

EAST AFR. PROT

10940

10940

10940

No. 86
Rowing

1916

2 Feb.

Last previous Paper.

Surv
/ Long

Complaint of G. M. McDonald

Sends further memo from him re. to known
Saw Mills. also reports by local Conservator
of Forests regarding grazing farms for which
Mr. McDonald & Mr. Buxton applied near L. Kavacha

The Read.

The Newton's first report refers to the
57
22,000
square
fix forms at the north of the plain (broken
red line boundary). His second refers
505
24,000
to the second others (continuous red line).
His report stated, but pointed out the
circumstances of the
L. Kavacha
C. M. Buxton
at all times.

The Newton's conclusion was that the
one good patch of forest (in 578) was
too small to be a commercial proposition
but that much of the wood would be
useful for farm fencing & development.
It is a fact that Lord Curzon has advised
a case will be made out a small plant for
farm purposes only - in any case there is his
Newton's ^{proposed} ~~proposed~~ forest area should
be clearly fixed for
use and not left on what terms the
land has not been fixed nor the land of

Next subsequent Paper.

Nos. 157, 13 March 1916

accordance with Order
332 I approve of
the balance of Rs 574-55
due to the fact being
written off as irrecoverable

2. I ~~however~~ ^{however} ~~support~~ ^{support}
that it is a matter for
consideration whether it should
be within the power of an
unsecured junior official to
receive public money, and
also ~~that~~ ^{whether} in any circumstances,
it should not be made a
recognized condition that formal
receipts, taken from counterfoil
receipt books, should be given for
all such sums as here referred
to in the memo., even though such
payments are required to be made
by means of stamps.

Jan. 10739/916.

Est.



Sir

14 March 1916.

Drawn 24361

Sir

DRAFT

Est.

No. 189

W. H. Belfield

MINUTE.

Mr. Scott 13/3/16

Mr.

Mr.

Mr.

Sir G. Fiddes

Sir H. Just

Sir J. Anderson.

Mr. Steel Mailland.

Mr. Bonar Law.

I have the honor
 to ack. the receipt
 of your despatch, no.
 85, of the 2^d of Feby
 relating to defalcations
 on the part of an
 Audit Registration Clerk
 named Abdullalim,
 since deceased, and
 to inform you that
 if, as I assume to be
 the case, the Clerk
 had not been required
 to furnish security

Name of deceased.	Name of Wasi	Place of Death	Total of Estate	Commis- sion.	Wasi declare
Awath Mbarak Mhamed b. Khalfan Fatuma b. Kamna	Salim Mbarak Hilali b. Said Hamis b. Mbarak	Moaomoto Malindi Kijijiwe) Tanga)	423-55	21-18	Paid Not Paid ---
Mhamed Salim Ana Shee b. Shee	Ali bin Salim Abdurahman bin Abdalla)	Malindi Malindi	669-85	Paid at Office	Not paid
Mhamed bin Naser Said b. Abdissalam Fawshi Wa Suleiman Jambo wa Ali bin) Nasibu)	Said bin Naser Abdula b. Naser Ali b. Suleiman Farazi wa Ali) bin Naser)	" " Bura "	1497-33 3103-81	75-33 155-19	Paid Paid Not paid " "
Said b. Shen Mawish Talib Maden wa Abdula) Mohamed)	Ali bin Naser Omar b. Mohamed	Malindi Mambrai	466-95	23-34	Paid Not paid
Masura wa Haji Abdula)	Mzee bin Ahmed	Ganda	339-04	16-95	Paid
Marahani wa Farazi Faraji wa Mliwa	Hamisi Mtepe	Merekebundi	107-00	5-38	Paid
Mzee wa Barafia Moga wa Akimali Salima b. Gazi Mhad. b. Raschid Mhad. b. Salim Mzee b. Mhamed Ahmed Mhad. Kisumu	Mzee bin Ahmed Bakar wa Swana	Ganda Mambrai	446-86	22-34	Paid Wasi dead
Mzee wa Barafia Moga wa Akimali Salima b. Gazi Mhad. b. Raschid Mhad. b. Salim Mzee b. Mhamed Ahmed Mhad. Kisumu	Hamisi Mtepe Hamadi Here Jamadar Esmail Dawal b. Said Said b. Salim Swana wa Shali Abdula bin Salim	Merekebundi Malindi Malindi Mambrai Malindi "	36-00 75-00 1041-38 2497-00	2-00 3-75 52-07 124-85	Paid " " " Not paid Not paid Not paid
Mhad. Kisumu Salim bin Salim Awath bin Obar Mussena bti Khalfan Mawish b. Ahmed Mmani bin Ali	Said bin Said Ali bin Awath Said bin Naser Kathi Naser Kathi Naser	Mambrai Malindi Malindi Malindi Malindi	812-35 1100-00 327-00 210-00 810-19	40-32 55-00 Not paid 10-50 40-55	Not paid " Not paid Paid Paid

644-75.

Abdulla bin Naser bin Abedi has bought two shambas from Administrator - General Mombasa in the estate of Karamji bin Isa Bohora of Mambrai through broker Abdulkader bin Abubakar and brought the deed of 2 shambas from Mombasa. 1 Shamba at # Mapino claim No. 2354 other 2 shambas at Bomani claim No. 2377. Abdulalim told me to bring Rs. 5/- registration fees I gave him Rs. 5/- together with the deed until now I did not get my deed and the fees has been paid to Registration clerk Abdulalim.

Sd/- Abdulla bin Naser Bijadi.

I have also issued a notice through Livali that, in futur when such payments are made, that the payers must themselves affix the stamps to the file in the presence of the District Commissioner.

I regret having to trouble with the matter but it is one which I have been unable to deal with without advice.

I have &c.,

Sd/- Merwyn Beech.

District Commissioner.

Will you please instruct me as to how I should proceed?

There is one point upon which I would lay particular stress, and that is the absolute impossibility of the officers in charge at the time being in any way held responsible for the alleged defalcations. They have signed no receipts and the transactions complained of may be very well have taken place in the town.

The auditor, apparently, only examines such case files as are already settled and does not examine those which are still pending. It is therefore easy for a dishonest clerk to presupon the credulity of the population who are apt to consider that whatever is done by anyone in Government employ is beyond suspicion.

That the present discovery was made is entirely due to the fact that the Cashier Mr. Fernandes, who has had nothing to do with Abdulalim beyond issuing stamps for monies produced by him, having had some difficulty in obtaining Rs. 200/- which were due for registration fees, had suspicions that all might not be correct with regard to the Wasi cases, and suggested to me the course of issuing the notices referred to at the beginning of this letter.

The only action I have taken, pending your instructions, is to place an injunction upon the Wasi of Abdulalim not to proceed with the distribution of the property until further notice. The value of this property amounts, as far as I can gather, to a little over Rs. 500/-, so the percentage which Government would receive, as an ordinary creditor, would only cover a small portion of the amount alleged to have been paid;— and this is not taking into consideration what the three wasi, who have not yet been interviewed owing to their being away, may have to say.

The points in favour of these statements being true are:-

- 1) Some Wasi did not attempt to disguise the fact that they had not paid whereas there was an excellent opportunity for them to say that they had done so.
- 2) At least one man (No.19) holds a receipt from Abdulalim for Rs.124/85 whereon he has written that it is not customary to give a receipt, but that he acknowledges having taken the money and will put the stamps on the file:- or words to that effect.

I have seen this document.

It may be noted in parenthesis that the maximum amount chargeable for commission is Rs.50/- but the Livali tells me that for some years past every Wasi has been paying 5% on the value of the ~~Wasi's~~ estate. As the cashier has never received more than Rs.50/- from Abdulalim on a single transaction, he (Abdulalim) must, if all is true, have been enjoying considerable profit from his business. However this is not directly the subject in hand. The question now is what is to be done considering the circumstances with a view to settling the matter.

Legally I am of opinion that, as there are no stamps on the file and no entries on the cash book, the Wasi can be ordered in Court to pay again. (The plea that the clerk is not authorized to sign a receipt is rather nullified by the fact that no receipt book is kept). But they would doubtless all be shams, and as no receipts are given, the matter would be difficult to prove one way or the other.

I feel convinced that some, if not all, of the cases are genuine. But I see no way of proving which are true and which are false.

Also I do not see how it is to be proved that the late clerk did not come to terms with certain of the Wasi (e.g. those who hold his receipt) to give a receipt for a larger sum than he actually received.

District Commissioner's Office,

Malindi,

4th. May, 1915.

Sir,

I have the honour to inform you that, shortly after arrival, I caused notices to be issued to all Wasi who had not rendered their accounts or paid commission. There were 30 cases pending, the earliest being since 1910.

Of these Wasi one was dead; three were unavailable owing to absence from the district; one, being in charge of a madman, who is still alive, has not rendered his account; three came to the office, rendered their accounts and paid commission; seven admitted having not yet either rendered their accounts or paid; while the remaining fifteen declared that they had already paid all dues to Abdulalim the former Registration clerk lately deceased.

I carefully examined the files and, if the commission was in reality paid, there is certainly no evidence of the fact, seeing that the files are innocent of stamps, and the payment being of the nature of Court fees, no receipts are issued. I instructed the Liwali, after examination of the various Wasi, to prepare me a list.

This list is appended and shows a sum of Rupees Six hundred and forty-four and cents Seventy-five (Rs. 644/75) as alleged to have been paid to the said Abdulalim, and apparently mis-appropriated by him.

There is also another complaint attached regarding a document and its fees of Rs. 5/-.

The Hon'ble

The Provincial Commissioner,

M O M B A S A

amount paid by the Wasi. You should consult the Registrar
High Court on the matter.

In the event of the Wasi refusing to pay the whole
matter must be put before the Attorney General.

I have etc.

SD/ G. V. Robley.

Provincial Commissioner.

Mombasa,

14th May, 1915.

No. 40/96/15.

Sir,

In reply to your 27/24/15 I regret to learn that there are deficiencies in the Probate accounts. If there are no stamps on the files or any evidence that fees have been paid the burden of proof that monies actually have been paid lies with the various Wasi and you should collect ^{the money} from them without delay.

It seems unlikely that 15 Wasi could have paid money to the late Abdulalim and that he could have misappropriated these monies without the knowledge of the District Commissioner who must necessarily have checked the probate files. If the Wasi refuse to pay you should inform them that the Government will sue them for the money and the matter must be referred to the Attorney General.

You have legally no power to place an injunction on the Wasi of Abdulalim unless a debt on the estate has been proved in Court or is admitted. Abdulalim must be considered innocent of any fraud until proved otherwise. You are not correct in stating that the maximum commission chargeable is Rs. 50 only on all estates. It is 50/ on an estate of under Rs. 1500/ but 6% on the estate when over 1500/.

I agree that some system of receipts should be given and I understand that in Mombasa a slip book is kept showing

amount

The District Commissioner,

Malindi.

District Commissioner's Office.

Malindi,

20th September 1915.

No. 129/34/15.

Wasi.Your No. 2/13/5/15.

Sir,

I have the honour to inform you that the Wasi of Abdulalim refuses to pay any commission out of the deceased's estate without proof. He is quite right in so refusing. I have therefore instituted a suit against him before the Livali in which all the claimants will have to appear as witnesses.

Should they be successful in establishing the fact that they have paid - a fact which I am personally satisfied is true - the Wasi agrees to accept the Livali's decision as the necessary proof and will pay the percentage from the estate into Govt.

The result of this case should be sufficient evidence for Government to write off the balance. I am afraid however that this will take considerable time as many of the applicants are away and will have to be collected. It is this fact which has been causing so much delay.

If, however, Government is willing to accept my assurance that I am personally satisfied that the money has been paid, I would, to save further delay, request that the amount be written off at once.

I have etc.

SD/ Mervyn Beech

District Commissioner.

The Hon'ble,

The Provincial Commissionery,

Bombay.

Free Translation.

No. 156,

Malindi

15th November 1915.

Mr. Beech

The District Commissioner,
Malindi.

Sir,

I have the honour to inform you that tomorrow 9 a.m. I will hear the District Commissioner's Civil Case No. 68/15 at the Liwali's Court on the Defendant Abdulla bin Said Wasi of Abdulalim bin Abdurahman Bakisthir it is my business to inform you that all.

Your sincerely

Liwali - Malindi

Said bin Abdalla.

No. 171.

Malindi
28th December 1915.

Mr. Beech

The District Commissioner.

Sir,

I have the honour to inform you that today date I decided Civil Case No. 68/ Liwali's Court of 1915 which Plaintiff is D.C. Malindi with Abdalla bin Said Wasi of late Abdulalim bin Abdurahman Bakisthir on account of Rs. 648/75 Govt. commission which paid from Wasi to the late Abdulalim bin Abdurahman the case against the Wasi of late Abdulla bin Said to pay all the amount for this I wish to let you know about it.

Your sincerely

Said bin Abdalla.

Liwali - Malindi.

of deceased	Name of Wasil	Place of death	Total of Estate	Com.	Wasil declares
th Mbarak	Salim Mbarak	Mtcomoto	423/55	21/18	pd.
omed b. Kai	Milali b Said	Malindi	...	...	not paid
ams b Kanna	Hamis b Mbara	Kijiwe Tanga	...	...	---
omed Salim	Ali b Salim	Malindi	669/85	paid at Office	
a Shee b Shee	Abdulrehman b. Abdulla	Malindi	...	...	not paid
ed b Naser	Said b Naser	"	1497/33	75/33	pd.
d b AbdiSalem	Abdula b Naser	"	3103/81	155/19	pd.
ghi wa Sulaiman	Ali b Saliman	Bura	...	...	not paid
ho wa Ali	Farazi wa Ali	"	...	...	not paid
n Nasibu	bin Naser	"	...	...	not paid
d b Shen	Ali b Naser	Malindi	466/95	23/34	pd.
wish Talib	Omar b Mahomed	Mamburui	...	..	not paid
en wa Abdula	Mzee b Ahmed	Ganda	339/04	16/95	pd.
Mshomed					
ura wa Haji	Hamesi Mtepe	Mericabuni	107/00	5/38	pd.
Abdulla					
ahani wa	Mzee b Ahmed	Ganda	446/86	22/34	pd.
eruzi					
razi wa Mlima	Saizar wa Ewana	Here	...	...	Wasil died
se wa Barafie	Hamesi Mtepe	Mericabuni	36/00	2/00	pd.
ga wa Akilimali	Hamadi Here	Malindi	75/00	3/75	pd.
ic b Gazi	Jamadar Esmal	Malindi	1041/38	92/07	pd.
omed b Raschid	Dewel b Said	Mamburui	2497/00	124/85	pd.
ed b Salim	Said b Salim,	Malindi	...	...	not paid
ee b Ahmed	Ewana wa Shalli	"	...	...	not paid
ed Kisutu	Abdula b Salim	"	...	...	not paid
imini b Salim	Salen b Said	Mamburui	812/55	40/32	pd.
th b Obar	Ali b Awath	Malindi	1100/-	55/-	pd.
ona binti	Said b Naser	Malindi	327/-	...	not paid.
Khalfan					
wish b Ahmed	Kathi Naser	Malindi	210/-	10/50	pd.
ani b Ali	Kathi Naser	Malindi	810/19	40/55	pd.

648/75

General Remarks.

I would add the following remarks.

a) As I am shortly leaving I would point out that the previous correspondence will explain anything that may not be quite clear in the present report which I have attempted to make as concise as possible.

b) There are still two cases pending No. 1 of 1913 wasi Omar bin Mgadam; No. 2 of 1912 wasi Hilali bin Saif

In these files I find no statements of assets and liabilities and they have no stamps. I have failed to secure the presence of either wasi; one being in Mwanza and the other in Arabia.

I have also been unable to obtain any evidence as to whether the claim to have paid or not.

I have, etc.,

Sd/- M.T.H. Beech

District Commissioner.

Attached is the list showing the details of the Rs. 648.75
Amount taken.

Claims to the amount of Rs. 648/75 were put in to the
Wasi of Abdulalim. Notices were issued to the effect that all
wasi must themselves affix the stamps to the files in the pre-
sence of the District Commissioner.

Measures taken to recover the money etc.

After some correspondence you informed me that if I was
satisfied that the wasi did actually pay the money I should
recover what I could from the wasi and ask permission to write
off the balance.

Now the wasi was only willing to pay in the case of Duwal
bin Said where he accepted Abdulalim's receipt as proof. It
then appeared to me that the best course was to sue Abdulalim's
wasi for the Rs. 648/75 in the Liwali's Court. This would have
a double effect.

- 1) The wasi would hear the evidence of all the 15 wasi.
- 2) If the Liwali gave judgement against Abdulalim's wasi,
and he acquiesced in the judgment, it would be the best
obtainable proof that the 15 wasi had paid the money and
therefore sufficient warranty for me to request that the
balance be written off.

I accordingly sued Abdulalim's wasi and each of the 15
wasi and their witnesses were called to give evidence. This
proceeding took some months.

Result.

Yesterday the Liwali finished giving judgment in each
individual case (Liwali's Civil case No. 68/15) and ordered
Abdulalim's wasi to pay the whole Rs. 648/75 from the deceased
clerk's estate. Attached is translation of his letter.

Abdulalim's total liabilities were Rs. 1517/- and his
assets Rs. 314/- only.

The "wasi" is paying 20 cents in the rupee. The amount
payable to Government is Rs. 134/20. I therefore request that
the balance of Rs. 514/55 be written off.

General Remarks

District Commissioner's Office,

Malindi,

December 29th 1915.

190/24/15.

W A S I

Ref: your No. 2/13/5/15 of July 13th
By No. 129/24/15 of 20th Sept.
Your No. 2/13/7/15 of 29th Sept. and
previous correspondence.

Sir,

I have the honour to report as follows:-

Excis of my No. 57/24/15 of May 4th 1915.

When I took over the District in February there were 30 Probate cases "pending". They were said to be delayed pending decisions in slavery cases. The wasi were called upon to make statements, 15 declared they had paid commission to the late clerk Abdulalim; two could not be found, whereas the remainder admitted that they had not yet paid.

The amounts which the 15 wasi claimed to have paid totalled Rs. 648/75. There were no corresponding stamps upon the files. It was therefore evident that either the statements of the wasi were false or that Abdulalim had misappropriated the money. In support of the latter supposition was the fact that one at least of the wasi, Duwal b. Said, produced an informal receipt signed by Abdulalim to the effect that he had received Rs. 124/85, that it was not customary to give receipts and that he would affix the stamps upon the file. The fact that he had not done so proved clearly that he had misappropriated the sum. I pointed out that as no receipts were given in the office, the fees being in the nature of "Court Fees", it was quite feasible for Abdulalim to receive monies away from the office without any possibility of the District Commissioner being aware of the fact. Abdulalim died in January.

HON. PROVINCIAL COMMISSIONER,

M. O. N. B. A. S. A.

Provincial Commissioner's Office.

10-39

Nairobi,

REC'D 6 MAR 16

27th January, 1916.

2/13/9/16

Sir,

I have the honour to report the following matter. In May last the District Commissioner Malindi reported that he had discovered a case of apparent defalcation on the part of an Arab Registration Clerk Abdulalim since deceased.

2. I informed the District Commissioner that if there were no stamps on the files and no evidence that fees had been paid the burden of proof that money had been paid lay on the various Wasi and the money was to be collected.

3. A civil suit was recently brought against the Wasi of the estate of Abdulalim for recovery of the amount in the Court of the Lwali of Malindi and a judgment obtained in favour of Government.

4. The estate of Abdulalim is however not solvent and is only paying 20.5 cents in the rupee, the amount recoverable by Government from the estate of the deceased is only Rupees 134/20.

5. This leaves a deficit of Rupees 214/53 which I beg to seek the authority of Government to write off as uncollectable.

6. I attach copies of the correspondence.

I have the honour to be,

Sir,

Your most obedient servant,

B. W. H. ...
Provincial Commissioner.

Hon'ble The Chief Secretary,

Nairobi.

H. Hon'ble Attorney General,

Nairobi.

the public money and also other
circumstances, it should be made
under certain conditions had formal receipts
from Counterfeit receipt books, should
be for all such sums as have been
paid to, even though his payments are
said to be made by means of stamps.

Off. to be on the lines
of Mr. Stephenson's minute.

at once
H. J. R.
10/11/10