

ORDINANCE No. XXXIII of 1938

Assented to in His Majesty's name this thirtieth day of November, 1938.

R. BROOKE-POPHAM,
Governor.

[30TH NOVEMBER, 1938.] Date of assent.

An Ordinance to Enlarge, Extend and Revise the Objects and Scope of the Charitable Trust known as the McMillan Memorial Library and the Powers and Responsibilities of the Trustees thereof; to make certain further amendments and additions to the Constitution and Trusts of the said Charitable Trust and to divers documents subsidiary thereto; and to Consolidate and Declare the Constitution and Trusts as so Modified.

30th November, 1938

Date of commencement.

WHEREAS by a Trust Deed dated the 30th day of June, 1931, and made between the then Commissioner for Local Government for and on behalf of the Government of the Colony and Protectorate of Kenya and Lady Lucie McMillan, Commander of the Most Excellent Order of the British Empire (therein called "the Appointors"), of the one part, and the then Colonial Secretary and the then Director of Education respectively of the Colony and Protectorate of Kenya, the then Mayor of Nairobi, the late Lieutenant-Colonel Marcuswell Maxwell of Nairobi, Arthur Alexander Legat of Nairobi, and Lieutenant-Colonel Ralph Beresford Turner, Companion of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Distinguished Service Order (therein called "the Trustees") of the other part, after reciting that an institution had been established under the name of the "McMillan Memorial Library" for the establishment and development of a Reading and Reference Library for the use of Europeans, and a Book Distributing Library for the use of European libraries in the Colony and Protectorate of Kenya, and that the Appointors aforesaid were desirous of granting that piece and parcel of land situate in Nairobi being Plot Number L.R. 209/1890 and comprising 0.560 of an acre or thereabouts together with the buildings which had been erected thereon for the purposes of the said Libraries, and that the Trustees aforesaid have been approved

by the Governor of the Colony and Protectorate of Kenya to be appointed and had consented to be so appointed for the purpose of having vested in them the control and management of the said libraries together with the land and buildings to be granted as aforesaid and to provide for the future application of all funds which might from time to time accrue to the said libraries, it was witnessed that the Appointors aforesaid on behalf of the McMillan Memorial Library thereby appointed the Trustees aforesaid to be trustees of the said libraries for the purpose of having vested in them the McMillan Memorial Library and the Book Distributing Library together with the buildings comprising the same and the land upon which the said buildings had been erected and all funds which might from time to time accrue to the said libraries and all property whether moveable or immovable including all chattels, moneys and securities of or belonging to the said libraries or which might thereafter be acquired by or devolve upon the said libraries in any manner, upon the trusts and with and subject to the powers and provisions hereinafter respectively set forth;

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AND WHEREAS, for the purposes of the said Trust Deed, the Trustees aforesaid were duly registered under the Land (Perpetual Succession) Ordinance as a body corporate with the name of "The McMillan Memorial Library Registered Trustees", and a Certificate of such registration (hereinafter referred to as the Original Certificate) was duly granted to the Trustees aforesaid by the Governor in Council on the 16th day of November, 1932, subject to the conditions and directions therein contained;

AND WHEREAS, pursuant to the terms and intention of the Trust Deed, the said piece and parcel of land known as Plot Number L.R. 209/1890 was, by a Grant dated the 1st day of July, 1933 (registered in the Registry of Titles at Nairobi, as Number I.R. 3790/1), duly granted to the said McMillan Memorial Library Registered Trustees for a term of 99 years from the 1st day of January, 1929, at the yearly rent and subject to the conditions therein respectively reserved and contained, and the said respective Libraries have been established and since maintained in accordance with the trusts, powers and provisions of the Trust Deed;

AND WHEREAS it has now become expedient that the objects and scope of the McMillan Memorial Library, as declared by the Trust Deed, should be enlarged or extended

to include certain further activities and fields, and that certain further and other powers should be conferred upon the said McMillan Memorial Library Registered Trustees as trustees thereof, and that certain further and other provisions should be made with reference to the administration of the trusts thereof and otherwise, and that for the better effecting of such several purposes and for divers other good causes the constitution and trusts of the McMillan Memorial Library, with all necessary modifications, should be consolidated and declared anew as hereinafter in this Ordinance set forth;

AND WHEREAS these purposes cannot be effected without statutory authority;

AND WHEREAS the McMillan Memorial Library Registered Trustees now consist of the said Lieutenant-Colonel Ralph Beresford Turner, Edward Gilbert Morris, Officer of the Most Excellent Order of the British Empire, George Beresford Stooke, R.N. (Retired), Gwladys Lady Delamere, and the said Arthur Alexander Legat, Officer of the Most Excellent Order of the British Empire and they, as the present trustees of the McMillan Memorial Library, have expressed their approval of the purposes and terms of this Ordinance;

AND WHEREAS the Appointors aforesaid have each expressed the like approval;

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

PART I

PRELIMINARY

1. This Ordinance may be cited as the McMillan Memorial Library Ordinance, 1938. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpretation.

“East Africa” means the Colony and Protectorate of Kenya, the Uganda Protectorate, the Tanganyika Territory, and the Zanzibar Protectorate;

“McMillan Memorial Library” means the charitable trust originally the subject of the Trust Deed, the constitution and trusts whereof are hereby modified, consolidated and prescribed;

"Trust Deed" means the trust deed dated the 30th day of June, 1931, and more particularly described in the first recital of the preamble to this Ordinance;

"Trustees" means The McMillan Memorial Library Registered Trustees, and includes the said Lieutenant-Colonel Ralph Beresford Turner, Edward Gilbert Morris, George Beresford Stooke, Gwladys Lady Delamere, and Arthur Alexander Legat or other the trustees or trustee for the time being of the McMillan Memorial Library appointed pursuant to section 20 of this Ordinance;

"Trust Fund" means all the property, moveable or immovable, from time to time vested in or held by the Trustees, or any other persons or person under their direction, for the purposes of the McMillan Memorial Library, whether before or after the passing of this Ordinance, and whether by or pursuant to the Trust Deed or otherwise.

PART II

CANCELLATION OF TRUST DEED AND DECLARATION OF NEW CONSTITUTION AND TRUSTS

Cancellation
of Trust Deed.

3. The Trust Deed and all the Trusts, powers and provisions therein declared or contained shall be and are hereby extinguished and declared null and void and of none effect, without prejudice to any act or thing lawfully done, right accrued, or liability incurred thereunder before the commencement of this Ordinance.

Supplementary
modifications.

4. (1) The constitution of the McMillan Memorial Registered Trustees, and the conditions and directions contained in the Certificate of Registration granted to them by the Governor in Council under the provisions of the Land (Perpetual Succession) Ordinance on the 16th day of November, 1932, shall be deemed to have been modified, if and so far as is necessary to render the same consistent with the provisions of this Ordinance; and the Governor in Council may grant such further Certificate of Registration, if any, either by way of modification of the Certificate granted as aforesaid or in substitution therefor, as may be deemed appropriate to give effect to the provisions of this sub-section.

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(2) The conditions contained in the Grant in favour of the Trustees dated the 1st day of July, 1933, and registered in the Registry of Titles at Nairobi as Number I.R. 3790/1 shall also be deemed to have been modified, if and so far as is necessary to render the same consistent with the provisions of this Ordinance.

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5. The constitution and trusts of the McMillan Memorial Library shall be as hereinafter prescribed.

Declaration of
new Constitution
and Trusts.

PART III

NEW CONSTITUTION AND TRUSTS

6. The objects and scope of the McMillan Memorial Library shall include the following:—

Objects and
scope of the
Trust.

- (a) the establishment, maintenance and development at Nairobi of a Reference Library, a Reading Room, and a Lending Library, for the use of Europeans only;
- (b) the establishment, maintenance and development of a Circulating Library service with headquarters at Nairobi, for the circulation of books to approved co-operative or subsidiary libraries for the use of Europeans only in any part or parts of East Africa, to be known as "the East African (Carnegie) Circulating Library";
- (c) the organization, promotion, and encouragement of public lectures, cinematograph performances, educational classes, and other courses or methods of education or instruction of every kind, and on any subject whether of general or of particular or technical interest or value, for Europeans only in any part or parts of East Africa;
- (d) the establishment, maintenance, development, promotion and/or encouragement in any part or parts of East Africa of other libraries, institutions or societies, whether subsidiary or independent, for all or any of the foregoing purposes; and
- (e) co-operation with, or contribution to, any other libraries, institutions, societies, corporations, trusts or funds, upon such terms and conditions as the Trustees may, in their sole discretion, from time to time, think fit, for all or any of the foregoing purposes:

Provided that the activities referred to in paragraph (a) of this section shall constitute the primary objects of the McMillan Memorial Library, and nothing in this Ordinance contained shall be construed as requiring the Trustees to extend the activities of the McMillan Memorial Library beyond the scope of that paragraph except so far as they may, in their discretion, consider that the resources of the Trust Fund and other circumstances permit; provided further that

the several activities of the McMillan Memorial Library for the time being may be combined, kept separate, or made co-operative to such extent and in such manner as the Trustees may, in their sole discretion, for the time being consider desirable.

Trusts of the Trust Fund.

7. The Trustees shall hold the Trust Fund upon trust, subject and without prejudice to the powers, discretions and provisions conferred by or contained in this Ordinance, to use, apply or appropriate the same for the purposes of the McMillan Memorial Library.

Trustees to have control of Trust Fund and all specific assets comprised therein.

8. (1) The Trustees shall have the absolute management and entire control of the Trust Fund, including all libraries, buildings and other specific assets of whatsoever nature or kind from time to time forming part thereof, and may, subject to the provisions of section 17 of this Ordinance, make, rescind and alter such regulations (not being inconsistent with the provisions of this Ordinance) as they may think fit, with respect to the purposes for which, the manner in which, the persons by whom, the terms and conditions on which and the times when any such specific assets or any other part or parts of the Trust Fund shall be used, applied or appropriated, and otherwise as the Trustees shall think necessary for the purposes prescribed in section 6 of this Ordinance or in connexion with the execution of any of the trusts or powers contained in or conferred by this Ordinance.

(2) The Trustees may at any time (notwithstanding anything to the contrary contained in this Ordinance) impose a charge for the admission to, or for the use of, any buildings or libraries, or for the use of books or other assets, from time to time comprised in the Trust Fund on all or any persons entering or using the same respectively.

Power to purchase and sell books, etc.

9. The Trustees may pay or apply any part of the Trust Fund, not specifically granted, donated or set apart for some other special purpose, for the purchase, printing or publication of such books, pamphlets, manuscripts, reports, pictures, maps and other documents, and such furniture and effects, as to them may seem expedient from time to time, and may also at any time sell, or otherwise dispose of, any moveable assets of whatsoever nature or kind (except articles specifically granted or donated for any special purpose which precludes such sale) from time to time forming part of the Trust Fund. All moneys arising from any such sale or disposition shall fall into and form part of the Trust Fund.

10. The Trustees may at any time, as to them may seem expedient, apply any part of the Trust Fund (not specifically granted, donated or set apart for some other special purpose) in acquiring, by purchase or on lease or otherwise, any freehold or leasehold lands for all or any of the purposes hereinbefore declared, or in erecting, or pulling down or rebuilding, or enlarging, improving or altering at any time, and from time to time any buildings on such lands or otherwise for the time being forming part of the Trust Fund, and in furnishing or equipping the same or any part or parts thereof, as the Trustee may think desirable for the purposes aforesaid, and may, from time to time, set apart any part or parts of the Trust Fund and accumulate such part or parts by investing the same and the resulting income thereof in the names of the Trustees (or in the names of such other persons as they shall from time to time direct) in any investments by this Ordinance authorized, as a building fund, with a view to applying such fund as and when the Trustees shall think fit for the purposes aforesaid or any of them.

Acquisition of lands, and erection and alteration of buildings.

11. Any lands acquired under the last preceding section shall be conveyed or demised to, or otherwise vested in, the Trustees or such other persons as the Trustees shall from time to time direct.

Vesting of lands.

12. The Trustees shall be at liberty at any time to sell, transfer or exchange any lands acquired under the provisions of section 10 of this Ordinance or any other lands which may for the time being form part of the Trust Fund (excepting only the said piece or parcel of land known as Plot Number L.R. 209/1890 and any other lands specifically granted or donated for any special purpose which precludes sale) with power, in the case of sale, to buy in and resell the same without being responsible for any loss that may thereby be incurred; and, in the case of any such sale, transfer or exchange all persons in whom the lands sold, transferred or exchanged may be vested shall execute and do all such deeds and acts for the purpose of carrying such sale, transfer or exchange into effect as the Trustees may direct; and all moneys arising from any such sale, transfer or exchange shall fall into and form part of the Trust Fund accordingly.

Power to sell lands.

13. The Trustees may at any time permit any part of any buildings for the time being forming part of the Trust Fund (including any premises acquired under the provisions of section 10 of this Ordinance) to be used, either gratuitously

Use of premises for meetings.

or otherwise, for lectures, classes, meetings, or otherwise, provided that such use shall not be inconsistent or interfere with the carrying out of the primary objects specified in section 6 of this Ordinance.

Leasing powers.

14. The Trustees may at any time let, or demise in such manner and on such terms as to them may seem expedient, any part of any premises for the time being forming part of the Trust Fund (including any premises acquired under the provisions of section 10 of this Ordinance but excepting the said piece and parcel of land known as Plot Number L.R. 209/1890 and any other lands specifically granted or donated for any special purpose which includes letting) which may not be immediately required for any of the purposes hereinbefore prescribed.

Appointment of officers and servants.

15. The Trustees may at any time appoint, upon such terms as they may determine, a Librarian, a Secretary, and a Treasurer, together with such other officials and servants as the Trustees may deem expedient, for all or any of the several purposes hereinbefore prescribed, and may at any time remove any such official or servant.

Outgoings, insurance, etc.

16. The Trustees may, subject to the provisions of section 17 of this Ordinance, pay out of the income or capital of the Trust Fund all rents, rates, taxes, assessments, costs of insurance, repairs and other outgoings at any time payable in respect of any premises from time to time forming part of the Trust Fund (including any premises acquired under the provisions of section 10 of this Ordinance), whether moveable or immovable, and all expenses of any sale effected pursuant to section 12 of this Ordinance, and may also pay out of such income or capital (subject as aforesaid) the salaries and wages of all officials and servants, and all other expenses of and incidental to any of the purposes hereinbefore prescribed, or to the exercise of any of the powers hereby conferred upon the Trustees.

Creation of endowment.

17. The Trustees may from time to time, at their discretion, set apart as an endowment fund such part or parts (if any) of the Trust Fund as may in their judgment be so set apart safely and without prejudice to the due execution of any of the trusts or powers herein contained, and all sums constituting the endowment fund shall be invested by the Trustees in their names, or in the names of such other persons as they shall from time to time direct, in any investments by

this Ordinance authorized, with power at any time to vary any of such investments; and the endowment fund and all investments at any time representing the same shall be held upon trust that the income thereof shall be applied in perpetuity in like manner and for the like purposes as and for which the Trust Fund may be applied under the provisions of this Ordinance.

18. The Trustees may at any time appoint or make provision for the appointment of any persons (including all or any of the Trustees) as governors or a management committee or otherwise, for the purpose of discharging such functions in connexion with the management of the Trust Fund or of any specific assets or asset for the time being forming part thereof, or otherwise in relation to the execution of any of the trusts or powers contained in or conferred by this Ordinance, in such manner and subject to such regulations as the Trustees may prescribe, and may at any time appoint or provide for the appointment of separate trustees to hold any lands acquired, or any building fund or endowment fund established under the provisions of this Ordinance, or any other properties, investments or funds for the time being forming part of the Trust Fund, in such manner and subject to such regulations as the Trustees may from time to time think fit, and may confer upon any governors, management committee or separate trustees as aforesaid any special privileges in connexion with any specific assets or asset for the time being forming part of the Trust Fund. The Trustees may delegate to one or more of themselves, or to any body of governors or management committee or separate trustees as aforesaid, any of the trusts or powers vested in or exercisable by the Trustees under or by virtue of this Ordinance.

Power to constitute governors, management committee, or separate trustee.

19. The Trustees may from time to time open and maintain in their corporate name, or in the names of any such separate trustees as aforesaid, a banking account or banking accounts at such bank or banks as they shall from time to time determine, and may at any time pay or cause to be paid any moneys forming part of the Trust Fund (including any building fund or endowment fund established under the provisions of this Ordinance) to the credit of any such account or accounts, or place or cause to be placed the same on deposit with any banker or bankers; and any moneys at any time forming part of the Trust Fund (whether forming part of a building fund or endowment fund or otherwise) and requiring

Banking accounts and investments.

investment may be invested at the discretion of the Trustees in any of the investments for the time being permitted by law for the investment of trust funds, with power for the Trustees at their discretion from time to time to vary any such investment for any other of a like nature.

Appointment of
new Trustees.

20. (1) The Trustees shall at all times, subject only to temporary vacancies occasioned by death, be six in number and shall consist of:—

(a) two persons of pure European descent appointed by the Governor in Council;

(b) one person of pure European descent appointed by resolution of the Municipal Council of Nairobi;

(c) the said Lieutenant-Colonel Ralph Beresford Turner, or some other person of pure European descent appointed by writing under the hands of any three of the other five Trustees;

(d) two persons of pure European descent appointed either:—

(i) by writing under the hand of the senior of such of the children or remoter issue (if any) of the late Lieutenant-Colonel Marcuswell Maxwell as are for the time being of the age of majority and of sound mind and resident in East Africa, males ranking as senior to females for the purpose of this provision; or, in default of any such children or remoter issue,

(ii) by writing under the hand of Lady Lucie McMillan, being of sound mind and resident in East Africa, or failing her, by writing under the hand of Margaret Dorothy Marcuswell Maxwell, widow of the late Lieutenant-Colonel Marcuswell Maxwell, being of sound mind and resident in East Africa, or, failing her, by writing under the hand of the senior wife, widow, husband or widower, being of sound mind and resident in East Africa, of any child or remoter issue of the late Lieutenant-Colonel Marcuswell Maxwell (for which purpose seniority shall be determined according to that of the husband or wife, living or deceased, whom such wife, widow, husband or widower as aforesaid represents); or in default of any such persons as aforesaid,

(iii) by writing under the hand of Mrs. Lucie McMillan Johnston of Kitale in the Colony of Kenya, or, after her death, by writing under the hand of the senior of her children or remoter issue, failing whom, by writing under the hand of the widower of the said Mrs. Lucie McMillan Johnston, or, failing him, by writing under the hand of the senior wife, widow, husband or widower of such children or remoter issue of hers, with the like provisions as to seniority and other qualifications in all respects, *mutatis mutandis*, as are hereinbefore contained in paragraphs (i) and (ii); or, if and so often as there shall be no such person as aforesaid available, then

(iv) by writing under the hands of any three of the other four Trustees;

but so that the children or remoter issue of the late Lieutenant-Colonel Marcuswell Maxwell or any other person competent to appoint as provided by paragraphs (ii), or (iii) shall be entitled to appoint himself or herself as a Trustee.

(2) Every and any appointment from time to time made as aforesaid, including all appointments having effect at the commencement of this Ordinance, may from time to time, and at any time, be revoked in the like manner and form as that prescribed for such appointment, without previous notice, by the person or persons in whom respectively, under the provisions of this section, the power of such appointment is vested, upon a new and valid appointment being made by such person or persons respectively: Provided that the appointment of the said Lieutenant-Colonel Ralph Beresford Turner shall only be revoked if, at the time of revocation—

- (a) he has given his written consent thereunto; or
- (b) he has become unable or unwilling to act; or
- (c) he is absent from East Africa, and has been so absent for an immediately preceding consecutive period of more than six calendar months.

Powers of majority to act, and of individuals to appoint alternates.

21. (1) All or any of the trusts and powers vested in or exercisable by the Trustees under or by virtue of the foregoing provisions of this Ordinance shall, without prejudice to the special provisions of the last preceding section enabling three to act, be capable of being performed by any four of them, and any action or decision of any four of the Trustees for the time being shall be as valid as it would have been if done or made by six Trustees: Provided that if and so often as there are less than four Trustees in East Africa then the said trusts and powers shall nevertheless be capable of being performed by all Trustees not being less than two, who are for the time being in East Africa, and any act or decision of theirs shall be as valid as it would have been if done or made by six Trustees.

No. 28 of 1929.

(2) Notwithstanding anything to the contrary contained in the Trustee Ordinance, 1929, no individual Trustee other than the said Lieutenant-Colonel Ralph Beresford Turner shall have any power in any circumstances to appoint any attorney, alternate, or substitute to act in his place:

No. 28 of 1929.

Provided that nothing in this sub-section shall derogate from or otherwise affect any power of delegation conferred upon the Trustees generally by section 18 of this Ordinance, or any power of the said Lieutenant-Colonel Ralph Beresford Turner to do or make any formal act or deed by the agency of a duly constituted attorney under or by virtue of the said Trustee Ordinance, 1929, or any other law for the time being in force in the Colony.

PART IV

FUTURE MODIFICATIONS

Power to vary Constitution and Trusts.

22. Notwithstanding anything to the contrary contained in this Ordinance, all or any of the trusts, powers and provisions hereinbefore contained may at any time or times hereafter, by a declaratory deed under the hands and seals of any five of the Trustees and under the hand of the Governor and the seal of the Colony, be altered, modified or extended in such manner and to such extent as the Trustees may think fit and the Governor in Council may approve.

Power to transfer Trust Fund or part thereof.

23. (1) In addition to the powers conferred by the last preceding section and any other powers hereinbefore contained, and without prejudice to the generality of such respective powers, the Trustees acting unanimously, or any five

of them, may at any time or times, with the consent of the Governor in Council duly recorded under the hand of the Governor and the public seal of the Colony, transfer the whole or any part or parts of the Trust Fund to any municipality or other local authority or to any separate body of trustees, upon the terms either that the transferee or transferees shall thenceforth become a trustee or trustees of the premises so transferred for the purposes of and with and subject to the powers and provisions declared by this Ordinance in the place of the Trustees, or else that the premises so transferred shall thenceforth be excluded entirely from the McMillan Memorial Library and from the operation of this Ordinance, and upon such further or other terms as may be thought fit: Provided that neither the said piece and parcel of land known as Plot Number L.R. 209/1890 nor any building thereon, nor any part thereof respectively, shall be transferred to any person other than the Municipal Council of Nairobi, and then only upon condition that the same shall continue at all times thereafter to be known and designated by the name of the "McMillan Memorial Library".

(2) In the event of any such transfer as aforesaid, the Trustees shall thereupon, unless the terms of such transfer otherwise provide, be released and discharged from all future responsibility or liability under this Ordinance in respect of the premises so transferred.

PART V

MISCELLANEOUS

24. All appointments made, liabilities incurred, and other acts and things done or suffered by the Trustees prior to the commencement of this Ordinance, which would have been valid and effectual if so made, incurred, done or suffered after the commencement of this Ordinance, shall be valid and take effect in all respects as if the same had been so made, incurred, done or suffered under or by virtue of this Ordinance.

Retrospective effect as regards prior acts and liabilities.

25. All powers, discretions, authorities, responsibilities, and liabilities conferred or imposed upon the Trustees by any other law for the time being in force shall apply to the Trustees, except so far as expressly or impliedly modified or excluded by the terms of this Ordinance.

Saving of powers, etc., conferred on trustees by other laws.

Costs.

26. The costs, charges and expenses preliminary to and of and incidental to the preparation and enactment of this Ordinance, shall be paid by the Trustees out of the Trust Fund.

Saving of rights of the Crown, bodies corporate and other persons.

27. Nothing in this Ordinance contained shall in anywise prejudice or affect any rights of His Majesty the King, His Heirs and Successors, in any respect other than in His vicarious capacity as one of the Appointors mentioned in the preamble to this Ordinance, or of any body or bodies (politic or) corporate or other person or persons excepting only such as are mentioned herein and those claiming by, from or under them.

Control of Production

— Oct 28/43