

1935

1935

38006

KENYA

CO 533/453

38006

Nairobi Swamp.

Period

1/25/31.

Subsequent

Aug 29/31 11/1

Sub 6. Cotton by 3/3

20/31

Aug 31 11/5

Sub 6. Cotton by 2/5

20/31 11

A. 297

1. Sir J. Byrnes (to O)

11th Dec. 34 2

11/ Nairobi Swamp. Nairobi Swamp. Nairobi.
Nominal.

States the position regarding Major Grogan's
Nairobi Swamp which is considered unsatisfactory but
in view of the impossibility of finding funds for acquisition,
or canalisation of the river there is no way out of the difficulty.

Major Grogan called just after this
came. I told him of it & suggested that
as he was about to go back to Kenya
he had better see the Forester about
it: if he happened to do so I would
write Sir J. Byrnes. His only
word was "What's the good?" - and I
did not write.

As the position is not
clearly defined in the
and I think we must discuss
it with the Forester when he
arrives. My sympathies are
very much with Major Grogan
but (as and) I do not want
another Akaraki.

The Flood case - then 6. 11. 7 May.

V.C.B. 27.3.35 am

Mr C. Bottomley

I have not re-read this. I am expecting
Sir J. Byrnes to call in sometime next week.

I mentioned this to Sir J. Byrne yesterday. Actually Major Grogan did see him when he went back to Kenya but apparently the discussion was without result.

Sir J. Byrne said that the Municipality had now taken steps for the major drainage of the swamp so that Major Grogan was now in a position to carry out his share of the drainage and make the land fit for building. (This, of course, means that Major Grogan loses the rents which he now receives from the market gardeners on the site.)

I asked Sir J. Byrne if there ~~was~~ still any difficulty in the way of Major Grogan building or letting sites for building, from the point of view of the absence of any town planning scheme, and he said that, so far as he knew, there were no such difficulties.

I said that in my view Major Grogan was sincerely under the impression, at the time when it was agreed to drop legal proceedings, that the Government or the Municipality would proceed to negotiate for purchase, but Sir J. Byrne said that he was satisfied that there were no grounds for Major Grogan's impression.

We must now wait for Major Grogan to make some other move. It is something to be able to tell him that he is now able to look forward to active development, and I am quite sure that he would very much rather sell the land.

Mr. Flood:

You were present at the discussion and I should be glad of any correction of, or comments on the above before it is put by.

1685 23 5 38

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GOVERNMENT HOUSE,
NAIROBI,
KENYA.

11th December, 1934.

Dudmanlike

● My dear Bottomley,

No 13
7257/4

With reference to your semi-official letter of the 16th October on the subject of Major Grogan's Nairobi Swamp, I am sorry that I am unable to report any real advance in the solution of the problem.

In the first place, I must definitely repudiate Grogan's statement that the agreement between the Attorney General and himself was intended as a clearing of the ground for a continuance of purchase negotiations. On the contrary, it is quite clear from the Executive Council minute on the subject that we withdrew from the Acquisition Proceedings because there seemed to be a serious prospect of the award being a prohibitive amount, with a heavy bill of costs, and that the object of the acquisition - malaria prevention - might be obtained by the action of the Local Authority under the Prevention of Malaria Ordinance, 1929.

A memorandum by MacGregor written shortly before his meeting with Grogan when the agreement was signed shows that he had no misapprehension on the point. I attach a copy of the Memorandum.

Grogan refers to the Colonial Secretary's letter of the 14th March, 1930, in substantiation of his contention. It is difficult to see how any such construction can be placed upon the following.....

following statements contained in the letter:-

.....

"I am directed to state that Government is unable to accept any of these alternatives but renews its former offer of £80,000 as made to you in the Attorney General's letter No. L.85/4/13/68 of February 8th, 1930.

"I am further to inform you that, if this offer is refused, Government proposes to discontinue proceedings under the Land Acquisition Act and in doing so the Attorney General will put in a statement to be countersigned by you to the effect that Government considers it no longer necessary to take action under that Act and that, in the light of further knowledge of the circumstances in this case particularly as regards its acquiescence in the erection of certain buildings on the plot, it no longer proposes to question the Lessee's right to develop the plot for building purposes but will exercise its right under the lease and the Crown Lands Ordinance, 1902, to enter on the land and construct such arterial roads as are required for Town Planning purposes free of compensation. The Roads in question are shown on the plans of the Town Planning Authority which have already been exhibited for public inspection. The statement will also provide that each party in the Court proceedings shall bear its own cost.

"The position as regards the breeding of mosquitoes on this property will be a matter for the Local Authority to deal with under the Malaria Prevention Ordinance, 1929."

This letter, although dated two days after the statement signed by Grogan and MacGregor, was part of the same negotiations and was not a re-opening of any of the questions under discussion.

Proposals for purchase for £100,000 in Bonds were subsequently made by Grogan, but it was made quite clear to him that, in considering.....

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in considering them at all, Government regarded the previous negotiations as closed. Ultimately, on the advice of Executive Council, the offer was rejected. Since then the Government has had no direct connection with the subject, but the Municipal Council has been in fairly continuous negotiations with Grogan with a view to arriving at some satisfactory settlement of the difficulties, but no easy solution has emerged.

The main factor in the problem is the condition of the lease which permits Grogan to utilise by means of two canals one quarter of the flow of the Nairobi River for irrigation purposes. This permission has continuously been used by the Indian Market Gardeners, who are Grogan's sub-lessees, and their methods of irrigation are the cause of the malarious conditions which it is desired to remove. The title to the land was, on the advice of successive Attorneys General, regarded as an agricultural lease, the conditions of which prohibited the use of the land for any purposes other than agricultural, and it was on this assumption that the Acquisition Proceedings were initiated. The situation was entirely changed, however, when MacGregor, after reviewing all the circumstances, gave the opinion that the Government was not in a position to question the lessee's right to develop the plot for building purposes. The value of the property was thereby greatly increased and the probability that the award in the Acquisition.....

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NAIROBI,
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the Acquisition Proceedings would, in taking account of this opinion, be a prohibitive figure, caused Government to withdraw from the legal Action and leave Grogan to develop the property for himself.

The situation then was that the lessee was at liberty to develop the land as a building Estate, but as the greater part of the land is a Reclaimed Swamp it will be unsuitable for buildings and could only be rendered suitable by canalizing the river at a higher level and filling in the low-lying portions of the area to the level of the new river channels.

The river would have to be deflected from its present course for the purpose of canalization at Ainsworth Bridge, i.e., above Grogan's land, but, whilst the local authority appreciates that some portion of the cost of canalization should be borne by it, it considers that the adjacent landholders, including Grogan, should bear a share on a formula of distribution to be agreed upon. Moreover, as the authority's interest in canalizing the river is in order to remove a public health menace, it declines to consider spending public funds on this purpose unless the present irrigation ceases. Grogan on the other hand will not agree to any suggested formula or submit an alternative, nor will he agree to surrender the right which he holds under his lease to irrigate.....

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irrigate such portions of his land as he cannot for some years effectively dispose of for building purposes.

The Council is of the opinion, however, that considerable improvement in the malarious conditions can be effected in the meantime by a reconstruction of the irrigation canals and a radical alteration in the methods of irrigating the gardens. A drain is being constructed by the Council to carry away from other adjacent property surface water, which has previously passed into one of the irrigation canals, so adding to the bad conditions. When this has been completed the Lessee will be called upon under the provisions of the Malaria Prevention Ordinance so to improve the present irrigation arrangements that mosquito breeding will be eliminated. Some amelioration in health conditions may be hoped for on these lines, but Grogan's major problem will be left unsolved.

As regards the Municipal Rating Assessment the Valuation Roll was made in 1929 by Mr. Tannahill, who was selected from various tenderers as the Municipal Valuer, and the figure given by him for this land was based upon the potential value of the property as a building estate, with appropriate allowances for the costs which must necessarily be incurred before it can be developed, and for the period which must elapse before the sub-plot
can be.....

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GOVERNMENT HOUSE.

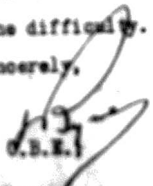
NAIROBI,

KENYA.

can be marketed. The valuation figure for the property was £197,331. Grogan, at the time, lodged no objection and since then made no formal appeal for a revision until a few weeks ago. I understand that Grogan says that, since negotiations for the purchase of the property by Government were proceeding at the time when his objection should have been lodged, he considered that it would be no concern of his and that, in consequence, he need take no steps in the matter. He claims, I believe, that the valuation is erroneous because, whilst it correctly represents a present market value, it is not an unimproved site value, since the valuer has failed to take into consideration the large sums of money expended in past years in transforming a papyrus swamp into an ordered estate. An appeal to the Council on these lines has recently been made, but since any revised valuation could not be made retrospective the matter is standing over for consideration when the new Valuation Bill, which is now in course of preparation, is ready.

The whole position is extremely unsatisfactory, but in view of the impossibility of either Government or the Municipal Council finding funds for acquisition or for canalisation of the River there is no easy way out of the difficulty.

Yours sincerely,


 SIR W. C. BOTTOMLEY, K.C.M.G., C.B., C.B.E.
 COLONIAL OFFICE,
 DOWNING STREET, S. W. 1.

Ref:No.L.85/4/13/74.

4th March, 1930.

The Honourable
The Colonial Secretary.

PLOT No.136 SWAMP AREA - NAIROBI.

At our interview with His Excellency, yesterday morning Major Grogan intimated that he was willing to have the pending proceedings before a Collector under the Indian Land Acquisition Act withdrawn without any order as to costs if a statement on behalf of Government were made to the Collector that -

- (a) Government after further consideration had come to the conclusion that the intended acquisition of the Swamp Area for town planning purposes was, in all the circumstances of the case, a misuse of the Act; and
- (b) that Government in the light of all the knowledge now in its possession did not any longer maintain that Mrs. Grogan's lease imposed any limitation of user.

(a) seems to me to follow from the recent decision of Executive Council that we should withdraw from the acquisition, using our statutory powers when necessary to have malarial nuisances abated and roads and communications made, leaving Mrs. Grogan to carry out the town plan of the area.

The word "misuse", which is Major Grogan's and not mine, might give rise to erroneous ideas in the minds of the public. I should prefer to say that in view of all the facts, and particularly of (b), it was no longer necessary to invoke the assistance of the Act.

To a statement as at (b) I can raise no objection. It has throughout been my contention that there was in the lease no such limitation of user, and such a statement may obviate possible difficulties in future.

If no such statement is made Government will have to pay a considerable sum, probably some hundreds of pounds, in costs.

I should be glad to know early whether I may be authorized to make such a statement, which will be countersigned by Major Grogan.

It will also be necessary to revoke the Gazette notice of intention to acquire.

(Signed) A. D. A. MacGREGOR.

ATTORNEY GENERAL.