

## **CHAPTER 389 - Merchant Shipping Act**

**An Act of Parliament to make provision for the control, regulation and orderly development of merchant shipping.**

### **Part I – PRELIMINARY**

Short title

1. This Act may be cited as the Merchant Shipping Act.

Interpretation

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

"apprentice" means an apprentice to the sea service;

"coasting ship" means a ship employed solely in the coasting trade;

"coasting trade" means the carriage of goods or passengers on a sea voyage solely from any place on the coast of Kenya to any other place or places in Kenya or to another place or places on the coast of East Africa between the limits of Mogadishu in the north and Ibo in the south;

"collision regulations" means the International Regulations for Preventing Collisions at Sea, 1960, as amended by regulations made under section 317 of this Act;

"Commissioner" means the Commissioner of Customs and Excise;

"consular officer" means a Kenya consular officer;

"court" means the High Court exercising its admiralty jurisdiction;

"customs officer" means an officer of the Customs and Excise Department and any person, other than a labourer, for the time being performing duties in relation to the customs;

"dangerous goods" or "goods of a dangerous nature" means goods that by reason of their nature, quantity or mode of storage are either individually or collectively liable to endanger the lives of the passengers or imperil the ship, and includes all substances specified by the Minister by regulations under section 230 to be dangerous goods;

"detaining officer" means a person appointed under section 300 (1);

"foreign country" means any country or place other than Kenya, and "foreign ship" shall be construed accordingly;

"foreign-going ship" means a ship employed in voyages beyond the limits of a coasting trade voyage;

"Government ship" means a ship of the armed forces or the Kenya Police Force or used in the customs service;

"harbour" includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter, or ship and unship goods or passengers;

"harbour authority" means the body or authority responsible for the provision of harbour services and facilities;

"Kenya ship" means a ship registered or licensed at a port in Kenya under this Act;

"master" includes every person (except a pilot) having command or charge of a ship, or having command or charge of a seaplane or other craft when it is on or in close proximity to the water;

"motor ship" includes a steamship and any other ship propelled by machinery, but not a sailing ship;

"owner" as applied to an unregistered vessel means the actual owner, and as applied to a registered ship means the registered owner;

"passenger" means any person carried on a ship, other than—

(a) the master, an apprentice, a member of the crew or a person employed or engaged in any capacity on board the ship on the business of the ship;

(b) a child under one year of age; or

(c) a person carried on the ship in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;

"passenger ship" means a ship carrying or capable of carrying more than twelve passengers;

"pilot" means a person not belonging to a ship who has the conduct of the ship;

"port" means a place, whether proclaimed a harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers;

"ports manager" means a ports manager appointed to take charge of a port or harbour;

"proper officer" means an officer appointed to perform a certain duty or function when engaged on the performance of that duty or function;

"register" means register under this Act;

"registrar" means the registrar of ships at the ship's port of registry, and includes a deputy registrar;

"sailing ship" means a ship having sufficient sail area to be capable of being navigated under sail alone, whether fitted with mechanical means of propulsion or not;

"seaman" includes every person (except a master, pilot or apprentice duly contracted or indentured and registered) employed or engaged in any capacity on board a ship;

"ship" includes every description of vessel used in navigation not propelled by oars;

"shipping master" includes a deputy shipping master;

"surveyor" means a person appointed a surveyor under section 75 or section 189;

"vessel" includes any ship or boat, or any other description of vessel used or designed to be used in navigation;

"wages" includes emoluments;

"wreck" includes flotsam, jetsam, lagan and derelict found in or on the shores of the sea or of any tidal water, the whole or any portion of a ship lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of such a ship, and any portion of the personal property on board such a ship when it was lost, stranded, abandoned or in distress.

(2) This Act does not apply to the regulation of inland water transport.

## **Part II - REGISTRATION AND LICENSING**

Registration of ships  
12 of 1975, s.2.

3.(1) A ship shall be registered as a Kenya ship if it—

- (a) is of twenty-five net register tonnage or more; and
- (b) is owned by persons qualified to be an owner of a Kenya ship; and
- (c) is not exempted from registration.

(2) The following persons are qualified to be an owner of a Kenya ship—

- (a) a person who is resident in Kenya;
- (b) a body corporate, incorporated under the Laws of Kenya, which has its principal place of business in Kenya;
- (c) the Government; or
- (d) a body corporate which is incorporated, registered or established, in Kenya, under any written law and which the Minister, by notice in the Gazette, has declared to be so qualified in respect of any specified ship which he has, by the same notice, declared to be subject to the jurisdiction of Kenya.

Unregistered ship not recognized

4.(1) A ship which is required by section 3 to be registered but is not registered shall not be recognized in Kenya or for the purposes of this Act as being entitled to the rights and privileges accorded to Kenya ships.

(2) The Minister may cause any ship which appears to require to be registered under this Act to be detained until its certificate of registration is produced.

Exemption from registration

**5.**The Minister may, by notice in the Gazette, exempt any particular class of ship, not exceeding 125 net register tonnage, from being registered.

#### Registrar of ships

**6.**The Minister may, by notice in the Gazette—

- (a) declare any port in Kenya to be a port of registry; and
- (b) appoint a registrar of ships, and deputy registrars at those ports of registry.

#### Register book

**7.**Every registrar shall keep a register of ships, to be called the register book, and entries in it shall be made in accordance with the following provisions—

- (a) the property in a ship shall be divided into sixty-four shares;
- (b) subject to the provisions of this Act with respect to joint owners, or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship, but this rule shall not affect the beneficial title of any number of persons or of any body corporate represented by or claiming under or through any registered owner or joint owner;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding five may be registered as joint owners of a ship, or of any share or shares in a ship;
- (d) joint owners shall be treated as constituting one person as regards the persons entitled to be registered and shall not be entitled to dispose in severality of any interest in a ship, or in any share in a ship, in respect of which they are registered; and
- (e) a body corporate may be registered as owner by its corporate name.

#### Survey and measurement of ship

**8.**Every ship, before being registered, shall be surveyed by a surveyor and her tonnage ascertained in accordance with the tonnage regulations of this Act, and the surveyor shall grant his certificate specifying the ship's tonnage and build and such other particulars descriptive of the identity of the ship as may for the time being be required by the Minister, and the certificate shall be delivered to the registrar for registration.

#### Marking of ship

**9.(1)** Every ship, before being registered, shall be marked permanently and conspicuously to the satisfaction of the Minister as follows—

- (a) her name shall be marked on each of her bows, and her name and the name of her port of registry shall be marked on her stem, on a dark ground in white or yellow letters, or on a light ground in black letters, the letters being of a length not less than four inches and of proportionate breadth;
- (b) her official number and the number denoting her register tonnage shall be cut on her main beam or some other conspicuous place;
- (c) a scale of feet denoting her draught of water shall be marked on each side of her stem and of her stem post in Roman capital numerals or in figures, not less than six inches in length, the lower line of

such numerals or figures coinciding with the draught line denoted thereby, and those numerals or figures shall be marked by being cut in and painted white or yellow on a dark ground or in such other way as the Minister approves.

(2) The Minister may exempt any class of ship from all or any requirements of this section.

(3) The marks required by this section shall be permanently continued, and no alteration shall be made therein except in the event of any of the particulars thereby denoted being altered in accordance with this Act.

(4) If he is satisfied that a ship is insufficiently or inaccurately marked, the Minister may cause the ship to be detained until the insufficiency or inaccuracy has been remedied to his satisfaction.

#### Application for registration

**10.** An application for registration of a ship shall be made in the case of individuals by the person requiring to be registered as owner, or by some one or more of the persons so requiring if more than one, or by his or their agent, and in the case of a corporation by its agent; and the authority of the agent shall be testified by writing, and if appointed by a corporation under the common seal of that corporation.

#### Declaration of ownership 12 of 1975, s. 3.

**11.** A person shall not be entitled to be registered as owner of a Kenya ship or of a share therein until he, or in the case of a corporation a person authorized on behalf of the corporation, has made and signed a declaration of ownership referring to the ship as described in the certificate of the surveyor and containing the following particulars—

(a) a statement of his qualification to own a Kenya ship, or in the case of a corporation of such circumstances of the constitution and business thereof as prove it to be qualified to own a Kenya ship;

(b) a statement of the time when and the place where the ship was built, or, if the ship is foreign built and the time and place of building are unknown, a statement that she is foreign built and that the declarant does not know the time or place of her building; and in addition thereto, in the case of a foreign ship, a statement of her foreign name, or in the case of a ship condemned a statement of the time, place and court at and by which she was condemned;

(c) a statement of the name of the master;

(d) a statement of the number of shares in the ship of which he or the corporation, as the case may be, is entitled to be registered as owner;

(e) a declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein; or in the case of a body corporate that the body is qualified under section 3 (2) (b) or (d).

#### Evidence to be produced

**12.**(1) On the first registration of a ship, the following evidence shall be produced in addition to the declaration of ownership—

(a) in the case of a ship built in Kenya, a builder's certificate, that is to say, a certificate signed by the builder of the ship, and containing a true account of the proper denomination and of the tonnage of the

ship as estimated by him, and of the time when and the place where she was built, and of the name of the person (if any) on whose account the ship was built, and if there has been any sale the bill of sale under which the ship, or a share therein, has become vested in the applicant for registration;

(b) in the case of a ship built outside Kenya, the same evidence as in the case of a ship built in Kenya, unless the declarant who makes the declaration of ownership declares that the time and place of her building are unknown to him, or that the builder's certificate cannot be produced, in which case there shall be required only the bill of sale under which the ship or share therein became vested in the applicant for registration;

(c) in the case of a ship condemned by any competent court, an official copy of the condemnation.

(2) The builder shall grant the certificate required by this section, and such person as the Minister recognizes as carrying on the business of the builder of the ship is included for the purposes of this section in the expression "builder of the ship".

#### Particulars to be entered

**13.**As soon as the requirements of this Act preliminary to registration have been complied with, the registrar shall enter into the register book the following particulars respecting the ship—

(a) the name of the ship and the name of the port to which she belongs;

(b) the details comprised in the surveyor's certificate;

(c) the particulars respecting her origin stated in the declaration of ownership;

(d) the name and description of her registered owner or owners, and if there are more owners than one the proportions in which they are interested in her.

#### Documents to be retained by registrar

**14.**On the registration of a ship, the registrar shall retain in his possession the surveyor's certificate, the builder's certificate, any bill of sale of the ship previously made, the copy of the condemnation, if any, and all declarations of ownership.

#### Port of registry

**15.**The port at which a ship is registered for the time being shall be her port of registry and the port to which she belongs.

#### Certificate of registry

**16.**On the completion of the registration of a ship, the registrar shall grant a certificate of registry comprising the particulars respecting her entered in the register book, together with the name of her master.

#### Use of certificate

**17.**The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatever, had or claimed by any owner, mortgagee, or other person to, or in the ship.

#### Penalty for use of improper certificate

**18.** If the master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall be guilty of an offence, and on his conviction the ship shall be subject to forfeiture.

#### Loss of certificate

**19.(1)** In the event of the certificate of registry of a ship being mislaid, lost or destroyed, the registrar of her port of registry shall grant a new certificate of registry in its place.

(2) Where the port at which the ship is at the time of that event, or first arrives after that event, is not in Kenya, but has a consular officer, then the master of the ship or some other person having knowledge of the facts of the case shall make a declaration stating the facts of the case and the names and descriptions of the registered owners of the ship to the best of the declarant's knowledge and belief, and the consular officer may thereupon grant a provisional certificate containing a statement of the circumstances under which it is granted.

(3) The master of a ship in respect of which a provisional certificate has been granted under subsection (2) shall within ten days after the first subsequent arrival of the ship at a port in Kenya deliver the provisional certificate to the registrar at the port of registry, and the registrar shall thereupon grant a new certificate of registry.

#### Endorsement of change of master on certificate

**20.** Whenever the master of a Kenya ship is changed, a memorandum of the change shall be endorsed on the certificate of registry—

(a) if the change is made in consequence of a ruling of a court or marine inquiry, by the presiding officer of that court; or

(b) if the change occurs from any other cause, by the registrar, or by the consular officer at the port where the change takes place.

#### Endorsement of change of ownership on certificate

**21.(1)** Whenever a change occurs in the registered ownership of a ship, the change of ownership shall be endorsed on her certificate of registry, by the registrar or by the registrar of ships at any port at which the ship arrives who has been advised of the change by the registrar.

(2) The master shall, for the purposes of endorsement by the registrar, deliver the certificate of registry to the registrar forthwith if the change occurs when the ship is at her port of registry, or, if it occurs during her absence from that port, and the endorsement is not made before her return, then upon her first return to that port.

(3) The registrar of any port not being the ship's port of registry who is required to make an endorsement under this section may for that purpose require the master of the ship to deliver to him the ship's certificate of registry so that the ship be not thereby detained, and the master shall deliver it accordingly.

#### Certificate to be surrendered if ship lost or no longer Kenya ship

**22.(1)** In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt or broken up, or ceasing, by reason of a transfer to persons not qualified to be owners of Kenya ships or otherwise, to be a Kenya ship, every owner of the ship or any share in the ship shall,

immediately on obtaining knowledge of the event, if no notice thereof has already been given to the registrar, give notice thereof to the registrar, and the registrar shall make an entry thereof in the register book, and the registration of the ship shall be considered as closed except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein.

(2) In any such case as is provided for in subsection (1), except where the ship's certificate or registry is lost or destroyed, the master of the ship shall immediately, if the event occurs in port, or within ten days after her arrival in port, if it occurs elsewhere, deliver the certificate to the registrar, or if there is none, to the consular officer there, and the registrar if he is not himself the registrar of her port of registry or the consular officer shall forthwith forward the certificate delivered to him to the registrar of her port of registry.

#### Provisional certificate

**23.**(1) Where, at a port outside, a ship becomes the property of persons qualified to own a Kenya ship and those persons declare an intent to apply to have her registered in Kenya, the consular officer there may grant to her master on his application a provisional certificate stating—

- (a) the name of the ship;
- (b) the time and place of her purchase and the names of her purchasers;
- (c) the name of her master;
- (d) the best particulars respecting her tonnage, build and description which he is able to obtain,

and shall forward a copy of the certificate at the first convenient opportunity to the Minister.

(2) A provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the ship's arrival at a Kenya port of registry (whichever first happens), and on either of those events happening shall cease to have effect.

#### Temporary pass in lieu of certificate

**24.**Where it appears to the Minister that by reason of special circumstances it would be desirable that permission should be granted to a ship to pass without being previously registered from a port in Kenya to a port outside Kenya, the Minister may grant a pass accordingly, and that pass for the time and within the limits therein mentioned shall have the same effect as a certificate of registry.

#### Transfer of ship or share

**25.**(1) A registered ship or a share therein (when disposed of to a person qualified to own a Kenya ship) shall be transferred by bill of sale.

(2) The bill of sale shall contain the description of the ship which is contained in the surveyor's certificate or some other description sufficient to identify the ship to the satisfaction of the registrar, and shall be in a form approved by the Minister or as near thereto as circumstances permit, and shall be executed by the transferor in the presence of, and be attested by, a witness or witnesses.

#### Declaration of transfer

12 of 1975, s. 4.

**26.**Where a registered ship or a share therein is transferred, the transferee shall not be entitled to be registered as owner thereof until he or, in the case of a corporation, the person authorized to make



declarations on behalf of the corporation, has made and signed a declaration (in this Act called a declaration of transfer) referring to the ship and containing—

(a) a statement of the qualification of the transferee to own a Kenya ship, or if the transferee is a corporation of such circumstances of the constitution and business thereof as prove it to be qualified to own

a Kenya ship; and

(b) a declaration that to the best of his knowledge and belief no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein; or in the case of a body corporate that the body is qualified under section 3 (2) (b) or (d).

#### Registration of transfer

**27.**(1) Every bill of sale for the transfer of a registered ship, or of a share therein, when duly executed shall be produced to the registrar with the declaration of transfer, and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share, and shall endorse on the bill of sale the fact of that entry having been made with the day and hour thereof.

(2) Bills of sale of a ship or of a share therein shall be entered in the register book in the order of their production to the registrar.

#### Ship or share not to be transferred to unqualified person

**28.**A registered ship or share therein shall not be disposed of to a person not qualified to own a Kenya ship except with the consent in writing of the Minister.

#### Transmission on death or bankruptcy

**29.**(1) Where the property in a registered ship or share therein is transmitted to a person qualified to own a Kenya ship on the death or bankruptcy of any registered owner, or by any lawful means other than by a transfer under this Act—

(a) that person shall authenticate the transmission by making and signing a declaration (in this Act called a declaration of transmission) identifying the ship and containing the several statements hereinbefore required to be contained in a declaration of transfer, or as near thereto as circumstances admit, and also a statement of the manner in which and the person to whom the property has been transmitted;

(b) if the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is for the time being receivable in the court as proof of the title of persons claiming under a bankruptcy;

(c) if the transmission is consequent on death, the declaration of transmission shall be accompanied by the instrument of representation or an official extract therefrom.

(2) The registrar, on receipt of the declaration of transmission so accompanied, shall enter in the register book the name of the person entitled under the transmission to be registered as owner of the ship or share therein, the property in which has been transmitted and, where there is more than one such person, the names of all those persons, but those persons, however numerous, shall for the purpose of the provisions of this Act which relate to the number of persons entitled to be registered as owners be considered as one person.

#### Order for sale on transmission to unqualified person

**30.**(1) Where the property in a registered ship or share therein is transmitted on death, bankruptcy or otherwise to a person not qualified to own a Kenya ship, the court may, on application by or on behalf of the unqualified person, order a sale of the property so transmitted and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under the transmission, or otherwise as the court may direct.

(2) The court may require any evidence in support of the application it thinks requisite and may make the order on any terms and condition it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) Every such application for sale shall be made within twelve weeks after the occurrence of the event on which the transmission has taken place, or within such further time as the court allows.

(4) If such an application is not made within the time aforesaid, the ship or share transmitted shall thereupon be subject to forfeiture under this Act.

#### Transfer of ship or share by order of court

**31.**Where any court, whether under the preceding sections of this Act or otherwise, orders the sale of any ship or share therein, the order of the court shall contain a declaration of vesting in some person named by the court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof; and every registrar shall obey the requisition of the person so named in respect of any such transfer to the same extent as if that person were the registered owner.

#### Power of court to prohibit transfer

**32.**The court may, if it thinks fit (without prejudice to the exercise of any power of the court), on the application of any interested person, make an order prohibiting for a time specified any dealing with a ship or any share therein, and the court may make the order on any terms or conditions the court thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires, and the registrar without being made a party to the proceeding shall, on being served with an order or an official copy thereof, obey it.

#### Mortgage of ship or share

**33.**(1) A registered ship or share therein may be a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called a mortgage) shall be in a form approved by the Minister and on the production of the instrument the registrar shall record it in the register book.

(2) Mortgages shall be recorded by the registrar in the order in time in which they are produced to him for that purpose, and the registrar shall by memorandum under his hand notify on each mortgage that it has been recorded by him, stating the date and hour of that record.

#### Discharge of mortgage

**34.**Where a registered mortgage is discharged, the registrar shall, on the production of the mortgage deed with a receipt for the mortgage money endorsed thereon duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and on that entry being made, the estate, if any, that passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances if any) it would have vested if the mortgage had not been made.

### Priority of mortgages

**35.** Where there are more mortgages than one registered in respect of the same ship or share, the mortgages shall, notwithstanding any express, implied or constructive notice, be entitled in priority between each other according to the date at which each mortgage is recorded in the register book and not according to the dates of the mortgages.

### Mortgagee not treated as owner

**36.** Except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

### Mortgagee has power of sale

**37.** Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but, where there are more persons than one registered as mortgagees of the same ship or share, a subsequent mortgagee shall not, except pursuant to an order of the court, sell the ship or share without the concurrence of every prior mortgagee.

### Mortgage not affected by bankruptcy

**38.** A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order or disposition or was reputed owner thereof; and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the bankrupt, or any trustee or assignee on their behalf.

### Transfer of mortgage

**39.** A registered mortgage of a ship or share may be transferred to any person, and the instrument effecting the transfer shall be in a form approved by the Minister or as near thereto as circumstances permit, and on the production of the instrument, the registrar shall record it by entering in the register book the name of the transferee as mortgagee of the ship or share, and endorse on the instrument of transfer a note that it has been recorded by him, stating the date and hour of the record.

### Transmission of interest of mortgagee on death or bankruptcy

**40.(1)** Where the interest of a mortgagee in a ship or share is transmitted on death or bankruptcy, or by any lawful means other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted, and shall be accompanied by the same evidence as is required in the case of a transmission of an interest in a ship or share therein under section 29.

**(2)** The registrar, on receipt of the declaration and the production of the evidence, shall enter the name of the person entitled under the transmission in the register book as mortgagee of the ship or share in respect of which the transmission has taken place.

### Power of mortgage or sale conferred by certificate

**41.**(1) A registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered, at any place outside Kenya may apply to the registrar, and the registrar shall thereupon enable him to do so by granting a certificate of mortgage or a certificate of sale.

(2) The application for a certificate of mortgage or sale shall state the following particulars—

(a) the name of the person by whom the power mentioned in the certificate is to be exercised and, in the case of a mortgage, the maximum amount of charge to be created if it is intended to fix any such maximum, and in the case of a sale the minimum price at which the sale is to be made if it is intended to fix any such minimum;

(b) the place where the power is to be exercised, or if no place is specified a declaration that it may be exercised anywhere, subject to this Act;

(c) the limit of time within which the power may be exercised.

(3) A certificate of sale or mortgage shall not authorize a mortgage or sale to be made in Kenya or by a person not named in the certificate.

(4) A certificate of mortgage and a certificate of sale shall contain a statement of the several particulars by this Act directed to be entered in the register book on application for the certificate, and in addition thereto a statement of any registered mortgages or certificates of mortgage or sale affecting the ship or share in respect of which the certificate is given.

Certificate of mortgage

**42.**The following rules shall be observed as to certificates of mortgage—

(a) the power to mortgage shall be exercised in conformity with the directions contained in the certificate;

(b) every mortgage made under the certificate shall be registered by the registrar or consular officer endorsing a record of the mortgage on the certificate;

(c) a mortgage made in good faith under the certificate shall not be invalidated by reason of the person by whom the power was given dying before the making of the mortgage;

(d) if the certificate specifies the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, a mortgage made in good faith to a mortgagee without notice shall not be invalidated by reason of the bankruptcy of the person by whom the power was given;

(e) every mortgage which is so registered on the certificate shall have priority over all mortgages of the same ship or share created subsequent to the date of the entry of the certificate in the register book; and, if there are more mortgages than one so registered, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied or constructive notice, be entitled to priority between each other according to the date at which each mortgage is registered on the certificate, and not according to the dates of the mortgages;

(f) subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate;

(g) the discharge of a mortgage registered on the certificate may be endorsed on the certificate by the registrar or a consular officer, on the production of such evidence as is by this Act required to be produced to the registrar on the entry of the discharge of a mortgage in the register book; and, on that endorsement being made, the interest, if any, which passed to the mortgagee shall vest in the same person or persons in whom it would (having regard to intervening acts and circumstances, if any) have vested, if the mortgage had not been made;

(h) on a certificate of mortgage been delivered to the registrar, he shall, after recording in the register book in such manner as to preserve its priority any unsatisfied mortgage registered on the certificate, cancel the certificate, and enter the fact of the cancellation in the register book; and every certificate so cancelled shall be void to all intents.

#### Certificate of sale

**43.** The following rules shall be observed as to certificates of sale—

(a) a certificate of sale shall not be granted except for the sale of an entire ship;

(b) the power to sell shall be exercised in conformity with the directions contained in the certificate.

(c) a sale made in good faith thereunder to a purchaser for valuable consideration shall not be invalidated by reason of the person by whom the power was given dying before the making of the sale;

(d) if the certificate specifies the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, a sale made in good faith to a purchaser for valuable consideration without notice shall not be invalidated by reason of the bankruptcy of the person by whom the power was given;

(e) a transfer made to a person qualified to be the owner of a Kenya ship shall be by bill of sale in accordance with this Act;

(f) if the ship is sold to a person qualified to be the owner of a Kenya ship, the ship shall be registered anew; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book;

(g) before registration anew, the bill of sale by which the ship is transferred, the certificate of sale and the certificate of registry of the ship shall be produced to the registrar who is required to make the registration;

(h) the last-mentioned registrar shall retain the certificates of sale and registry, and, after having endorsed on both of those instruments an entry of the fact of a sale having taken place, shall forward them to the registrar of the port appearing thereon to be the former port of registry of the ship, and the last-mentioned registrar shall thereupon make a memorandum of the sale in the register book and the registration of the ship shall be considered as closed, except as regards any unsatisfied mortgages or existing certificates of mortgage entered in the register book;

(i) on registration anew, the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being resurveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee;

(j) if the ship is sold to a person not qualified to be the owner of a Kenya ship, the bill of sale by which the ship is transferred, the certificate of sale and the certificate of registry shall be produced to a registrar or a consular officer, and the registrar or consular officer shall retain the certificates of sale

and registry and, having endorsed thereon the fact of that ship having been sold to a person not qualified to be the owner of a Kenya ship, shall forward the certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of that ship; and that registrar shall thereupon make a memorandum of the sale in the register book and the registration of the ship shall be considered as closed, except as regards any unsatisfied mortgages or existing certificates of mortgage entered therein;

(k) if, on a sale being made to a person not qualified to be the owner of a Kenya ship, default is made in the production of the certificates mentioned in paragraph (j), that person shall be considered by law as having acquired no title to or interest in the ship; and further, the person on whose application the certificate of sale was granted and the person exercising the power shall each be guilty of an offence and liable to a fine not exceeding ten thousand shillings;

(l) if no sale is made in conformity with the certificate of sale, that certificate shall be delivered to the registrar by whom it was granted; and he shall thereupon cancel it and enter the fact of the cancellation in the register book; and every certificate so cancelled shall be void for all purposes.

#### Revocation of certificate of mortgage or sale

44.(1) The registered owner of a ship or share in a ship in respect of which a certificate of mortgage or sale has been granted specifying the places where the power of mortgage or sale is to be exercised may, by an instrument under his hand, authorize the registrar by whom the certificate was granted to give notice to the registrar or consular officer at every such place that the certificate is revoked.

(2) Notice shall thereupon be given accordingly and shall be recorded by the registrar or a consular officer who receives it, and after it is recorded the certificate shall be deemed to be revoked and of no effect so far as respects any mortgage or sale to be thereafter made at that place.

(3) The notice after it has been recorded shall be exhibited to every person applying for the purpose of effecting or obtaining a mortgage or transfer under the certificate.

(4) A registrar or consular officer on recording such a notice shall inform the registrar by whom the certificate was granted whether any previous exercise of the power to which the certificate refers has taken place.

#### Ships' names

45.(1) The Minister may refuse the registration of a ship by the name by which it is proposed to register it, if it is already the name of a registered Kenya ship or a name so similar as to be calculated to deceive.

(2) A ship shall not be described by any name other than that by which she is for the time being registered.

(3) A change shall not be made in the name of a ship without the previous written permission of the Minister.

(4) Application for that permission shall be in writing, and if the Minister is of the opinion that the application is reasonable he may entertain it, and thereupon require a notice thereof to be published in the Gazette.

(5) On permission being granted to change the name, the ship's name shall forthwith be altered in the register book, in the ship's certificate of registry, and on her bows and stern.

(6) Where it is shown to the satisfaction of the Minister that the name of a ship has been changed without permission, he shall direct that her name be altered into that which she bore before the change, and the name shall be altered in the register book, in the ship's certificate of registry, and on her bows and stern accordingly.

(7) Where a foreign ship, not having been previously registered as a Kenya ship, becomes a Kenya ship she shall not be registered by any name other than that she bore as a foreign ship immediately before becoming a Kenya ship except with the written permission of the Minister.

(8) If any person acts, or permits any person under his control to act, in contravention of this section, or omits to do, or permits any person under his control to omit to do, anything required by this section, he shall be guilty of an offence and the ship may be detained until this section has been complied with.

#### Registration of alterations

**46.** When a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if the alteration is made at any port having a registrar, that registrar or, if it is made elsewhere, the registrar of the first port having a register at which the ship arrives after the alteration, shall, on application being made to him and on receipt of a certificate from the proper surveyor stating the particulars of the alteration, either cause the alteration to be registered or direct that the ship be registered anew.

#### Alterations noted on certificate of registry

**47.(1)** For the purpose of the registration of an alteration in a ship, the ship's certificate of registry shall be produced to the registrar, and the registrar shall in his discretion either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered or endorse and sign on the existing certificate a memorandum of the alteration.

(2) The particulars of the alteration so made, and the effect of the new certificate having been granted, or endorsement having been made, shall be entered by the registrar of the ship's port of registry in his register book; and for that purpose the registrar to whom the application for the registration of the alteration has been made (if he is not the registrar of the ship's port of registry) shall forthwith report to the last-mentioned registrar those particulars and facts accompanied, where a new certificate of registry has been granted, by the old certificate of registry.

#### Provisional certificate and endorsement where ship to be registered anew

**48.(1)** Where any registrar, not being the registrar of the ship's port of registry, on an application as to an alteration in a Kenya ship, directs the ship to be registered anew, he shall either grant a provisional certificate describing the ship as altered or provisionally endorse the particulars of the alteration on the existing certificate.

(2) Every such provisional certificate or certificate provisionally endorsed shall, within ten days after the first subsequent arrival of the ship at a port of registry in Kenya, be delivered up to the registrar thereof, and that registrar shall cause the ship to be registered anew.

(3) The registrar granting a provisional certificate under this section, or provisionally endorsing a certificate, shall add to the certificate or endorsement a statement that it is made provisionally and shall send a report of the particulars of the case to the registrar of the ship's port of registry containing a statement similar to that made on the certificate or endorsement.

## Registration anew on change of ownership

**49.** Where the ownership of a ship is changed, the registrar may, on the application of the owners of the ship, register the ship anew, although registration anew is not required under this Act.

## Procedure for registration anew

**50.(1)** Where a ship is to be registered anew, the registrar shall proceed as in the case of first registration and on the delivery up to him of the existing certificate of registry and on the other requisites to registration, or in the case of a change of ownership such of them as he thinks material, being duly complied with, he shall make registration anew and grant a certificate of registry.

(2) When a ship is registered anew, her former registration shall be considered as closed, except so far as it relates to any unsatisfied mortgage or existing certificate of sale or mortgage entered thereon, but the names of all persons appearing on the former register to be interested in the ship as owners or mortgagees shall be entered on the new register and the registration anew shall not in any way affect the rights of any of those persons.

## Transfer of registration

**51.(1)** The registration of a ship may be transferred from one port in Kenya to another, on the application to the registrar of the existing port of registry of the ship made by declaration in writing of all persons appearing on the register to be interested therein as owners or mortgagees, but that transfer shall not in any way affect the rights of those persons or any of them, and those rights shall in all respects continue in the same manner as if no such transfer had been effected.

(2) On any such application, the registrar shall transmit notice thereof to the registrar of the intended port of registry, with a copy of all particulars relating to the ship and the names of all persons appearing on the register to be interested therein as owners or mortgagees.

(3) The ship's certificate of registration shall be delivered up to the registrar either of the existing or intended port of registry, and if delivered up to the former shall be transmitted to the registrar of the intended port of registry.

(4) On the receipt of the above documents, the registrar of the intended port of registry shall enter in his register book all particulars and names so transmitted and grant a fresh certificate of registry, and thenceforth the ship shall be considered as registered at the new port of registry and the name of the ship's new port of registry shall be substituted for the name of her former port of registry on the ship's stem.

## Wrecked ship may be registered

**52.(1)** Where a Kenya ship or foreign registered ship is wrecked and the register thereof is closed, and the certificate of registry delivered up to the registrar and cancelled, the Minister may direct that the ship may be registered as a Kenya ship, on proof being adduced to the satisfaction of the Minister that—

(a) the ship has been thoroughly repaired and made seaworthy;

(b) all the transactions connected with the wreck, condemnation and sale of such ship were in good faith;

(c) all the requirements of the law have been complied with.



(2) No registrar shall register any such ship without the consent of the Minister.

#### Infancy or other incapacity

**53.** Where by reason of infancy, lunacy or any other cause any person interested in a ship or a share in a ship is incapable of making any declaration or doing anything required or permitted by this Act to be made or done in connexion with the registration of the ship or share, the guardian or manager, if any, of that person or, if there is none, any person appointed on application made on behalf of the incapable person or of any other person interested, by any court or judge having jurisdiction in respect of the property of incapable persons, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such act or thing in the name and on behalf of the incapable person, and all acts done by the substitute shall be as effectual as if done by the person for whom he has substituted.

#### No notice of trusts

**54.** No notice of any trust, express, implied or constructive, shall be entered in the register book, or be receivable by the registrar; and, subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner of a ship or a share therein shall have power absolutely to dispose of the ship or share in the manner provided in this Act, and to give effectual receipts for any money paid or advanced by way of consideration.

#### Equities not excluded by Act

**55.** In this Part, "beneficial interest" includes interests arising under contract and other equitable interests, and the intention of this Act is that, without prejudice to—

(a) the provisions of this Act for preventing notice of trusts from being entered in the register book or received by the registrar; and

(b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees; and

(c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of Kenya ships,

interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein, in the same manner as in respect of any other movable property.

#### Liability of owner

**56.** Where any person is beneficially interested otherwise than by way of mortgage in a ship or a share in a ship registered in the name of some other person as owner, the person so interested, as well as the registered owner, shall be subject to all penalties imposed by this Act in respect of any offence under this Act on the owners of ships or shares therein, and proceedings may be taken for the enforcement of any such penalties against both the person holding any such interest and the registered owner or either of them jointly, or jointly and severally:

Provided that such a person shall not be liable to any penalty if he is able to show that the offence in question was committed without his knowledge and consent.

#### Ship's managing owner to be registered

**57.**(1) The name and address of the managing owner for the time being of every registered ship shall be registered with the registrar.

(2) Where there is not a managing owner, there shall be registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner, and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations and subject to the same liabilities as if he were the managing owner.

#### Power of registrar to dispense with evidence

**58.**When under this Part any person is required to make a declaration on behalf of himself or of any corporation, or any evidence is required to be produced to the registrar and it is shown to the satisfaction of the registrar that for any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the registrar may, with the approval of the Minister and on the production of such other evidence and subject to such terms as he may think fit, dispense with the declaration or evidence.

#### Inspection of register and admissibility of documents

**59.**(1) A person on payment of the prescribed fee may, on application to the registrar at a reasonable time during the hours of his official attendance, inspect any register book.

(2) The following documents shall be admissible in evidence before the court, namely—

(a) any register book, on its production from the custody of the registrar having the lawful custody thereof;

(b) a certificate of registry purporting to be signed by the registrar;

(c) an endorsement on a certificate of registry purporting to be signed by the registrar;

(d) every declaration made pursuant to this Part in respect of a Kenya ship.

#### Fees

**60.**The Minister may prescribe a tariff of fees for the registration, change of name, transfer, transmission, mortgage, survey and inspection of registers of Kenya ships.

#### Forms of documents

**61.**(1) The several instruments and documents specified in this Part shall be in the prescribed form.

(2) A registrar shall not be required without the special direction of the Minister to receive and enter in the register book any bill of sale, mortgage or other instrument for the disposal or a transfer of any ship or share or any interest therein, that is made in any form other than that for the time being required under this Part.

(3) The Minister shall cause the forms to be supplied to all registrars under this Act for distribution to persons required to use them.

#### Instructions to registrars

**62.** The Minister may also, for carrying into effect this registrars, part, give such instructions to registrars as to the manner of making entries in the register book as to the execution and attestation of powers of attorney, as to any evidence required for identifying any person, or as to the referring to him of any question involving doubt or difficulty and generally as to any act or thing to be done in pursuance of this Part, as he thinks fit.

#### Forgery of documents

**63.** A person who forges or fraudulently alters any register book, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage or a certificate of mortgage or sale under this Part, or any entry or endorsement made in or on any of those documents, shall be guilty of an offence and liable to imprisonment for a term not exceeding seven years.

#### False declarations

**64.**(1) A person who, in the case of a declaration made in the presence of or produced to the registrar under this Part, or in any document or other evidence produced to the registrar —

(a) wilfully makes a false statement concerning the title to, or ownership of, or the interest existing in, any ship or any share in a ship;

(b) utters, produces or makes use of a declaration or document containing any such false statement knowing it to be false, shall be guilty of an offence and liable to imprisonment for term not exceeding one year.

(2) A person who wilfully makes a false declaration concerning the qualification of himself or of any other person or of any corporation to a Kenya ship or share in a Kenya ship, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year, and that ship or share shall be subject to forfeiture, to the extent of the interest therein of the declarant, and also, unless it is proved that the declaration was made without authority, of any person or corporation on behalf of whom the declaration is made.

#### Nationality and flag of ship to be declared before clearance

**65.**(1) A customs officer shall not grant a clearance or transire for any ship until the master of the ship has declared to that officer the name of the country to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance or transire.

(2) If a ship attempts to proceed to sea without a clearance or transire, she may be detained until a declaration is made.

#### National colours 38 of 1968, Sch.

**66.**(1) The national colours of a registered or licensed Kenya ship are hereby declared to be the national flag of Kenya, and save as hereinafter provided such a ship shall fly no other.

(2) *(Deleted by 38 of 1968, Sch.)*

(3) A Kenya ship shall hoist the proper national colours—

(a) on entering or leaving any Kenya or foreign port;

(b) on a signal being made to the ship by any ship in the service of the Government.

## Penalty

**67.**(1) If a person uses or permits any person to use the national flag of Kenya on board a ship which is not wholly owned by persons qualified to be owners of a Kenya ship for the purpose of making that ship appear to be a Kenya ship he shall be guilty of an offence and liable to imprisonment for a term not exceeding two years, and the ship shall be subject to forfeiture.

(2) In proceedings under subsection (1), the burden of proving the right to use the national flag of Kenya colours and assume the character of a Kenya ship shall upon the person using and assuming them.

## Proceedings for forfeiture of ship

**68.**(1) Where a Kenya ship or a share in a Kenya ship has become subject to forfeiture under this Part—

(a) a commissioned officer of the armed forces;

(b) a detaining officer; or

(c) a consular officer,  
may seize and detain the ship and bring her for adjudication before the court, and the court may thereupon adjudge the ship with her tackle, apparel and furniture or the share in the ship, as the case may be, to be forfeited and make such order in the case as the court considers just.

(2) A person seizing or detaining a ship under this section shall not be responsible, either civilly or criminally, to any person in respect of the seizure or detention, if it is shown to the satisfaction of the court trying any question relating to the ship or the seizure or detention that there were reasonable grounds for the seizure or detention.

## Rules for ascertaining tonnage

**69.**(1) Before a ship is registered, its tonnage shall be ascertained in accordance with the tonnage regulations, subject to the exceptions contained in this Part.

(2) In this Act, "the tonnage regulations" means the rules set out in the First Schedule, together with the provisions of this Act relating to tonnage.

(3) In ascertaining the register tonnage of a ship, the allowance and deductions hereinafter mentioned shall be made from the tonnage of the ship ascertained as aforesaid.

(4) In measuring a ship for the purpose of ascertaining her register tonnage, no deduction shall be allowed in respect of any space which has not first been included in the measurement of her tonnage.

(5) For the purposes of the tonnage regulations, tonnage deck shall be taken to be the upper deck in ships which have less than three decks, and to be the second deck from below in all other ships, and all measurements shall be taken in feet, and fractions of feet shall be expressed in decimals.

(6) The Minister may, by order, amend the First Schedule for securing the more accurate and uniform application thereof and the effectual carrying out of the principles of measurement therein adopted, and may issue instructions for the guidance of surveyors.

## Allowance for engine-room space

**70.**(1) In the case of a ship propelled by steam or other power requiring engine room, an allowance shall be made for the space occupied by the propelling power, and the amount so allowed shall be deducted from the gross tonnage of the ship ascertained in accordance with section 69, and the remainder shall (subject to any deductions hereinafter mentioned) be deemed to be the register tonnage of the ship; and the allowance shall be calculated as follows—

(a) in ships propelled by screws in which the tonnage of that space is 13 per cent or more of the gross tonnage, the deduction shall be 32/100 of the gross tonnage;

(b) in ships propelled by screws in which the tonnage of that space is less than 13 per cent of the gross tonnage of the ship, the deduction shall be 32/100 of that gross tonnage proportionately reduced, but the deduction shall not be made unless the surveyor is satisfied that the space provided for the working of the boilers and machinery and the ventilation and lighting of that space are adequate.

(2) The allowance under this section for the space occupied by the propelling power of a ship shall not in any case exceed 55 per cent of that portion of the tonnage of the ship which remains after deducting from the gross tonnage any deductions allowed under section 71, but this section shall not apply to a motor ship constructed for the purpose of towing vessels so long as it is exclusively employed for that purpose.

(3) Such portion of the space above the crown of the engine room and above the upper deck as is framed in for the machinery or for the admission of light and air shall not be included in the measurement of the space occupied by the propelling power unless—

(a) the owner of the ship so requests the Minister in writing; and

(b) that portion is first included in the measurement of the gross tonnage; and

(c) a surveyor certifies that the portion so framed in is reasonable in extent and is so constructed as to be safe and seaworthy, and that it cannot be used for any purpose other than the machinery or for the admission of light and air to the machinery or boilers of the ship.

(4) Goods or stores shall not be stored or carried in any space measured for the propelling power, and if they are so carried in a ship the master and owner of the ship shall be guilty of an offence.

#### Additional allowances

**71.**(1) In measuring or remeasuring a ship for the purpose of ascertaining her register tonnage, the following deductions shall be made from the space included in the measurement of the tonnage—

(a) in the case of all ships—

(i) any space used exclusively for the accommodation of the master and any space occupied by seamen or apprentices and appropriated to their use that is certified in the manner required by any regulations made under section 135;

(ii) any space used exclusively for the working of the helm, the capstan and the anchor gear or for keeping the charts, signals and other instruments for navigation and boatswain's stores;

(iii) the space occupied by the donkey engine and boiler, if they are connected with the main pumps of the ship;

(iv) any space (other than a double bottom) adapted only for water ballast;

(b) in the case of a ship propelled only by sails, any space set apart and used exclusively for the storage of sails.

(2) The deductions allowed under this section, other than a deduction for a space occupied by seamen or apprentices and certified as aforesaid, are subject to the following provisions—

(a) the space deducted must be certified by a surveyor as being reasonable in extent and properly and efficiently constructed for the purpose for which it is intended;

(b) a notice must be permanently marked in or over every such space stating the purpose to which the space is to be applied and that whilst so applied it is to be deducted from the tonnage of the ship;

(c) the deduction on account of space for storage of sails shall not exceed 2½ per cent of the tonnage of the ship.

#### Measurement of ship with double bottom

72. In the case of a ship constructed with a double bottom for water ballast, if the space between the inner and outer plating is certified by a surveyor to be not available for the carriage of cargo, stores or fuel, the depth required by the tonnage regulations relating to the measurement of transverse areas shall be taken to be the upper side of the inner plating of the double bottom, and that upper side shall for the purposes of measurement be taken to represent the floor timber referred to in the tonnage regulations.

#### Tonnage once ascertained to be tonnage of ship

73. Whenever the tonnage of a ship has been ascertained in accordance with the tonnage regulations and registered, it shall thenceforth be deemed to be the tonnage ship of the ship and shall be repeated in every subsequent registration of the ship unless an alteration is made in the form or capacity of the ship or unless it is discovered that the tonnage of the ship has been erroneously computed, and in either of those cases the ship shall be remeasured and her tonnage determined and registered according to the tonnage regulations.

#### Tonnage of ship of foreign country adopting tonnage regulations

74.(1) If it appears to the Minister that any foreign country has brought in rules as to tonnage substantially the same as the tonnage regulations, he may order that the ships of that country shall, without being remeasured in Kenya, be deemed to be of the tonnage denoted in their certificate of registry or other national papers in the same manner, to the same extent and for the same purposes as the tonnage denoted in the certificate of registry of a registered ship is deemed to be the tonnage of that ship; and—

(a) any space shown by the certificate of registry or other national papers of any such ship as deducted from tonnage, on account of being occupied by seamen or apprentices and appropriated to their use, shall be deemed to have been certified under this Act and to comply with those provisions of this Act which apply to such a space in the case of Kenya ships, unless the surveyor certifies to the Minister that the construction and the equipment of the ship as respects that space do not come up to the standard required under this Act in the case of a Kenya ship; and

(b) if any question arises whether the construction and the equipment of the ship do come up to the required standard, a surveyor may inspect the ship for the purpose of determining whether such a certificate should be given by him or not.

(2) Where it appears to the Minister that the tonnage of any foreign ship as measured by the rules as to

tonnage of the country to which she belongs materially differs from that which would be her tonnage if measured under this Act, the Minister may order that, notwithstanding any order for the time being in force under this section, any of the ships of that country may for all or any of the purposes of this Act be remeasured in accordance with this Act.

Surveyors for measurement of ship

**75.** The Minister may appoint—

(a) in any port in Kenya;

(b) at any place outside Kenya;

surveyors to survey and measure ships under this Act.

Licences for certain un registered ships

**76.**(1) Every vessel or boat owned by persons (not being bodies corporate) resident in Kenya, or by a corporate body incorporated or having its principal place of business in Kenya, and which is not required by this Act to be registered, shall, if it is gainfully employed or owned for the purpose of gainful employment within territorial waters, and it proceeds beyond the limits of any port, be licensed as hereinafter provided.

(2) If the owner or master of a vessel required by subsection (1) to be licensed permits that vessel to proceed to sea beyond the limits of a port without there being in force in relation to the vessel a valid licence issued under this Part, he shall be guilty of an offence and liable to a fine not exceeding two hundred shillings in respect of each ton of the vessel's tonnage, and the vessel shall be subject to forfeiture.

(3) The Minister may appoint officers for the purpose of issuing licences at ports where there is no registrar, and the registrar, or if there is no registrar the officer so appointed, shall be the proper officer for the purposes of this Part dealing with the licensing of unregistered vessels.

(4) The Minister may approve forms and certificates to be used in connexion with the licensing of small vessels and may prescribe the fees to be charged in respect thereof.

(5) This section does not apply to undecked sailing vessels of primitive construction or to boats propelled by oars.

Provisions as to licences

**77.**(1) Licences under this Part shall be in a form approved by the Minister, and shall contain the following particulars—

(a) the name of the vessel and the year of her build, and the identification number and letter assigned to her;

(b) the name and address of her owner;

(c) the principal dimensions and tonnage of the vessel, together with a description of the vessel and her rig;

(d) the type, brake horse power and the manufacturer's type and serial number of the engine, if the vessel is mechanically propelled;

(e) the trade in which she is to be employed;

(f) the date of issue of the licence and the fee paid.

(2) A licence shall be valid for a period of twelve months from the date of issue, and may be renewed annually on payment of the prescribed fee and if the vessel is seaworthy and properly found and equipped and has not been altered in any significant manner since the licence was issued.

(3) A licence shall be prepared in duplicate, and both parts shall be signed by the proper officer, and one part shall be delivered to the owner or applicant and the other retained by the proper officer.

(4) On receipt of an application for a licence together with the prescribed fee, the proper officer shall examine and measure the vessel and ascertain her tonnage under Rule II of the tonnage regulations, and shall satisfy himself that the vessel is seaworthy for the employment in which she is to be engaged and properly found and equipped in accordance with this Act; and if he is satisfied that the vessel is so seaworthy, properly found and equipped, the proper officer may proceed to issue the licence, but if he is of the opinion that the vessel is unseaworthy or is ill-found or not properly equipped he shall reject the application and retain that portion of the fee paid which relates to the examination and measurement of the vessel and return the balance to the applicant:

Provided that the proper officer may appoint a person who in his opinion is qualified for the purpose, to carry out the examination and measurement of the vessel under this section.

(5) If any significant alteration is made to a licensed vessel, or if the property in a licensed vessel is transferred wholly or in part, or if the owner or his agent fails to renew the licence on or before the due date, the licence shall be cancelled and the owner or his agent shall be required to apply for a new licence but, except where the licence has been cancelled by reason of an alteration, the vessel will not be remeasured:

Provided that a licence which has become subject to cancellation by reason of a transmission shall be deemed to be valid for a period not exceeding thirty days after the event giving rise to the transmission.

(6) Any person who has a beneficial interest in a licensed vessel and who has knowledge of any significant alteration having been made to the vessel, or of the transfer of the property in the vessel wholly or in part, shall report the matter in writing to the officer who issued the licence, and if he fails to do so he shall be guilty of an offence.

(7) In the event of a licensed vessel being lost or becoming a constructive total loss, the owner or master shall, within two months of the loss, forward to the officer by whom the licence for the vessel was issued an account of the matter, together with the licence if it has not been lost or destroyed, and if he fails to do so he shall be guilty of an offence.

(8) A licence shall remain the property of the Government and shall be produced on demand of any proper officer, shipping master or customs officer, and shall be surrendered on demand to the officer by whom it was issued.

(9) A person who forges or fraudulently alters a licence or document or certificate used in connexion with the licensing of vessels under this Part shall be guilty of an offence and liable to imprisonment for a term not exceeding one year, and, if he is the owner of the vessel or of a share in the vessel in respect of which the forgery or fraudulent alteration was made, the vessel or share shall be subject to forfeiture.



### Part III - MASTERS, OFFICERS, SEAMEN AND APPRENTICES

Ship to be provided with certificated officers

78.(1) In this section and in subsequent sections dealing with certificates of competency, "coasting ship" means a ship of not more than 500 tons register tonnage engaged in the officers coasting trade which does not normally go more than fifteen nautical miles from the land.

(2) Every Kenya foreign-going ship and every Kenya coasting ship of 10 tons register tonnage and upwards when going to sea from a place in Kenya, and every foreign ship carrying passengers to or from a place in Kenya which is not provided with certificated officers in accordance with the national laws of the country of registry, shall be provided with officers duly certificated under this Act according to the following scale—

(a) in every case, a duly certificated master;

(b) if the ship is over 100 tons but not over 500 tons register tonnage, at least one officer besides the master holding a certificate not lower than—

(i) mate in the case of a coasting ship;

(ii) second mate in the case of a foreign-going ship;

(c) if the ship is over 500 tons but not over 1600 tons register tonnage and is engaged on voyages where the distance between the ports visited—

(i) does not exceed 500 nautical miles, at least one officer besides the master holding a certificate not lower than second mate;

(ii) exceeds 500 nautical miles, at least two officers besides the master, one holding a certificate not lower than second mate and the other a certificate not lower than third mate;

(d) if the ship is over 1600 tons register tonnage and is engaged on voyages where the distance between the ports visited—

(i) does not exceed 500 nautical miles, at least two officers besides the master, one holding a certificate not lower than chief mate and the other a certificate not lower than second mate;

(ii) exceeds 500 nautical miles, at least three officers besides the master, namely a chief mate, a second mate and a third mate, all of whom shall be duly certificated;

(e) if any seaman or officer is carried in addition to those required by paragraphs (b), (c) and (d) for the purpose of keeping a watch at sea, he shall hold a certificate not lower than—

(i) mate in the case of a coasting ship;

(ii) third mate in the case of a foreign-going ship;

(f) if the ship is a motor ship of under 500 shaft horse power, at least one engineer holding a certificate not lower than third class engineer;

(g) if the ship is a motor ship of over 500 but not over 2500 shaft horse power and is engaged on voyages where the distance between the ports visited—

(i) does not exceed 500 nautical miles, at least two engineers, one holding a certificate not lower than second class engineer and the other a certificate not lower than third class engineer;

(ii) exceeds 500 miles, at least two engineers, one a first class engineer and the other a first class engineer or a second class engineer duly certificated;

(h) if the ship is a motor ship of over 2500 but not over 5000 shaft horse power she shall be provided with at least three engineers, one a first class engineer, one a second class engineer and one a third class engineer, all of whom shall be duly certificated;

(i) if the ship is a motor ship of over 5000 shaft horse power, she shall be provided with at least one third class engineer duly certificated, in addition to those engineers required under paragraph (h);

(j) if any engineers are carried in addition to those required by paragraphs (f), (g), (h) and (i) for the purpose of keeping a watch in the engine room at sea, they shall hold a certificate not lower than third class engineer.

(3) No person other than a seaman officer or engineer officer holding a certificate or licence under this Act may take charge of a watch on deck or in the engine-room of a Kenya ship at sea, and no person other than a duly certificated engineer shall be left in charge of the boiler room of a Kenya ship in port if the boilers are under steam.

(4) If any person—

(a) having been engaged as one of the above-mentioned officers goes to sea as such an officer without being duly certificate; or

(b) employs a person as one of the above-mentioned officers without ascertaining that the person so employed is duly certificated, he shall be guilty of an offence.

(5) An officer is not duly certificated within the meaning of this section unless he is the holder for the time being of a valid certificate of competency under this Act or a licence under section 80, of a grade appropriate to his rank and status in the ship and to the tonnage or shaft horse power or the type of engine of the ship or to the trade in which the ship is engaged or of a higher grade.

(6) Where it appears to the Minister that a ship may be unreasonably delayed because the owner is unable to provide officers in accordance with the foregoing scales, and the Minister is satisfied that—

(a) the owner has exercised due diligence to provide those officers; and

(b) the ship is properly and efficiently manned for the voyage she is about to undertake, the Minister may on the written application of the owner exempt that ship from any of the provisions of this section.

**79.**(1) Certificates of competency shall be granted in competency, accordance with this Act in each of the following grades—

- (a) master of a foreign-going ship;
- (b) chief mate of a foreign-going ship;
- (c) second mate of a foreign-going ship;
- (d) third mate of a foreign-going ship;
- (e) master of a coasting ship not exceeding 500 tons register tonnage;
- (f) mate of a coasting ship not exceeding 500 tons register tonnage;
- (g) master of a coasting vessel not exceeding 100 tons register tonnage;
- (h) first class engineer;
- (i) second class engineer;
- (j) third class engineer.

(2) A certificate of competency as master or chief mate of a foreign-going ship is superior to a certificate of competency as master of a coasting ship and entitles the holder to go to sea in that capacity, but a certificate of competency as master of a coasting ship does not entitle the holder to go to sea in any capacity in a foreign-going ship.

(3) A certificate of competency as second mate or third mate of a foreign-going ship is superior to a certificate of competency as mate of a coasting ship and entitles the holder to go to sea in that capacity.

(4) A certificate of competency granted under the regulations made pursuant to section 72 of the Kenya Ports Authority Act shall have the same force to the extent thereby authorized as if it had been granted under this Act.

Examinations for certificates of competency and foreign certificates

**80.**(1) For the purpose of granting certificates of competency the Minister may—

- (a) cause examinations to be held at such times and at such places as he may direct;
- (b) appoint examiners to conduct the examinations;
- (c) regulate the conduct of the examinations and the qualifications of candidates and do all such acts and things as he thinks expedient for the purpose of the examinations, and may fix fees therefor;
- (d) cause to be delivered to every candidate who is duly reported by the examiners to have passed his examination, and to have given satisfactory evidence of his experience, ability and good character, the appropriate certificate of competency;
- (e) prescribe the rights and obligations of holders of certificates of competency and the offences for which certificates may be forfeited.

(2) Where the laws of any other country provide for the examination of, and grant of certificates to, persons intending to act as masters, seamen officers and engineers on board ships, and—

(a) the Minister is satisfied that all the examinations are so conducted as to be equally efficient as the examinations for the same purpose in Kenya under this Act, and

(b) the certificates are granted on principles which show similar qualifications and competency as those granted under this Act,

the Minister may in the case of persons holding those certificates, who desire to go as master, seaman officer or engineer in Kenya ships, direct that—

(i) if the person is a citizen of Kenya, he shall surrender that certificate and be granted a certificate of equivalent grade under this Act;

(ii) if the person is not a citizen of Kenya he shall, on payment of the prescribed fee and subject to such conditions as the Minister may impose, be issued with a licence authorizing him to go to sea in a Kenya ship in the same rank or station as if his certificate had been granted under this Act.

(3) A licence issued at subsection (2) (ii) shall-

(a) during its currency have the same force as a certificate of competency granted under this Act and be capable of being cancelled or suspended for the same reasons;

(b) be valid for a period of twelve months from the date of issue, and may be renewed annually on payment of the prescribed fee.

(4) The Minister shall by notice in the Gazette from time to time declare the names of the countries to which subsection (2) has application.

Offences relating to certificates and licences

**81.** A person who—

(a) makes a false representation for the purpose of obtaining for himself or for any other person a licence or certificate of competency or of service as a deck officer or engineer;

(b) forges or fraudulently alters any such licence or certificate or an official copy thereof;

(c) fraudulently makes use of any such certificate or licence which is forged, altered, cancelled or suspended or to which he is not justly entitled; or

(d) fraudulently lends such a certificate or licence to or allows it to be used by any other person, shall be guilty of an offence.

Appointment of ship master and deputies

**82.** The Minister may appoint a public officer to be shipping master at any port in Kenya, and may also appoint public officers to be deputy shipping masters.

Business of shipping master

**83.**(1) It shall be the general business of the shipping master—

- (a) to afford facilities for engaging seamen by keeping registers of their names and characters;
  - (b) to superintend and facilitate the engagement and discharge of seamen as provided in this Act;
  - (c) to facilitate the making of apprenticeships to the sea service;
  - (d) to perform such other duties relating to seamen, apprentices and merchant ships as are by or in pursuance of this Act committed to him.
- (2) Any act done by, to or before a deputy shipping master shall have the same effect as if done by, to or before a shipping master.

#### List of deserters

**84.** A shipping master shall keep at his office a list of the seamen who, to the best of his knowledge and belief, have deserted or failed to join their ships after signing an agreement to proceed to sea in them, and shall on request show the list to a master of a ship, and he shall not be liable in respect of any entry made in good faith in the list.

#### Fees

**85.** The Minister shall fix a scale of fees payable for the defined services performed by shipping masters.

#### Signature of contracts and indentures

**86.**(1) All contracts or indentures of apprenticeship or learnership to the sea service entered into in Kenya shall be signed by the intended apprentice or learner and the owner or master to whom he is to be bound in the presence of the shipping master, who shall attest the signature, and who shall before the contract or indentures is signed, satisfy himself—

(a) that the intended apprentice or learner—

(i) understands the contents and provisions of the contract or indentures;

(ii) freely consents to be bound;

(iii) has attained the age of sixteen years; and

(iv) is in possession of a certificate by a duly qualified medical practitioner to the effect that the apprentice or learner is physically fit for the sea service; and

(b) if the intended apprentice or learner is under the age of twenty-one years, that his parent's or guardian's consent has been obtained to his being contracted or indentured, or, if there is no parent or guardian, the consent of a labour officer.

(2) This section shall, except in so far as it prescribes specifically in respect of a matter dealt with under any law governing apprenticeships or indentured learnerships, be in addition to and not in derogation of the provisions of that law.

#### Records to be kept by shipping master

**87.**(1) The shipping master shall keep a copy of every contract or indenture of apprenticeship or learnership in his office, and the copy shall be open to public inspection free of charge.

(2) Whenever a contract of indenture is assigned or cancelled or whenever an apprentice dies or deserts, the matter of the apprentice or indentured learner shall, within thirty days after the assignment, cancellation, death or desertion if it happens in Kenya, or if it happens elsewhere so soon afterwards as circumstances permit, notify the fact to the shipping master.

#### Agreement with crew

**88.**The master of every ship of more than 125 tons register tonnage shall enter into an agreement (in this Act called the agreement with the crew) in accordance with this Act with every seaman whom he engages in Kenya and carries to sea as one of his crew.

#### Contents of agreement with crew

**89.**(1) An agreement with the crew shall be in a form approved by the Minister and shall be dated at the time of the first signature thereof, and shall be signed by the master before a seaman signs it.

(2) The agreement with the crew shall show the place at which it is made, the surname and other names of the seaman, his birthplace, and his age or the date of his birth, and shall state clearly the respective rights and obligations of each of the parties, and shall contain as terms thereof the following particulars—

(a) the name of the vessel or vessels on board which the seaman undertakes to serve;

(b) either the nature and, as far as is practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the port at which it is intended the crew shall be discharged, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(c) the number and description of the crew;

(d) if possible, the place and date at which each seaman is to be on board or to begin work;

(e) the capacity in which each seaman is to serve;

(f) the amount of wages which each seaman is to receive;

(g) a scale of the provisions which are to be furnished to each seaman;

(h) the time that is to expire after arrival before the sea man is discharged;

(i) any regulations as to conduct on board and as to fines short allowance of provisions or other lawful punishment for misconduct which have been approved by the Minister as regulations proper to be adopted and which the parties agree to adopt;

(j) a list of young persons under the age of eighteen years and the dates of their births.

(3) The agreement with the crew shall be so framed as to admit of such stipulations to be adopted at the will of a master and seaman in each case, whether respecting the advance and allotment of wages or otherwise, as are not contrary to law.

(4) If the master of a ship registered at a port outside Kenya has an agreement with the crew made in due form according to the law of that port or of the port in which her crew were engaged, and engages single seamen in Kenya, those seamen may sign the agreement so made and it shall not then be necessary for them to sign an agreement in the form approved by the Minister.

(5) An agreement made to employ a seaman under this section shall be terminated by—

(a) mutual consent of the parties thereto; or

(b) the death of the seaman; or

(c) the loss or total unseaworthiness of the vessel.

Agreement with crew of foreign-going ship

**90.** The following provisions shall have effect with respect to the agreements with the crew made in Kenya in the case of foreign-going ships registered either within or outside Kenya—

(a) the agreement shall, subject to the provisions of this Act as to substitutes, be signed by each seaman in the presence of a shipping master;

(b) the shipping master shall give reasonable facilities to the seaman and his adviser, if any, to examine the agreement, and shall cause the agreement to be read over and explained to each seaman or otherwise ascertain that each seaman understands it before he signs it and shall attest each signature;

(c) when the crew is first engaged, the agreement shall be signed in duplicate, and one part shall be retained by the shipping master and the other shall be delivered to the master and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship;

(d) where a substitute is engaged in the place of a seaman who duly signed the agreement and whose services are, within twenty-four hours of the ship's putting to sea, lost by death, desertion or other unforeseen cause, the engagement shall, when practicable, be made before a shipping master, and when not practicable the master shall, before the ship puts to sea if practicable, and if not as soon as possible afterwards, cause the agreement to be read over and explained to the substitute, and the substitute shall thereupon sign it in the presence of a witness, and the witness shall attest the signature;

(e) the agreements may be made for a voyage or if the voyages of the ship average less than six months in duration may be made to extend over two or more voyages, and agreements so made to extend over two or more voyages are in this Act referred to as running agreements;

(f) running agreements shall not extend beyond the six months' period of time next following the date of their making or the first arrival of the ship at her port of destination in Kenya after the termination of that period;

(g) on every return to a port in Kenya before the final termination of a running agreement, the master shall make on the agreement an endorsement as to the engagement or discharge of seamen, either that no engagements or discharges have been made or are intended to be made before the ship leaves port, or that all those made have been made as required by law, and if the master wilfully makes a false statement in any such endorsement he shall be guilty of an offence;

(h) the master shall deliver the running agreement so endorsed to the shipping master, and the shipping master shall, if the provisions of this Act relating to agreements have been complied with, sign the endorsement and return the agreement to the master:

(i) the duplicate running agreement retained by the shipping master on the first engagement of the crew shall be kept by the shipping master until the expiration of the agreement;

(j) except as provided in section 104, the agreement shall not purport to deprive the courts of jurisdiction to hear and determine disputes respecting the agreement.

#### Crew list for small vessel

**91.**(1) The master of every vessel of under 125 tons register tonnage who is not required by this Act to enter into an agreement with the crew shall be issued with a crew list by the shipping master at the port where the crew is engaged, and before carrying any person to sea as a member of his crew from any port in Kenya he shall produce that person before a shipping master or, if there is no shipping master, to a customs officer, and the shipping master or customs officer shall inscribe that person's name and particulars in the crew list.

(2) Crew lists shall be in a form approved by the Minister and shall contain the following information—

(a) the name and tonnage of the vessel and her port of registry or licensing;

(b) the name of the master and the name and address of the owner;

(c) the port and date of issue;

(d) the full name and address of each member of the crew, his age or date of birth and any peculiarity which which might serve to identify him:

(e) the capacity in which each member of the crew is to serve and the amount of his wages;

(f) the date when each member of the crew joined the vessel and the date when he left and the reason for his leaving.

(3) On arriving at any place in Kenya the master shall produce his crew list to the shipping master or if there is no shipping master to the customs officer of that place, and if the shipping master or customs officer discovers any person short or in excess of the number shown in the crew list he shall detain the vessel until a satisfactory explanation of the shortage or excess is forthcoming.

(4) No person, except a shipping master or a customs officer, shall inscribe any name or particular in, or make any alteration to, a crew list.

(5) A new crew list shall be issued on each occasion when the crew is changed or the licence for the vessel is renewed.

(6) A person who contravenes this section shall be guilty of an offence and, if he is the owner or master of the vessel, the vessel shall be subject to forfeiture.

#### Change in crew



**92.** The master of every foreign-going ship whose crew has been engaged before a shipping master shall, before finally leaving Kenya, sign and send to the nearest shipping master a full and accurate statement in a form approved by the Minister of every change which takes place in his crew before finally leaving Kenya, and that statement shall be admissible in evidence in the manner provided by this Act.

#### Certificate as to agreement with crew

**93.**(1) Where all the requirements of this Part have been complied with to his satisfaction, the shipping master shall give to the master of the ship a certificate to that effect and shall state in the certificate the class of ship to which the ship belongs, her gross and register tonnage and particulars of her employment, and that the certificate of competency of such of her officers as are required to be certificated under this Act have been produced to him.

(2) No customs officer shall clear a foreign-going ship until the shipping master's certificate is produced to him.

#### Further provisions as to certificate

**94.**(1) The master shall, at the commencement of every foreign voyage or engagement, cause a legible copy of the agreement with the crew omitting the signatures to be posted up in some part of the ship which is accessible to the crew.

(2) Every erasure, interlineation or alteration in any agreement with the crew, except additions made for the purpose of shipping substitutes or persons engaged after the first departure of the ship, shall be wholly inoperative unless proved to have been made with the consent of all persons interested in the erasure, interlineation or alteration.

(3) In any proceedings, a seaman may bring forward evidence to prove the contents of any agreement with the crew or otherwise to support his case without producing or giving notice to produce the agreement or any copy thereof.

(4) A person who fraudulently alters, makes a false entry in or delivers a false copy of any agreement with the crew shall be guilty of an offence.

#### Engagement of seamen outside Kenya

**95.** Where the master of a Kenya ship engages a seaman at a port outside Kenya in which there is a consular officer, the provisions of this Act respecting agreements with the crew made in Kenya shall apply, subject to the following modifications—

(a) in any such port the master shall engage the seaman before some officer performing functions equivalent to those of a shipping master or before the consular officer; and

(b) the master shall request the officer to endorse upon the agreement an attestation to the effect that the agreement has been signed in his presence, and otherwise made as required by this Act.

#### Employment of children and young persons

**96.**(1) No person under the age of fourteen years shall be employed in any vessel.

(2) No person under the age of fifteen years shall be employed in any vessel, except—

(a) upon work approved and supervised by the Minister on board a school-ship or training-ship; or

(b) where the Minister certifies that he is satisfied, having due regard to the health and physical condition of the person and to the prospective and immediate benefit to him of the employment, that the employment will be beneficial to him.

(3) No person under the age of eighteen years shall be employed in any capacity in any ship unless there has been delivered to the master of the ship a certificate granted by a duly qualified medical practitioner certifying that the person is fit to be employed in that capacity.

(4) Every such certificate—

(a) shall be valid for one year from the date of issue, unless revoked under this section; and

(b) may at any time be revoked by a duly qualified medical practitioner if he is satisfied that the young person is no longer fit for work.

(5) No person under the age of eighteen years shall be employed or work on any vessel as a trimmer or stoker.

(6) This section does not apply to a vessel in which only members of one family are employed.

#### Certificate of competency

**97.**(1) No seaman engaged in a Kenya ship shall be rated able seaman unless he holds a certificate of competency as able seaman.

(2) The registrar may make regulations for the grant of certificates of competency as able seaman, and the regulations shall in particular direct that no certificate shall be granted to a person unless he has—

(a) reached the minimum age prescribed by the regulations, which shall not be less than eighteen years; and

(b) performed at least three years qualifying service at sea;  
and

(c) passed the presented examinations:

Provided that the regulations may authorize the grant of a certificate thereunder to any person, notwithstanding that he has not passed the presented examinations, if he can show that he was serving as able seaman or equivalent or superior seaman rating before or on the commencement of this Act.

#### Seaman to be discharged before shipping master

**98.**When a seaman serving in a foreign-going ship or in a coasting ship of over 125 tons register tonnage, whether registered within or outside Kenya, is on the termination of his engagement discharged in Kenya, he shall, whether the agreement with the crew is an agreement for the voyage or a running agreement, be discharged in the presence of a shipping master.

#### Certificate of discharge

**99.**(1) Subject to section 149, the master shall sign and give to a seaman discharged from his ship, either on his discharge or on payment of his wages, a certificate of his discharge in a form approved by

the Minister or a form approved by the proper authority in the place at which the ship is registered, specifying the period of his service and the time and place of discharge, but not containing a statement as to his wages or the quality of his work.

(2) The master shall also, upon the discharge of a certificated officer whose certificate of competency has been delivered to and retained by him, return the certificate to the officer.

#### Report of seaman's character

**100.**(1) Where a seaman is discharged before a shipping master, the master shall make and sign in a form approved by Minister a report of the conduct, character and qualifications of the seaman discharged, or may state in that form that he declines to give any opinion upon those particulars or upon any of them, and the shipping master before whom the discharge is made shall, subject to section 149, if the seaman desires, give to him a copy of the report (in this Act referred to as the report of character).

(2) A person who—

(a) makes a false report of character knowing it to be false;

(b) forges or fraudulently alters a certificate of discharge or report of character or copy of a report of character; or

(c) fraudulently uses a certificate of discharge or report of character or copy of a report of character which is forged or altered, or does not belong to him,

shall be guilty of an offence.

#### Time and manner of payment

**101.**(1) The master or owner of a foreign-going Kenya ship shall pay to each seaman belonging to that ship his wages, if demanded, within three days after the arrival of the ship at the port where the crew is to be discharged or upon the seaman's discharge, whichever first happens.

(2) Where a seaman is discharged before a shipping master in Kenya, he shall receive his wages in legal tender through or in the presence of the shipping master, unless a court otherwise directs.

#### Master to deliver account of wages

**102.**(1) The master of every ship shall, before paying off or discharging a seaman, deliver at the time and in the manner provided by this Act a full and true account, in a form approved by the Minister, of the seaman's wages and of all deductions to be made therefrom for any reasons whatever,

(2) The account shall be delivered—

(a) where the seaman is not to be discharged before a shipping master, to the seaman himself not less than twenty-four hours before his discharge or payment off;

(b) where the seaman is to be discharged before a shipping master, either to the seaman himself at or before the time of his leaving the ship or to the shipping master not less than twenty-four hours before the discharge or payment off.

#### Deductions

**103.**(1) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in pursuance of section 102, except in respect of a matter happening after the delivery.

(2) The master shall, during the voyage, enter the various matters in respect of which the deductions are made with the amount of the respective deductions as they occur in a book kept for that purpose, and shall if required produce the book at the time of the payment of wages and also upon the hearing before a competent authority of any complaint or question relating to that payment.

Shipping master's decision as to wages

**104.**(1) Whenever a question as to wages is raised before a shipping master between the owner or master of a ship and a seaman or apprentice and the amount in question does not exceed two hundred shillings the shipping master may, on the application of either party, adjudicate, and his decision shall be final, but if the shipping master is of opinion that the question is one that ought to be decided by a court he may refuse to decide it.

(2) Where any question, of whatever nature and whatever the amount in dispute, between a master or owner and any of his crew is raised before a shipping master, and both parties agree in writing to submit it to him. the shipping master shall hear and decide the question so submitted; and an award made by him on the submission shall be conclusive as to the rights of the parties, and a document purporting to be the submission or award shall be admissible as evidence thereof.

Ship's papers. Shipping master may require

**105.**In any proceeding under this Act before a shipping master relating to the wages, claims or discharge of a seaman, the shipping master may require the owner or his agent or the master or any mate or other member of the crew to produce any log-books, papers or other documents in his possession or power relating to a matter in question in the proceeding, and may require the attendance of and examine any of those persons who are then at or near the place on the matter, and may administer oaths.

Rate of exchange

Cap.113.

**106.**Where a seaman has agreed with the master of a Kenya ship for payment of his wages in Kenya or (in accordance with the Exchange Control Act) any other currency, any payment of or on account of his wages if made in any other currency than that stated in the agreement shall, notwithstanding anything in the agreement, be made at the rate of exchange for the money stated in the agreement for the time being current at the place where the payment is made, and such rate of exchange shall be endorsed on the agreement by the consular officer at that place.

Conditional agreements

**107.**(1) Where an agreement with the crew is required to be made in a form approved by the Minister, the agreement may contain a stipulation for payment to or on behalf of the seaman conditionally on his going to sea in pursuance of the agreement of a sum not exceeding the amount of two weeks' wages payable to the seaman under the agreement.

(2) Except as provided in subsection (1), an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in Kenya shall be void, and any money paid in satisfaction or in respect of any agreement shall not be deducted from the seaman's wages, and the person purporting to conclude the agreement with the

seaman shall not have a right of action, suit or set off against the seaman or his assignee in respect of any money paid or purporting to have been so paid.

#### Allotment notes

**108.**(1) Any stipulation made by a seaman at the commencement of a voyage for the allotment of any part of his wages during his absence shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made.

(2) Where the agreement is required to be made in a form approved by the Minister the seaman may require that a stipulation be inserted in the agreement for the allotment, by means of an allotment note, of any part (not exceeding one half) of the seaman's wages in favour either of a near relative or of a savings bank.

(3) Allotment notes shall be in a form approved by the Minister.

(4) In those provisions of this Act which relate to allotment notes—

(a) "near relative" means the wife, father, mother, grandfather, grandmother, child, grandchild, brother or sister of the seaman;

(b) "savings bank" means the Kenya Post Office Saving Bank or a bank licensed under the Banking Act.

(5) When a seaman is engaged under this Act before a shipping master, the shipping master shall, after the seaman has signed the agreement with the crew, ask the seaman whether he requires a stipulation for the allotment of his wages by means of an allotment note; and if the seaman requires such a stipulation he shall insert the stipulation in the agreement with the crew, and any such stipulation so inserted shall be deemed to have been agreed to by the master.

#### Facilities for remitting wages

**109.**Where the balance of wages due to a seaman is more than one hundred and fifty shillings and the seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting all or any part of the balance to a savings bank or to a near relative in whose favour an allotment note may be made, the master shall give to the seaman all reasonable facilities for so doing, so far as regards so much of the balance as is in excess of one hundred and fifty shillings, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port or otherwise than conditionally on the seaman going to sea in the ship.

#### Recovery of sums allotted

**110.**(1) The person in whose favour an allotment note under this Act is made may, unless the seaman is shown in the manner specified in this Act to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted as they are made payable with costs from the owner of the ship with respect to which the engagement was made or from any agent of the owner who has authorized the allotment in the same court and manner in which wages of seaman may be recovered under this Act.

(2) In any proceedings for such recovery it shall be sufficient for the claimant to prove that he is the person mentioned in the note, and that the note was given by the owner or by the master or some authorized agent, and the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the court either—

(a) by the official statement of the change in the crew caused by his absence, made and signed by the master as is required by this Act; or

(b) by a certified copy of some entry in the official logbook to the same effect; or

(c) by such other evidence as the court consider sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

(3) If a master wilfully makes a false statement in any credible letter intended for use in proceedings on an allotment note for the recovery of a seaman's wages, to the effect that the seaman has left the ship and has ceased to be entitled to the wages out of which an allotment is to be paid, he shall be guilty of an offence.

Commencement of right to wages

**111.**A seaman's right to wages and provisions taken to begin either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Right to wages and salvage not to be forfeited

**112.**(1)A seaman shall not by any agreement—

(a) forfeit his lien on a ship; or

(b) be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled; or

(c) abandon his right to wages in case of the loss of the ship; or

(d) abandon any right that he may have or obtain in the nature of salvage;

and every stipulation in an agreement inconsistent with any provision of this Act shall be void.

(2) Subsection (1) does not apply to a stipulation made by the seamen belonging to a ship which according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by that ship to another ship.

Wages not to depend on freight

**113.**(1) The right to wages shall not depend on the earning of freight, and every seaman and apprentice would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case be entitled to demand and recover the wages, notwithstanding that freight has not been earned:

Provided that in a case of wreck, or loss of the ship proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim for wages.

(2)where the seaman or apprentice who would, but for death, be entitled by virtue of this section to demand and recover any wages, dies before the wages are paid, they shall be paid and applied in the same way as the wages of a seaman who dies during a voyage.

#### Wages where service terminated

**114.**(1) Where the service of a seaman terminates before the date contemplated in the agreement by reason of his being left on shore at a place abroad under a certificate of his unfitness or inability to proceed on the voyage, the seaman shall be entitled to wages for time served up to the termination but not for any further period.

(2) Where the service of a seaman terminates before the date contemplated in his agreement by reason of the loss or foundering of the ship on which he is employed, he shall be entitled to receive wages in respect of each day on which he is in fact unemployed during a period of two months from the date of termination of the service at the rate to which he was entitled at that date, except so far as he obtains other suitable employment.

#### Refuse to work

**115.**A seaman or apprentice shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for him to begin work, or for any period during which he is lawfully imprisoned for an offence committed by him, unless the court hearing the case otherwise directs.

#### Illness caused by default.

**116.**(1) Where a seaman is by reason of sickness incapable of performing his duty and it is proved that the sickness has been caused by his own willful act or default or is a sickness or infirmity wilfully concealed at the time of engagement, he shall not be entitled to wages for the time during which he is, by reason of the stickiness, incapable of performing his duty.

(2) Subsection (1) does not remove the right of a master, seaman or apprentice to any payments or other benefits to which he may be entitled under the law providing for compensation to injured or sick workmen.

#### Costs of procuring conviction

**117.**Whenever in any proceeding relating to seaman's wages it is shown that a seaman or apprentice has, in the course of the voyage, been convicted of an offence by a competent authority and rightfully punished for that offence by imprisonment or otherwise, the court hearing the case may direct any part of the wages due to the seaman, not exceeding one month's wages, to be applied in reimbursing any costs properly incurred by the master in procuring the conviction and punishment.

#### Compensation for improper discharge

**118.**Where a seaman who has signed an agreement is discharged otherwise than in accordance with the terms of the agreement before the commencement of the voyage or before one month's wages are earned without fault on his part justifying the discharge and without his consent, he shall be entitled to receive from the master or owner, addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned.

#### No attachment or sale of wages

**119.**As respects wages due or accruing to a seaman or apprentice—

(a) they shall not be subject to attachment by any court;

- (b) an assignment or sale of the wages before they are due shall not bind the person making it;
- (c) a power of attorney or authority for the receipt of wages shall not be irrevocable;
- (d) a payment of the wages to the seaman or apprentice shall be valid in law, notwithstanding that they have been sold, assigned, attached or encumbered, but this section does not affect the provisions of this Act with respect to allotment notes.

#### Seaman may sue for wages

**120.**(1) A seaman or apprentice, or a person duly authorized on his behalf, may, as soon as any wages due to him become payable, sue for them in a subordinate court having jurisdiction in the place at which his service has terminated or at which he has been discharged, or at which any master or owner or other person upon whom the claim is made is or resides, and the order made by the court in the matter shall be final and not subject to appeal.

(2) The court, upon complaint on oath made to it, may summon the master or owner or other person to appear before him to answer the complaint.

(3) Upon the appearance of the master or owner or other person, the court may examine upon oath the parties and their respective witnesses regarding the complaint and the amount of wages due, and may make such order for the payment of any wages found due as appears reasonable and just.

(4) Where the master or owner or other person does not appear, the court, on due proof that the master or owner or other person was duly summoned, may examine on oath the complainant and his witnesses regarding the complaint and the amount of wages due, and may make such order for the payment of any wages found due as appears reasonable and just.

(5) Where the order for the payment of the wages is not obeyed within twenty-four hours next after the making thereof, the magistrate may issue a warrant to levy the amount of the wages awarded to be due by distress and sale of the goods and chattels of the person on whom the order is made together with all the charges and expenses incurred in connexion with the distress and levy and the enforcement of the order.

(6) Where sufficient distress cannot be found the court may cause the amount of the wages, charges and expenses to be levied on the ship in respect of which the wages were earned or on the tackle and apparel thereof:

Provided that, if the ship is not within the jurisdiction of the court, no levy may be made on the ship but the court may cause the person upon whom the order for payment is made to be arrested and committed to prison for a term not exceeding three months.

#### Restriction of jurisdiction of High Court

**121.**The High Court shall not have jurisdiction to hear or determine any action, suit or proceeding instituted by or on behalf of a seaman or apprentice for the recovery of wages, except where—

- (a) the owner of the ship is insolvent;
- (b) the ship is under arrest or is sold by the authority of the High Court;
- (c) a subordinate court refers the claim to the High Court; or



(d) neither the owner nor the master resides in or within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

#### Master's remedy for wages and expenses

**122.**(1) The master of a ship, so far as the case permits, shall have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.

(2) The master of a ship, and every person lawfully acting as master of a ship by reason of the decease or incapacity from illness of the master of the ship, so far as the case permits, shall have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) Where, in any proceedings regarding the claim of a master in respect of wages or of disbursements or liabilities, a right of set off or counterclaim is set up, the court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceedings, and may direct payment of any balance found to be due.

#### Power of court to rescind contracts

**123.**Where proceedings are instituted in a court in relation to a dispute between an owner or master of a Kenya ship and a seaman or apprentice, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court if having regard to all the circumstances of the case it thinks it just to do so, may rescind any contract between the owner or master and the seaman or apprentice or any contract or indentures of apprenticeship, upon such terms as the court thinks just, and this power shall be in addition to any other jurisdiction that the court can exercise independently of this section.

#### Property of deceased seaman

**124.**(1) If any seaman or apprentice belonging to a Kenya ship, the crew of which are to be discharged at or the voyage of which is to terminate in Kenya dies out of Kenya during the voyage, the master of the ship shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.

(2) The master shall enter in the official log-book—

(a) a statement of the amount of the money and a description of the effects; and

(b) a statement of the wages due to the deceased, the amount of deductions (if any) to be made from the wages and the balance of the wages due.

(3) The entry shall be signed by the master and attested by a mate or some other member of the crew.

(4) The master, if he thinks fit, may cause any of the effects to be sold.

(5) The money, effects and balance of wages are in this Act referred to as the property of the seaman or apprentice.

#### Delivery of property to shipping master

**125.**(1) Where a seaman or apprentice dies in circumstances referred to in section 124 (1), the master shall, within forty-eight hours after the arrival of the ship at a port in Kenya, deliver and pay the

property of the seaman or apprentice to the, shipping master, who shall forward the property to the Minister.

(2) Where a seaman or apprentice dies during the progress of a voyage or engagement, the master shall give to the shipping master such account as he requires of the property of the deceased in such form as the Minister requires.

(3) A deduction claimed by the master in the account shall not be allowed unless verified, if an official log-book is required to be kept, by an entry in that book made and attested as required by this Act and also by such other vouchers, if any, as may reasonably be required by the shipping master.

(4) Where the master complies with those provisions of this section which relate to acts to be done at a port in Kenya, the shipping master shall give him a certificate certifying that he has done so.

Master accountable to Minister

**126.**(1) If the master of a ship fails to comply with the provisions of this Act with respect to taking charge of the property of the deceased seaman or apprentice, or to making in the official log-book the proper entries relating thereto, or to procuring the proper attestation of those entries as required by this Act, or to the payment or delivery of the property, he shall be accountable for the property to the Minister and shall pay and deliver it accordingly; and in addition he shall be guilty of an offence and be liable to a fine not exceeding three times the value of the property not accounted for, or if the value is not ascertained to a fine not exceeding one thousand shillings.

(2) Where any such property is not paid, delivered or accounted for by the master, the owner of the ship shall pay, deliver and account for it, and the property shall be recoverable from him accordingly; and, if he fails to account for and deliver or pay it, he shall in addition to his liability for it be guilty of an offence and liable to a fine not exceeding three times the value of the property not accounted for, delivered or paid over, or if the value is not ascertained to a fine not exceeding one thousand shillings.

(3) The property may be recovered in the same court and manner in which the wages of seamen may be recovered under this Act.

Recovery of wages of seaman lost with ship

**127.**(1) Where a seaman or apprentice belonging to a Kenya ship is lost with the ship to which he belongs, and either—

(a) the crew of the ship are or were to be discharged at a port in Kenya; or

(b) the final destination of the ship was to be a port in Kenya,

the Minister may recover the wages due to him from the owner of the ship in the same court and in the same manner in which the wages of seamen are recoverable under this Act, and he shall deal with those wages in the same manner as with the wages of other deceased seamen and apprentices under this Act.

(2) If in any proceedings for the recovery of the wages, it is shown by some official return produced out of the custody of the shipping master or by other evidence that the ship has two months or more before the institution of the proceedings left her port of departure, she shall, unless it is shown that she has been heard of within two months after that departure, be presumed to have been lost with all hands on board either immediately after the time when she was last heard of or at such later time as the court hearing the proceedings may think probable.

(3) A duplicate agreement made out or statement of a change of the crew delivered under this Act at the time of the last departure of the ship from a port in Kenya, or a certificate purporting to be a certificate from a consular officer at any port outside Kenya stating that certain seamen and apprentices were shipped in the ship from that port, shall, if produced out of the custody of the shipping master or of the Minister, in the absence of proof to the contrary, be sufficient proof that the seamen and apprentices therein named as belonging to the ship were on board at the time of the loss.

#### Delivery of property of seaman dying in Kenya

**128.** If a seaman or an apprentice belonging to a Kenya ship dies in Kenya, and is at the time of his death entitled to claim from the master or owner of the ship any unpaid wages or effects, the master or owner shall pay and deliver or account for that property to the shipping master.

#### Distribution of property by Minister

**129.**(1) Where any property of a deceased master, seaman or apprentice on a Kenya ship or the proceeds thereof comes into the hands of the Minister under this Act, the Minister after deducting any expenses incurred in respect of that master or seaman or apprentice or of his property, shall pay and deliver the residue to the personal representative of the deceased, or if there is no legal representative of the deceased the Minister shall dispose of the residue in accordance with the law of the place in which the deceased was last resident for determining the distribution or succession of personal property of deceased persons or in accordance with the order of a court having jurisdiction to determine the distribution of the property of the deceased.

(2) Where the value of the property of a deceased master, seaman or apprentice does not exceed the sum of two thousand shillings, the Minister may pay or deliver the residue to any claimant who is proved to his satisfaction to be the widow or a child of the deceased or to be entitled to the property under the will (if any) of the deceased or under any law providing for the distribution of the property of deceased persons or otherwise.

#### Forgery of document to obtain property of deceased seaman

**130.** A person who for the purpose of obtaining, either for himself or for another person, property of a deceased seaman or apprentice—

- (a) forges or fraudulently alters a document purporting to show or assist in showing a right to that property;
  - (b) makes use of a document which has been so forged or fraudulently altered;
  - (c) gives or assists in giving or procures to be given false evidence knowing it to be false;
  - (d) makes a false representation knowing it to be false; or
  - (e) assists in procuring any false evidence or representation to be given or made knowing it to be false,
- shall be guilty of an offence.

#### Complains as to provision of water

**131.**(1) Where three or more of the crew of a Kenya ship consider that the provisions or water provided for the use of the crew are at any time of bad quality or deficient in quantity, they may complain thereof to a consular officer or a shipping master, who may either examine the provisions or water complained of or cause them to be examined.

(2) Where the person making the examination finds that the provisions or water are of bad quality or deficient in quantity, he shall signify it in writing to the master of the ship, and if the master does not thereupon provide proper provisions or water in lieu of those which have been condemned he shall be guilty of an offence.

(3) The person making the examination shall enter a statement of the result of the examination in the official log-book and send a report thereof to the Minister, and that report shall be admissible in evidence in the manner provided by this Act.

(4) If the person making the examination certifies in his statement that there was no reasonable ground for complaint, each of the complainants shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for short or bad provisions

**132.** If during a voyage—

(a) the allowance of provisions provided for a seaman is less than that stipulated in his agreement; or

(b) any of those provisions are of bad quality,

the seaman shall receive by way of compensation for the deficiency or bad quality, for so long as it lasts, the following amounts to be paid to him in addition to, and to be recoverable as, wages—

(i) if the deficiency is not more than one-third of the quantity specified in the agreement, a sum not exceeding one shilling a day;

(ii) if the deficiency is more than one-third of that quantity, two shillings a day; or

(iii) in respect of bad quality, a sum not exceeding three shillings a day;

but, if the deficiency occurred because the provisions could not be procured or supplied in proper quantities and that proper and equivalent substitutes were supplied in lieu thereof, those circumstances shall be taken into consideration, and the compensation shall be reduced or denied accordingly.

Weights and measures to be kept

**133.**(1) The master of a Kenya ship where provisions are supplied to the crew shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out, and shall allow them to be used at the time of serving out the provisions and articles in the presence of a witness whenever any dispute arises about the quantities.

(2) If the master of a ship fails without reasonable cause to comply with this section, he shall be guilty of an offence.

Regulations as to medical examination and cooking

**134.** The Minister may, subject to this Act, make such regulations as appear to him to be necessary in respect of the following matters—

(a) for the medical examination of all persons seeking employment in any capacity on board ships and the issue of medical certificates in respect of those persons;

(b) for the examination and granting of certificates to persons qualifying to be employed as ships' cooks.

#### Regulations respecting crew accommodation

**135.**The Minister may make regulations respecting the crew accommodation to be provided in Kenya ships and, without prejudice to the generality of the foregoing, may in particular make regulations—

(a) respecting the space and equipment to be provided for the sleeping rooms, wash rooms, mess rooms and galleys in a ship;

(b) providing for the protection of the crew against injury, condensation, heat, cold and noise on a ship;

(c) prescribing the water heating, lighting, ventilation and sanitary facilities to be supplied on a ship;

(d) respecting the inspection, measuring and marking of crew accommodation on a ship and its certification for the purpose of ascertaining register tonnage and prescribing the fees to be charged therefor.

#### Motor ship to carry certificated cook

**136.**(1) Every foreign-going Kenya motor ship of 1,000 tons or more register tonnage shall be provided with and carry a duly certificated ship's cook.

(2) Where in the opinion of the Minister there is an inadequate supply of certificated ships' cooks, he may exempt a particular ship from the requirements of this section.

#### Scales of medical stores

**137.**(1) The Minister shall lay down scales of medicines, medical stores and appliances to be carried on different classes of ships and voyages, and shall approve books of instructions for dispensing medicines, medical stores and appliances.

(2) The owner and master of every ship shall ensure that the ship carries medicines, medical stores and appliances in accordance with the scales laid down under subsection (1).

#### Inspection of medical stores

**138.**(1) The Minister may appoint suitable persons as inspectors of medicines, medical stores and appliances, and an inspector so appointed shall have power—

(a) to go on board any ship and inspect it or any part of it at all reasonable times;

(b) to demand from the owner or master of the ship reasonable assistance and pertinent information.

(2) If an inspector is of the opinion that the medicines, medical stores and appliances on the ship are deficient in quantity or quality or are placed in improper receptacles, he shall give notice in writing to the master, owner or consignee of the ship and to the shipping master, and the master of the ship before proceeding to sea shall produce to the shipping master a certificate under the hand of the inspector that the default found by him has been remedied; and if that certificate is not so produced the ship shall be detained until the certificate is produced.

#### Medical expenses in case of injury or illness

**139.**(1) If the master or a seaman or apprentice belonging to a Kenya ship receives any hurt or injury in the service of the ship or suffers from any illness (not being an illness, other than a venereal disease, due to his own wilful act or default or to his own misbehaviour or an illness or infirmity wilfully concealed at the time of his engagement), the expense of—

(a) providing proper medical care and maintenance for him until he is cured or dies or is returned either to the port at which he was shipped or to a port in the country to which he belongs and of his conveyance to such port; and

(b) in the event of his death, his burial,

shall be defrayed by the owner of the ship without any deduction on that account from his wages.

(2) For the purposes of this section, proper medical care comprises—

(a) medical treatment and the supply of proper and sufficient medicines and therapeutical appliances; and

(b) hospitalization or board and lodging.

(3) Where a master, seaman or apprentice becomes eligible to receive and receives medical aid at the expense of his employer under the terms of any written law providing for compensation to injured or sick workmen, this section, except in relation to the expense of his burial in the event of his death, shall cease to apply to him.

#### Medical practitioners to be carried

**140.**(1) Every foreign-going ship which proceeds from a port in Kenya having 100 persons or more on board shall carry on board as part of her complement some duly qualified medical practitioner; and if she does not the owner shall be guilty of an offence for each day of every voyage of the ship on which it does not so carry a duly qualified medical practitioner.

(2) For the purposes of subsection (1), a duly qualified medical practitioner means a medical practitioner authorized by law to practise as a legally qualified medical practitioner in the Commonwealth or, in the case of a foreign ship, in the country to which the ship belongs.

#### Facilities for making complaints

**141.**(1) Where a seaman or apprentice whilst on board a ship tells the master of the ship that he wishes to make a complaint to a magistrate, consular officer or shipping master against the master or any of the crew, the master shall, so soon as the service of the ship will permit, allow the complainant to go ashore—

(a) if the ship is then at a place where there is a magistrate, consular officer or shipping master, at that place; or

(b) if the ship is not then at such a place, on her arrival at such a place,

so that he can make his complaint

(2) If the master of the ship fails, without reasonable cause, to comply with this section, he shall be guilty of an offence.

No assignment or sale of salvage

**142.** Subject to this Act, an assignment or sale of salvage payable to a seaman or apprentice made before the salvage accrues shall not bind the person making the assignment or sale, and a power of attorney or authority for the receipt of any such salvage shall not be irrevocable.

Seaman's debts

**143.** A debt exceeding in amount twenty shillings incurred by a seaman or apprentice after he is engaged to serve shall not be recoverable until the service agreed for is concluded.

Misconduct endangering life or ship

**144.** If a master, seaman or apprentice belonging to a Kenya ship by wilful breach of duty or by neglect of duty or by reason of drunkenness—

(a) does any act tending to cause the immediate loss, destruction or serious damage of the ship, or tending to endanger immediately the life or limb of a person belonging to or on board the ship; or

(b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage or for preserving any person belonging to or on board the ship from any immediate danger to life or limb,

he shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months.

General offences against discipline

**145.**(1) If a seaman or apprentice engaged on a Kenya commits any of the following acts, he shall be guilty of an offence and liable to be punished as follows—

(a) if he quits the ship without leave after her arrival at a port and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one week's pay;

(b) if he is guilty of wilful disobedience to a lawful command, he shall be liable to imprisonment for a term not exceeding one month, and also at the discretion of the court to forfeit out of his wages a sum not exceeding two days' pay;

(c) if he is guilty of continued wilful disobedience to a lawful command or lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for a term not exceeding three months, and also at the discretion of the court to forfeit for every twenty-four hours continued disobedience or neglect either a sum not exceeding two days' pay or any expenses properly incurred in hiring a substitute.

(d) if he assaults the master or any mate or officer of the ship, he shall be liable to imprisonment for a term not exceeding one year;

(e) if he combines with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for a term not exceeding one year;

(f) if he wilfully damages his ship, or dishonestly misappropriates or converts to his own use or commits criminal breach of trust in respect of or wilfully damages any of her stores or cargo, he shall be liable to imprisonment for a term not exceeding one year, and also at the discretion of the court to forfeit out of his wages a sum equal to the loss thereby sustained;

(g) if he commits an act of smuggling whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to the master or owner a sum sufficient to reimburse the loss or damage, and the whole or a proportionate part of his wages may be retained in satisfaction or on account of that liability without prejudice to any further remedy;

(h) if he aids or procures a person to stow away on his ship, and that person is afterwards convicted of the offence, he shall be liable to imprisonment for a term not exceeding three months, and also to pay to the master or owner of the ship a sum sufficient to reimburse the expenses occasioned to that master or owner in respect of the stowaway, and the whole or a proportionate part of his wages may be retained in satisfaction or on account of that liability without prejudice to any further remedy.

(2) A seaman or apprentice shall not be guilty of an offence under subsection (1) by reason only of his refusing duty during a lawful strike after his ship has arrived and has been secured in good safety to the satisfaction of the master and the port manager at a port in Kenya.

(3) A forfeit or other payment imposed in respect of an offence under subsection (1) shall not exceed one half of one month's salary in any one month, and shall leave the seaman a sum which is sufficient for the maintenance of the seaman and his family.

Conviction not to affect other remedies

**146.**Section 145 and the sections relating to the offences of desertion or absence without leave do not take away or limit any remedy by suit or otherwise of an owner or master for any breach of contract in respect of matters constituting an offence under those sections, but an owner or master shall not be compensated more than once in respect of the same damage.

Desertion and absence without leave

**147.**If a seaman lawfully engaged or an apprentice belonging to a Kenya ship commits any of the following acts, he shall be guilty of an offence and liable to be punished as follows—

(a) if he deserts from his ship, he shall be guilty of the offence of desertion and be liable to imprisonment for a term not exceeding three months, and he shall also be liable to forfeit all or any part of the effects he leaves on board and the wages which he has then earned and, where the master or owner of the ship has engaged a substitute in his place at higher rate of wages than the rate which wages had been stipulated to be paid to him;

(b) if he neglects or refuses without reasonable cause to join his ship or to proceed to sea in his ship, or is absent without leave at any time within the period of twenty-four hours next before the ships sailing from a port either at the commencement or during the progress of a voyage, or is absent at any time without leave and without sufficient reason from his ship or from his duty, and the act or omission does not constitute or is not treated by the master as constituting the offence of desertion, he shall be guilty of the offence of absence without leave and be liable to imprisonment for a term not exceeding two months, and shall also be liable to forfeit out his wages a sum not exceeding two days' pay and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay or any expenses properly incurred in hiring a substitute.

Improper negotiation of advance note



**148.**(1) Where a seaman belonging to a Kenya ship has been lawfully engaged and has received under his agreement an advance note, and after negotiating his advance note wilfully or through misconduct fails to join his ship or deserts therefrom before the note becomes payable, he shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve weeks or to a fine.

(2) This section does not take away or limit any remedy by suit or otherwise, of any person in respect of the negotiation of the advance note, or which an owner or master would otherwise have for breach of contract.

Certificate of discharge may be withheld

**149.**Where it is shown to the satisfaction of the shipping master that a seaman belonging to a Kenya ship and lawfully engaged has wilfully or through misconduct failed to join his ship, the shipping master shall report the matter to the Minister, and the Minister may direct that the seaman's certificate of discharge shall be withheld for such period as he may think fit, and while the seaman's certificate of discharge is so withheld the shipping master and any other person having the custody of the documents may, notwithstanding anything in his or any other Act, refuse to furnish copies of any of his certificates of discharge or certified extracts of any particulars of service or character.

False statement as to last ship or name

**150.**If a seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or alleged last ship, or wilfully and fraudulently makes a false statement of his own name, he shall be guilty of an offence.

Deserters from foreign ships

**151.**(1) Where it appears to the Minister that due facilities will be given by the government of a foreign country for apprehending and recovering seamen who desert in that country from Kenya ships, the Minister may, by order, declare that this section shall apply in the case of that foreign country, subject to any limitations, conditions and qualifications contained in the order.

(2) Where this section applies in the case of a foreign country, and a seaman or apprentice deserts in Kenya from a merchant ship registered in that country, the master of the ship may apply to a court for aid in apprehending the deserter, and the court and its officers shall give all aid within their power, and for that purpose the court may, on information given on oath, issue a warrant for the deserter to be conveyed on board the ship, or delivered to the master or of mate of the ship or to the owner of the ship or is urgent to be so conveyed.

Offences to be entered in official log-book

**152.**If on or in respect of a Kenya ship—

(a) an offence is committed under section 145 or section 147; or

(b) an act of misconduct is committed for which the agreement of the person committing it provides for fine, and it is intended to enforce the fine,

then—

(i) an entry of the offence or act shall be made in the official log-book and signed by the master and also by an officer or one of the crew;

(ii) the offender if still in the ship shall, before the next subsequent arrival of the ship at any port or (if she is at the time in port) before her departure from port, either be furnished with a copy of the entry or

have it read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit;

(iii) a statement that a copy of the entry was so furnished or that the entry was so read over, and in either case the reply (if any) then made by the offender, shall likewise be entered and signed; and

(iv) in any subsequent legal proceedings, the entries made under this section shall, if practicable, be produced or proved, and if they are not the court hearing the case may refuse to receive evidence of the offence or act of misconduct.

#### Proof of desertion in proceedings for forfeiture of wages

**153.** Whenever a question arises whether the wages of a seaman or apprentice are forfeited under this Part for desertion from a Kenya ship it shall be sufficient for the person insisting on the forfeiture to show that—

(a) the seaman or apprentice was duly engaged in or belonged to the ship; and

(b) he left the ship before the completion of the voyage or engagement; and

(c) an entry of his desertion was duly made in the official log-book;

and the desertion shall thereupon be deemed to be proved so far as relates to any forfeiture of wages under this Part, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

#### Application of forfeiture

**154.**(1) Where any wages or effects are forfeited under this Part for desertion from a ship, the effects may be sold, and the wages or effects (or the money arising from sale of the effects) shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and any balance remaining shall be paid to the Government.

(2) Where any wages are forfeited under this Part for any cause other than that of desertion, the forfeiture shall, in the absence of any specific provision to the contrary, be in favour of the master or owner by whom the wages are payable.

#### Question of forfeiture decided in suit for wages

**155.** Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice under this Part may be determined in proceedings instituted with respect to those wages, notwithstanding that the seaman or apprentice has not been prosecuted for the offence which gives rise to the question.

#### Deduction of fine from wages

**156.** A fine imposed on a seaman for any act of misconduct for which his agreement imposes the fine shall be deducted as follows—

(a) if the offender is discharged in Kenya and the offence and the entry in the official log-book required by this Act to be made in respect thereof are proved to the satisfaction of the shipping master before whom the offender is discharged, the master or owner shall deduct the fine from the wages of the offender;

(b) the fine so deducted shall be paid to the shipping master, and if the master or owner of the ship fails without reasonable cause so to pay the fine he shall be guilty of an offence;

(c) an act of misconduct for which a fine has been inflicted and paid by or deducted from the wages of the sea-man shall not be otherwise punished under this Act.

#### Persuading seaman to desert, and harbouring deserter

**157.**(1) If a person by any means whatever persuades a seaman or apprentice to neglect or refuse to join or proceed to sea in his ship, or to desert from his ship, or otherwise to absent himself from his duty, he shall be guilty of an offence.

(2) If a person wilfully harbours a seaman or apprentice who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe the seaman or apprentice to have so done, he shall be guilty of an offence.

#### Official log-book

**158.**(1) An official log-book shall be kept in every Kenya ship of over 125 tons register tonnage in the appropriate form for that ship approved by the Minister.

(2) The Minister shall approve forms of official log-books which may be different for different classes of ships, so that each such form shall contain proper places for the entries required by this Act.

(3) The official log-book may, at the discretion of the master, be kept distinct from or united with the ordinary ship's log, but in all cases the spaces in the official log-book be duly filled up.

(4) An entry required by this Act to be made in an official log-book shall be made as soon as possible after the occurrence to which it relates, and if it is not made on the same day as the occurrence it shall be made and dated so as to show the dates of the occurrence and the entry respecting it, and if it is made in respect of an occurrence happening before the arrival of the ship at her final port of discharge it shall not be made more than twenty-four hours after that arrival.

(5) Every entry in the official log-book shall be signed by the master and by an officer or some other member of the crew, and if it is an entry of illness, injury or death, shall also be signed by the surgeon or medical practitioner on board, if any.

(6) Every entry made in an official log-book in the manner provided by this Act shall be admissible in evidence.

#### Entries in official log- book

**159.**The master of a ship for which an official log-book is required by this Act to be kept shall enter or cause to be entered in the official log-book particulars of—

(a) every conviction by a court of a member of his crew and the punishment inflicted;

(b) every offence committed by a member of his crew for which it is intended to prosecute or to make a forfeiture or to impose a fine, together with the statement concerning the furnishing of a copy, or reading over, of the entry and concerning the reply (if any) made to the charge which is required by this Act;

(c) every offence for which punishment is inflicted on board and the punishment inflicted;

- (d) a statement of the conduct, character and qualifications of each of his crew or a statement that he declines to give an opinion on these particulars;
- (e) every case of illness or injury happening to a member of the crew, with the nature thereof and the medical treatment adopted if any;
- (f) every refusal of a member of the crew to take anti-scorbutics or medicines;
- (g) every birth and death happening on board his ship;
- (h) every marriage taking place on board, with the names and ages of the parties;
- (i) the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof;
- (j) the wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom;
- (k) the sale of the effects of any seaman or apprentice who dies during the voyage, with a statement of each article sold and the sum received for it;
- (l) every collision with any other ship and the circumstances in which it occurred;
- (m) the date and time of posting up in the ship of a notice containing particulars of the ship's draught and freeboard; and
- (n) any other matter directed by this Act to be entered.

#### Delivery of official log-book to shipping master

**160.**(1) The master of every foreign-going Kenya ship shall, within forty-eight hours after the ship's arrival at her final port of destination in Kenya or upon the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the shipping master before whom the crew is discharged.

(2) The master or the owner of every Kenya ship engaged in the coasting trade for which an official log-book is required to be kept, within twenty-one days after the 30th June and the 31st December in each year, transmit or deliver the official log-book for the preceding half year to a shipping master in Kenya.

(3) If the master or owner of a ship fails without reasonable cause to comply with this section, he shall be guilty of an offence, and the ship shall be liable to forfeiture.

#### Surrender of official log-book on transfer of ownership, etc.

**161.**(1) Where, by reason of transfer of ownership or change of employment of a Kenya ship, the official log-book ceases to be required in respect of the ship or to be required at the same date, the master or owner of the ship shall, within one month if the ship is then in Kenya, or if she is elsewhere within three months after cessation, deliver to the shipping master at the port to which the ship belonged the official log-book, duly made out to the time of cessation

(2) Where a ship is lost or abandoned, its master or owner shall, if practicable and as soon as possible, deliver the official log book, if any, duly made out to the time of the loss or abandonment.

## Penalty for improperly kept official log-book

**162.(1)** Where an official log-book is not kept in the manner required by this Act, or if an entry directed by this Act to be made therein is not made at the time and in the manner directed by this Act, the master shall be guilty of an offence.

(2) A person who makes an entry in an official log-book in respect of an occurrence which took place before the arrival of the ship at her final port of discharge, and makes the entry more than twenty-four hours after that arrival, shall be guilty of an offence.

(3) A person who wilfully destroys, omits, alters or renders illegible any entry in an official log-book or wilfully makes a false or fraudulent entry in or omission from an official log-book, shall be guilty of an offence.

## List of crew

**163.(1)** The master—

(a) of every foreign-going ship whose crew is discharged in Kenya;

(b) of a coasting ship,

shall make out and sign a list (in this Act referred to as the list of the crew) in a form approved by the Minister containing the following particulars—

(i) the number and date of the ship's register and her register tonnage;

(ii) the length and general nature of the voyage or employment;

(iii) the names, ages and places of birth of all the crew, including the master and apprentices, their ratings on board, their last ships or other employments and the dates and places of their joining the ship;

(iv) the names of any of the crew who have ceased to belong to the ship, with the times, places, causes and circumstances thereof;

(v) the names of any members of the crew who have been maimed or hurt, with the time, place, cause and circumstances thereof;

(vi) the wages due at the time of death to any of the crew who have died;

(vii) the property belonging to any of the crew who have died, with a statement of the manner in which that has been dealt with, and the money for which any part of it has been sold; and

(viii) any marriage that takes place on board, with the date thereof and the names and ages of the parties.

(2) The list of the crew—

(a) in the case of a foreign-going ship, shall be delivered by the master within forty-eight hours after the arrival of the ship at her final port of destination in Kenya or upon the discharge of the crew, whichever first happens, to the shipping master before whom the crew is discharged;

(b) in the case of a coasting ship, shall be delivered or transmitted by the master or owner to some shipping master in Kenya on or within twenty-one days after the 30th June and the 31st December in each year,

and the shipping master shall give to the master or owner a certificate of delivery or transmission, and any such ship may be detained until the certificate is produced, and a customs officer shall not clear outwards a foreign-going ship until the certificate is produced.

(3) This section does not apply to ships of under 125 tons register tonnage.

#### Transfer of ownership or change of employment of ship

**164.**(1) Where, by reason of the transfer of ownership or change of employment of a ship, the list of the crew ceases to be required in respect of the ship or to be required at the same date, the master or owner of the ship shall, within one month if the ship is then in Kenya, and if she is elsewhere within six months, after that cessation deliver to the shipping master at the port to which the ship belonged the list of the crew duly made out to the time of the cessation.

(2) Where a ship is lost or abandoned, its master or owner shall, if practicable and as soon as possible, deliver to the shipping master at the port to which the ship belonged the list of the crew duly made out to the time of the loss or abandonment.

#### Delivery of ship's documents to consular officer or shipping master

**165.**(1) Where a Kenya ship arrives at a port outside Kenya at which there is a consular officer or shipping master and remains there for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver to the consular officer or shipping master the agreement with the crew and also all contracts or indentures and assignments of apprenticeship or such of those documents as the ship carries.

(2) The person to whom the documents are delivered shall keep them during the ship's stay in the port, and upon the application of the master or a person on his behalf shall return the documents to him within a reasonable time before the expected time of departure of the ship, together with a certificate endorsed on the agreement with the crew certifying the times respectively when the documents were delivered to him and returned by him.

(3) Where it appears to the person to whom the documents are delivered that this Act has been contravened he shall make an endorsement to that effect on the agreement with the crew, and forthwith shall send to the registrar a copy of the endorsement with all the information in his possession relating to the apparent contravention.

#### Documents to be handed over on change of master

**166.**Where during the progress of a voyage the master of a Kenya ship is removed or superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the certificate of registration and the various documents relating to the navigation of the ship and to its crew which are in his custody, and his successor shall immediately on assuming the command of the ship enter in the official log-book a list of the documents so delivered to him.

#### Returns of births and deaths

**167.**(1) The master of a Kenya ship upon its arrival at a port in Kenya or at such other time and place as the Minister may with respect to any ship or class of ships direct, shall deliver in such form as the

Minister directs a return of the facts recorded by him in respect to a birth or death on board the ship to a shipping master if in Kenya or to a consular officer if elsewhere.

(2) The shipping master or consular officer shall send a certified copy of the return relating to births and deaths to the Minister, who shall cause the information contained therein to be sent to the authority having responsibility for the registration of births and deaths.

Law of port of registry governs, failing this Act

**168.** Where in any matter relating to a ship or to a person belonging to a ship there appears to be a conflict of laws, then if there is in this Act any provision on the subject that is thereby expressly made to extend to that ship or person, the case shall be governed by that provision, but if there is no such provision, the case shall be governed by the law of the port at which the ship is registered.

Owner responsible for return of seaman left behind outside Kenya

**169.**(1) Except as hereinafter provided, every agreement entered into for the employment of a seaman in a ship shall be deemed to provide that the seaman, if the agreement terminates outside Kenya (whether by effluxion of time or by any act of the parties or by shipwreck or sale of the ship or by the inability of the seaman to proceed in the ship by reason of sickness or injury or any other cause whatsoever) be returned to a proper return port at the expense of the master or owner of the ship, and the master or owner, whether principal or agent, shall make such arrangements as may be necessary and defray all expenses incurred for the return of the seaman, and that liability shall include the cost of any maintenance and medical treatment which is necessary for the seaman until his arrival at a proper return port, and the seaman shall not become a charge upon the Government.

(2) A seaman who has been left behind or discharged from his ship as a result of—

(a) his desertion; or

(b) his imprisonment; or

(c) his inability to proceed in the ship owing to sickness or injury caused by his own wilful act or default or sickness or infirmity wilfully concealed at the time of the engagement,

shall not be entitled to be returned at the expense of the owner or master, but the master or owner, whether principal or agent, shall make all arrangements necessary and defray all expenses incurred for the return of the seaman to a proper return port as if he were so entitled, and the master or owner may be reimbursed his expenses out of any wages owing to the seaman at the time he left the ship or out of the proceeds from the sale of any of his effects left on board or, if this should not prove sufficient, by ordinary process of law, but the seaman shall not become a charge upon the Government.

(3) A shipping master or consular officer may demand a guarantee from the master or owner (whether principal or agent) of a ship from which a seaman is to be discharged or left behind for the proper discharge of any obligations imposed by this section, and if this is refused he may withhold his consent to the discharge.

(4) Where a seaman or apprentice becomes eligible to receive and receives medical aid or periodical payments at the expense of his employer under the terms of any written law providing for compensation to injured or sick workmen—

(a) to the extent to which the seaman or apprentice receives medical aid, shall cease to confer upon the seaman or apprentice a right to receive medical treatment under this section; and

(b) to the extent and for so long as the seaman or apprentice receives periodical payments, shall cease to confer a right upon the seaman or apprentice to receive maintenance under this section.

(5) In this section, "owner", in the case of a foreign ship engaging a seaman at a port in Kenya, includes a person appointed or nominated by the owner, or the charterer if the ship is on demise charter, to act as his agent and who was so acting at the time the seaman was engaged.

#### Wages and effects of seaman left behind outside Kenya

**170.**(1) Where a seaman belonging to a Kenya ship is left at a place outside Kenya, the master of the ship shall, subject to this section—

(a) as soon as practicable enter on the official log-book a statement of the effects left on board by the seaman and an account of wages due to him at the time when he was left behind; and

(b) on the termination of the voyage during which the seaman was left behind, furnish to the shipping master or consular officer, within forty-eight hours after the arrival of the ship at the port at which the voyage terminates, accounts in a form approved by the Minister, one (in this section referred to as the delivery account) of the effects and wages and the other (in this section referred to as the retention account) of expenses caused to the master or owner of the ship by the absence of the seaman (where the absence is due to desertion, neglect to join his ship or any other conduct constituting an offence under section 145 or section 147 including, in the case of a seaman who is not entitled to be repatriated at the expense of the owner or master of the ship, any provision made for the return of the seaman to a proper return port, and the master shall, if required by the shipping master or consular officer, furnish such vouchers as may be reasonably required to verify the accounts.

(2) The master of the ship shall deliver to the shipping master or consular officer, if he will receive them, the effects of the seaman as shown in the delivery account, and, subject to any reimbursement allowed under subsection (3), the amount due on account of wages as shown in that account, and the shipping master or consular officer shall give to the master a receipt in a form approved by the Minister for any effects or amount so delivered.

(3) The master of the ship shall be entitled to retain out of the wages any sums shown in the retention account which appear to the shipping master or consular officer (or in the case of an appeal under this section, to the court) to be owing or payable to the master of the ship, and for that purpose the shipping master or consular officer (or if necessary in the case of an appeal, the Minister) shall allow those sums to be retained by the master out of the amount due on account of wages shown in the delivery account and, so far as that amount is not sufficient, to be raised and paid to the master out of the effects.

(4) Before allowing any sum to be retained or to be raised and paid, the shipping master or consular officer may require evidence that the sums are owing or payable to the master of the ship to be provided by statutory declaration or otherwise.

(5) Where the master of a ship is aggrieved by the decision of the shipping master or consular officer as to the sums allowed to be retained or raised and paid and the amount in dispute exceeds one thousand shillings, he may appeal from the decision of the shipping master or consular officer to a subordinate court.

(6) The shipping master or consular officer shall deliver the remainder of the wages and effects to such person at such time and in such manner as the Minister requires, and shall render such accounts in respect thereof as the registrar directs.



(7) The master of the ship shall be under no liability for any loss of effects or for any damage to the effects if he proves to the shipping master or consular officer that the loss or damage occurred without his neglect or consent after the seaman left the ship.

(8) The Minister shall not be under any liability with respect to anything done under this section; except that, if after the wages or effects of a seaman have been dealt with under this section any legal proceedings are taken in respect of those wages or effects or involving the forfeiture of those wages or effects or of any sum out of the wages by the seaman against the master or owner of the ship or by the master or owner of the ship against the seaman, the Minister shall, if notice is given to him of the proceedings and a reasonable opportunity afforded him of appearing, comply with any order of the court made as respects the wages or effects so far as he can do so out of the wages and effects remitted to him in respect of the voyage of the ship.

(9) The Minister shall be entitled to appear and be heard in the proceedings or to be represented by any of his officers or any officer of the Government.

(10) The Minister may, if and so far as he thinks fit, meet any claim made by a seaman against the master or owner of the ship in respect of any wages or effects dealt with under this section, although legal proceedings are not actually taken in respect thereof, if he has given notice to the master or owner of the ship and the master or owner of the ship has not given written notice of objection within ten days of the notice being given.

(11) For the purpose of subsections (8), (9) and (10), any legal proceedings taken or any claim made by a person in whose favour an allotment note has been made shall be treated as proceedings taken or a claim made by the seaman.

(12) Any sums remitted under this section or arising from the sale of effects under this section, and not disposed of in accordance with this section, shall be paid to the Government.

(13) If the master of a ship fails without reasonable cause to comply with this section, he shall, without prejudice to any other liability, be guilty of an offence.

(14) This section does not apply in the case of an absent seaman where—

(a) the master of the ship satisfies the shipping master or consular officer that none of the effects of the seaman have to his knowledge been left on board the ship and that he has paid all wages due to the seaman; or

(b) the amount of wages earned by the seaman, after taking into account any deduction made in respect of allotments or advances for which provision is made by the agreement with the crew, appears from the agreement to be less than one hundred shillings; or

(c) the master of the ship satisfies the proper officer that the net amount due to the seaman on account of wages, after taking into account any deductions lawfully made in respect of allotments, advances or otherwise, is less than one hundred shillings; or

(f) the question of the forfeiture of the wages and effects of the seaman as been dealt with in proceedings lawfully instituted before the termination of the voyage or within forty-eight hours of the arrival of the ship at the port at which the voyage terminates.

(15) In this section, "effects" includes the proceeds of any sale of any effects sold under this section, and the effects may be sold by the shipping master or consular officer in such manner as he thinks fit when they are delivered to him unless the Minister directs to the contrary, and if not so sold then may be sold by the Minister as and when he thinks fit unless they are delivered to the seaman.

#### Sanction required for discharge of seaman outside Kenya

**171.(1)** The master of a Kenya ship shall not discharge a seaman at any place outside Kenya unless he has had the sanction of the shipping master or consular officer in that place endorsed on the agreement with the crew.

(2) The shipping master or consular officer shall examine the ground on which the seaman is to be discharged at a place outside Kenya and for that purpose may administer oaths and grant or refuse the sanction as he thinks just, but his sanction shall not be unreasonably withheld and shall not be refused where the seaman is discharged on the termination of his service or at a proper return port.

(3) If a seaman shows to the satisfaction of the master that he can obtain employment in another vessel in a higher grade than he actually holds, or that any other circumstance has arisen since his engagement which renders it essential to his interest that he should be permitted to take his discharge, he may claim his discharge, provided he furnishes a competent and reliable man in his place, without increased expense to the owner and to the satisfaction of the master, and seaman shall be entitled to his wages up to the time of taking his discharge but shall have no further claim on the owner or master of the ship.

#### Certificate of discharge abroad

**172.** Where the master of a Kenya ship discharges a seaman at any place outside Kenya, he shall give to that seaman a certificate of discharge in a form approved by the Minister under section 99 (1).

#### Return of seaman on termination of service at foreign port

**173.(1)** Where during the currency of the agreement the service of a seaman belonging to a Kenya ship terminates at a port outside Kenya, otherwise than by the consent of the seaman, the master of the ship shall, besides giving the certificate of discharge required by this Part, and besides paying the wages to which the seaman is entitled, make adequate provision in accordance with this Act for his maintenance and his return to a proper return port, and shall request the shipping master or consular officer to endorse upon the agreement with the crew of the ship which the seaman is leaving the particulars of any provision so made.

(2) If the master fails without reasonable cause to comply with subsection (1), the expenses of maintenance and of the journey to the proper return port—

(a) if defrayed by the seaman, shall be recoverable as wages due to him; and

(b) if defrayed by the shipping master or the consular officer or any other person, shall be a charge upon the ship to which the seaman belonged, and may also be recovered against the person who is the owner of the ship for the time being, or where the ship has been lost, against the person who was the owner of the ship at the time of the loss, or (where the ship has been transferred to some person who is not entitled to be registered as owner of a Kenya ship) either against the owner for the time being or against the person who was the owner of the ship at the time of the transfer, at the suit of the shipping master or consular officer or other person defraying the expenses, or (if they have been allowed out of public money) as a debt to the Government either by ordinary process of law or in the court and in the manner in which wages may be recovered by seamen.

#### Discharge of seaman on change of ownership at foreign port

**174.(1)** Where a Kenya ship is transferred or disposed of at a port outside Kenya, any seaman belonging to that ship shall be discharged unless the seaman consents in writing in the presence of the shipping master or consular officer to complete the voyage of the ship if continued.

(2) Where a seaman is so discharged, the provisions of this Part as to the certificate of discharge and the return of the seaman to a proper return port shall apply as if his service had terminated otherwise than by his consent to be discharged during the currency of the agreement, and shall apply to foreign seamen whether they have been shipped at a port in Kenya or not.

#### Certificate required where seaman left behind at foreign port

**175.**(1) The master of a Kenya ship shall not leave a seaman behind at any place outside Kenya except where the seaman is discharged in accordance with this Act, unless he has had the certificate of the shipping master or consular officer endorsed on the agreement with the crew, certifying the cause of the seaman being left behind, whether the cause is unfitness or inability to proceed to sea, desertion, disappearance or otherwise.

(2) The shipping master or consular officer to whom an application is made for a certificate under this section may examine the grounds on which a seaman is to be left behind, and for that purpose may administer oaths and grant or refuse the certificate as he thinks just, but the certificate shall not be unreasonably withheld.

(3) If the master of a ship fails to comply with this section, he shall without prejudice to his liability under any other provision of this Act, be guilty of an offence; and in a prosecution for the offence it shall lie on the master to prove that the certificate was obtained or could not be obtained without unreasonable delay to the ship or was unreasonably withheld.

#### Account of wages where seaman left behind

**176.**(1) Where a master of a Kenya ship leaves a seaman behind at any place outside Kenya on the ground of his unfitness or inability to proceed to sea, he shall deliver to the person signing the certificate required by section 175 a full and true account of the wages due to the seaman, and if that person is a consular officer shall deliver the account in duplicate.

(2) If a master fails without reasonable cause to deliver the account, he shall be guilty of an offence.

#### Payment of wages of seaman left behind

**177.**(1) The master shall pay the wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea to the shipping master or consular officer if such officer will receive them.

(2) Where a payment is so made, the shipping master or consular officer, if satisfied with the account, shall furnish a receipt for the payment.

(3) The payment shall be made, whenever practicable, in money, and when not so practicable by bills drawn on the owner of the ship.

(4) If the master fails without reasonable cause to pay wages as provided by this section, he shall be guilty of an offence.

#### Application of wages of seaman left behind

**178.**Where the wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea are so paid to and accepted by a shipping master or consular officer, that officer shall accept them on condition that he deals with them in the following manner—

(a) if the seaman subsequently obtains employment at or leaves the port at which the payment has been made, he shall retain out of the money any expenses incurred by him in respect of the

maintenance of the seaman under this Act, except such as the owner or master is by this Act required to defray, and shall pay the remainder to the seaman and deliver to him an account of the money received and expended on his behalf;

(b) if the seaman dies before his ship leaves the port, he shall deal with the money as part of the property of a deceased seaman; and

(c) if the seaman is sent to a proper return port at the public expense under this Act, he shall account for the money to the Minister, and after retaining any expenses duly incurred in respect of the seaman, except such expenses as the master or owner of the ship is required by this Act to defray, the money shall be dealt with as wages of the seaman.

#### Relief of distressed seaman

**179.**(1) Where a seaman who has been resident in Kenya for at least twelve months before the commencement of the voyage or engagement on which he is at the time employed—

(a) is found in any place outside and has been ship wrecked from a Kenya ship or ship registered elsewhere than in Kenya; or

(b) by reason of having been discharged or left behind from any such ship in a place outside Kenya is in distress in that place,

the shipping master or consular officer may provide, in accordance with this Act—

(i) for the return of a seaman who is in this Act included in the term distressed seamen at the expense of the Government to a proper return port and also provide for his necessary clothing and maintenance until his departure for such a port;

(ii) and in case of death, for burial expenses; and

(iii) in addition in the case of a shipwrecked seaman for the repayment of any expenses incurred in his conveyance to port after his shipwreck and his maintenance while being so conveyed.

(2) Where a seaman is found in any place in Kenya as a result of being shipwrecked from a Kenya ship, the owner of the ship or his representative shall provide for his necessary clothing and maintenance in that place and shall pay the expenses of returning the seaman to a proper return port.

#### Repayment of expenses of relief and return

**180.**(1) Where any expenses as defined by this section are incurred by a shipping master or a consular officer on behalf of the Government under section 179, or are incurred by the government of a foreign country and are repaid to that foreign country by the Government, the Minister may pay to the shipping master or consular officer or foreign government the amount of the expenses out of any moneys available for the purpose or out of any moneys appointed for that purpose.

(2) Any or all money paid by the Minister under subsection (1), together with the wages, if any, due to the seaman, shall be a charge upon the ship to which the distressed seaman belonged and shall be a debt due to the Government from the master or owner of the ship or from the owner of the ship for the time being, or where the ship has been lost from the person who was the owner of the ship at the time of the loss, or where the ship has been transferred to some person (not being a person entitled to be registered as owner of a Kenya ship) either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, and also (if the ship is a foreign ship) from the person whether principal or agent who engaged the seaman for service in the ship.

(3) The debt, in addition to any fines and consular fees which may have been incurred, may be recovered by the Minister on behalf of the Government either by ordinary process of law or in the court and manner in which wages may be recovered by seamen.

(4) In any proceedings for recovery, the production of an official account of the expenses furnished in accordance with this Act and proof of payment of the expenses by or on behalf of the Government shall be prima facie evidence that the expenses were incurred or repaid under this Act by or on behalf of the Government.

#### Forcing ashore

**181.** A person belonging to a Kenya ship shall not wrongfully force a seaman on shore and leave him behind or otherwise cause a seaman to be wrongfully left behind at any place, and if he does so he shall be guilty of an offence.

#### Proper return port

**182.** For the purposes of this Part, either the port at which the seaman was shipped or a port in the country to which he belonged or some other port agreed to by the seaman (in the case of a discharged seaman) at the time of his discharge is a proper return port, but in the case of a seaman shipped in Kenya the return port shall be the same in which he was shipped unless otherwise agreed to by him.

#### Manner of return of seaman

**183.**(1) A seaman may be sent to a proper return port by any reasonable route.

(2) Provision may be made for the return of the seaman, if he is fit for work, by providing him with suitable employment on board a ship proceeding to a proper return port that is in want of men to make up its complement or, if that is not practicable, by providing the seaman with a passage in any ship or aircraft or in other public transport and by providing for his maintenance during the journey.

(3) Where the master of a ship is required under this Part to provide for the return of a discharged seaman to a proper return port, the master may, instead of providing the seaman's passage or the expenses of his journey, deposit with the shipping master or consular officer such sum as the shipping master or consular officer considers sufficient to defray the expenses of the return of the seaman to a proper return port.

(4) Where a seaman is repatriated as a member of a crew, he shall be entitled to the appropriate remuneration for work done during the voyage.

#### Questions as to return of seamen

**184.** When any question arises as to what return port a seaman is to be sent to or as to the route by which he should be sent, that question shall be decided by the shipping master or consular officer, and in deciding the question, the shipping master or consular officer shall have regard both to the convenience of the seaman and to the expense involved and also (if it is the case) to the fact that a ship which is in want of men to make up its complement is about to proceed to a proper return port or to a port in the vicinity thereof; but nothing in this section shall relieve the owner from the obligation and expense of returning the seaman to his proper return port.

#### Minister may assist distressed seamen

**185.**(1) The Minister may, whenever he deems it necessary, spend money on the temporary relief in Kenya, in such manner as he thinks advisable, of shipwrecked, destitute or otherwise distressed

seamen not otherwise entitled to relief under this Act or under the laws of the country to which the ship belongs.

(2) Any expenses incurred for shipwrecked, destitute or otherwise distressed seamen under this section, shall be repaid to the Government by the master, owner or agent of the vessel to which the distressed seaman belonged, and may be recovered by the Minister on behalf of the Government in the same way as expenses incurred outside Kenya for distressed seamen of sea-going vessels registered in Kenya are recovered.

#### **Part IV - PASSENGER SHIPS**

Regulations as to passenger ships

**186.** The Minister may make regulations—

(a) respecting accommodation, facilities and provisions on board passenger ships which carry passengers from a port in Kenya;

(b) requiring the preparation and furnishing of particulars as to all passengers to or from a port in Kenya;

(c) regulating the number of passengers which a ship may carry from a port in Kenya, whether or not the ship is a passenger ship;

(d) prescribing the terms and conditions upon which ships may carry passengers between ports in Kenya.

Offences in connexion with passenger ships

**187.**(1) A person who while on board or while attempting to board a passenger ship in Kenya—

(a) being drunk or disorderly, is requested by the owner or any person in his employment to leave the ship, and after having the amount of his fare (if he has paid it) returned or tendered to him does not comply with the request; or

(b) after warning by the master or other officer of the ship, molests or continues to molest any passenger; or

(c) having gone on board the ship at any place and been requested on account of the ship being full by the owner or any person in his employment to leave the ship before it has left that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, does not comply with that request; or

(d) travels or attempts to travel in the ship without first paying his fare and with intent to avoid payment thereof; or

(e) having paid his fare for a certain distance, knowingly and wilfully proceeds in the ship beyond that distance without first paying the additional fare for the additional distance and with intent to avoid payment thereof; or

(f) on arriving in a ship at a point to which he has paid his fare, knowingly and wilfully refuses or neglects to leave the ship; or

(g) fails when requested by the master or other officer thereof either to pay his fare or exhibit such ticket or other receipt showing the payment of his fare as is usually given to persons travelling by and paying their fare for the ship; or

(h) wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship, or to obstruct, impede or molest the crew or any of them in the navigation or management of the ship or otherwise in the execution of their duty on or about the ship, shall be guilty of an offence.

(2) A person who—

(a) being drunk and disorderly, has been on that account refused admission to a passenger ship in Kenya by the owner or any person in his employment, and after having the amount of his fare (if he has paid it) returned or tendered to him nevertheless persists in attempting to enter the ship; or

(b) after having been refused admission to a passenger ship in Kenya by the owner or any person in his employment on account of the ship being full and having had the amount of his fare (if he has paid it) returned or tendered to him nevertheless persists in attempting to enter the ship,

shall be guilty of an offence.

Ticket to be issued for passage

**188.**(1) If any person receives money from another person for or in respect of a passage in a ship proceeding from a place in Kenya to a place within or outside Kenya, he shall give to the person paying the money a contract ticket signed by or on behalf of the owner or charterer of the ship.

(2) The contract ticket required by this section shall specify—

(a) the amount of the fare paid;

(b) the places between which the passenger is entitled to be carried;

(c) whether the passenger is to be berthed or unberthed;

(d) whether the passenger is entitled to free food or must purchase or provide his own food for the journey;

(e) the amount of baggage the passenger is permitted to carry free of charge; and

(f) any other rights or obligations of the parties;

but the contract ticket shall not contain any clause, condition or stipulation, or refer to any clause, condition or stipulation not contained in it, which purports to indemnify the owner or charterer of the ship from the consequences of any neglect to ensure that the ship was seaworthy, or from the consequences of any neglect in the management or navigation of the ship, or which would deprive the passenger of any right or remedy which he would have enjoyed were it not for that clause, condition, stipulation or reference; and if any such clause, condition, stipulation or reference is contained in a contract ticket in contravention of this section it shall be void.

(3) Any question which arises respecting the breach or non-performance of a stipulation in a contract ticket may, at the option of the passenger interested, be tried before a subordinate court, and the court

may award the complainant such damages and costs as it thinks just, not exceeding three times the amount of the passage money specified in the contract ticket.

## **Part V - SAFETY**

### Appointment of surveyors

**189.**(1) The Minister may appoint at such places as he considers advisable persons competent to inspect—

- (a) the boilers and machinery of motor vessels;
- (b) the equipment of ships, including ships' tackle, furnishing and appurtenances;
- (c) the hulls and superstructures of ships;
- (d) the life-saving, fire-fighting and other safety equipment of ships;
- (e) the radiotelegraphy and radiotelephony installations of ships;
- (f) the stowage and manner of loading of ships' cargoes and the stowage of dangerous goods.

(2) A person so appointed is in this Part referred to as a surveyor, and the same person may be appointed in several capacities.

(3) The survey and inspection of ships, so far as regards the enforcement of the regulations made under this Part, shall be carried out by surveyors appointed by the Minister or, subject to such conditions as the Minister may impose, by any corporation or society for the survey and classification of ships approved by the Minister.

### Surveyor's rights of inspection

**190.**(1) A surveyor in the exercise of his duties may go on board any ship at all reasonable times and inspect the ship or any of its machinery or equipment or any certificate of a master, mate or engineer, and if—

- (a) he considers the ship unsafe or (if a passenger ship) unfit to carry passengers, or the machinery or equipment defective in any way so as to expose persons on board to serious danger; or
- (b) he finds that any provisions of this Act have not been complied with in respect of the ship and considers that the ship should be detained for that reason,

he may detain the ship.

(2) Where a surveyor visits a ship under this section, he may ask the owner or his agent, the master or chief engineer, or any other person on board and in charge or appearing to be in charge, any question concerning the ship or concerning any accident that has happened to the ship and every such person shall fully and truly answer.

(3) A surveyor may require that the machinery be put in motion so that he may satisfy himself as to its condition.



## Record of inspections and certificates

**191.** A surveyor shall keep a record of the inspections he makes and certificates he issues in such forms and with such particulars respecting them as the Minister may direct, and shall furnish copies thereof and any other information pertaining to the duties of his office which the Minister may require.

## Interpretation of Part

**192.** In this Part—

"international voyage" means a voyage from a port in one country to a port in another country;

"Load Line Convention" means the International Convention respecting load line of 1960 together with any amendment thereto which the Minister may, by order, declare to be in effect;

"Load Line Rules" means the rules made under this Act to give effect to the Load Line Convention;

"Safety Convention" means the International Convention for the Safety of Life at Sea 1960, together with any amendments thereto which the registrar may, by order in the Gazette, declare to be in effect;

"Safety Convention certificate" means a certificate that is required to be issued to a Safety Convention ship that complies with the relevant provisions of the Safety Convention, and includes a safety certificate, a safety construction certificate, a safety equipment certificate, a safety radiotelegraphy certificate, a safety radiotelephony certificate and any such certificate that is limited, modified or restricted by an exemption certificate;

"Safety Convention ship" means a ship registered in a country to which the Safety Convention applies, and

"Safety Convention passenger motor ship" shall be construed accordingly;

"short international voyage" means an international voyage—

(a) in the course of which a ship is not more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and

(b) which does not exceed 600 nautical miles in length between the last port of call in the country where the voyage begins and the final destination,

no account being taken of any deviation by the ship from her intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer, if any, of the ship could reasonably have prevented or forestalled.

## Regulation to give effect to Conventions

**193.** The Minister may, subject to this Act, make such regulations as may appear to him to be necessary to give effect to the Safety Convention and the Load Line Convention.

## Countries to which Conventions apply

**194.** The Minister, if satisfied—

(a) that the government of any country has ratified, acceded to or denounced the Safety Convention or the Load Line Convention; or

(b) that the Safety Convention or the Load Line Convention has been applied or has ceased to apply to any country,

may by notice in the Gazette make a declaration to that effect.

Initial and subsequent surveys of ships

**195.**(1) Every Kenya passenger ship shall be subjected to the surveys specified below, namely—

(a) a survey before the ship is put into service;

(b) periodic surveys at intervals of not more than one year;

(c) additional surveys as occasion arises.

(2) The surveys referred to above shall be carried out as follows—

(a) the survey before the ship is put into service shall include a complete inspection of the hull, machinery and equipment, and this survey shall be such as to ensure that the arrangements, material and scantlings of the hull, boilers and other pressure vessels, main and auxiliary machinery, electrical installation, radio installation in motor lifeboats, portable radio apparatus for survival craft, life saving appliances, fire detecting and extinguishing appliances, pilot ladders and other equipment fully comply with the requirements of the Safety Convention and with any regulations made under sections 193 and 197 of this Act; and the survey shall be such as to ensure that the workmanship of all parts of the hull and machinery and equipment is satisfactory, and that the ship is provided with such light and sound signals and distress signals as are required by the Safety Convention and the collision regulations;

(b) the periodic surveys shall be such as to ensure that the hull, boilers and other pressure vessels, main and auxiliary machinery, electrical installations, radio installations, radio installations in motor lifeboats, portable radio apparatus for survival craft, life-saving appliances, pilot ladders and other equipment are in satisfactory condition and fit for the service for which the intended and that they comply with the requirements of the Safety Convention and with any regulations made under sections 193 and 197 of this Act; and the light and sound signals and the distress signals carried by the ship shall also be subject to the survey;

(c) a survey, either general or partial, according to the circumstances, shall be made every time an accident occurs or a defect is discovered which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment, or whenever important repairs or renewals are made; and the survey shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of the repairs or renewals are in all respects satisfactory and that the ship complies in all respects with the Safety Convention and the collision regulations and any regulations made under this Act.

(3) The hull, machinery and equipment (other than items in respect of which cargo ship safety equipment certificates, cargo ship safety radiotelegraphy certificates or cargo ship radiotelephony certificates are issued) of a cargo ship shall be surveyed on completion and thereafter at intervals of not more than four years; and the survey shall be such as to ensure that the arrangements, material and scantlings of the hull, boilers and other pressure vessels, main and auxiliary machinery, electrical installations and other equipment are in all respects satisfactory for the service for which the ship is intended.

(4) The life-saving appliances and fire-fighting appliances of cargo ships shall be subject to survey before the ship is put into service and thereafter at intervals of not more than two years; and the fire control plans in new ships and the pilot ladders, light and sound signals and distress signals in new and existing ships shall be included in the surveys for the purpose of ensuring that they comply fully with the requirements of the Safety Convention and, where applicable, the collision regulations.

(5) The radio installations of cargo ships and any radio-telegraph installation in a motor lifeboat or portable radio apparatus for survival craft which is carried in compliance with any regulations made under section 193 and 197 shall be subject to survey before the ship is put into service and thereafter at intervals of not more than one year.

(6) Pleasure yachts shall be exempt from the inspections required by this section.

Surveyor to report to Minister

**196.** A surveyor, if satisfied on inspection that he can with propriety do so, shall forward a report to the Minister which shall contain a statement showing—

- (a) that the hull and machinery are sufficient for the service intended and in good condition;
- (b) that the hull and machinery are constructed, arranged and fitted in accordance with any regulations made under this Part;
- (c) that the equipment that is required under any regulations is on board and in good condition;
- (d) that the master, mates and engineers are persons duly certificated as required under this Act and that the crew is sufficient and efficient;
- (e) the class of voyage on which the steamship is fit to ply and the time, if less than one year, for which the hull, equipment and machinery will be sufficient;
- (f) if the steamship is a passenger steamship, the number of passengers which she may carry; and
- (g) the steam pressure that may be carried on the boilers.

Safety regulations

**197.** The Minister may make regulations respecting—

- (a) the construction of hulls, including their subdivision into water-tight compartments and the fitting of double-bottoms and fire-resisting doors;
- (b) the construction of machinery, with particular reference to the testing of the main and auxiliary boilers, connexions, steam pipes, high pressure vessels and fuel tanks for internal combustion engines;
- (c) the construction of equipment and the class and quantity of various types of equipment to be carried in any vessel, including the marking of boats, lifeboats and buoyant apparatus;
- (d) compasses, sounding apparatus and other navigating appliances;
- (e) propelling power and the appliances and fittings for steering;
- (f) stability, and the data relating thereto to be supplied to the master of a steamship;

- (g) the marking of subdivision load lines on passenger steamships;
- (h) the provisions to be made for mustering the passengers and crew for abandoning ship, including the lighting of decks, passage ways and similar parts of the ship, and the provision of proper means of escape from the various parts of the ship;
- (i) passenger accommodation and the number of passengers allowed to be carried;
- (j) the production of plans and documentary evidence showing the construction of hulls, machinery and equipment; the subdivision of hulls into water-tight compartments, the arrangement of passenger accommodation and similar information necessary to decide on the fitness of a steamship for any particular service;
- (k) the inspection of the hulls, equipment and machinery of steamships and the extent to which inspection shall be carried out, having due regard to the class of voyage on which a steamship is to be engaged and the trade on which she is employed, and whether the ship is classed with a society or association for the classification and registry of shipping approved by the Minister;
- (l) the manning of steamships, the number of certificated lifeboat men to be carried and the qualifications for and the granting of certificates to lifeboat men;
- (m) the carrying of line-throwing apparatus;
- (n) precautions against fire and damage control plans;
- (o) the holding of periodic boat and fire drills;
- (p) the provision of pilot ladders on ships;
- (q) the lights to be carried and exhibited;
- (r) the fog and distress signals to be carried and used;
- (s) the steering and sailing rules to be observed;
- (t) the radio apparatus and the number of radio operators to be carried in various classes of ships, and the hours of duty of radio operators.

#### Issue of certificate to passenger or cargo ship

**198.(1)** Where a Kenya motor ship being a Safety Convention ship is intended to carry more than twelve passengers on an international voyage and the Minister, on receipt of the report of inspection provided for under section 196, is satisfied that all relevant provisions of this Act have been complied with, there shall be issued the appropriate Safety Convention certificate or certificates and an inspection certificate in respect of that ship.

(2) Where a Kenya motor ship, being a cargo ship of 500 tons gross tonnage or more, is intended to be employed on an international voyage, and a surveyor is satisfied that all relevant provisions of this Act have been complied with, there shall be issued under this Act the appropriate Safety Convention certificate and inspection certificate for that ship.

#### Local safety certificate

**199.**The Minister may make regulations prescribing safety requirements and providing for the issue of local safety certificates in respect of—

- (a) any ship or class of ship to which the Safety Convention does not apply; and
- (b) any ship or class of ship to which the Safety Convention applies, in respect of matters for which it does not expressly provide.

Posting of certificate  
38 of 1968, Sch.

**200.**(1) On receipt of an inspection certificate or a local safety certificate or a Safety Convention certificate, the owner or master shall cause the certificate or certificates to be posted up in some conspicuous place on board the ship for the information of all on board, and the certificate or certificates shall be kept so posted while in force and the ship is in use.

(2) A certificate shall be in force for the period specified therein or until notice is given by the Minister to the owner or master that the certificate has been cancelled.

(3) Where a Kenya ship in respect of which a certificate has been issued is absent from Kenya at the date when the certificate expires, the Minister may, if it appears proper and reasonable so to do, grant such extension of a certificate as will allow the ship to return to Kenya.

Issue of certificates by other governments

**201.**The Minister may request the government of a country to which the Safety Convention applies to issue in respect of a Kenya ship any certificate provided for by the Safety Convention; and the certificate issued in pursuance of such a request and containing a statement that it has been so issued shall have effect for the purposes of this Act as if it had been issued thereunder.

Issue of certificates to ship that is not Kenya ship

**202.**(1) The Minister, at the request of the government of a country to which the Safety Convention applies, may cause any certificate provided for by the Safety Convention to be issued in respect of a ship of that country, if he is satisfied as in the case of a Kenya ship that such a certificate can properly be issued, and where a certificate is issued on such a request it shall contain a statement that it has been so issued.

(2) The Minister may make such regulations as appear to him to be necessary for the purpose of securing that Safety Convention certificates issued by the Governments of foreign countries in respect of Safety Convention ships not registered in Kenya are accepted as having the same force as corresponding certificates issued by the Minister under this Act.

Production of certificate

**203.**(1) The master of a Safety Convention ship that is not a Kenya ship for which a clearance is demanded in respect of an international voyage shall produce to the customs officer a valid Safety Convention certificate, and if the Safety Convention certificate is qualified shall show that the corresponding exemption certificate has been issued; and a clearance shall not be granted, and the ship shall be detained, until the appropriate certificate is or certificates are produced.

(2) The master of—

- (a) a Kenya Safety Convention ship; or

(b) a Kenya ship which is required to possess a local safety certificate,

shall in respect of every international voyage produce to the customs officer from whom a clearance is demanded a valid Safety Convention certificate or local safety certificate, as the case may be.

International voyage from Kenya by ship to which Safety Convention does not apply

**204.**No passenger ship that is registered in a country to which the Safety Convention does not apply, and no cargo ship of 500 tons gross tonnage or more that is so registered, shall proceed or attempt to proceed to sea on an international voyage from a port or place in Kenya until the ship has complied with the provisions of this Act respecting safety that apply to ships that are Kenya ship; but the Minister may authorize the clearance of a ship to which this section applies if he is satisfied that—

(a) no passengers are carried; and

(b) the amount of cargo carried is not more than allows the ship to make a voyage in safety; and

(c) the hull, boilers, machinery and equipment of the ship are in good condition and sufficient for the voyage contemplated; and

(d) the radio installation is in good condition and sufficient for the voyage contemplated.

Crew to be sufficient and efficient

**205.**Every Kenya ship shall be manned with a crew sufficient and efficient from the point of view of safety of life for the purpose of the intended voyage, and shall during the voyage be kept so manned.

Master to notify hazard to navigation

**206.**(1) The master of a Kenya ship on meeting with dangerous ice, a dangerous derelict, a tropical storm or any other direct danger to navigation shall send information of it by all means of communication at his disposal and in accordance with any regulations that the Minister may make or adopt for the purpose of this section to ships in the vicinity or to such authorities on shore as may be prescribed by those regulations.

(2) The person in charge of a radio station in Kenya or on board a Kenya ship shall, on receiving the signal prescribed in the regulations for indicating that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and if so required by the Minister shall transmit the message in such a manner as may be required by him.

(3) A transmission of messages in pursuance of this section shall be without charge.

(4) In this section, "tropical storm" means a hurricane, typhoon, cyclone or other storm of a similar nature, and a master of a ship shall be deemed to have met with a tropical storm if he has reason to believe there is such a storm in the vicinity.

Distress signals

**207.**(1) The Minister may make regulations as to what signals shall be signals of distress and urgency, and the signals prescribed by the regulations shall be deemed to be signals of distress and urgency respectively.

(2) Regulations shall further prescribe, so far as is necessary and expedient, the circumstances in which and the purposes for which any signals prescribed by those regulations shall be used, and the circumstances in which they shall be revoked.

(3) If a master of a ship uses or displays or causes or permits any person under his authority to use or display—

(a) a signal prescribed by regulations under this section, otherwise than in the circumstances and for the purposes prescribed by the regulations; or

(b) a private signal, whether registered or not, that is liable to be mistaken for a signal so prescribed by regulations, he shall be guilty of an offence and in addition to any penalty imposed upon him on conviction he shall be liable to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal having been supposed to be a signal of distress or urgency; and the compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable.

#### Obligation to assist in distress

**208.**(1) The master of a Kenya ship at sea on receiving a signal from any source that a ship or aircraft or survival craft thereof is in distress shall proceed with all speed to the assistance of the persons in distress, informing them if possible that he is doing so, but if he is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to proceed to their assistance, he shall enter in the official log-book the reason for failing to proceed to the assistance of the persons in distress.

(2) The master of a ship in distress may, after consultation so far as possible with the masters of the ships which answer his distress signal, requisition such one or more of the ships as he considers best able to render assistance, and it shall be the duty of the master of a Kenya ship that is so requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.

#### Method of giving helm orders

**209.**No person in a Kenya ship shall, when the ship is going ahead, give a helm or steering order containing the word "starboard" or "right" unless he intends that the head of the ship shall move to the right; or give a helm or steering order containing the word "port" or "left" unless he intends that the head of the ship shall move to the left.

#### Collision regulations to be observed

**210.**(1) All owners and masters of ships and seaplanes and other craft when on or in close proximity to the water shall obey the collision regulations and shall not carry or exhibit any other lights or use any other signals than such as are required by regulations made under this Part.

(2) If an infringement of the collision regulations is caused by the wilful default of a master or owner, that master or owner shall be guilty of an offence.

(3) If any damage to property arises from the non-observance of the collision regulations, the damage shall be deemed to have been caused by the wilful default of the person in charge of the ship, seaplane or other craft at the time, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the collision regulations necessary.

#### Vessel to assist other in case of collision

**211.**(1) In every case of collision between two vessels, it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew and passengers (if any)—

(a) to render to the other vessel, and to her master, crew and passengers (if any), such assistance as may be practicable and as may be necessary to preserve them from any danger caused by the collision, and to stay by the other vessel until he has ascertained that she has no need of further assistance; and also

(b) to give to the master or person in charge of the other vessel the name of his own vessel and of the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

(2) If the master or person in charge fails without reasonable cause to comply with this section, he shall be guilty of an offence.

Collision to be entered in official book

**212.**In every case of collision in which it is practicable so to do, the master of every ship shall, immediately after the occurrence, cause a statement thereof and of the circumstances under which it occurred to be entered in the official log-book, and the entry shall be signed by the master and also by an officer or one of the crew.

Accidents to Kenya ship to be reported

**213.**Where a Kenya ship has sustained or caused an accident occasioning loss of life or serious injury to any person or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, as soon as possible after the happening of the accident or damage, transmit to the Minister, by letter signed by the owner or master, a report of the accident or damage and of its probable occasion, stating the name of the ship, her official number if any, the port to which she belongs and the place where she is.

Application

**214.**(1) The following ships shall be exempt from the provisions of this Part which relates to load lines and loading—

(a) sailing ships of under 80 tons register tonnage engaged solely in the coasting trade;

(b) ships engaged solely in fishing; and

(c) pleasure yachts.

(2) Ships which are not exempt from provisions of this Part by virtue of subsection (1) are hereafter in this Act referred to as load line ships, and for the purposes of this Part they are divided into the following classes—

(a) international load line ships, that is to say, ships of 150 tons gross tonnage or more which carry cargo or passengers on international voyages; and

(b) local load line ships, that is to say ships other than international load line ships which carry cargo or passengers.



(3) International load line ships belonging to countries to which the Load Line Convention applies are hereafter in this Act referred to as Load Line Convention ships.

#### Load line regulations

**215.**The Minister may make regulations (hereafter in this Act referred to as the load line regulations) for the purpose of giving effect to the Load Line Convention, and such regulations may prescribe load line requirements and provide for the issue of local load line certificates in respect of ships to which the Load Line Convention does not apply.

#### Marking of deck line and load lines

**216.**(1) A Kenya load line ship shall not proceed to sea unless—

- (a) the ship has been surveyed by a surveyor in accordance with the load line regulations; and
- (b) the ship complies with the conditions of assignment contained in the load line regulations; and
- (c) the ship is marked on each side with a mark (hereafter in this Act referred to as a deck line) indicating the position of the uppermost complete deck as defined by the load line regulations, and with marks (hereafter in this Act referred to as load lines) indicating the several maximum depths to which the ship can be safely loaded in various circumstances prescribed by the load line regulations; and
- (d) the deck line and the load lines are of the description required by the load line regulations, the deck line is in the position required by those regulations, and the load lines are of the number required by such of those regulations as are applicable to the ship; and
- (e) the load lines are in the position required by such of the load line regulations as are applicable to the ship.

(2) Where a ship proceeds or attempts to proceed to sea in contravention of this section, the master or owner or charterer, or the agent if he is privy to the contravention, of the ship shall be guilty of an offence.

#### Submersion of load lines

**217.**(1) A Kenya load line ship shall not be so loaded as to submerge the appropriate load line on each side of the ship in sea water when the ship has no list.

(2) Where a ship is loaded in contravention of subsection (1), the owner or master or charter, or the agent if he is privy to the contravention, of the ship shall be guilty of an offence; and in addition to any penalty which may otherwise be imposed upon him on conviction he shall be liable to a fine not exceeding five thousand shillings for every inch or fraction of an inch by which the appropriate load line on each side of the ship was submerged or would have been submerged if the ship had been floating in sea water and had no list.

(3) A ship loaded in contravention of this section shall be detained until she ceases to be so loaded.

#### Alteration or defacement of marks

**218.**If—

(a) the owner or master of a Kenya load line ship which has been marked in accordance with the foregoing provisions of this Part fails without reasonable cause to keep the ship so marked; or

(b) any person conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any mark placed on any ship in accordance with the foregoing provisions of this Part, except with the authority of a person entitled under the load line regulations to authorize the alteration of the mark, he shall be guilty of an offence.

#### Load line certificates

**219.**(1) Where a Kenya load line ship has been surveyed and marked in accordance with the foregoing provisions of this Part, and complies with the conditions of assignment to the extent required in her case by those provisions, there shall be issued to the owner of the ship on his application and on payment of the prescribed fee—

(a) in the case of an international load line ship, a load line certificate (hereafter in this Act referred to as a load line certificate); and

(b) in the case of a local load line ship, a load line certificate (hereafter in this Act referred to as a local load line certificate).

(2) Every such certificate shall be issued by the Minister and shall be issued in such form and manner as may be prescribed by the load line regulations.

(3) Load line certificates, except as in this Act otherwise provided, shall be issued by the Minister.

(4) The Minister may request the government of a country to which the Load Line Convention applies to issue a load line certificate in respect of a Kenya Load Line Convention ship, and a certificate issued in pursuance of such a request and containing a statement that it has been so issued shall have effect for the purposes of this Part as if it had been issued under the seal of the Minister.

(5) Where a load line certificate issued in pursuance of subsection (4) and for the time being in force is produced in respect of a ship, that ship shall, for the purpose of the foregoing provisions of this Part, be deemed to have been surveyed as required by those provisions; and, if the deck line and load lines correspond with the position specified in the certificate, the ship shall be deemed to be marked as required by those provisions.

Certificate may be issued by corporation or society for survey of shipping.

**220.**The Minister may authorize, subject to such conditions as he may deem fit, any corporation or society for the survey and classification of shipping approved by the Minister to survey ships in respect of load lines, to assign load lines to ships and to issue load line certificates, and any certificate so issued shall have effect in place of the certificate provided for under section 219.

#### Renewal, duration and cancellation of certificates

**221.**(1) A load line certificate may, after survey not less effective than the survey required by the load line regulations before the issue of the certificate, be renewed from time to time and by the authority by which it was granted, for such period not exceeding five years on any occasion as the authority renewing the certificate thinks fit.

(2) Every load line certificate which is not renewed in accordance with subsection (1) shall expire at the end of such period, not exceeding five years from the date of its issue, as may be specified therein.

(3) The Minister shall cancel a load line certificate which is in force in respect of a ship, if he has reason to believe that—

(a) material alterations have taken place in the hull or superstructure of the ship which affect the position of the load lines; or

(b) fittings and appliances for the protection of openings, guard rails, the freeing ports or the means of access to the crew's quarters have not been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(4) The owner of a ship in respect of which a load line certificate is in force shall cause the ship to be surveyed in the manner prescribed by the load line regulations once at least in each year after the issue of the certificate for the purpose of seeing whether the certificate should be cancelled under subsection (3), and if the ship is not so surveyed the Minister shall cancel the certificate:

Provided that the Minister may in any particular case extend the period of one year.

(5) Where a load line certificate has expired or been cancelled, the Minister may require the owner or master of the ship to which the certificate relates to deliver up the certificate as he directs, and the ship may be detained until the requirement has been complied with; and if the owner or master fails without reasonable cause to comply with the requirement he shall be guilty of an offence.

(6) On the survey of a ship pursuant to this section, there shall be paid by the owner of the ship such fee as may be prescribed by the load line regulations.

Ship not to proceed to sea without certificate

**222.**(1) A Kenya international load line ship shall not proceed to sea on an international voyage unless a load line certificate is in force in respect of the ship.

(2) A Kenya local load line ship shall not proceed to sea unless a local load line certificate is in force in respect of the ship.

(3) The master of a Kenya load line ship shall produce to the customs officer from whom a clearance for the ship is demanded the certificate that is required by the foregoing provisions of this section to be in force when the ship proceeds to sea; and a clearance shall not be granted, and the ship shall be detained, until that certificate is so produced.

Certificate to be displayed and entered

**223.**(1) Where a load line certificate has been issued in respect of a Kenya load line ship—

(a) the owner of the ship shall, forthwith on the receipt of the certificate, cause it to be framed and posted up in some conspicuous place on board the ship and to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use; and

(b) the master of the ship, before making any other entry in any official log-book, shall enter therein the particulars as to the position of the deck line and load lines specified in the certificate.

(2) Before a Kenya load line ship leaves a dock, harbour or other place for the purpose of proceeding to sea on an international voyage, the master thereof shall—

(a) enter into the official log-book such particulars, relating to the depth to which the ship is for the time being loaded, as the load line regulations require to be entered; and

(b) cause a notice, in such form and containing such particulars as the load line regulations require, to be posted up in a conspicuous place on board the ship and to be kept so posted up and legible until the ship arrives at some other dock, harbour or place.

Particulars of load line to be inserted in agreement with crew

**224.**(1) Before an agreement with the crew of a Kenya load line ship is signed by any member of the crew, the master of the ship shall insert in the agreement the particulars as to the position of the deck line and load lines specified in the certificate.

(2) In the case of a Kenya foreign-going load line ship, a shipping master shall not proceed with the engagement of the crew until—

(a) there is produced to him a load line certificate for the time being in force in respect of a ship; and

(b) he is satisfied that the particulars required by this section have been inserted in the agreement with the crew.

Load line certificate of Convention ship not registered in Kenya

**225.**(1) The Minister may, at the request of the government of a country to which the Load Line Convention applies, cause to be issued a load line certificate in respect of an international load line ship of that country, if he is satisfied in the same manner as in the case of a Kenya ship that the certificate can properly be issued, and where a certificate is issued at such a request it shall contain a statement that it has been so issued.

(2) With a view to determining the validity in Kenya of certificates purporting to have been issued in accordance with the Load Line Convention in respect of the Load Line Convention ships not registered in Kenya, the Minister may make such regulations as appear to him to be necessary for the purpose of giving effect to Article 17 of the Load Line Convention; and, for the purpose of the provisions hereafter contained in this Part relating to Load Line Convention ships not registered in Kenya, "a valid load line certificate" means a certificate complying with such of those regulations as are applicable in the circumstances.

Inspection of Convention ships not registered in Kenya

**226.**(1) A surveyor may go on board a Load Line Convention ship which is not registered in Kenya and which is at a place in Kenya, for the purpose of demanding production of its load line certificate.

(2) Where a valid load line certificate is produced to the surveyor, the surveyor's powers of inspecting the ship with respect to load lines shall be limited to seeing—

(a) that the ship is not loaded beyond the limits allowed by the certificate;

(b) that the position of the load lines on the ship corresponds with the position specified in the certificate;

(c) that no material alterations have taken place in the hull or superstructure of the ship which affect the position of the load lines; and

(d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were when the certificate was issued.

(3) Where it is found on an inspection that the ship is loaded beyond the limits allowed by the certificate, the ship may be detained and section 217 shall apply to it.

(4) Where it is found on an inspection that the load lines on the ship are not in the position specified in the certificate, the ship may be detained until the matter has been rectified to the satisfaction of the surveyor.

(5) Where a valid load line certificate is not produced to the surveyor on demand, the surveyor shall have the same power of inspecting the ship for the purpose of seeing that this Part has been complied with as if the ship were a Kenya ship.

(6) For the purposes of this section, a ship is loaded beyond the limits allowed by the certificate if she is so loaded as to submerge the appropriate load line on each side of the ship in salt water when the ship has no list, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the load line convention to be loaded.

Certificate of Convention ship to be produced to customs

**227.**The master of a Load Line Convention ship which is not registered in Kenya shall produce a valid load line certificate to the customs officer from whom a clearance for the ship from any port in Kenya is demanded; and a clearance shall not be granted, and the ship may be detained, until the certificate required by this section is so produced.

Carriage of timber deck cargo

**228.**(1) The Minister may make regulations (hereafter in this section referred to as the timber cargo regulations) as to the conditions on which timber may be carried as cargo out of Kenya in any uncovered space on the deck of a load line ship.

(2) The timber cargo regulations—

(a) shall not conflict with the requirements of the Load Line Convention;

(b) may prescribe generally the conditions on which timber may be carried in a load line ship either on all voyages or on any particular class of voyages, and either at all seasons or at any particular season; and

(c) in particular may prescribe the manner and position in which timber is to be stored and the provision which is to be made on the ship for the safety of the crew.

Carriage of bulk commodities

**229.**(1) In this section—

"bulk commodity" includes agricultural or mineral products handled in bulk which by their nature are liable to shift whilst in transit unless precautions are taken;

"ship carrying a bulk commodity" means a ship carrying a bulk commodity exceeding one-third of the ship's register tonnage.

(2) Where a bulk commodity is loaded on board a Kenya ship or on board any ship at a port in Kenya, so that the ship constitutes a ship carrying a bulk commodity, all necessary and reasonable precautions shall be taken to prevent the bulk commodity from shifting, and if those precautions are not taken the owner or master of the ship shall be guilty of an offence, and the ship may be detained until the unsafe condition is rectified to the satisfaction of a surveyor.

(3) Where a ship carrying a bulk commodity arrives at a port in Kenya and reasonable precautions to prevent the bulk commodity from shifting have not been taken, the ship may be detained until the unsafe condition is rectified to the satisfaction of a surveyor.

(4) Without prejudice to the generality of this section, the Minister may make regulations to provide for the safe carriage and stowage of bulk commodities.

#### Regulations as to dangerous goods

**230.**(1) The Minister may make regulations specifying any goods, articles or materials to be carried in a ship to be dangerous goods, and may prescribe—

(a) the method of packing and stowing those goods;

(b) the quantity of those goods which may be carried in any ship;

(c) the place or places within a ship in which they may be carried;

(d) the marking that is to be placed on any package or container in which goods may be placed for shipment;

(e) the precautions that shall be taken with respect to the carriage of those goods, and the powers of inspection to determine compliance with the regulations.

(2) No person shall send dangerous goods by or carry dangerous goods in a Kenya ship, except in accordance with regulations made under subsection (1), but this subsection does not apply to ships' distress signals or to the carriage of military stores for the public service under conditions authorized by the Minister.

(3) No person shall send dangerous goods by or (if he is not the master or owner of the ship) carry dangerous goods in a Kenya ship unless the outside of the outermost package containing the goods has the nature of the goods distinctly marked on it in the prescribed manner and written evidence of the nature of the goods and of the name and address of their sender have been given to the master or owner of the ship at or before the time of sending the goods to be taken on board the ship.

(4) This section and any regulations made thereunder shall apply to all ships not registered in Kenya while loading at any place in Kenya as they apply to Kenya ships.

(5) Any person who contravenes this section or any regulations made thereunder shall be guilty of an offence.

#### Obligation to secure seaworthiness of ship

**231.**(1) In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner of the ship and the master and every agent charged with the loading of the ship, or the preparing of the ship for sea, or the sending of the ship to sea, shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the voyage.

(2) Nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

Unseaworthy ship to be detained

**232.**(1) Where on complaint or representation made to him, or without any complaint, a detaining officer has reason to believe that a ship at a port or place in Kenya is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipment or machinery or by reason of undermanning, overloading or improper loading unfit to proceed to sea or to make a voyage or trip without serious danger to life, he shall detain the ship until he is satisfied that she is a safe ship.

(2) Where a ship is detained under subsection (1), a detaining officer may, before releasing her, demand that the owner or master have her inspected by a surveyor to investigate any defects believed to exist.

(3) The owner or master may require that a person of his choosing shall accompany the surveyor making inspection under this section.

(4) A surveyor who makes inspection under this section shall report fully to the detaining officer who has detained the ship under this section, and the detaining officer shall report fully to the Minister, setting out all the particulars in regard to the detention, and his report shall be accompanied by a copy of the report of the surveyor who has made the inspection.

Complaint to be in writing

**233.**A complaint in respect of the seaworthiness of a ship shall be in writing, stating the name and address of the complainant, and a copy of the complaint, including the name and address of the complainant, shall be given to the owner or master of the ship at the time of detention, if the ship is detained.

Where complaint of trivial nature

**234.**Before a ship is detained under section 232, a detaining officer shall assure himself by all means at his disposal that the complaint is not of a trivial or vexatious nature; and, where on inspection it is determined that a ship detained under section 232 was not an unseaworthy ship, the expenses in connexion with inspection shall be paid to the Ministry by the person making the complaint.

Regulations for protection of workers against accidents while loading or unloading ships

**235.**The Minister may make regulations for the protection against accidents of workers employed in loading or unloading ships, having regard in particular to—

(a) the strength of machinery, tackle and gear and their fitness for the purpose for which they are intended;

- (b) the provision of proper safe gangways, stagings and the like;
- (c) protection by way of rails or other sufficient protection at openings through decks and around wharves and docks;
- (d) illumination of holds and decks of ships and docks or wharves at which ships may be loading or unloading; and
- (e) provision of means for attending to persons injured.

#### Marking of heavy packages

**236.**No person shall in Kenya consign to be loaded on any ship, and no master, owner or agent of any ship shall, in Kenya, cause or permit to be loaded on any ship, a package or object of a gross weight of 2,240 lb. or over without causing its approximate weight to be plainly and durably marked on the outside of the package or object.

#### Part may be applied to foreign ships

**237.**The Minister may direct that this Part or any of its provisions shall apply to any foreign vessel or class of vessel whilst in Kenya.

#### Minister may exempt from compliance with Part

**238.**(1) Notwithstanding anything in this Part, the Minister may exempt a Kenya ship or the owner of a Kenya ship from compliance with any of the provisions of this Part or of regulations made thereunder relating to inspection, in any specific case of emergency where the Minister may deem it necessary or advisable in the public interest, to such extent and in such manner and upon such terms as he may consider proper in the circumstances; but the Minister shall not exempt a ship or owner from compliance with any such provision to an extent or in a manner which would permit any ship to proceed to sea or to make any voyage or trip in an unseaworthy condition.

(2) This section does not apply to Safety Convention ships or international load line ships.

## **Part VI - WRECKS SALVAGE AND INVESTIGATION INTO SHIPPING CASUALTIES**

#### General superintendence of Commissioner

**239.**The Commissioner shall have the general superintendence of all matters relating to wreck and may, by notice in the Gazette, appoint any person to be a receiver of wreck in any district and to perform the duties of a receiver under this Part.

#### Fees and expenses of receiver

**240.**(1) The receiver shall be repaid the expenses properly incurred by him in the performance of his duties and also such fees as the Commissioner may, by regulation, establish.

(2) The receiver shall, in addition to all other rights and remedies for the recovery of expenses and fees, have the same rights and remedies in respect thereof that a salvor has in respect of salvage due to him and may, if the property in respect of which any such expenses and fees are due is not under arrest in any court, seize or detain that property until the expenses and fees are paid, or until security is given for them to his satisfaction.



#### Duties of receiver

**241.**(1) When a vessel is wrecked, stranded or in distress at a place on or near the coast of Kenya, the receiver shall upon being made acquainted with the stranding or distress forthwith proceed to that place, and upon his arrival there he shall take the command of all persons present and assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel, hereinafter referred to as shipwrecked persons, and of the cargo and apparel of the vessel.

(2) If any person wilfully disobeys the directions of the receiver, he shall be guilty of an offence and liable to a fine not exceeding one thousand shillings; but the receiver shall not interfere between the master and crew of the vessel in reference to the management of the vessel, unless he is asked to do so by the master.

#### Powers of receiver

**242.**(1) The receiver may, with a view to the preservation of the shipwrecked persons or of the vessel, cargo or wreck—

(a) require such persons as he thinks necessary to assist him;

(b) require the master or other person having the charge of any vessel near at hand to give such aid with his men or vessel as is in his power; and

(c) demand the use of any machinery or vehicles or equipment that is obtainable.

(2) The receiver may cause to be arrested and kept in custody, until he can be conveniently taken before a court to be dealt with according to law, any person who plunders, creates disorder or obstructs the preservation of a vessel wrecked, stranded or in distress on or near the coast of Kenya, and may use reasonable force for the suppression of plundering, disorder or obstruction, and may command all persons in the vicinity to assist him.

#### Passage over adjoining lands

**243.**(1) Whenever a vessel is stranded, wrecked or in distress, any person may for the purpose of rendering assistance to the vessel or of saving the lives of the shipwrecked persons or of saving the cargo or apparel of the vessel, pass and repass, with or without vehicles and equipment, over any adjoining lands without being subject to interruption by the owner or occupier, unless there is some public road equally convenient, and also deposit on those lands any cargo or other things recovered from the vessel, but those persons shall not do any more damage than is reasonably necessary.

(2) Any damage sustained by the owner or occupier in consequence of the exercise of the rights conferred by this section shall be a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned, and the amount payable in respect of the damage shall, in case of dispute, be determined, and shall in default of payment be recoverable, in the same manner as the amount of salvage is under this Part determined or recoverable.

(3) If the owner or occupier of any property hinders or obstructs any person exercising the rights conferred by subsection (1), he shall be guilty of an offence.

#### Immunity of receiver

**244.** Where a receiver or a person acting under his orders is engaged in the execution of the duties imposed on the receiver by this Part and some other person resists the receiver or person and is killed, maimed or hurt by reason of his resistance, no action, suit or prosecution against the receiver or person shall be maintainable by or on behalf of the person killed, maimed or hurt, unless the receiver or person has used more force than was, in the circumstances, reasonably necessary.

#### Obstruction of receiver

**245.** Every person who wilfully impedes or obstructs a receiver or a person acting under his orders in the execution of his duty shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

#### Duty of person taking possession of wreck

**246.**(1) Whenever a person takes possession of a wreck in Kenya, he shall as soon as possible deliver the wreck to the receiver; but the Commissioner may dispense with delivery in the case of any wreck upon such conditions as he thinks fit.

(2) This section shall apply to a wreck found derelict at sea outside Kenya and brought into Kenya.

(3) If any person who has taken possession of a wreck fails without reasonable cause to comply with this section, he shall be guilty of an offence and liable to a fine not exceeding double the value of the wreck and to forfeit any claim or right to salvage with relation to the wreck.

#### Concealment of wreck

**247.**(1) Where a receiver suspects or receives information that a wreck is secreted or in the possession of some person who is not its owner or that a wreck is otherwise improperly dealt with, he may apply to a magistrate for a search warrant and that magistrate shall have power to grant the warrant, and the receiver, by virtue of the warrant may enter any house or other place wherever situated and also any vessel and search for, seize and detain any wreck there found.

(2) If the seizure of a wreck is made in consequence of information given by a person to the receiver, the informer shall be entitled by way of salvage to such sum as the receiver may allow under instructions from the Commissioner.

#### Notice of wreck

**248.** Where a receiver takes possession of a wreck and does not know who owns it, he shall within forty-eight hours cause to be posted in the customs house nearest to the place where the wreck was found or was seized by or delivered to him a description of the wreck and of any marks by which it is distinguished, and shall transmit a similar description to the Commissioner, who may give such publicity to the description as he thinks fit.

#### Owner may claim wreck within six months

**249.**(1) Where a wreck is in the possession of the receiver, and its owner establishes his claim to the wreck to the satisfaction of the receiver within six months from the time the wreck came into the possession of the receiver, he shall, upon paying the customs duty, if any, and the salvage, fees and expenses due, be entitled to have the wreck or the proceeds of sale of the wreck delivered up to him or his agent.

(2) Where any such wreck is proved to the satisfaction of the Commissioner to belong to a foreign owner, any consular officer in Kenya of the country to which the owner of the wreck belongs shall, in

the absence of the owner or his agent, be deemed to be the agent of the owner so far as relates to the custody and disposal of the wreck.

#### Power to sell wreck

**250.** Where a wreck is in the possession of a receiver, and it is in his opinion for the advantage of all parties to sell wreck or the wreck consists of goods of a dangerous or perishable nature, the receiver may immediately sell the wreck, and the proceeds of sale, after levying customs duty, if any, and defraying the expenses of the sale, shall be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

#### Power to sell unclaimed wreck

**251.** Where a wreck is in the possession of a receiver and no owner establishes a claim to it within six months after it came into his possession, the receiver may sell the wreck and pay the proceeds of sale to the Government after—

- (a) deducting from the proceeds the expenses of the sale any customs duty payable and any other expenses incurred by him; and
- (b) paying to the salvors out of the proceeds such amount of salvage as the Commissioner may determine.

#### Discharge of receiver

**252.** Upon delivering a wreck to the owner or paying him the proceeds of sale in pursuance of this Part, the receiver shall be discharged from all liability in respect thereof, but the delivery shall not prejudice or affect any question which may be raised by third parties concerning the wreck.

#### Removal of wreck in port

**253.**(1) Where a vessel is sunk, stranded or abandoned in any port under the control of the harbour authority or in or near any approach thereto, in such manner as in the opinion of the harbour authority to be, or to be likely to become, an obstruction or danger to navigation, the harbour authority may—

- (a) take possession of and raise, remove or destroy the whole or any part of the vessel;
- (b) light or buoy the vessel or part until it is raised, removed or destroyed;
- (c) sell, in such manner as he thinks fit, the vessel or part when so raised or removed, and also any other property recovered in the exercise of his powers under this section, and out of the proceeds of the sale reimburse himself for the expenses incurred by him in relation thereto under this section, and shall hold the surplus, if any, of the proceeds on deposit for paying to the person establishing his right to it:

Provided that such deposit shall be forfeited unless such person makes his claim within one year of the sale;

- (d) if the expenses connected with the raising, removal or destruction of the vessel exceed the value of any property recovered, the excess shall be a debt due to the harbour authority from the person who was the owner of the vessel at the time when the vessel was sunk, stranded or abandoned.

(2) Where a vessel is run aground or stranded in a port under the control of the harbour authority or in or near the approaches thereto, and it appears expedient to the harbour authority to take charge of the

operation of refloating the vessel, he may appoint an officer to direct the operation, and the officer shall be authorized to do all things which in his opinion are necessary to refloat the vessel, and the master and all persons present belonging to the ship shall obey the directions of the officer and render him such assistance as he may require.

#### Removal of wreck on coast

**254.** Where a vessel is sunk, stranded or abandoned on the coast or on or near any rock, shoal or bank in Kenya or any adjacent seas, the Minister shall, if in his opinion the vessel is or is likely to become an obstruction or danger to navigation, have the same powers in relation to it as are by this Part conferred upon the harbour authority.

#### Reasonable salvage payable

**255.**(1) Where—

(a) services are rendered wholly or in part within waters of Kenya in saving life from an aircraft or vessel or elsewhere in saving life from a vessel; or

(b) within the territorial waters any aircraft or vessel is wrecked, abandoned, stranded or in distress and services are rendered by any person in assisting the vessel or saving wreck, the owner of the aircraft, vessel or wreck shall pay to the salvor a reasonable amount of salvage, including expenses properly incurred, to be determined in case of dispute in manner hereinafter mentioned.

(2) Salvage in respect of the preservation of life shall be payable in priority to all other claims for salvage.

#### Disputes as to salvage

**256.** Disputes as to salvage whether of life or property shall be heard and determined by and before the receiver or the court as provided for respectively by this Part and not otherwise.

#### Where receiver may determine amount of salvage

**257.** The receiver shall determine the amount of salvage—

(a) where the parties to the dispute consent;

(b) where the value of the property salvaged does not exceed twenty thousand shillings;

(c) where the amount claimed does not exceed six thousand shillings.

#### Costs

**258.** Where in any proceedings for salvage in a court the claimant recovers an amount less than the maximum amount that might be claimed before the receiver, then unless the court certifies that the proceedings were unfit to be determined by the receiver the claimant shall have no costs, charges or expenses incurred by him in the prosecution of his claim; and shall pay to the other parties such costs, charges and expenses, if any, as the court directs.

#### Valuation of property

**259.** Where any dispute as to salvage arises, the receiver or the court shall on the application of either party appoint a valuer to value such property and shall give copies of the valuation to both parties.

#### Receiver may seize property liable for salvage

**260.**(1) A receiver may seize property alleged to be liable for salvage and detain it until either the salvage, fees and costs due thereon are ascertained and paid, or process is issued for the arrest or detention of the property by the court, or security is given to his satisfaction for the salvage, fees and costs.

(2) A receiver may release any detained property if security is given to his satisfaction or, if the claim for salvage exceeds four thousand shillings and a question is raised as to the sufficiency of the security, to the satisfaction of the court.

(3) Security given for salvage in pursuance of this section may be enforced by the court in the same manner as if bail had been given in the court.

#### Receiver may sell detained property

**261.**(1) The receiver may sell any detained property, if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, and—

(a) the amount is not disputed and payment of the amount due is not made within twenty days after the amount is due;

(b) the amount is disputed but no appeal lies from the court and payment is not made within twenty days after the decision of the court; or

(c) the amount is disputed and an appeal lies from the decision of the court to some other court, and within two months of the decision of the court of first instance, neither payment of the sum due is made nor proceedings are commenced for the purpose of appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of expenses, fees and salvage, and so far as not required for that purpose shall be paid to the owners of the property or any other persons entitled to receive the proceeds.

#### Voluntary agreement to pay salvage

**262.**(1) Where services are rendered for which salvage is claimed and the salvor voluntarily agrees to abandon his lien upon the vessel and the cargo and property alleged to be salvaged, then, upon the master or owner, whether principal or agent—

(a) entering into a written agreement attested by two witnesses to abide by the decision of the court or of any court of competent jurisdiction in another country; and

(b) giving security in that behalf, to an amount agreed upon by the parties to the agreement,

that agreement shall bind the vessel and the cargo and property and the respective owners of the vessel and the cargo and property and the owners for the time being thereof for the salvage which may be adjudged to be payable to the extent of the security given.

(2) Where security has been given for the performance of an agreement made under this section, the person with whom the security is lodged shall deal with it as the court adjudicating upon the agreement directs.

(3) Where an agreement which corresponds to an agreement made under this section is made under the corresponding provisions of the law in force in another country, and that agreement provides that the parties thereto will abide by the decision of a court of competent jurisdiction in Kenya, the court shall have power to adjudicate upon and enforce that agreement.

(4) The High Court shall have power to enforce and shall assist any court of competent jurisdiction in another country in enforcing an agreement made under this section or under the corresponding provisions of the law in another country.

#### Limitation of time for salvage proceedings

**263.** An action in respect of salvage services may not be brought after the end of one year from the date when the salvage services were rendered:

Provided that the High Court may extend that period to such extent and on such conditions as it thinks fit.

#### Shipping casualties

**264.** A shipping casualty shall be taken to occur—

(a) where, on or near the coast of Kenya, a ship is stranded, lost, abandoned or damaged, or any loss of life occurs by reason of a casualty happening to or on board a ship;

(b) where in any place a Kenya ship is stranded, lost, abandoned or damaged and a witness is found in Kenya;

(c) where a Kenya ship is lost or supposed to have been lost and any evidence is obtainable in Kenya as to the circumstances in which she proceeded to sea or was last heard of.

#### Preliminary inquiry

**265.**(1) Where a shipping casualty has occurred, a preliminary inquiry may be held respecting the casualty by a receiver, a surveyor or any other person appointed for the purpose by the Minister.

(2) For the purpose of an inquiry, the person holding the inquiry shall have the powers of a surveyor under this Act, and in addition may require the attendance of all such persons as he thinks fit to call before him, and may require answers or returns to any inquiries he thinks fit to make, and may administer oaths.

(3) Upon the conclusion of an inquiry, the person who made it shall send to the Minister a report containing a full statement of the case and of his opinion thereon, accompanied by such report of or extracts from the evidence and such observations as he thinks fit.

#### Formal investigation by commissioner

**266.**(1) The Minister may appoint a judge, a magistrate or a senior public officer to be a commissioner to hold formal investigations or a formal investigation under this Part.

(2) A formal investigation need not be preceded by a preliminary inquiry.

(3) A formal investigation may be held in the following cases—

- (a) a shipping casualty;
  - (b) where a master, mate, pilot or engineer is charged with incompetence, misconduct or default while serving—
    - (i) on board a Kenya ship; or
    - (ii) on board any other ship on or near the coast of Kenya or in the course of a voyage to a port in Kenya.
- (4) The commissioner so appointed shall hold a formal investigation with the assistance of one or more assessors of nautical, engineering or other special skills or knowledge appointed by the Minister from a list approved by the Minister for the purpose.

#### Powers of Commissioner Cap.102

**267.**The commissioner shall have all the powers and privileges of a commissioner appointed under the Commissions of Inquiry Act.

#### Power of commissioner as to certificates

**268.(1)** The certificate or licence of a master, mate or engineer granted under this Act may be cancelled or suspended by a commissioner holding a formal investigation into a shipping casualty under this Part, if the commissioner finds that the loss or abandonment of or serious damage to a ship or loss of life has been caused by—

- (a) his wrongful act or default;
  - (b) his incompetence or gross act of misconduct;
  - (c) in a case of collision, his failure to render such assistance or give such information as is required under Part V.
- (2) A cancellation or suspension under this section requires the concurrence of the majority of the assessors assisting the commissioner.
- (3) Each assessor who does not concur in and sign the report of the commissioner shall state in writing his dissent and the reasons for it.
- (4) The commissioner shall in all cases send a full report on the case with the evidence to the Minister and shall also, if he decides to cancel or suspend any certificate or licence, send the certificate or licence so cancelled or suspended to the Minister with his report; and a copy of the report shall also be furnished to the master, mate or engineer whose certificate or licence has been cancelled.

#### Delivery up of certificates

**269.(1)** The commissioner may at any time during or after a formal investigation call upon any master, mate or engineer to deliver his certificate or licence to him, and the commissioner on receiving the certificate or licence shall send it to the Minister.

- (2) On receiving the certificate, the Minister shall, if the certificate or licence—

(a) has been granted in Kenya, retain it; or

(b) has been granted elsewhere than in Kenya, send it, together with the full report upon the case and a copy of the evidence, to the government of the country concerned.

#### Rehearing of formal investigation

**270.**(1) Where a formal investigation has been held, the Minister may order the investigation to be reheard either generally or as to any part thereof, and shall so order if—

(a) new and important evidence that could not be produced at the investigation has been discovered; or

(b) for any other reason there has been in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) The Minister may order the investigation to be reheard by the commissioner who held the investigation in the first instance, or may appoint another commissioner and select the same or other assessors to hear the case.

(3) Where on an investigation a decision has been given with respect to the cancelling or suspension of the certificate or licence of a master, mate or engineer and an application for the investigation to be reheard under this section has not been made or has been refused, an appeal shall lie from the decision to the court.

#### Inquiry into fitness of officer

**271.**(1) Where the Minister has reason to believe that a master, mate or engineer is from incompetence or misconduct unfit to discharge his duties, or that in a case of collision he has failed to render such assistance or give such information as is required by this Act, he may cause an inquiry to be held.

(2) The Minister may either himself appoint a person to hold the inquiry or may direct the inquiry to be held before a judge.

(3) Where the inquiry is held by a person appointed by the Minister that person—

(a) shall hold the inquiry with the assistance of a competent lawyer appointed by the Minister;

(b) shall have all the powers of a surveyor under this Act;

(c) shall give a master, mate or engineer against who a charge is made an opportunity of making his defence, either in person or otherwise, and may summon him to appear;

(d) may make such order with regard to the costs of the inquiry as he thinks fit; and

(e) shall send a report upon the case to the Minister.

(4) Where the inquiry is held by a judge, the inquiry shall be conducted and the results reported in the same manner, and the court shall have the same power, as in the case of a formal investigation into a shipping casualty under this Part.

(5) Where upon an inquiry the Minister is satisfied—



(a) that the master, mate or engineer has been shown to be incompetent or has been guilty of an act of misconduct, drunkenness or tyranny;

(b) that the loss or abandonment of or serious damage to a ship or any loss of life was caused by the wrongful act or default the master, mate or engineer;

(c) that the master, mate or engineer has been guilty of a criminal offence or has been blamed by a coroner's inquest in respect to the death of any person; or

(d) that the master or mate, in a case of collision between his vessel and another vessel, has failed without reasonable cause to comply with the requirements of this Act with regard to rendering assistance or to giving information; he may suspend or cancel the certificate of competency or licence of the master or mate or the certificate or licence of the engineer, as the case may be.

Court may remove master

**272.**(1) In Kenya the court, and elsewhere any court having admiralty jurisdiction, may remove the master of a Kenya ship whilst within the jurisdiction of that court, if that removal is shown to the satisfaction of the court by evidence on oath to be necessary.

(2) The removal may be made upon the application of an owner of the ship or his agent, or of the consignee of the ship, or of a certificated officer, or of one-third or more of the crew of the ship.

(3) The court may appoint a new master instead of the one removed, but where the owner, agent or consignee of the ship is within the jurisdiction of the court such an appointment shall not be made without the consent of that owner, agent or consignee.

(4) The court may also make such order and require such security in respect of the costs of the matter as the court thinks fit.

## **Part VII - LIMITATION AND DIVISION OF LIABILITY**

Limitation of liability of ship owner

**273.**(1) In this head—

"ship" includes a structure launched and intended for use in navigation as a ship or as a part of a ship; and

"gold franc" means a unit consisting of 651/2 milligrams of gold of millesimal fineness 900.

(2) Where any of the following events occur without the actual fault or privity of the owner of a ship, whether registered in Kenya or not—

(a) loss of life or personal injury is caused to a person on board the ship;

(b) damage or loss is caused to goods, merchandise or other things whatsoever on board the ship;

(c) Loss of life or personal injury is caused to a person not on board the ship through—

(i) the act or omission of a person, whether on board the ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; or

(ii) any other act or omission of a person on board the ship; or

(d) loss or damage is caused to property, other than property described in paragraph (b), or any rights are infringed, through—

(i) the act or omission of a person, whether on board the ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; or

(ii) any other act or omission of any person on board that ship; the owner shall not be liable for damages beyond the following amounts—

(e) in respect of loss of life or personal injury, either alone or together with loss or damage to property, or any infringement of any rights mentioned in paragraph (d), an aggregate amount equivalent to 3,100 gold francs for each ton of that ship's tonnage; and

(f) in respect of loss or damage to property or infringement of rights mentioned in paragraph (d), aggregate amount equivalent to 1,000 gold francs for each ton of that ship's tonnage.

(3) The limits on the liability of an owner of a ship set by this section shall apply in respect of each distinct occasion on which any of the events mentioned in paragraphs (a) to (d) of subsection (2) occur without that owner's actual fault or privity, and without regard to any liability incurred by that owner in respect of that ship on any other occasion.

(4) This section does not limit the liability of an owner of a ship in respect of loss of life or personal injury caused to, or loss of or damage to property of, or an infringement of any right of, a person who is employed on board or in connexion with a ship under a contract of service, if that contract is governed by the law of a country other than Kenya and that law does not set any limit to that liability, or sets a limit exceeding that set by this section.

#### Power of court to consolidate claims

**274.** Where liability is alleged to have been incurred by the owner of a ship in respect of loss of life or personal injury, or loss of or damage to property, or an infringement of any right, in respect of which his liability is limited by section 273, and several claims are made in respect of that liability, the court may on the application of that owner determine the amount of his liability and distribute that amount rateably among the several claimants; and the court may stay proceedings pending in another court in relation to the same matter, and the court may proceed in such manner and subject to such rules of court as to making persons interested parties to the proceedings, and as to the exclusion of claimants who do not apply to be joined in the proceedings within a certain time, and as to requiring security from the owner, and as to the payment of costs, as the court thinks just.

#### Extension of limitation of liability

**275.** Section 273 and 274 apply to—

(a) the charterer of a ship;

(b) a person having an interest in or possession of a ship from and including the launching thereof;

(c) the manager or operator of a ship, where any of the events mentioned in paragraphs (a) to (d) of section 273 (2) occur without their actual fault or privity; or

(d) a person acting in the capacity of master or member of the crew of a ship, and a servant of the owner, and a person described in paragraphs (a) to (c) of section 273 (2) where any of the events mentioned in paragraphs (a) to (d) of section 273 (2) occur, whether with or without his actual fault or privity.

#### Limitation of liability of dock, canal and harbour owners

**276.**(1) Where without the actual fault or privity of the owners of a dock or canal or a harbour or port authority loss or damage is caused to a vessel or vessels or to any goods, merchandise or other things whatsoever on board a vessel or vessels, the owners shall not be liable to damages beyond an aggregate amount equivalent to 1,000 gold francs for each ton of the tonnage of the largest registered Kenya ship that at the time of the loss or damage occurring is or has within the preceding five years been within the area over which the dock or canal owner or port or harbour authority performs any duty or exercises any power.

(2) For the purposes of this section, a ship shall not be taken to have been within the area over which a port or harbour authority performs any duty or exercises any power by reason only that it has been built or fitted out within that area, or that it has taken shelter within or passed through that area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within that area.

(3) This section does not impose a liability in respect of loss or damage on any such owners or authority in a case where no liability exists apart from this Act.

(4) In this section, "owners of a dock or canal" includes any person or authority having the control and management of a dock or canal, and any ship using it.

#### Tonnage of small vessel

**277.**For the purposes of sections 273 and 276, the tonnage of a ship that is less than 300 tons shall be deemed to be 300 tons.

#### Calculation of tonnage

**278.**(1) For the purposes of sections 273, 274, 275 and 276, the tonnage of a motor ship shall be her register tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage, and the tonnage of a sailing ship shall be her register tonnage.

(2) There shall not be included in the tonnage any space occupied by seamen or apprentices and appropriated to their use.

(3) The tonnage of a foreign ship shall be measured according to this Act if it is capable of being so measured.

(4) In the case of a ship which is incapable of being measured according to this Act, the Minister shall, on receiving from or by direction of the court hearing the case such evidence concerning the dimensions of the ship as it is found practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship if she had been duly measured according to this Act, and the tonnage stated in that certificate shall for the purposes of sections 273 and 276 be deemed to be the tonnage of that ship.

#### Where several claims arise on one occasion

**279.**The limitation of liability under sections 273 and 276 shall relate to the whole of any losses and damages that may arise upon any one distinct occasion, although those losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under a statute, and notwithstanding anything contained in that statute.

#### Release of ship on giving security

**280.**(1) Where a ship or other property is arrested in connexion with a claim which appears to the court to be founded on a liability to which a limit is set by sections 273 and 276, or security is given to prevent or obtain release from such an arrest, the court may, and in the circumstances mentioned in subsection (3) shall, order the release of the ship, property or security if the conditions specified in subsection (2) are satisfied, but where the release is ordered the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim.

(2) The conditions referred to in subsection (1) are—

(a) that security which in the opinion of the court is satisfactory, in this section referred to as the guarantee, has previously been given, whether in Kenya or elsewhere, in respect of the liability or any other liability incurred on the same occasion, and the court is satisfied that if the claim is established the amount for which the guarantee was given, or such part thereof as corresponds to the claim, would be actually available to the claimant; and

(b) that either the guarantee is for an amount not less than that limit, or further security is given which together with the guarantee is for an amount not less than that limit.

(3) The circumstances referred to in subsection (1) are that the guarantee was given in a port which in relation to the claim as the relevant port, or as the case may be a relevant port, and that that port is in a Convention country.

(4) For the purposes of this section—

(a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given;

(b) any question whether the amount of any security is either by itself or together with any other amount not less than any limit set under this Part shall be decided as at the time when the security is given;

(c) where part only of the amount for which a guarantee was given will be available to a claimant, that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1).

(5) In this section—

"Convention country" means a country in respect of which the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships signed in Brussels on the 10th October, 1957, is in force (including any country to which that Convention extends by virtue of Article 14 thereof);

"relevant port"—

(a) in relation to any claim, means the port where the event giving rise to the claim occurred, or if that event did not occur in a port the first port of call after the event occurred; and

(b) in relation to a claim for loss of life or personal injury or damage to cargo, includes the port of disembarkation or discharge.

#### Rules as to division of liability

**281.**(1) Where by the fault of two or more vessels damage or loss is caused to one or more of those vessels, or to their cargoes or freight, or to property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault.

(2) Where having regard to all the circumstances of the case it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) This section does not render any vessel liable for loss or damage to which her fault has not contributed.

(4) This section does not affect the liability of any person under a contract of carriage or any contract, nor does it impose upon any person a liability from which he is exempted by any contract or by any law, nor does it affect the right of any person to limit his liability in the manner provided by law.

(5) In this section, "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a vessel includes a reference to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

#### Joint and several liability

**282.**(1) Where loss of life or personal injury is suffered by a person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

(2) This section does not deprive any person of a right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person entitled to sue in respect of the loss of life, nor does it affect the right of any person to limit his liability in cases to which this relates in the manner provided by law.

#### Right of contribution

**283.**(1) Where loss of life or personal injury is suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damage is recovered against the owners of one of the vessels that exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which these vessels were respectively in fault; but no amount shall be so recoverable if, by reason of any statutory or contractual limitation of or exemption from liability or for any other reason, it could not have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to contribution under subsection (1) shall have, for the purpose of recovering contribution subject to this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

#### Extended meaning of "owners"

**284.**Sections 281, 282 and 283 apply to persons other than the owners who are responsible for the fault of the vessel as though "owners" includes those persons and all persons responsible for the navigation and management of the vessel pursuant to a charter or demise.

## Part VIII - LEGAL PROCEEDINGS

Stowaways, etc  
13 of 1973, s. 2.

**284A.**A person who, without consent given by the master or other person authorized to give consent, goes to sea or attempts to go to sea in a ship shall be guilty of an offence.

Unauthorized presence on board ship  
13 of 1973, s. 2.

**284B.**A person who, except as may be authorized by law or as the proper officer of a public body—

(a) goes on board a ship without consent given by the master or other person authorized to give consent; or

(b) remains on board a ship after being required by the master or other officer of the ship, a police officer, a customs officer, an immigration officer or an officer of the harbour authority to leave it,

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

Master's powers  
13 of 1973, s. 2

**284C.**The master of a Kenya ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

Contravention of regulations

**285.**A person who contravenes any regulations made under this Act, or any of the regulations, rules and orders referred to in section 317, shall be guilty of an offence.

Offences and penalties

**286.**A person who commits an offence under this Act for which no specific penalty is provided, or in respect of which a specific penalty is provided in addition, shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Limitation of time

**287.**Subject to any special provisions of this Act, including section 308, neither a conviction for an offence nor an order for payment of money shall be made under this Act in proceedings instituted in Kenya, unless those proceedings are commenced within one year after the commission of the offence or after the cause of complaint arises, as the case may be.

Liability of agents

**288.**Where the owner or charterer of a foreign ship appoints or nominates a person resident in Kenya to act as his agent or otherwise on his behalf in respect of the management for the time being of that ship, and that person acting on behalf of the owner or charterer does anything or omits to do anything in respect of that ship, in contravention of this Act or in contravention of any regulations or rules made

under this Act, he shall be liable to the same extent as the owner or charterer would have been liable in respect of the contravention had he done or omitted to do that thing and was within the jurisdiction of the court.

#### Jurisdiction in case of offences

**289.**(1) For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which it actually was committed or arose, or in any place in which the offender or person complained against may be.

(2) Where in proceedings under this Act a question arises whether a ship or person is or is not governed by the provisions of this Act or of some part of this Act, that ship or person shall be deemed to be within those provisions unless the contrary is proved.

#### Jurisdiction over ship lying off coast

**290.**(1) A court which has jurisdiction in any part of the coast of Kenya shall have jurisdiction over any vessel being on or lying or passing off that coast and on all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of that court.

(2) The jurisdiction conferred by this section shall be in addition to and not in derogation of any jurisdiction or power afforded by any other law.

#### Jurisdiction in case of offence on board ship

**291.**Notwithstanding anything contained in any other written law, but subject to section 168, where a person—

(a) being a citizen of Kenya, does an act or makes an omission on board a Kenya ship on the high seas or in a port or harbour; or

(b) not being a citizen of Kenya, does an act or makes an omission on board a Kenya ship on the high seas and is found in Kenya, and the action or omission is one which would be an offence if done or made in Kenya, that person shall be guilty of that offence and may be tried by any court having jurisdiction in the whole of Kenya.

#### Offence in foreign port

**292.**Where a master, seaman or apprentice employed on a Kenya ship does an act against any property or person on the ship at any place outside Kenya, and the act is one which would be an offence if done in Kenya, he shall be guilty of that offence and may be tried by any court having jurisdiction in the whole of Kenya.

#### Mortgage of ship sold to foreigners

**293.**Where the registration of a ship is considered as closed under section 22 on account of a transfer to persons not qualified to be owners of a Kenya ship, any unsatisfied mortgage may, if the ship comes within the jurisdiction of the court, be enforced by the court notwithstanding the transfer, but without prejudice, in cases where the ship has been sold under the judgment of a court, to the effect of the judgment.

#### Power to detain foreign ship that has occasioned damage

**294.(1)** Where—

(a) injury has in any part of the world been caused to property belonging to a citizen of Kenya, or to a person (not being a body corporate) or a body corporate resident in Kenya, or to the Kenya Ports Authority, by a ship not registered in Kenya; or

(b) a claim is made for damages by or on behalf of a citizen of Kenya or person resident in Kenya, or the Kenya Ports Authority, in respect of personal injuries (including fatal injuries) against the owners of any such ship, and at any time thereafter that ship is found in any port or place in Kenya, the court may, upon it being shown to it by a person applying that the damage or injury was probably caused by the misconduct or want of skill of the master or mariners of the ship, issue an order directed to a detaining officer, or to any other officer named by the court, requiring him to detain the ship until such time as the owner, master or agent thereof has made satisfaction in respect of the damage or injury or has given security, approved by the court, to abide the event of any proceedings that may be instituted in respect of the damage or injury, and to pay all costs and damages that may be awarded thereon.

(2) A detaining officer or other officer to whom the order is directed shall detain the ship accordingly.

(3) Where it appears that before an application can be made under this section the ship in respect of which the application is to be made will have departed from Kenya, the ship may be detained for such time as will allow the application to be made, and the result thereof to be communicated to the officer detaining the ship; and that officer shall not be liable for any costs or damages in respect of the detention unless the detention is proved to have been made without reasonable grounds.

(4) In any proceedings in relation to any such damage or personal injury, the person giving security shall be made defendant and shall be stated to be the owner of the ship that has occasioned the damage or injury, and the production of the order of the court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

Conveyance of offender and witnesses to Kenya

**295.(1)** Whenever a complaint is made to a consular officer—

(a) committed at a place outside Kenya by a master, seaman or apprentice who at the time when the offence was employed in a Kenya ship; or

(b) that an offence on the high seas has been committed by a master, seaman or apprentice belonging to a Kenya ship,

that consular officer may inquire into the complaint upon oath, and may if the case so requires take any steps in his power for the purposes of placing the offender under the necessary restraint and of sending him as soon as practicable in safe custody to a port in Kenya.

(2) The consular officer may order the master of a Kenya ship bound for a port in Kenya to receive and afford a passage and subsistence during the voyage to any such offender and to any witnesses, but the master shall not be required to receive more than one offender for every 100 tons of his ship's register tonnage or more than one witness for every 50 tons of that tonnage; and the consular officer shall endorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the registrar may require.

(3) The master of a ship to whose charge an offender has been so committed shall, on the ship's arrival in Kenya, give the offender into the custody of a police officer, and that officer shall take the offender before a court.



(4) The expenses of confining any such offender and of conveying him and the witnesses to a port in Kenya in any manner other than in the ship to which they respectively belong shall, where not paid as part of the costs of the prosecution, be paid out of public funds.

#### Reciprocal services relating to foreign ships

**296.**(1) Where the law of a foreign country provides, in terms extending to ships registered in that country while they are in Kenya or before or after they have been in Kenya or while they are at sea, that a court, the registrar, a customs officer, a shipping master, a surveyor or some other officer or functionary in or of Kenya may or shall execute any request, exercise any right or authority or perform any duty or act in relation to those ships or to their owners, masters or crews, the court, registrar, customs officer, shipping master surveyor or other officer or functionary may or shall, as the case may be, execute that request, have that right or authority and perform that duty as if the power to so act were conferred by this Act.

(2) Where the law of a foreign country provides, in terms extending to Kenya ships while they are in that country or before or after they have been in that country or while they are at sea, that a court or authority in or of that country may or shall, in relation to Kenya ships or to their owners, masters or crews, execute any request, exercise any right or authority or perform any duty or act, which this Act makes or purports to make, confer, impose or direct to be done of, upon or by that court or authority, then all things done by that court or authority, in form pursuant to this Act, that can be related to that law shall be deemed to have been done by force of that law:

Provided that where any provision of this Act which permits, authorizes, requires or directs any such court or authority is permissive merely, all things done by the court or authority pursuant to this Act shall be deemed to have been validly done for all the purposes of this Act.

#### Application of Act to foreign ships

**297.**Where it appears to the Minister that the government of a foreign country is desirous that any of the provisions of this Act which do not apply to the ships of that country should so apply and there are no special provisions in this Act for that application, the Minister may by order direct that any specified provisions of this Act shall, subject to any limitations contained in the order, apply to the ships of that country and to the owners, masters, seamen and apprentices of those ships when not locally within the jurisdiction of the government of that country, in the same manner in all respects as if those ships were Kenya ships.

#### Inquiry into cause of death on board

**298.**(1) Where a death occurs on board a foreign-going Kenya ship, the shipping master at the port where the crew of the ship is discharged or a person appointed by the Minister for that purpose shall, on the arrival of the ship at that port, inquire into the cause of the death and make in the official log-book an endorsement either to the effect that the statement of the cause of the death in the official log-book is in his opinion true, or to the contrary effect, according to the results of the inquiry.

(2) The shipping master or person shall, for the purpose of an inquiry under this section, have the powers of a receiver, surveyor or other person making a preliminary inquiry under section 265, and if in the course of the inquiry it appears to the shipping master or person that the death has been caused on board the ship by violence or other improper means, he shall report the matter to the Minister and, if the urgency of the situation so requires, take immediate steps for bringing the offender or offenders to justice.

#### Deposition where witness cannot be produced

**299.**(1) Where in the course of proceedings instituted in Kenya before a court or before a person authorized by law or by consent of the parties to receive evidence, the testimony of any witness is required in relation to the subject matter of those proceedings, and it is proved that the witness cannot be found in Kenya, any deposition that the witness may have previously made on oath in relation to the same subject matter before any court or consular officer elsewhere shall be admissible in evidence, but if the deposition was made in Kenya it shall not be admissible in any proceedings instituted in Kenya, and if the proceedings are criminal proceedings it shall not be admissible unless it was made in the presence of the person accused or his counsel.

(2) A deposition so made shall be authenticated by the seal of the court or the signature of the consular officer before whom it is made, and the court or consular officer shall certify, if the fact is so, that the accused or his counsel was present when the deposition was taken.

(3) It shall not be necessary in any case to prove the seal or official signature or official character of the person appearing to have signed the deposition; and in criminal proceedings a certificate under this section shall, unless the contrary is proved, be sufficient evidence that the accused or his counsel was present in the manner certified.

#### Detention of ship

**300.**(1) The Minister may from time to time at such places as is deemed advisable appoint fit and proper persons to be officers (in this Act referred to as detaining officers) for the better execution of those sections of this Act which provide that ships may be detained under this Act.

(2) Where under this Act a ship is to be or may be detained, a detaining officer may detain the ship, and if the ship, after being detained, or after a notice of or order for detention has been served on the master, proceeds to sea before it is released by a competent authority, the master of the ship and also the owner and any person who sends the ship to sea, shall be guilty of an offence, unless he proves that the ship proceeded to sea without his consent and without any negligence on his part.

(3) Where a ship so proceeding to sea takes to sea an officer authorized to detain the ship when he is on board the ship in the course of his duty, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer being so taken to sea.

(4) Where under this Act a ship is to be detained, a customs officer shall refuse to clear that ship outwards, and where under this Act a ship may be detained a customs officer may refuse to clear that ship outwards.

#### Ship may be seized and sold if penalty not paid

**301.**(1) Where the owner of a ship has been convicted of an offence under this Act and a fine has been imposed, and the fine is not paid forthwith, the ship may be seized and, after reasonable notice, may be sold by a customs officer or a person authorized for that purpose in writing by the Minister, and that customs officer or person may, by bill of sale, give to the purchaser a valid title to the owner's interest in the ship.

(2) Any surplus remaining from the proceeds of sale after paying the amount of the fine and the cost of conviction, together with costs of seizure and sale, shall be paid to the person who was owner of the ship before the sale or to the mortgagee, as the case may be.

#### Distress on ship for sums ordered to be paid

**302.**Where a court has power to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then if the party so directed to make the payment is the master or owner

of the ship, and the payment is not made at the time and in the manner prescribed in the order, the court which made the order may in addition to any other powers it may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied in distress and sale of the ship and her tackle furniture and apparel.

#### Proof of attestation

**303.** Where a document is required by this Act to be executed in the presence of or to be attested by a witness or witnesses, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or any of the attesting witnesses.

#### Admissibility of documents in evidence

**304.**(1) Where a document is, by this Act, declared to be admissible in evidence, that document shall on its production from the proper custody be admissible in evidence in a court or before a person authorized by law or by consent of parties to receive evidence, and subject to all just exceptions shall be evidence of the matters stated in it pursuant to this Act or by an officer pursuant to his duties.

(2) A copy of any such document or an extract from such a document shall also be so admissible in evidence, if it is proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer in whose custody the original document was; and that officer shall furnish the certified copy or extract to any person applying for it at a reasonable time upon payment of a reasonable sum therefor.

(3) If an officer wilfully certifies a document as being a true copy or extract knowing it not to be a true copy or extract, he shall be guilty of an offence.

(4) If a person forges the seal, stamp or signature of a document referred to in this section, or tenders in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing it to be false or counterfeit, he shall be guilty of an offence, and if the document has been admitted in evidence the court or the person who admitted it may on request direct that it shall be impounded and kept in the custody of some officer of the court or other proper person for such period or subject to such conditions as the court or person thinks fit.

#### Service of documents

**305.**(1) Where for the purposes of this Act a document is to be served on a person, that document may be served—

(a) in any case by delivering it to him personally, or by leaving it at his last known place of abode;

(b) if the document is to be served on the master of a ship and there is one, or on a person belonging to a ship, by leaving him on board the ship with the person who is or appears to be in command or charge of the ship;

(c) if the document is to be served on the master of the ship and the ship is in Kenya but there is no master, on the managing owner of the ship, or if no managing owner is known on some agent of the owner residing in Kenya, in the manner prescribed in paragraph (a), or if no such managing owner or agent is known or can be found by affixing a copy of the document to the mast of the ship and to some other conspicuous place on board where it may be seen by persons entering the ship.

(2) A person who obstructs the service of a document which is to be served to the master of a ship under this Act shall be guilty of an offence and liable to a fine, and if the owner or master of a ship is

party or privy to the obstruction, he shall be guilty of an offence and liable to the penalties prescribed under section 286 (1).

#### Protection of officers

**306.** Every officer appointed under this Act, and every person appointed or authorized under this Act for any purpose of this Act, shall have immunity from suit in respect of anything done by him in good faith or admitted to be done in good faith in the exercise or performance or in the purported exercise or performance of a power, authority or duty conferred or imposed on him under this Act.

#### Limitation of time for civil proceedings

**307.(1)** An action may not be brought to enforce a claim or lien against a vessel or her owners in respect of—

(a) damage or loss to another vessel or to her cargo or freight, or to property on board; or

(b) damage for loss of life or personal injuries suffered by a person on board her, caused by the fault of the former vessel, whether that vessel is wholly or partly in fault, after the end of two years from the date on which the right of action accrued, and an action may not be brought to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries after the end of one year from the date of payment.

(2) A court having jurisdiction to deal with an action to which this section relates may extend the period to such extent and on such conditions as it thinks fit and shall, if satisfied that there has not during that period been a reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend the period to an extent sufficient to give a reasonable opportunity.

### **Part IX – POLLUTION**

#### Interpretation of Part

**308.(1)** In this Part—

"dark smoke" means smoke which, if compared in the appropriate manner with a chart of the type known as the "Ringalmann Chart", would appear to be as dark as or darker than shade 2 on the chart;

"discharge" in relation to oil or oily mixtures means any discharge, escape or leak howsoever caused;

"heavy diesel oil" means marine diesel oil, other than distillates of which more than 50 per centum by volume distills at a temperature not exceeding 340 degrees centigrade when tested by the American Society for Testing Materials Standard Method D. 158/53;

"mile" means a nautical mile of 6,080 feet or 1,853 metres;

"oil" means crude oil, fuel oil, heavy diesel oil and lubricating oil and includes coal tar and bitumen, and "oily" shall be construed accordingly;

"oily mixture" means a mixture containing not less than 100 parts of oil in 1,000,000 parts of the mixture.

## Pollution of sea

**309.**(1) If any oil or oily mixture is discharged from—

(a) a ship into a harbour or into the sea within 100 miles from the coast of Kenya; or

(b) a Kenya ship into the sea within 100 miles of any land, the owner or master of the ship shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

(2) A person laying information or giving evidence leading to the conviction of the master or owner of a ship for an offence under this section may, at the discretion of the court trying the case, be awarded a portion, not exceeding one-half, of the fine imposed.

(3) Where a person has been convicted of an offence under this section and it appears to the court that any person has incurred or will incur expense in removing pollution or making good any damage attributable to the offence, the court may order the person so convicted to defray that expense.

## Pollution of air

**310.**(1) If a ship or vessel within the limits of a port emits dark smoke or soot or ash or grit or gritty particles for a period in excess of five minutes in any one hour, the master or owner of the ship or vessel shall be guilty of an offence.

(2) In a prosecution for an offence under subsection (1) the court may be satisfied that smoke is or is not dark smoke notwithstanding that there has been no actual comparison of the smoke with a chart and, without prejudice to the preceding provision of this section, if the Minister by regulations prescribes any method of ascertaining whether smoke is dark smoke, proof that the method was properly applied, and that the smoke was thereby ascertained to be or not to be dark smoke, shall be accepted as sufficient evidence of the fact.

(3) The Minister may prescribe methods for ascertaining whether smoke is or is not dark smoke, and may appoint inspectors to report whether the prohibition imposed by the creation of an offence by virtue of this section has been complied with.

## **Part X - SUPPLEMENTAL**

### Exemption of Government ships

**311.**This Act does not, except as specifically provided, apply to Government ships.

### General powers of Minister

**312.**Except as otherwise provided in this Act, the Minister shall have general superintendence in all matters relating to merchant shipping and seamen.

### Delegation of powers

**313.\*** For the better execution of certain provisions of this Act the Minister may delegate his powers, except the power to make rules and regulations and the powers conferred by sections 266, 271 and 291, to an officer (in this Act referred to as the Merchant Shipping Superintendent) and anything done by that officer in respect of this Act in consequence of the delegation shall be deemed to have been done by the Minister.

*\*Powers delegated to the Merchant Shipping Superintendent at Mombasa (L.N. 36/1973)*

#### Forms

**314.** Subject to this Act and any regulations or rules made under it, the Minister may determine the forms of the documents to be used under this Act.

#### Exemption for limited period

**315.** Notwithstanding any other provisions of this Act the Minister may, by notice in the Gazette giving his reason for so doing, exempt a particular vessel or class of vessels from all or any of the provisions of this Act for a limited period, where in his opinion special circumstances exist.

#### Production of certificates and documents to customs

**316.** Where under this Act a certificate or document is required to be produced to a customs officer before clearance inwards or outwards is granted by the customs officer, the production of a certificate granted under the hand of a shipping master to the effect that the certificate or document has been produced to him shall be sufficient evidence that this Act has been complied with and the customs officer may proceed to grant clearance.

#### Regulations

12 of 1981, Sch.

**317.**(1) The Minister may make regulations for—

(a) prescribing the forms to be used, and the fees or sums to be paid for services performed or things done, under or for the purposes of this Act;

(b) prescribing anything which under this Act may be prescribed;

(c) giving effect to and for the better carrying out of the purposes of this Act, generally for regulating merchant shipping and for carrying out and giving effect to any convention thereon.

(2) The regulations, rules and orders specified in the Second Schedule of this Act, as from time to time amended under subsection (1) shall have effect and shall be deemed to have been made under this Act, and—

(a) wherever it is provided that those regulations, rules and orders shall apply to British ships registered in the United Kingdom and to other ships while they are in port in the United Kingdom, they shall be construed as applying in the same manner *mutatis mutandis* to Kenya ships and to other ships in port in Kenya;

(b) any certificate, form or code of instructions printed and officially published for use in compliance with those regulations, rules and orders shall apply similarly;

(c) those regulations, rules and orders may be amended by regulations made under this section.