

38060

CO 533/478

38060

KENYA

MAGADI SODA COMPANY LTD.

PURCHASE OF DEPOT WORKS AT SHIMONI PIERS

Previous

1936

Mr Duncan	23/7/37	297	16/10
Miss Burke	2x	297	21/10
Mr Flood	26	Mr Chandler	4/11
Sir C. Bottomley	27	297	31/12
248	5/8	309	4/12

Subsequent

1938

297	17/8	Mr Parkin	1/1
R. 309	17/8	Mr Duncan	4/1
Mr Parkin	7/8	Mr Parkin	5/1
Mr Duncan	15/8	298	2/11

R. 297	5/2/37
R. 309	10/2
Mr Parkin	11
297	25/2/37
R. 309	25/2
Mr Parkin	25/2
297	25/2
R. 309	25/2
Mr Parkin	25/2
297	25/2
R. 309	25/2
Mr Parkin	25/2
Mr Duncan	10/7/37
Mr Flood	13/7
Sir C. Bottomley	13/7
President's Clerk	16/7
Sir C. Bottomley	19/7
Mr. Park	20/7

Mr Parkin	2/9	297	
Mr Parkin	2/9		
Mr Duncan	7/5/37		
Mr Flood	7/9		
Room 309	8/9		
248	13/9		
297	20/9		
Mr Chandler	+		
297	30/9		
Mr Parkin	1/11		
Mr Duncan	4/10/37		
Mr Flood	4/10		
Sir C. Bottomley	5.10		
R. 309			
298	13/10		

C. I.

1. Crown Agents

4.2.37²

MAGADI SODA CO.
KARUNIA.

The copies of a further letter & encl. which they have addressed to the K. U. R. Administration in connexion with the surrender of the Magadi Soda Co's premises at Shimanzi.

There will no doubt be some argument regarding the payment of interest from the 31st Dec, (when the K. U. R. Administration took possession of the harbour premises,) up to the date of the execution of the deed of Surrender. $\$$ 4% Interest amounts to $\$$ 166 a month.

? Put by.

C. J. Rowland
10/2/37

J. J. Pascoe

12/2

above

[Handwritten mark]

2. CROWN AGENTS

22.2.37.

Trs. copy of letter sent to Genl. Man. on 20.2.37 regarding the surrender of the Magadi Soda Co's premises at Shimanzi.

? Put by

C. J. Rowland
25/2/37

J. J. Pascoe
25/2

above

[Handwritten mark]

with not stamping it.

I am disposed to

? Proceed as Mr. Dunsen proposes, and also send a copy of the case to the High Comm. for Transport and ask for his views. And tell the R.A. what we are doing.

J. S. W. King
13/7.

[The only possible dispute would be over amending in the third Schedule to the Agreement Dead, about soda goods warehousing etc. It isn't very likely there would be a lawsuit but the K.U.A. has got a 'down' on the C.A. & might do something that is not very likely either.]

Precedents Clerk

Have you any with bearing on this question? It is probable that it has arisen somewhere or other.

[The moral is, execute dead locally].

W.S. 13.7.37

Sir G. Bostanley

Please see K 10 100/27

Below

A. F. Chandler.

16/7/37.

has died

In the 1927 case Sir G. Bostanley advised that stamping here was unnecessary, but his doubts are clearly stamped on the margin. In that case, the other parties had signed the duty.

I think we might wish to permit if the R. is being express for stamping here if it is understood that the document will be stamped locally.

[I don't know however if the Kenya Ord. which Bostanley seems to have mentioned to the R. also covers the local post. For duty or revenue the necessary for stamping locally].

For your views, please
W.S. 15.7.37

The relevant clause in the Kenya Stamp Ordinance appears to be the proviso to Section 4 which lays down that no duty is chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where Government would be liable to pay the duty but for the exemption. This appears to be the case here. It is not, however, clear whether the document would be stamped without payment or whether the fact that the liability for payment is waived means that the instruments would be accepted without any stamp on it at all. Draft herewith to Mr. Marriott, very much for ease

W.S. 7/37

In my minute of 10/7/37 was dealing, of course, with stamp duty in the U.K. - not in Kenya. In the latter country it would appear that, by virtue of the proviso to section 4 of the Stamp Ordinance, no duty is chargeable, and that the instrument need not be stamped. The same point, I think, ^{quite} recently came up in connection with another Kenya Agreement.

I agree with the terms of the attached draft letter to Mr. Marriott as now amended by me; but, in view of Sir S. Busher's opinion of 29/6/27 in Kenya 10.100/27, I am passing the papers through him.

23/7/37 / A. Duncan.

H.B. w/f

Wds of area

To H. Marriott.

5.8.37

S. H.F. MARRIOTT
 States that the Company have no objection to the Deed of Surrender being left unstamped in this country but suggests C.A. should indemnify the Company against any stamp duty & penalty which would be payable if they should be enforced the Agreement against the C.A. in Courts of U.K.

The Company's attitude is reasonable. Presumably we should get the consent of the H.C. Transport on the indemnity point, but before doing so it might be as well to find out whether Messrs Bushells see any objection.

H.F. Marriott
 17/8

I am inclined to think that the S. of C. should authorise the C.A. to give them this indemnity, without prior ref. to the H.C.

But it will be seen from Messrs Bushells' letter of 19/6 (encl. in No. 3) that there is a possibility that Somerset H.C. might refuse to stamp the Deed at some time hereafter. If they do, then presumably, the suggested indemnity rep. be of no value to the Co., as they wd. be debarr'd from taking proceedings in the Courts here.

As this is a matter wh. wd. only affect the Co., it is perhaps unnecessary to raise it, since the Co. has not mentioned it. But I shd. be glad to have your views.

H.F. Marriott
 2/8

With the Deed would not be available to the Co. for the purpose of proceedings here (see sec. 14 (4) of the Stamp Act 1891).
 H.F.

X

Quite apart from the question of a
Crown grant - there is the question
whether a conveyance of land -
in Colo is liable to stamp duty here.

This I think was discussed on
C.A. 28th Sept
5/2093/18 T'dad - T we right
Gm

look at the paper.

T.B. 18/8

6. CROWN AGENTS.....21.8.37.
Encls. copy of letter from Purchells and indicates
reply then propose to return if C.O. approve.
Mr Duncan

In the correspondence mentioned by Sir G.
Baker the following facts were
placed before the Bd of L. K.

"(1) Certain contracts for the sale of land
in a Colony were made in England and
were duly stamped with a fixed duty
stamp of 6"

"(2) Subsequently conveyances of this land
were executed in England by the
vendors"

"Now the question which arises, and
upon which the Bd would be obliged if
the Bd would be so good as to advise
him is whether these conveyances
are chargeable with ad valorem British
duty as conveyances on sale, or whether
they are exempted under Section 59(3)
of the Stamp Act 1891 in view of the
fact that the land in question is
locally situate out of the U.K. & the

previous contracts have been duly
stamped."

The Board's reply was

"... The Conveyances in question,
if executed in this country, are liable
to ad valorem stamp duty under the
charge "Conveyance on Sale" in the
first Schedule to the Stamp Act 1891.
Attention is invited to the provisions
of Section 14(4) of the Stamp Act 1891.
The provisions of subsection 3
of Section 59 of the Stamp Act 1891
would not apply to the conveyances
in question as ad valorem duty has
not been paid on the relative
contracts under subsection (1) of
the section."

I attached the volumes of correspondence
may we have your views on this in
the light of the C.A. with
preparing
2/9/37

In the first place I should be inclined to
send the C.A. a copy of Nos. 4 & 5; say that,
apart from the question of a Crown grant, we
have been considering the question whether a
conveyance of land in the Colonies is liable to
stamp duty here; refer them in this connection
to the copy of the correspondence with the B.L.B.
which we sent them in our letter of 16/1/19
(see the attached volumes 3 & 4 Printed 1918);
and ask them to ascertain whether Messrs Purchells
have any further observations to make in the light
of the enclosed, & of the 1918, correspondence, and in
particular on the point referred to at X of Mr Perkins's
minute of 17/8/37.

7/9/37

/s/ A. Duncan

Ms 61824/24
T'dad

So proceed. (Honal. de Colonial Business in the Colony)

1.10.37
29

To CA. (W/C 45). (Sancd). - 13.9.37

MM

8. CROWN AGENTS. 28.9.37.
Trs. copy of letter containing Messrs Burchells' observations on question of stamp duty on Deed of Surrender and enquires whether course suggested is approved.

3 appon.
99 Burch
1/2

120, I think so.

4/10/37 A. Duncan.

Sir C. Bottomley

You should see I think we are safe in telling C.A. to give the undertaking but we must explain to the High Comm (likely it's not a loan or loan might object to a pledge with a remote liability)

1.10.37
4-10

W.C.S.
5.10.37
W.C.S.

To CA (Sancd) - 13.10.37

10 L. H. de Transport Conf. (1/2, 3/6, 4/5, 7/8) - 16 OCT 1937

11. CA. Minute 29/10/37

Encs copy of draft Agreement, together with copy of covering letter from Burchells, and requests advice on points indicated

Para 2 (41)

The correspondence about the stamp duty with the B.T.R. was conducted by Messrs Burchells - ends to no 3.

There is no correspondence registered between either file between us and the B.T.R.

(3) in the draft agreement should therefore be amended. It should will be sufficient for it to run

"Doubt" arise as to the necessity for meeting the stamp duty, if any, which was attracted by the said Surrender and the same was withdrawn from the Commissioners of Inland Revenue and left unstamped.

Para 3. ~~Proposed amendment to be made to the~~

would seem that the most convenient solution would be to substitute for the words "in the Lands Registry", which appear in Recital 2 of the agreement, the words "in the Register of the Department of Local Govt Lands & Settlement".

Clarke White.

1. Recital 3. I agree that this will not do. I have suggested an amendment in pencil on the draft.

2. Recital 2. I do not think that Mr. Clarke White's suggestion wd. be appropriate. There is a Crown Lands Registration Office under the Crown Lands Dept. (? in the Crown Lands), & there is a Register of Titles under Cap. 142.

But is this recital required

NOTED PRECEDENTS

at all? as there is no corresponding
provision in the operation part of
the agreement, & as it does not seem
relevant to the purpose of the agreement,
I shd. have thought that it was
unnecessary.

If this is agreed, it will be
unnecessary to consider what shd.
be substituted for "Lands Registry".

J. B. 4.1.38

1. I agree.

2. I do not think that this recital
is necessary, but it is good propaganda
as showing or tending to show that the effective
act takes place in Kenya and not here. I
cannot help you as regards the proper
description of the office, and I think you
had better ask Burdell's whether they attach
sufficient importance to the recital for us
to go to the trouble of enquiring from Kenya
as to the proper wording.

J. B. 4.1.38.

12 To CA. (11 am) min - 12.1.38

C. O.

Mr. Paine 5/1 J.

Mr.

Mr.

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.

C. D.
R G-JAN
D. 11

28060/1/37.

25/12

Minute No. 0/Kanra 318
of the 24th Dec. in regard to
the Nagadi Coda Company
Agreement.

DRAFT. Minute

C. A.

O. Dept

1. Para 3 of the minutes is
~~not~~ ^{would} ~~appropriately~~ ^{it is}
suggested that it ~~be~~ ^{be}
reworded on the following
basis:

"(2). Doubt arose as
to what stamp duty, if any,
was attracted by the said
Surrender, & the same was
withdrawn from the said
Commissioners & remains
unstampd."

2.) The reference to the
"Land Registry" in the Colony
is probably incorrect &
it is desired
to return this matter, we
should have to refer to

FURTHER ACTION.

Kenya to ascertain what should
be substituted. The Co. crises
however (whether the result is
really necessary. It is useful in
showing that the effective act
takes place in Kenya & not here,
but it seems doubtful whether
it serves any other purpose. You
also mention Ann Munn Burchells
whether they attach sufficient
importance to this result to
warrant it with the trouble of connecting
Kenya or to the proper wording.

(Sgd). J. J. Paskin.

12 JAN 1938

RECEIVED
28 DEC 1937
C. O. REGY

9
//

O/Kenya 31B.

The East African Department,
COLONIAL OFFICE.

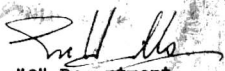
Magadi Soda Company Ltd.

9.

With reference to paragraph 2 of Colonial Office letter No.38060/1/37 of the 13th October, and as arranged in a conversation with Mr. Grossmith on the 23rd December, we enclose a copy of a draft Agreement with the above Company prepared by Burchells. We also 21.12.37. enclose a copy of the covering letter from the latter.

2. Generally the Agreement seems to us to be in order, but we wonder whether you would prefer the reference in recital (3) to disputes between the Secretary of State and the Commissioners of Inland Revenue to be amended, especially as we believe that there has been no direct correspondence on the subject between the two Departments.

3. There is one other small point; we do not know of a "Lands Registry" in Kenya under that title. Can you say what the correct designation is, please?



"O" Department.
Crown Agents Office.
24.12.37.

Ans of 12.

check

COPY OF LETTER FROM MESSRS. BURCHELLS TO CROWN AGENTS

Ref. "A"

5, The Sanctuary,
Westminster, S.W.1.

O/Kenya 31B.

21st December, 1937.

Gentlemen,

Magadi Soda Company Limited.

We enclose a draft of the Agreement with the Magadi Company in respect of the unstamped Deed which will be under hand only so as to avoid further questions of stamp duty.

2. On hearing that you approve this very reasonable document, we will have an engrossment made and forward it to you for signature.

We are,

Gentlemen,

Your obedient servants,

(Sgd) BURCHELLS.

11

THIS DEED made this _____ day
of _____ 1937 BETWEEN THE CROWN AGENTS
FOR THE COLONIES of 4 Millbank the City of Westminster
(hereinafter called "the Crown Agents") acting for and
on behalf of the Government of the Colony and Protectorate
of Kenya (hereinafter called "The Government") and of
the Kenya and Uganda Railways and Harbours (hereinafter
called "the Administration") of the one part and THE
MAGADI SODA COMPANY LIMITED a Company Incorporated in
England under the Companies Acts 1908 and 1917 and having
its registered office situate at Imperial Chemical House
in the City of Westminster (hereinafter called "the
Company") of the other part

WHEREAS :

(1) These presents are supplemental to a Deed of
Surrender dated the 22nd day of April 1937 whereby the
Company agreed to surrender and the Government to accept
a surrender of a Lease of certain lands and properties
situate wholly in the Island of Mombasa in the said
Colony in consideration of the payment of the sum of
£50,000 and on the terms and conditions therein contained

(2) The said Surrender can only be implemented by

12
registration in the Lands Registry of the said Colony.

(3) ^{Doubt} [Disputes] arose [between His Majesty's Secretary of State for the Colonies and the Commissioners of Inland Revenue] as to what stamp duty, if any, was attracted by the said Surrender and the same was withdrawn from the said Commissioners and remains unstamped

N O W T H I S D E E D W I T N E S S E T H :

THAT in the event of the Company at any time hereafter finding it necessary to commence legal proceedings against the Government and/or the Administration in the High Court of Justice in England in connection with the said Surrender the Crown Agents will at their own expense (if the same becomes necessary in order to enable the said Surrender to be produced in Court) have the said Surrender duly stamped by the Commissioners of Inland Revenue and pay any penalty which the said Commissioners may impose as a term of stamping the said Surrender

I N W I T N E S S w h e r e o f

one of the Crown Agents for the Colonies has hereunto set his hand and the Secretary of The Magadi Soda Company Limited has hereunto set his hand on behalf of the said Company the day and year first above written

DATED

1937

THE OWN AGENTS FOR THE COLONIES

-AND-

THE MAGADI SODA COMPANY LIMITED.

Draft.A G R E E M E N T

Burchells,

5 The Sanctuary,

Westminster,

S.W.1.

C. O.

Mr. Costley-White. 6.10.37.

38060/1/37.

Mr. Flood 6.10.37

Mr.

Sir H. Moore.

Downing Street.

Sir G. Tomlinson.

Sir C. Bodomley.

~~Let~~

16. October, 1937.

Sir J. Shuckburgh.

Permu. U.S. of S.

Parly. U.S. of S.

Sir,

Secretary of State.

DRAFT.

TRANSPORT

KENYA-UGANDA.

NO.

CONFIDENTIAL

HIGH COMMISSIONER.

I have the honour to refer to my conf. disp. of the 25th of Nov. 1936 ^{9 connex} ^{conn} to previous correspondence regarding

purchase of the Magadi Soda Company's premises the Magadi Soda Company, and to ^{work at Shimangi} to transmit for your information copies of

correspondence with the Crown Agents ^{for the Colonies}

in connection with a question raised ^{the solution} by ~~them~~ over the stamping of the Deed

of Surrender of the Magadi Soda Company's premises at Shimangi.

2. It will be observed that in the stamp duty payable on the deed order that the Deed shall become would amount to £ 500, and as it legally enforceable in the Courts of seems very unlikely that the deed this country it is necessary that a can ever become the subject of legal transfer stamp of £500 should be affixed ~~thereby, and that~~ to it. payment for this stamp has been

requested by the Inland Revenue proceedings in the Courts here

Commissioners

- Fr. C.A. 22nd February. (2 with encls.)
- Fr. C.A. 24th June. (3 - with encls. but without Deed).
- To ^{Mr} W. Marriott. 5th August. (4)
- Fr. W. Marriott. 13th August. (5)
- To C.A. 13th September. (7)
- Fr. C.A. 28th September. (8 - with encls.)

2 drafts.

FURTHER ACTION.

~~Commissioners. In view, however, of the
extreme improbability of the Deed being
the subject of legal proceedings in the
Courts of this country, and of the
anomalous nature of a claim by the Crown
in England for stamp duty on the repurchase
by the Crown of a grant by the Crown in
Kenya, I have approved the course, suggested~~

~~by Messrs. Burchells, whereby it will be
rendered unnecessary for this payment to
be made.~~

*the payment will be avoided, as an
undertaking being given by the C.A.
to the Company
to meet any penalties which may
be incurred hereafter in the event
of litigation*

3. The Deed will accordingly be
withdrawn from Somerset House and left
unstamped in this country. At the same
time an undertaking will be given by the
Crown Agents on behalf of the Kenya-Uganda
Railways and Harbours that, in the unlikely
event of the Deed becoming the subject of
litigation in this country, the transport
administration will be prepared to pay both
the stamp duty and the penalties that may be
connected therewith.

I have, etc.

(Signed) W. ORMSBY GORE.

C. O.

Mr. Costley-White. 6.10.37.

Mr. Flood 6.10.37.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

6.10.37.

38060/1/37.

Downing Street.

13 October, 1937.

Gentlemen,

I am etc. to acknowledge

the receipt of your letter of the 28th
of September, No. O/Kenya 31B,
regarding the stamp duty on the
Deed of Surrender of the Magadi Soda
Company's premises at Shimanzi.

2. Mr. Ormsby Gore approves
the adoption of the course suggested
by Messrs. Burchells in their letter
to you of the 22nd of September,
namely that the document should be
withdrawn from Somerset House, left
unstamped in this country, and that
an undertaking should be given by you
on behalf of the Kenya-Uganda
Railways and Harbours to the Magadi

Soia

DRAFT.

THE CROWN AGENTS
FOR THE COLONIES.

2 drafts.

FURTHER ACTION.

Soda Company to the effect that, in the event of proceedings involving the Deed of Surrender being instituted in the English Courts, you will be prepared to pay the stamp duty and all penalties connected therewith.

3. The High Commissioner for Transport, Kenya-Uganda, has been informed accordingly and supplied with copies of the correspondence.

I am, etc.

(Signed) J. E. W. FLOOD

16
8.

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES.
THE FOLLOWING REFERENCE AND THE
DATE OF THIS LETTER BEING QUOTED.

Dup all



4, MILLBANK,
LONDON, S.W.1.

O/Kenya 31B

TELEGRAMS: "CROWN, LONDON".
TELEPHONE: VICTORIA 7730.

RECEIVED
29 SEP 1937
C. O. REGY

28th September. 1937.

Sir,

7.

I have the honour to acknowledge the receipt
of your letter No.38060/1/37 of the 13th September regarding
the stamp duty on the Deed of Surrender of the Magadi Soda
Company's premises at Shimanzi, and to state that a copy
of it was sent to Messrs. Burchells with a request for their
further observations.

22.9.37

A copy of a letter containing their observations
is enclosed, and I have to enquire whether the course
suggested is approved.

Answered
Copy to Mr. G. H. Mansfield

I have the honour to be,

Sir,

Your obedient Servant,

R. Mansfield

for Crown Agents.

The Under Secretary of State,

COLONIAL OFFICE.

NR

COPY OF LETTER FROM MESSRS. BURCHELLS.

TO CROWN AGENTS.

5, The Sanctuary, 11
Westminster, S.W.1 .

22nd September, 1937.

Gentlemen,

Magadi Soda Company Limited.

We have carefully considered your letter of the 16th instant, and have referred to our old papers in connection with the transactions in 1918 and 1919 when the Inland Revenue took up the same similar intransigent position.

2. The Text Book which is generally used by the profession is Alpe's "The Law of Stamp Duties" in which the exemption conferred by section 59 on the Stamp Act is fully considered, the conclusions come to are precisely in accordance with the advice we have already tendered, and it is curious in that the decision of the House of Lords to which he refers, Inland Revenue Commissioners v. Muller reported 1901 A.C. p. 217 extends the exemption of section 59 not only to the property situate abroad, but also to the goodwill attached to that property.

3. Apart from legal proceedings against the Commissioners, they cannot be compelled to accept our view as to the exemption, and we suggest that we should write again to the Authorities informing them that we claim this exemption and requesting them to either stamp the deeds or return them to us. We may say, they are asking how this matter is proceeding and therefore, something must be done.

4. As regards the proposed Indemnity to the Magadi Soda Company, the possibility of the Deed having to be adjudicated upon by the English Courts seems very remote and we would suggest for consideration, that an undertaking by the Crown Agents to pay the stamp duties on the English Deed and all penalties in connection therewith in the event of proceedings being

/instituted

instituted in the English Courts which involve the production of the Deed might be efficient.

We are, etc.,

(sgd.) Burchells.

35060/1/37 Ken.

C. O.

Mr. C. ROSS

Mr. [unclear]

Mr. Dumas

9/9/37

Sir C. Parkin

Sir G. Tomlinson

Sir C. B. [unclear]

Sir [unclear]

Part of U.S. of S.

Secretary of State

See (8)

to [unclear]

September, 1937.

C. O. D.
19-SEP
10

C. O. D.
19-SEP
10

Sir,

I am to acknowledge the receipt of your letter of the 24th of June (reference O/Kenya 51B) with two

prints of the Deed of Surrender of the Magadi Soda Company's premises at Shimanzi, as executed by you in pursuance of instructions from the General Manager of the Kenya and Uganda Railways.

2. with regard to the question of the stamp duty on the Deed, I am to transmit to you a copy of correspondence with Mr. H.F. Marriott, of the Magadi Soda Company, relating to a proposal that, in order to save the stamp duty in this country, the document should not be stamped. It will be seen that the

Copy to H. F. Marriott (10)

DRAFT.

THE CROWN AGENTS
FOR THE COLONIES.

To Mr. H.F. Marriott 5 Aug.
(4)

Fr Mr. H.F. Marriott 13 Aug.
(5)

FURTHER ACTION.

Withdrawn from Somerset House & not stamped.

Company agree that the Deed should be left unstamped

in this country provided that they are indemnified

against any stamp duty and penalty which would be

payable if the Company ever had to enforce the

agreement in the courts in this country. It has

*however appear from Messrs Bardsley's letter ~~unresponsiveness~~ of the
18th of June that
there is a*

bility that the Board of Inland Revenue might refuse

to stamp the Deed at ~~some~~ ^{any} time hereafter, *In that event it wd. appear*

indemnity would be of no value to the Company *Since,* & *if*

the Board of Inland Revenue did so refuse, it would

the ~~Deed~~ would not be available to
seem that the Company ~~would be debarred from taking~~
~~proceedings~~ *for the purpose of*
proceedings in the courts here.

3. Apart from the anomaly mentioned in the
second paragraph of your letter, the question whether

a conveyance of Land in the Colonies is liable to

stamp duty here has been considered in the C.O., and

in this ^{connection} reference is invited to the correspondence

with the Board of Inland Revenue which accompanied the

letter from this office on the 16th of January, 1919.

(Reference 61524/15.)

4. It will be appreciated if you will ascertain

whether

*61524/15
18
District
Panel.*

whether Messrs. Burchells have any further observations to make in the light of the correspondence enclosed herewith and of the 1918 correspondence.

I am, etc.,

SIGNED / E. W. FLOOD

Mr. G.A. Grossmith,
East African Department,
Colonial Office.



18.8.37.

With reference to our recent telephone conversation about the Magadi Soda Company's Surrender of premises at Shimanzi (C. O. reference 38060/1/36), I enclose a copy of a letter now received from Burchells.

We conclude we may say that the matter is receiving consideration and that it is expected that it will shortly be possible to indicate what course is to be followed. Will you please confirm ?

J. S. Bimfield

"O" Department.
Crown Agents.

21st August, 1937.

COPY OF LETTER FROM BURCHELLS TO CROWN AGENTS.

5, The Sanctuary,
Westminster, S.W. 1.

18th August, 1937.

Gentlemen,

Magadi Soda Company Limited.

Referring to your letter of the 24th June, we have a letter from the Controller of Stamps, enquiring whether we are now in a position to proceed in this case.

We are,

Gentlemen,

Your obedient Servants,

BURCHELLS.

523

Hugh F. Marriott. H. F. M. (H. F. M. P. H. F. M. C. A. R. S. M. A. R. S. & C.)

TELEPHONE HOLBORN 8846-7

AFRICA HOUSE,
KINGSWAY,
LONDON, W.C.2.

3c 2c

13th August 1937

Your reference 38060/1/37

The Under Secretary of State,
Colonial Office,
London, S. W. 1.

RECEIVED
14 AUG 1937
REGY

Sir,

Magadi Soda Company Ltd.

I have consulted with the Company on the points raised in your letter of 5th August and they have no objection to the proposal that the Deed of Surrender of the Port Works should be left unstamped in this country.

They suggest, however, that if this procedure is decided upon the Crown Agents should indemnify the Company against any stamp duty and penalty which would be payable if the Magadi Company ever had to enforce the Agreement against the Crown Agents in the Courts of this country.

I am, Sir,

Your obedient servant,

Hugh F. Marriott

Hugh F. Marriott

Copy to CA
4
H. F. Marriott

C. O.

Mr. Flood 20/7/37

Mr. Dunson Please see my assistant. H.O.

Sir G. Bushe Vt
Mr Flood 26.
Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 27/12 f

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C.O.
26 JUL
1937

SX

Down (5)

Downing Street,

5 Aug. 1937.

Sir,

In connection with the recent

sale to the Kenya and Uganda Railways

and Harbours Administration of the

Nagadi Soda Company's premises at

Shimanzi, I am etc. to inform you that

a question has arisen as to liability

for stamp duty on the ~~document~~ of

Surrender. The document ~~having been~~

executed in this country the Inland

Revenue Authorities claim that it is

liable to stamp duty, ~~which would be~~ *and refer to section*
119 of the Stamp Act 1891 and to section 16(1)
of the Crown Lands (No. 2) Act 1927.

~~Administration. If the document had~~

~~been executed in Kenya however, the~~

~~document, in accordance with the provisions~~

of the Kenya Stamp Ordinance, ~~would not~~

stamp duty is chargeable in respect of it in
that Colony.

DRAFT.

F. H. MARRIOTT, ESQ.

Copy to CA T
H.O. Stamp duty 20

And although it has been represented
to the Inland Revenue Department
that, since the Deed relates to a
repurchase by the Crown of a parcel
of the Crown in Kenya, it is an anomaly
if the Crown in England seeks to charge
stamp duty on the document in connection
with the Deed as proposed in Kenya.

FURTHER ACTION.

that no

2. 11

2. It appears probable that ~~it~~ ^{was} if

~~the order of the Government of Kenya to be~~
~~the event of any proceedings being taken under~~

^{agreement}
the ~~order~~ they would originate in Kenya, in
which event the question of stamping would ^{apparently} not

arise, ~~so far as the Government is concerned~~, and

it has accordingly been suggested that, in order

to save the stamp duty in this country, which

would be of a considerable amount, the document

should be withdrawn and not stamped here, and I

am to enquire whether the Company would be prepared

to agree to this, ~~on the understanding that~~ ^{should it be found}

~~it is necessary to stamp the order~~ ^(This would be done, of course,)
~~in Kenya without any expense~~

to them.) ~~The result would be that~~ ^{if proceedings, however,}

were instituted in the Courts of this country there

might be ~~some~~ difficulty owing to the absence of the

necessary inland revenue stamps, ~~but if proceedings~~

were begun in the Courts ~~in~~ in Kenya the fact that

no stamp duty had been paid would not be material

and would not affect any proceedings of the competent

Court, while in the event of an appeal to the Judicial

Committee of the Privy Council the fact that the document

was in order under the laws of Kenya would be sufficient.



36 15

ALL COMMUNICATIONS TO BE ADDRESSED TO THE CROWN AGENTS FOR THE COLONIES. THE FOLLOWING REFERENCE AND THE DATE OF THIS LETTER BEING QUOTED

O/Kenya 31B

TELEGRAMS: "CROWN, LONDON" TELEPHONE: VICTORIA 7730

4, MILLBANK,

LONDON, S.W.1.

24th June, 1937

RECEIVED 25 JUN 1937 C. O. REGY

Sir,

With reference to our letter of the 22nd of February I now enclose for the information of the Secretary of State, two prints of the Deed of Surrender of the Megadi Soda Company's premises at Shimanzi, as executed by us in pursuance of further instructions received from the General Manager, Kenya and Uganda Railways.

2. A question has arisen in connection with stamp duty on the Deed in this country, upon which Messrs. Burchells have suggested that we should seek the advice of the Secretary of State. While it is understood that each party to the Deed will meet its own solicitors' costs, Messrs. Burchells inform us that any stamp duty on the document payable in this country will have to be borne by the Government of Kenya, as purchasers, the purchaser being responsible for the stamp duty on his own document and it not being possible to look to the Vendor to contribute thereto. Messrs. Burchells have, however, represented to the Inland Revenue Department that since the Deed relates to a re-purchase by the Crown of a Grant by the Crown in Kenya Colony, it is an anomaly if the Crown in England seeks to charge itself with stamp duty in connection with one of its own properties in Kenya. To this the Inland Revenue Department have replied as shown in the accompanying copy of a letter from that Department to Messrs. Burchells, dated the 16th June. A copy of a letter from Messrs. Burchells to us on the subject, dated the 18th June, is also enclosed. It will be seen that the amount involved is approximately £500.

copy to Dept 1 to Adv. Managerial

X

16.6.37.

18.6.37.

The Under Secretary of State,

COLONIAL OFFICE.

/ 3.

3. We shall be glad to learn whether the Secretary of State thinks that any further effort should be made to contest the claim of the Inlai. Revenue Department in this connection.

I have the honour to be,

Sir,

Your obedient servant,

J. A. ...

for CROWN AGENTS.

O/Kenya 31B

COPY OF LETTER FROM THE INLAND REVENUE DEPARTMENT TO
MESSRS. BUSHHELLS

Controller of Stamps Office,
(Adjudication Branch)
Inland Revenue,
Bush House,
W.C.2.

16th June, 1937

Gentlemen,

Adjudication No. 8588/37
Magadi Soda Company Ltd. and
The Crown Agents for the Colonies

In reply to your letter of the 3rd instant (Ref. A) I have to point out that the Ordinance which you cite is an Act of a Colonial Legislature and cannot operate to give exemption from a duty imposed by Parliament in the United Kingdom.

As regards the position of the Crown in relation to stamp duties in this country, I would invite your attention to Section 119 of the Stamp Act, 1891, and to Section 16 (1) of the Crown Lands (No. 2) Act, 1927.

The document must therefore be regarded as liable to duty and a Notice of Assessment is enclosed.

I am, etc.

(Sgd)

for Controller of Stamps.

2

O/Kenya 31B

COPY OF LETTER FROM MESSRS. BURCHELLE TO COLON AGENTS.5, The Sanctuary,
S.W.1.

18th June, 1937

Gentlemen,

Magadi Soda Company Ltd.

We send herewith copy of a further letter we have received from the Controller of Stamps, and the duty assessed is as follows:-

Ad valorem conveyance on sale duty on £50,000	£500. 0. 0.
Ad valorem lease duty on £500 payable for an indefinite term (Third schedule, Clause 4)	<u>5. 0. 0.</u>
Two duplicates at 5/-	505. 0. 0. <u>10. 0.</u>
	<u><u>£505.10. 0.</u></u>

You will see from the copies of the correspondence with which we have furnished you, that we have carried the matter as far as we can, short of contesting the claim in the Courts. Personally, we think the claim ought not to be made or, at any rate, in respect of the ad valorem duties and it may be that you will think well to bring this matter before the Colonial Office.

We would withdraw the documents from Somerset House and take the chance of the Commissioners refusing to stamp the Agreement at any time hereafter, because it is probable that if any litigation subsequently arose on which the Government was the Plaintiff, the proceedings would be in Kenya, but our difficulty is caused by the fact that the Magadi Soda Company

are entitled to have documents on which they could sue in this country, and we very much doubt if they would be willing to take an unstamped Instrument.

We shall be glad to receive your instructions in due course.

We are, etc.

(Sgd) Burchells.

Handwritten signature

Handwritten mark

31
DATE 22ND APRIL 1937.

O/KENYA 31 B.

THE MAGADI SODA COMPANY LIMITED

— TO —

THE CROWN AGENTS FOR THE COLONIES.

Surrender

Of the Lease of the Port Branch Railway Line Works and Pier at
Kilindini, in the Colony and Protectorate of Kenya.

BURCHELLS,

5 THE SANCTUARY,

WESTMINSTER, S.W.1.

This Deed is made this 22nd day of April One thousand nine hundred and thirty-seven BETWEEN THE MAGADI SODA COMPANY LIMITED a Company incorporated in England under the Companies Acts 1908 and 1917 and having its registered office situate at Imperial Chemical House in the City of Westminster (hereinafter called "the Company") of the one part and THE CROWN AGENTS FOR THE COLONIES of 4 Millbank in the said City of Westminster (hereinafter called "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter called "the Government") and of the Kenya and Uganda Railways and Harbours (hereinafter called "the Administration") of the other part

WHEREAS:—

(1) By a Grant dated the Nineteenth day of February One thousand nine hundred and thirty (usually known and hereinafter referred to as "the Port Lease") registered in the Mombasa Registry as No. C.R. 820/1 the Governor and Commander-in-Chief of the Colony and Protectorate of Kenya on behalf of His late Most Gracious Majesty King George the Fifth did thereby grant unto the Company the premises described in the First Schedule hereto for a term of Ninety-nine years from the First day of November One thousand nine hundred and twenty-four subject to the payment of the rent thereby reserved and to the provisions of the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof and except as was therein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and nineteen and to the special conditions contained in the Schedule thereto.

(2) The Company have agreed to surrender and the Government to accept a surrender of the Port Lease for the consideration hereinafter appearing.

NOW THIS DEED WITNESSETH as follows:—

I. IN consideration of the sum of FIFTY THOUSAND POUNDS paid by the Crown Agents on behalf of the Government and of the Administration on the execution of these presents (the payment and receipt whereof the Company hereby acknowledges) and of the agreements on behalf of the Government and of the Administration hereinafter contained THE Company hereby surrenders and assigns to the Government ALL AND SINGULAR the premises comprised in and demised by the said recited Port Lease and described in the First Schedule hereto TOGETHER with all rights privileges and facilities thereby granted To the intent that the said term of ninety-nine years granted by the said Lease may subject to and with the benefit of the provisions of the Agreements specified in the Second Schedule hereto merge and be absolutely extinguished in the freehold reversion of the Government in the said premises.

II. IN further pursuance of the said agreement and in consideration of the said surrender the Crown Agents on behalf of the Government and of the Administration agree with the Company that as from the date of these presents the provisions and conditions set out in the Third Schedule hereto shall come into full force and effect and the Company agrees to accept and be bound by the same provisions and conditions.

In cases where for the convenience of the Administration a vessel is loaded with soda goods at more than one berth or in the case of a vessel shifting berth to load under 200 tons at Shimanzi Pier no charge shall be levied for shifting such vessel.

4. The Administration shall provide warehouse space in the warehouse at Shimanzi for a maximum storage of 5,000 tons of soda goods at any one time. Provided that the Administration may in the interests of Port working, of which the Port Management shall be the sole judge warehouse such soda goods in such other place or places in the Port of Mombasa as it may deem necessary. The Company shall pay an inclusive rent of £500 per annum for such warehouse accommodation free of rates to be payable half-yearly on the 1st day of January and the 1st day of July in every year. The Administration shall maintain the said warehouse accommodation in such a state of repair as to avoid soda goods lying in the warehouse becoming damaged by weather.

5. Should the Company at any time have more than 5,000 tons of soda goods (excluding common salt) warehoused in the Port of Mombasa all tonnage in excess of 5,000 tons shall be paid for at the rate of 25 cents per ton per week or part of a week.

The Administration shall at all times endeavour to meet the demands of the Company for warehouse accommodation in excess of 5,000 tons provided that the Company give to the Administration adequate notice of the Company's requirements.

6. Provided that the necessary shipping or other disposal arrangements are made by the Company the Administration shall so arrange all soda goods warehoused as aforesaid as to ensure that no stock shall be allowed to remain in such warehouse accommodation in the Port of Mombasa for more than three months.

7. The Administration shall at all reasonable times allow the Company's representatives access to the warehouse accommodation in the Port of Mombasa for the purpose of inspecting and checking the stock for the time being lying there, and shall undertake the rebagging of stock at the prevailing charges set out in the Tariff of Harbour Dues and Charges.

8. Subject to the provisions of Section 22 of the Harbours Regulation Ordinance 1928 which shall be deemed to apply hereto the Administration shall load soda goods into vessels whether alongside Shimanzi Pier or any other berth in the Port of Mombasa at a rate of not less than 500 tons per weather working day (Sundays and Holidays excepted).

9. The Administration shall provide at owners' use free warehousing accommodation for nets used in the process of loading soda goods and which nets are the property of shipping companies using the berth at the said pier for the purpose of loading soda goods.

10. The Administration shall take such reasonable measures as may be necessary to ensure that any vessel drawing up to 28 feet shall at all times be able to load afloat at L.W.O.S.T. at Shimanzi Pier subject

to the condition that the Administration shall have the right to direct that no vessel shall load at the said pier if in the opinion of the Port Management such course is deemed necessary.

11. Nothing in this Schedule contained shall be construed or be deemed to limit the right of the Administration at any time to close the said pier and/or the other premises described in the First Schedule hereto for the shipment or storage of soda goods either temporarily or permanently in whole or in part or to alter the said pier and/or other of the said premises or construct a new pier and/or other of the said premises provided that in any such event the charges set out herein for off-loading handling wharfage and warehousing in respect of soda goods the property of the Company shall remain in full force and effect and the Company shall be provided with warehousing and facilities for shipping not less favourable than those provided before any such closure as aforesaid.

12. All goods (other than soda goods) imported or exported by the Company through the Port of Mombasa shall be subject to the charges in respect thereof set out in the Tariff of Harbour Dues and Charges from time to time in force.

13. The work to be performed hereunder by either party shall be subject to the provisions of the Harbours Regulation Ordinance 1928 and to any regulations made thereunder and when performed in overtime outside the ordinary working hours shall be subject to the provisions for overtime work contained in the Tariff of Harbour Dues and Charges from time to time in force.

14. For the purposes of this Schedule —
"Ton" shall mean a ton of 2,240 lbs.

15. The provisions contained in this Schedule shall remain in force for the duration of the Railway Lease but shall determine at the expiration or sooner determination of the Railway Lease or if the Company shall go into liquidation or cease to carry on business in either of which two latter events the Administration shall have no claim under this Deed against the Company in respect of such determination.

16. If during the currency of the arrangements set out in this Schedule there shall be a substantial increase or decrease in the tonnage of soda goods warehoused in the Port of Mombasa or in the Administration's cost of carrying out the services to be performed hereunder either party will sympathetically consider any proposal which may be brought forward by the other party for a modification of the terms herein set out.

THE COMMON SEAL of The Magadi Soda Company Limited was hereunto affixed in the presence of

H. F. MARRIOTT }
A. E. GAWLER } *Directors.*

J. D. EARLAM, *Secretary.*

SIGNED SEALED and DELIVERED
by Sir William Frederick Gowers one
of the Crown Agents for the Colonies
in the presence of } W. F. GOWERS (L.S.)

ALFRED W. BURCHELL,
5 The Sanctuary,
Westminster,
Solicitor.

N. RAE,
4 Millbank,
London, S.W.1,
Civil Servant.

DATED 22ND APRIL 1937.

O KENYA 31 B.

**The Magadi Soda Company
Limited**

— TO —

**The Crown Agents for the
Colonies.**

Surrender

Of the Lease of the Port Branch Railway
Line Works and Pier at Kilindini, in the
Colony and Protectorate of Kenya.

BURCHELLS,

5 The Sanctuary,
Westminster, S.W.1.



ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES.
THE FOLLOWING REFERENCE AND THE
DATE OF THIS LETTER BEING QUOTED

/Kenya 31B.

TELEGRAMS: "CROWN, LONDON"
PHONE: VICTORIA 7730.

RECEIVED

24 FEB 1937

P. O. REGD

4, MILLBANK,

LONDON, S.W.1.

22nd February, 1937.

Sir,

With reference to our letter of the 4th of
February, I have the honour to enclose, for the information
of the Secretary of State, a copy of a further letter and
enclosure to the Kenya and Uganda Railways and Harbours
Administration, regarding the surrender of the Magadi Soda
Company's premises at Shimanzi.

I have the honour to be,

Sir,

Your obedient servant,

Hammond
for CROWN AGENTS.

Copy to Mr. de. Sampson

**The Under Secretary of State,
Colonial Office.**

Q/Kenya 31B

AIR MAIL

20th February, 1937

Sir,

With reference to your telegram dated the 8th of February, meaning:-

"Referring to your letter 29th January re; Magadi Company's Shimani premises. Pay Company forthwith purchase price in full with interest to date at the rate of 4% per annum on the understanding that purchase price plus interest at the same rate will be refunded if deed surrender not completed. Debit general account.

I have to inform you that the sum of £50,000 plus interest at 4% per annum from the 1st of January to the 18th of February inclusive, viz., £522/3/10., has been paid to the Magadi Soda Company, and a copy of the undertaking signed by the Company is enclosed herewith.

Your telegram under reference was received on the 8th of February and our instructions to our solicitors in the matter were received by them on the 8th of February. The form of undertaking was promptly agreed with the Company's solicitors, but the seal of the Company could not be affixed thereto before the Board meeting of the Company on the 18th of February. No earlier date could therefore be arranged for the completion of this matter, and interest was accordingly paid up to and including that date.

I am,

Sir,

Your obedient Servant,

FOR CROWN AGENTS.

COPY.

To The Crown Agents for the Colonies:-

In consideration of your agreeing, on behalf of the Government of Kenya and the Kenya and Uganda Railways and Harbours, to pay us against receipt of this undertaking the sum of Fifty thousand pounds, together with interest at the rate of Four per cent per annum from the First January One thousand nine hundred and thirty seven, notwithstanding that the deed of surrender of the lease of the Port branch railway line, works and pier at Kilindini in the Colony and Protectorate of Kenya, by virtue of the execution of which the said sum will become payable, has not yet been completed, we, the Magadi Soda Company Limited, hereby agree with you that if the said deed of surrender (in whatever form may be finally agreed upon between us), is not completed by the Thirtyfirst December One thousand nine hundred and thirtyseven, we will refund to you the said sum of Fifty thousand pounds plus interest thereon at the rate of Four per cent per annum from the First January One thousand nine hundred and thirty seven to the date of repayment.

PROVIDED ALWAYS that if we are called upon by the Government of Kenya to repay the said sum of Fifty thousand pounds and interest in accordance with the above written provision such repayment shall not prejudice or affect any legal right or claim we may have to require the completion of the said Deed of Surrender after that date or in respect of any of our properties in Kenya which may have been handed over to the Governor or the Kenya and Uganda Railways and

Harbours in anticipation of the completion of the said
Surrender.

Given under the Common Seal of the Magadi Soda
Company Limited this 18th day of February One thousand nine
hundred and thirty seven in the presence of:

(Signed) A. C. LAWLER. Director.

(Signed) J. O. EARLAM Secretary.



1/50

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES,
THE FOLLOWING REFERENCE AND THE
DATE OF THIS LETTER BEING QUOTED.

10/Kenya 313

TELEGRAMS: "CROWN, LONDON".
TELEPHONE: VICTORIA 7730.



4, MILLBANK,

LONDON, S.W.1.

4th February, 1937.

Sir,

(16) on 30060/1/36

With reference to our letter of the 3rd December last, I have the honour to transmit, for the information of the Secretary of State, copies of a further letter and enclosures which we have addressed to the Kenya and Uganda Railways Administration in connection with the surrender of the Magadi Soda Company's premises at Shimanzi.

29.1.37. &
enclosures.

I have the honour to be,

Sir,

Your obedient servant,

For Crown Agents.

The Under Secretary of State,
COLONIAL OFFICE.

NR

O/Kenya 31b.

AIR MAIL

29th January 1937.

Sir,

With reference to our letter of the 30th November

**XV.1.37. &
enclosures.**

I enclose a copy of a letter we have now received from our Solicitors regarding the draft Deed of Surrender in connection with the Magadi Soda Co's Shimani premises, together with copies of the enclosures thereto, except of the "proof A" referred to, the amendments in which are incorporated in the "proof B" mentioned and a copy of which is sent.

We await your further instructions in the matter in due course and shall be obliged if, when communicating with us, you will inform us what reply should be made in regard to the question of interest, raised in the last paragraph of the Company's Solicitor's letter of the 19th January.

I am, Sir,

Your obedient servant,

For Crown Agents.

The General Manager,
Kenya & Uganda Railways & Harbours,
Nairobi,
Kenya.

42
O/Kenya 31b.

FROM MESSRS. BURCHELLS TO CROWN AGENTS.

5 The Sanctuary,
S.W.1.

27th January 1937.

Gentlemen,

Magadi Soda Co. Ltd

Referring to your letter of the 30th November, on the 15th inst. we received a letter from the Solicitor, of which we enclose you a copy for your file.

2. On the following day we sent them the twelve fair copies of the draft embodying the red ink revisions, advising the Solicitor that when he was in a position to inform us that the Magadi Soda Company wished the matter put forward to you for your consideration in the form of Proof "B" we would communicate with you thereon.

3. Yesterday, we received a further letter from the Solicitor a copy of which, with the enclosure thereto, we also send, and so that you may the more readily understand the nature of the revisions which have been made we enclose herewith Proof "A" as provisionally amended by the Magadi Soda Company and two fair prints of the document as amended, namely Proof "B".

4. It would appear that there is likely yet to be some delay before the matter can proceed, which does not seem
/to

600

to be due to any fault of the Crown Agents for the Colonies or the Governor and no doubt, you will bear this in mind when you come to consider the provision for the payment of interest on the purchase money.

We are,

ac.

(Sgd) BURCHELLS.

COPI

Imperial Chemical Industries Ltd. 44
Millbank, S.W.1.

Legal Department

15th January 1937.

Dear Sirs,

The Mag Soda Co. Ltd. and
The Crown Agents for the Colonies.

Referring to our telephone conversation this afternoon I enclose herewith the proof print of the Deed of Surrender which has been revised in red in Kenya by the local Manager of the Magadi Company in conjunction with the Railway Administration.

As revised in red the draft is, I understand, acceptable to your clients as well as mine, though I understand that you have not yet received any instructions in regard to these revisions from the Crown Agents.

Although I have indicated that the draft as revised in red is acceptable to my clients, it must go before the Magadi Board for their formal approval and they happen to have a Board meeting on Thursday of next week. In order that the revised draft can be circulated to the members of the Magadi Board before their meeting, I should be grateful if you would have the draft reprinted and let me have 12 revised proofs during the course of Monday, at the same time returning me the enclosed proof from which the revisions will have been printed.

I shall then be able to let you know after next Thursday's Board meeting whether the revised draft has been formally approved by the Magadi Board and it is understood, of course, that if your instructions turn out to be different from what I anticipate they will be, you have in no way committed the Crown Agents by letting me have the revised draft.

There is one further point which I think it would be as well for you to take up with the Crown Agents in due course and that is the question of interest on the purchase price. I

understand that the Magadi Company actually handed over physical possession of the harbour premises. ac. to the Railway Administration on the 31st December last, though they have not yet received the purchase price and will not presumably receive it until the Deed of Surrender is finally executed. In these circumstances, the Magadi Company will, of course, expect to receive interest on the purchase price from the 31st December last to the actual date of completion and they suggest a rate of 4% per annum.

Yours faithfully,
 H.A.Bingen.

Messrs. Barchells,
 5, The Sanctuary,
 Westminster,
 S.W.1.

IMPERIAL CHEMICAL INDUSTRIES LIMITEES,

Millbank, S.W.1.

26th January 1937.

Legal Department

Dear Sirs,

The Magadi Soda Company Ltd. and
The Crown Agents for the Colonies.

With reference to my letter of the 18th instant the revised draft agreement was considered by the Magadi Soda Co. at their Board meeting last Thursday and was also discussed on the same day by them with Sir Godfrey Rhodes, the General Manager of the Kenya Railways, who is now on his way back to Nairobi.

As a result of these discussions, certain further modifications in the third schedule were suggested and these are summarised in the Magadi Company's letter of the 25th instant to Sir Godfrey Rhodes, of which I enclose a copy.

No doubt I shall be hearing further on the subject from the Magadi Company when Sir Godfrey Rhodes and the Magadi Company's local Manager have had an opportunity of further discussion on the subject and when I hear anything further on the matter I will again get into touch with you. You on your part will no doubt let me know when you have any further instructions in the matter from the Crown Agents.

Yours faithfully,

E.A. Bingen.

Messrs. Burchells,
5, The Sanctuary,
Westminster,
S.W. 1.

25th January 1957.

Dear Sir,

In confirmation of our informal discussion on 21st instant regarding the transfer of our Port Depot to the Railways & Harbours Administration, I am instructed to submit the following comments on the draft Deed of Surrender marked Proof "B", a copy of which was handed to you at our meeting.

My directors are in agreement with the terms of the Deed in general and the points I have to raise are confined to the provisions of the Third Schedule concerning the handling and storage of soda goods by the Port Management.

Taking these points in the order in which they occur, I would refer you first to Clause 3 in which it is stated that neither the Company nor the ship will be called upon to pay any additional port charges for the shifting of vessels required to load soda goods at different points in the Port. We have assumed that the term "port charges" includes all those charges enumerated in sections 3, 4, 5, 6, 7 and 12 of the Tariff of Harbour Dues and Charges, and that the only charges excluded will be those outside the Port Authority's control, e.g. raising ship's steam, etc.

(2) In Clause 3, the Schedule provides for the reservation of warehouse space for a maximum of 5,000 tons of soda goods in the Port of Mombasa. My Directors have always understood that this space would be available in the Company's god-down at Shimani, thus avoiding the necessity of loading at two points except on very rare occasions when there is a clash of dates between two steamed ships loading a large parcel. As the Clause now stands, shippers must take into account in

The Magadi Soda Company Limited
Imperial Chemical House,
Millbank, S.W.1.

25th January 1957.

Dear Sir,

In confirmation of our informal discussion on 21st instant regarding the transfer of our Port Depot to the Railways & Harbours Administration, I am instructed to submit the following comments on the draft Deed of Surrender marked Proof "B", a copy of which was handed to you at our meeting.

My directors are in agreement with the terms of the Deed in general and the points I have to raise are confined to the provisions of the Third Schedule concerning the handling and storage of soda goods by the Port Management.

Taking these points in the order in which they occur, I would refer you first to Clause 3 in which it is stated that neither the Company nor the ship will be called upon to pay any additional port charges for the shifting of vessels required to load soda goods at different points in the Port. We have assumed that the term "port charges" includes all those charges enumerated in sections 3, 4, 5, 6, 10 and 12 of the Tariff of Harbour Dues and Charges, and that the only charges excluded will be those outside the Port Authorities' control, e.g. raising ship's steam, &c.

(2) In Clause 5, the Schedule provides for the reservation of warehouse space for a maximum of 5,000 tons of soda goods in the Port of Mombasa. My Directors have always understood that this space would be available in the Company's go-down at Shimani, thus avoiding the necessity of loading at two points except on very rare occasions when there is a clash of dates between two steamers each loading a large parcel. As the Clause now stands, shipowners must take into account in

fixing their rates of freight the possibility of moving ship with its consequent expense and delay, and we have already found that the shipping companies concerned are asking for increased rates in respect of forward loadings. If the Administration could allot us space for 5,000 tons at Shimane^{it} would greatly assist us in our negotiations with Shipowners, and we trust that you will be able to meet us in this direction.

(3) With regard to the provision of space for storage in excess of 5,000 tons, we note that the Administration is unable to make any guarantee that space for 12,000 tons will always be available even if reasonable notice has been given to the Port Management by our own General Manager. As, however, we do not expect that it will be necessary to exceed a stock of 5,000 tons of Soda Ash at the Coast except on comparatively rare occasions, and as our General Manager will be able to give you six weeks' to two months' warning in the event of our requiring such additional space, we agree to allow Clause 6 to stand and to rely upon the co-operation of the Administration to assist us at such times, as they have always done in the past. It should be borne in mind, however, that if storage space at the Coast is restricted it may entail the necessity of heavier railings from Nagadi when chartered steamers are actually loading.

(4) My Directors note that the Administration have omitted the clause which we proposed stating that ships would be loaded at a minimum rate of 500 tons per day. Actually in the past we have been able to load comfortably at this rate, and even more when necessary. Shipowners who have handled our products have naturally taken this point into consideration when fixing freight contracts and charter parties, and although we have only guaranteed them loading at 500 tons per day they have calculated their rates on the basis of customary quicker despatch. In these circumstances it will be appreciated that our inability to offer a guarantee of any kind in future will place us in some difficulty and we trust that the Administration will be able to

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to undertake a minimum loading rate of at any rate 500 tons per weather working day.

I am sending a copy of this letter to Major Pelling in case you may wish to have any further discussions with him on these various points.

Yours faithfully,

FOR THE MAGADI SODA COMPANY LIMITED.

Encl. General Sir Godfrey Huxton, G.C.B., D.S.O.
Kenya & Uganda Railways & Harbours,
Nairobi.

020

DATED

193

O/KENYA 31 B.

THE MAGADI SODA COMPANY LIMITED

— TO —

THE CROWN AGENTS FOR THE COLONIES.

Surrender

Of the Lease of the Port Branch Railway Line Works and Pier at
Kilindini, in the Colony and Protectorate of Kenya.

BURCHELLS,

5 THE SANCTUARY,

WESTMINSTER, S.W.1.

This Deed is made this _____ day of _____

One thousand nine hundred and thirty- _____ BETWEEN THE MAGADI SODA COMPANY LIMITED a Company incorporated in England under the Companies Acts 1908 and 1917 and having its registered office situate at Imperial Chemical House in the City of Westminster (hereinafter called "the Company") of the one part and THE CROWN AGENTS FOR THE COLONIES of 4 Millbank in the said City of Westminster (hereinafter called "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter called "the Government") and the Kenya and Uganda Railways and Harbours (hereinafter called "the Administration") of the other part

WHEREAS :—

(1) By an Indenture of Lease bearing date the Twentieth day of March One thousand nine hundred and twenty-eight and made between The Crown Agents acting for and on behalf of the Government of the one part and the Company of the other part usually known and hereinafter referred to as "the Port Lease" the premises described in the First Schedule hereto were demised to the Company for a term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four subject to the payment of the rent thereby reserved and the covenants on the part of the Company and conditions therein contained.

(2) The Company have agreed to surrender and the Government to accept a surrender of the Port Lease for the consideration hereinafter appearing.

NOW THIS DEED WITNESSETH as follows :—

1. IN consideration of the sum of FIFTY THOUSAND POUNDS paid by the Crown Agents on behalf of the Government and of the Administration on the execution of these presents (the payment and receipt whereof the Company hereby acknowledges) and of the agreements on behalf of the Government and of the Administration hereinafter contained THE Company hereby surrenders and assigns to the Government ALL AND SINGULAR the premises comprised in and demised by the said recited Port Lease and described in the First Schedule hereto TOGETHER with all rights privileges and facilities thereby granted To the intent that the said term of ninety-nine years granted by the said Lease may subject to and with the benefit of the provisions of the Agreements specified in the Second Schedule hereto merge and be absolutely extinguished in the freehold reversion of the Government in the said premises.

2. IN further pursuance of the said agreement and in consideration of the said surrender the Crown Agents on behalf of the Government and of the Administration agree with the Company that as from the date of these presents the provisions and conditions set out in the Third Schedule hereto shall come into full force and effect and the Company agrees to accept and be bound by the same provisions and conditions.

THE THIRD SCHEDULE above referred to.

3. IT IS HEREBY MUTUALLY AGREED that if from any cause this Deed is not executed prior to the Thirty-first day of December One thousand nine hundred and thirty-six then and in such case the foregoing surrender provisions and conditions shall be deemed to have come into operation on that date.

4. NEITHER the Governor of Kenya nor the Crown Agents or any of them nor any Officer either of the Government or the Administration shall be in anywise personally bound or liable for any default or omission in the observance or performance of any of the acts matters or things which are hereinbefore contained.

IN WITNESS whereof The Magadi Soda Company Limited has caused its Common Seal to be hereunto affixed and
one of the Crown Agents for the
Colonies hath hereunto set his hand and seal the day and year first above
written.

THE FIRST SCHEDULE above referred to.

Firstly All that depot works at Shimanzi near Kilindini known as the Magadi Depot and the branch railway line leading from the Kenya and Uganda Railway at Kilindini to the said depot works Together with all appurtenances and all the land held therewith and the dwelling-houses and buildings thereon the boundaries of all of which are and the site thereof is delineated on the plan annexed hereto and is thereon bordered red and

Secondly All that the conveyor plant and apparatus used in connection therewith and the pier adjacent thereto known as the Shimanzi Pier which said conveyor plant and pier are bordered green on the said plan but excluding the land beneath the said conveyor plant and pier Reserving unto the Company full and free right to carry its conveyor plant over the land bordered green Together with the right of access at all times to the supports of the conveyor plant for the purpose of maintenance Excepting nevertheless and reserving to the Government as in the Lease more fully set out.

THE SECOND SCHEDULE above referred to.

An Agreement dated the 1st January 1932 and made between the Company of the one part and the Shell Company of East Africa Limited of the other part providing (inter alia) for the renting to the Shell Company of No. 2 tank at Shimanzi at an annual inclusive rental of £250.

An Agreement dated the 23rd October 1934 and made between the Company of the one part and the East African Power & Lighting Company Limited of the other part providing (inter alia) for the carrying by the Power Company of an electric supply line over certain of the premises demised in favour of the Company by the Port Lease.

PROVISIONS AS TO THE RAIL-BORNE TRAFFIC OF THE COMPANY TO COME INTO FORCE AS FROM THE DATE OF THE SURRENDER OF THE PORT LEASE.

1. All soda goods as defined in the Railway Lease despatched from Magadi to the coast will be railed subject to the rates and other conditions set out in the Lease of a Railway to Lake Magadi granted by the Government to the Magadi Soda Company for a term of 99 years from the 1st day of November 1924 (hereinafter referred to as "the Railway Lease") or as the same may be altered or modified from time to time by agreement between the parties thereto such rates and conditions covering the carriage of the goods from Magadi to the coast.

2. The Administration shall undertake the handling of such goods on arrival at the Port of Mombasa including the taking of the goods from the trucks and placing them in store in the go-down and also whenever the Company have a ship available the removal of the goods from the go-down and the placing of the goods alongside the ship for shipment from the go-down with all reasonable despatch. The Company will pay 5 sh. 90 cents per ton for these services irrespective of the tonnage handled per year; the last-mentioned charge of 5 sh. 90 cents per ton shall include off-loading wharfage and handling and the use of the conveyor.

3. All ships chartered or otherwise engaged by the Company shall berth alongside the pier at Shimanzi provided the goods to be loaded amount to not less than 200 tons and provided further such pier is available. Should the pier at Shimanzi not be available all vessels chartered or otherwise engaged by the Company shall take up such berth as the Port Management may direct, but shall not be called upon to pay any additional port charges for the shifting of the vessel for the purposes of loading soda goods at different points.

In the event of tonnage to be loaded in each ship not amounting to 200 tons such ship shall be loaded at such berth as the Port Management may direct provided the ship shall not be called upon to pay any additional port charges for the shifting of the vessel for the purposes of loading soda goods not exceeding 200 tons.

4. Whenever ships are loaded at any berth in the Port of Mombasa other than Shimanzi Pier the Administration will convey the soda goods to such berth and alongside the ship for shipment and in such cases the Company shall pay for off-loading handling and wharfage a charge of 4 sh. 90 cents per ton and in addition the Company shall pay for haulage such charges as may properly be raised and as are set out in the Tariff of Harbour Dues and Charges from time to time in force.

5. The Administration will at all times provide warehouse space in the Port of Mombasa for a maximum storage of 5,000 tons of soda goods at any one time and the Company will pay an inclusive rent of £500 per annum for such warehouse accommodation free of rates to be payable

DATED

193 .

O / KENYA 31 B.

**The Magadi Soda Company
Limited**

— TO —

**The Crown Agents for the
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