



LAWS OF KENYA

MTWAPA BRIDGE ACT

CHAPTER 402

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CHAPTER 402

MTWAPA BRIDGE ACT
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CHAPTER 402

MTWAPA BRIDGE ACT

[Date of assent: 3rd November, 1959.]

[Date of commencement: 17th November, 1959.]

An Act of Parliament to ratify and provide for carrying out an agreement between the Government of Kenya and Mtwapa Bridge Limited respecting a bridge over the Mtwapa Creek, and for purposes incidental thereto and connected therewith

[Act No. 42 of 1959, L.N. 2/1964, Act No. 21 of 1966.]

1. Short title

This Act may be cited as the Mtwapa Bridge Act.

2. Interpretation

In this Act—

“**agreement**” means the agreement which is set out in the Schedule to this Act;

“**bridge**” means the bridge which the company is authorized by the agreement to operate;

“**bridge area**”, except where the context otherwise requires, means the bridge, the land owned by the company contiguous to the bridge, and the road reserve for a distance of—

- (a) 91.4 metres in a northerly direction from the north face of the north anchor blocks; and
- (b) 152.4 metres in a southerly direction from the south face of the south anchor blocks;

“**company**” means Mtwapa Bridge Limited, a limited company having its registered office at Nairobi, or any person or persons to whom the company may assign its right under the proviso to clause 1 of the agreement.

3. Ratification of agreement

Subject to the provisions of this Act, the agreement is hereby ratified and approved.

4. Operation of bridge

Subject to the provisions of clauses 1, 9 and 10 of the agreement, the bridge shall be open at all times of the day or night to—

- (a) pedestrians;
- (b) wheeled vehicles having an individual rolling load not greater than 40,642 kg and with no single axle load greater than 12,700 kg;

- (c) animals under the effective control of their custodians:

Provided that—

- (i) the Minister may by order close the bridge if he is satisfied that it is, or is likely to become, dangerous, or that essential maintenance or repair work renders the closure of the bridge imperative;
- (ii) where a person in charge of cattle on foot wishes to cross the bridge with the cattle and the immediate volume of wheeled traffic is such that in the opinion of an officer of the company, substantial inconvenience, will be caused by the crossing, he may require that person to delay the crossing until permission therefor is given by the officer.

5. Power of company's officers

An officer of the company in uniform in the bridge area shall, subject to any directions by the Commissioner of Police, have the same powers of arrest and of controlling traffic, keeping order and preventing obstructions as are conferred upon police officers by sections 29 and 32 of the Criminal Procedure Code (Cap. 75) and section 26 of the Police Act (Cap. 84) and in respect of the exercise of those powers any act which if done in relation to a police officer would constitute an offence shall, if done in relation to an officer of the company, be deemed to constitute the same offence and to render the offender liable to the penalties prescribed therefor.

[Act No. 21 of 1966, First Sch.]

6. Access to bridge for inspection and testing

After giving reasonable notice to the company of his intention so to do the Minister may cause the bridge to be inspected and tested as he may think proper, and the company shall make available for the inspection or test without charge such equipment and facilities as it may possess.

7. Wires, cables and pipes

(1) The Kenya Posts and Telecommunications Corporation or the Government may attach wires, cables or pipes to the bridge (due regard being had to such reasonable directions with regard thereto as the company may give) and maintain them, without payment to the company whether in respect of wayleave, toll or otherwise.

(2) An objection by the company to the nature or weight of wires, cables or pipes, or as to the manner in which the attachment or maintenance thereof is carried out, shall be referred to the Minister, whose decision thereon shall be final.

8. Exceptions from provisions of Cap. 39

The provisions of the Public Authorities Limitation Act (Cap. 39) shall not apply to actions, prosecutions or other proceedings commenced against the company for any act, neglect or default in connexion with the bridge.

9. Regulations

The Minister may make regulations generally for the better carrying out of the purposes of this Act and for the efficient working, management and control of the bridge, and particularly, but without prejudice to the foregoing, for—

- (a) prescribing, in accordance with the provisions of the agreement, the tolls payable for the use of the bridge, and for prescribing penalties for the evasion of tolls;
- (b) prescribing the uniform to be worn by officers of the company on duty in the bridge area;
- (c) prescribing the circumstances in which officers of the company or any other officers may refuse admission to the bridge;
- (d) providing for the control of traffic in the bridge area, including the provision of traffic signs and the imposition of a speed limit for vehicles, or of different speed limits for different classes or weights of vehicles.

10. Application of traffic law

The provisions of section 5, and of any regulations made under section 9 shall be in addition to, and not in derogation of, any other law for the time being relating to traffic on the roads.

SCHEDULE

[Section 2.]

AGREEMENT

AN AGREEMENT made the Third day of March One thousand nine hundred and fifty-nine BETWEEN THE GOVERNMENT OF THE COLONY AND PROTECTORATE OF KENYA (hereinafter called "the Government") of the one part and MTWAPA BRIDGE LIMITED a limited liability company having its registered office at Mombasa in the Protectorate of Kenya hereinafter called "the Company" which expression where the context so admits shall include its successors and assigns) of the other part.

WHEREBY IT IS AGREED as follows—

1. Subject to the provisions of this Agreement the Government hereby grants to the Company the sole right to operate a suspension bridge over the Mtwapa Creek Malindi Road under a toll system PROVIDED THAT the Company may assign such right subject to the previous written consent of the Government such consent not to be unreasonably withheld.
2. The Company shall have the right to operate the said Bridge for a period of Twenty years from the Twentieth day of June One thousand nine hundred and fifty eight (hereinafter called "the commencement date") PROVIDED ALWAYS that the Government shall have the right on giving one year's previous notice in writing to purchase on the expiration of the fifth, eighth, eleventh or fourteenth year of the said period the Bridge and its ancillary buildings on payment of a sum calculated at the rate of Three thousand pounds for each year of the said period of Twenty years unexpired at the date of purchase and in addition the sum of Seventy-seven thousand pounds.

- 3.** The Government shall have the right on giving five years previous notice in writing to purchase on the expiration of the said period of Twenty years the bridge and its ancillary buildings on payment of the sum of Seventy-seven thousand pounds.
- 4.** If the right contained in Clause 3 hereof shall not be exercised then the Government will grant to the Company on terms not less favourable to the Company than those contained in the Agreement the right to operate the bridge under a toll system for such further period and subject to such conditions (including an option for the Government to purchase the Bridge and its ancillary buildings) as shall be agreed according to the circumstances existing at the time.
- 5.** The Company shall not be responsible for any roadway construction work beyond the abutments of the bridge nor for any moving or levelling of earth except that which may be necessary in connection with the said abutments or the foundations of the bridge.
- 6.** The Government having by the commencement date finished the approach roads to a standard capable of taking the same volume and weight of traffic as the bridge will at all times maintain the same to such standard PROVIDED THAT in the event of the capacity of the bridge being increased with the prior agreement in writing of the Government to take a larger volume and weight of traffic at any time the Government will increase the capacity of the approach roads as may accordingly be necessary.
- 7.** The Government having reduced the ferry service operating across Mtwapa Creek to not more than one hand operated ferry boat will not during the continuance of this Agreement (except at such times as the bridge is closed to traffic for any reason) operate or permit the operation of any other ferry service across Mtwapa Creek without the prior written consent of the Company.
- 8.** During the continuance of this Agreement the Government will not (except at such times as the bridge is closed to traffic for any reason) without the prior written consent of the Company use or permit the use within a distance of Ten miles from the site of the bridge of any other crossing over Mtwapa Creek or over any river flowing into Mtwapa Creek if such crossing would diminish the traffic using the bridge.
- 9.** The Company shall on giving to the Government Thirty days written notice of such intention have the right to close the bridge from time to time for such period as shall be necessary to carry out repairs and maintenance PROVIDED THAT in cases of emergency the bridge may be closed without such notice having been given but the Government shall be notified in writing of such closure as soon as may be practicable thereafter.
- 10.** (*Spent*);
- 11.** The Company shall permit to cross the bridge without payment of tolls all vehicles owned by the Government and the Armed Forces bearing number plates indicating that the vehicle is the property of the Government of Kenya being on official duty and carrying passes to that effect PROVIDED ALWAYS that in the event of a state of emergency arising and resulting in the use of the bridge predominantly by military vehicles the position of the Company in regard to the expense of operating the Bridge including depreciation maintenance and a reasonable return

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to the Company's shareholders shall be a matter to be negotiated between the parties.

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12. Any dispute or difference arising out of the provisions of this agreement including in particular but not by way of limitation—

- (a) any failure to agree on the conditions of the renewal of this Agreement under the provisions of Clause 4 hereof;
- (b) (*Spent*);
- (c) the negotiations mentioned in the proviso to Clause 11 hereof.

shall be settled by arbitration in accordance with the provisions of the Arbitration Act (Cap. 49) or any statutory enactment in that behalf for the time being in force.
