority shall not be responsible for any loss or damage caused through the act, neglect or default of any pilot.

(7) The owner or master of a ship navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner as he would if pilotage were not compulsory.

37. No ship shall, without lawful excuse, embark or disembark any passenger or goods at any place other than a port:

Passengers, etc., to be embarked, etc., only at a port.

Provided that—

- (i) the Managing Director may authorize the master of any ship to embark passengers or goods at any place other than a port;
- (ii) nothing in this section shall apply to small boats carrying passengers or goods from any place within Kenya to any other place within Kenya.

38. The master of any ship arriving in a port shall, if required, produce to an authorized employee—

Master to supply information, etc.

- (a) the ship's register and the ship's papers;
- (b) a list of the crew;
- (c) a list of the passengers, if any, showing particulars of their sex and occupation;
- (d) a list showing the deaths, if any, which have occurred during the voyage;
- (e) a list showing the stowaways, if any, on the ship,

and shall also supply such other information in relation to the ship, passengers and cargo thereof, as such employee may require.

39. (1) There shall be levied upon every ship entering a port such port rates and charges as the Authority may determine and publish in the Tariff Book.

Port rates may be levied.

(2) At any port where there is a port office there shall be available for public inspection at such port office a notice specifying all port rates and charges applicable at that port.

40. (1) Where any port charges are owing in respect of any ship, an authorized employee may arrest the ship and the tackle, apparel and furniture thereof and may detain it until the amount of such charges is paid.

Power to arrest ship for port charges.

(2) Where, after such arrest, any such port charges remain unpaid for a period of seven days, an authorized employee may cause the ship and the tackle, apparel and furniture thereof arrested, to be sold and out of the proceeds of such sale he may retain the amount of any port charges which are owing and the expenses of the detention and sale thereof, and shall deliver the balance, if any, to the person responsible, under this Act, for the payment of such port charges.

(3) Where any ship, in respect of which port charges are owing and have not been secured to the satisfaction of an authorized employee leaves any port and enters or is in any other port then such ship may be dealt with as if the port charges so owing and secured were port charges owing in respect of such other port.

41. The proper officer of customs of any port may refuse to give the master of any ship in such port outward clearance until—

- (a) all port rates and charges due in respect of the ship, and all penalties and expenses to which the ship and her master are liable under this Act, have been paid or secured to the satisfaction of an authorized employee; and
- (b) he has received a certificate from an authorized employee stating that the master has complied with the provisions of this Act.

42. (1) An authorized employee may—

- (a) remove any obstruction to a port or its approaches or any boat, timber, raft or other thing floating in a port which endangers or obstructs, or is likely to endanger or obstruct, the free navigation of the port or the use of any wharf or dock therein;
- (b) in case of urgent necessity, take any action in a port which in his opinion may be necessary to prevent any danger to life or shipping;
- (c) enter upon any ship or into any building in a port if it is necessary for him so to do in the performance of any duty under this Act or if he has reasonable grounds for believing that an offence against this Act has been, or is about to be, committed therein.

Refusal of
outward
clearance.

Powers of
authorized
employee in
relation to
a port.

(2) The owner of any thing removed by an authorized employee under the provisions of paragraph (a) of subsection (1) shall, without prejudice to any other action which may be taken against him, be liable to pay the reasonable expenses of such removal; and such thing may be detained by such employee until such expenses are paid.

(3) Where any thing is removed under the provisions of paragraph (a) of subsection (1) and the expenses of removal have not been paid within seven days of such removal, the Authority may sell such thing by public auction and may out of the proceeds of sale retain the expenses of such removal, detention and sale and shall deliver the balance, if any, to the person appearing to the Managing Director entitled thereto.

(4) The provisions of this section are in addition to, and not in derogation of, the provisions of any law relating to wreck.

43. (1) A health officer may board any ship in a port and—

Powers of health officers in a port.

- (a) medically examine any person therein;
- (b) inspect the provisions, medicines and accommodation therein;
- (c) require the master to produce the log-book and any other documents which such health officer may think necessary for the purpose of ascertaining the state of health of persons therein and the master shall produce such log-book or documents;
- (d) question any person therein for the purpose of ascertaining the state of health of such person;
- (e) prohibit any person therein who appears to be infected with, or who has been exposed to the risk of infection from, any infectious or contagious disease from leaving such ship or cause any such person to be landed and detained in any hospital or quarantine station.

(2) In this section the expression "health officer" means a medical practitioner appointed under any law to discharge the duties of a health officer at a port or such other person

as may be deputed to perform port health duties by the Port Health Officer.

Authority may retain goods until freight, etc., paid.

44. (1) Where the master of a ship from which any goods have been landed at a port and accepted by the Authority for handling or warehousing, or for delivery to the consignee, notifies the Managing Director in writing that freight or other charges, of the amount specified in the notice, remain unpaid in respect of the goods, the Authority may retain the goods and refuse delivery thereof to the consignee or any other person until—

- (a) the production of a receipt for, or a release from, the payment of such amount signed, or purporting to be signed, by or on behalf of the ship owner; or
- (b) payment of such amount, together with any rates, charges and duties due in respect of such goods has been made by the person entitled to take delivery thereof.

(2) Where the Authority delivers any goods in respect of which a notice has been given under subsection (1) to a person producing such receipt or release or making such payment as is referred to in that subsection, the Authority shall be freed from all liability to any person in respect of the goods.

(3) The Authority shall be entitled to such charges as may be determined under this Act in respect of the custody of any goods delivered to it in accordance with this section and may do all such reasonable acts and incur such reasonable expenses as are necessary for the proper custody and preservation of the goods and shall have a lien on the goods for such charges and any other expenses so incurred.

(4) Nothing in this section shall be construed as requiring the Authority to take into the custody of the Authority any goods which would not otherwise be receivable by the Authority under the provisions of this Act or as requiring the Authority to inquire into the validity of any claim for freight or any other charges made in any notice given by any master under subsection (1).

Liability for demurrage.

45. The Authority shall not be liable for any demurrage which may occur or be due on any ship howsoever such demurrage may have been caused.

46. The master of a ship shall be responsible for the compliance in respect of such ship with the provisions of this Act and, in the event of a contravention thereof, may be proceeded against and held responsible for such contravention.

Master responsible for contravention of Act, etc., in respect of ship.

47. The Authority shall, in every port, maintain for the inspection of the master of any ship arriving at such port a copy of this Act, any port regulations made thereunder and of any law relating to quarantine.

Act to be available to master.

Major offences.

PART X—PROVISIONS RELATING TO OFFENCES

48. Any person who unlawfully—

(a) does any act which obstructs, or might obstruct, the working of any equipment or vehicle of the Authority used in the operation of a port and which endangers, or might endanger, the life of any person therein; or

(b) damages or in any way interferes with any ship, vehicle, signal, points, rail, sleeper, lighthouse, buoy, mark, beacon or other property of the Authority in such a manner as to endanger, or as might endanger, the life of any person,

Minor offences

shall be guilty of an offence and liable to imprisonment for a term not exceeding ten years.

49. Any person who—

(a) not being specifically authorized in that behalf or an employee, passenger or agent of the Authority—

(i) is found during the hours of darkness on any premises occupied by the Authority;

(ii) is found in any area designated by the Authority as dangerous by the erection of a notice to that effect; or

(iii) refuses to leave premises occupied by the Authority or any ship or vehicle thereof, after being lawfully warned to do so by an employee or police officer;

- (b) being on any premises occupied by the Authority, or any ship or vehicle of Authority—
- (i) refuses when called upon by an employee or police officer to give his name and address or gives a false name or address for the purpose of avoiding prosecution;
 - (ii) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person;
 - (iii) discharges any firearm or does anything which may cause injury to any person on such premises or upon such ship or vehicle;
 - (iv) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language;
 - (v) without lawful excuse contravenes any lawful direction given by any employee;
 - (vi) save with the express permission of the Managing Director, sells or exposes for sale any article or touts, applies for or solicits custom of any description; or
 - (vii) smokes in any part of such premises, ship or vehicle bearing a notice that smoking is not permitted in that part;
- (c) writes, draws or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any premises occupied by the Authority or upon any ship or vehicle of the Authority;
- (d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by Authority or upon any ship or vehicle of the Authority;
- (e) damages or, without lawful excuse, interferes with any property of the Authority;
- (f) without lawful excuse, does any act which obstructs or is likely to obstruct, the free navigation of any port or the use of any wharf, pier, landing stage or dock therein;
- (g) without lawful excuse, enters or leaves any ship or vehicle of the Authority or any train within premises

occupied by Authority while it is in motion or elsewhere than at the place appointed by the Authority for passengers to enter to leave, or opens any outer door of any train while it is in motion;

- (h) being a driver or conductor of any vehicle, disobeys while upon premises occupied by the Authority any reasonable direction given to him in respect of such vehicle by any police officer or, not being an employee disobeys any such direction given by an authorized employee;
- (i) in the absence of a gate-keeper, omits to shut and fasten, if any form of fastener is provided, any gate on any railway within premises belonging to the Authority, as soon as such person or any animal, vehicle or other thing under his charge has passed through such gate;
- (j) knowing or having reason to believe that a train is approaching, or without having exercised due care to ascertain whether a train is approaching, opens any gate, chain or bar set up on either side of a railway or drives any animal, vehicle or other thing on to or across such railway;
- (k) fails to deliver at the earliest possible opportunity to an authorized employee any property which there is reason to believe has been lost, forgotten or found on any premises occupied by the Authority or any ship or vehicle of the Authority;
- (l) wilfully obstructs or impedes an employee in the discharge of his duties;
- (m) gives or offers to any employee any money or any thing of value for the purpose of avoiding payment of any sum due to the Authority;
- (n) unlawfully removes any property of the Authority;
- (o) being an employee, receives from any passenger or from any other person delivering goods to the Authority for any of the purposes of the Authority or from any other person making use of the facilities provided by the Authority, any amount of money, and who fails within a reasonable time, not exceeding half an hour, to issue a receipt in respect of such amount of money;

(p) travels, without the permission of an authorized employee, in or upon any part of a ship or vehicle of the Authority other than the part ordinarily provided for passengers during travel;

(q) contravenes any direction given by a health officer under the provisions of section 43 or refuses to answer any question put to him under the provisions of that section or gives in reply thereto any information which is false in a material particular,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

False
returns.

50. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorized to be made for the purposes of the Authority under this Act shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Unlawfully
transporting
dangerous
goods

51. (1) Any person who, in contravention of the provisions of section 29, delivers any goods to which that section applies to the Authority for handling or warehousing shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(2) Any person who is convicted of an offence under this section shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so delivered to the Authority for handling or warehousing; and the court which convicts such offender may order him to pay the amount of any such loss, injury or damage to the person suffering it and in default of such payment may impose a further term of imprisonment not exceeding six months.

Offences by
master of
vessel.

52. Any master of a ship who contravenes, or permits to be contravened, any of the provisions of section 37, 38 or 43 (1) or produces any document or gives any information

which is false in any material particular shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

53. If any ship is navigated in circumstances in which pilotage is compulsory and such ship is not under the pilotage of a pilot, the master thereof shall be guilty of an offence and liable to a fine not exceeding three thousand shillings.

Navigating
without
pilot in
compulsory
pilotage port.

54. Any employee who, while on duty, endangers the safety of any person—

Employee
endangering
safety.

- (a) by contravening any of the provisions of this Act;
- (b) by contravening any lawful order, direction or rule given to such employee or made in respect of his service;
- (c) by being under the influence of alcohol or drugs; or
- (d) by any rash or negligent act,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

55. Any employee who, with intent to defraud, demands, solicits or receives from any person delivering goods to the Authority for handling or warehousing or from any person making use of the facilities provided by the Authority, any greater or lesser amount than he should demand or receive, or any other thing of value, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Employee
demanding
improper
amount.

56. (1) Where the safe operation of any port or any service ancillary thereto, would be endangered by the immediate arrest, whether with or without a warrant, of any employee thereof, the police officer whose duty it is to make such arrest shall—

Arrest of
employee.

- (a) request the officer in charge of such port to relieve such employee from his duties as soon as practicable; and
- (b) refrain from arresting such employee until he is so relieved and shall, until he is so relieved, take all necessary steps to ensure that such employee does not escape,

(2) Where any request is made to the officer in charge of a port under this section, it shall be his duty to relieve the employee in respect of whom the request is made with the least possible delay.

Power of
arrest,
removal and
place of
trial.

57. (1) Any person who commits any offence mentioned in section 48, 49 or 54, may be arrested without warrant by any authorized employee or police officer and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or to commit him for trial.

(2) Any person who commits any offence against this Act, other than an offence mentioned in subsection (1), may be arrested without warrant by any authorized employee or police officer if—

(a) there is reason to believe that such person will abscond; or

(b) he refuses on demand to give his name and address; or

(c) there is reason to believe that the name or address give by him is incorrect, and

shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or commit him for trial:

Provided that, save where there is reason to believe that such person will abscond, he shall, if his true name and address are ascertained, be released on his executing a bond without sureties for his appearance before a magistrate when required.

(3) Any person who commits any of the offences set out in section 49 or 51, may be required by any authorized employee or police officer to leave the premises occupied by the Authority or the ship or vehicle thereof, as the case may be, in which such person is at the time of the commission of the offence and to remove any goods therefrom; and if such person fails to comply with such requirement he or such goods may be removed therefrom with such force as may be reasonably necessary in the circumstances.

(4) Any person charged with any offence under this Act may be proceeded against, tried and punished in any place in which he may be in custody for that offence as if the offence

had been committed in such place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof be deemed to have been committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial and punishment of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried and punished.

PART XI—MISCELLANEOUS

Staff

58. (1) Subject to the provisions of this Act, the Board may appoint such employees as may be necessary for its efficient working under such terms and conditions, including conditions relating to discipline and dismissal, as it may think fit.

Appointment
of staff.

(2) The Managing Director may, by notice in writing authorize any employee appointed under this section to maintain order upon any premises occupied by the Authority, or in any port of the Authority, and any employee so authorized shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer.

(3) Every person who is employed in the undertaking of the East African Harbours Corporation and who becomes an employee of the Authority under section 74 shall be deemed to have been appointed to the service of the Authority in accordance with this section.

59. (1) Where any employee dies or leaves the service of the Authority and, at the time of such death or termination of service, any property of the Authority was in his possession or custody or any premises of the Authority were occupied by him, it shall be the duty of such employee or, in the event of his death, of the person in whose possession such property may be or who may be occupying such premises, as soon as practicable to deliver such property to the Authority or to vacate such premises, as the case may be.

Property of
the Authority
in custody of
employee, etc.

(2) If any property or premises to which subsection (1) applies is not delivered to the Authority or vacated, as the case may be, the Managing Director shall give notice in writing to the person appearing to him most likely to be in possession of such property or in occupation of such premises to deliver to the Authority such property or vacate such premises within such time as may be specified in the notice; and if such property is not so delivered or such premises are not so vacated within such time, the Managing Director may, without prejudice to any other means of recovery, apply to a magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property if found to the Authority or, as the case may require, to evict from such premises any person found therein.

Regulations relating to staff.

60. Subject to this Act, the Minister may make regulations generally relating to the conditions of service of employees and without prejudice to the generality of the foregoing, may make regulations relating to—

- (a) the grant of pensions, gratuities and other retiring allowances to employees and their dependants and the grant of gratuities to the estate or dependants of deceased employees;
- (b) the establishment and maintenance of sick funds, superannuation and provident funds and the contributions payable thereto and the benefits receivable therefrom;
- (c) the liability or otherwise to assignment, attachment, sequestration or other levy of sums payable to an employee or other persons under regulations made under this section.

Legal Provisions

Delegation and signification.

61. (1) The Board and the Managing Director may delegate to any person any of the powers vested in them under this Act and may grant to any person powers of attorney.

(2) Any act or decision, or notification thereof, of the Board or the Managing Director under this Act may be signified under the hand of an employee authorized for that purpose.

62. (1) In the exercise of the powers conferred by sections 12, 14, 15 and 16, the Authority shall do as little damage as possible; and, where any person suffers damage, no action or suit shall lie but he shall be entitled to such compensation therefor as may be agreed between him and the Authority or, in default of agreement, as may be determined by a single arbitrator appointed by the Chief Justice.

Compensation.

(2) Nothing in this section shall be construed as entitling any person to compensation—

- (a) for any damage suffered unless he would have been entitled thereto otherwise than under the provisions of this section; or
- (b) for any damage suffered as a result of the user of any works authorized under this Act unless such damage results from negligence in such user.

63. (1) The Authority shall not be liable for any loss or damage caused by fire from any engine upon any land occupied by the Authority to any building, or any property therein, if any part of such building is within two hundred feet of the rails of any railway.

Liability for damage caused by fire.

(2) Subject to subsection (1), the Authority shall be liable for any loss or damage caused by fire from any engine upon any land occupied by the Authority where there is negligence in the working or the construction of such engine.

(3) Subject to the provisions of subsection (1), the Authority shall be liable for any loss or damage caused by fire from any engine upon any land occupied by the Authority without proof of any such negligence as is mentioned in subsection (2) if—

- (a) such loss or damage is caused to the owner or occupier of any land which is contiguous with land occupied by the Authority; and
- (b) at the time of such loss or damage such owner or occupier maintained upon such land a firebreak in good condition; and
- (c) where no firebreak in good condition was maintained at that time by the Authority, such owner or occupier had given notice in writing of such fact to the

Managing Director at least one month prior to the occurrence of such loss or damage; and

(d) the owner or occupier suffering any such loss or damage gives to the Managing Director—

(i) within fourteen days of the occurrence of such loss or damage, notice in writing thereof; and

(ii) within twenty-one days of the occurrence of such loss or damage, particulars in writing of his claim and of the loss or damage suffered by him:

Provided that the maximum compensation payable by the Authority under the provisions of this subsection shall be two hundred thousand shillings.

Burden of proof.

64. In any proceedings against the Authority for compensation under the provisions of section 22, it shall not be necessary for the person claiming compensation to prove how such loss, misdelivery, detention, damage, delay or deviation was caused.

Notice of claim.

65. (1) No person shall be entitled to compensation for non-delivery of the whole of a consignment of goods, or for any separate package forming part of such consignment, accepted by the Authority for handling or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within six months of the date upon which such goods were accepted by the Authority.

(2) No person shall be entitled to compensation for any goods missing from a packed or unpacked consignment of, or for misdelivery of, or damage to, any goods accepted by the Authority for handling or warehousing unless—

(a) the Managing Director is notified of such fact in writing within four days of the date upon which such goods were delivered to the consignee or person entitled to take delivery thereof; and

(b) a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within one month of such date.

(3) Where the person claiming compensation proves that it was impracticable for him to notify the Managing Director, or give the Managing Director his claim, as set out in subsections (1) and (2) within the time specified therein and that such notification or claim was made or given in reasonable time nothing in those subsections shall prejudice the right of such person to obtain compensation.

66. Where any action or other legal proceeding is commenced against the Authority for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect— Limitation.

- (a) the action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent;
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of continuing injury or damage, within six months next after the cessation thereof.

67. Notwithstanding anything to the contrary in any law—

- (a) Where any judgment or order has been obtained against the Authority, no execution or attachment, or process in the nature thereof, shall be issued against the immovable property of the Authority or any of its vehicles, ferries, vessels or its other operating equipment, machinery, fixtures or fittings; but the Managing Director shall cause to be paid out of the revenue of the Authority such amount as may, by the judgment or order, be awarded against the Authority to the person entitled thereto;
- (b) no immovable property of the Authority or any of its vehicles, ferries, vessels or its other operating equipment, machinery, fixtures or fittings, shall be

Restriction on execution against property of Authority.

seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Managing Director.

Overcharge and undercharge.

68. (1) Where the amount paid for port or other charges to the Authority is found to be incorrect, then, if such amount is—

- (a) an overcharge, the person who paid the charge shall be entitled to a refund of the amount of the overcharge;
- (b) an undercharge, the Authority shall be entitled to collect the amount of the undercharge from the person who paid the charge:

Provided that such overcharge or undercharge shall not be refunded or collected, as the case may be, unless a notice in writing containing such particulars as may be reasonably necessary is given—

- (i) by the person claiming such overcharge to the Managing Director; or
- (ii) by the Managing Director, to the person against whom the amount of such undercharge is claimed,

within six months after such port or other charge was incurred so, however, that where such undercharge is caused by any information or description subsequently found to be incorrect, such period of six months shall commence from the discovery by the Authority of the correct information or description.

(2) Where the person claiming a refund under subsection (1) proves to the satisfaction of the Managing Director that it was impracticable for him to notify the Managing Director of his claim within the time specified in that subsection, and that such notification was made, or given, in reasonable time, nothing in that subsection shall prejudice the right of such person to obtain such refund.

Medical examination of persons claiming compensation.

69. Whenever any person claims compensation against the Authority in respect of any injury alleged to be suffered by him as a result of the operations of the Authority, any court or person having by law, or consent of the parties, authority to determine the claim may order that the person injured be examined by a medical practitioner named in the

order and may also make such order with respect to the costs of the examination as may be thought fit.

70. Any notice or other document required or authorized under this Act to be served on the Authority, or the Managing Director, may be served—

Service of notice, etc., on the Managing Director.

- (a) by delivery of the notice or other document to the Managing Director or to any authorized employee; or
- (b) by leaving it at the office of the Managing Director; or
- (c) by sending it by post to the Managing Director.

71. Any notice or other document required or authorized under this Act to be served on any person by the Authority or the Managing Director or any employee may be served—

Service of notice, etc., by the Managing Director.

- (a) by delivering it to that person; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by post addressed to that person at his usual or last known address.

Regulations

72. (1) The Minister may make regulations generally with respect to the services performed and the functions provided by the Authority, for the maintenance of order in any port or any ship or vehicle of the Authority and, without prejudice to the generality of the foregoing, with respect to—

Regulations.

- (a) the berths and stations to be occupied by ships and the removal of ships from one berth, station or anchorage to another and the time within which such removal shall be effected;
- (b) ships whilst taking on or discharging ballast or cargo or while bunkering or provisioning;
- (c) the anchoring, fastening, mooring and unmooring and warping of all ships and the use of warps, mooring buoys, chains and other moorings;
- (d) the use by ships of navigating lights or signals and of signal lights;
- (e) the prohibition of smoking in any portion of any ship, premises or vehicle or other property of the Authority;

- (f) the proper control, management, and protection of any ship, premises or vehicle or other property of the Authority;
- (g) the proper control and management of foreshores and ports, and the entrance thereof, the prevention and removal of obstructions therein and the regulation of any work, service or facility performed or provided thereat;
- (h) subject to the provisions of any law relating to merchant shipping,—
 - (i) the taking of measures for the prevention of ships from leaving any port if overloaded, improperly loaded, improperly found, insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety or if otherwise unseaworthy;
 - (ii) the examination and certification of masters, mates and engineers of ships engaged in local trade, tugs, dredgers, fishing boats and light craft and the charges and licences and fees payable in respect thereof;
 - (iii) the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats or other craft, the charges to be paid therefor and the number of passengers to be carried therein;
- (i) subject to the provisions of any law relating to merchant shipping, the protection of ships and cargoes and the removal, destruction, sale or abandonment of stranded ships and their cargoes and appurtenances which obstruct, or are likely to obstruct, the fairway of any port, the payment of expenses in connection therewith and the levy and recovery of rent for the right of a hulk, wreck or wreckage to lie in any port;
- (j) the examination, registration and licensing of pilots, the charges to be made by pilots and their duties and obligations and the limitation of their liability for negligent navigation; and
- (k) the licensing of ferrymen, boatmen, porters, landing agents, shipping agents, baggage and parcel agents

and contractors for the supply of water or ballast, or other persons concerned in port work, and the regulation of charges leviable by them, and their duties and the hours of their attendance at work.

(2) The power of the Minister to make regulations under this section in relation to any matter shall not be construed as derogating from any other power conferred upon him under this Act to make provision in relation to any such matter in any different manner.

**PART XII—APPLICATION OF LAWS OF THE COMMUNITY,
TRANSITIONAL, SAVINGS, ETC.**

73. (1) Part V of the East African Harbours Corporation Act shall cease to have the force of law in Kenya, except in relation to things done or falling to be done in respect of Kenya before the commencement of this Act.

Application of
Community
laws.

E.A. Cap. 19.

(2) All regulations and orders made or deemed to be made under section 64 or 76 or any other provision of the East African Harbours Corporation Act shall, insofar as they apply to Kenya or to the East African Harbours Corporation in Kenya or to any employee of the East African Harbours Corporation who continues in the service of the Authority under or by virtue of section 74, continue in force with necessary adaptations with respect to Kenya and to the Authority and to any employee thereof and shall be deemed for all purposes to have been made under this Act (both in respect of service occurring, or anything done or falling to be done, before as well as after the commencement of this Act) and may be modified or revoked by the Minister under the corresponding provision of this Act accordingly.

(3) The Minister may by order made and laid before the National Assembly within six months from the commencement of this Act adapt or modify any law of the Community relating to any subject or matter for which provision or to which reference is made in this Act.

(4) This Act shall apply notwithstanding any Community or other written law.

74. (1) Every contract made by or on behalf of the East African Harbours Corporation which at the commencement of this Act falls wholly to be performed within Kenya shall, whether or not in writing and whether or not otherwise assign-

Transitional
and savings.

able in law by either party, have effect on and after the commencement of this Act as if made by or on behalf of the Authority with the other party or parties thereto and as if references therein to the East African Harbours Corporation or any employee or authority thereof were references to the Authority or the corresponding employee or authority of the Authority.

(2) All the liabilities at law of the East African Harbours Corporation which at the commencement of this Act fall wholly to be discharged within Kenya shall thereupon by virtue of this section and without further assignment become the liabilities of the Authority.

(3) Notwithstanding anything in subsections (1) and (2), the liabilities of the East African Harbours Corporation in respect of any money borrowed by it under section 23 of the East African Harbours Corporation Act or in respect of any stock issued by that Corporation or charged upon its property shall not become a liability of the Authority under those subsections but may be dealt with by orders made under subsection (4).

(4) The Minister may, from time to time, after the commencement of this Act by order declare that any property of the East African Harbours Corporation or any liabilities or contracts of that Corporation to which subsections (1) and (2) do not apply, or any part or proportion thereof, shall, on a day to be specified in the order, become property, liabilities or contracts of the Authority subject to such terms or provisions as may be specified in the order, and all such orders shall take effect in Kenya according to their terms.

(5) All legal proceedings pending in Kenya by or against the East African Harbours Corporation in respect of any property, liabilities or contracts which become property, liabilities or contracts of the Authority under this section shall be deemed to continue or be continued by or against the Authority.

(6) The Tariff Book and all directions, orders, rules, authorizations and other things published, made, given or done by the East African Harbours Corporation under the East African Harbours Corporation Act, or any subsidiary legislation thereunder, subsisting at the commencement of this Act, shall on and after that day be deemed to have been published, given, made or done by the Authority.

(7) Every person who at the commencement of this Act is an employee of the East African Harbours Corporation resident and serving in Kenya (not then being under notice of dismissal or resignation) shall on that day and subject to this Act become an employee of the Authority on the same terms and conditions.

(8) Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document affecting or evidencing title to property, shall, without payment of fee or other charge and upon request made by or on behalf of the Authority, do all such things as are by law necessary to give final effect to the transfer of property mentioned in any order made under subsection (4).

(9) In this section liabilities and contracts which fall wholly to be discharged or performed in Kenya shall include liabilities and contracts in respect of—

- (a) goods or services received and utilized or due to be received and utilized in Kenya by the East African Harbours Corporation;
- (b) a cause of action in tort which arose in Kenya;
- (c) only such judgements obtained in Kenya before the commencement of this Act as arise out of liabilities or contracts within subsection (1) or (2).

(10) Notwithstanding the provisions of this section, subject to any order made by the Minister under subsection (4) and to the provisions of subsection (7), no liability arising out of any contract of employment entered into by the East African Harbours Corporation, with a person who is not a citizen of Kenya at the commencement of this Act, including any liability for any retirement or other benefits, shall become a liability of the Authority.

(11) Notwithstanding anything in this section or in any written law, it shall be lawful for the Authority pending the vesting of any property by orders made under subsection (4) to manage, operate, use and deal with the property of the East African Harbours Corporation in Kenya for any of the purposes of the Authority as if such property were the property of the Authority and as if the provisions of this Act

applied thereto, but subject to such provisions with regard to that user, including provisions for any financial adjustments or arrangements, as the Minister may from time to time direct; and the Authority shall have power, subject to any such direction of the Minister, to have recourse to any such property and income arising therefrom for the purpose of meeting any liabilities or obligations of the Authority or of the East African Harbours Corporation, whether or not liabilities or obligations assumed by the Authority under this section.

(12) The Minister may by order, from time to time, provide that any property, powers, liabilities, obligations, contracts or employees of, or proceedings by or against East African Cargo Handling Services Limited (a company incorporated in Kenya under the Companies Act and limited by shares, the whole of which shares are held by the East African Harbours Corporation or the East African Railways Corporation or persons on their behalf) as specified or described in the order, shall, on a day to be specified in the order, and by virtue of the order, become property, powers, liabilities, obligations, contracts or employees of, or proceedings by or against, the Authority or any company or companies then incorporated in Kenya of which the Authority is a member, upon such terms and conditions and subject to such adjustments and arrangements as may be prescribed in the order.

Cap. 486.

Contracts, etc.,
on behalf of
Authority
before
commencement
of this Act.

75. (1) Any contract made and any act or thing done or purported to be made or done or any act or thing omitted to be done in Kenya on behalf of or in the name of the Kenya Ports Authority prior to the incorporation of the Authority under this Act by any person acting in good faith and with due or apparent authority in that behalf shall be deemed to be a contract, act or thing made or done or an act or thing omitted to be done, as the case may be, by the Authority under this Act.

(2) The time for notices and claims under section 65 or 68 and the periods of limitation set out in section 66 shall, in respect of any claim, action or legal proceedings arising out of any of the matters covered by subsection (1), commence from the date of the commencement of this Act.

FIRST SCHEDULE

(s. 7)

PROVISIONS AS TO THE BOARD AND THE AUTHORITY

1. The Chairman and the directors appointed under paragraph (f) of section 4 shall, subject to the provisions of this Schedule, hold office for such period not exceeding three years and on such terms as may be determined in the instruments of their appointment, and shall be eligible for re-appointment. **Tenure of office.**
2. Each director mentioned in the preceding paragraph may— **Vacation of office.**
- (a) resign his office by notice to the Minister in writing at any time;
- (b) be removed from office by the Minister in writing if he—
- (i) has been absent from two consecutive meetings of the Board without permission of the Board; or
- (ii) is incapacitated by prolonged physical or mental illness; or
- (iii) is otherwise unable or unfit to discharge his functions.
3. Each of the directors mentioned in paragraphs (c), (d) and (e) of section 4 may, from time to time, depute in writing an officer of his Ministry or Corporation to attend meetings of the Board in his place and the officer so deputed shall at such meetings have the same powers as his principal. **Deputies.**
4. The Board shall meet for the despatch of business at such times and places as it shall appoint, or failing any such appointment, as the Chairman shall appoint: **Meetings.**
- Provided that the Board shall meet not less than six times in any financial year.
5. The Chairman or any three directors may, by not less than twenty-four hours' written notice to all other directors, summon a special meeting of the Board at the headquarters of the Authority at any time. **Special meetings.**
6. Except where a shorter period is appointed under paragraph 4 or 5 of this Schedule, notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as he shall have notified to the Authority from time to time: **Notice of meetings.**
- Provided that the failure of any director to receive such notice shall not invalidate any proceedings.
7. The quorum necessary for the transaction of business by the Board shall be four. **Quorum.**
8. The Chairman shall preside at meetings of the Board: **Chairman.**
- Provided that if he is not present at the start or at any time during a meeting, the directors present, if a quorum, may choose one of their number, other than the Managing Director, to act as chairman during the Chairman's absence from that meeting.

- Voting.** 9. Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:
- Provided that in the case of any equality of votes, the chairman of the meeting shall have a second or casting vote.
- Minutes.** 10. The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.
- Other procedures.** 11. Subject to the provisions of this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.
- Disclosure of interest.** 12. (1) If a director is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- The common seal.** 13. The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairman or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Authority authorized generally or specially by the Board to act for the purpose.
- Contracts and instruments.** 14. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specially authorized by it for that purpose.
- Proof of documents.** 15. Any document purporting to be a document duly executed or issued under the seal of the Authority or on behalf of the Authority shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

SECOND SCHEDULE

(ss. 2 and 36)

PART I

Funzi	Malindi
Kilifi	Mtwapa
Kiunga	Shimoni
Lamu	Vanga

PART II

Mombasa