

S U P P L E M E N T
TO
OFFICIAL GAZETTE
OF THE
EAST AFRICA PROTECTORATE.



Published under the authority of His Excellency the Governor of East Africa.

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His Excellency has approved of the following Bills being introduced during the present Session of the Legislative Council.

T. S. W. THOMAS,
Clerk to the Legislative Council.

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\ Bill

Intituled

An Ordinance to provide for Duties on Estates of Deceased Persons.

1 This Ordinance may be cited as "The Estates Duty Short title
Ordinance, 1918 "

2 In this Ordinance and in any Rules made under this Definitions
Ordinance, unless the context otherwise requires, the following
5 expressions have the following meanings —

- (a) The expression "approved valuer" means a valuer approved by the Commissioners
- (b) The expression "deceased person" means a person dying after the commencement of this Ordinance
- 10 (c) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Ordinance, any person who takes possession of or intermeddles with the property of a deceased person
- 15 (d) The expression "estate duty" means estate duty under this Ordinance
- (e) The expression "property" includes immoveable and moveable property and the proceeds of sale thereof respectively and any monev or investment for the time being representing the proceeds of sale
- 20 (f) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases
- 25 (g) The expression "property passing on the death" includes property passing either immediately on the death or after an interval either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death"
- (h) The expression "the Commissioners" means the Estate Duty Commissioners
- (i) The expression "prescribed" means prescribed by the Commissioners

35 COMMISSIONERS AND OFFICERS

3 There shall be a Board of Commissioners, in this Constitution of Board of
Ordinance referred to as the Estate Duty Commissioners for the Commissioners purpose of superintending the care, management and direction of this Ordinance having its Chief Office at Nairobi, which shall 40 consist of the Attorney General and the Treasurer, who shall be ex-officio members thereof, and such other person, and a Secretary to the Board, as the Governor may from time to time appoint. The name of the Commissioner so appointed by the Governor shall be published in the Official Gazette, and any 45 number of the Gazette containing a notice of such appointment shall be deemed sufficient evidence thereof for all purposes

President and Vice-President of the Board

4 The Attorney General and Treasurer shall be the President and Vice-President of the Board, and at every meeting of the Board the President, or in his absence, the Vice-President shall be chairman

Meetings

5 The Board shall hold its meetings once a month, if necessity requires, and oftener if need be at such places as the President may appoint, and may adjourn from time to time. The President may at any time and shall, on the requisition signed by two members of the Board, summon a meeting thereof

Quorum

6 Two members of the Board shall constitute a quorum 10

Assistant Commissioners

7 The Commissioners shall, subject to the approval of the Governor-in-Council, by writing under their hands, or the hands of the major part of them, appoint proper persons to act as Assistant Commissioners in such areas as occasion shall require to collect and receive the duties hereby imposed and to keep 15 proper accounts thereof to be transmitted to the head office of the Commissioners, and, subject to the like approval the Commissioners shall appoint and assign to every Assistant Commissioner appointed under this Ordinance, if occasion shall require, such clerical staff, as to the Commissioners may appear necessary for 20 the purposes of this Ordinance

Salaries

8 The Commissioners and Assistant Commissioners, the Secretary to the Board and the clerical staff shall be remunerated out of the general Revenues of the Protectorate in such manner and at such rates as the Governor-in-Council may from time to 25 time prescribe with the approval of the Secretary of State

Accounts

9 Every Assistant Commissioner and other person intrusted with the collection and receipt or custody of duties imposed by this Ordinance shall keep and render accounts in the prescribed manner and form of all sums of money collected or received by 30 him or intrusted to his custody

All revenue to be paid over

10 All money and securities for money from time to time collected or received on account of duties imposed by this Ordinance shall be paid in the prescribed manner into the hands of the Treasurer 35

ESTATE DUTY

Estate Duty on property passing on death of person dying after the commencement of this Ordinance

11 In the case of every person dying after the commencement of this Ordinance there shall save as hereafter expressly provided be levied and paid upon the principal value ascertained as hereafter provided of all property moveable and immoveable 40 settled or not settled which passes on the death of such person a duty called "estate duty" at the graduated rates set forth in the schedule hereto

What property is deemed to pass

12 (1) Property passing on the death of the deceased shall be deemed to include the following property that is to say — 45

(a) Property of which the deceased was at the time of his death competent to dispose,

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such 50 interest but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole,

(c) In the case of a person dying after the commencement of this Ordinance, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift *inter vivos* must have been made, or a surrender, assurance, divesting or disposition must have been made or effected, in order that the property taken under the disposition, 60 or affected by the surrender, assurance, divesting, or disposition, may not be included as property passing on the death of the deceased, shall be three years Provided that this sub-

section shall not apply to any gift *inter vivos*, surrender, assurance, divesting, or disposition made or effected before the commencement of this Ordinance, or made or effected for public or charitable purposes. Provided further that this sub-section

5 shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in

10 the case of any donee, do not exceed in the aggregate Rs 1,500/- in value or amount where property taken under such a disposition or affected by such a surrender, assurance, divesting or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property

15 was not, as from the date of the disposition, surrendered, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased

20 as is provided by this sub-section,

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(d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased

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(2) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bona fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise

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40 13 For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof —

Aggregation of property to form one estate for purposes of estate duty

45 Provided that any property so passing, in which the deceased never had an interest, or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or a lineal descendent of the deceased, shall not be aggregated with any other property but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof, but if any benefit under the disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendent of the deceased, such benefit shall be aggregated with the property of the deceased for the purposes of determining the rate of estate duty

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COLLECTION AND RECOVERY OF DUTY AND VALUE OF PROPERTY

14 (1) Estate duty shall be collected and recovered as collection and recovery
60 hereinafter mentioned of estate duty

(2) The executor of the deceased shall pay the estate duty in respect of all moveable property passing on the death on delivering a copy of the inventory and valuation required to be delivered under section 20

65 (3) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased

Interest

(4) Interest at the rate of seven per cent per annum on the estate duty shall be paid from the date of the death up to the date of the delivery of a copy of the inventory and valuation or the expiration of six months after the death, whichever first happens, and shall form part of the estate duty 5

Payment of duty on
immoveable property by
instalments

(5) Provided that the duty due upon the valuation required to be delivered under section 20 of the property may, at the option of the executor delivering the valuation be paid by eight equal yearly instalments, or sixteen half yearly instalments, with interest at the rate of seven per cent per annum 10 from the date at which the first instalment is due, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment, and paid accordingly, but the duty for the time being unpaid with such interest to 15 the date of payment, may be paid at any time, and in case the property is sold shall be paid on completion of the sale, and if not so paid shall be duty in arrear

Value of property

15 In determining the value of an estate for the purposes of estate duty allowance shall be made for reasonable funeral expenses, the remission of fees or duty allowed under the Death Duties (Killed in War) Ordinance, 1915, and for debts and incumbrances, but an allowance shall not be made— 20

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such 25 debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(b) for any debt in respect whereof there is a right to 30 reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(c) more than once for the same debt or incumbrance charged upon different parties of the estate,

and any debt or incumbrance for which an allowance is made 35 shall be deducted from the value of the land or other subjects of property liable thereto

Interest in expectancy

16 (1) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then— 40

(a) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased, and 45

(b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value 50 of the rest of the estate as previously ascertained

(2) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the 55 property, be the principal value of that property, and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended 60

Reduction of full amount
of duty where the
margin above the limit
of value is small

17 The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, when necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be 65 payable at a lower rate

18 Where the Commissioners are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company) or any interest in land or such a business, passing upon the death of 5 any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death, (if that death occurs after the passing of this 10 Ordinance) in respect of the property so passing shall be reduced as follows —

Relief in respect of quick succession where property consists of land or a business

15 Where the second death occurs within one year of the first death, by fifty per cent, where the second death occurs within two years of the first death by forty per cent, where the second death occurs within three years of the first death, by thirty per cent, where the second death occurs within four years of the first death, by twenty per cent, where the second death occurs within five years of the first death, by ten per cent, Provided that where the value, on which duty is 20 payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated

25 19 Where an interest in expectancy in any property has, before the commencement of this Ordinance, been *bona fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, 30 than would have been payable if this Ordinance had not passed, and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgage

Interest in expectancy.

20 Every person accountable for the payment of estate 35 duty in respect of property passing on the death of a deceased shall furnish to the Assistant Commissioner within the local limits of whose jurisdiction the property, or any part thereof is situate a valuation of such property, signed by an approved valuer, together with a copy of the inventory of such property 40 required to be made under any Ordinance or applied Act

Valuation of property, with inventory, to be furnished to Assistant Commissioners

21 The Assistant Commissioner within the local limits of whose jurisdiction the property of the deceased or any part thereof is, may at any time inspect, and take or cause to be taken copies of the record of any case in which application for 45 Probate or Letters of administration, or sealing under the British and Colonial Probates Ordinance, 1914, has been made, and if, on such inspection or otherwise, he is of opinion that the value of the property of the deceased has been underestimated, the Assistant Commissioner may, if he thinks fit, require the 50 attendance of the person accountable for the duty, or the valuer (either in person or by agent) and take evidence on oath and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated may require the person accountable for the duty 55 to cause the valuation to be amended

Power of Assistant Commissioner to inspect and take copies of record of any case in which application for Probate or Letters of Administration has been made and if Assistant Commissioner is of opinion value of property underestimated he may take steps to ascertain the real value

(2) If, within 30 days, the valuation is not amended to the satisfaction of the Assistant Commissioner the Assistant Commissioner shall report the case and all the evidence taken thereon to the Commissioners

60 (3) The Commissioners, on receipt of such report, shall hold an inquiry into the matter and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated The Assistant Commissioner shall be deemed to be a party to the inquiry

65 (4) The finding of the Commissioners shall be notified to the person accountable for the duty, and if within 30 days, or such further time as may be allowed by the Commissioners, he shall fail to pay, or make arrangements to pay, the duty payable on the value of the property so found, the Commissioners may move the High Court for an order directing payment

(5) At the hearing of the motion the evidence taken before the Assistant Commissioner shall be read as evidence in the case and the Court may allow such further evidence as may be produced to prove the true value of the property and thereafter may make such order as to payment, including costs as between the Commissioners and the person accountable for the duty, as it may deem fit, and such order shall be final and binding on all parties 5

Relief where too high a duty has been paid

22 (1) Where the property of the deceased has been estimated to be of greater value than the same was afterwards proved to be, and the person accountable for the duty has consequently paid too high a duty thereon, if, within six months after the true value of the property has been ascertained, such person produces the Probate or Letters of Administration to the Assistant Commissioner within the local limits of whose jurisdiction property was situate and delivers to such Assistant Commissioner a particular inventory and valuation of the property of the deceased verified by affidavit or affirmation the Assistant Commissioner shall report his opinion to the Commissioners 10 15 20

(2) If the Commissioners are satisfied that too much duty has been paid they shall direct the Treasurer to make a refund out of the general revenues of the Protectorate

(3) If the Commissioners shall refuse to make a refund the person accountable for the duty may, within 30 days of receiving a notification to that effect move the High Court for a rule to direct the Commissioners to make such refund 25

(4) Any order made by the High Court for a refund, or for payment of costs by the Commissioners shall be in the nature of a direction to the Treasurer to pay the person named in the order the sum found due. Such order shall be signed by the Judge, and on receipt of the same by the Treasurer he shall comply therewith 30

Postponement of payment

23 Where the Commissioners are satisfied that the estate duty leviable in respect of any particular property cannot without excessive sacrifice, be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding 8 per cent or any higher interest yielded by the property and on such terms, as the Commissioners think fit 35 40

Charge of estate duty in arrear on property

24 All duty in arrear shall be a first charge on the property in respect of which the duty is leviable, provided that the property shall not be chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice

Release of person paying estate duty

25 (1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case 45 50 may be

(2) A certificate of the Commissioner under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts a shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for 55 60

(3) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration with notice from the duty notwithstanding any such fraud or failure 65

Scale of rates of estate duty

26 The rates of estate duty passing on the death of every person dying after the commencement of this Ordinance shall be according to the rates appearing in the schedule to this Ordinance

LEGAL PROCEEDINGS

- 27 It shall not be lawful to commence proceedings against any person for the recovery of any estate duty, fines or penalties levied, imposed or payable under this Ordinance or any rules thereunder, except by order of the Commissioners
- Proceedings for duty, fines, etc., not to be commenced without order of the Commissioners
- 28 All actions, suits and proceedings for the recovery of any estate duty, fines or penalties or in respect of any matters relating to this Ordinance, shall be commenced, prosecuted and carried on in the name of the Commissioners and shall be verified by one of the Commissioners or by the Secretary of the Board, and the seal of the Board
- Proceedings to be in the name of the Estate Duty Commissioners
- The Commissioners may be plaintiffs or defendants as the case may require, and may be represented in such actions, suits and proceedings by any advocate, or Administrative Officer as circumstances require
- 29 All estates passing on the death of the deceased prior to the commencement of this Ordinance, the valuation whereof is still in dispute on the coming into operation of this Ordinance, shall be valued by the Assistant Commissioner in whose area the property is situate, according to the provisions of this Ordinance, and such estate shall be deemed to have passed subsequently to the commencement of this Ordinance save for the purpose of assessing the estate duty payable thereon such duty shall be payable on the scale provided by the East Africa Court Fees Rules, 1902
- Method of valuing estates the valuation whereof is still in dispute
- 30 Nothing in this Ordinance shall prevent the Commissioners from suing for, at any time, any estate duty fees or penalties due and payable in respect of any property, or for any estate duty fees or penalties due and payable in respect of any intentionally undisclosed property
- Commissioners' power to sue for estate duty, etc
- 31 The Commissioners may from time to time, subject to and with the approval of the Governor-in-Council, make, alter and revoke rules for the purposes of this Ordinance, Power to make Rules
- For prescribing the forms and methods in which accounts shall be kept and remitted to the Treasury
- (1) For the procedure to be observed by the Commissioners and Assistant Commissioners in carrying out the provisions of this Ordinance
- (2) For prescribing the fees and charges which shall be levied in respect of any act, matter or thing required to be done before the Commissioners and Assistant Commissioners
- (3) For prescribing the forms generally to be used for the purposes of this Ordinance
- All rules shall be signed by one of the Commissioners and published in the Official Gazette, and thereafter they shall have the force of law
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- 45
- 50
- 32 A person who wilfully fails to comply with the provisions of this Ordinance shall be liable to pay a penalty not exceeding Rs 7,500/-, which may be recovered as a civil debt recoverable summarily
- Penalties
- 33 This Ordinance shall apply to all persons other than natives living in a communal state in a tribe
- Application of Ordinance
- 34 On the coming into operation of this Ordinance the fees heretofore payable on Probate and Letters of Administration under the schedule to the East Africa Court Fees Rules, 1902, fee numbered 23, as amended by Rules of Court (Fees) No 5 of 1911, and fee numbered 26 shall cease to be payable and there shall be substituted therefore estate duty according to the rates appearing in the schedule to this Ordinance
- Repeal

SCHEDULE**Scale of Rates of Estate Duty.**

Where the principal value of the Estate				Estate duty shall be payable at the rate per cent of —
Exceeds	Rs 1,500	and does not exceed	Rs 7,500	
"	7,500	" "	15,000	1
"	15,000	" "	75,000	2
"	75,000	" "	150,000	3
"	150,000	" "	300,000	4
"	300,000	" "	600,000	5
"	600,000	" "	900,000	6
"	900,000	" "	1,200,000	7
"	1,200,000	" ,	1,500,000	8
"	—500,000	" "	2,250,000	9
"	2,250,000	" "	3,000,000	10
"	3,000,000	" "	3,750,000	11
"	3,750,000	" "	4,500,000	12
"	4,500,000	" "	5,250,000	13
"	5,250,000	" "	6,000,000	14
"	6,000,000	" ,	7,500,000	15
"	7,500,000	" ,	9,000,000	16
"	9,000,000	" ,	12,000,000	17
"	12,000,000	" ,	15,000,000	18
"	15,000,000			19
				20

A Bill

Intituled

An Ordinance to amend the Law relating to Native Authorities.

1 This Ordinance may be cited as "The Native Authority Short title Amendment Ordinance, 1918," and shall be construed together with the Native Authority Ordinance, 1912, hereafter referred to as the Principal Ordinance

5 2 Section 7 of the Principal Ordinance is hereby amended Amendment to section 7
of the Native Authority
Ordinance, 1912 by the addition to the purposes therein set out of the following —

10 requiring any native residing in his jurisdiction to cultivate land within the local limits of such jurisdiction to such reasonable amount as the headman may prescribe. The crops accruing from any such cultivation shall be the property of the native