

1937

Kenya.

No. 38005/11

SUBJECT. C0533/476

Land Commission

Kikuyu Right-Holders Compensation to

Previous

1936

No. 38036/5/36.

Subsequent

1938

G.I.
LAND.

1. ACTING GOV'S DEPUTY (FILLING) ..10.....14.1.37.
Free copy of petition by three Kikuyu who have been evicted from the farm of a Mr. Boyd in the Limuru area, and stresses urgency of early progress being made with legislative measures required to implement Commission's recommendations, asking for an early reply to (1) on 38005/6/35), and attaches copy of report by Mr. A. Philips, stating that the natives who have been evicted can readily be accommodated and will be offered monetary compensation to which, under the report, they are entitled.

2. ACTING GOV. KENYA.....32.....12.2.37.
Fwd. Memorial with annexures submitted by Messrs. Daly & Figgis, on behalf of Messrs. Scott & Bradshaw (referred to in para. 2 of (1) on file) and comments thereon.

3. WAKAGUIMA, MWAI & THOGO..... 24.3.37
Submits copy of petition fwd. via Governor.

(Orig - 38005/7/37) Kenya 109. Conf 7.8.37
Urg. early promulgation of necessary legislation

① Bills in Delays 11.8.37
(Under petition)

② Crech Jones (16.6.35) 16.8.37
Check certain papers in connection with the burning of huts of natives living at Kimlea Estate & request action to be taken with 'The Times' re same.

East African Department.

Will you please advise what reply the Secretary of State should return to the attached letter from Mr. Crech Jones, M.P. (Labour) about the burning down of huts of natives at Kimlea Estate, Kenya.

Cy Constantis

17.7.1937.

7. Govt Exp Kenya - Vol. 126 - 6/7/47
 To, with comm. petition from Kamba to use Kanga with
 reference to claim of right to occupation of farms in Lunenburg area
 and lands very fertile - will be made to accelerated progress with
 legislative measures required

8. Jomo K. N. was - 22/10/47
 Public regarding... by...
 ...

9. ...

(10. ... 9. Govt Kenya - Vol. 109 - 12/8/47
 ...

9a. ...

Govt Kenya - Vol. 150
 (8/7) ...
 ...

Let me know ...
 ...
 ...

The action referred to by Mr. Costley-White was the consideration of the draft letters to Council and draft Ordinances required to give effect to the Land Commission recommendations, on which the necessary despatches were sent to Kenya at the end of October. There remain, however, the various petitions on this file to which no replies have yet been returned.

Mr. Costley-White

16
Mr. Costley-White has prepared the attached note (No.10) summarising the complaints which have been put forward. Apart from the petition of Messrs. Scott and Bradshaw forwarded with No.2, they relate principally to complaints by natives who have been evicted by European farmers who had become impatient at the delay in giving effect to the recommendations of the Land Commission.

No.1 contains a petition to the Governor which would not have required action by the Secretary of State if the Governor (as shown by the last enclosure to No.3) had not replied that the petition had been forwarded to the Secretary of State, and that in the meantime nothing could be done. Thereupon the natives in question petitioned the Secretary of State direct on the 24th March (No.3) and followed it up with another petition direct to the Secretary of State on the 11th of August (No.5).

The memorial in No.6 is addressed to the Commissioner for Local Government, and the Secretary of State only comes into it because in reply to Mr. Creech Jones's Question on the 2nd of July, the Secretary of State had promised to enquire into the matter.

In No.7 the Governor sent home another petition to the Secretary of State, ~~and~~ but did not offer any advice as to the reply which should be returned.

No.9 shows obvious signs of having been prepared by the same hand which prepared the petition in No.7, though it relates to a different

different farm. The original of this petition was sent to the Governor for transmission, but has not yet been received. It also has been the subject of a F.C.

I now submit, for conson, a draft despatch to the Governor, in an effort to tidy up all these loose ends.

J.J. Pascoe

20.12.1937

6. Gordon Ngigima to Tharau (6.5.3)
(Petition against being removed to new farm lands)

Since meeting as above, I have not across the paper petition which had been registered on the file relating to the transfer of the natives living at Figoni. Its only connection with that case is that this clan claims to have rights in the area of Forest Reserve & etc. the natives of Figoni are being moved. They also claim rights on certain European farms. The original of this petition was sent through the Gov., but has not come home. I have added a para. to the top of page.

J.J. Pascoe
24/12/37

12. Kenyan Central Assoc. (Kil) — 23.12.37
Requests against acceptance of Order
in Council Report following

I have included a response to this in the
draft.

J.E.G. 41-12.

Please see minutes on Nos. 9 and 11.
The difficulty arose when some of the Kenya
settlers, thinking that as the Carter Commission
recommended that natives should not any more
have rights in land in the Highlands, that
automatically gave them the right to turn off
such natives when they wanted to, proceeded to
remove from their farms some resident native
labourers and apparently some who might have
been regarded as right-holders. This action
was, of course, high-handed, but it is not a
matter which can be dealt with satisfactorily
by petitions. The difficulty was that in the
case of Messrs. Scott and Bradshaw that a free-
hold title was issued to them and they found
that there were natives on the farm. They
thought they had been compensated, but in point
of fact, they had not. Accordingly the appeal
of Scott and Bradshaw is that the Government
should proceed to remove the natives and as
the Governor points out in No. 2, this can only
be done when the Native Lands Order-in-Council
and the Native Lands Ordinance are in force.
Those documents are now with Kenya. On the whole
I think that Mr. Paskin's draft herewith
summarises the situation well and disposes of
the various memorials as well as can be done.

J. E. G.

31.12.1937

Sir C. Paskin

You stated on this case that
it was regrettable that the land
had been transferred to the
"title holders" - which was
being done as a form of
clearance. These rights were
lost by the 1902 Ordinance, but
the condition that if they left the
land would form part of the farm
in 1915. We pointed out in
our 1914 report that the J.L. would
make sure that any such
disputes were settled by 1900,
in some cases they have very
strongly and without the
knowledge of the Government and
down by the Commission that
arrange and must be
found.

The former land that in
land now, and may be that
in future matters will
be solved more smoothly.

Oct 11. 38.

I am thankful that Mr. Paskin
should take this in hand
& try to clear up all these

outstanding petitions etc.
It is very regrettable that
no action has been
taken within a reasonable
time on 11.6.

~~and~~

S.1.52

~~above~~

13 ~~to~~ Kenya Bank (S) (to make an in draft) basis 14 JAN 1958
(102 thousand)

+ Cases to be
returned to the
Director

Some can be
sent to 10/13

4
• Nairobi
ep 6

MS

C. O.

Mr. Parni 20/11/37.

Mr. Flood 3/12

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. (T. 28)

Sir J. Shackburgh.

→ Parat. U.S. of S. 5/8

Parly. U.S. of S.

Secretary of State.

See
Aned 5 on 1938 file

14 Jan 1938.

In the course of the past

year you have addressed to me a number of despatches in which you have drawn my attention to the unfortunate consequences of the delay which has occurred in introducing the legislation which is required to give effect to the recommendations of the Kenya Land Commission, and in particular to the difficulties which have been encountered in connection with the decision that the rights of natives on lands which had been alienated should be extinguished, and that powers should be taken to remove the natives in question from these lands.

8. It is hardly to be expected that the publication of the measures which it is intended to introduce to deal with these matters, will reconcile the natives concerned to the

necessity

DRAFT.KENYA.CONFIDENTIALGOVERNOR.24.3.37. (No. 3)
(without enclosure)

14.8.37. (No. 5)

G and A. 2.7.37.
(No. 1 on 38357/37 P.4.)16.8.37. (No. 6)
(without enclosure).

Telegram 23.12.37 (100 12)

FURTHER ACTION.

necessity of moving to the Reserves, but

I trust that it will at least encourage

the European farmers to continue to exercise

patience, which the majority of them have

so admirably displayed, until it becomes

possible for Government to take the necessary

steps for the removal of these natives.

3. In the meantime, it is necessary to

consider what action should be taken

in regard to a number of memorials which I have

received, but to which no replies have been

returned.

4. As regards the memorial from

Messrs. Scott and Bradshaw, which was forwarded

with Sir A. Wade's Confidential despatch No. 32 of (2)

the 12th of February, 1937, I request that, when

informing them of the progress which is now

being made in the arrangements for giving effect

to the recommendations of the Land Commission, you

will convey to them an expression of my sympathy

with them at the great inconvenience to which they

were put, owing to the inability of Government

to take any effective action in respect of Kimani,

and my appreciation of the forbearance which they

displayed

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bullock.

Sir J. Shackburgh.

Perm. U.S. of S.

Privy U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

displayed in such trying circumstances.

5. There remain for

consideration the memorials addressed

to me by natives who have been

summarily evicted by European farmers.

6. In his Confidential despatch

No. 10 of the 14th of January 1937

Mr. Pilling transmitted for my

information a copy of a petition

addressed to the Governor in Council,

by three Ahikuyu who had been evicted

from the farm of Mr. Boyd in the

Liguru area. In a letter dated the

21st of March, 1937, of which I enclose

copy, they sent me copies of that

petition and of the reply returned

thereto, and on the 11th of August

they addressed in a further

petition, of which I also enclose a

copy, representing that they had been

dispossessed of their fertile land,

that their wattle plantation had been

taken by Mr. Boyd without compensation,

and that, as a result of their eviction,

they

they were without means or land to cultivate, and praying to be restored to the land from which they had been evicted,

It is necessary that ^{15 petitioners} these people should be informed that I have received their petition and that, in view of the decision of His Majesty's Government to adopt the recommendations of the Kenya Land Commission, I am unable to accede to their prayer. I observe that the claim of these petitioners was allowed by Mr. Phillipps (vide paragraph 23 of his report), so that these natives will receive compensation from Government funds in common with all other right-holders who are required to move from the farms on which they have been living; ~~There remains for consideration the question whether any action can be taken in regard to hardships which they may have suffered as a result of their summary eviction by Mr. Boyd before any arrangements had been made for their accommodation on other land.~~ There seems to me to be a clear case for the payment of some additional compensation in respect of such hardships and it is for consideration whether

may
and if you think
it desirable to
make reference
to this in the
reply to them.

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Stinchburgh.
- Paras. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

an attempt should be made to induce the European farmers, who have taken the law into their own hands, to provide the necessary funds, or whether additional compensation in these cases should be paid from Government funds. In the event of your considering that there are political objections to the former course, I should not wish to raise any objection to the latter.

7. In this connection, I would call attention to the observation, at the end of Mr. Pilling's confidential despatch No. 10 of the 14th of January that having regard to the fact that there are now known to be many more of these right-holders than was understood by the Land Commission, the amount of compensation payable to each of them (on the basis of a total sum of £2,000) would be small. In this connection I would invite reference to paragraph 5 of my confidential (6) despatch of the 28th of

14 on 38005/6/37.

1937,
of October ¹ in which I observed that if
(not amended)
it is desired to remove any considerable
number of these natives beyond the few
hundreds contemplated by the Commission,
it would be necessary to consider the
provision of funds for the payment of
additional compensation on what, I suggested,
should be a generous scale.

8. The petition from Kirumbi wa Kungu (7)
forwarded with Mr. Pilling's confidential
despatch No. 126 of the 6th September asks
for the release of the three natives who had
been arrested, and asks that I shall give
directions for our re-instatement on the
farm in which some of us have been evicted,
and to prevent us from being molested by any
lessee from the Government or assignee of such
lessee." The papers with which I have been
furnished, do not indicate that any of these
natives have actually been evicted from the
farm. As three natives have been released, and
as I assume that there is no longer any question
of Mr. Morson himself taking any action to evict
any of those remaining on his farm, I am prepared
to

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Mears.
- Sir G. Tomkinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Parli. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

(6)

and of a letter dated the
11th of June 1937 addressed to
the Commission for Local
Govt. Lands & Settlement.

FURTHER ACTION.

you will be asked
to leave to your discretion the
question whether any reply to the
returned to this petition. If you
consider that a reply is desirable,
I should be glad to have your advice
as to what should be said to them.

9. I enclose a copy of a
question by Mr. Creech Jones in the
House of Commons on the 2nd of July
in regard to the alleged burning of
three huts and a grain store.

Subsequently I received from
Mr. Creech Jones a letter, dated the
16th of August, of which I enclose
a copy. The papers enclosed were
copies of a letter dated 6th February

Mr. Pilling from Karanja Wainaina
"M.A. Phillips, Advocate, Nairobi";
subsequent correspondence between
this man and the District Officer,
Nairobi. I request that I may be
furnished with a report on this case.

10. In a communication dated
the 1st of December I sent to you a
copy of a further question asked by
Mr.

38001/37/PA

1937

(No. 7 on 38005/37 P.Q.)

Mr. Creech Jones on the 17th of November

in regard to a petition from Njomo Sje Ngaru.

I had received a copy of this petition dated

1937,

the 22nd of October with an endorsement to (8)

the effect that the original had been sent

"through the proper channel." I assume that

I shall receive your observations, and advice,

on this petition in due course.

" I have also received a copy of a
petition dated the 16th of Sept 1937 from

(11)

Grishor Njuguna S/O THARAU, whose

claim claims rights in
certain European farms

as well as in the area of forest

known as NYAMWERU to which

the natives of TIGONI are being

moved. It appears that the

original of this petition was sent
to me through you and I assume

shall be glad to receive your observations
in due course.

12. Lastly, I enclose a copy of a telegram
addressed to me by the Kikuyu Central Association

NO. 12.

in which they appear to contemplate a further petition.
They inform that I have received their telegram,
and that the policy proposed by the Kenya Land Commission has been
accepted by the N. A. C. and that steps are being taken to

98 with 30 min
supplies if they
are

implement their decision.

(Signed) W. ORRISBY CORLE

CABLE AND WIRELESS LIMITED.

10 12



12 3 RD 00 1888



W 0949

Circuit.

Clerk's Name.

The first line of this Telegram contains the following particulars in the order named: 1. The name of the Telegram. 2. The name of the Office of Origin, number of Telegrams, Date. Time handled in and out of Office.

Copy to Kenya (12)

+ + PT PT 38 LIMURU 52 23 0950 WLESS NUMBER OF WORDS

SUBJECT TO CORRECTION WLESS -

SECRETARY OF STATE COLONIAL OFFICE LONDON -

WE REPRESENTATIVES KIKUYU TRIBE STRONGLY PROTEST YOUR

ACCEPTING ORDER IN COUNCIL REPORT BEG NO ACTION BE TAKEN

IMMEDIATELY OUR PETITION WILL FOLLOW REMINDING YOU SECTION

12 ROYAL CHARTER DATED 3 RD SEPTEMBER 1888 BY QUEEN

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Leeds 1: King St. Chambers, 52, Wellington Street

Leith 2: 64, Constitution Street

Liverpool 2: India Buildings, Brunswick Street

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Newcastle 1: 51, Market Street

Penarth 2: 1, Queen Street

Portsmouth 1: Cornhill

Sheffield 2: 60, The Wigmore

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(2 lines)

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Bank 5020

(6 lines)

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(4 lines)

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Sheffield 20283 (4

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CONTINUATION SHEET No. 2

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Secretary

PT-38

VICTORIA TO I B E A COMPANY KENYA GOVERNMENT NOTIFIED

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16/6
September 1937

The Right Honourable,
The Secretary of State for the Colonies,
LONDON.

Thro'
His Excellency the Governor,
Nairobi-KENYA.



MAY IT PLEASE YOUR LORDSHIP.

R. NYAMWERU LAND - ON THE NORTH WEST OF UPLANDS
STATION - IN THE FOREST DEPARTMENT - KIAMBU
DISTRICT - KENYA.

The Humble Petition of HISHON NJUNWA S/O THARAU respectfully
Sheweth:-

1. That Your Petitioner is a member of the Wakahia's clan (Mbaryi 346 men) of the Kikuyu.
2. That Your Petitioners have been the owners of lands at the north west of Uplands Station, Kiawaroga and Itungi, Limuru (On the north) which lands have been alienated away by the Government and are in the possession and occupation of Forest Department (Uplands) and Major H.V. Price (Kiawaroga) and Mr. L.E. Caine (Itungi) and others.
3. That hitherto Your Petitioners have been occupying their lands feeling perhaps that they have been safeguarded by operation of section 86 (1) of the Crown Lands Ordinance (Chapter 140 Laws of Kenya).
4. Since the Report of the Kenya Land Commission it seems to have been assumed by the leasee or occupier from the Government that Your Petitioners must of necessity be removed from the land according to the Carter Commission's recommendations of 1932. This Commission's recommendations is that our land Nyamweru to be exchange with Tigonu while we still lose such lands in the Past! The Carter Commission's recommendations (as a whole) were not accepted by the Natives chiefly (Kikuyu) as final one. This Commission seems to us that it demands His Majesty's Government to implementation of the recommendations of the Kenya Land Commission to render Section 31 of the Crown Lands Ordinance of 1902 and Section 86 of the Crown Lands Ordinance of 1915 and to violate the Royal Charter dated 3rd September 1888 granted by the Queen Victoria to the Imperial British East African Company.

And Section 12 of the Charter stated:-

"In the administration of justice by the Company to the peoples of its territories or to any of the inhabitants thereof, careful regard shall always be had to the custom and laws of the class or tribe, or nation to which the parties respectively belong especially with respect to the holding, possession, transfer and disposition of lands and goods, and testate, or intestate, succession, thereto, and marriage divorce, and legitimacy and other rights of property and personal rights".

Your Petitioners therefore humbly pray that Your Lordship will issue directions for our re-instatement on the farms in which some of us have been evicted, and to prevent us from being in any way molested by any lease from the Government or assignee of such lease, and at the same time Your Lordship will be pleased to order that our land to be returned to us.

And Your Petitioners as in duty bound will ever pray.

Erishon Njunga s/o Tharan

FOR AND ON BEHALF OF MBARI YA WAKAHIRIA.

Nos (1)(3) and (5).

The petition to the SPS at (6) covers the same ground as that at (1) & (3). It is the case of 3 Kings who have been evicted, in anticipation of the title, from land over which they have rights in the form of M. Day. Their claim to land is endorsed in Phillips report of 23. They allege they have no home and petition to be reinstated.

and (4)

In Phillips report: On the question of £2000 compensation and the now increased number of claimants see p 4 of report.

No (2)

Petition by Morris Selt and Bradshaw requesting that legislation should be enacted promptly to bring to an end an untenable situation on town estate in regard to one Kinare. Kinare's claim to land rights is admitted by Phillips although the same is argued with the fact that the land is forfeited in the absence of native rights in it. The action requested by the petitioners is being taken.

No (6)

see 3832/3) new 3832 PQ.

A native named Idaniana was given notice to quit a farm owned by a Major M. P. He desired the notice to quit as a result of which 3 huts and some things were burned. It is alleged a landowner (occupier) for Great Town asked a PQ about it, as a result of which it was promised to investigate the case. No action however has yet been done. Like to be published about the case from the end of (6) beyond the fact that Idaniana's claim was submitted to Phillips - with reference to (see also No 5a/18).

No (7)

see 460 para 4 (19)

The petition in this case is by natives who claim they have been wrongfully evicted from land, on which they have rights, by the owner - occupier Mr. Mason. The ends haven't make out that the evicted natives were not only those who have come on as squatters and who

registered no claims before Mr Phillips: all those who registered claims have been allowed to stay.

The ejected natives committed small crimes by way of venting their anger, for which some of them were imprisoned. The petition requests that the business may be reinstated. This has already in effect taken place, as they were released owing to the inadvisability of opening a case in the courts concerning native rights. All the natives - those with rights & squatters too - remain on the farm.

No(8)

A petition by a native raised by one of the Kikuyu claiming rights on the farm of Mrs Dennis from which some members of his tribe have been ejected. There is no inf. about his case. There is a note on the pt. that "original sent case paper claimed" so presumably it has not been sent on from Kenya.

No(11), was No(9) — has been dealt with in Tigani pt

Clark/Smith
1/12

AIR MAIL.

Original regd on 38005/4/37

KENYA

NO. 109

915

CONFIDENTIAL.

9 August, 1937.

Sir,

I have the honour to refer to my Confidential Despatch No. 70 of the 29th. April, last, on the subject of the removal of Kikuyu Natives from Tigoni.

2. The fears expressed in paragraphs 4 and 5 of that Despatch have now materialised and, as an illustration of the difficulties with which the Administration is at present faced, I attach copies of a letter No. LND.17/6/III/26 dated 21st. July, 1937, received from the Provincial Commissioner, Central Province, and a letter No. LND.2/2 Vol. III dated 3rd. July, 1937, addressed to the Provincial Commissioner, Central Province, from the District Commissioner, Kiambu. These will, I trust, serve to emphasize the importance and urgency of the early promulgation of the Order in Council expunging Native Rights outside Native Reserves and the other legislative measures to carry out the recommendations of the Land Commission.

3. On the kindred issue of the occupation of farms, particularly in the Limuru area, by natives who allege they have claims of rights to the lands in respect of which freehold title was issued to Europeans many years ago, the situation has become increasingly difficult, ever since my Despatch under reference was posted.

THE RIGHT HONOURABLE,
E. G. A. GREY-GORE, F.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

On the 22nd. June last I received a deputation from the Limuru District Farmers' Association and in reply to their representations informed them that this Government was unable to act in the matter pending the issue of the Order in Council, and the expungement therein of native rights in these lands. They fully appreciated the position but urged that action should not be unduly delayed in view of the difficulties which they were experiencing in restraining certain of the European farmers concerned from taking overt action against the natives.

4. The position is undoubtedly serious. During the last few weeks I am informed that the natives on certain of the farms in question have been joining by relatives and friends from the Reserve, all of whom claim to belong to the same Clan and to participate in the Clan's land claims. They have enlarged their cultivation on the farms quite extensively and in one case have deliberately cultivated a piece of land which they knew the farm-owner was on the point of ploughing up. They pay no heed to instructions as to where they should cultivate and their attitude to the farmers is intransigent to a degree. Last week one farmer essayed to fence off a portion of his farm. Holes for fencing posts were dug and overnight were filled in again by the natives. Four of his cattle were found dead from arsenic poisoning though no arsenic is possessed by the farmer. This matter was enquired into by the District Officer who reported that he had arrested four of the natives who were resident on the farm. He stated that this action alone prevented a breach of the peace. The natives were charged for a breach of the Resident Native Labourers Ordinance, 1925, and were remanded to Kiambu Gaol. When the matter was reported to Government on Friday last, it was evident

that, if a Court action in which the whole question of Kikuyu land rights would be raised was to be avoided, the natives would have to be discharged. The one thing which, for the last four years, this Government has been endeavouring to avoid is an action of this kind which would probably find its way to the Privy Council and would effectively hamper you in regard to the Order in Council.

There is no doubt that the natives know this and are trading on what they regard as Government's weakness. On the other hand the Europeans realize the Government's difficulties but cannot be expected to tolerate much longer the infringement of their freehold rights and the general obstructiveness of the natives.

5. Notice of motion has been given by Major F. Cavendish-Bentinck to the effect that an urgent Despatch should be addressed to you pressing upon you the importance of early action towards the promulgation of the Order in Council. This will be debated tomorrow. As this is a course which this Government has already pressed upon you in a number of Despatches I cannot but accept the motion, and I can only hope that nothing will be said during the course of the debate which will prejudice the issue.

The draft legislation prepared here was sent to your predecessor in May, 1935. Since then the under-noted 4 Despatches have been sent but to none of them has a single reply come:-

- Kenya No. 441 of 25th. August, 1936.
- Kenya Confidential No. 183 of 8th. December, 1936.
- Kenya Confidential No. 10 of 14th. January, 1937.
- Kenya Confidential No. 52 of 12th. February, 1937.

I feel sure that when this is brought to your personal notice you will readily appreciate the awkward position in which this Government has been placed and I would most earnestly beg of you to give me some indication of the reasons for the long delay in replying to these Despatches and of the difficulties which I assume you are experiencing in carrying into effect the Cabinet decision announced in the White Paper which was issued together with the Kenya Land Commission Report,

6. With the exception of the survey of the new Kasigau Reserve and the Mwachhi Valley exchange which will be completed in a couple of months' time - and these can be described forthwith, if necessary, with sufficient accuracy for the purpose of a Schedule to the Order in Council - everything is ready on this side for the gazetteing of the Highlands and the Native Lands. Local discussion of the draft Ordinance must - as has been pointed out in previous Despatches - take some appreciable time even if the general line of the drafts sent home with Kenya Despatch No. 72 of May 21st. 1955, are agreed to by you, though as you will be aware, several points of principle of prime importance were discussed in that Despatch.

Both you and I have come comparatively recently into this matter and I am confident that you will appreciate my difficulties and will understand my desire to be acquainted fully in regard to yours.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R. BROOKE-POPHAM

AIR CHIEF MARSHAL.
GOVERNOR.

COPY

OFFICE OF THE PROVINCIAL COMMISSIONER,
CENTRAL PROVINCE,
Nyeri.

21st July, 1957

Ref.No.LND.17/6/III/26

The Hon.Colonial Secretary,
Thro' The Hon.Commissioner for Local Government,
Lands & Settlement,
Nairobi.

OCCUPATION BY KIKUYU OF TIGONI TOWNSHIP.

I forward herewith copy of a letter from the District Commissioner Kiambu and would refer you to my Nos.LND.17/6/III/19 of 28.4.57 and LND.17/6/III/23 of 19.5.57 addressed to the Commissioner for Local Government, Lands and Settlement of which I append a copy for your reference.

2. I am aware from the contents of the Despatch No.70 of the 29th April 1957, to the Secretary of State that the difficulties of the position have been fully emphasised to the Secretary of State, but I would urge that the attention of the Secretary of State be again invited to the urgency of the matter and that no opportunity be lost of impressing on the Colonial Office the early need for action.

3. I have every sympathy with the District Commissioner who is compelled to see his own position and authority and those of Government undermined by the successful defiance of a handful of malcontents, who rely upon the alleged inadequacy of the law to deal with the recalcitrants. In my view, the law is entirely adequate but, in this matter, I must naturally bow to the advice of the Acting Attorney General as communicated by the Commissioner for Local Government, Lands and Settlement in his letter No.LND.20/12/13/1/50 Vol.II. of 11.5.57.

Sd.S.M. La Fontaine

Provincial Commissioner
Central Province

Copy to:- The Hon.Colonial Secretary,
for information.

The D.C.Kiambu.

Srd. July, ..

7.

The Hon'ble,
The Provincial Commissioner,
Central Province,
N. Y. S. I.

I beg to draw your attention to the following facts regarding the move of the natives living in Tigoni Township.

During the last 18 months these natives have been informed on numerous occasions at barabas attended by the Chief Native Commissioner, the Deputy Colonial Secretary, the Provincial Commissioner and the District Commissioner, that Government had decided that they must move off Tigoni Township. They have also been told that the Secretary of State has replied, in answer to their petition, that he is unwilling to reconsider his decision that they must leave Tigoni Township. Notwithstanding these announcements, however, Government has decided with the advice of the AG. Attorney General that the move of those who will not go willingly cannot be enforced until the issue of the Order-in-Council.

In April last I wrote to you that I considered it most important that the orders to move should be enforced as otherwise the Kikuyu Central Association would be likely once more, to become a power in the District.

Unfortunately there are already unmistakable signs that the prestige of this Association has increased considerably in the last two or three months with the result that they are once again looked upon by recalcitrant members and sections of the community as a means of avoiding or delaying obedience to orders issued by the Administration or Native Authorities.

It is well known that the Kikuyu Central Association consult Nairobi lawyers to advise and assist them

in their struggles against Authority and while I still have the Native Authorities and the vast majority of the tribal elders solidly behind me, the success of the Kikuyu Central Association in delaying obedience to orders in the matters of the Tigonj move (and the closing of the Independent schools) is inevitably causing many to doubt whether Government is prepared or able to enforce orders, even when issued by its Senior Officers, if the help of lawyers is invoked to oppose them.

Natives are beginning to realize that even if obedience to an unliked order cannot, in all cases, be avoided altogether, it can at any rate be delayed considerably by making it the subject of a letter or petition to an Officer of Government more senior than the one from whom the order emanated. It is difficult to see how this can be avoided, but the fact remains that this state of affairs tends to slow down all work and add considerably to the difficulties of the Administration in this District.

While the move of the seven and a half Tigonj clans who accepted compensation is still proceeding satisfactorily there are signs that the two and a half passive resisting clans are becoming more and more truculent by reason of their success in resisting the orders to move, and are now endeavouring to persuade those who have agreed to go, to change their minds.

Headman Luga reported recently that one of the recalcitrants had started to make use of some cultivated land which had been abandoned by a man who had already moved and it seems possible, if we have no power to stop this, that eventually the passive resisters and their friends will spread over the vacated portion of Tigonj.

It is unnecessary for us to stress the deplorable

effect which the success of the passive resisters in opposing Government's wishes is having on those who have consented to move and on native public opinion generally, as very few Kikuyu are sufficiently enlightened to appreciate that Government's forbearance is due, not to weakness, but to a desire to do nothing which is not scrupulously fair and legal.

I feel very strongly, now that the move has gone so far, that it is in the interests of Government's prestige and good Administration generally that it should be completed with as little delay as possible.

The Native Authorities and the Administration who were at considerable pains to obtain for the Tironi natives a piece of land acceptable to them, assure that they are getting a very fair deal and that it is in the ultimate interests of the Tironi natives themselves that they should move from this island of Crown Land in the middle of European farms to the Mwareru area which is consolidated with the main Kiambu Reserve and where they can develop unhampered by opposing European interests.

If an Order-in-Council is necessary before the move of the passive resisters can be enforced, I feel that every effort should be made to bring about its promulgation in the near future and, failing this, some other means of solving the problem should be found. No longer is only the move of a few Tironi natives at issue, the matter is now looked upon by all as a test of strength between the Kikuyu Central Association and other subversive influences on the one side, and Government and the Native Authorities on the other.

Our failure to deal with the Tironi passive resisters has, moreover, not only affecting native opinion in the Reserve, it is reacting adversely on the behaviour of squatters living as of right on European

effect which the success of the passive resisters in opposing Government's wishes is having on those who have consented to move and on native public opinion generally, as very few Kikuyu are sufficiently enlightened to appreciate that Government's forbearance is due, not to weakness, but to a desire to do nothing which is not scrupulously fair and legal.

I feel very strongly, now that the move has gone so far, that it is in the interests of Government's preservative and good Administration generally that it should be completed with as little delay as possible.

The Native Authorities and the Administration who were at considerable pains to obtain for the Tigonu Natives a piece of land acceptable to them, agree that they are getting a very fair deal and that it is in the ultimate interests of the Tigonu natives themselves that they should move from this island of Crown land in the middle of European farms to the Nyamwera area which is consolidated with the main Kiambu Reserve and where they can develop unhampered by opposing European interests.

If an Order-in-Council is necessary before the move of the passive resisters can be enforced, I feel that every effort should be made to bring about its promulgation in the near future and, failing this, some other means of solving the problem should be found. No longer is only the move of a few Tigonu natives at issue, the matter is now looked upon by all as a test of strength between the Kikuyu Central Association and other subversive influences on the one side, and Government and the Native Authorities on the other.

Our failure to deal with the Tigonu passive resisters has, moreover, not only affecting native opinion in the Reserve, it is reacting adversely on the behaviour of squatters living as of right on European

farms and making more difficult and urgent the settlement of that problem.

(Sgd) J. Gerald Hopkins.

District Commissioner.
Kiambu.

JGH/JMF.

VERY URGENT.

GITHURUA RARI
P.O. UPLANDS
KENYA DATE 22-10-1937 248

The Right Honourable,
The Secretary of State for the Colonies,
LONDON.

Thro' His Excellency the Governor-in-Council
Nairobi-KENYA.
The Provincial Commissioner, NYIRE,
and The District Commissioner,
KIAMBU- KENYA.

RECEIVED
10/30/37
C.R. 62

MAY IT PLEASE YOUR LORDSHIP.

RE. CLAIM FOR LAND (MBARI YA NGURU) OCCUPIED BY
MRS. J.V. DRUIRS -RUI-RWAKA RIVER- ON THE NORTH
EAST OF LIMURU STATION -KIAMBU DISTRICT-KENYA.

The Humble Petition of NJOMC S/O KIHKA respectfully
Sheweth:-

1. That Your Petitioner is a member of the Nguru's clan (Mbari 218 men) of the KIKUYU.
2. That Your Petitioners have been the owners of land at the north east of Limuru Station, which land have been alienated away by the Kenya Government and is in the possession and occupied by Mrs Druirs.
3. That hitherto Your Petitioners have been occupying their land feeling perhaps that they have been safeguarded by operation of section 86 (1) of the CROWN Lands rdinance of 1915 (Chapter 140 Laws of Kenya).
4. Since the Report of the Kenya Land Commission (1932) it seems to have been assumed by the leasee or occupier from the Government that some of Your Petitioners must of necessity be removed from the land according to the Carter Commission's recommendation. This Commission's recommendations as a whole were not accepted by the Natives chiefly (Kikuyu) as a final one. It is not very comforting to find emphasis laid by the administration on those findings of the Kenya Land Commission which suits the Policy of the Administration. What was the composition of that Commission? Was there a member of that Commission who could be said to have come to the enquiry with absolute impartiality? Their antecedents would not give that impression. Did the terms of reference and all the matters connected with those terms (of which you are very well aware) indicate such absolute impartiality? A Person's statements are taken or read against and not for him. You will pardon me feeling that the Commission was appointed to lend an air of legality to a policy of dispossession, and since his views is that, some Natives not being willing to be dispossessed of their ancestral lands was forced to leave.

This Commission also seems to us that it demands His Majesty's Government to implementation of the recommendations in their report to reader Section 31 of the Crown Lands Ordinance of 1902 and Section 86 of the Crown Lands Ordinance of 1915 (Chapter 140 Laws of Kenya).

Your Petitioners therefore humbly pray that Your Lordship will issue directions for our re-instatement on the farms in which some of us have been evicted, and to prevent us from being in any way molested by any leasee from the Government or Assignee of such leasee, and at the same time Your Lordship will be pleased to order that our land to be returned to us.

And Your Petitioners as in duty bound will ever pray.

SD. NJOMO S/O KIHKA *Njomo*

FOR AND ON BEHALF OF MBARI YA NGURU.

original sent thro' proper channel

AIR MAIL

KENYA
No. 126



GOVERNMENT HOUSE
NAIROBI
KENYA

CONFIDENTIAL.

RECEIVED
13 SEP 1937
C. O. REGY

16 September, 1937.

Sir,

I have the honour to forward a petition from Kirumbi wa Kungu with reference to a claim of right to the occupation of a farm in the Limuru area.

2. The incident to which reference is made was mentioned in paragraph 4 of ^{Kenya} confidential despatch No. 109 of the 9th. of August, 1937. The natives concerned have been released from custody and are now back on Mr. Morson's farm. I attach copies of a letter dated 10th. August, 1937, received from Messrs. Daly & Figgis, Advocates, Nairobi, and confidential letter No. LND.6/1/37 dated 10th. August, 1937, received from the District Commissioner, Nairobi, which describe from different standpoints the course of events.

3. The difficulties of the position were emphasized by the Governor in his telephone conversation with the Permanent Under Secretary of State. They were mentioned in the course of the Debate in Legislative Council on the subject of the delay in giving effect to the recommendations by the Kenya Land Commission. The assurance contained in Sir Cosmo Parkinson's telegram dated the 9th. August, 1937, that both Orders in Council will be ready in the Autumn, has to some extent allayed the fears amongst the Europeans but the individual native may be expected to maintain his

THE RIGHT HONOURABLE,
W.G.A. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

(4) on 38005/3/37

truculent attitude.

I trust, therefore, that every effort will be made to accelerate progress with the legislative measures required.

4. A copy of the speeches made in the Debate to which I have referred will be sent to you as soon as possible.

I have the honour to be,

Sir,

Your most obedient, humble servant,



GOVERNOR'S DEPUTY.

Limuru 6th August 1937.

The Right Honourable,
The Secretary of State for the Colonies.

His Excellency,
The Governor-in-Council
Nairobi.

GOVERNOR'S OFFICE.

MAY IT PLEASE YOUR LORDSHIP,

RE. CLAIM OF LAND (GITHUNDI) RIGHT NORTH WEST
OF LIMURU STATION AT (MUNDIRIO) KAMITI FARM
OCCUPIED BY MR. S. MORSON IN THE KIAMBU DISTRICT
KENYA.

The Humble Petition of KIRUMBI WA KUNGU respectfully
Sheweth:-

1. That Your Petitioner is a member of the KUNGU (GITHUNDI) clan (Mbari 179 men) of the KIKUYU.
2. That Your Petitioners have been the owners of lands at the North west of the Limuru Station which lands have been alienated away by the Government and are in the possession and occupation of Mr. S. Morson.
3. That hitherto Your Petitioners have been occupying their lands feeling perhaps that they have been safeguarded by operation of Section 86 (1) of the Crown Lands Ordinance (Chapter 140 Laws of Kenya).
4. That on the 1st August 1937 the District Officer, Nairobi ordered that Muiga wa Wagitwiki, Njau wa Karima and Waweru wa Gitau to be arrested and sent to Kiambu Prison until they will accept the move from this farm against our will. This is to confirm the following Telegram sent to His Excellency the Governor-in-Council on 3.8.37:-
 - " WE MBARI WA KUNGU PROTESTING AGAINST DISTRICTER NAIROBI DISTURBING
 - " AND ARRESTED MUIGA, NJAU AND WAWERU 1ST KIMBERE FORCING THEM TO
 - " QUIT FROM MR. MORSONS FARM LIMURU AGAINST SECTION 86 CROWN LANDS
 - " ORDINANCE CHAPTER 140 LAWS OF KENYA TAKE NECESSARY ACTION PENDING
 - " GOVERNMENT DECISION OUR REPORT WILL FOLLOW".
5. Since the report of the Kenya Land Commission it seems to have been assumed by the lessee or occupier from the Government that Your Petitioners must of necessity be removed from the land according to Carter Commission recommendations of 1932, of which recommendations (as a whole) have not accepted by the Natives (Kikuyu) as final one. This assumption seems to us that it demands His Majesty's Government to implementation of the recommendations of the Kenya Land Commission to render Section 31 of the Crown Lands Ordinance of 1902, and Section 86 of the Crown Lands Ordinance 1915 and to violate the Royal Charter dated 2nd September 1885 granted by the Queen Victoria to the Imperial British East Africa Company:-

And Section 12 of the Charter stated:-

"In the administration of Justice by the Company to the peoples of its territories or to any of the inhabitants thereof, careful regard shall always be had to the customs and laws of the class or tribe, or nation to which the parties respectively belong especially with respect to the holding, possession, transfer and disposition of lands and goods, and testate, or intestate, succession, thereto, and marriage, divorce, and legitimacy and other rights of property and personal rights".

Your Petitioner therefore humbly pray that Your Lordship will issue directions for our re-instatement on the farm in which some of usd have been evicted, and to prevent us from being in any way molested by any lessee from the Government or assignee of such leases, and at the time Your Lordship will be pleased to order that Muiga wa Wagitwiki, Njau wa Aarima and waweru wa Gitau to be released from Aiambu Prison.

And Your Petitioners as in duty bound will ever pray.

Kirumbi wa Kumpu

F/M

10th. August

37.

The Hon. The Ag. Colonial Secretary,

NAIROBI.

Sir,

We have been requested on behalf of Mr. and Mrs. Maroon the owners of Farm L.O.No. 237/27 and 5904 Limuru to write to you pointing out the very serious situation which exists in regard to the Natives on their farm.

The farm is a small one comprising some 252 acres of which 80 acres are planted with tea with a further 7 or 8 acres under pyrethrum and orchard.

There are in all 11 families of Natives squatting on the farm of which 7 have put forward claims of right which have been duly registered, but the remaining 4 families have registered no claims of ownership of any kind whatsoever.

The farm was purchased by our clients in the year 1920 and of the 11 families above referred to 3 only were residing on the farm when our clients took over.

The remaining 8 families came to the farm as labourers and were allowed to reside on the farm and cultivate small areas while in the employment of our clients.

In the year 1936 most of the natives refused either to work or to leave the farm and there are, in fact, only 4 individual natives working for our clients out of a total of about 30 resident on the farm.

Owing to the impossible position which had arisen our clients in September and October 1936 signed off all squatters who had not registered any claims of right to reside. No action was taken in regard to those who had registered claims in the hope that Government might arrive at a settlement

The Hon. The Ag. Colonial Secretary.

10th. August 1937.

of these claims within the near future in pursuance of the report of the Carter Commission.

In January 1937 the natives who had not registered claims were given three months' notice to leave and remove their crops and belongings as the result of which two left but the others refused to leave.

At the end of April 1937 Mr. Mullins (the District Officer) gave further notice to these natives to leave the farm within six weeks, but the natives remained on in spite of this notice.

Mr. and Mrs. Morson were in Mombasa in June and Mr. Mullins thought it better not to take any action in their absence so he gave the natives a further month's notice which they again refused and neglected to obey.

In view of the failure to comply with these notices four natives were arrested on the 1st. inst. and the case against them was set down for hearing at Tigmaji but, in view of the fact that Mr. Mullins would be an essential witness, it was decided that the case should be remitted for hearing before the Resident Magistrate at Nairobi and the accused were accordingly remanded in custody.

The case has never been heard but the natives have been released and have resumed occupation on the farm.

On the 27th. July several of our clients' heifers took ill and subsequently died and death has been shown to be due to arsenical poisoning, and on one occasion Mr. Morson (Jumr) had to sign a native who was treating him with gross incivility.

The attitude of the natives has for some time been intensely insolent, both to our clients and towards the Police, and there is open boasting of the inability of settlers or Government to deal with them.

We think it must be admitted that the settlers in the Igemu area have been most patient and have done everything in their power to assist the Government in Kenya in what is recognised as being a difficult situation but there is, undoubtedly, a real danger that - unless something is done soon

The Hon. The Ag. Colonial Secretary.

10th. August 1937.

to settle the native question and effect the removal of natives from farms - there may be serious trouble, and we can hardly imagine that the authorities at home are alive to the seriousness of the situation.

Our clients wish us to state that they are genuinely apprehensive that further injury may occur to their cattle and even themselves unless steps are taken for their protection, and they ask that arrangements be made for adequate police supervision at their farm.

Apart from the above, our clients are anxious to graze cattle on their farm and the land is becoming impoverished by native cultivation to such an extent that it will shortly be of little value.

We have the honour to be,

Sir,

Your obedient servants,
For DALY & FIDGIS,

LND. 8/1/37.

NAIROBI
10/Aug. 1937.

The Hon. The Ag. Commissioner for Local Government,
Lands and Settlement.

Kikuyu Claims of Right.

I reported to you personally on 5/8/37 and was taken by you to report to the Hon. Ag. Colonial Secretary, the Hon. Ag. Attorney General and the Hon. Chief Native Commissioner as to the present state of affairs in the Limuru area.

When Mr. Phillips considered the claims of various Kikuyu to rights on the farms the fact was very widely advertised and a large number of claims was put forward. Mr. Phillips at the time took particular care to impress on the natives that he was considering "individual" claims.

He drew up a list of people whom he considered had established prima facie claims of right before him.

In most cases these natives continued to reside on the farms and cultivated their small holdings as before, pending their removal to land in the Native Reserve and the extinction of their right by an Order in Council.

As time passed and no action was taken the natives extended their claims of right on these farms.

Not only have individual natives who did not appear before Mr. Phillips, or whose claims were rejected by him, put forward claims, but in the majority of letters and petitions recently addressed to Government the claims are put forward on behalf of some "mbari" or other.

"clan"

When Mr. Phillips considered the claims the area of these was not specified, but the claimants appeared satisfied to cultivate a reasonable small holding.

The position now is that in several cases the claimants are asserting their right to the whole farm. There are cases where they are allowing their goats to wander at random all through the European cultivation. They are also breaking up and cultivating large areas of land wherever they please on the farm, and employing friends from the reserve to assist them. In some cases this has been done to land which they know very well the European intends to develop.

The most serious case at the moment is that of Mr. S. Morsen of Gwalla Farm. I reported to you on 8/5/37 as to the position there and enclose a copy.

Since then the position has become much worse. Not only have the natives refused to concentrate their cultivation to one part of the farm, but they have now cultivated a large area which Mr. Morsen intended to develop.

Amongst the natives on the farm are five who did not establish claims of right before Mr. Phillips. As

they refused to move, I gave them notice in writing on 30/6/37 to remove themselves and their families by 29/7/37. They made no attempt to move, and were arrested for illegally residing. They have since been released on the instructions of the Hon. A. Colonial Secretary.

Within the last fortnight two cattle belonging to Mr. Merson have died from arsenical poisoning. This may be no more than a coincidence, and the case is being investigated by the Police; but it has certainly happened at an unfortunate time.

Mr. Merson has recently attempted to put up a fence on his farm. The holes which had been dug were promptly filled in by the claimants, and when the fence was erected part of it was pulled down.

I quote this case at length in an attempt to show that I consider the position is daily becoming more acute in the Limuru area.

Both Europeans and natives are coming to believe that the Order in Council will never be passed. The natives are daily adopting a more defiant attitude and extending their claims on the farms. The Europeans who hold freehold titles find that they cannot develop their farms as they are interfered with by the natives who, as matters stand at present, cannot legally be restrained by Government officers.

I am seriously apprehensive that some European will become desperate about the present state of affairs, and resort to direct action against the natives on his farm, and should this happen there is no knowing where the trouble will end.

(Sgd) A.C.W. Mullins.
DISTRICT OFFICER.
for District Commissioner

8th. May, 1937.
LND. 6/1/C/37.

The Hon. Commissioner for Local
Government, Lands & Settlement,
Nairobi.

KIRUMBI CLAIMS OF RIGHT.

Ref. Your No. LND. 20/12/1/1/99 of 27.3.37.

On 21.4.37 I visited Mr. Morson's Estate at
Limuru. The area of the estate was given by Mr. Morson
as 236 acres.

2. The native claimants have large areas where
they have cultivated on four different parts of the
estate, one being in a patch of forest.

These areas are filthy with dead standing maize
and weeds: there was one small patch of green maize
and some sweet potatoes, and goats were wandering about
in these shambas.

A considerable amount of wattle has been cut and
some of the shambas fenced with it.

Wire fences have been trampled down and the poles
are missing.

3. Mr. Morson wishes to concentrate the claimants
so that he can develop his estate which is at present
impossible with shambas scattered about everywhere. He
also wishes to plant up the spaces in the patch of forest
with wattle.

4. Of the claimants and their sons, only one will
work on the estate as is the case in many estates in
Limuru where there are claimants.

5. On 28.4.37 I met the majority of the claimants
and two men who had not established prima facie claims
at Tigon.

I discussed the situation with them for 5 1/2 hours
and wrote to Mr. Morson after the meeting. I enclose
a copy of this letter for your information.

6. My opinion is that Mr. Morson has been most
reasonable with the natives and that they are making
things extremely difficult for him.

Of the two men who signed the letter to the Hon.
Colonial Secretary which you forwarded for report,
Kirumbi wa Kungu established a prima facie claim of
right through his father: Mwiga wa Kituiki did not
establish a claim nor is there any record of his having
attempted to do so in any of Mr. Phillips' notes.

7. In view of this and as Mr. Morson does not
want him on his estate where he does no work, I gave
him six weeks notice as from 28.4.37 to remove himself
and his family.

8. In conclusion may I point out that the petitions
now being sent to you are on behalf of various "mbari"
whereas the claims considered by Mr. Phillips were
individual claims, a fact which he took particular
care to impress on the natives at the time.

(Sgd) A.C.M. MULLINS.
DISTRICT OFFICER.

Copy to:-
The Hon. Provincial Commissioner,
NYERI.

38
36
17
6
16th August, 1937

Rt. Hon. W. G. Ormsby-Gore, M.P.,
Colonial Office,
S.W.1.

Dear Mr. Ormsby-Gore,

I drew your attention in a Question to the burning of huts of natives living at Kimlea Estate when Mr. Durham seems to have taken the law into his own hands and destroyed three huts as well as property in respect of maize and cash to the value of Sch.1,250.

The enclosed papers represents the only additional information I have been able to gather, but a communication was addressed to the Commissioner for Local Government, Lands and Settlements at Nairobi in June last and the native concerned is still waiting to know what action the authorities intend to take. In any case, the action was high-handed and it seems a sound demand on the part of the native whose property was destroyed that some return should be obtained.

Your attention to the matter will oblige. I shall be glad if you will return the papers in due course.

Yours faithfully,

Atkinson

*Copy filed to Kings
June 6/37 on 1918 file*

11th August 1937. 37

LIMURU.

KENYA.

The Right, Honourable,
the Secretary of State,
for the Colonies,

LONDON.

MAY IT PLEASE YOUR LORDSHIP.

RECEIVED

17 AUG 1937

C. O. REGY

Sir,

MOST HUMBLE AND RESPECTFULLY SHEWETH BY GATHU S/O WAKAGUIMA
I have the honour to inform the receipt of your, No. L.P.R. 32885/37, of
1st June 1937, of our petition of 25/3/37, Limuru, under No. 141, sent
by Gathu S/o Wakaguima Limuru, and addressed to the Right Honourable
Secretary of State at London.

We ~~are~~ earnestly request, that your Lordship will be very interest-
ed to consider our petition, as we continually petition your
Lordship.

Your humble memorialist Gathu S/o Wakaguima most respectfully
sheweth. That you are His Majesty's representative as far as the
Native population of this country is concerned, and therefore their
grievances shall be carefully considered.

- (1) Your humble memorialist believes that all important points of his
people's cases with regard to their land claims were placed before
the land Commission. He therefore has to submit the principal points
with regard to (ITWGI LAND, L.P. No. 141 and KIKUPO LAND, L.P.
No. 141) in this humble memorial.
- (2) In connection with the memorial it was mentioned here that
before the report of the Commission was published all his lands
land, found uncultivated, and the land Commission, are now
cultivated and built upon, and the land are excellent. From these
pieces, although the Kikupopo land, the land is the land of all
people that they shall not be taken away from them. This
Commission was published.
- (3) Our families assure His Majesty's Government through you, Sir, that
while all are prepared to make every sacrifice for the Government
in times of trouble or need, the idea of our ancestral land being
taken by strangers is indeed very painful to us. In addition, by
losing these lands, we cannot maintain ourselves, because
the Native population, had during the war, contributed to the cost of
the war in such a manner and way as they could by their blood,
their cattle, corn, etc.:-
- (4) when the Europeans colonization first began, many large areas
of uncultivated land were granted to them, but even our cultivated
lands were taken away from us, and never any fair substitution has
been made.
- (5) The people of our families are under impression that the
final decision of their lands are Sir, in your hands. They have also
learnt that you have been invited by the white Settlers to visit
this Country. But as His Majesty's representative, you Sir, should
consider the Claims of the white or Black, with equal justice.

Although there is no slavery under the British Government, our condition is worse than that of the slaves.

- (7) The Native are very poor now, especially our families, because we have been removed from our ancestral land, two mentioned Cases) - and, now we are wandering about. Our Chief information is to state that we are entirely homeless and Shambaless. For that we earnestly request the Parliamentary Committee that our remaining uncultivated lands to be restored to us, while cultivated pieces are being considered. As we stated in our petition which was forwarded to you, Sir, by His Excellency the Governor and we too, on ~~XXXX~~ 25-3-37, and indeed too poor to obtain lands elsewhere. God had gifted us with fertile lands, with rich soils. If these are taken away from us, we have neither the means, nor the power to get such land in other countries. Our lands are equal to none and they cannot be parted with and these experiments have proved, a failure already.
- (8) Since the report of the Kenya Land Commissioner it seems to have been assumed by the lessee or occupier from the Government that, your petitioners must of necessity be removed from the land according to the ~~XXXX~~ Carter Commission recommendations of 1932, of which recommendations (as a whole) were not Accepted by NATIVE (KIKUYU) as a FINAL ONE. This Commission seems to us that it demands His Majesty's Government to implementation of the recommendations of the Kenya Land Commission to render the Section 31 of Crown Lands Ordinance of 1902, and Section 86 of the Crown Lands Ordinance 1915 and to Violate the ~~XXXX~~ Royal Charter dated 3rd September 1888, granted by Queen Victoria to the Imperial British East Africa Company: - In the Administration of Justice by the Company to the people of its Territories or to any of the inhabitants there of, Careful regard shall always be had to the CUSTOMS and laws of the class or tribe, or Nation to which the parties respectively belong especially with respect to holding, possession, transfer and disposition of lands and Goods, and testate or intestate, succession, thereto, and Marriage divorce and legitimacy and the other rights of property and personal rights".
- (9) That from the month of May 1936, we have been forcibly removed from our ancestral home, without waiting for His Majesty's Government which, your petitioners learn, it was one time proposed to promulgate to legalize any removal he has forcibly evicted your petitioners from the said farm on which they reside.
- (10) Our present position is that we have nowhere to go and cultivate our Crops, that is our annual crops of food; more, our planting of black wattle is no longer ours, for it has been forcibly taken from us by Mr. R. Boyd, without any compensation.
- (11) We are in effect, not only homeless, but without any means of obtaining money for the support of ourselves and our families and to pay the Government taxes.
- (12) For all these critical situations, we earnestly request, your Lordship, that our petitions be sympathetically considered.

(13) It is very much wished by our families that, for your SYMPATHETICALLY GUIDANCE and LEADERSHIP of this Colony that our petition will be accepted by you, Sir, and the Committee of the Parliamentary, and to be the present at the sitting of the above mentioned Committee. That we earnestly request that arrangements be made in good time for the planting season, which is imminent.

Your humble memorialist pray, and anticipates a favourable and reply from you in due course.

And your petitioners as in duty bound will ever pray.

I have the honour to be,

Sir,

Your obediently servant .

Bethu ya Wakagima
For (Mbari ya Wakagima.

LIMURU

KENYA.

P.O. BOX 39.

Limuru.

24.3.1937.

RECEIVED
-5 APR 1937
O. O. REGY

To the,

Secretary of State,

Sir,

We beg for your sympathetic ~~for~~ guidance and leadership to submit a copy of our petition forwarded to ~~by~~ His Excellency the Governor, which we had addressed to him, on 28th November last year together with a copy of his reply to us.

We have waited with patience for your reply, but no reply has yet been received.

Please receive these letters of ours and give us a favorable reply.

We beg to remain,

Sir,

Your obedient servants

.....
.....
.....
.....

For Mbari ya Wakaguima.

Copy this to Kenya Co

28th November, 1936.

To, H.E. The Governor-in Council,
Through
The Hon^{ble} the Chief Native Commissioner,
NAIROBI.

Your Excellency,

THE HUMBLE PETITION OF GATHU WA
WAKAGWIMA: Thogo wa Kwai and Njoroge Thogo Most Respectfully
Sheweth.

1. That your petitioners are Members of the Wakagwima clan (Mpari) of the Kilaya.
 2. That your petitioners have been the owners of lands at Limuru which lands have been alienated away by the Government and are in the possession and occupation of Mr. Boyd.
3. That hitherto your petitioners have been occupying their lands feeling perhaps that they have been safeguarded by the operation of Section 86 (1) of the Crown Lands Ordinance (chapter 140 laws of Kenya).
4. Since the report of the Kenya Land Commissioner it seems to have been assumed by the lessee or occupier from the Government that your petitioners must of necessity be removed from the land and without waiting for the Order-in Council which, your petitioners learn, it was at one time proposed to promulgate to legalize any removal he has forcibly evicted your petitioners from the said farm on which they reside.

Your petitioners therefore humbly pray that Your Excellency will issue directions for our re-instatement on the farm from which we have been evicted, and to prevent us from being in any way molested by any lessee from the Government or assignee of such lessee.

And Your petitioners as in duty bound will ever pray.

Sd.	GATHU WA	WAKAGWIMA.
"	THOGO "	MWAI.
"	NJOROGE"	THOGO.

DEPARTMENT OF LOCAL GOVERNMENT. 42
LANDS & SETTLEMENT.

NAIROBI JANUARY 22nd. 1937.

NO. LND. 20/12/1/1/82.

Sir,

I have to refer to your Petition of the 28th. of November last addressed to His Excellency the ~~Governor~~ Governor in Council through the Chief Native Commissioner.

I am instructed to inform you that your petition has been forwarded to the Secretary of State and that pending his reply His Excellency the Acting Governor does not consider that any useful purpose would be served by an interview.

I am, Sir,

Your obedient servant,

SD.

C. E. Cuortimor,
AG. Commissioner for Local Government,

LANDS AND SETTLEMENT.

Mr. Gathu wa Kaka, Galian,
P.O. Box 39,
LIMURU.

KENYA.

No. 32



43
GOVERNMENT HOUSE
NAIROBI,
KENYA

12 FEBRUARY 1937.

CONFIDENTIAL.

Sir,

With reference to Kenya Confidential despatch No. 10. of the 14th January, on the subject of the Kenya Land Commission Report, I have the honour to forward for your consideration a Memorial with annexures submitted by Messrs. Daly & Piggis, Advocates, acting on behalf of Messrs. Scott & Bradshaw, to whom reference was made in paragraph 2 of the aforementioned despatch.

2. On page 2 of the Memorandum there is a statement to the effect that the agreement under the Resident Native Labourers' Ordinance is inconsistent with the existence of any other right to occupy the land in question. On page 9 it is stated that "the fact that Kimani executed a Squatter's Agreement in 1926 is, at all events, an indication that his idea of a right to occupy is of recent origin". I am unable to agree with these two statements, for at the time in question, efforts were made to regularise the position of natives resident on alienated farms, and the fact that a native agreed to enter into a contract under the Resident Native Labourers' Ordinance cannot be held to prejudice a claim of right or, indeed, to indicate that he did not honestly believe that he had such claim of right.

THE RIGHT HONOURABLE
W. ORMSBY GORE, F.C.S., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON. S.W. 1.

Apart from these two points, I am satisfied that the Memorandum contains a reasonable and accurate statement of the position and that the recital of facts is substantially correct.

3. The criminal proceedings to which allusion is made in the Memorial were in respect of the damage done to the property by tree destruction. If successful, these proceedings would have resulted in some punishment being inflicted on Kimani but would not have affected his occupancy of a part of the farm. The defence would of course have been that Kimani was dealing with his own property and a Court action involving the validity of Crown Titles might have resulted.

In order to effect Kimani's removal from the farm action was therefore proposed at one stage under the Native Authority Ordinance, viz. Section 11 as amended by the Amendment Ordinance of 1928. It appeared, however, doubtful whether such action though legal was within the intention of the amending Ordinance, and in any event Sir Joseph Byrne decided, with the concurrence of his principal advisers, that it would be impolitic to make use of an instrument which it was not contemplated should be brought into general operation merely because in one case a change of European ownership of land was in progress. I am satisfied that that decision was correct and that the only way of dealing with this class of case is as part of the comprehensive land adjustment and compensation recommendations of the Kenya Land Commission.

In these circumstances the Attorney General considered that it was unlikely that a Magistrate would be satisfied that Kimani did not believe that he had a bona fide claim of right to the land in question and therefore a right to cut down the trees. He therefore entered...

entered a nolle prosequi.

4. The name of the native concerned, Kimani wa Muratha, appears in the list attached to Mr. A. Phillips' report, to which reference was made in Sir Joseph Byrne's despatch No.441 of the 25th August, 1936. A copy of this Report was forwarded to you under cover of Mr. Pilling's Confidential despatch No.10. of the 16th January last. The detailed list of persons attached to the Report was not enclosed and I give below the list in respect of this farm, from which it will be observed that Kimani has a considerable number of dependants:-

<u>Name.</u>	<u>Sons & Brothers.</u>	<u>Women.</u>	<u>Children.</u>	<u>Remarks.</u>
Kimani Muratha.	-	6.	30.	
Gatundu "	-	2.	1.	
wanjuki Chiuri.	2.bros.	-	-	2.Bros. Kimani and Mbugwa wa Gachomba. Gachomba is their uncle & lives on Pirie's farm.
Kuteini Kaguru.	-	1.	2.	Claims through deceased father.
Gichuhi Njonge.	-	-	-	Left recently.
Ngure Nyamoni.	-	-	-	Left since 1932.
Gichuki Kiarie.	-	2.	10.	" " "
Kiaba Kanyari.	-	-	-	" " "
Gachinga Muratha.	-	-	-	" " "

5. I am informed that the inconvenience caused to the purchaser of the farm and the difficulties attendant on Kimani's cultivation have recently substantially increased, resulting in the present submission of this Memorial. The Memorandum was in fact prepared over eight months ago but the Petitioners decided not to forward it at the time in the hope that the matter might be settled without the necessity of adopting this course. Messrs. Scott and Bradshaw concluded the agreement to sell the land but also undertook...

undertook to do everything in their power to adjust the question of native rights by continuing their negotiations with Government.

6. The grounds on which Kimani's claim is based are similar to those governing the claim of three evicted Akikuyu whose Petition was forwarded under Mr. Pilling's despatch under reference. Both the farms concerned are situated in the Limuru area, where there are several other cases of this nature which are likely to cause trouble in the immediate future. In this connection I would invite attention to the last words of Mr. Phillips' Report: "there was abundant evidence of their (i.e. the Akikuyu belonging to the Kiambu District) strong antipathy to the idea of accepting monetary compensation".

7. The only solution of this and similar cases lies, as I have said, in the legislative measures required to give effect to the recommendations of the Kenya Land Commission, which were forwarded for your consideration in my Confidential despatch No. 72 of the 21st May, 1936. I cannot stress too strongly the urgency of reaching finality in this matter. I should be glad to learn, therefore, whether the drafts of the two proposed Orders in Council may be expected in the near future.

8. In conclusion, to return to the immediate instance in respect of which I am forwarding the Memorial, I should like to express my sympathy with Messrs. Scott & Bradshaw, who have conducted themselves with commendable restraint in very trying circumstances for a period of over two years, and, in common with certain other European landholders, have been carrying on in the hope that the question of native claims of right on their farms....

-5- 47
farms would be speedily settled by the issue of the
proposed Order in Council.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

Arthur

ACTING GOVERNOR.

MEMORIAL

TO THE RIGHT HONOURABLE,
HIS MAJESTY'S SECRETARY OF STATE FOR THE COLONIES

FROM MESSRS. SCOTT & BRADSHAW

49
15th January, 1937.

To,
The Right Honourable,
His Majesty's Secretary of State for the Colonies,
Downing Street,
L O N D O N, S.W.1.

Sir,

Re. NATIVE OCCUPATION OF FREEHOLD LAND AT LIMORU.

We respectfully beg to lay before you certain facts in reference to the occupation of our freehold land by natives.

We have done everything in our power to have the matter adjusted without reference to you, but our efforts have been ineffectual.

There is little doubt that any natives who were entitled to any compensation at the time the freehold title was issued were, in fact, compensated, but the Government records on the matter would appear to be faulty.

Government has issued a freehold title without any reservation, and we have developed our farm relying upon the validity of the title issued by the Crown and it would seem to us, in the circumstances, that there is a distinct obligation upon the Crown to take steps to either remove the natives without compensating them, or to satisfy the natives by compensating them if the Crown still considers that there is any doubt as to their having been compensated when the titles were issued.

The failure to remove the natives in question is causing very considerable trouble among the other squatters, and it is certainly of importance that the matter should be settled with as little further delay as is possible.

(2)

The Rt. Hon. H.M.'s Secretary of State
for the Colonies.

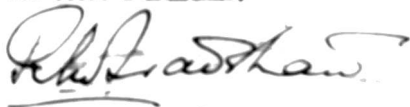
The facts are set out in the Memorandum which is forwarded herewith and the correspondence with the various Government Departments in connection with the matter.

We feel confident that; when you have perused the files, you will be satisfied that we have done everything we could to assist Government while maintaining our own rights, and that our Memorial will receive your favourable consideration.

We have the honour to be,

Your Excellency's Obedient servants,

For SCOTT & BRADSHAW,



MEMORANDUM

RE

NATIVE CLAIMS ON FREEHOLD LANDS

OWNED BY

MESSRS SCOTT & BURNETT

LINCOLN.

Memorandum re claim of Kimani wa Muratha to occupation on Farm of Messrs Scott & Bradshaw at Limuru.

the lands in question were purchased by Messrs Scott and Bradshaw in the year 1912 from Mr. Clement Hirtzel, who held them under a clear Freehold Title issued by the Crown in the year 1909, subject to the Crown Lands Ordinance 1902.

Section 30 of the Crown Lands Ordinance provides that the Commissioner shall not sell or lease any lands in the actual occupation of Natives, while Section 31 makes certain exceptions in regard to Leasehold.

Section 5 (1) of the Crown Lands Ordinance 1902 provides that upon the payment of the purchase price the land shall vest in the purchaser.

The issuing of this Freehold Title clearly implies that the Crown had satisfied itself that prior to its issue there were no Natives in such occupation of the land as to give them any rights or that - if there had been any such Natives - they had been duly compensated for the abandonment of any such rights as might have previously existed.

In many cases in which Native rights were compensated for the natives were in fact allowed to continue in occupation either because they entered into the service of the purchaser or because they were elderly people whom the purchasers did not wish to turn off the land, but in no case could a Freehold Title be legally issued until all claims of natives with regard to the land covered by such Title were absolutely disposed of.

Kimani wa Muratha was not, at the time Messrs Scott and Bradshaw purchased the farm in question, residing on that farm but his father who was an elderly man was occupying a small shamba on the farm in quite a different position to the area now claimed by Kimani.

It is presumed that he had been compensated when Mr.

Hirtzel obtained his Freehold Title and, because of his age, was allowed as a matter of grace to remain in occupation of his shamba.

Some time after Messrs Scott & Bradshaw had purchased the farm Kimani came to them and sought and obtained employment on the farm and, as is usual, he was allowed to reside on a specified portion of the farm while in the employment of the owners.

The Resident Natives Ordinance came into force and, under its provisions it became necessary for natives in employment of private farms and residing thereon to execute agreements and in the year 1926 Kimani signed an agreement for 2 years, which agreement is inconsistent with the existence of any other right to occupy the land in question.

The Authorities experienced considerable trouble over these agreements and the District Officers in many cases unofficially indicated that they should not be renewed.

Kimani remained in the employment of Messrs Scott and Bradshaw for a number of years but eventually became concerned in proceedings with regard to other land claimed by him - Messrs Scott and Bradshaw found him becoming very unsatisfactory and having a bad influence over other employees and they accordingly told him that his service must be terminated and that he must vacate the shamba which he had been occupying while in their employment. It might be pointed out that there was no hardship in this as Kimani was entitled to a considerable area in the Native reserve.

The only effect of this notice was that Kimani refused to leave and depredations were effected under his direction on a forest area which is some distance from the area which he occupied.

Information was given to the Police and criminal proceedings for malicious injury to property were instituted

against Kimani.

On the day upon which the Criminal Case was listed for hearing the Assistant District Commissioner, before whom the case was to be heard, intimated that he was not prepared to let the case proceed at present, as Kimani was claiming a right to remain on the land in question and the Carter Commission report had not yet been implemented.

Messrs Scott and Bradshaw then consulted their Advocates who got into touch with the Attorney General and pointed out that the Criminal proceedings had nothing to do with the Carter Commission and that the report itself merely recommended the compensation of natives where it could be shown that they had in fact been removed from lands which they had been previously entitled to occupy without compensation having been paid.

The Attorney General agreed that the prosecution should go forward and intimated that the Provincial Commissioner was the proper person to approach with a view to removal of the natives.

A letter dated 27th August 1935 (copy attached) was then written to the Provincial Commissioner.

This letter shows the reasonable attitude of the owners of the farm and it may here be pointed out that at this stage there is little doubt that they could have effected the removal of Kimani by private arrangements as to compromise but this they did not attempt in view of the expression of the view by Government that the effect of such a settlement might be to induce a large number of natives to prefer claims for compensation.

A copy of the letter to the Provincial Commissioner was sent to the Attorney General under cover of a letter of the same date (copy attached).

A reply dated the 31st August 1935 (copy attached)

4.

was received from the Provincial Commissioner stating that he thought it inadvisable to take any action pending Police investigation. A further letter dated 10th September 1935 (copy attached) was written to the Provincial Commissioner explaining that the Criminal proceedings did not affect the necessity for action under the Native Authority Ordinance.

A further interview with the Attorney General took place on the 11th September 1935 and a further letter to him was written on the 12th September 1935 (copy attached) setting out the owners' views.

A letter dated 14th September 1935 (copy attached) was received from Crown Counsel purporting to throw the responsibility for the Criminal proceedings on the owners and this contention was dealt with in a reply from the Owners' Advocates dated 17th September 1935 (copy attached).

A further letter was then received from the Provincial Commissioner dated 17th September 1935 (copy attached) definitely refusing to take any action under the Native Authority Ordinance until the hearing of the Criminal proceedings had been completed.

The owners' Advocates then wrote a letter to His Excellency The Governor dated the 24th September 1935 (copy attached) setting out the facts fully and emphasising the urgency of the matter in view of negotiations for sale of portion of the farm.

After a formal acknowledgment from the Private Secretary to His Excellency, dated 26th September 1935 (copy attached) a letter dated the 2nd October 1935 (copy attached) was received from the Provincial Commissioner stating that he had hopes that Kimani would be removed in the near future and further hoped that the owners would do nothing in the meantime with regard to compensating the natives.

On receipt of this letter it was considered that the

was received from the Provincial Commissioner stating that he thought it inadvisable to take any action pending Police investigation. A further letter dated 10th September 1935 (copy attached) was written to the Provincial Commissioner explaining that the Criminal proceedings did not affect the necessity for action under the Native Authority Ordinance.

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After a formal acknowledgment from the Private Secretary to His Excellency, dated 26th September 1935 (copy attached) a letter dated the 2nd October 1935 (copy attached) was received from the Provincial Commissioner stating that he had hopes that Kimani would be removed in the near future and further hoped that the owners would do nothing in the meantime with regard to compensating the natives.

On receipt of this letter it was considered that the

matter was settled and that immediate steps would be taken for the removal of Kimani.

The owners received a letter from their Advocates dated 5th October 1935 (copy attached) enclosing a copy of the letter dated 2nd October 1935 received from the Provincial Commissioner.

The Attorney General then rang up the owners' Advocates and suggested that in view of the fact that Kimani was being removed it might be advisable to adjourn the hearing of the Criminal Proceedings pending the removal of the natives.

The owners' Advocates replied on the 7th October 1935 (copy attached) suggesting adjournment to a definite date.

A further letter dated 7th October 1935 (copy attached) was written to the Provincial Commissioner setting out the position and expressing satisfaction at the arrangements for removal of the natives.

The Criminal Case was mentioned in Court and the proceedings were adjourned to the 14th November 1935.

It was considered that everything was then settled when, to the surprise of the owners' Advocates, they received a letter from the Colonial Secretary dated the 14th October 1935 (copy attached) entirely countermanding the arrangement as set out in the last letter from the Provincial Commissioner and intimating that nothing would be done with regard to removal of the natives in question until the recommendations of the Carter Commission were carried into effect and stating that steps were being taken to inform Kimani that upon the enactment of the necessary measures he would be compelled to remove himself from the land.

The owners' Advocates immediately rang up the

Colonial Secretary and pointed out the loss which would result to the owners if the natives were allowed to remain on the lands for an indefinite period.

There was then an interview at which the Colonial Secretary, the Attorney General and Mr. Figgis of the firm of Daly & Figgis, were present and it was arranged that two Senior Officers should meet the owners and Kimani on the farm with a view to effecting the removal of Kimani.

This arrangement was not carried out but the Colonial Secretary called Kimani to his office and (we are informed) with the Chief Native Commissioner present told Kimani that it would be better for him to leave at once (or shortly) as he would eventually have to leave and if he left promptly he would probably get higher compensation from the owners than he eventually would get if he remained on the land. Kimani, with apparently full knowledge of the contents of the Colonial Secretary's letter of the 14th October, stated that he was not prepared to leave until all other natives were removed from lands occupied by them to which they made claim and that he did not want to be compensated by the owners.

The matter was again referred to His Excellency the Governor and a letter dated the 25th October 1935 (copy attached) was written to His Excellency pointing out the unsatisfactory state of affairs as far as the owners were concerned and also the danger of allowing natives to adopt an attitude such as that adopted by Kimani.

Subsequently the Colonial Secretary pointed out that the statement with regard to telling Kimani to leave the farm, contained in the letter addressed to His Excellency of the 25th October, was not strictly accurate and this error was rectified by a letter dated 21st November 1935 (copies attached) addressed to the Colonial Secretary and His Excellency the Governor respectively.

A further letter dated 1st November 1935 (copy attached) was written to the Colonial Secretary pointing out the urgency of the matter and asking whether government was prepared to take any action and a reply was received dated 13th November 1935 (copy attached) stating definitely that no action would be taken until the issue of an Order in Council giving effect to the recommendations of the Kenya Land Commission Report.

In the meantime a letter dated 13th November 1935 (copy attached) was received from the Attorney General stating that he had filed a "nolle prosequi" in the Criminal proceedings as he was not satisfied he could succeed and considered that a failure to succeed would only aggravate the position.

A reply was sent dated 13th November 1935 (copy attached) stating that in view of the withdrawal of the Criminal proceedings it was hoped that immediate steps would be taken for the removal of Kimani.

The net result of this correspondence was that the owners' Advocates had to inform the Advocates for the prospective Purchaser (Messrs Delany & Stratton) that the owners could not give vacant possession of portion of the farm and a reply dated 20th November 1935 (copy attached) was received stating that the option which would expire on the 25th October could not be exercised but that, if vacant possession could be given Messrs Delany & Stratton's client would consider further negotiations.

A letter dated 21st November 1935 (copy attached) was then written to the Colonial Secretary setting out fully the owners' claims and point of view and asking for replies to very specific queries.

The matter being then one of extreme urgency a prompt reply was expected and, in view of the absence of such a reply, the prospective purchaser definitely refused to

8.

proceed with negotiations and the owners had to refund the Option money.

A letter was written on the 29th November 1935 (copy attached) pointing out the result of Government's decision and the only result was that a letter dated 16th December 1935 (copy attached) was received, which, on perusal, might fairly be said to be most unsatisfactory, as it does not contain any answer to the queries contained in the letter of the 21st November 1935 above referred to and it is submitted that the letter of the 19th December 1935 (copy attached) addressed to the Colonial Secretary was fully justified.

The owners are, of course, unaware of what steps, if any, were taken by the Kenya Government to lay these facts before the Secretary of State with a view to impressing the importance and urgency of dealing with cases of Natives residing on lands for which it has issued Freehold Titles but the nett result in this case has been that a valuable sale has been lost to the owners and they have been so disheartened by the position that they have agreed to sell the whole farm in question on very much less favourable terms but have undertaken to follow up the correspondence and take steps to induce Government to effect the removal of Kimani and his dependents at the earliest moment and it is with this in view that these representations are made.

The recommendations in the Carter report do not seem to contemplate that - even in the case of alienated Leasehold lands - Natives should be allowed to remain in occupation but they do recommend that in proper cases compensation should be granted.

With regard to Freehold lands the Carter report does intimate that Government may have omitted to compensate

natives in certain cases and that if any natives can show that they had not been compensated prior to the issue of the Freehold Titles they should now be compensated by Government.

The Crown Lands Ordinance makes it quite clear that it is the duty of Government to satisfy itself that all natives rights have been dealt with prior to the issue of a Freehold Title and it is extremely improbable that all natives who had any rights were not in fact compensated.

The trouble is that in the early days of the Colony these matters were not dealt with in as regular a manner as they might have been and the records as to steps taken with regard to compensating natives are somewhat scanty.

The granting of the Freehold Title under which the owners hold is inconsistent with the existence of any native rights to occupation of the land in question and the fact that Kimani executed a Squatters Agreement in 1926 is, at all events, an indication that his idea of a right to occupy is of recent origin.

It is also to be observed that the areas which he was allowed to occupy were allocated by the owners and were from time to time altered as cultivation extended without any objection on Kimani's part.

Whatever may be done with regard to Leaseholds, it is contended that the question of the establishment of Freehold rights should be dealt with at once and that either (a) the natives should be removed to the Reserves or (b) Government should take up the titles and compensate those to whom it has issued Titles which it was not justified in issuing.

It is not suggested that natives should be dealt with otherwise than with the greatest reasonable consideration and with a due regard to their limited intelligence in so far as matters such as the signing of Squatters Agreements

are concerned but it would be obviously inequitable that owners who have cultivated their property, relying on a Title issued by Government, should suffer loss owing to the failure of Government to carry out its obligations or to keep adequate records to establish that such obligations had been fulfilled.

The present position is that the Natives in the district are unsettled and that those who are under the influence of the Young Kikuyu Association are in open defiance and endeavouring to influence those natives who do not agree with their political propaganda.

Kimani, while showing apparent deference to Government due to what he probably considers as his championing by Government as against the Settler, has continued his insolent behaviour to the owners and the parties to whom they have agreed to sell and the delay in settlement of the question at issue is certainly calculated to create further serious trouble among the settlers in the area in question.

The owners have not concerned themselves in politics and investigation would show that they are law-abiding settlers who have dealt fairly and considerately with the natives on their farm - the correspondence shows the fairness of the attitude adopted by them in so far as Government is concerned - and it is suggested that they are justified in expecting that their difficulties should be dealt with as expeditiously as possible.

It is hoped by the owners that as the result of this Memorandum some steps may be taken to establish their rights. They have refrained from direct action with a view to avoiding the creation of disturbance and in the hope that, even at this late stage, something may be done to bring the matter to a satisfactory close.

It would certainly seem that, apart from the case of Kimani, the settlement of the manner in which the recommendations in the Carter report are to be implemented should be determined with as little delay as possible.

ANNEXURE - TO MEMORANDUM
OF
MESSRS SCOTT & BRADSHAW
RE NATIVE CLAIMS OVER THEIR FREEHOLD LANDS

27th August, 1935.

The Provincial Commissioner,
N. Y. R. I.

Sir,

Messrs. Scott & Bradshaw and Kimani wa Kuratha

We are instructed by Messrs. Scott and Bradshaw to write to you in connection with the wrongful occupation of a certain portion of their farm at Limuru by Kimani wa Kuratha and his dependents.

The position is that our clients purchased the farm in 1912 from Mr. Clement Hirtzel who held it under a freehold title issued by the Crown in 1902 subject to the Crown Lands Ordinance 1902.

The Crown Lands Ordinance 1902 (Section 30) provides that the Commissioner shall not sell or lease any land in the actual occupation of natives while Section 31 provides that the Commissioner may lease areas containing native villages or settlements without specifically excluding such villages or settlements and Section 31 (5) provides that upon the ceasing of occupation such land shall pass to the Lessee.

The Conveyance to Mr. Clement Hirtzel recites that all requirements for vesting the land have been carried out and Section 5 (1) of the Crown Lands Ordinance 1902 lays down that upon payment of the purchase price on a sale the land shall vest in the Purchaser. When our clients entered into possession Kimani was working on another farm and came to our clients asking for employment, and he was, in fact, employed for a number of years during which time he resided upon our clients' farm.

Kimani's father who was an old man was occupying a small shamba when our clients purchased, but nowhere on the area upon which Kimani has recently been living, so that our clients can say that no land of their farm which was in the occupation of natives at the time they purchased is now occupied by natives.

In the year 1926, Kimani entered into a two years' agreement under the Resident Native Labourers Ordinance and after the expiry of that agreement worked for a considerable time, along with others, as a daily labourer paid each month, and from time to time rested on different parts of the farm. Kimani became unsatisfactory and our clients were obliged to dispense with his services and, as the result, Kimani has not only refused to vacate but has committed injury to plantations, in respect of which acts criminal proceedings are pending.

Our clients are anxious to cause as little trouble to Government as possible but it is essential that Kimani should be removed without delay as they have entered into an agreement for sale of their farm and native trouble might have a serious effect upon these negotiations.

We have been in touch with the Attorney General and have intimated to him that we are writing you with a view to your taking steps under the Native Authority (Amendment) Ordinance 1928 Section 8.

In view of the fact that our clients hold a Freehold title, any argument which might be put forward under Section 51 of the Crown Lands Ordinance 1902 in connection with Leaseholds could not apply and there can be no doubt whatever that our clients are absolutely entitled to the entire area of their farm without any reservation.

It is most important to our clients that this matter should be dealt with as promptly as possible and we have no doubt that you will give it your attention as an urgent matter.

We are sending a copy of this letter to the Attorney General for his information.

We have the honour to be,
Sir,
Your obedient servants,

27th August, 1936.

The Hon. The Attorney General,
NAIROBI.

Sir,

Messrs. Scott and Bradshaw and Kimani wa Muratha

In reference to the interview which the writer had with you yesterday at your office, we beg to confirm that on reference to the Title Deeds we find that our clients have a freehold title and therefore that the provisions of Section 51 of the Crown Lands Ordinance 1908 could not apply, as such provisions merely apply to Leaseholds.

We enclose herewith, as promised, a copy of our letter to the Provincial Commissioner, Nyeri, and we hope that he will be able to take the necessary action without delay, as it is of the utmost importance to our clients that the natives should be removed at as early a date as possible.

Major Bradshaw called this morning and showed us a copy of a letter addressed by Kimani to the District Officer, Nairobi, in which, inter alia, he states that Major Scott fully realises his claim under the Crown Lands Ordinance.

We are writing the District Officer in regard to this letter, which contains several mis-statements and is obviously written by someone other than Kimani, with a view to endeavouring to strengthen his position.

We have the honour to be,
Sir,
Your obedient servants,

For DALY & FIGGIS

ATTORNEY GENERAL'S OFFICE,
P.O.Box 112,
Nairobi.
Kenya.

No.L.152/22/21

30th August, 1955.

Gentlemen,

Ref. your letter dated the 27th August, 1955.
MESSES. SCOTT AND BRIDGMAN & KIMANI WA MURATHA

I beg to thank you for your above quoted letter and the information contained therein, and for enclosing a copy of your letter of 27th instant to the Provincial Commissioner, Nyeri.

I have the honour to be,
Gentlemen.

Your obedient servant,

SGD. ARTHUR

CROWN COUNSEL
for ATTORNEY GENERAL

MESSES. DALY & FIGGIS,
ADVOCATES,
NAIROBI.

CENTRAL PROVINCES,

NERI.

31st August, 1936.

Sirs,

MESSRS. SCOTT & BRADSHAW & KIMANI WA MURATHA

I beg to acknowledge your letter No.P/MD dated 27th August, 1936.

I understand that a criminal charge against Kimani wa Muratha for wilful destruction of trees and other property is being investigated by the Police and until the result of this investigation is known I consider it inadvisable to take any action under the Native Authority Ordinance.

I have the honour to be,

Sirs,

Your obedient servant,

SGD. W.B.R. VIDAL

AS. PROVINCIAL COMMISSIONER
CENTRAL PROVINCES.

10 might
Messrs. Daly & Figgis,
Advocates,
P.O.Box 54,
NAIROBI.

F/Z

10th September, 1955.

The Provincial Commissioner,
(Central Province)
NUSRI.

Sir,

Messrs. Scott & Bradshaw & Kimani wa Muratha

We are obliged for your letter of the 31st ult., re the above but we would request you to reconsider your decision that it would be inadvisable to take any action under the Native Authority Ordinance pending the investigation of the Criminal charge by the Police.

When discussing the matter with the Attorney General we pointed out that the Criminal proceedings were quite distinct from any proceedings for removal of the natives from the farms and informed him that, in addition to requesting him to direct that the Criminal charge should be proceeded with, we were writing to you requesting you to take the necessary steps for the removal of the natives under the Native Authority Ordinance.

The Police have investigated the complaint against Kimani and the Attorney General has directed that the Criminal charge shall be proceeded with and is making arrangements for the charge to be heard before a Senior Magistrate.

We would, however, point out that when the charge is heard the Magistrate can merely punish Kimani for the offence committed by him if he is found guilty but cannot give any direction as to his removing himself, his belongings and his dependents from the farms.

Should the Crown fail for any reason to prove to the satisfaction of the Court that the deprivations complained of were effected by Kimani personally or under his directions it might be argued by Kimani and his friends that you only took action under the Native Authority Ordinance because the Crown failed to obtain a conviction against Kimani.

It appears to us that, whether the Criminal proceedings are successful or not action under the Native Authority Ordinance will be necessary to ensure the permanent removal of Kimani and his dependents from the farms and, this

being so, it would seem that nothing would be gained by awaiting the result of the Criminal proceedings, which are in connection with damage to the Forest.

Kimani has apparently made up his mind to flout authority and any delay in effecting his removal may result in further trouble.

Apart from the above the early removal of the natives is of considerable importance to our clients in view of their arrangements for sale of the farms.

We have the honour to be,
Sir,
Your obedient servants,

[Faint, illegible text, likely bleed-through from the reverse side of the page]

F/BD

12th September, 1935.

The Hon.
The Attorney General,
NAIROBI.

Sir,

Re: Scott & Bradshaw and Kimsai wa Murathi

In reference to the interview which the writer had with you yesterday, it has occurred to the writer as the result of a remark made by you that there may be some misunderstanding as to our connection with the Criminal proceedings.

We were not consulted in regard to the Criminal proceedings prior to the laying of an information by our clients and merely requested that the case might proceed on the ground that the reason given for discontinuing seemed to us to be inadequate.

We had nothing to do with the preparation of or consideration of the evidence but presume that the Police investigated the matter and satisfied themselves that the evidence available was adequate.

We presume also that - if Kimsai contends that he was entitled to act as he did through rights of ownership - the Police will not only produce our clients' documents of title but will, if necessary, subpoena the Commissioner of Lands to vouch that the Crown had expunged any rights which might have existed and were in a position to grant the freehold title to our clients' predecessor.

It appears to us that the Court should accept the warranty of Title by the Crown as indefeasible until such time as some third party or parties may by action have established that the Crown had no authority to grant the freehold.

With regard to the action which we have requested the Provincial Commissioner to take, we cannot see how it should be in any way dependent upon the Criminal Proceedings. The Crown have granted a freehold title and, unless the title is bad, the Natives must be wrongfully in occupation of the farm as they claim on the basis of occupation prior to issue of the freehold title.

12th Sept. 1935.

The Crown purports to have taken all steps necessary for giving a freehold title and, if it has not in fact taken the necessary steps, it must have issued the freehold title on a false warranty and - if it admits this to be the case - should compensate our clients and take back the farm or should compensate the natives without delay in order to rectify the position. We have little doubt that the natives - if they had any rights - were compensated at the first but the Crown must know if this is the case.

Our clients are not trying to create trouble but it is of the utmost importance to them that the natives should be removed with as little delay as possible and the Crown is empowered under existing legislation to give the natives notice to quit.

There is no doubt that the action of Kimani is due to political influence and our clients certainly look to Government to ensure the removal of Kimani and his dependents.

We have the honour to be,
Sir,
Your obedient servants,
For BAILY AND FIGGIS

N.No.L.152/22/27

14th September, 1966.

Gentlemen,

SCOTT AND BRADSHAW AND KIMANI WA MURATHI
Re: your letter dated the 12th September, 1966.

I have to acknowledge the receipt of your above quoted letter, a copy of which has been sent to the Commissioner of Police.

2. An appointment has been made with the Registrar of the Supreme Court for 9.50 a.m. on Monday the 23rd instant when the Supreme Court will be moved by Crown Counsel for the transfer of the criminal charge against Kimani from Kiambu to the Court of the Resident Magistrate, Nairobi.

3. The Attorney General wishes it to be clearly understood that the criminal charge is being proceeded with by agreement with you, and in response to your request on behalf of your Clients that Government should take action in the matter.

I have the honour to be,

Gentlemen,

Your obedient servant,

SGT. THEODORE WALLACE,

CROWN COUNSEL
for ATTORNEY GENERAL

Mrs. Daly & Figgis,
Advocates,
Nairobi.

17th September, 1955.

Theodore Wallace Esq.,
 (Crown Counsel),
 Attorney General's Office,
 NAIROBI.

Sir,

Scott & Bradshaw and Kimani vs Murathi

We beg to acknowledge receipt of your letter number L.152/22/27 of the 14th instant.

We do not quite appreciate the intention of the last paragraph of your letter under reply.

We knew nothing about the trouble which has arisen until after the prosecution had been launched and a date fixed for hearing and, as we said in our last letter, we presume that the Crown satisfied itself that there was adequate evidence before instituting proceedings.

We discussed the reasons given for not proceeding with the prosecution and it was agreed that such reasons were not sound. Our request that the prosecution should proceed was not intended in any way as an effort to force the hands of the Crown as we recognise that, however strongly pressure might be brought to bear, the Crown would not be justified in either commencing or continuing proceedings if not satisfied that it had evidence which it considered adequate upon which to base the prosecution.

We do not know what statements the Crown has taken or what evidence it is calling and trust the writer's suggestion as to certain evidence which he would consider of importance has not been deemed to be impertinence on his part.

The Title Deeds can be produced and the Commissioner of Lands should be able to say whether he has any doubt as to the validity of the Title which it has issued.

The mere tendering of a claim by certain native to the members of the Carter commission could certainly not be any proof of a title to supersede a title given by the Crown and further evidence of guilt should be derived from the fact that until quite recently Kimani has never suggested that he had any rights whatsoever and his actions have

Theodore Wallace Esq.,

17th Sept., 1955.

been inconsistent with the existence of such rights.

In any event the report of the Carter Commission does not contemplate the retention of native upon even leasehold areas but merely payment of compensation where compensation has not been already paid.

Whatever happens, we consider it very unwise for Government to postpone taking action under the Native Authority Ordinance until after the hearing of the criminal proceedings. The effect of action under the Native Authority Ordinance is to remove the natives from lands for which the Crown has issued what should be an indefeasible title - the criminal proceedings, if successful, merely result in the punishment of a wrong doer for an offence which he has committed.

We have the honour to be,
Sir,

Your obedient servants,

MON DALY & EGG S

PROVINCIAL COMMISSIONER'S OFFICE,
CENTRAL PROVINCE,
NYSKI. September 17th, 1935.

Ref. No.LND. 52/4/17

Messrs. Daly & Figgis,
Advocates,
P.O.Box 54,
NAIROBI.

Sirs,

Messrs. Scott and Bradshaw and Kimani wa Muratha

I beg to acknowledge your letter No.F/Z of
September 10th, 1935.

I have discussed this matter with the Attorney
General and consider that I shall be in a better position
to judge if Kimani wa Muratha is illegally occupying
portions of Messrs. Scott and Bradshaw's estate after
evidence in the Criminal Case in the Senior Magistrate's
Court has been taken.

I therefore regret that I am not prepared, at
the present moment, to give an order under Section 11
of the Native Authority Ordinance as amended by Section
5 of Ordinance 18 of 1928.

I have the honour to be,

Sir,

Your obedient servant,

SGD. M.R.R.VIDAL

AG. PROVINCIAL COMMISSIONER
CENTRAL PROVINCE

24th September, 1936.

His Excellency
The Governor of Kenya Colony,
Government House,
NAIROBI.

Your Excellency,

Re Scott & Bradshaw and Kimani wa Muratha

We regret to be obliged to trouble you at the present difficult time with a matter in which clients of ours are concerned. We would not do so were it not that the immediate settlement of the matter in issue is of considerable importance to our clients.

Our clients hold a freehold title from the Crown the issue of which presupposes the settlement of all claims by natives with regard to the area covered by the Conveyance.

The native concerned (Kimani wa Muratha) was for a considerable number of years in our clients' employment and in 1928 entered into a quatters Agreement for a period of two years.

These Squatters' Agreements caused considerable trouble with the natives with the result that, when they fell in settlers by unofficial sanction of the Government, in many cases allowed their employees to remain on without the signing of fresh agreements.

Some time ago our clients found it necessary to dispense with the services of Kimani but he, with his wives and dependants, has continued to occupy a portion of the farm and now claims that he is entitled to do so as of right by virtue of the Crown Lands Ordinance and relies on claims of his tribe preferred to the Carter Commission.

He has also effected the destruction of portion of our clients' timber for which acts a Criminal prosecution is pending.

Our clients rely on their Title from the Crown have requested Government to take steps to effect the removal of the natives under the Native Authority Ordinance, which, we believe, was enacted for the express purpose of ensuring that the removal of natives from lands held by Europeans and other dealings with natives should be effected by Government and not by private individuals.

His Excellency, The Governor of Kenya Colony.

24/9/55.

We would point out that the report of the Carter Commission does not contemplate the allowing of natives to remain on Freehold areas which have been alienated by the Crown but merely that compensation should be paid in cases in which it cannot be proved that Government have taken the necessary step to see that compensation has been awarded prior to the issuing of titles.

We have little doubt that compensation was paid in every case but, unfortunately, the Government records in the early days were far from complete and transactions of this kind were, largely owing to understaffing, carried out in a rather informal manner, and with regard to the present case the Commissioner of Lands informs us that there is nothing in his records to show that compensation was paid other than the Freehold Title itself which should not have been issued until all natives entitled had received their compensation. He indicated, however, that there might possibly be some record in the District Commissioner's office at Kyambu.

There has been considerable correspondence both with the Attorney General and with the Provincial Commissioner of the Central Province, and we enclose you herewith copies of the last letter received by us from the Provincial Commissioner and of our reply, which show the present position.

Our clients quite appreciate the difficulties which Government is experiencing with regard to native claims and are anxious to cause the least possible embarrassment to Government, but the position is the negotiations are pending for sale of portion of their farm to a Mr. Hooper, who is at present on his way to Kenya and the non-removal of the natives may very seriously affect these negotiations.

We suggested that our clients might try to make private arrangements with the natives in question by offering payment to them but it was pointed out to us that such action might affect Government's position in dealing with other claimants and, for this reason, our clients have not so far approached the natives with a view to attempting to make a private settlement with them.

The nett position is, as we see it, that unless our clients title is bad the natives must be in wrongful occupation and if it is bad Government should either take back the farm and compensate our clients, or take steps to see that the natives are in wrongful occupation we cannot see why action with regard to their removal should be postponed.

Excellency the Governor of Kenya Colony.

24/9/35.

We have pointed out that Criminal proceedings, if successful, can merely result in punishment of Kimani and not in removal of himself and his dependents, while, - if for any reason the Criminal proceedings should prove unsuccessful - it might be urged that Government only took action under the Native Authority Ordinance because of the failure of the Criminal proceedings.

Whatever happens it would appear that action will have to be taken sooner or later to remove the natives, either by paying compensation or by notice under the Native Authority Ordinance, as in no event does Government contemplate the allowing of natives remaining on farms for which Freehold titles have been issued.

Our reason for placing the matter before you personally is that we fully appreciate the difficulty of the position in which your officials are placed and further that we do not wish to advise our clients to endeavour to make private arrangements for compensating the natives until every other avenue has been explored with a view to effecting the removal of the natives.

You will realize the urgency of the matter from our clients' point of view.

We have the honour to be,
Your Excellency's obedient Servants,

For DALY & FIGGIS

24th September, 1935.

The Ag. Provincial Commissioner,
Central Province,
NYSRI.

Sir,

Messrs. Scott & Bradshaw and Kimani wa Muratha

We beg to acknowledge your letter No. LND.52/4/17
the contents of which are noted.

The removal of the natives has become of immediate
importance to our clients and the only course open to them
is to endeavour to make arrangements with the natives in
question to pay them compensation to which we have little
doubt they are not entitled.

This could have been done long ago but our clients
held over such negotiations as it was indicated to them that
such procedure might hamper Government in dealing with the
claims of other natives.

The natives have no agreement for occupation with
our clients and the only basis upon which it could be con-
tended that they are legally in occupation is that the Title
issued by the Crown and for which the Crown has been paid
many years ago is a bad Title.

We have done everything in our power to enable
the legal removal of the natives in a manner which would not
in any way hamper Government but the non-removal of the
natives might seriously affect the negotiations which are
pending for sale of portion of our clients' farm and the
prospective purchaser is at present on the High Seas and our
clients must do something to safeguard their own interests.

We have the honour to be,
Sir,
Your obedient servants,

For Ealy & Figgis

P... Your letter, though dated the
17th inst. was received by us on the
23rd inst.

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

26th September, 1955.

Sirs,

I am directed by His Excellency the Governor to acknowledge receipt of your letter of 24th September, with enclosures, on the subject of Scott and Bradshaw and Kimani wa Muratha.

Enquiries are being made into the matter referred to and a further communication will be sent you at a later date.

I have the honour to be,

Sirs,

Your obedient servant,

Sgt.

PRIVATE SECRETARY

MRS. LALY & FIGG S
P.O. BOX 84,
MOBI.

PROVINCIAL COMMISSIONER'S OFFICE,
CENTRAL PROVINCE,
NYERI.

2nd October, 1956.

Ref.No. LND. 52/4

Messrs. Daly & Figgis,
Advocates,
P.O.Box 54,
NAIROBI.

Sirs,

MESSRS. SCOTT & BRADSHAW AND KIMANI WA MURATHA

I beg to inform you that the Colonial Secretary and the Attorney General have again been consulted in this matter and I have hopes that the removal of Kimani may be effected in the near future.

I trust therefore that your clients will make no arrangements as to the payment of compensation in the meantime.

I have the honour to be,

Sirs,

Your obedient servant,

SGS. M.R.R.VIDAL

AG. PROVINCIAL COMMISSIONER
CENTRAL PROVINCE

Copy to Hon. Colonial Secretary,
NAIROBI

With copy of Messrs. Daly & Figgis' letter.

5th October, 1935.

F/MD

Messrs. Scott & Bradshaw,

LIMURU.

Dear Sirs,

We beg to confirm the contents of our wire informing you that we had a satisfactory reply from the Government. We enclose you herewith a copy of the letter received from the Provincial Commissioner.

Since the receipt of this letter we rang up the Attorney General in order that we might have an explanation of the meaning of the words "in the near future." He informs us that the point is that they may have to allow Kimani to reap any crops which might be growing. He also stated that in view of the action taken by the Government in regard to the removal of the natives he proposed to withdraw the proceedings for malicious damage, as it might be urged that Government were acting vindictively. We told him that we did not consider that you would in any way object to the withdrawal of the prosecution if the removal of the natives was duly effected.

We are glad that the letter to His Excellency the Governor has had such good results.

Yours faithfully,

For DALY & FIGGIS

RS. DALY & FIGGIS,
P.O. BOX 54,
NAIROBI.

7th October, 1935.

The Hon. The Attorney General,
NAIROBI.

Sir,

Scott & Bradshaw and Kimani wa Muratha

In reference to the writer's interview this morning over the phone when you agreed that it would be advisable to adjourn the original proceedings pending the actual removal of the natives, we would suggest that it might be better to adjourn the case for a fortnight or three weeks instead of adjourning "sine die."

If the case is adjourned to a definite day it may assist in the peaceable removal of the natives.

We have written to the Provincial Commissioner requesting him or the District Commissioner, Kyambu, to inspect the farm with our clients in the presence of Kimani and have pointed out that our clients are quite willing to pay such compensation as may be assessed for any crops growing on the area allotted to Kimani.

As the question of removal is settled there should be no reason for delay in view of our clients' readiness to compensate for crops. The main point, as far as our clients are concerned, is to get the natives off the land at once so that their negotiations for sale may not be jeopardised in any way.

We have the honour to be,
Sir,
Your obedient servants,

For DALY & FIGG'S

7th October, 1955.

The Provincial Commissioner,
Central Province,
NYSRI.

Sir,

Messrs. Scott & Bradshaw and Kimani wa Muratha

We are obliged for your letter number LND.52/4 of the 2nd instant and are pleased that the question of removal of the natives has now been settled.

Our clients would ask that the removal of Kimani and his dependents be effected at the earliest moment possible as the position at present is very difficult and Kimani is causing considerable trouble among the other natives. You are also aware that Mr. Hooper who is negotiating for the purchase of portion of the farm should be here in about a fortnight's time. Our clients request that either you (if possible) or some other senior officer such as the District Commissioner, Kyambu, should make an appointment in the course of next week to meet them at their farm and inspect the cultivated area in the presence of Kimani. Our clients are quite willing to compensate Kimani for any crops planted on the area which he was occupying under arrangement with them but we understand that someone has planted in the forest area which is a considerable distance from the area which was allotted to Kimani, and for crops planted in such area neither Kimani nor anyone else can have a valid claim for compensation, and it is important that you or some other responsible person should see the actual position on the farm.

The Attorney General has informed us that he does not propose to proceed with the Criminal Case for malicious damage if the natives are removed and our clients are quite agreeable to this course. It would obviously be unwise to withdraw the prosecution until the natives are actually removed and the Attorney General has arranged to adjourn the criminal proceedings which are we believe set down for the 14th instant if the natives are not removed by that date.

Now that the question of removal is settled there should be no cause for delay in carrying out this removal.

In view of the contents of your letter under reply our clients are not for the time being approaching the natives with a view to compensating them but they point out that the
/main

MS. DALY & FIGGIS,
P.O. BOX 54,
NAIROBI.

7/10/55

7th October, 1956.

The Provincial Commissioner,
Central Province,
NYSRI.

Sir,

Messrs. Scott & Bradshaw and Kimani wa Muratha

We are obliged for your letter number LND.52/4 of the 2nd instant and are pleased that the question of removal of the natives has now been asked.

Our clients would prefer that the removal of Kimani and his dependents be effected at the earliest moment possible as the position at present is very difficult and Kimani is causing considerable trouble among the other natives. You are also aware that Mr. Hooper who is negotiating for the purchase of portion of the farm should be here in about a fortnight's time. Our clients request that either you (if possible) or some other senior officer such as the District Commissioner, Kyaabu, should make an appointment in the course of next week to meet them at their farm and inspect the cultivated area in the presence of Kimani. Our clients are quite willing to compensate Kimani for any crops planted on the area which he was occupying under arrangement with them but we understand that someone has planted in the forest area which is a considerable distance from the area which was allotted to Kimani, and for crops planted in such area neither Kimani nor anyone else can have a valid claim for compensation and it is important that you or some other responsible person should see the actual position on the farm.

The Attorney General has informed us that he does not propose to proceed with the Criminal Case for malicious damage if the natives are removed and our clients are quite agreeable to this course. It would obviously be unwise to withdraw the prosecution until the natives are actually removed and the Attorney General has arranged to adjourn the criminal proceedings which are we believe set down for the 14th instant if the natives are not removed by that date.

Now that the question of removal is settled there should be no cause for delay in carrying out this removal.

In view of the contents of your letter under reply our clients are not for the time being approaching the natives with a view to compensating them but they point out that the
/main

S. DALY & FIGGIS,
P.O. BOX 54,
NAIROBI.

The Provincial Commissioner,
Nyeri.

7th October, 1935.

main matter which they are concerned with is the removal of the natives in the course of the next few weeks, and whether the removal is effected by Government or by private arrangement for compensation, it is essential that the natives should be removed at once in order that the negotiations for sale should not be jeopardised as this might involve the loss of some thousands of pounds.

We understand that - if the farm is inspected - it will be seen that the cultivation by Kisanu on the area allotted to him is almost negligible but our clients are only too ready to pay such sum as Government may assess for such crops as may be found thereon in order to facilitate speedy removal.

We have the honour to be,

Sir,

Your obedient servants,

For DALY & FIGGIS

DALY & FIGGIS,
P.O. BOX 34,
NAIROBI.

No. C.LND.15/2/52

15th October, 1955.

Gentlemen,

With reference to your letter of the 24th September, 1955, addressed to His Excellency the Governor, I am directed by His Excellency to inform you that he has given careful and sympathetic consideration to this matter.

2. This claim of Kimani is similar in character to a number of other claims submitted to the Kenya Land Commission and I am to draw your attention to paragraphs 1828 - 1856 of the Commission's Report and to their recommendations on the point contained in paragraph 1854.

3. In the circumstances His Excellency feels that he cannot do more at present than give your clients an assurance on behalf of this Government that, when the Commission's recommendation to which I have referred is carried into effect in an Order-in-Council and in the new Native Lands Trust Bill, active steps will be taken to remove any natives whose continued occupation of farm lands is not covered by the provisions of the Resident Labourers Ordinance.

4. Steps are being taken to inform Kimani that, upon the enactment of these measures he will be compelled to remove himself from your clients' land.

I have the honour to be,

Gentlemen,

Your obedient servant,

SGT. ...DE V. WADE

COLONIAL SECRETARY

18th October, 1955.

The Hon. The Colonial Secretary,
C/O The Secretariat,
NAIROBI.

Sir,

RE SCOTT & BRADSHAW AND KIMANI WA MURATHA

In reference to your letter No.Sc.Lnd.15/2/52 of the 15th inst. and the writer's subsequent interview with you and the Hon. The Attorney General, we beg to confirm that we are writing our clients suggesting that a joint effort should be made with a view to effecting the removal of Kimani and his dependents from their farm, the suggestion being that either one or two Senior Officers should interview Kimani with our clients, and that it should be pointed out to Kimani that the Report of the Carter Commission does not contemplate natives remaining upon lands which have been alienated and that they should remove themselves, while our clients might as an inducement at the same time make them an offer of compensation.

We understand that you will communicate with us informing us what arrangements are being made with regard to the visit by the Senior Officer or Officers referred to.

You are now fully aware of the urgency of the matter as far as our clients are concerned, and we sincerely hope that the joint efforts to settle this matter may prove successful.

We quite appreciate the difficulties with which Government is confronted but think you must agree that the fact that Government now questions the validity of the freehold title issued to our clients is a good reason for expecting Government to make special efforts to avoid any inconvenience or loss to our clients. If efforts in Kenya prove totally unsuccessful there would appear to be no course left open but to forward a report on the matter to the Secretary of State for the Colonies drawing attention to the position and pointing out the importance of immediate steps being taken to effect the removal of natives at all events from lands in connection with which a freehold title has been issued.

We very much regret having to worry either you or His Excellency with this matter at a time when we know that you are occupied with other most important and difficult matters, and we should not do so but for the fact that the non-removal of the natives from our clients' property might very possibly result to them in the loss of thousands of pounds.

We have no doubt that you will do everything in your power to assist our clients in their difficulty.

We have the honour to be,

Sir,

Your obedient servants,

For DALY & FIGGIS

25th October, 1955.

His Excellency,
The Governor of Kenya,
Government House,
NAIROBI.

Your Excellency,

RE. SCOTT AND BRADSHAW AND KIMANI VA NIBATHA

I regret to be obliged to trouble you again with this matter, but the situation has now become extremely serious.

As you are aware the Colonial Secretary and the Chief Native Commissioner had Kimani before them on Wednesday when Kimani was, I understand, told that he and his dependants must leave our clients' farm. Kimani thereupon informed the Colonial Secretary that he knew he would have to leave, but was not prepared to go until the other natives who had claims recorded in the Carter Commission Report were ordered to leave and that he did not want to be compensated by our clients.

There is no doubt in my mind that the adoption of this attitude is due to the fact that natives have obtained information as to the correspondence which has taken place with various Government Offices, and have formed the opinion that Government are hesitating as to the taking of action under the Native Authority Ordinance.

The Provincial Commissioner's letter of the 17th September stated that he was not prepared to make a final order pending the hearing of the Criminal action against Kimani, but after further correspondence with Your Excellency and others the Provincial Commissioner wrote us on the 2nd October indicating that he hoped that Kimani would be removed in the near future and requesting our clients not to attempt to compensate Kimani in the meantime.

As the result of this letter it was arranged with the Attorney General that the Criminal Case should be adjourned for one month in order to leave ample time for the removal of Kimani, and an order for such adjournment was made on the 14th October.

We then received a letter dated the 15th October from the Colonial Secretary intimating that Kimani would not be told to leave until the Carter Report was implemented, but we pointed out that this would be of little use to our clients if the negotiations for sale of portion of the farm fell through.

This resulted in the interview which the Colonial Secretary had with Kimani on Wednesday last.

Both Major Scott and Major Bradshaw state that, probably as the result of Kimani's knowledge of the correspondence which has taken place, his attitude has been most insolent, and they feel that even if they attempt to interfere with the cultivation which he has effected on portions of their farms which he was never given any permission to cultivate, the result would be that their labourers would be attacked and that a riot would ensue.

The natives are clearly priding themselves on what they consider to be the flouting of Government and, apart altogether from the financial loss which may result to our clients, there seems every possibility of serious trouble in the neighbourhood if drastic steps are not taken soon.

Human endurance has a limit, and the attitude of the natives is such that our clients state it is impossible almost to bear, as the result of which they have, as far as possible, kept away from Kimani while these negotiations have been going on.

I personally feel that the only way to avoid the possibility of serious trouble would be that the claims of all the natives mentioned in the Carter Report should be dealt with promptly and that they should all be removed to the reserve. The Carter Report does not contemplate their being allowed to remain even on leasehold lands and certainly indicates that they should be removed from freehold lands.

Kimani has been told to leave the farm by the Colonial Secretary, and if he is allowed to remain after such directions have been given to him, it is likely that not only he but other natives will be extremely difficult to deal with later on.

I would not trouble you again with this matter but for its extreme urgency.

I have the honour to be,
Your Excellency's Obedient Servant,

1st November, 1956.

The Hon. The Colonial Secretary,
NAIROBI.

Sir,

RE SCOTT AND BRADSHAW AND KIMANI

As a result of the information given to the writer by you with reference to Mr. Trivedi's interview, we got into touch with Mr. Trivedi who arranged to see Kimani.

He has now informed us that his client states that under no circumstances will he leave the farm and that he had given instructions for the filing of proceedings against the Crown to establish his rights, but that he (Mr. Trivedi) thought the point might be raised in the Criminal proceedings.

As we pointed out before, the Criminal proceedings do not cover the removal of Kimani and the natives from the land, and the present position seems to be that Kimani is not prepared to obey the directions of Government.

We understand from you that as the result of your interview with Kimani the matter had been referred back to His Excellency the Governor for directions and, as you are aware, we have also written a further letter to His Excellency on the matter.

It would certainly seem to be an impossible position if natives consider that they are at liberty to disregard orders which are given to them by Government.

Major Bradshaw who was in a few days ago, states that the position at the farm now is that all the other natives are terrified of Kimani and of the native powers behind him.

You are of course aware of the urgency of the matter, and we would therefore be obliged if you would let us know whether Government is now prepared to take active steps for the removal of Kimani and his dependents.

I have the honour to be,

Sir,

Your obedient servants,

For DALY & FIGGIS

1st November, 1956.

The Hon. The Colonial Secretary,
NAIROBI.

Sir,

RE SCOTT AND BRADSHAW AND KIMANI

As a result of the information given to the writer by you with reference to Mr. Trivedi's interview, we got into touch with Mr. Trivedi who arranged to see Kimani.

He has now informed us that his client states that under no circumstances will he leave the farm and that he had given instructions for the filing of proceedings against the Crown to establish his rights, but that he (Mr. Trivedi) thought the point might be raised in the Criminal proceedings.

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You are of course aware of the urgency of the matter, and we would therefore be obliged if you would let us know whether Government is now prepared to take active steps for the removal of Kimani and his dependents.

I have the honour to be,

Sir,

Your obedient servants,

For DALY & FIGGIS

LEGAL DEPARTMENT,
ATTORNEY GENERAL'S OFFICE,
P.O. Box 118,
Nairobi.

of.No.L.152/25

12th November, 1955.

Gentlemen,

NAIROBI R.M.'S CRIMINAL CASE NO. 5549 of 1955.
HEI VERSUS KIMANI WA MURATHI

I have the honour to inform you that I filed a Nolle Prosequi in the above mentioned case as I am not satisfied that we will be able to obtain a conviction, and the failure to do so would only aggravate the position.

I have the honour to be,
Gentlemen,
Your obedient servant,

SGD. W.HARRIGIN

ATTORNEY GENERAL

MESSRS. DALY & FIGGIS,
ADVOCATES,
P.O. Box 54,
NAIROBI.

15th November, 1955.

The Hon. The Attorney General,
N A I R O B I.

Sir,

NAIROBI: R.M.'S CRIMINAL CASE NO. 5549 of 1955.
REX V. KIMANI WA MURATHA

We beg to acknowledge receipt of your letter No. L. 152/25 of the 12th instant the contents of which are noted.

It is to be hoped that, in view of the withdrawal of the Criminal Case, immediate steps will be taken to effect the removal of Kimani and his dependents.

The attitude even now adopted by the natives, in view of the delay in effecting their removal, is most offensive and, if they can boast that the Crown have withdrawn the prosecution against Kimani and taken no steps to remove them, we should imagine the position will become quite impossible.

We have the honour to be,
Sir,
Your obedient servants,

For DALY & FIGGIS

95
THE SECRETARIAT,
NAIROBI,
KENYA.

Ref.No.C.L.D.15/2/78

15th November, 1956.

Gentlemen,

I am directed to refer to your letter of the 25th October, 1955 addressed to His Excellency the Governor and also to your letter of the 1st instant, and to inform you that after full consideration Government has come to the decision to take no steps towards the eviction of natives who are residing on European farms and who advance claims of right to be there, pending the enactment of legislation and the issue of an Order-in-Council to give effect to the recommendations of the Kenya Land Commission Report.

I am directed by His Excellency to add that this decision applies to the case of Kimani equally as to others similarly situated.

I have the honour to be,

Gentlemen,

Your obedient servant,

SGT. HAYES SADLER

FOR COLONIAL SECRETARY

MESSRS. DALY & FIGGIS,
P.O.Box 54,
Nairobi.

BARCLAYS BANK BUILDING,
NAIROBI.

Ref.No.FS/1556/191

20th November, 1956.

Messrs. Daly & Figgis,
Advocates,
NAIROBI.

Dear Sirs,

Messrs. Scott & Bradshaw and Mr. J. Hooper

We confirm our advice to Mr. Figgis over the telephone this afternoon that as your client will not only be unable to find vacant possession of the area proposed to be purchased, by the 25th instant, and can give no definite assurance that vacant possession can be given by any specified date, our client will not exercise his option to purchase.

If and whenever your clients are in a position to give a clear title and vacant possession of the land and they are still willing to sell the same, we shall be glad if you will advise us as our client is still interested.

Yours faithfully,

DELANEY & STRATTON

Nairobi.

BARCLAYS BANK BUILDING,
NAIROBI.

ref.No.FS/1556/191

20th November, 1956.

Messrs. Daly & Figgis,
Advocates,
NAIROBI.

Dear Sirs,

Messrs. Scott & Bradshaw and Mr. J. Hooper

We confirm our advice to Mr. Figgis over the telephone this afternoon that as your client will not only be unable to find vacant possession of the area proposed to be purchased, by the 26th instant, and can give no definite assurance that vacant possession can be given by any specified date, our client will not exercise his option to purchase.

If and whenever your clients are in a position to give a clear title and vacant possession of the land and they are still willing to sell the same, we shall be glad if you will advise us as our client is still interested.

Yours faithfully,

DELANEY & STRATTON

Nairobi.

21st November, 1956.

The Hon. The Colonial Secretary,
The Secretariat,
NAIROBI.

Sir,

RE SCOTT & BRUSHY AND KIMANI WA MURATHA

We beg to acknowledge receipt of your letter No.C.LND.15/2/78 of the 15th inst. and would state that we have advised our clients as to the decision which has been arrived at by Government.

We have now heard from Messrs. Delany & Stratton, representing Mr. Hooper intimating that, in view of our clients inability to give vacant possession owing to non-removal of the natives, Mr. Hooper cannot exercise his option which expires on the 25th instant. Messrs. Delany & Stratton's letter further states however that if vacant possession can be obtained their client would still be interested in the purchase of the estate.

The position now appears to be that notwithstanding the fact that our clients hold what purports to be a freehold title from the Crown -

- (1) the Crown by withdrawing the prosecution for malicious damage against Kimani indicates that it considers that it is powerless to punish an offender who causes injury to property held under a freehold title granted by the Crown itself owing to such offender claiming a native right to occupation,
- (2) that Government by deciding not to enforce the provisions of the Native Authority Ordinance with a view to effecting the removal of the natives has rendered it necessary for private individuals to protect themselves by such means as may lie in their power if they are to have the full use of their property.

We have done everything possible to assist Government in its difficulty and our clients have, by acceding to Government's request not to attempt to compensate Kimani privately, been placed in the present impossible impasse.

Nairobi.

Our clients hold a freehold title from the Crown which, if it constitutes a good title, entitles them to the unrestricted use of the lands held under that title, and they can hardly be expected to lose some thousands of pounds owing to the trespass of natives.

If the Crown is doubtful as to its having had the right to issue a freehold title, our clients are prepared to surrender their title upon reasonable compensation being paid but, if our clients are to retain their title, the natives who are at present trespassing must be removed in the near future unless serious loss is to be sustained by our clients.

The Government is apparently not prepared to act in the matter the only effective course which we can see that is open to our clients is to give Kimani notice that the huts must be removed and that his belongings and dependents must also be removed from the farm within a fixed time, with a warning that if they are not removed by him our clients will be obliged to remove them.

We should, of course, intimate to our clients that if it should become necessary for them to remove the huts etc. the work should be carried out as peaceably as possible, and would also suggest to them that they should notify the police as to the time at which it is proposed to carry out such removal so that any possible attempt at violence should be avoided.

The initial cause of the whole trouble appears to be that Government has failed to keep an adequate record of its transactions with natives prior to issuing a title to the lands in question, and it would seem quite unreasonable that our clients should be forced to suffer loss as the result of Government's omission.

To put it shortly; the Crown has given our clients, as it were, a cheque (and not a post-dated cheque) for a freehold title to the land, and our clients look to the Crown either to honour its cheque or to compensate them for loss sustained through its failure - whether through inability or otherwise - to honour its cheque.

To enable us to advise our clients as to their course of action, we would ask Government to say whether:-

- (a) It is prepared to vouch that the freehold title granted in respect of the lands in question is a valid freehold title,
- (b) whether, in the event of Government not being prepared to vouch the validity of the freehold title, it is prepared to compensate our clients

Nairobi.

The Hon. Colonial Secretary

21st November, 1955.

and accept a surrender of the property in question.

We take it, of course, that your letter under reply merely indicates that His Excellency is not prepared to take steps under the Native Authority Ordinance, and not as a direction to our clients that they are not to take any other steps to remove the natives, as such a direction would involve an admission that our clients' title is bad.

We hope that even at this late stage something may be done to prevent the falling through of the negotiations for purchase and sale of our clients' property.

We have the honour to be,
Sir,
Your obedient servants,

For DALY & FIGG'S

Nairobi.

21st November, 1955.

The Hon. The Colonial Secretary,
The Secretariat,
NAIROBI.

Sir,

RE SCOTT AND BRADSHAW AND KIMANI

As it has been unofficially intimated to the writer that our letter of the 25th ultimo addressed to His Excellency the Governor and our letter of the 1st instant addressed to you do not accurately reflect what happened at your interview with Kimani at your Office, we would hasten to rectify this error.

The information as to what happened at the interview was given to the writer over the phone and we very much regret that he misinterpreted that information.

We understand now that what you actually told Kimani was that he would certainly have to leave the firm and that, in his own interests, the sooner he went the better as otherwise he could not expect any compensation from our clients who were prepared to voluntarily compensate him if he left without being evicted.

The statements contained in our letter to His Excellency of the 25th October at the bottom of page 2 and top of page 3 and in paragraphs 3 and 5 of our letter addressed to you of the 1st inst. should be considered as amended in accordance with the above.

We have the honour to be,
Sir,
Your obedient servants,

For DAVID SCOTT

Nairobi.

21st November, 1955.

His Excellency,
The Governor of Kenya,
Government House,
NAIROBI.

Your Excellency,

RE SCOTT AND B. MACHIA AND KIMANI WA M. MUTHA

We beg to enclose you herewith copy of a letter we have addressed to the Hon. The Colonial Secretary.

We unfortunately misinterpreted the information received over the 'phone in regard to what had been said to Kimani and not rally are anxious that the files should be rectified at once as to this error.

We have the honour to be,
Your excellency's obedient servants,

for J. M. MACHIA

Nairobi.

29th November, 1936.

F/M

The Hon. The Colonial Secretary,
C/o The Secretariat,
NAIROBI.

Sir,

RE SCOTT AND BRADSHAW & KIMANI WA MURATHA

We would request you to let us have a reply to our letter of the 21st instant as the earliest moment possible.

We are aware that the session of Legislative Council must occupy your time to a great extent, but a further complication has arisen owing to the fact that Kimani has started carting cedar timber to the farm over our clients' private road without even asking permission, and is also carrying out development in the timber area.

The negotiations with Mr. Hooper are at an end - the execution of the option has been declined on the ground that the natives have not been removed - the option money has been returned to Mr. Hooper's Associates, and the subdivisional plans handed back.

We have the honour to be,
Sir,

Your obedient servants,

For D LY & VIGOR

Nairobi.

THE SECRETARIAT,
NAIROBI,
KENYA.

of No. C.LND.15/2/102

16th December, 1935.

Gentlemen,

RE SCOTT AND BRADSHAW & KIMANI WA MURATHA

I have to acknowledge the receipt of your letter of the 21st November relating to the above.

It would not appear that the facts in the matter are seriously in dispute, though it is conceivable that the inferences to be drawn therefrom might present points of difference.

With regard to the validity of your Client's title to the land in question, I cannot see that there is anything which I can usefully add to what has already been said. As all the information at the disposal of the Law Officers of the Crown is already in your possession you would appear to be precisely in their position in regard to the material necessary for forming an opinion upon the title.

I have the honour to be,
Gentlemen,

Your obedient servant,

JOHN V. SADE
COLONIAL SECRETARY

Messrs. Daly & Figgis,
Advocates,
P.O. Box 54,
Nairobi.

19th December, 1955.

The Hon.
The Colonial Secretary,
the Secretariat,
NAIROBI.

Sir,

RE: SCOTT AND BRADSHA: AND KIMANI YA MURATHI

We beg to acknowledge receipt of your letter No.LNB.15/2/106 of the 18th instant.

We regret to say that we cannot regard it as an answer to our letter of the 21st ultimo which contains several specific queries which are, as yet, unanswered.

We are not in possession of a y opinion on the questions concerned given by the Law Officers.

We can only say that the receipt of such a letter after a considerable lapse of time and after receipt by you of our letters of the 21st and 29th ultimo which indicate the urgency and seriousness of the position in so far as our clients are concerned, is most disheartening to a firm which has always endeavoured to assist Government in every way in its power.

We have the honour to be,
Sir,
your obedient servants,

For JALY & FUGGIE

25th November, 1935.

The Hon.
The Colonial Secretary,
C/o The Secretariat,
NAIROBI.

Sir,

Re. Messrs Scott & Bradshaw and Kimani wa Muratha
(Your File S/LND/13/2)

Prior to the writer's going on leave in May last a Memorandum dealing with this matter was prepared with a view to presenting it to His Majesty's Secretary of State for the Colonies.

In view of the fact that our clients were led to believe that pressure was being brought to bear to ensure the implementing of the Carter Commission Report at an early date, our clients decided not to forward the Memorial at the time in full expectation that the question of compensating natives and removing them from privately owned lands would be dealt with in the near future.

The writer has now returned from leave and nothing effective seems to have transpired during his absence.

A question was put in Legislative Council recently asking how the matter stood, but we gather that the question was not replied to.

We would be obliged if you could inform us whether the question of implementing the Carter Commission Report has advanced any further since we last heard from you, and whether you are in a position to give any estimate as to when the necessary Order in Council may be expected.

Our clients have agreed to sell the land but have also agreed to do everything in their power to adjust the question of natives' rights by continuing their negotiations with Government.

If you are not able to say that the position has satisfactorily advanced, the Memorial must be forwarded to the Secretary of State, but we naturally should prefer to have the matter adjusted without the necessity of adopting this course.

We have the honour to be,

Sir,

Your obedient servants,

For DALY & FIGGIS.

(Sgd) E.K. FIGGIS

COPY:

THE SECRETARIAT,
NAIROBI, KENYA.

Ref: C. LND, 13/2/128 4th December, 1936.

Messrs Daly & Figgis,
Advocates,
P.O. Box 34,
NAIROBI.

Gentlemen,

With reference to your letter of the 25th November regarding the case of Messrs Scott and Bradshaw and Kimani wa Muratha, I have the honour to inform you that the draft of the Order in Council has been receiving consideration by the Colonial Office.

2. It is not, however, possible at present to give any estimate of the date when the Order in Council will be made.

I have the honour to be,

Gentlemen,

Your obedient servant,

(Sgd) ???

p. COLONIAL SECRETARY.

AIR MAIL

KENYA

No. 10



107 /

GOVERNMENT HOUSE

NAIROBI

KENYA

REC

22 JAN 1937

CONFIDENTIAL. O. O. REG

January, 1937.

Sir,

With reference to Kenya Confidential despatch No. 152 of 8th. December, 1936, on the subject of the Kenya Land Commission Report, I have the honour to transmit for your information a copy of a Petition presented to me by three Akikuyu who have been evicted from the farm of a Mr. Boyd in the Lituru area.

Since the date of this eviction some half dozen other cases have occurred in the same locality.

2. The action of European landowners in evicting natives from their farms is greatly to be deplored. The case of Messrs. Scott and Braithwaite has already been placed before you and the difficulties inherent in these cases, where the farms were in the past ~~owner~~ but in freehold, are well known to you.

These subsequent cases, which may indeed be followed by others, make it all the more urgent that early progress be made with the alternative measures required to implement the Commission's recommendations and I would like to strongly to press for an early reply to the despatch No. 70 of May last.

3. I may say that the report of Mr. A. P. Hill, which reference was made in Sir George Verne's despatch No. 44 of August 1936, has been received.

THE RIGHT HONOURABLE,
W.G.A. ORMSBY-GORE, F.C.S., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

(1) or JB005/3/37
30 309
23/36

Answer (13)

(1) or JB005/4/35

(7) or JB005/5/36

enclose a copy of it for your information (without the detailed list of persons but with Appendix C).

I am hopeful that a satisfactory solution of the question of providing suitable land outside the Kikuyu Reserve for the accommodation of squatters who may be turned off farms in the future - vide your despatch No. Confidential (4) of 12th. October, 1936, may be reached at an early date and negotiations to that end are now proceeding.

(2) on 38223/35

The natives whose rights to farm lands in the Kikuyu Reserve are to be extinguished can also be accommodated therein though I see no reason to fear that the majority of them will fail to find accommodation in the areas to be added to the Kikuyu Reserve under the Commission's recommendations. It may also be necessary to have recourse to the issue of Rules framed on the lines of the recommendation in section 1866 of the Report - as to which empowering provision has been made in clause 24 (e) of the Draft Native Lands Trust Bill.

4. In the meantime the natives who have been evicted can readily be accommodated in these areas and will be offered the monetary compensation to which, under Mr. Philip's report, they are entitled. That compensation must, however, (on the basis of a total sum of £2,000) be small.

I have the honour to be,

Sir,

Your most obedient, humble
servant,

ACTING GOVERNOR'S DEPUTY.

P.O.Box 39,

LIMURU (Kenya).

28th November, 1936.

The Hon'ble The Chief Native Commissioner,

NAIROBI.

Sir,

We send you herewith enclosed, in triplicate,
Petition for presentation to His Excellency the Governor-
in-Council, and commend it to your kind offices.

We beg to remain,

Sir,

Your obedient servants,

Sd. Gathu wa Wakanguina.

Thogo wa Kwai.

Njoroge wa Thogo.

28th November, 1936.

To,

H.E. The Governor-in-Council,
(Through The Hon'ble The Chief Native Commissioner).

Your Excellency,

THE HUMBLE PETITION OF GATHU WA WAKAGUIMA,
THOGO WA MWAI and NJEROGI WA THOGO MOST RESPECTFULLY SHEWETH.

1. That your petitioners are members of the Wakaguima Clan (Mbari) of the Kikuyu.
2. That your petitioners have been the owners of lands at Limuru which lands have been alienated away by the Government and are in the possession and occupation of Mr. Boyd.
3. That hitherto your petitioners have been occupying their lands, feeling perhaps that they have been safeguarded by the operation of Section 86 (1) of the Crown Lands Ordinance (Chapter 140, Laws of Kenya).
4. Since the report of the Kenya Land Commission, it seems to have been assumed by the lessee or occupier from the Government that your petitioners must of necessity be removed from the land, and without waiting for the Order-in-Council which, your petitioners learn, it was at one time proposed to promulgate to legalize any removal, he has forcibly evicted your petitioners from the said farm, on which they reside.

Your petitioners therefore humbly pray that Your Excellency will issue directions for our re-instatement on the farm, from which we have been evicted, and to prevent us from being in any way molested by any lessee from the Government or assignee of such lessee.

And your petitioners as in duty bound will
ever pray.

Sd. Gathu wa Wakaguima.
Thogo wa Mwai.

REPORT ON INQUIRY INTO RIGHTS CLAIM
OF RIGHT ON ALIENATED LAND.

REPORT ON INQUIRY INTO KIKUYU
CLAIMS OF RIGHT ON ALIENATED
LAND.

INTRODUCTION.

1. I reported at Kiambu on 25th March 1933, on transfer from Nakuru, and received instructions to carry out an investigation of Kikuyu claims of right on alienated land.
2. I spent about a fortnight in preliminary office work, and then commenced the investigation of particular claims. This involved a considerable amount of travelling, as it was considered desirable, whenever possible, to visit the land in question.
3. Towards the end of April, Mr. Ousek, District Officer, was transferred to Maralal, and was not replaced. In consequence it became necessary for me to spend part of my time in ordinary district work, with the result that this special investigation was not completed as soon as was originally expected.
4. The main work of investigation was finished by about 20th July 1933, and since then no further travelling has been necessary. The inquiry was, however, kept open in the hope of obtaining further information concerning certain claims which were the subject of correspondence.

PURPOSE OF THE INQUIRY.

- 5. The inquiry was necessary as a preliminary to carrying out the recommendations of the Kanya Land Commission with regard to natives who had rights on alienated land under section 33 of the Crown Lands Ordinance 1915 (or section 31 of the 1908 Ordinance).
- 6. The relevant sections of the Land Commission Report are 203 - 275, 1285 - 1290, 1294.
- 7. The object of my inquiry has been to prepare a complete list of natives who are entitled to be regarded as right-holders within the terms of these sections.

STEPS TAKEN TO OBTAIN NOTICES OF THE INQUIRY.

- 8. A map was obtained from the Survey Department based on the Land Commission Report and showing the farms which were situated in the following areas:-
 - 14. (a) "Land found to have been unoccupied Kikuyu territory in 1906"
 - 14. (b) "Land allegedly acquired by Kikuyu since 1906 but afterwards alienated by Government"
 - 14. (c) "Land in which Kikuyu had won a footing in 1906 but which was still largely unoccupied and land-covered and was subsequently alienated by Government."
- 9. The Land Assistant, Nairobi, supplied a list which contained the names of owners, L.O. numbers, etc., of the farms in question.

PUBLIC RECORD OFFICE
 Reference
C.O. 533 / 476
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10. A circular letter dated 1st April 1960, was then sent to all the European owners and occupiers concerned, accompanied by a notice in Kikuyu for distribution to squatters, and a form and franked envelope for reply. A copy of the letter is attached to this report (Appendix A).

11. The circulation of the letter to farms in the Thika district was undertaken by the District Commissioner, Thika.

12. The Superintendent of Police, Kiambu, also cooperated by circulating copies of the letter with the Patrol Books in his area, for the benefit of any residents whose names might have been omitted from the list.

13. The response to the letter was very good, and a large proportion of the claims which I investigated were originally brought to my notice in this way.

14. In addition, a notice was published in the Official Gazette (General Notice No. 418 of 14. 4.60), inviting the submission of claims not later than 30th April 1960. This date was later extended (by General Notice No. 490 of 28. 4.60) to 31st May 1960.

15. Further publicity was given to the investigation by front-page headlines and a leading article in the "East African Standard" of 16th and 17th April 1960.

16. Other steps taken to give notice of the inquiry included: letters to all chiefs in the Kiambu district, who were asked to publish the news in baraza; announcement at the Local Native Council meeting on 21st April 1966; letters to the principal mission centres in this district and to the Municipal Native Affairs Officer, Nairobi, requesting that the information might be circulated as widely as possible among Kikuyu natives in their respective localities.

LIMITS OF THE INQUIRY.

17. With regard to farms outside the areas mentioned in paragraph 6, I decided, after consulting the Provincial Commissioner (Mr. La Fontaine) and Mr. Pasa (who was secretary to the Land Commission and is now acting Provincial Commissioner, Nyamira) that no special steps (e.g. circulating faxes etc.) need be taken to ascertain the existence of claims, for the following reasons:-

- (a) It would be difficult to know where to stop; e.g. should Nairobi and Naivasha be included?
- (b) It seemed unlikely that any valid claims existed outside the areas mentioned.
- (c) In any case, steps were being taken to give notice of the investigation to Kikuyu generally, through the native authorities in the reserve, etc.

Nevertheless, I was prepared to, and did in fact, investigate such claims as were submitted in respect of land outside those areas.

18. I would also mention that in practice no claims were excluded from consideration on the ground that they were submitted after the time limit fixed by the Sango notice.

PRINCIPLES APPLIED IN DECIDING CLAIMS.

19. The basis of a valid claim is uninterrupted occupation since before the date of alienation, subject to the proviso which is expressed as follows in section 509 of the Land Commission Report:-

"While our general recommendation is that such compensation should be paid to persons who are now living on the farms as of right, but not to those who have left, we consider that a point should be stretched in favour of those who have left the farms since the Commission was appointed."

20. It was therefore necessary for us to entertain claims, not only from natives who were still in occupation of alienated land, but also from others who had left, and in respect of the latter to attempt to ascertain whether their occupation ceased before or after the Commission was appointed. (The date of appointment is given in the Introduction to the Report (Sec.1) as April 1952). This was not always an easy task, and in some cases, where sufficient evidence was not forthcoming, I have given the claimants the benefit of the doubt.

21. With regard to the question of what constitutes "occupation" no ruling has, as far as

I am

I am aware, ever been given in a court of law, and I have therefore thought it expedient to adopt a somewhat liberal interpretation.

22. For instance, natives have in some cases (often on the orders of their European masters) shifted their huts and gardens from one part of a farm to another, but I have not considered it necessary to take such limited movements into account.

23. Again, in one instance (that of Gethu wa Vakuguma on Mr. Boyd's Estate at Limuru) I have allowed a claim which is based on continuous cultivation, although actual residence has not been continuous.

24. In some instances, moreover, it has happened that a claimant has since the date of alienation moved from one farm to another. In view of the fact that farm boundaries are artificial and do not necessarily coincide with the boundaries of the original native holdings, I have not refused to entertain such claims, and if satisfied after due inquiry that the claimant has not moved far away from his original place of occupation and is in fact on the same "githams", I have accepted his claim as valid for purposes of my inquiry.

25. In a few cases I have gone even further than this and have provisionally included in my list certain claims which would doubtless be rejected

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35. In a few cases I have gone even further than this and have provisionally included in my list certain claims which would doubtless be rejected

rejected in a court of law. In doing so, I have had in mind the probability that the right-holders to whom this inquiry relates would, on the extinction of their rights by Order-in-Council, be given an opportunity of settling on land which is being added to the Reserve as compensation; and I considered that it would be useful for this purpose (though perhaps not necessary for purposes of monetary compensation) to include in my list the names of persons who, while their claims were not valid according to the strict letter of the law, had a strong case for consideration on equitable grounds.

26. The following are examples of such cases:-

(a) Kingitori Ltd, Kiambu.

Three natives resided on this estate from before alienation till after the war. They were then evicted but were later allowed to return, and remained in occupation till 1955.

(b) Itogi Estate, Limuru.

A native named Eria was an original right-holder on this estate. After the war he moved, at the desire of the owner, Mr. Cairns, to another farm belonging to the latter in a different locality, and has remained there ever since.

27. In each case of this nature, as in all cases of removal from one farm to another, I have inserted an explanatory note in the list which I have prepared, so that if it is decided that they have been wrongly included they can easily be deleted later.

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28. I have accepted the principle that rights can be inherited. If, therefore, it appears that the original right-holder is dead, but that there has been continuous occupation by him and afterwards, without any hiatus, by his heir, the latter's claim has been admitted, even though he may not have been born till after alienation.

29. As indicated in paragraph 17, I did not consider that claims should be necessarily excluded on the ground that they related to land outside what were found by the Land Commission to have been the limits of Kikuyu territory in 1902. It is possible that a few scattered outposts may have existed beyond these limits, and in certain cases, moreover, alienation took place somewhat later than 1902. I have, in fact, admitted a few such claims (e.g. Uplands Bacon Factory, Parklands Estate, Kidojo Estate, Kiambu).

SOURCES OF INVESTIGATION.

30. I have had resort to all such sources of information as were available, accepting each piece of evidence for what it was worth, without regard to legal rules of admissibility.

31. European owners and managers were, almost without exception, exceedingly helpful, and I gratefully acknowledge their assistance.

32. It was my usual practice first to record the statements of the claimants, and then to invite the statements of the European concerned. The latter would be asked whether he had any record or recollection of the length of the claimant's residence on his land. The evidence thus obtained was frequently negative (i.e. to the effect that nothing was known to controvert the claim). Nevertheless, much useful information was obtained in this way, particularly with regard to the date of termination of residence in cases where the claimant professed to have left since the Land Commission was appointed.

33. Another means of checking the statements of claimants, which sometimes yielded conclusive results, was the examination of entries on Registration certificates.

34. In a few cases, moreover, I was able to obtain the necessary verification by searching files in the office of the District Commissioner, Kiambu, and of the District Commissioner, Nairobi, for correspondence concerning squatters ~~between 1905~~

35. A major source of information, however, was the testimony of other natives; and the value of this testimony is largely dependent on the Kikuyu 'githaka' system, under which the individual's right to land springs originally from his membership of certain 'nbari'.

86. I endeavored, whenever possible, by general inquiries and by reference to Vol. I of the Land Commission Evidence, to ascertain the 'shari' which was recognized to have had 'githaka' rights in the particular locality in question. If the claimant was found to belong to that 'shari', his case was obviously strengthened. If not, he might still have a valid claim as a 'mmed' (or tenant) - vide section 875 of the Land Commission Report - but in this case it would be necessary to consult the representatives of the 'shari' to whom he stood in the relation of tenant. If they supported his claim there was good reason to think that it was valid, since they would not be likely to support the claim of an impostor to what they considered to be their own 'githaka'. On the contrary, in fact, I frequently observed that right-holders who had been existed long ago were reluctant to support the claims even of genuine 'shari' for compensation for which they themselves were not eligible.

87. Finally, I would mention the use which I have made of native assessors. At various stages of the inquiry I invited the opinions of responsible native elders who often had some special local knowledge but had no direct personal interest in the questions at issue. These elders included Chief Koinange, Chief Josiah, and Central Tribunal Elders Kibuyi, Nduro, and Laka. On

to be admitted.

July 22nd 1900, when my list was practically complete, I held a meeting at Tigua with the five elders mentioned. I went through the list with them, inviting their comments on each separate claim. The proceedings were held in the open, in the presence and hearing of several hundred interested natives, who were allowed, when they wished, to put forward their views and representations.

50. The primary object of this meeting was to enable me to make a final decision as to a number of claims about which I was somewhat doubtful and which had only been included in the list provisionally. As a result some of these claims were eliminated but the majority were confirmed.

MEANS OF FINALITY.

51. It will be realized that the fact that a claim has been included in my final list does not necessarily mean that it has been established beyond all doubt. In many cases I have not found it possible, keeping within reasonable limits of time and expense, to obtain conclusive evidence. I have therefore acted on the principle that if a claimant establishes a prima facie case, and if after a reasonable amount of investigation the available evidence is insufficient to rebut it, the claim should be admitted.

40. I have aimed at carrying my investigations as far as I consider would be justified by the purpose of this inquiry. Obviously, however, my conclusions in any particular case could not be regarded as making it 'res judicata' if the question of legal proceedings arose between the claimant and the European owner or lessee.

CLASSIFICATION OF RESULTS.

41. For purposes of my inquiry I classified the claims according to the farms to which they referred. A separate file was kept for each farm, and each file was given a serial number to facilitate reference. In the final list of valid claims (which is attached to this report, appendix B) the system of grouping under the relevant farm name has been retained, but the numbering has been altered to allow of classification according to districts.
42. The original files, containing my notes of investigations, correspondence, etc., together with the lists, maps, etc. which I obtained and used, have been deposited in the office of the District Commissioner, Kisumu.
43. The final list (Appendix B) contains, in addition to the names of persons found to have valid claims, particulars of their dependants, including the numbers of grown-up sons and

younger

younger brothers, sisters, and children. This information has been collected with a view to the possibility of their eventual settlement on land which is being added to the Reserve. But since this object was subsidiary to my main task, the figures are in some cases incomplete, and no high degree of accuracy can be claimed for them.

44. I have, however, made a calculation based on the average obtained from 75 representative families, and have arrived at the following estimate of the number of persons likely to be affected by the proposed Order-in-Council:-

Principal right-holders	565
Grown-up sons and brothers	501
Wives (married)	525
Children	2581
Total	4172

Details of this calculation will be found in Appendix C.

45. Of the principal right holders, 88 are persons who were found to have left since the Land Commission was appointed, so that the number still living on farms is 505. The corresponding proportionate figures for the total population would be: 507 left, 5505 remaining.

46. The above figures represent, in my opinion, a conservative estimate.

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Names of sons and brothers have not, as a rule, been included in the list, but in many instances they have been recorded in the original files.

POLITICAL ASPECT OF THE INQUIRY.

48. I found it constantly necessary to explain the nature of the inquiry both to Europeans and to natives. The former usually appreciated the necessity for it and realized that it was to their own advantage that it should be carried out as expeditiously as possible.

49. The native reaction to the inquiry was generally to exaggerate its importance, and to make it the occasion for submitting 'abari' claims similar to those which were submitted to the Land Commission. I received a large number of typed letters setting out the claims of the various 'abaris'. The King not unnaturally failed to understand on what principle compensation was to be granted to those who had remained till 1958 but withheld from those who had been evicted earlier, especially when this meant that 'abari' were in some cases given precedence over githaka-owners.

50. I was constantly at pains, therefore, to emphasize the strictly limited scope of my inquiry and the fact that it was useless to

approach

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approach me in the hope of reopening the whole question of 'shari' claims. Nevertheless, although no disagreeable incidents occurred during the course of the inquiry, I could not fail to observe the intensity of the feeling with which the Kibaya of this district nurse their grievances with regard to land, and the deep dissatisfaction which they show with the settlement proposed by the Land Commission. In particular, there was abundant evidence of their strong antipathy to the idea of accepting monetary compensation.

A. PHILLIPS
DISTRICT OFFICER.

SIAMBU
19th September 1956.

Calculation of total number of persons likely to be affected by the proposed Order-in-Council.

The number of principal right-holders whose claims have been admitted is 365.

The average number of women and children per family (calculated from the figures obtained in 75 instances) is 2 women and 3 children.

The number of grown-up sons and brothers (not included in the above figures) is 591. Of these, it is, I think, safe to assume that at least half are married, and the average number of women and children in these subsidiary families is not likely to be less than 1 woman and 2 children.

Calculated on this basis, the population will be as follows:-

MEN	(a) principal right-holders	365
	(b) sons and brothers	591
WOMEN	under class (a)	730
	" " (b)	195
CHILDREN	under class (a)	2190
	" " (b)	591
	Total	<u><u>4262</u></u>