

1937

38005

CO 533/476

38005

3^B

KENYA

3^B

LAND COMMISSION REPORT

WHITE HIGHLANDS

SALE OF FARMS AT MUKHORONI TO INDIANS

Previous

1936

Subsequent

R. 297

20/6/37

R. 309

19/7

McLachlan

1/7

in Flood

1/12

in C. O. 297

2/12

R 299

7/1

297

C.L.

LAND.
Nominal.

1. SIR A. WADE (S/O TO MR. FLOOD)..... 15.5.37
Ref. [I] on 38005/3B/36 comments on position and states that Mr. Ney proposes to leave for England shortly and intends taking up the matter direct with the C.O.

The position as regards the farms which Mr. Ney wishes to sell to Indians is very complicated. Kenya regards the farms as in the area reserved for Europeans and say that they cannot, therefore, be sold to Indians. Mr. Ney's case is that the area is not fit for Europeans to live in, but that Indians could stand it. On this point it is worth noting that the Land Commission recorded the view that it would be a foolish procedure to reserve permanently and exclusively for European use areas which had proved by experience to be unhealthy for Europeans, but possibly healthy for Asiatics. This, no doubt, is the explanation of the permission which has been granted in a few cases for the transfer of soldier settlement farms to Indians. Farms 1509, 1503, 1618, and 1586, in the Muhoroni area, are instances.

Para. 194B
Report.

To return to the actual farms Nos. 1580 and 1612, there seems to be some discrepancy between the position of the farms as shown in the diagram supplied by Mr. Ney and the position shown in the plan prepared by the Kenya Government illustrating the Highlands boundary. I attach a tracing from the latter, in which it will be seen that while farm 1580 is included in the Highlands area, farm No. 1612 is not. But I think that Mr. Ney has made a mistake in the numbering of the farms. Disregarding his numbering and relying on the position of the markings 'A' and 'B' in his diagram, it seems clear that the two farms in question are those ~~No. 1613~~ and No. 3102 in the blue tracing herewith, which are both within the Highlands boundary.

Encl. to No. 1
on 1936 file.

boundary according to the Kenya Government. This particular area is, however, in the region of the Muhoroni farms, regarding which a decision has yet to be taken. There have been conversations with the India Office on the subject. The large plan herewith is taken from the back of Volume III of the Land Commission Report and is referred to in pages 2837 and 2841 of that volume. Taking the righthand third of the plan, we have three suggested variants of the Highlands boundary, one of which (the dotted line) excludes all the Indian farms from the definition, but also excludes a large number of European-owned farms (two of which are the subject of Mr. Ney's petition), while another (the solid black line) includes both the Indian and the European farms. The intermediate suggestion separates Indian from Indian and European from European. It appears that Kenya has adopted the intermediate suggestion in arriving at its definition of the Highlands boundary. There can be no doubt that this has been done, because of the protest which might be expected from European farm holders who would find themselves excluded from the Highlands if the dotted line were adopted.

In paragraph 1957 of their report the Land Commission recommended a procedure for dealing with the small block of farms immediately to the east of Muhoroni which was alienated to Indians in 1906. They recommended -

(a) That this block should be deemed for the present to be excluded from the European Highlands.

(b) That if any plot comes into the market it should be permissible for either a European or an Asiatic to buy it.

(c) That when any such plot has been bought by a European it shall thereafter be included in the European Highlands.

The blocks marked in pencil on the big plan herewith, and according to the boundary description proposed by the Kenya Government, has been included in the Highlands. We do not know, however, what Kenya proposes to do about (b) and (c) of the Commission's recommendations.

Sir A. Wade says that there are only two methods by which Mr. Ney's request can be met, i.e. the alteration of the boundaries of the Highlands so as to exclude the farms in question, or non-exercise of the veto on inter-racial transfer. He says that both of these alternatives appear to be out of the question, and in the circumstances the Kenya Government can see no way of helping Mr. Ney.

It is only too obvious that Kenya does not want to start another Indian settlement in that area, but surely the first alternative is not out of the question if it can be proved that Mr. Ney's two farms are unhealthy for Europeans, but possibly healthy for Indians (vide paragraph 1984 of the report).

C. H. Groomer

12.7.1937

Mr. Groomer discussed this with me before meeting.

It is I think clear that we can disregard the discrepancy in the numbering of these

(for the present purpose)

forms on the sketch attached to
Mr. May's letter (38005/3B/36) & on
the map sent him by Kanga
to show the proposed boundaries of
the Highlands. Although the forms
are numbered on the sketch, Mr. May
never refers to them by their
numbers, but by letters A & B,
and since Kanga says that they are
both within the proposed boundaries,
it is clear that form B cannot be
No. 1612 as shown on the Kanga map.

It seems to me that
the only possibility of an accommodation
lies in the application of a view
expressed by the Commission in
paragraph 4 in Mr. Grossnickel's
minutes.

It is true that (in spite
of this expression of opinion) the
Commission (in para 356) endorsed
a view of the Sub. Comtee of
S. Co. that the boundary now
proposed represents "a fair & impartial
decision on a difficult question".
And the Commission expressed the
view, in full knowledge of the fact
that the line was drawn in preference
to one of the alternative lines,
because the latter "would have placed

the boundary too far below the 5000' line
& in an area not consistent with any
altitude be called favourable for
settlement by Europeans.

On this, two points emerge:-
(a) general "unsuitability" as to the
suitability of this area for Europeans;
(b) no definite indication that
the Commission gave any detailed
evidence to the forms in that area
from ~~the~~ point of view of their
general desirability at X.

Now, in this case (e.g. the
alternative accommodation for the
Tigon natives), the recommendations
of the Commission have had to
be modified because it was found,
in contradiction, that these actual data
(proposals were unsuitable.

It is not this case but dealt with
in a similar manner? The owners
of these farms allege that they are
quite unfitted for occupation by
Europeans; & that if this is so, their
withdrawal in the Highlands will be
in conflict with the general direction
of the Commission as indicated at X
as there is no evidence that

(7. Mr. Johnson
mentioned in 380
on Mr. May's plan
- (12)

Commissioner attempted to apply
their own criteria to this area,
and it will be reasonable for
the Gov. to ~~offer~~ appoint an
ad hoc Committee to review the
views of the Committee upheld
the views of the owners as to
the unsuitability of this land
for European occupation. The
Gov. should be on firm ground
in ~~establishing~~ it from the Highlands.

J. J. P. P.
12/1/37

To I.O. (w/enc as) 29/10/37
dft (draft as
- 12/3)

30-11-37

No reply has yet been returned to No 1 on 1/26,
and forwarded a memorial to the S. of S.

It has now been decided that there
shall be a Highlands Board, and the Gov. is
to consult on all matters relating to the
disposition of land within the Highlands. A
possible way of dealing with this application
might be for the S. of S. to direct that
it should be referred to the Highlands Board,
when constituted, for advice.

J. J. P. P.
12/24/37

This is one of the things which really had
to wait until we had got the Land Commission out of
the way, or at any rate, got started with the
necessary legislation. Mr. Mey did not turn up
and we have heard nothing further. The burden of
his petition was that he wanted to sell two farms to
Indians which he says are unhealthy but which, as
they were in the Highlands area as recommended by
the Commission, Government would not allow him to
sell to Indians. The boundary of the Highlands
having been agreed upon, we don't want to alter it
if it can be helped. We know that a good many of
the people in the Highlands would, in fact, like to
sell to Indians, and it is only a small number of
the settlers who are absolutely die-hard on the
subject. Still, it is not a matter in which the
Secretary of State can or should intervene. It is
for the local Government and the European settlers
as represented by the Highlands Board when that is
established. It may be considered that it is a
'dog in the manger' policy to prevent the transfer of
land to an Indian simply because it is included in
the

C. O.

38005/3B/37

37

Mr. Flood. (31.12)

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. 31.12.

Sir J. Shuckburgh

Perm. U.S. of S.

Party. U.S. of S.

Secretary of State.

DOWNING STREET.

~~December, 1938~~

6 JAN 1938

6/1

Sir,

I have etc. to refer to

Sir Joseph Byrne's Confidential despatch No.60 of the 6th of June, 1936, in which he forwarded an application from Mr. R.C. Ney, ~~concerning~~ for permission to sell two farms to Indians. From the plan submitted with Mr. Ney's memorial, it would appear that the two farms in question were those numbered 1580 and 1612, while ^{from} ~~in~~ the map showing the ^{proposed} ~~supposed~~ boundary of the Highlands Area, it would appear that the farms in question are those numbered 1613 and 3102. The boundary ~~as~~ drawn on the map of the Highlands leaves No.1612 outside the Highlands area.

DRAFT.

KENYA

CONFIDENTIAL

GOVERNOR

FURTHER ACTION.

2. The question of the disposal

of farms is not a matter in which I can well intervene, and under the proposed arrangements it will be a matter which can be settled by the Governor on the advice of the Highlands Board. I accordingly suggest that, when the Board is constituted, ~~this~~ this question, together with any others of a similar nature, may be referred to the Board and their advice taken into careful consideration.

3. On general principles I would point out that the Land Commission expressed the view in paragraph 1948 of the Report that it would be foolish to reserve permanently and exclusively for European use areas which had proved by experience to be unhealthy for Europeans, but possibly healthy for Asiatics. ^{In fact} ~~indeed~~ to attempt to reserve such areas for European occupation would appear to be impracticable, since it may be assumed that no European would wish to take them up and the land must therefore remain unused, unless it can be occupied either by Indians or by natives. It may ~~indeed~~ ^{be} ~~be~~ that such land ought to be left waste as being of no value, in which ~~case~~ ^{case}

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Parnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

no question of its disposal would arise.

4. The only method of meeting Mr. Ney's wishes would be either to alter the boundary in this area, which appears to be undesirable for many reasons, or to refrain from exercising the power of veto on the transfer to a non-European. ^{Having} ~~regard to the circumstances I should~~ ^{have thought that the latter alterna-} ^{ly to farms to} ~~tive would be practicable in the case~~ ^{which are} of farms ~~like these~~ ^{which are} situated on the edge of the Highlands area and regarded as unsuitable for European occupation ^{if that is a fair view,} but that is obviously a matter which is for the decision of yourself and your advisers.

I have, etc.

(Signed) W. ORMSBY GORE

Kua
Draft on
18005/2/37

2

27 October, 1937.

Sir,

I am directed by Mr. Secretary Ormsby Gore to refer to the letter from this office of the 31st of December, 1935, and previous correspondence in regard to the Highlands of Kenya, and to transmit to you, for the information of the Marquess of Aetland, a copy of a draft Order-in-Council which has been prepared to deal with the Highlands.

2. It will be observed that the draft in question merely purports to define the area of the Highlands in accordance with a gazette notice issued by the Government of Kenya. That notice will be published in due course and will simply set out the boundaries of the area which will be classified as the 'Highlands'.

3. It will be observed that nowhere in the Order-in-Council is there any reference to racial discrimination or to holding of land, although it is

proposed

THE UNDER SECRETARY OF STATE,
INDIA OFFICE.

proposed to set up a board to be called the Highlands Board to protect the interests of the inhabitants of the Highlands and to advise the Governor in matters relating to the disposition of land within that area.

The effect of this will be that the present administrative practice as set out in the White Paper of 1923 will remain in force unchanged.

5. With regard to the specific question of the farms now owned by Indians in the Mularoni area, the position will be that the farms will be left undisturbed. The present Indian holders will remain in possession as hitherto and will be at liberty to dispose of their holdings as they think fit in accordance with the recommendation of the Carter Commission report. It is true that the Commission recommended that the block of land in question should be deemed to be excluded from the Highlands, and that if any plot was bought by a European it should thereafter be included in the Highlands. This, however, on examination appeared to be unnecessary refinement, and no provision is made to deal with it.

6. The Marquess of Athlone will understand that the proposals are being referred to the Government of

Kenya for consideration, and I am to request that
the draft Order-in-Council may be regarded as
confidential.

I am,

Sir,

Your most obedient servant,

Signed

Nairobi,

16th May 1937.



Dear Flood,

(1) on 3200.5/3²/16
With our Confidential despatch No.60 of the 6th June, 1936 we sent a memorial addressed to the Secretary of State by Mr. R.O. Ney, seeking permission to sell certain farms at Muhareri to Indians.

We have received no acknowledgment of or answer to that despatch, but the purpose of this letter is to warn you that Mr. Ney proposes to leave for England shortly and has announced his intention of taking up the matter direct with the Colonial Office "with the assistance of influential friends".

The position is that there are only two methods by which Mr. Ney's request can be met, i.e. the alteration of the boundaries of the Highlands so as to exclude the farms in question, or non-exercise of the veto on inter-racial transfer. Both these alternatives appear to be out of the question, and in the circumstances we cannot see any way of helping Mr. Ney.

Yours sincerely,

J.E.W. Flood, Esq., C.M.G.,
Colonial Office,
LONDON, S.W. 1.