

EAST AFR. PROT

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Governor  
Halffield 377

FINE UNDER COLLECTIVE PUNISHMENT'S ORDICE 1909

1915

24 May

in connection with the killing of a Police Constable  
in Kabras, North Kavirondo District.

Last previous Paper.

Sends reports by the District Commissioner and  
states circumstances in which fine of 50 head of  
female stock was imposed subject to concurrence.

*Sir G. Fiddes. There is a good deal to  
be said for the <sup>action</sup> they ~~proposed~~ acted under  
great provocation, but I think  
that we must be guided by local  
opinion. The Prov<sup>t</sup> Comm<sup>r</sup> referred  
to is para: 4 - Mr Amworth,  
whose opinion in a matter of this  
kind is entitled to the greatest  
weight.*

*Concur in the imposition  
of the fine?*

*H. J. B.*

*Chief*

*21/6/15*

*at home 22.6.15*

Next subsequent Paper

*33741*

28457

Recd  
Recd 21 JUN 15

GOVERNMENT HOUSE,  
NAIROBI,  
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE

No. 377

May 5th 1915.

463

Sir,

I have the honour to transmit herewith certain correspondence on the subject of the killing of a Police Constable in Kabras, North Kavirondo District.

2. The learned judge directed an acquittal in the case because the evidence failed to make it clear which of the defendants, if any, struck the blows that had the fatal result. Furthermore as it was not clear at what stage of the arrest of the deceased and under what precise circumstances the blows were struck, he was unable to come to a decision as to whether the killing was unlawful or not.

3. Whilst it may be held that the Constable brought his death upon himself it is important to consider the effect of not imposing a punishment from the native point of view. It has been constantly

Re D.C. M. Miss  
4. 15

do.  
18. 12. 14

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

constantly impressed upon the natives of this particular district who have been concerned before in an affair of this nature, that they cannot take the law into their own hands and they were well aware in this instance that they should have caught the police constable if possible, and handed him over to the District Authorities for trial.

4. The Provincial Commissioner, Nyanza Province, is of opinion that in the interest of future peace and order in the Kabras location some action is necessary and advocates the imposition of a fine of fifty head of female stock. In this view he is supported by the Attorney General.

5. I see no reason to challenge the propriety of this course of action and I have therefore, subject to your concurrence, approved of the imposition of the fine under the Collective Punishments Ordinance 1909.

I have the honour to be,

Sir,

Your humble, obedient servant,

*H. C. B. B. B.*

GOVERNOR

21 JUN 15

District Commissioner's Office,

Mumias,

April 8th, 1915.

Reference No.  
85/1/15.

470

Sir,

Murder of a Policeman in Kabras.

I have the honour to address you on the subject of the murder of a policeman by the Tutsi people of this district last December.

2. I would refer you to my letter No. 1280/1/14 of the 18th December 1914, which gives all the facts of the incident.

3. Eight men were committed for trial before the Sessions Court at Kisumu. I enclose the committing Magistrate's original file (No. 80/1914 II Class Court). His findings sum up the circumstances attending the murder.

4. The trial before the Sessions Court resulted in an acquittal. The judgment merely states "I direct an acquittal" so I am not aware of the reasons which led to this result.

5. As you are aware, this is not the first time that a police constable has been murdered in that part of this district.

6. I am of opinion that the acquittal of the accused in this case, some of whom had admitted their guilt, may tend to produce an impression in the native mind that police constables may be assaulted or murdered with impunity, if there happens to be no inconvenient witness present, and I believe the only means of removing or preventing any such impression from gaining ground, would be to impose a collective fine on the location concerned.

7. The Tutsi people under Headman Kakai, South East of the Kalia River, where the murder occurred, are quite a small community. The hut count for 1914-15 for this section showed 172 huts only - 37 bomas averaging about 5 huts in each boma. Eight of these bomas contained less than 5 huts, leaving 29

bomas

bomas of 5 huts or over. If a collective fine is approved, I would suggest that it might be fixed as 50 head of cattle, female stock from bomas of 5 huts or over, male stock from bomas of under 5 huts.

8. When visiting the Tatsani people about 3 weeks ago, I held a meeting at which practically all the adult male population was present. I informed them that I believed the Sessions Court had acquitted the 8 men on the ground that they were only a few of the many persons actually implicated in the murder, and that Government would probably impose a collective fine.

9. I found that the bandas built on the camping ground for the accommodation of Officers and their porters on tour had been demolished, and as was told that this had been done at the instigation of an Elder named Lumbaasi, who is reported to have said "the Europeans will not come here again". I arrested Lumbaasi, and have now removed him to North Kitch where he was originally domiciled. I mention this incident as possibly indicative of a spirit of lawlessness engendered or fostered by the acquittal of the murderers of the policeman.

10. In the circumstances I trust that His Excellency may see fit to order the imposition of a collective fine, under Section 3 of Ordinance 4 of 1909, upon the Tatsani tribe under Headman Kakai in North Kabras, North Kavirondo District. I am glad that Officers Munia and Maruriga agree as to the necessity for some punishment being meted out to the Tatsani people.

I have &c., &c., &c.

Your obedient servant,

Ed. C. E. SPENCER.

District Commissioner.

Encourable,

Provincial Commissioner,

I R U M U

District Commissioner's Office,  
Mumias,

December 18th, 1914.

Reference No.  
280/1/14.

The Provincial Commissioner,

K I S U M U.

- With reference to Mr. Salmon's letter No. 1262/1/14 of the 11th instant, I have to-day returned from Kabras, where I investigated the murder of 3rd Constable No. 3399 Mutuku Mithengi of this Unit which took place on the 8th instant.
2. On my arrival, on the 15th instant, at the home of Headman Kakai, headman of Katsani folk who live in North Kabras, I got together a fairly large gathering of people, including Kakai, ex-headman Lumbassi, and a score of Elders. There appeared to be no reluctance on the part of the people to meet me.
  3. I charged the tribe with the murder of a police askari. This was not denied, but they pleaded justification, the askari having first fired his rifle, without cause or provocation, wounding one of their number.
  4. They handed over to me six young men, said to have been principals, though it was not denied that a general onslaught had been made on the askari after he had fired his rifle and wounded the man Siangani.
  5. The latter was brought to me on a stretcher. He had two bullet wounds, one where the bullet had entered the right buttock and the other at its exit half way down the right thigh, showing that the man had been shot from behind whilst in a stopping position.
  6. After taking Siangani's evidence I arranged at once for his despatch to Mumias Hospital, but a few hours later the carriers returned to my camp with his dead body, he having succumbed to his week old injuries on the road.

7. The evidence of two or three witnesses goes to show that the deceased askari had entered a boma where a large number of people were drinking tembo; that he was supplied with some tembo, and asked for more, which was not forthcoming; that presently for some unknown reason he fired his rifle, wounding Sianzani, and then fled, upon which the crowd pursued him, beat him violently with sticks, tied him up with rope and brought him back to the boma, their alleged intention being to hand him over to the Headman.

8. It appears that Headman Kakai came to the scene, saw the askari bleeding from the head and tied up with rope; that the dying man offered him Rs.2/- to release him, but that Kakai, owing perhaps to remonstrances on the part of the people, declined to give assistance, and went away, soon after which the askari expired. Kakai took no steps to report the murder, nor to arrest the offenders, until I arrived on the scene a week later.

9. Although the murder of this askari appears to have been the deed of a large number of people, I propose to charge, and eventually commit for trial, the six men handed over to me, together with two more who are still at large, if they can be found.

10. I have brought Kakai here and will detain him for the present. I am doubtful as to whether any charge can be preferred against him, except one of neglect of duty under Section 18 (b) of Ordinance 29 of 1912. In any case I think he should be deposed. Meanwhile Lumbassi is acting headman.

11. I saw no cattle in the vicinity of Kakai's, and believe they had all been driven off to the Nandi border, probably with the idea of evading a collective fine.

Sd. G. E. Spenser.

District Commissioner,

No. 28457/915 Ear.

P 23 JUN 1915

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24 June 1915.

DRAFT.

Ear.

No 455

Mr. H. J. Fiddes

MINUTE.

Mr. H. J. Fiddes 22/6/15

Mr. Bottomley 23.6.15

Mr G. Fiddes.

Mr H. Just.

Mr J. Anderson.

Mr L. Linton.

Mr H. J. Fiddes.

Sir,

I have the honour to acknowledge the receipt of your despatch No 377 of the 5<sup>th</sup> of June & to inform you that I approve of your action in imposing, under the Collective Punishments Order 1909, a fine of 50 head of female stock upon the Tatsoni tribe in North Kabras, North New Guinea, in respect of ~~the~~ killing of a Blue Pouter.