

W.P.

EAST AFR. PROT.
43135

C.O
43135
PECB
Rfg. 17 SEP 15

W.P. Fieldes 6/14

Mr. C. Smith's land.

1915
to August
next previous Paper.

States conditions on which - is leased, encloses copy of a letter addressed to Mr. Smith, who has certain grievances against the Govt's treatment of his recommended grant of new lease, or conditions stated, as an act of grace

W. Fieldes. Dr. G. Fieldes.

We can agree with the Governor that the Railway should not buy fuel if it does not want simply for the sake of making itself disagreeable to Mr. Smith by insisting on having the bark - the only valuable part of the wood.

I am not sure that I fully understand para 4, but apparently Mr. Smith is paying 1 anna per acre for all his 1996 acres. The present Crown land rent is 10 cents, or 1.6 annas, per acre, with a premium abatement in 5th bargain. The proposed 1/2 anna rent on the termination of the fuel contract compares

Mr. 701. 23 Sept 15

next subsequent Paper.

Compare very favourably with the
current rate, but without full
information as to ^{the terms of the lease,} conditions about
subletting, average planted with
wattle, & profits from wattle bark,
it is impossible to ~~of~~ make an
exact comparison.

We need hardly take into account
the Rs 30 per 100 acres rent (three
times the current rate) which
the Smith is "entitled" to pay if
the contract breaks down - it
is quite excessive for any but the
most favoured areas.

Although the Governor says that
indulgence in this case cannot
form a precedent, I fear that it will
i.e. that people who have grievances
against the Govt on other grounds will
point to this case as showing that
indulgence in land matters is
possible. But Sir H. Belfield has
been so firm about land cases
in regard to land licenses that
I think we should rely on him in
this matter.

? Approval of his
proposal in para. 13.

W.C.B. 20/9/15

at once H. J. R. 20/9/15

21.9.15

with some
hesitation

Room

412

C O
43135

REC'D
GOVERNMENT HOUSE,
NAIROBI,
SEP 15 1915
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE.

No. 614.

August 10th, 1915.

Sir,

I have the honour to bring to your notice the case of Mr. C. E. Smith of Njoro, one of the earliest settlers in the Protectorate, and to ask your approval of the action which I desire to take in regard thereto.

2. Mr. Smith had been looking about for land for some time previously, but it was in October 1904 that he made his first definite application. The area which he wished to take up lay for the most part within the Railway zone and the late Mr. Currie, who was then Manager, was unwilling to lease it except on condition that Mr. Smith would enter into a contract to plant and supply wattle fuel for use on the Railway.

3. Seeing that he could get the land on

no

THE RIGHT HONOURABLE

ANDREW BONAR LAW, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.

Mr. Smith
2-9-14

no other terms Mr. Smith agreed to this, though he asserts, and I see no reason to doubt his statement, that from the first he disliked the wattle planting proposition.

4. The area in question comprised (a) 1,623 acres in the Railway zone and (b) 970.75 adjoining the zone but outside it. At that time the rates in force were Rs.30 per 100 acres for agricultural land within 10 miles of the Railway and 1 anna (slightly over 6 cents) per acre for grazing land within that limit. Mr. Smith was granted a lease of (a) at grazing rates subject to the fuel contract, with the proviso that if the latter should be terminated at any time he should be entitled to a lease at the rate current at the time of application. He was also granted a lease of (b) at ordinary grazing rates without conditions. All this land would in the ordinary course have been leased at agricultural rates viz. Rs.30 per 100 acres.)

5. Mr. Smith's fuel contract bound him to plant timber approved by the Manager of the Railway. He accordingly planted wattle, not only with the concurrence but practically by the direction of the late Mr. Currie, expending on his operations according to himself over

£2,000

£2,000 and according to the Land Office valuation approximately that amount. His wattle has now come to maturity, but in the meanwhile it has been found that timber of this kind is not suitable for fuel for locomotives and the Railway authorities are unwilling to take it. It is true that Mr. Smith is offering it to them without the bark, which, as you are aware, is now considered to be the main asset of a wattle plantation, and that the calorific value of the timber is thereby somewhat reduced, but, although by insisting on its retention we might perhaps force him to break the contract himself instead of the Railway doing so, I scarcely think that such action, though doubtless strictly legal, would be equitable in the circumstances.

6. Mr. Smith has appealed to me against the decision of the Railway authorities in refusing to take his timber, but I could only tell him that if he considered himself aggrieved he should seek his remedy in the courts, failing settlement with the Railway by mutual arrangement. I attach a copy of the letter which I caused to be addressed to him on the subject. At the same time I must observe that my legal advisers are very doubtful whether the Government could successfully defend any action which

he might bring.

7. Subsequently during my recent visit to Nakuru I saw Mr. Smith and had a long conversation with him. He is an elderly man, somewhat embittered by a sense of grievance against the Government, in the main quite unjustifiable but in the present case having a certain basis in fact. I found him not unamenable to reason and quite ready to settle the matter in dispute if certain concessions were made to him.

8. What he asks is that his land should be leased to him on the same terms as those granted to Lord Delamere, whose treatment by Government as compared with his own he is somewhat inclined to criticize.

9. Lord Delamere applied for his land in 1903, fully a year before Mr. Smith and obtained his lease at the rate of $\frac{1}{2}$ anna per acre, the current grazing rate at that time which was doubled in May 1904 prior to Mr. Smith's application. The only unusual circumstances attaching to the grant were its size, 100,000 acres, and the fact that it included a large frontage of Railway Zone land, which a year later would certainly not have been leased at grazing rates except subject to such a fuel contract

contract as Mr. Smith's. The latter accordingly feels that he has been placed at a disadvantage in regard to his neighbour, though of course he has really no legitimate cause for complaint in this respect.

10. The effect of the concession which he asks would be that instead of paying Rs.30 per 100 acres for his 1,623 acres of zone land, the rate to which he is entitled owing to the lapse of the fuel contract, and 1 anna per acre for the other 370.75 acres, he would pay $\frac{1}{2}$ anna per acre on the whole area, i.e. Rs.62.30 instead of Rs.510, a difference of Rs.447.70, or roughly £30 per annum. This only represents interest at the rate of $1\frac{1}{2}\%$ per annum on his estimated outlay of £2,000 on the wattle, whereas the local rate is 8%, which leaves a very large margin for an over estimate and cannot be considered an inordinate demand for compensation.

11. There is, however, another aspect of the question. Could such a concession be drawn into precedent to any large extent? If that were the case I should be very chary of recommending it. I have, however, made careful enquiries and I find that, if these terms are offered to Mr. Smith purely as an act of
grace

grace in recognition of the fact that he has lost money by the failure of his fuel contract, there is not a single landholder, who would be in a position to prefer a similar claim.

12. To recapitulate, Mr. Smith is acknowledged by the Land Office to have worked hard and developed his farm well. He has admittedly suffered loss, not perhaps quite to the extent which he states, but still some loss, over his wattle planting. He is willing to accept as compensation a concession equivalent to a sum of about £30 per annum, i.e. the interest on a capital of say £400 at the rates current locally. Our legal position, if he takes action in the courts, is not satisfactory and the possible expedient of insisting on his handing over his wattle timber with the bark on would result in the loss of a valuable product and would almost certainly not prove to be a satisfactory fuel supply. Finally a settlement on the lines indicated would bring to an amicable conclusion what may almost be described as a long standing feud between the Government and Mr. Smith and would not at the same time establish a precedent of which others would be able to avail themselves.

18. I strongly recommend therefore that I may be authorized to offer Mr. Smith a lease of his whole area of 1,993.75 acres at the same rate as that granted to Lord Delamere, viz. $\frac{1}{2}$ anna per acre, purely as an act of grace conditionally on his foregoing all claims against the Uganda Railway Administration in respect of his fuel contract, such offer to be made "without prejudice".

I have the honour to be,

Sir,

Your humble, obedient servant,

Alonzo Bepko

GOVERNOR.

INCLOSURE

In Despatch No. 614 of August 10th 1915

THE SECRETARIAT, 419

NAIROBI,

EAST AFRICA PROTECTORATE.

September 2nd

1915
43135

REC'D
SEP 17 1915

Sir,

I am desired to inform you in reply to your letter of July 23rd respecting your contract with the Uganda Railway that His Excellency is of opinion that any difference of opinion between yourself and the Railway Administration, which is not susceptible of settlement by mutual arrangement, is a matter for decision by the courts and that he regrets that he cannot go into the question personally.

2. Should you think fit to address the Secretary of State on the subject your communication should be sent through this office in triplicate, in order that the Governor's remarks may accompany it, as provided for in the Colonial Regulations. I am to observe that it is most improbable that the Secretary of State will be prepared to investigate a complaint in respect of which you have your legal remedy.

I have the honour to be,
Sir,
Your most obedient servant,

sd. W. J. MONSON

Ag. Chief Secretary to the Govt.

Maude E. Smith, Esq.,

Njoro.

Gov. 43135/1915-

420

E.A.P.



5

23 Sept. 1915

Sir,

DRAFT.

E.A.P.

No. 701

Gov. Sir W. Belfield.

MINUTE.

Mr. Harper 22/9/15

Mr. Bottomley 22.9.15+

Mr.

Mr.

Sir G. Fiddes;

Sir H. Just.

Sir J. Anderson.

Mr. Steel-Mailand.

Mr. Bonar Law.

Have the honour
to accept the receipt
of your despatch No. 614
of the 10th of August on
the subject of the ^{land} case
held by
Lt. Col. C.E. Smith of
Njoro and to inform
you that I approve,
although with some
hesitation, of your
offering him a lease of
the whole area of
1993.75 acres
land on the terms stated
in para. 13 of your despatch.