



LAWS OF KENYA

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**McMILLAN MEMORIAL LIBRARY ACT**

CHAPTER 217

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CHAPTER 217

**McMILLAN MEMORIAL LIBRARY ACT**

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

*Section*

1. Short title.
2. Interpretation.

PART II – CANCELLATION OF TRUST DEED AND  
DECLARATION OF NEW CONSTITUTION AND TRUSTS

3. Cancellation of Trust Deed.
4. Supplementary modifications.
5. Declaration of new constitution and trusts.

PART III – NEW CONSTITUTION AND TRUSTS

6. Objects and scope of trust.
7. Trusts of Trust Fund.
8. Trustees to have control of Trust Fund.
9. Power to purchase and sell books, etc.
10. Acquisition of land, and erection and alteration of buildings.
11. Vesting of land.
12. Power to sell land.
13. Use of premises for meetings.
14. Leasing powers.
15. Appointment of officers and servants.
16. Outgoings, insurance, etc.
17. Creation of endowment.
18. Power to constitute governors, management committee or separate trustee.
19. Banking accounts and investments.
20. Appointment of New Trustees.
21. Powers of majority to act, and of individuals to appoint alternates.

PART IV – FUTURE MODIFICATIONS

22. Power to vary constitution and trusts.
23. Power to transfer Trust Fund or part thereof.

PART V – MISCELLANEOUS

24. Validation of past acts.
  25. Saving of powers, etc., conferred on Trustees by other laws.
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## CHAPTER 217

## MCMILLAN MEMORIAL LIBRARY ACT

[Date of commencement: 30th November, 1938.]

**An Act of Parliament to enlarge, extend and revise the objects and scope of the charitable trust known as the McMillan Memorial Library and the powers and responsibilities of the trustees thereof; to make certain further amendments and additions to the constitution and trusts of the charitable trust and to divers documents subsidiary thereto; and to consolidate and declare the constitution and trusts as so modified**

[Act No. 33 of 1938, Cap 316 (1948), L.N. 649/1963, L.N. 2/1964, Act No. 21 of 1966.]

## PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the McMillan Memorial Library Act.

**2. Interpretation**

In this Act—

“**East Africa**” means Kenya, Uganda and Tanzania;

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

“**Trust Deed**” means the trust deed concerning the McMillan Memorial Library dated the 30th June, 1931, and made between the then Commissioner for Local Government for and on behalf of the Government and Lady Lucie McMillan of the one part, and the then Colonial Secretary, the then Director of Education, the then Mayor of Nairobi, Marcuswell Maxwell, Arthur Alexander Legat and Ralph Beresford Turner of the other part;

“**Trustees**” means The McMillan Memorial Library Registered Trustees, and includes the trustees or trustee for the time being of the McMillan Memorial Library appointed pursuant to section 20;

“**Trust Fund**” means all the property, movable or immovable, from time to time vested in or held by the Trustees, or any other persons or person under their direction, for the purposes of the McMillan Memorial Library, whether before or after the commencement of this Act, and whether by or pursuant to the Trust Deed or otherwise.

[Act No. 21 of 1966, 1st Sch.]

PART II – CANCELLATION OF TRUST DEED AND  
DECLARATION OF NEW CONSTITUTION AND TRUSTS**3. Cancellation of Trust Deed**

The Trust Deed and all the trusts, powers and provisions therein declared or contained shall be and are hereby extinguished and declared null and void and of

no effect, without prejudice to any act or thing lawfully done, right accrued or liability incurred thereunder before the commencement of this Act.

#### **4. Supplementary modifications**

(1) The constitution of the McMillan Memorial Registered Trustees, and the conditions and directions contained in the certificate of registration granted to them by the Governor in Council under the Land (Perpetual Succession) Act, (Cap. 286) on the 16th November, 1932, shall be deemed to have been modified, if and so far as is necessary to render them consistent with the provisions of this Act; and the Minister may grant such further certificate of registration, if any, either by way of modification of the certificate granted or in substitution therefor, as may be deemed appropriate to give effect to the provisions of this subsection.

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

[L.N. 649/1963, Sch.]

#### **5. Declaration of new constitution and trusts**

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

### **PART III – NEW CONSTITUTION AND TRUSTS**

#### **6. Objects and scope of trust**

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

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

Provided that—

- (i) the activities referred to in paragraph (a) shall constitute the primary objects of the McMillan Memorial Library, and nothing in this Act shall be construed as requiring the Trustees to extend the activities of the McMillan Memorial Library beyond the scope of that paragraph except so far as they may consider that the resources of the Trust Fund and other circumstances permit;
- (ii) the several activities of the McMillan Memorial Library for the time being may be combined, kept separate or made co-operative to such extent and in such manner as the Trustees may for the time being consider desirable.

#### **7. Trusts of Trust Fund**

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

#### **8. Trustees to have control of Trust Fund**

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

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

#### **9. Power to purchase and sell books, etc.**

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

(2) All moneys arising from any such sale or disposition shall fall into and form part of the Trust Fund.

**10. Acquisition of land, and erection and alteration of buildings**

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

**11. Vesting of land**

Land acquired under section 10 shall be conveyed or demised to, or otherwise vested in, the Trustees or such other persons as the Trustees shall from time to time direct.

**12. Power to sell land**

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

**13. Use of premises for meetings**

The Trustees may at any time permit any part of buildings for the time being forming part of the Trust Fund (including any premises acquired under section 10) to be used, either gratuitously or otherwise, for lectures, classes, meetings or otherwise, provided that the use is not inconsistent and does not interfere with the carrying out of the primary objects specified in section 6.

**14. Leasing powers**

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

**15. Appointment of officers and servants**

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

**16. Outgoings, insurance, etc.**

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

**17. Creation of endowment**

The Trustees may from time to time set apart as an endowment fund such part or parts (if any) of the Trust Fund as may in their judgment be so set apart safely and without prejudice to the due execution of any of the trusts or powers herein contained, and all sums constituting the endowment fund shall be invested by the Trustees in their names, or in the names of such other persons as they shall from time to time direct, in any investments by this Act authorised with power at any time to vary any of such investments; and the endowment fund and all investments at any time representing it shall be held upon trust that the income thereof shall be applied in perpetuity in the same manner and for the same purposes as and for which the Trust Fund may be applied under this Act.

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

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

(2) The Trustees may delegate to one or more of themselves, or to a body of governors or management committee or separate trustees, any of the trusts or powers vested in or exercisable by the Trustees under or by virtue of this Act.

**19. Banking accounts and investments**

The Trustees may from time to time open and maintain in their corporate name, or in the names of separate trustees, a banking account at such bank or banks as they shall from time to time determine, and may at any time pay or cause to be paid moneys forming part of the Trust Fund (including any building fund or endowment fund established under the provisions of this Act) to the credit of that account, or place or cause to be placed the moneys on deposit with a banker; and moneys at any time forming part of the Trust Fund (whether forming part of a building fund or endowment fund or otherwise) and requiring investment may be invested at the discretion of the Trustees in any of the investment for the time being permitted by law for the investment of trust funds, with power for the Trustees from time to time to vary any such investment for any other of a similar nature.

**20. Appointment of new Trustees**

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

- (a) two persons appointed by the Minister;
- (b) one person appointed by resolution of the City Council of Nairobi;
- (c) Ralph Beresford Turner, or some other person appointed by writing under the hands of any three of the other five Trustees;
- (d) two persons appointed either—
  - (i) by writing under the hand of the senior of such of the children or remoter issue (if any) of the late Marcuswell Maxwell as are for the time being of the age of majority and of sound mind and resident in East Africa, males ranking as senior to females for the purpose of this provision; or, in default of any such children or remoter issue;
  - (ii) by writing under the hand of Lady Lucie McMillan, being of sound mind and resident in East Africa, or, failing her, by writing under the hand of Margaret Dorothy Marcuswell Maxwell, widow of the late Marcuswell Maxwell, being of sound mind and resident in East Africa, or, failing her, by writing under the hand of the senior wife, widow, husband or widower, being of sound mind and resident in East Africa, of any child or remoter issue of the late Marcuswell Maxwell (for which purpose seniority shall be determined according to that of the husband or wife, living or deceased, whom the wife, widow, husband or widower aforesaid represents); or, in default of any such persons;
  - (iii) by writing under the hand of Mrs. Lucie McMillan Johnston of Kitale, Kenya, or, after her death, by writing under the hand of the senior of her children or remoter issue, failing whom, by writing under the hand of the widower of the said Mrs. Lucie McMillan Johnston, or failing him by writing under the hand of the senior wife, widow, husband or widower of the children or

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

but so that the children or remoter issue of the late Marcuswell or other person competent to appoint as provided by subparagraph (ii) or subparagraph (iii) shall be entitled to appoint himself or herself as a Trustee.

(2) Every appointment from time to time made under subsection (i), including all appointments having effect at the commencement of this Act, may from time to time, and at any time, be revoked in the same manner and form as that prescribed for the appointment, without previous notice, by the person or persons in whom respectively, under this section, the power of appointment is vested, upon a new and valid appointment being made by that person or persons respectively:

Provided that the appointment of Ralph Beresford Turner shall only be revoked if, at the time of revocation—

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

[L.N. 649/1963, Sch.]

## **21. Powers of majority to act, and of individuals to appoint alternates**

(1) All or any of the trusts and powers vested in or exercisable by the Trustees under or by virtue of the foregoing provisions of this Act shall, without prejudice to the special provisions of section 20 enabling three to act, be capable of being performed by any four of them, and an action or decision of any four of the Trustees for the time being shall be as valid as it would have been if done or made by six Trustees:

Provided that, if and so often as there are less than four Trustees in East Africa, the trusts and powers shall nevertheless be capable of being performed by all Trustees, not being less than two, who are for the time being in East Africa, and any act or decision of theirs shall be as valid as it would have been if done or made by six Trustees.

(2) Notwithstanding anything to the contrary contained in the Trustee Act, (Cap. 167), no individual Trustee other than Ralph Beresford Turner shall have power in any circumstances to appoint an attorney, alternate or substitute to act in his place:

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

## PART IV – FUTURE MODIFICATIONS

**22. Power to vary constitution and trusts**

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

[L. N. 649/1963, Sch.]

**23. Power to transfer Trust Fund or part thereof**

(1) In addition to the powers conferred by section 22 and any other powers hereinbefore contained, and without prejudice to the generality of such respective powers, the Trustees acting unanimously, or any five of them may at any time, with the consent of the Minister duly recorded under the hand of the Minister and the public seal of Kenya, transfer the whole or any part or parts of the Trust Fund to any municipality or other local authority or to any separate body of trustees, upon the terms either that the transferee shall thenceforth become a trustee of the premises so transferred for the purposes of and with and subject to the powers and provisions declared by this Act in the place of the Trustees, or else that the premises so transferred shall thenceforth be excluded entirely from the McMillan Memorial Library and from the operation of this Act, and upon such further or other terms as may be thought fit:

Provided that neither the piece and parcel of land known as Plot Number L. R. 209/1890 nor any building thereon, nor any part thereof respectively, shall be transferred to a person other than the City Council of Nairobi, and then only upon condition that it shall continue at all times thereafter to be known and designated by the name of the McMillan Memorial Library.

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

[L. N. 649/1963, Sch.]

## PART V – MISCELLANEOUS

**24. Validation of past acts**

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

**25. Saving of powers, etc., conferred on Trustees by other laws**

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

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