

1937

38086

22

CO 533/480
KENYA

38086

22

PETITIONS

MRS. NATHU RAM KHOSLA

Previous

SEE 3010/33
(NY 118)

Subsequent

R. 297 8/37

R. 309 9/1

with R. 7.1

M. Duncan 14/1/58

Mc. Dowe 20.1

298 29/1

297 6/3

309 10/3

Mc. Duncan 21/3/58

Mc. Dowe 24.3

MR. C. BOTTOMLEY 28/3

had sufferin. 29

R. 309 /

R. 299 5/4

297

C.I.
PETITIONS.
Nominal.

1. GOV. KENYA 755 17.12.37.
Trs., with comments, petition on behalf of
Mrs. Nathu Ram Khosla in connexion with grant of
lease of land at Kisiani, Central Kavirondo,
recommending she be informed that S. of S. is
unable to intervene in the matter.

Mrs. Nathu Ram Khosla is in occupation of a plot of 5 acres (L.O.4660), an island site in the Kavirondo Native Reserve near Kisiani. She holds a non-transferable lease ending at the time of her death or in 1943, whichever is the earlier. This lease was granted in 1923 in the place of a Temporary Occupation Licence under which she and her husband (who died in 1928) had occupied the land since before the war. Before this ten years' licence was granted (see No. 7 on 3010/33) she applied for a longer and transferable lease, which request is now repeated in this petition.

The real reason for the petition, according to the Governor, is that a mortgage has been raised on the land on the scanty security of the Temporary Occupation Licence which had now been cancelled.

The Governor recommends non-intervention. The natives, ^{with his usual} in spite of the action at 'X' in paragraph 3 of this despatch, have always opposed the lease of the land. The Land Commission Report, of which the relevant paragraphs are attached below, only refrained from recommending the cancellation of the Temporary Occupation Licence in order to avoid causing hardship to the licensee. It was for the

same

Claim to a
Mill Plot on
Kisiani River.

1137. There is a small plot of five acres (L.O. No. 4660) held on temporary licence at Kisiani by the widow of the late Nathu Ram. It is an island in the native reserve and is claimed by the natives. The Local Native Council has recommended that the temporary occupation licence should not be exchanged for a lease, but should be cancelled.

1138. The cancellation of the temporary occupation licence is a matter for consideration by the District Commissioner, and we do not propose to fetter his discretion by making any recommendation. The area involved is small, and possibly cancellation of the licence would cause considerable hardship to the licensee.

same reason that the ten years' licence was granted in 1933 (see the last paragraph of No. 7 on 3010/33). The licensee has, in fact, been lucky to be treated as well as she has been and there appears to be no reason at all why she should be given a longer lease.

Subject to legal observations the petitioner may be informed that the Secretary of State is unable to intervene.

Costley White 5/1

M: Duncan

For your news, please

*A. J. Dawe
7.1*

Mr. Dawe.

In a recent case (Mr. Paskin and Mr. Costley White know about it) relating to the dismissal of a Police Officer we asked the ^{Senior Official} O.A.G. to forward a report by his Legal Advisers in any future cases which involved questions of local law, and he promised that this would be done.

There may not be much in the present case, but as questions of local law are involved I think we might write ^{semi-}officially, referring to Mr. Flood's semi-official letter mentioned above, and asking for a legal report.

I have been looking through the Native Lands Trust Ordinance, 1930, and I note inter alia that, under the proviso to Section 3, no lease can be granted under the Ordinance unless at a meeting of the Central Board there are at least five votes in favour of doing so. Presumably the special reference in paragraph 6 of No. 1 to Section 8 is to subsection (2) of that section - but we may as well get the whole position cleared up. It appears that the Local Native Council and the Local Land Board were in favour of granting the petitioner's request.

14/1/38.

A. Duncan.

Dft. a letter from me to M: Pilling referring to (4) in 38086/21/37. Let M: Duncan see it.

*Attorne
A. J. Dawe
17.1*

2 To H. Pilling

27/1/38

cons

27.1.38

3. Sir A. de V. Wade (3/1) ——— 23-2-38
(2 Encs.) Encs. with comments, copy of report by the
Attorney General on the petition.

Mr Duncan

? You will advise whether in
view of No 3 and its enclosure there
remains any legal difficulty in informing
the petitioner that the S.P.S. is not
prepared to intervene.

I should have thought that from what is
said in No 1 there is no occasion for
taking up the suggestion in the last para
of the Attorney - General's report. On its
merits the case seems to be against the
petitioner.

Clotworthy 1973

If the Governor is satisfied that no
hardship is being caused to the petitioner, I am
that we need not suggest as in para. 4 of
Mr. Wallace's report (Enclosed in No. 3), and
that the petitioner can be informed that
the S.P.S. has considered her petition but
is unable to intervene in the matter.

22/3/38 H. Duncan.

P.S. If the local natives were in fact opposed
to the lease, as the Chief Native Commissioner
says, it seems strange that they should
have made a formal recommendation in
in favour of granting the petitioner's requests
(see the second & third paragraphs on page 2 of No. 1).

H.D.

Sir C. Bottomley.

It does not seem to me that there
sufficient ground for the Secretary of State to
request the Central Board to reconsider its
refusal. I think that it would be undesirable
for the Secretary of State to make such a request
to the Central Board with respect to an individual
case unless it could be shown beyond a doubt that
their decision had resulted in an injustice.
That, in my opinion, cannot be shown in this case.
The petitioner is simply trying to read into her
lease something which does not come within its
terms.

? Ask the Governor to cause the petitioner
to be informed that the Secretary of State has
considered her petition but is unable to intervene
in the matter.

A. J. Wade
24.3.38.

Lord Dufferin

I have recovered the 1933 file (3010);
please see No. 7 and the minutes.

You will see that the local natives
opposed the renewal of the original licence to the
husband and the extension of it to his widow in
1928. They were overruled, but now they have
voted by a large majority in favour of a still
greater concession, of a long lease, to the widow
they are again overruled in the opposite direction.
We are told, fairly plainly, that their new vote

is due to lobbying by the widow and her friends and also that there is a strong feeling of opposition to the proposal. I should have thought it reasonable to conclude that it was the old diehards who were still opposing and that the younger men represented an enlightened majority.

But I agree that the petition, for far more favourable terms than her husband ever had had, should not be approved.

? as Mr. Daws proposes.

W.D.S. 28.3.38.

As proposed.

D&A
at once 29.3.38.

at No. Kenya 191 - 1 Approved - 5 APR 1938

W.D.S.

38086/22/37

C. O.

Mr. Cooke, White 29/3

Mr. Deane

Mr.

Sir H. Moore.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Stuchburgh.

Parlt. U.S. of S.

Party. U.S. of S.

Secretary of State.

29.3 J

EH

Recd
March 28

5 APR 1938



Sir

I have etc. to ask the

(1) receipt of your despatch No. 755 of the 17th of December, 1937, transmitting a petition on behalf of Mrs. Nathan Ram Khosla for an alteration in the terms and an extension of the period of her lease of a plot of land at Kisiani.

2. I ^{have to} request that the petitioner may be informed that I have considered ~~her petition~~ ^{her petition} but ~~am~~ ^{am} unable to interfere on ~~her behalf~~ ^{in the matter}.

I have etc.

(Signed) W. ORMSBY GORE.

DRAFT.

Kenya.
No. 191.
Gov.

FURTHER ACTION.

Nairobi,

23rd February 1938.

Dear Dawe,

2
I have your letter of the 27th January to Pilling on the subject of Mrs. Nathu Ram Khosla's petition about her lease under the Native Lands Trust Ordinance, 1930.

1
The special reference in paragraph 6 of Kenya despatch No.755 of the 17th December, 1937, to section 8 of the Ordinance was not to subsection (2) of that section, but to the general question of the authority empowered to grant leases, that is particularly to subsection (1), which makes the Governor, with the advice and consent of the Central Board, the only authority who can lease land in a Native Reserve, without any provision for appeal in the event of his refusal to grant a lease. In effect the reference was intended to convey much the same point generally as is made in greater detail by the proviso to section 3 of the Ordinance, that no lease can be granted unless at a meeting of the Central Board there are at least five votes in favour of doing so.

A.J. DAWE, ESQ., O.B.E.,

I/
6
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-2-

I enclose a copy of a report on the position by the Attorney General, who had already concurred in the wording of paragraph 6 of our despatch.

As regards the undertaking referred to in the last paragraph of your letter, the practice is that any despatch to the Secretary of State on a matter involving a point of law is reviewed by the Attorney General, whose advice is in effect incorporated in the despatch. I presume you do not require a separate report from the Attorney General on every such matter any more than you would want, say, a separate report from the Treasurer on any matter involving a question of finance. The arrangement referred to by Pilling is regarded here as meaning that in any case where the Law Officers' opinion is not incorporated or reflected in the despatch itself, a separate report on the matter by the Attorney General will be sent.

Yours sincerely,

Admiral

8

The only person empowered to grant a lease in a Native Reserve is the Governor with the advice and consent of the Native Lands Trust Board.

2. The prior approval of the Secretary of State has to be obtained where the lease is objected to by the Local Native Council or by any African member of the Local Board (vide proviso to section 7) or where it is for a term exceeding thirty three years (vide section 9). Such approval is unnecessary in this case as the Local Native Council by a majority of 32 to 12 agreed, the Local Board unanimously supported the application and the lease was for a term not exceeding thirty three years.

3. The Governor with the advice and consent of the Central Board could have granted the lease without referring the matter to the Secretary of State; in fact on the advice of the Board he has refused it and in law no one can reverse that decision as there is no appeal therefrom.

4. The Secretary of State might of course, if he considered it to be a hard case, suggest that the Central Board should reconsider the matter.

(SGD) THEODORE WALLACE

AG: SOLICITOR GENERAL
for ATTORNEY GENERAL.

C. O.

O. D.
R 20 JAN
D 94

(3)

38086/22/37.

29

Mr. Duncan 19/1/38

Mr. Dawe 20.1

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Qtd. for Mr. Dawe's signature.
Downing Street,

27 January, 1938.

Dear Pilling.

~~We have been considering~~

Mrs. Nathu Ram Khosla's petition

which was enclosed in Kenya despatch
has been under consideration
No. 755 of the 17th of December, 1937,

~~we~~ and note that ~~the~~ the Local

Native Council and the Local Land

Board recommended that she should be

granted a new lease for 33 years from

1937 with no restrictions as to sale,

but that

the Central Lands Trust Board decided

that it was unable to consent to any

change in the terms of the lease

approved on the 6th of May, 1933.

In this connection, the

Legal Advisers here observed that,

under the proviso to Section 3 of the

Native Lands Trust Ordinance, 1930,

no lease can be granted unless at a

meeting

DRAFT.

H.G. PILLING, ESQ., C.M.G.

FURTHER ACTION.

meeting of the Central Board there are at least five votes in favour of doing so; and that the special reference in paragraph 6 of the despatch to Section 8 of the Ordinance is presumably to subsection (2) of that section. It would be convenient, however, if a report from ^{your} the Law Officers on the position could be obtained - so perhaps you would kindly let us have one in due course.

I see from your letter to Flood (S/Est.19/1/1275/59) of the 30th of November last that arrangements are being made for a report from your Legal Department to be sent to us in any case in which a point of local law is involved.

Signed A. I. DAWE

AIR MAIL

KENYA

No. 755



RECEIVED
GOVERNMENT HOUSE
24 DEC 1937 NAIROBI
C. O. REGY KENYA

17 December 1937.

Sir,

(8) on 30/10/33

I have the honour to refer to despatch No. 547 of the 22nd July 1933 in which Sir Philip Cunliffe-Lister (now Lord Swinton) communicated his approval of the grant of a lease of five acres of land at Kisiani, Central Kavirondo, Nyanza Province, to Mrs. Nathu Ram Khosla in the light of the facts set out in Sir Joseph Byrne's despatch No. 351 of the 7th June, 1933, and to forward a Petition on behalf of Mrs. Nathu Ram Khosla in this connection.

(7) on 30/10/33

Amended (14)

2. The grant of the lease in question was made for a term of ten years or for the lifetime of Mrs. Nathu Ram Khosla, whichever should be the shorter period, and it was stipulated that the lease should be non-transferable. Mrs. Nathu Ram Khosla is not satisfied with these terms, and, though the object of her representations is not clearly stated in the Petition itself, I have ascertained that she desires to be granted a lease without any restriction as to sale and for a period of not less than thirty-three years.

3. It will be observed that the Petition is dated the 30th November, 1936, and it is necessary to explain the progress of the matter since the receipt of your despatch under reference.

The usual requisition for deeds was made upon the surveyor General in August, 1933, and it was then discovered that the area concerned had never been surveyed.

Government/

THE RIGHT HONOURABLE

W. GEMSEY GORE, F.C.S., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOVEHOUSE STREET, LONDON, S.W. 1.

11

Government was not in a position to have the survey effected and in the circumstances the applicant was requested to have the survey made by a Licensed Surveyor. In October, 1935, Mrs. Mathu Ram Khesla asked that she might be given three months in which to have this done as she was not then in a position to pay the necessary fees.

Subsequently Mrs. Mathu Ram Khesla made further representations but she was informed that the Central Lands Trust Board would not be prepared to reconsider its decision except in the light of a further recommendation from the Local Land Board. In December, 1936, the enclosed Petition was submitted for transmission to you, but the Provincial Commissioner was informed that the terms of the lease already approved could not be varied without consideration by the Central Lands Trust Board, that the Board could not consider the matter without the recommendations of the Local Native Council and the Local Land Board, and that it was useless to forward the Petition to you without an expression of the views held upon it by the various bodies concerned. The matter was therefore submitted to the Local Native Council and to the Local Land Board which bodies, as the result of further representations made by Mrs. Mathu Ram Khesla and on her behalf, recommended that the lease already approved for 10 years or for the lifetime of the applicant should be replaced by a new lease to run for a term of thirty-three years from 1937 with no restrictions as to sale. The recommendation was carried by 32 votes to 12 votes in the Local Native Council and was unanimous in the case of the Local Land Board.

This recommendation was submitted to the Central Lands Trust Board in August last, when the Chief Native Commissioner explained that the local natives had always opposed the issue of a lease in respect of this land and that they still resisted a grant on more favourable terms than

that/

that already issued. The board took note of the fact that there had been considerable opposition in the Local Native Council to the revised recommendation and after reviewing at length all the circumstances of the case, recorded its decision that it was unable to consent to any change in the terms of the lease approved on the 6th May, 1933.

The Central Board's decision was communicated to Mrs. Mathu Ram Khosla who has now requested that her original Petition may be forwarded to you.

4. It has been represented on behalf of the petitioner that insufficient consideration was given to the terms of the original Temporary Occupation Licence which, unlike other similar licences, contained the following clause:-

"During the continuance of beneficial occupation by the licensee and provided his conduct is satisfactory the licensee or his heirs and assigns shall be left in undisturbed possession of the land".

In other respects the Licence was in similar terms to others granted under the Crown Lands Ordinance, 1902, that is to say it was for a term of one year in the first instance and thereafter subject to termination by either party giving to the other six months previous notice in writing. A copy of the Licence is enclosed.

It has been suggested that the clause indicated above brought the rights granted under this licence almost to the level of those under a lease in perpetuity, in that the covenant for quiet enjoyment extends to the licensee's heirs and assigns. Legal opinion has, however, been sought on this point on three separate occasions from 1924 onwards, and each time government was advised that this covenant amounted to nothing more than a covenant for quiet enjoyment during the continuance of the licence, and in no way precluded notice being given as and when required.

-4-

5. The petitioner's real grievance is that her late husband raised money on the security of a Temporary Occupation Licence which had to be cancelled in 1932, and is due to the fact that the licensee regarded the licence as a lease.

A reference to the plot concerned appears in sections 1137-1138 of the Kenya Land Commission Report.

3) on 16010/30

6. It would appear that, in view of the provisions of section 8 of the Native Lands Trust Ordinance, 1930, and of the refusal of the Central Board to consent to any variation of the terms of the lease already approved, the only course open is for the petitioner to be informed that you are unable to intervene in the matter.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

Brooke-Popham

AIR CHIEF MARSHAL
GOVERNOR

14

KENYA COLONY
KISUMU.

30th. November, 1936.

Captain The Right Honourable Mr. Ormsby Gore P.C.
Secretary of State for the Colonies,

L O N D O N

Sir,

REGARDING KISIANI MILL PLOT NO. 4060

I most humbly and respectfully to place my pathetic case before you for your merciful condition.

My case is briefly referred to in Sections 1137 and 1138 of the Kenya Land Commission Report. The small plot of land of five acres has been in the occupation of various Indians for the last 30 years and has served the very useful purpose of grinding grain for the Natives of the District from the time they did not know what mill was or what milled flour was for its utility commenced from the period when the Natives of these areas did not even know what a wearing apparel was.

The plot changed hands at considerable prices and the development thereon took place with the full knowledge of the Government and all the natives of the vicinity. The natives at this period did not even know that Land could belong to any individuals or communities. The native idea of the possession of land at the time was that it was a gift of God and came in the same category as river water, free air or sunshine was and could not be the property of any one beyond the extent to which it was actually utilised by cultivation etc.

My deceased husband purchased the plot from one Mrs. Alice Ivy Anderson for Rs.13,000 or Shillings 26,000/- by a written deed which was duly registered in the East Africa Protectorate Kisumu Registry as No.1 of 1911.

I beg to inform you that my husband had spent the money for the above plot as follows :-

C.O. 533 480
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 04/01/00 BY 60322 UCBAW/STP

Bought the above plot with 3 mills	Shs.26,000.-
Bought plant from the foreign countries	" 4,000.-
Developing costs on the plants	" 6,000.-
Office made with C.I.Sheets and cements in 1919.	" 1,000.-
Sleeping room and store made in 1926	" 3,000.-
	<hr/>
Total amount	Shs. 40,000.-
	<hr/>

Then as late as 1932, the Native Land Trust Ordinance came into force which provided for leases of plots to non-natives up to 33 years provided it was proved that the use of the plot was for the benefit and the interest of the Natives.

During these 26 years the Natives had imbibed all sorts of ideas from various political agitators who told them that their land had been robbed by the Indians and Europeans and consequently they advanced all sorts of most extravagant claims before the Land Commission claiming the whole of Kisumu Township, Masana, Maseno, Yala Township all land alienated to Indian farmers north of the Railway between Kisumu and Muhoroni, Mr. Maxwell's farm, Kipkarren Farms and all the Mining areas in Kakamega. Most of the claims were according to the Land Commission Reports based on totally false statements and were dismissed.

The obvious weakness of my case was (1) being a widow that I had no one to represent my case properly and (2) it was held on a Yearly Occupation Licence.

Considering the small area of the Plot the Commissioners did not make any definite recommendation which would fetter the discretion of the District Commissioner but gave a very clear indication of their mind by concluding Paragraph 1138 by saying "The area involved is small and possibly cancellation of the licence would considerable hardship to the licensee."

The case came up for consideration before the Local Native Council on 22nd August, 1932 when a Native gentleman, Zadok Okuma, according to the minutes of the proceedings is said to have remarked " when this plot was given out the local inhabitants were

not consulted. The land was now needed. The Occupiers were fools to plant fruit trees on land held under T.O.L. The original owners of land were known". He proposed that no lease be granted and was against any compensation for disturbance.

This was before the Land Commission reported on (7th July, 1933). It is well known that the idea that has been instilled into the minds of the natives, by the political agitators is, that European have stolen the whole of their country and if they could have their own ways, they would like to see the end of the British Government in their country. The point worthy of the consideration, here is : Where were the owners who are now "known" for the last thirty years during the time the mill plot was continuously occupied by Indian millers successively and the second question which has to be answered is ; has the plot been used for the benefit of the natives themselves.

The matter subsequently came up before the Local Board under the Native Land Trust Ordinance and eventually it was decided that to grant a lease for ten years on a yearly payment of Shs.350/- but the lease was cease on my death if it took place earlier.

I respectfully beg to submit that this is no lease at all. I am an old woman praying for the end of my miserable life at the earliest possible opportunity which would leave my poor 3 orphans helpless in the world. I was told that I could sell the plot on the terms of lease granted to me. But who would buy the plot on the lease which might be terminated at any moment with the last of my breath.

The matter again came up before the Native Council on the 25th July after the publication of the Land Commission Report. The personnel of this meeting was evidently more humane and sympathetic than those who formed the members of the meeting on the 22nd August, 1932. Jairo, the Vice President asked my young son who attended the meeting if he would accept Shs.20,000/- as compensation. My son replied the mill was

mortgaged for Shs. 13,000/- and although it would leave his mother a very small amount as balance she would accept in order to finish the matter. The President said he would discuss this matter with the Provincial Commissioner but he doubted if it was possible to find the money.

I was informed by the District Commissioner on the 9th August, 1934 that the Government had decided that no change in my present terms should take place nor does the Government consider that any compensation should be paid to me. This matter was evidently again brought up before the Local Land Board on 27th October, 1934 who also decided that no change could be granted and the Government stated that they were not prepared to allow the Local Native Council to spend the money on the plot. The decision was obviously influenced by the consideration that it would be useless to pay any money for the plot which was likely to be acquired free of charge at any moment when my death took place.

In vain did I appeal to the Hon. The Colonial Secretary and to His Excellency The Governor who informed me that they were not prepared to effect any change.

Respected Sir, I do not think I need make this appeal any lengthier. You are the last Court of Appeal for me on this earth and if there is any such thing as justice and mercy left on this planet, I appeal to you to consider my case as a fellow human being otherwise my children will be ruined and destroyed by starvation.

I beg to remain,

Sir,

Your most obedient servant,

Shivaji Khosla for
Mrs. N. S. Khosla

AN AGREEMENT made this 1st day of January 1911 Between His Most Gracious Majesty King Edward the Seventh of the one part and Virbhan Vasaram (hereinafter referred to as the Licensee) of the other part whereby under the provisions of the Crown Lands Ordinance 1902 His Majesty agrees to license and the Licensee agrees to occupy all that piece or parcel of unoccupied land situate in the Kisumu District consisting of five acres or thereabouts on the Kisiani Stream near the present Kisumu-Mumias Road Shamba Plot No.1 for a term of one year from the date hereof at the yearly rental of Rs.48/- payable in advance by monthly payments each of Rs.4/- on the said day of every callendar month. The said land is let subject to the payment of all rents and taxes and that no shops shall be erected on the land, and on the further condition that not less than 3/5ths. shall always be planted in ground nuts, sim sim, cotton or such other economic products as the District Commissioner shall from time to time decide. If the aforesaid rent or any part thereof is unpaid for one month after it becomes due, or if any tax or taxes imposed upon the land or upon the huts erected on the land or upon the licensee are unpaid for two months after it becomes due, or if the licensee fails to keep the land cultivated as hereinbefore provided, His Majesty His heirs and successors may eject the licensee from the land and this licence shall be forfeited.

This licence shall be determined at the end of the first year or at any subsequent period by either party giving to the other six months' previous notice in writing and is subject, save where expressly herein otherwise provided to the provisions of the Crown Lands Ordinance, 1902, and especially the provisions applicable to the licenses for temporary occupation and to the Rules for the time being in force under the said Ordinance.

During the continuance of beneficial occupation by the Licensee and provided his conduct is satisfactory the licensee or his heirs and assigns shall be left in undisturbed possession of the land.

AS WITNESS the hands of the parties hereto.

Sd. R.B. Wright.

Land Officer for N.E. the Governor of
the East Africa Protectorate

Sd. Virbhan Vasaram.

Witness Sd. Didar Singh.
28.12.09.

Certified true copy.

Sd. -
A.D.C.

III Class Magistrate.