

1937

38005

CO 533/476

38005

KENYA

LAND COMMISSION REPORTCLAIMS OF DURUMA NATIVES TO LAND IN MUYACHI VALLEY.

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Sir C. Bottomley	14.10	

LAND.

The position of the Duruma people in the Mwachi Valley (Coast Province) was brought to the notice of the Land Commission by Captain McKeag, District Commissioner, Mwali.

It appears that these natives, consisting of some 416 families, are residing on land which prior to 1908 was undoubtedly Duruma country, but which since 1908 has been alienated by Government. Notwithstanding the alienation, one native at least has secured a title to a plot known as L.O.1037 comprising about 1500 acres. The rest of the Duruma people living in the Mwachi Valley are naturally anxious to continue residing there. This Valley is one of the best watered and most fertile parts of the past or present holdings of the Duruma people.

It appears that the Duruma regard as theirs much of the land alienated by Government on the banks of the Mwachi, lying generally southwards of the railway between Miritini and a point some miles south of Mazeras Station.

The Land Commission examined statements made by various District Officers regarding the claims of the Duruma, in which a great deal of sympathy with the natives was shown. But it was only towards the conclusion of the investigation that it became known that, by an agreement dated the 9th of June, 1908, nine Duruma elders, purporting to be "the elders of the tribe" signed an agreement with Government by which in return for a payment of Rs.1,000 they surrendered "all the rights of the said tribe and of any and every member thereof" in certain areas of land which included "the twelve homestead plots on the banks of the Mwachi River."

provided

provided that if any of the Duruma "owners" should be required by the Government lessees to quit their present holding or to stop cultivating, "they should be duly compensated".

It appears that the land was originally taken up in the rubber boom of 1908. When rubber failed, it was soon abandoned by the title holders. But while the title holders have left, the Duruma appear to be occupying the Valley in increasing numbers and cultivating the land extensively.

The point has been made by Captain McKeag that by the deed of 1908 the Duruma tribe have, in consideration of a matter of Rs.1,000 (£75) voluntarily disposed of all their rights to the land now in question, and a good deal more as well. That this argument is legally sound is undoubted, but is it morally sound, asks Captain McKeag. He states:

"The elders told me that the land was surveyed and alienated without any reference to them whatever. That, after it was taken up, and some of the title holders were ejecting resident Duruma, the District Commissioner, Rabai, sent for the elders, and offered them money as compensation. This offer was emphatically turned down on two separate occasions by the elders. On the third occasion, the money (Rs.1,000) was accepted under protest by a few elders who considered it better to take what was offered, rather than lose everything. Many elders refused to accept any share of this money when the consenting elders divided it out.

As a side-light upon the probability or otherwise of the truth of this story, I quote here a statement made by Mr. Osborne himself when giving evidence in a Land Registration Court case in Mombasa in 1921, when the Crown put forward this deed: "Proper enquiry had not been made as to the native rights before alienation, and the compensation was the result of such alienation."

The

3

The decision of the Land Commission in the matter is as stated in the despatch, viz. that the Provincial Commissioner should undertake a special inquiry. The inquiry has been completed and the Provincial Commissioner finds that there is a case for restitution to the Duruma tribe. He ^{recommends} ~~recognized~~ that all of the land, with the following exceptions, should be acquired by purchase from the title holders and added to the Duruma Reserve. The exceptions are the Mission plots 1001 and 1271 and the Indian Farm 1031/1, which are to be set off against the Rs.1,000 paid in compensation to the Duruma elders.

The Governor is ~~ready~~ ^{willing} to place seven Crown Land Farms for occupation by the Duruma, but they are scattered over the area. The Governor has ~~to~~ ^{been} advised, therefore, that the most satisfactory arrangement would be to confine ^{Permanent} ~~present~~ native occupation to the land south of the Mwachi River. But this cannot be put into effect until certain farms south of the River can be acquired on reasonable terms, so he proposes that, until these farms can be acquired, certain farms north of the River should be held by the natives concerned on a Temporary Occupation Licence at a peppercorn rental.

I have illustrated the proposal in the attached sketch, and have attached a list of all the farms in the area.

The only disability of the proposal, as far as I can see, apart from the fact that it considerably modifies the Provincial Commissioner's recommendation, is that there will be an upheaval of the natives occupying the Class B2land when Farms 1028, 1029 and 1038 become available, which will take some

explaining

explaining in replies to Parliamentary questions. But there is the agreement of 1908 to fall back upon.
? Approve the proposals
C.P. Rowland.

It seems to me that the Gov. has made out a very inadequate case for such a substantial whittling down of the recommendations of the Provincial Commission. At the suggestion of the Land Commission that offer was changed with an investigation of the claims of the Duruma Natives, & he has come to the conclusion that there is a case for the restoration of the whole of the land in this valley (apart from the 3 plots wh. can be regarded as having been disposed of the payment of Rs. 1000 compensation in 1905).

The Gov. gives no reason for whittling this down to a proposal to give them only the land S. of the river (with temporary accommodation N. of the river until the whole of the land S. of the river can be purchased) beyond stating that his advisers consider that the most satisfactory arrangement wd. be to confine permanent Native

occupation to the land S. of the Duruma River.

In effect the Gov's proposal represents the restoration to these natives of less than half the area recommended by the P.C., and it seems to me that this requires some explanation than has been given.

In my case even the Gov's proposal is not wholly consistent because certain of these natives will be left in freehold occupation of two farms across the river (1037/2 & 1037/1).

In the case it is not clear what are the objections to the permanent addition to the reserve of farms 1034 wh. (although across the river) is contiguous to the block proposed, & is therefore free from the objection of discontinuity wh. applies to farms 1030, 4330 & 3240.

To add farm 1034 to the proposed native area wd. lessen the disparity between the P.C.'s recommendations & the Gov's proposals & wd. avoid the disturbance caused by removing the natives from that farm wh. has now marked with a black - because

available.

3 point out the discrepancy between the Govt proposals & the P.C.'s recommendations; and for further info as to the reasons for considering that the area S. of the river and represent an adequate restitution, having regard to the fact that the P.C. recommended the restitution of the whole of the land in this valley; and what are the objections to the permanent addition to the reserve of farms No. 1034, either as an addition to the block proposed; or alternatively as a substitution for (say) farms No 1028, in order to avoid disturbance in the (possibly distant) future when all the farms S. of the river can be purchased at a reasonable price.

J.P. Paskin
22/6

1/2 Vol. III

I do not at all like this question. From examination of the evidence it appears to me only too clear that this land was leased to Europeans without what we should now consider adequate consideration. The whole Valley was apparently in effective occupation by the Duruma and in 1933 there were 416 families living on the alienated lands. It appears that in 1908, the land having been alienated, the native elders were offered Rs.1000 as compensation and eventually decided that they had better take it instead of nothing, so it is not right to put any stress on the fact of the compensation having been paid.

Like Mr. Paskin, I cannot see that there is a good case for any reduction of the recommendations put in by the Provincial Commissioner. This is not a case of European Highlands, since the land is in the Coast Province, and I cannot understand the attitude of the Government in apparently arguing that land which has been declared Crown land ought not to be handed back to the native population, even when there is a clear claim to it. If the farms marked by a red dot on the plan can be turned over to the natives now, why should they not stay with them, and further, why should not the three farms 1028, 1029 and 1038 also be acquired and handed back as native reserve?

As regards the farms which are held on individual tenure by two natives, I agree with the Governor that there is no reason for buying them out in order to turn the land into native occupation. Apparently, from the evidence, what happened was that a native called Lucas Mgandi told the people that the Government was taking the land from them and selling

it or giving it away, so that they had better apply to lease it for themselves. They agreed and put up a certain amount of money and Lucas proceeded to buy 1037.

I think then that we should reply as Mr. Paskin proposes and say that the Secretary of State, on the facts as placed before him, is strongly of opinion that all the land which can be made available at once should be so made available without any idea of subsequent reversion to the Crown, and that the other farms should be added as Class A. Reserve as soon as they can be acquired on reasonable terms.

The Commission found that the land must have been in agricultural occupation since the land on both sides is native reserve and it would be odd if the valley which had the best land was not also occupied.

J. C. Flood
24.6.

* Mr. Flood tells me that he agrees that the areas marked in solid red on the plan shall be taken as paid for by the original 15000 rufees. I agree, though there is no evidence that a single rupee was to any one concerned in those particular areas.

I think that the despatch and minutes, with the help of the plan which Mr. Crossmith has marked, sufficiently shows the position. The passage in the part of the Morris-Carter Report, dealing with this question, is paras. 1203-1208. The ^{Volume of} [voluminous] evidence taken by the Commission has been consulted by the Department.

The Governor's proposal to restore only a part of what can eventually be restored, without undue cost or difficulty, is based on the argument in para. 5, that the Duruma claim is weak and that they have really concocted a claim based, not on ancient right, but on recent occupation of unoccupied but alienated land.

I confess that I think that the advice given to the Governor is probably a good deal weaker than the Duruma claim. As Mr. Flood points out, the Commission regarded this valley land as the land, of all that included in the Duruma Reserve, most likely to be occupied by them, and this view is reinforced by the fact that after alienation it is land which the Duruma have found worth cultivating. If it was attractive after 1908, surely it was attractive before 1908. Then again, the money payment in 1908 must be taken as evidence that the native claim to the land at that date was accepted.

I agree that we should try to secure for the natives as much of the land as possible. I feel sure that in these cases we ought to make the fullest restitution in land whenever we can. That is the basis, not only of the original Native Land Trust Ordinance, but also of the work of the Morris-Carter Commission, and I agree that we should reply as

Mr. Paskin

and why not 'larger' do the decent thing?

The Gov. says there is no strong objection to doing this (para. 1) and I think we should

? Say the S. of B. has again considered it and agrees that there was some attention paid to native rights in 1904 but is not satisfied that full attention - or what would now be thought the full attention - was paid to them. That he is impressed with the view of the P.C. & Mr. M. Keay and having regard to the fact that apparently no use is made of the land by its present owners (Bickerick) while the Durume appears to be living on it and increasing in number, thinks that his original suggestion is the most equitable course.

J. W. Flood
13/10

Sir G. Parkinson.

I think that the position will be clear to you from the minutes on No. 1 and the draft (No. 2), and Mr. Grossmith's very useful sketch which is below that draft. I have appended two pencil sketches of my own to show what the ultimate difference would be as between the native and alienated land under the Governor's proposal and our own. The former shows a much more solid block of alienated land. This may have something to do with the Governor's attitude ^{unless he can be persuaded} when he makes any criticism that we are always favouring the native. I do not think that can carry weight.

I am not very happy about No. 3. The question was whether the natives' rights had been enquired into before land was alienated in 1908. Mr. Eliot's investigations in 1904

and

and 1905, confined to the particular parcels of land which were then under consideration for alienation, had nothing to do with either 1908 or the rubber boom. It is true that on one of the areas on which he reported a decision was deferred until 1908 when it was then taken in hand as part of the general deal for which 1,000 rupees were paid. We are as much in the dark as we were as to any special investigation leading up to the 1908 transactions generally. I have marked "E" on Mr. Grossmith's plan the areas with which Mr. Eliot dealt, and it is perhaps noteworthy that the four areas which constitute the difference between the Governor and ourselves (red dot on Mr. Grossmith's plan) did not come under Mr. Eliot's review and therefore are areas of which we have no evidence of any investigation as to native rights.

I agree with Mr. Flood as to action.

W. S. G.
14.10.27

Sec. of State

You saw this at an earlier stage. I agree that we should adhere to what was suggested in para 5 of C.O. despatch in 1.2.

W. S. G.
17.10.27

W. S. G.
18.10.27

at the start of the rubber boom

3A

No. 976. 3 Howard. 10 NOV 1937

38005/17/37.

C. O.

C. D.
15-NOV
1937

Mr. Costley-White. 20.10.37.

Mr. Paskin. 5/11

Mr. Flood. 5/11

Sir H. Moore

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street.

10. November, 1937.

Sir,

(3) I have etc. to acknowledge receipt of your despatch No. 489 of the

24th of August on the subject of the

Daruma claims in the Mwachi Valley,

and to inform you that I ^{have} again carefully considered your proposals in the light of the observations therein.

2. It is apparent from the extracts from the Land Office records that in 1904 and 1905 some attention was paid to native rights when the alienation of certain of these lands was under consideration. On the

other hand these records are fragmentary and, as mentioned in paragraph 4 of

your

DRAFT.

KENYA.

NO. 976.

GOVERNOR.

FURTHER ACTION.

your despatch No. 255 of the 7th of May, throw
 no light on the transactions leading up to the
 "settlement" of 1908, whereby certain of the
 Duruma elders purported to dispose of the rights
 of the tribe for a payment of Rs.1,000/-. After
 careful consideration, I am still not satisfied
 that, at the time when these lands were alienated,
 the question of native rights in this area
 received the full consideration that would now be
 regarded as necessary.

3. I have been much impressed by the views
 of the Provincial Commissioner and of Mr. McKeag
 as recorded on pages 2608 and 2609 of Volume III of
 the evidence given before the Kenya Land Commission,
 and in your despatch of the 7th of May, and having
 regard to the facts that no use appears to be made of
 the land by its present owners, that on the contrary
 the Duruma appear to be living on it and increasing
 in numbers, and that much of the land in the existing
 reserve is ^{said to be arid} and ~~was~~ unsterile, I remain of the opinion
 that the most equitable solution of this problem would
 be as indicated in my despatch No. 584 of the 27th

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomkinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perms. U.S. of S.
- Periy. U.S. of S.
- Secretary of State.

of July; namely, that all the land now
 available in the Valley should be made
 permanent Class A or B-1 native reserve ^{permanently}
 with no Class A or Class B-1 land
 without any idea of the subsequent reversion
 of ^{any} part of it to the Crown, and that any
 land which may later become available should ~~also~~
 be added to the Reserve.

DRAFT.

I have, etc.

(Signed) W. ORMSBY GORE.

FURTHER ACTION.

Shaded area - 6th, ultimately, elevated or
elevated. Rest - including surrounding
land - active.

311

Garrison
Island

Co. personnel



AIR MAIL

KENYA

No. 489

RECEIVED

AUG 1937



GOVERNMENT HOUSE
NAIROBI
KENYA

24 August, 1937.

Sir,

I have the honour to refer to your despatch No. 584 dated 27th. July, 1937, on the subject of Duruma Claims in the Mwachi Valley.

Your opinion that all the land in the Valley which can be made available at once for Native Occupation should be declared Class A Native Reserve has been duly considered, and whilst there is no strong objection to this course, it is desired in giving the explanations for which you ask, to take the opportunity of enlarging upon the considerations which weighed with the members of Executive Council in arriving at the decision conveyed to you.

2. In the first place, the evidence from the Land Office records to which reference was made in paragraph 4 of Kenya Despatch No. 258 of 7th. May, 1937, was not placed before the Provincial Commissioner, Coast, during his enquiry, and this evidence shows that the statement that "proper enquiry had not been made into native rights before this land was alienated" was far from being substantiated. During 1904 and 1905 when the bulk of this land was alienated Mr. J. Eliot, Assistant Collector, was stationed at Rabai and was requested to advise upon Native occupation in respect of every application. The attached memorandum quotes extracts from the Land Office files which show that the obligation to investigate Native rights was not lightly regarded and that over

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

the greater portion of this area the Native occupation at that time was very sparse.

3. Since the Natives at present living on these farms considered they had a grievance this Government was prepared to meet their claim in what was deemed to be a generous spirit, but felt that the inclusion of the whole of the Crown Land as Class A Native Reserve was not justified on the facts, and that a reasonable settlement would be to divide the land in the manner set forth in the despatch of May 7th. 1937. The river boundary was selected as forming a convenient natural dividing line between the two portions.

4. Before informing Executive Council and, in due course, taking the necessary steps to carry out your decision, the Governor would be glad to know whether, after considering the further evidence now submitted, you are still of the opinion expressed in paragraph 5 of your despatch.

I have the honour to be,

Sir,

Your most obedient, humble servant,



GOVERNOR'S DEPUTY.

MEMORANDUM.LND. 20/12/10/1.

I have examined all the Land Office Files containing the original correspondence in respect of alienations of land now claimed by the Duruma.

Many of the files contain no reference whatever to native occupational rights. Other files contain minutes and letters which indicate that native occupation was taken into consideration. The following quotations are from the files noted:-

<u>File No.</u>	<u>L.R. No.</u>	<u>Grantee.</u>
9417	1271	U.M.F. Church Mission.

"The Asst. Collector,

Have you seen the plots? It is quite impossible for me to form any idea as to where they are; you do not state whether the land is under cultivation or is occupied by natives and if the whole or part of it belongs to natives. Kindly supply me with full details and give me your opinion.

H.M. Sub-Commissioner,
Mombasa.
5. 1. 05."

"H.M. Sub-Commissioner,
Mombasa.

All the various plots are known to me. The land belongs to Government. There is a certain amount of cultivation on some of the plots but Mr. Griffiths does not wish to interfere with any hut or shamba which may be on his land. He intends to build schools and chapels on the land and encourage his converts to come and live on his land and do some industrial work, such as planting cotton etc.

X X X X X X X X X X X X X X X

9.1.05.

Sd: J. Eliot.
Rabai."

File No.
6870

L.R. No.
1028

Grantee.
G.S. Day.

"Dear Skene,

With reference to the land which Mr. Day wishes to take up I cannot say whether there are any natives or cultivation on his land until I know exactly where the land is. I would suggest that Mr. Day should come to Rabai and point out his land and I will then inform you what natives are on the land and what cultivation.

11.3.1904.

Sd: J. Eliot.
Rabai."

The Collector,
Mombasa.

I have the honour to inform you that I have been over the land which Mr. Day is taking up. It is situated about five miles from Rabai near the Mwachi Pump. There is a small village consisting of five huts on the land. The people of this village have asked me to allow them to remain where they are at present, because they have just planted their crops for these rains. They are willing to go as soon as these crops are ripe, but if they have to go now they will be unable to get any food. Mr. Day wishes me to say that he is quite willing to let them stay until their crops are up and that he will arrange the compensation with me then.

I think it would be a great hardship to deprive these people of the Mahindi etc. which they have planted, and it is difficult to arrange compensation for a Shamba, where the seeds are not yet up. In my opinion therefore it will be better to let these people remain until their crops are ripe.

X X X X X X X X X X X X X X X X

14.4.1904.

Sd: J. Eliot.
Rabai."

<u>File No.</u>	<u>L.R. No.</u>	<u>Grantee.</u>
7582	1036	Alibhoy, Ismailji & Shukle.

"Messrs. Shukle & Alibhoy Ismailji,
Mombasa.

I have the honour to inform you that Mr. Eliot, Asst. Collector, Rabai, has been requested to certify as to the payment of compensation to the natives on your land and on receipt of his reply of your having done so, the temporary rights will be granted to you pending survey.

2.11.04. Sd/-
L.O. Nairobi."

"From Messrs. Tonks & Allen, Mombasa, to the
Land Officer, Nairobi. 13.2.1905.

On the 15th August last they paid survey fees and after certain correspondence you wrote them on the 11th November last that the permit for temporary occupation had been forwarded to the Collector at Rabai, but although they have been willing and ready for sometime to settle and pay compensation to the natives which has been fixed at Rs. 76/- they cannot get their occupation, and on telegraphing to the Collector at Rabai of the 21st ultimo have received a letter of the 24th ult. that all questions relating to land near Mazeras are to be held over for the present in case the Government required the land themselves."

"Minute by the C/Lands (Col. Montgomery) to the L.O. dated 5.3.08.

Further enquiry seems to be necessary about this.

x x x x x x x x x x x x x

Are there any native claims still existent on the land ?

Let these points be thoroughly clear before we commit ourselves to a transfer to Mr. Markus."

"Further Minute dated 19.3.08.

There yet remains the question of native rights. Enquire about this from the Secretary Native Affairs before sending out the deed."

"Minute by Mr. A.C. Hollis, Secretary Native Affairs to Land Officer dated 8.4.08.

I have no objection to offer provided the 1000 rupees which I have already written about is paid to the Duruma by Government for the purchase of the freehold rights. As you are aware steps have been taken to pay this sum."

<u>File No.</u>	<u>L.R. No.</u>	<u>Grantee.</u>
7307	1029	Abdul Hussain Mulla Karinji.

Permit to occupy pending survey issued 9.3.1905.

"Letter from the L.O. to the Asst. Collector, Rabai dated 18.3.05.

I have the honour to inform you that there is no objection on the score of natives to Messrs. Day, Adbhoy Ismailjee and Rewarshankar Shuhlar being granted temporary rights of occupation as native rights are safeguarded by the wording of the permits.

The land occupied by natives will be surveyed off the holdings at the expense of the applicants when their survey is undertaken.

x x x x x x x x x x x x x x "

<u>File No.</u>	<u>L.R. No.</u>	<u>Grantee.</u>
7555	1035	Indian Trading Association.

"Minute by J. Eliot, Asst. Collector, Rabai. 31.10.04. L.O.

Part of the land applied for is in the possession of the United Free Church Mission. The applicant should be told that if he will restrict his application to land outside the Mission radius I have no objection to offer.

x x x x x x x x x x x x x x "

File No. 645. L.R. No. 1285. Grantee. A.F. Ferreira.

"Minute by Mr. J.W. Tritton to L.O. dated 25.4.04.

The land in question has been visited by the A.D.O. at Rabai and there are no objections to Mr. Ferreira's occupation. There are no natives resident on the land."

File No. 6866 L.R. No. 1017 Grantee. Ahmedbhoj B. Patel.

"Minute by Mr. C.R. Lane dated 8.7.04 to Mr. Eliot.

Are there natives on the land, if so, are they willing to part with it?"

"Minute by Mr. J. Eliot, Rabai to Mr. C.R. Lane dated 8.7.04.

There are no natives residing on the land. There are a few coconut trees and bananas owned by natives residing near. Mr. Patel has expressed his willingness to compensating the owners of these coconuts etc. in the same way that the two other settlers have compensated natives who were residing on their land. The compensation to be arranged before me."

"Minute by Mr. C.R. Lane to Ag. C/Lands dated 9.7.04.

I have made careful enquiries and can find no objection to Mr. Patel having the land."

File No. 6868 L.R. No. 1016/II Grantee Husainali E. Jeevanjee.

"Letter from the Ag. L.O. to the applicant dated 26.9.04.

In connection with your application for 1280 acres of land at Mazeras on the Rabai side of the Railway I am advised by the Sub-Collector at Rabai that there are a lot of native huts and shambas on the land you ask for, consequently I cannot entertain your application.

You should therefore confine your selection to the other side of the Railway where there is a large extent of unoccupied country."

"Letter from Mr. Eliot Sub-Collector, Rabai, to the Collector, Mombasa, dated 4.10.04.

X X X X X X X X X X X X X X X

You asked me to state in detail my objection to land being granted on the Rabai side of the Railway Line.

X X X X X X X X X X X X X X X

- (2) The particular land which has been applied for is both populated and well cultivated. There are numbers of huts and many shambas of mahindi, mohogo and young coconut trees, and the amount of compensation for these shambas is a very difficult one to determine.
- (3) You state in your despatch that the natives concerned have already come to terms with the applicants in regard to their rights over the land. There are many owners of shambas, coconut trees etc. (on the land applied for) who live in Rabai and who have not even heard that the land has been applied for.

I should be glad to know who are the natives who have come to terms with the applicants and also what the terms are. My experience so far, in settling compensation, is that the natives invariably demand double the worth of their huts or shambas, and I shall be only too glad if the question has been settled between the applicants and the natives themselves. But to my knowledge there are owners of Shambas etc. (on the land applied for) who live in Rabai and who have not been approached by any applicant."

"Minute by Mr. J. Eliot, Rabai, dated 21.10.04.

With reference to applications north of the Line there are large numbers of huts, shambas, etc. on the land applied for where the natives have lived and cultivated for years. Do they not come under 'Native Rights'?

I still contend that I am doubtful about the applicant having come to terms with the natives. Will the applicants state what terms they have come to, and who the natives are they have come to terms with?"

"Part of Minute by Mr. C.R. Lane dated 24.10.04.

"Provided the natives now cultivating or living on it, are willing to accept compensation, which should in every case be arranged with the approval of the Asst. Collector, Rabai. The natives consent should be voluntary."

"Letter by Mr. R.B. Wright, L.O. to Messrs. Meade & Co., Mombasa, dated 30.11.04.

"On the opposite side of the Line, the Collector states, there is much unoccupied land, but pending survey he is unable to state whether the exact locality required by the applicant is available."

This application was changed to an area south of the Railway Line.

The usual permit to occupy pending survey was issued on 5.5.05.

C.E.M. L.S.

15th. November, 1935.

2

C. O.

Mr. *Prosser* 14/7
Mr. *Parkin* 17/7

Mr. Flood 17

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley. 19-7-37 *for*

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Ans. (3)



Downing Street,

July, 1937.

A 54

Sir,

I have the honour to acknowledge the receipt of your despatch No. 258 of the 7th of May containing your proposals for the settlement of the Duruma claim to land in the Mwachi Valley.

2. I observe that, in accordance with the suggestion made by the Land Commission a special inquiry into the Duruma claim was undertaken by the Provincial Commissioner of the Coast Province, and that as a result of that inquiry it is now proposed to make certain farms available for temporary occupation by the Duruma, and to add certain farms to the Native Reserve permanently.

It is ~~your~~ proposed that Farms L.R. Nos. 1033, 1036, and 1039 should be treated as Class A Native Reserve at once, and Farms L.R. Nos. 4330, 1030, 1034, and 3240 as

Class

DRAFT.

Kenya.

NO. *584*

GOV.

FURTHER ACTION.

Class B2 Native Reserve and held by the natives concerned on a Temporary Occupation Licence at a peppercorn rental. In addition you propose that as soon as Farms Nos. L.R. 1028, 1029 and 1036 can be acquired by Government, either by transfer or by purchase, at a reasonable figure, they shall be made available to the Duruma as Class A Native Reserves in substitution for Farms Nos. L.R. 4330, 1030, 1034 and 3240 which ~~would then~~ ^{would} cease to be occupied as B.2 Native Reserve and ~~would~~ ^{would} revert to the Crown.

3. In considering your proposals, I have ~~been somewhat concerned~~ ^{impressed by the} the extent to which ~~they differ from~~ ^{fall short of} the recommendations made by the Provincial Commissioner. In the first place, it is not plain to me why it is considered that the farms south of the Mwachhi River would represent adequate restitution, having regard to the fact that the Provincial Commissioner recommended the ~~restitution of the whole of the land in the valley, except the mission plots 1001 & 1271, the Indian farm 1031/1~~ ^{that} certain land East of the Mwachhi Forest Reserve, should be restored to the Duruma. I should be interested to learn what objections there are to the permanent addition to the Native Reserve

of

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Periy. U.S. of S.
- Secretary of State.

DRAFT.

4. In paragraph 5 of your despatch you state that it is far from clear that there is any substance in the Duruma claim as of right and that it appears probable that it is only because the greater portion of the land has for many years been entirely unoccupied and undeveloped by non-Native owners that the Duruma natives have entered into occupation and have put forward their claim. On the other hand, in paragraph 1208 of the Report of the Kenya Land Commission, and in the Report of the Provincial Commissioner, who has conducted the recent enquiry, strong presumptive reasons are given for the view that the land in this valley was Duruma country before it was alienated in 1908. It is clear that, not only was the land alienated without proper enquiry as to its ownership, but that the natives who were then in occupation were treated with scant consideration.

what could now be required as

FURTHER ACTION.

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of Farm No.1034, either as an addition to the block proposed, or alternatively in substitution for say (Farm No.1028) in order to avoid any subsequent disturbance of native occupation.

DRAFT.

wh. appears to be held by the present District Commissioner & the Provincial Commissioner

5. On the facts as placed before me I

am strongly of the opinion that all the land in the valley which can be made available at once should be made so available without any idea of subsequent reversion to the Crown, and that those farms which are not immediately available should be added as Class A Native Reserve as soon as they can be acquired on reasonable terms, though I am

prepared to agree, however, that Farms Nos.

1001, 1271, and 1031/1 should be regarded as a set-off against the Rs.1000 paid in compensation to the Duruma Elders in 1908.

5. You will no doubt furnish me with a further expression of your views.

I have, etc.,

FURTHER ACTION.

P.T.O.

Even if it were possible to justify ^{that now} accept such a considerable reduction in the area which the Provincial Commissioner has recommended ^{for restoration} should be restored to the Duruma natives, there are certain features of ^{the} your proposals which seem to require some further explanation. For example no reasons are given, beyond the statement that your advisers consider it the most satisfactory arrangement, for the proposal to confine permanent native occupation to the land south of the Mwachi River. Seeing that two farms, on the other side of the river, are already held on individual tenure by Duruma natives, and that it is not proposed to acquire these farms in order to withdraw them from native occupation, ^{it is not clear to me} ~~I should be glad~~ ^{from the despatch} to be informed of the particular reasons why it is not considered desirable that farm No. 1034 should be ^{permanently} added to the native reserve. Even if ~~(at the least)~~ ^{merely} it were regarded as a substitute for farm No. 1028, its immediate addition to the Reserve as Class A land would at least avoid the disturbance which would be caused by the removal of the natives therefrom when farm 1029 or 1038 became available; though, as indicated above, I

C. O.

Mr.

Mr.

Mr.

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Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Privy. U.S. of S.

Secretary of State.

DRAFT.

think that much the best solution will be to do do not at present see any sufficient reason why this farm, as well as the others mentioned, should not be made a permanent addition to the Reserve. Moreover, although farms Nos. 3240, 4330, and 1030 are separated from the other farms under discussion, I observe that they adjoin another part of the Reserve being separated therefrom only by the railway.

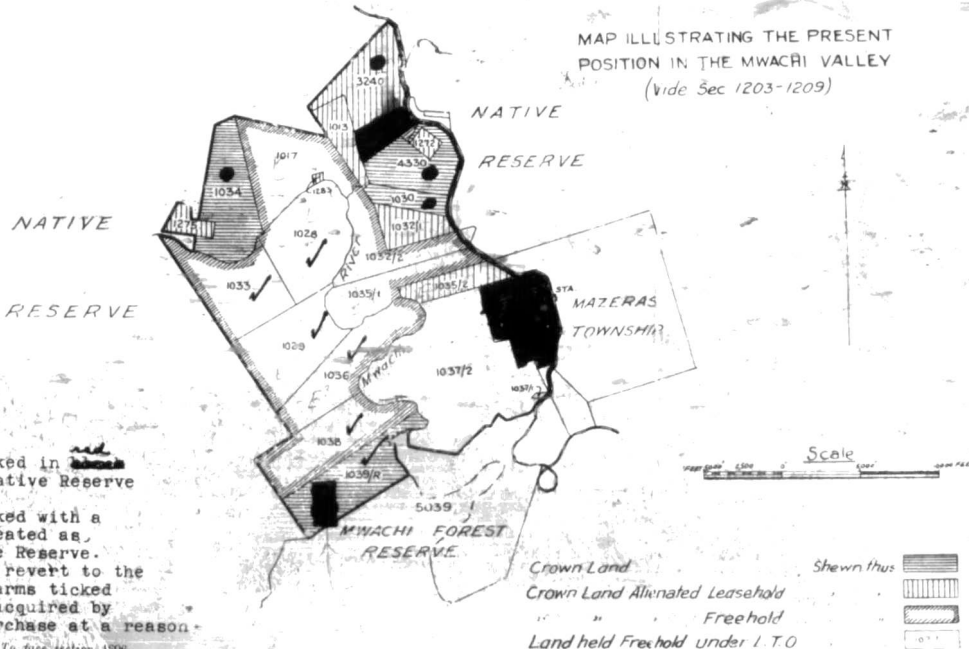
^{request} I request that the whole matter may be re-considered and that I may be furnished with a further expression of your views in the light of this despatch.

I have, etc.

(Signed) W. ORMSBY GORE.

FURTHER ACTION.

MAP ILLUSTRATING THE PRESENT
POSITION IN THE MWACRI VALLEY
(vide Sec 1203-1209)



Farms ticked in ~~black~~ ^{red} to be Class-A. Native Reserve forthwith.

Farms marked with a red dot to be treated as Class B.2. Native Reserve. These farms will revert to the Crown when the farms ticked in black can be acquired by Government by purchase at a reasonable price.

To Para. 1206

When acquired, the farms ticked in black will be made Class A. Native Reserve.

(The areas marked in red to be set off against the Rs.1,000 already paid to the Duruma elders.)

Farms in the area.

Farm 1033.	To be Class A. Native Reserve forthwith.
" 1035.	" " " " " "
" 1039.	" " " " " "
" 1028.	To be Class A. Native Reserve at such time as it can be purchased by Government at a reasonable price.
" 1029.	ditto.
" 1038.	ditto.
" 1030.	To be Class B. Native Land temporarily.
" 1034.	" " " " " "
" 3240.	" " " " " "
" 4330.	" " " " " "

Other Farms. North of the River.

Farm 1013.	Crown Land alienated Freehold.
" 1017.	" " " "
" 1032/1	" " " "
" 1032/2	" " " "
" 1035/1	" " " "
" 1035/2	" " " Leasehold.
" 1272	" " " "
" 1275	" " " "
" 1283	" " " "
" 1031/1	" " " Freehold.
" 1001/1	" " " Leasehold.
" 1037/1	Land held Freehold under Land Titles Ordinance by 4 Duruma natives.
" 1037/2	ditto.

Other Farms South of the River.

Farm 1271.	Crown Land alienated Leasehold.
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KENYA.

No. 258



GOVERNMENT HOUSE

NAIROBI,

KENYA.

RECEIVED
24 MAY 1937

7 May, 1937.

O.C. REGD

Sir,

I have the honour to refer to the recommendations of the Kenya Land Commission on the subject of the claims made by Duruma Natives to land in the Mwachi Valley.

2. In Section 1209 of the Report the following comment is made:-

"We are unable to make a definite recommendation on the settlement of the Duruma Claims in the Mwachi Valley. We had certain recommendations under consideration, but important evidence has come to hand at the last moment, and we feel that, even now, we have not all the information before us which would warrant us in reaching a final conclusion. We have therefore confined ourselves to a summary of the facts as presented to us and we invite special attention to the evidence which will be found at pp. 2602 and 2609 of the printed record. We are satisfied that grounds exist for a special inquiry, and we recommend that it might suitably be undertaken by the Provincial Commissioner".

References to this subject are also made in pp. 2602 - 2609 of the Evidence.

3. During 1935 the Provincial Commissioner, Coast, carried out the enquiry and in his finding expressed the view that the evidence submitted to him supported the statement of Mr. Osborne (paragraph 1207 of the Land Commission Report):-

"Proper enquiry had not been made as to the Native rights before alienation and the compensation was the result of such alienation".

He Adds:-

"The evidence shows:-

- (a) That surveyors arrived and cultivation took place before any question of compensation was suggested.
- (b) That rubber trees were already 3 ft. high when compensation was suggested.

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

- (c) That the Mwachi Valley was the traditional home of the tribe as the ceremonial Kayas were situated there.
- (d) That certain Duruma were ejected from their homes.
- (e) That certain Duruma were in occupation of their homes in the Valley before, during and after the occupation of the farms by strangers, as the farms they were on were not taken up.
- (f) That other Duruma who had been ejected returned to their homes again, about 1918, and have been in occupation ever since.
- (g) That many of the elders refused to consider compensation.

It is evident therefore that 'proper enquiry had not been made as to Native Rights in this land'; at a period, possibly, when the native's attachment to certain areas was not appreciated, and it was thought that they had 'the whole of Africa' in which to cultivate.

It is abundantly clear that certain Duruma elders took Rs. 1,000/- compensation in 1908 when the alienation of their land was already an accomplished fact, and they took money as no other course lay open to them.

There is a case for restitution to the Duruma tribe. I endorse fully the recommendation of the present District Commissioner, Mr. McKeag, as follows:-

That the land in the area West and North of the Mwachi Forest (Map p. 314 Kenya Land Commission Report) now in beneficial occupation by the title holders, i.e. Mission plots 1001 and 1271, and the Indian farm 1031/1, together with the land East of the Mwachi Forest Reserve (which was alienated but not shown on the map p. 314 Kenya Land Commission Report) be set off against the Rs. 1,000/- paid in compensation to the Duruma elders.

That the remaining land in the Mwachi Valley (Map p. 314 Kenya Land Commission Report) be acquired by purchase from the title holders and added to the Duruma Reserve.

Of the farms in this area L.R. 1033, 1034, 3240, 1030, 4330 and 1039/R are today Crown Land.

The question of the acquisition by purchase of L.R. 1037/2 is a separate issue.

This farm was granted to a Duruma native Lucas Mgandi under the Land Titles Ordinance. It probably should have been granted to several Duruma who were represented by Lucas Mgandi. Their rights should have been decided in the Courts.

The acquisition of this farm, at the same time as the others, for addition to the Duruma Reserve would however save a great deal of trouble to the Administration in the future".

4. Close examination of the original Land Office files clearly shows, however, that in 1904 and 1905 an

Administrative Officer stationed at Rabai investigated every application in relation to native occupation and that compensation was paid by individual applicants to the natives concerned when, in comparatively rare instances, natives were disturbed. The great bulk of this land, it seems clear from these contemporary records, was unoccupied.

No record can be traced to show why Government in 1908 purchased certain portions of this land from the Duruma for Rs. 1,000/-, a sum which Mr. Osborne himself at the time characterised as "generous".

A junior officer in 1908 gave a very strong opinion.

5. It is, therefore, far from clear that there is any substance in the Duruma Claim as of right to these lands and it appears probable that is only because the greater portion of the land has for many years been entirely unoccupied and undeveloped by non-Native owners that the Duruma Natives have entered into occupation and have put forward their claim.

6. This Government has no wish, however, to perpetuate what the Natives concerned regard as an injustice and has investigated the possibility of carrying out the recommendations of the Provincial Commissioner, Coast. From tentative enquiries it is certain that the re-purchase of any of this land in private hands would be very expensive. Two of the farms are held on individual tenure by two Duruma Natives and there appears to be no justification for acquiring these farms at the charge of public funds. Seven of the farms are at present Crown Land, and, on the advice of my Executive Council, I see no objection to setting these portions available for occupation by the Duruma. Unfortunately these farms are scattered

through the group and it is, therefore, difficult to provide a reasonably clear boundary line. My advisers consider that the most satisfactory arrangement would be to confine permanent Native occupation to the land south of the Mwachi River. As this is at present impracticable because of private ownership I have, with the advice of my Executive Council, decided that the Crown Land farms L.R. Nos. 1038, 4330, 1039, 1030, 1034, 1036 and 3240 comprising 5,831 acres shall be made available for occupation by the Duruma Tribe; of the above L.R. Nos. 1056, 1036 and 1039 shall be treated as Class A, Native Reserve; and L.R. Nos. 4330, 1030, 1034 and 3240 shall be treated as Class B2 Native Reserve and held by the natives concerned on a Temporary Occupation Licence at a peppercorn rental.

I have further decided that so soon as L.R. Nos. 1028, 1029 and 1038 can be acquired by Government either by transfer or by purchase at a reasonable figure, they shall be made available to the Duruma as Class A Native Reserve in substitution for L.R. Nos. 4330, 1030, 1034 and 3240 which will then cease to be occupied as B.2 Native Reserve and will revert to the Crown.

The attached plan illustrates the proposal.

7. I should be glad to know that this settlement of the Duruma Claim has your approval.

I have the honour to be,

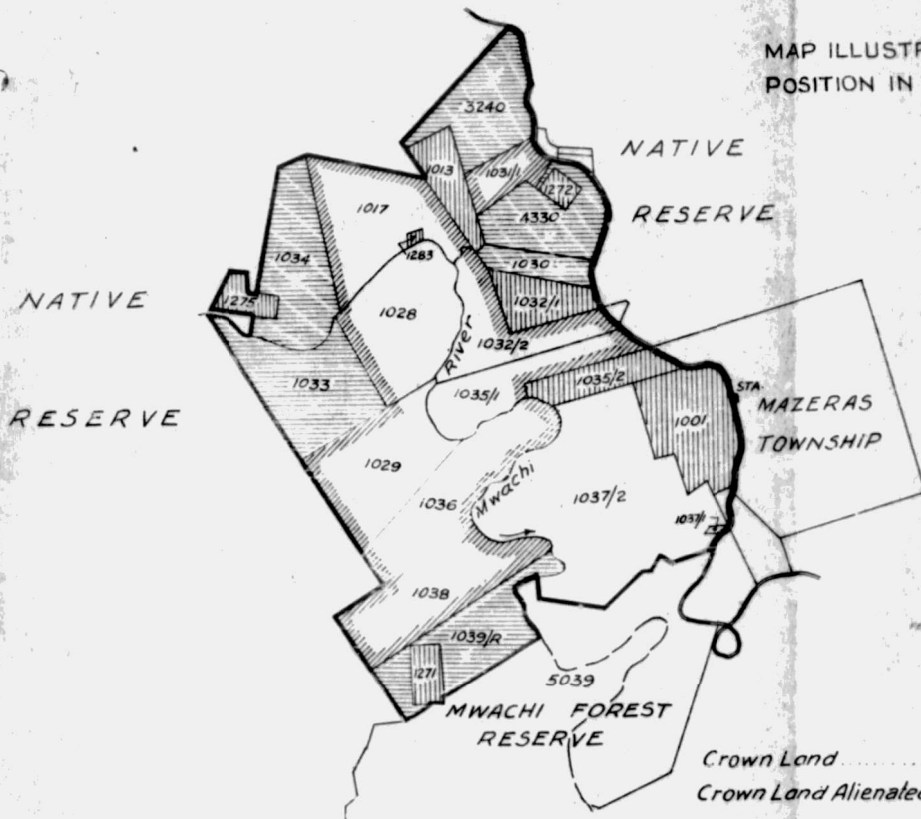
Sir,

Your most obedient, humble servant,

A. B. Brooke-Popham




AIR CHIEF MARSHAL.
GOVERNOR.

MAP ILLUSTRATING THE PRESENT POSITION IN THE MWACHI VALLEY



Scale



Crown Land Shewn thus	
Crown Land Alienated Leasehold " "	
" " " Freehold " "	
Land held Freehold under L.T.O " "	