

1937

38313

C0533/486

38313

KENYA

ALIENATION OF CROWN LAND OUTSIDE TOWNSHIPS

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LAND.

1. A/GOV'S REPORT, 195..... 2.4.37. 1
Encls. with comments, copy of scheme for alienation of
Crown Land outside townships and trusts that it will
receive B. of S's approval.

According to the Crown Lands Ordinance
(Cap. 140 Rev. Edition Kenya Laws) leases of town
plots and of farms shall, unless otherwise ordered
by the Governor in any particular case or cases, be
sold by auction.

The Acting Governor points out that during
the past 20 years Crown Lands have been disposed of
by one of four methods viz. allotment, tender, direct
grant and auction. In the last eight years, of the
397,507 acres of Crown Land granted for agriculture,
34 per cent. has been disposed of by direct grant,
21 per cent. by tender and 45 per cent. by auction.

The proposal now put forward is that
available Crown Land shall in future be disposed of
by direct grant, the object being, in the case of
agricultural land, to ensure as far as possible that
the land goes to the most suitable person from a
developmental point of view.

The special disadvantages attaching to the
method of sale by auction are described in paragraphs
3, 4 and 5 of the despatch. The auction system is
said to result frequently in the ousting of the
competent farmer by a rival bidder with ^{a longer lease} ~~an uneconomic~~
^{who may be buying for speculative or commercial}
purposes. We have had an example of this in Colonel
Abbey's efforts to secure a farm. (It can be assumed
that Colonel Abbey is a competent farmer). It is also
claimed that in the excitement of the auction, prices
which far exceed the true value of the land are
offered from a determination to brush aside
competition. The example of this quoted in paragraph
4 of the despatch is ^{in fact a} ~~an~~ somewhat special case and a
most unfortunate one, because the purchasers, who
happened to be Indians, have been unable to keep up
the annual instalments. They have only paid one
out.

* It cannot
8

out of six instalments which have become due.

(The Ordinance permits the purchase price to be paid by instalments over a period of ten years)

Apart from this case, however, it does not appear to the Acting Governor that there is substantial ground for thinking that the auction system has led generally to the payment of prices which are disproportionate to the economic value of the land sold.

The remaining objection to the auction system is the time factor. Three months' notice must statutorily be given of a sale by auction. The system of disposal by tender reduces the delay to a certain extent only, but it does not always result in the most suitable farmer securing the available farm.

The scheme accompanying the Acting Governor's despatch, which was prepared by the Advisory Land Board and approved by the Executive Council, states the conditions on which grants will be made by the Commissioner of Lands in respect of:—

I. Categories 1 and 2. Township plots and small holdings for quasi-residential settlement.

It will be seen that special provision is made for the free grant to Indian Army War Block Officers of plots in areas suitable for residential settlement, ~~assisted by money~~ ~~market-gardening.~~ This is in accordance with the decision on 38232/1/56. ~~but that~~ All other grants will be on the usual formula as regards Stand Premia and rent.

II. Category 3. Mixed farming units.

Stand premia and rent will be charged,
and

^{the} and general conditions of the Crown Lands Ordinance applied.

As regards the above categories the Acting Governor points out that the principle of direct grants on selection between applicants was approved in respect of the Closer Settlement Scheme and that the principle was authorised in connection with grants of plots for residential purposes in the case of the Indian Army War Block Officers. He ^{appears to} assume, therefore, the Secretary of State's approval of the proposed new general principles in regard to the disposal of land falling within categories 1, 2 and 3. He does, however, invite approval of the scheme in so far as categories 4 and 5 are concerned.

III. Category 4. Other Surveyed Farms.

IV. Category 5. Unsurveyed Areas.

Grants under category 4 when approved will be under ~~the~~ ordinary terms of the Crown Lands Ordinance, but subject to special conditions as to forest and soil conservation, and although it is not specifically stated in the scheme, it may be assumed that grants under category 5 will be on similar terms. So that with the sole exception of the Indian Army War Block Officers' plots, the scheme does not involve a form of Government assistance.

It will be seen that the farms in category 4 do not admit of subdivision for Closer Settlement purposes and are either farms which have never been applied for or have been at one time alienated and thereafter surrendered to the Crown. The Acting Governor adds that the unsurveyed areas in the fifth category are situated in the north part of Lalkiia district and comprise land suitable only for development on a large scale as sheep runs; there are

also

also large tracts of land in the Teita district and on the coast for which there has hitherto been no demand.

The following are the particulars of the larger areas surveyed for alienation and of Crown Land unsurveyed, according to the last return received dated 31st December, 1936.

(These figures do not include the portions of areas already alienated.)

Surveyed for Crown Land Alienation Unsurveyed

Nyanza Province

Kericho 25 1/2 miles. 203 sq. miles.

Rift Valley Province

Nakuru 133 sq. miles. 8 . .

Laikipia 288 " 1308 " "

Central Province

Fort Hall 199 " "

S. Nyeri 205 " "

N. Nyeri 75 " 435 " "

Meru 626 " "

Machakos 416 " 2031 " "

Kitui 33 " 12,021 " "

Coast Province

Teita 12 " 5439 " "

Digo 2 " 875 " "

Kilifi 60 " 2103 " "

It seems clear from these figures and from the statement at * above that it is not the intention to declare immediately the whole of the areas surveyed for alienation as available for disposal. As regards the unsurveyed areas it is not clear whether it is intended to invite applications for grants of any unsurveyed land. For last these unsurveyed areas named in the or whether the scheme is only a measure to deal with any applications that may be made for land

3908/37

X

Y

~~in the districts named~~, viz. parts of the Laikipia district, the Teita district, and land on the coast.

Although it cannot be said that the objections to sale by auction are insuperable the disposal of land by direct grant will no doubt operate in the best interests of the Colony. The fact that accepted applications will be published for objections should remove any misgivings there may be on the score of favouritism.

On the whole ? the scheme may be approved in so far as it relates to categories 4 and 5, but it might make enquiries in regard to the points at x and y above.

Ch. Brown

20. 5. 37.

It is, I think, the case that the system of auctions is generally unpopular in Kenya, and that the proposals will be welcomed. They do not seem open to any objection.

I should welcome an early issue of the enquiries suggested by Pt. 2 of the Report at x & y, as these points seem to be absolutely essential to the 3rd part of para 6 of the Report.

? approve.

J. J. Brown
20/5

I have kept this despatch in order to read through the old papers which are mentioned, which I have done with some considerable interest; but I am not at all satisfied with the proposal. The closer settlement scheme, and the scheme for making grants of land to ex-Government officers, and the settlement of Indian officers of the War Block were quite special things and justified special measures. Further, direct grants for residential purposes in the country townships are also very much special things. The land in such cases could be valued fairly closely: there could not from the nature of things be very much competition since it was for residential and not for business purposes, and the applicants would all be generally known.

But it is quite another story to proceed to approve the grant of surveyed farms and unsurveyed areas on application. The proposed safeguard of advertising and giving a month for objections and then referring to the Land Board is not, in my opinion, at all a sound way of meeting objections.

As I see it, the provision that plots should be put up to auction with an upset price on them was designed to meet the charge which would otherwise be made, and I believe was made in the early days, that Government alienated its lands in large

quantities

quantities to favoured applicants without giving anybody else a chance to look at them, with the result that many useful areas were tied up and that people took over large chunks of country with the object of selling again in small bits. Any proposal to allow the alienation of Crown Lands without safeguards is open to the objection I have mentioned, and, further, I would point out that the unsurveyed areas mentioned are said to be suitable only for development on a large scale as sheep runs. This would mean that the lands in question would be alienated in very large blocks and it might hereafter be found that the land in question would be required for something else.

There are also said to be large tracts of land in the Teita District and on the Coast for which there has hitherto been no demand, and the assumption is that efforts will be made to encourage applications for these areas.

Now I do not think that Government ought to. We know from bitter experience that in the past land was alienated quite recklessly without due regard to native rights, and I have a strong feeling that Government ought to close down upon all Crown Land outside the Highlands with a view to not alienating it but allowing it to go back to the natives as may be required, and that the policy of alienation should only be adopted in rare and exceptional cases. This may hold up some development, such as a sisal plantation which might be established, but I think the result would be to avoid trouble hereafter.

There

There is also the political objection on which I have touched above. Parliament is suspicious of everything that is done in Kenya and why should Kenya go out of its way to invite charges of favouritism and of giving away the land for nothing. I have no doubt whatever that an upset price could be fixed for disposal by tender which would be adequate, but it would be quite impossible to convince a determined opponent of the fact, and why invite criticism.

What I have said in regard to the areas in the Coast and Teita Districts applies also to the farms in category 4 which have been surveyed but, be it noted, have either never been applied for or have been surrendered after having been alienated. It seems to me that there can be no particular demand for such farms and that the best thing to do is to hold on to them with a view to their being made useful for native development, if possible. Such of them as are in the White Highlands cannot, of course, be made available for that purpose, but the principle of the thing is the same.

I would therefore proceed to tell the Governor that while the S. of S. agrees that no interference is called for in the case of land which has already been granted, or in those cases such as the Indian War Block and the other instances referred to where direct grants have already been made

and

and may continue to be made in future, yet it seems unadvisable to depart altogether from the principle of auction, especially in the case of what are likely to be large areas. Say that there is serious risk of misrepresentation of the policy of Government, and that charges of favouritism and undue influence would almost certainly be made which would be hard to meet, and, further, with regard to land in the Coast Province and elsewhere outside the White Highlands, say that it is very doubtful how far the policy of alienation should be allowed to continue, and that it is rather for consideration whether Government's aim should not be to restrict alienation as much as possible in order to ensure that sufficient land is available to meet the needs of the native population.

J. G. Flood

28.6.37.

Sir C. Parkinson.

I agree generally. Auction began as a funk hole against charges of favouritism but it has become an institution. It is firmly rooted in Tanganyika and to drop it altogether in Kenya would give rise to criticism, however ill founded.

Unalienated land outside the Highlands which is not a Native Reserve is the land classed as D in the Morris Carter Report - land in which all races shall have equal rights to lease. I do not think that we can go as far as Mr. Flood proposes in urging that this land should in effect be retained

for

for native use. We shall find it easier to safeguard native interests under other proposals of the Commission if we avoid as far as possible going further than the Commission does in the direction of native interests in cases of this kind. All we need do ~~however~~ is to make it clear in the despatch that special grants in D areas are not barred in the case of large planting propositions which will develop land which could not otherwise be developed, provided, of course, that there are no native interests in the land actually leased.

As regards what Mr. Flood says about the "~~ranching propositions~~" in the Highlands I do not know where ^a the grazing area ends and ^a the ~~ranching area~~ ^{sheep run} begins. I should like to say that except in the case of applications for very large areas with the assurance of large capital being available, it would be preferable to deal with the land in question as grazing areas have hitherto been dealt with, and by auction rather than by tender.

Perhaps we had better have a draft for consideration.

W.D.S.

1.7.37.

It seems to me clear that the objections to auction set out in the despatch are hypothetical, and

I agree with Mr. Flood that it would be selling gratuitously for trouble if the Kenya Govt. were now to throw over the system of auction. That, auction may now have become a sort of shibboleth, but in the absence of much well convincing reasons than are given in this despatch, I think the shibboleth must continue in force.

W.D.S.

5.7.37

W.D.S.

See 2/8/37

My despatch submitted. The draft is self-explanatory + there is no occasion, I think, for you to read anything except the despatch + the draft.

I feel strongly that the Govt. of Kenya would be ill-advised to

While general water interests in D areas must be borne in mind,

i.e. normally by auction

W.D.S.

abandon the system of
auction.

and

7.7.37

by 8.2.37

2 To Hon'ble Secy.

20 JUL 1937

[Handwritten mark]

3

(Chief)
Lord Francis Scott

1st Sept. 37.

(Orig. rept. on 38300/37)

It is true that these proposals have been turned down, but not, as Lord Francis Scott suggests, owing to any lukewarmness on the part of Mr. Logan who, in fact, (as Acting Governor's Deputy) signed the despatch in which the proposals were submitted to the Secretary of State.

The reasons why the proposal was turned down were (see No.2 on 38313/37) as follows:

"The main objection to abandoning the principle of auction is that, without the guarantee provided by auction, Government is open to a charge of favouritism

favouritism in alienating land to particular applicants, and may also be accused of having alienated land without due consideration, or without taking proper steps to obtain the best value for the Colony as a whole in return for land grants. This objection is one of principle, and even though I might be satisfied that land would in fact be alienated wisely and with due consideration, yet the unfavourable impression might be created and charges of favouritism or undue influence if made, would be hard to disprove."

It was felt that the arguments put forward in support of the proposals were not sufficiently strong to justify the abandonment of the practice which had hitherto been in force and which, at any rate, had the one advantage of not exposing Government to allegations of favouritism. It was thought that to abandon them would give rise to suspicion and misunderstanding in a matter which it was particularly desirable to avoid giving cause for criticism.

(There were other objections to the proposals in relation to the alienation of land outside the Highlands, but as Lord Francis Scott is clearly concerned principally with the Highlands, it is unnecessary to particularise ^{other} these objections.)

J.J. Passmore
15.9.37.

Sir C. B. Bollenby

This illustrates very nicely a particularly mean underhand trick which ^{some} Unofficials in Kenya are always playing - that is, to endeavour to find particular officials who can be alleged to be responsible for particular things. Lord Francis Scott happens to like Mr. Hosking, hence he is described here as one of the best officials in Kenya, and he doesn't like Mr. Logan, hence the backhanded crack that he is imbued with Henry George theories about land, and the utterly unjustified suggestion that he was responsible for criticisms which caused this scheme to be turned down.

The answer to Lord Francis is, therefore, that contrary to his opinions, Mr. Logan had nothing to do with it and that the proposal was turned down by the Secretary of State for good and sufficient reasons of policy, and it might be added that he ought to realize that the alienation of land in Kenya is the thing which excites more unjustifiable and unworthy suspicion than anything else so that any alteration is liable to give rise to political trouble, and that anything which might give colour to suspicion that Govt was handing over its assets (land) to settlers without a full return would be very much frowned upon after all matters may be cloudy but it is a good piece of wisdom discerning 15.9.37.

There is no mention of this point having been discussed in the records of L.F. Scott's conversations with Sir C. Bollenby & Sir C. Richardson, but a copy of L.F. Scott's letter has been sent to Sir R. Brown-Phipps (Ms 14 on 38300/37). This file can be seen in 21/2. J.J. Passmore 21/2

See. of State

Sir C. B. Bottomley

Named
(C. & J.)

Mr. Flood.

4.

I attach a letter which the Secretary of State has received from Lady Eleanor Cole regarding land alienation in Kenya. Perhaps you could suggest the terms of a further reply which Mr. Ormsby Gore might send to this letter.²

J. Gray
21.10.37.

5. To Lady Eleanor Cole (4 Acs) ————— 21.10.37

DESTROYED UNDER STATUTE

Lady Eleanor Cole has got a sheep farm in Kenya, and in paragraph 6 of the Acting Governor's despatch on 38313/37 it is stated that the unsurveyed areas are situated in the north part of the Laikipia district and comprise land suitable only for development on a large scale as sheep runs. I suspect then that Lady Cole, or her manager, would like to get hold of some and feels annoyed.

In point of fact, Mr. Logan has had nothing to do with it and Mr. Logan recommended the proposals which were not accepted here. The reason they were not accepted was because of the political difficulty in abandoning the safeguard against favouritism, etc., that auction gives. Anyhow, it is not a case of reversing anything but refusing to allow the existing system to be upset. Draft herewith.

Sir A. Wade told me that he was strongly in favour of the scheme put forward and hoped that

the Government would be allowed to make further representations designed to allay the fears of the Secretary of State. I told him of course there could be no possible objection and I gather that he will take the thing up when he returns. He admits the force of the arguments but says he thinks they can be satisfactorily got over.

J. E. A. Flood

22.10.37.

W. C. 22.10.37

See ~~Boali~~
only you yourself, I think, can settle the 'tone' of your reply to Lady Eleanor Cole's letter.

I did not however feel that the opt. marked 'A' was quite appropriate.

I have tried an alternative opt. B.

In any case I wd. not give the reasons for taking down the proposal, exp^t as in a wide aspect the Kenya Govt. to return to the charge & convince us that the change should be made.

1) In C. [unclear] 20/10/37
2) To Flood
R 297
attach

6. To Lady Eleanor Cole (3/6) 4. [unclear] 25.10.37

7. Lady Eleanor Cole (3/6 to S. of S.) 26.10.37
Reks. (6) with comments.

? Put by.

J. E. A. Flood
2/21

J. E. A. Flood 211

Min. of 3 not
attached
R. [unclear]
298/5.6.

S. C. [unclear] 27/10

→ Sir C. Parkes in 27.10.37 12

H. Flood

R 297

To see This night 2

attached is the camp [unclear]

now in Dept's

Phuay

Yes: what Kenya
ought to do is to stop
alienating land altogether.

27.10.37

J.



Dear B. K.,

Very many thanks for your letter.

I will pass on your information to Frank Joyce. Personally I feel the most important thing is for any land still held by Government for settlement, to be quickly disposed of as it is very difficult to establish land values or sell privately as long as there are blocks of government land that may be thrown on the market at any time. It is putting off to a prospective settler who might fancy a piece of land to be told he must wait indefinitely till there are enough other people wanting other pieces to justify an auction sale. This delay also hinders development.

"When a person wants to buy a Government farm to count off his own property, or to facilitate a fencing or water scheme.

I had put in for a bit of land when I thought the direct grant was coming in - now everything seems held up again, though all the formalities had been gone through.

Nothing has hindered the development in Kenya so much as the perpetual fear that somebody might make money. As long as no one is doing that is the whole country the loser in consequence the Colonial Office feels comfortable.

Look at that Northern district beyond Rumuruti. If any sympathy had been given to the applicants to take up land there in 1919 they would have had 10 good years in which to develop it & get water

• on to it (either by dam or wells) before the slump in 1929. As it is a few have struggled to make a little use of it on monthly tenancies & no development has been done at all. Get rid of the land & put that thorny question out of the way is the best way to help the country as a whole. I believe. However I know it isn't as easy for the Colonial Office to do this as it sounds, but I do think delays are disastrous.

Yours with more sympathy than
might appear by this letter

N. S. Hill

That does not necessarily mean that the

matter is closed, and if the Government

of Kenya feel that they wish to pursue

it I shall no doubt hear from ~~the~~ *Bonnie Popham*

Governor.

You will see, therefore, that your correspondent in Kenya has misunderstood the position. There has been no reversal of the system of direct grants: the system which has long been in force remains in force, and a suggestion made to alter that system has not gone through. The villain in the piece, if there is a villain, is myself.

You said in your letter that you did not know whether what had happened was due

to ~~Mr. Logan's~~ ^L return to Kenya. I am

sure you would have said that, and I

am sure you will not misunderstand me when

I say that I take strong exception to

attempts

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

attempts to ascribe any particular policy of the Government of Kenya or of my own to an individual officer.

Actually, in the present case, it was by Mr. Logan, who was deputy for

the Governor at the time, that the ^{presently established} proposals for a change in the system

were submitted to me. The real difficulty is ^{.....} to devise any alternative system that will effect ^{of} protected the lot from charges of favoritism & bad faith to individuals, & I am satisfied that many people think that the auction system gives people a chance who would not otherwise get it.

Yours sincerely,

W. Arundell Jones

A

C. O.

Mr. Flood. 22 10.37.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

For the Secretary of State's signature.

Downing Street.

Sir C. Bottomley. 22.10

Sir J. Shackburgh

Parms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

October, 1937.

See minute letter alternative off

*I can now write further
I have looked into the*

DRAFT.

LADY ELEANOR COLE.

question about land sales in Kenya

which you raised in your letter of the

20th of October, and I am afraid that

your information is quite wrong;
you or Mr. Joyce has got it very much

and I am sure you will not misunderstand
~~wrong; In particular, I must assent~~

*and I am sure you will not misunderstand
me when I say
that I resent*

attempts to ascribe any particular

policy of the Government of Kenya or

of my own to Mr. Logan or to any other

individual. What happened was ~~this~~

~~that~~ Recently the Government of

Kenya, Mr. Logan being ^{actually} deputising for

the Governor at the time, submitted

proposals for abandoning the present

system of land grants and adopted ^{it} what

you

FURTHER ACTION.

you describe as the direct grant system; ~~but~~
 I did not see my way to accept the proposals,
 [and I am of opinion that for the Government
 of Kenya to abandon the one small security
 which it has against charges of bad faith
 and favouritism would be a political mistake.
 I do not want to stir up more trouble in
 regard to the alienation of land in Kenya
 than is necessary.

Accordingly, I felt compelled
 to inform the Government that the scheme
 which they had proposed to replace auctions
 was not acceptable, and I said that while
 it might be the case that auction sales
 do not afford any additional measure of
 security, still to abandon them would give
 rise to suspicion and misunderstanding in
 a matter in which it is particularly
 desirable to avoid giving cause for criticism.

So you see that what really happened
 was that Mr. Logan was proposing to replace

the

[]

I should omit
 all this. It
 seems a pity
 to enter into
 argument with
 an individual -
 the more so as
 Sir A. Wade
 respects it
 because we
 think the merits
 of the proposal
 outweigh our
 objections
 and

C. O.

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

DRAFT.

the auction system by direct grants
 and that I felt compelled to raise
 objections to ^{his} proposal.] That,
 of course, does not necessarily mean
 that the matter is closed, and it will
 no doubt be raised again if the ~~Colonial~~
 Government ^{of Kenya wishes to pursue it.} ~~thinks fit~~

FURTHER ACTION.

Oct: 20: 37.

FISHER'S HILL
WOKING. 4. 19



Dear Billy,

I have had a letter from Frank Joyce in which he deplores the reversal of the system of direct grants of land which had just been instituted in Kenya in place of the public auction policy. I do not know if this is due to Mr. Logan's return out there, but as he is leaving for good soon, it seems a pity he should upset a policy that as far as I have gathered was working very satisfactorily or would have if it had been given a chance. Under the direct grant scheme, land available for allotment was valued at a reasonably low figure & applicants could then apply for it at that price. The most

Ans 6

• Suitable applicant being accepted - i.e.,
suitable in that it was the one most
likely to do real development. Applications
were vetted

- 1st } the Local District Com^{tee}
- 2nd } the Land Board
- 3rd } the Government in Council.

which would seem to provide all the
safeguards necessary especially as
the name of the chosen applicant
is published in the Gazette some
time before the grant is made.

The advantages of this scheme are
speed, elimination of the speculator &
more probability of eliminating financial
failure in that the applicant doesn't
have to over bid at auction. I believe
there have been cases where an unscrupulous
person has light heartedly gone on bidding

at the auction - secured the land - &
then being unable to pay has had
the price reduced.

also under the old system of auction a
man who wanted to get his land quickly
had to wait till there were enough farms
available to justify an auction - an
uneconomic price was often paid in
consequence of other bidding, & there
was nothing to prevent the speculator
buying & holding the land for a rise.

I thought I would pass on what
Frank Joyce & I presume others are
feeling in case it would be helpful.

I am going out to Kenya in January.

Yr. ever

Nelson Cole.

E 3

Extract of a letter from Lord Francis Scott to
Sir Cosmo Parkinson, dated
1st September, 1937.

x

x

x

(e) Reference alienation of land. Hooking, who is one of the best officials in Kenya, drew up a scheme whereby land could be sold "over the counter" without many months of delay. I am told this scheme has been flatly turned down by the Colonial Office, probably because of criticisms by Logan in the joint position of Acting Colonial Secretary, and Commissioner for Lands. Unfortunately Logan, who has many other good qualities, is impregnated with Henry George theories about land, and has in consequence been a great stumbling block for years in reference to our land questions. Could you tell me what is the position about this as it is of great importance in relation to attracting new settlers.

C. O.

Mr. Flood. 6. 7. 37.

38313/37. Kenya.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Downing Street.

X Sir C. Bottomley 7.7

Sir J. Shuckburgh.

+ Perm. U.S. of S. 7.7.37

Parly. U.S. of S.

X Secretary of State. 8.7.37

(for comment)

And (1) - 1138 file

10-8 JUL 10 13 44

20 July, 1937.

Sir,

DRAFT.

I have the honour to refer to Sir Armigel Wade's despatch No. 195 of the 2nd ~~of~~ April on the subject of the procedure to be followed in the alienation of Crown Land for agricultural or residential purposes outside townships.

2. The scheme which has been prepared recommends that the existing system of auctions should be dropped and replaced by a system of direct grants of land ~~on selection~~ with the advice of the Advisory Land Board and the Executive Council. It is pointed out that the system of tender or direct grant has been adopted in

many

KENYA

NO. 361

GOVERNOR.

FURTHER ACTION.

many instances, but it has, I think, been overlooked that the instances in question are very much of a special character. ^{of this nature applies to} ~~the~~ ex-soldier settlement scheme ~~was a very~~ peculiar undertaking, and the closer settlement scheme prepared in 1928 ~~was also~~ a special matter. Similarly, the alienation of land for the cultivation of sisal is a matter which can be dealt with on its own merits and the settlement of the Indian Army War Block Officers is again ~~a~~ ^{such as} ~~sufficiently peculiar matter~~ to justify departure from the ordinary rules. ^{likewise,} ~~similarly,~~ the making of direct grants of land for residential purposes in country townships can be distinguished, since in such cases there would not be likely to be any large demand, while the number of possible applicants would be restricted and ~~any possible~~ ^{possible} applicants would all, normally, be fairly well known.

3. The proposal, however, now submitted

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bolton-Moyle
- Sir J. Shackburgh.
- Pres. U.S. of S.
- Pres. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

is to abandon the system of auction in the case of certain surveyed farms and unsurveyed areas. I note that the surveyed farms have never been applied for or have been surrendered after alienation at one time, while the unsurveyed areas are considered to be suitable only for development on a large scale as sheep runs, or else are to be found in the Teita District and on the Coast in places where there has been hitherto no demand.

4. The main objection to abandoning the principle of auction is ~~political, namely~~ that without the guarantee provided by auction Government is open to a charge of favouritism in alienating land to particular applicants and may also be accused of having alienated land without due consideration

consideration or without taking proper steps to obtain the best value in return for land grants. This objection is one

of principle, and even though I might be satisfied that land would in fact be alienated wisely and with due consideration,

yet the unfavourable impression might be created and charges of ^{favoritism} recklessness or undue influence, if made, would be hard to disprove.

5. A further objection is that it is very doubtful how far Government ought to embark upon any general policy of further alienation of land, especially in large blocks and more especially outside the area of the Highlands. It may well be found on further examination that the unoccupied Crown Land in the Coast Province and elsewhere ^{may} will be needed to meet justifiable native requirements, and it is obviously easier to place unalienated land at the disposal of the native population than

for the Colony as a whole

favoritism

(most of)

may

assured

O. O.

Mr.

Mr.

Mr.

Sir C. Parkinson

Sir J. Tomkinson

Sir G. Battersley

Sir J. Stuckburgh

Parlt. U.S. of S.

Parlt. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

than to endeavour to buy it back after it has been alienated for some other purpose. While, however, general native interests in land which would be classified as 'D' in the Carter Commission Report must be carefully borne in mind, I do not think that special grants in such areas need be ruled out in the case of large undertakings ^{with considerable capital, unoccupied} which will develop land which could not otherwise be developed or which is not likely to be required for native expansion so far as can reasonably be foreseen.

6. I also feel doubtful as to the wisdom of alienating large tracts as sheep runs. There is a risk that large areas will be taken up and held for future disposal at a profit, and, except in the case of an application for a large area with ample capital for its development, it

would

would seem preferable to deal with such areas

in the same way as land alienated for grazing

purposes has hitherto been dealt with, ^{namely, by}
~~and to adopt that method, as further~~
in any case to proceed by the existing method
~~than tender, as the normal course.~~
~~of auction rather than by tender.~~

7. I have given careful consideration

to the arguments put forward in Sir Armigel

Wade's despatch, but I am not satisfied that

they are sufficiently strong to justify ~~the~~

abandonment of the practice which has hitherto

been in force and which at any rate has the

one advantage of not exposing Government to

~~of favoritism.~~

~~under competition.~~ It may be that auction

sales do not, in present circumstances, afford

any additional measure of security, but to

abandon them would, I fear, give rise to

suspicion and misunderstanding in a matter

in which it is particularly desirable to

avoid giving cause for criticism.

I have, etc.

(Signed) W. ORMSBY GORE.

KENYA.

No. 195



75
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED

26 APR 1937

C. O. REGY

2 April, 1937.

Sir,

I have the honour to inform you that the procedure to be followed in the alienation of Crown Land for agricultural or residential purposes outside townships has recently been under review; and I enclose a copy of a Scheme submitted with the concurrence of the Advisory Land Board and approved by my advisers in Executive Council in which it is proposed that the system of direct grants of land should be adopted as the regular method in future of disposing of Crown Land for these purposes.

2. As you are aware the Crown Lands Ordinance prescribed in Section 26 that the Commissioner of Lands shall sell land for agricultural purposes by auction unless the Governor shall in any particular case or cases order otherwise. But although the method of sale by auction was there clearly contemplated as the normal procedure, Crown land has in fact been disposed of during the last twenty years by one of four methods viz; allotment, tender, direct grant and auction. The whole of the Ex-Soldier Settlement Scheme was carried through on the basis of a lottery amongst selected candidates and the Closer Settlement Scheme of 1928 was to have been administered by selection of applicants. Since 1928 two Schemes of direct grants, one for the purpose of developing land in the Coastal belt and the other

THE RIGHT HONOURABLE

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

other particularly for the cultivation of sisal have been put into effect; and a considerable amount of land has been granted as the result of calling for tenders. From 1929 to 1936 inclusive out of a total figure of 397,507 acres granted for agricultural purposes, 133,991 acres have been the subject of direct grants, 82,881 acres have been disposed of by calling for tenders and 180,635 acres have been sold by auction.

3. Several disadvantages are alleged against the method of sale by auction. It is stated that, whilst it eliminates any possibility of favouritism or undue influence, it frequently results in the ousting of the competent farmer by a rival bidder with a longer purse who may be buying for speculative or uneconomic purposes. Moreover it is claimed that in the excitement of the auction prices which far exceed the true value of the land are offered from a determination to brush aside competition. Lastly three months' notice must statutorily be given of a sale by auction. The Commissioner of Lands naturally is inclined to wait (where no special urgency is disclosed in the application) until a reasonably long list of farms to be disposed of has been compiled and therefore it is objected that this method involves unnecessary delay to prospective buyers.

4. There is certainly one outstanding example in recent years of the second objection. In 1930 thirteen farms totalling 2,100 acres each in the Kibos area were put up for auction. The upset price fixed by Government was £4,160. The bidding was confined to Indians and for reasons which are still somewhat obscure prices ran up to £25 per acre and the sale yielded £22,000 more than the upset price. In point of fact only one instalment of this purchase price has been paid and some special treat-

ment based on the intermediate development of the farms is contemplated. But, apart from this case, the records of sales by auction since 1929 show that the difference between the upset prices and the prices paid has proved to be only Shs. 1/80 per acre in respect of 178,535 acres. In assessing a value for auction purposes the valuer leaves a margin for the auction and places the upset price at something below what he considers the economic value as indicated comparatively by land sales and values of similar land in the vicinity or in other parts of the Colony. Taking this fact into account it does not appear that there is substantial ground for thinking that the auction system, as has been often averred, has led generally to the payment of prices which are disproportionate to the economic value of the land sold.

It is of course true that if on a 2,000 acre farm the price paid is in fact two shillings an acre more than the economic value of the land, £100 will be paid to Government which might better have been devoted towards development. As however that sum is paid in equal instalments over ten years the argument has little real cogency nor of course is there any means of securing that money not devoted to the purchase price will in fact be used for land development purposes.

5. The other two objections to the auction system have to some extent only been met by the method of disposal by tender. The time factor has been largely reduced since one month's notice has been considered sufficient and individual applications have been dealt with in this way. Where only one tender is received the matter is dealt with forthwith, but, where a selection has to be made, it is the administrative practice to consult the Advisory Land Board and Executive Council and this process may unavoidably occupy several weeks. The system is moreover not wholly

satisfactory

satisfactory as an unsuccessful tenderer might have been perfectly willing to increase his offer had he known that others were in the field against him.

6. The principle of direct grants on selection between applicants has already been approved by your predecessor in respect of the Closer Settlement Scheme and the later modifications vide your predecessor's confidential telegram no. 7 of June 2nd 1930 in reply to paragraph 5 of Sir Edward Grigg's despatch No.43 of March 15th 1930 and his telegram No.156 of May 9th of that year. This principle has also been applied in respect of the reservation of certain lands for the Ex-Indian War Block Officers. Moreover the Commissioner of Lands was authorized by Sir Joseph Byrne in 1935 to make direct grants of plots for residential purposes in certain country townships.

(6) or 16/11/30
(2) or 16/11/30
(5) or 16/11/30

That part of the enclosed scheme which is submitted for your approval concerns therefore only the land included in the fourth and fifth categories. The surveyed farms in the fourth category are farms which do not admit of subdivision for closer settlement purposes and which either have never been applied for or have been at one time alienated, and thereafter surrendered to Government. The unsurveyed areas in the fifth category are situated in the north part of the Laikipia district and comprise land suitable only for development on a large scale as sheep runs; there are also large tracts of land in the Keita district and on the Coast for which there has hitherto been no demand.

As regards item III (c) in the enclosed scheme there is of course no intention of flooding the land market by inviting application for land in respect of all these areas but, subject to your approval, the Commissioner of Lands would be authorized to let it be known that he

was prepared to accept applications for any of these lands and thereafter the normal method of disposal would be by direct grant by the Governor on the advice of the Advisory Land Board and Executive Council. The auction system would therefore effectively disappear.

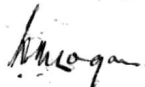
I agree with my advisers that the scheme may be accepted in regard to the land in the fourth and fifth categories with advantage and I trust it will receive your approval.

I have the honour to be,

Sir,

Your most obedient,

humble servant,



ACTING GOVERNOR'S DEPUTY.

(Draft approved by Mr. Wade)

ALIENATION OF LAND.GENERAL PRINCIPLES AND METHODS.I. CATEGORIES 1 and 2.Township plots and small holdings for quasi-residential Settlement.

To be available for allotment to all applicants who can satisfy the Commissioner of Lands as to financial competency, personal qualifications and intention to occupy. For Rioni no applications to be considered from people who merely want a week-end resort. New settlers to have preference over old residents who already own land of this class. The Commissioner of Lands already has authority to make grants of land in this category.

Conditions:

- (a) Stand Premia. Indian Army War Block free. Others pay on usual formula on valuations by Crown Land Valuation Board.
- Rent. On usual formula.
- (b) Term. 99 years.
- (c) Building. Permanent house within two years.
- (d) Occupation. 3 years out of first 5.
- (e) Transfer. No transfer for 5 years without special consent.
- (f) Special conditions for preservation of forest and soil conservation. Rioni to be specially advertised when open for applications. Other areas to be announced as available.

II. CATEGORY 3.Mixed Farming units.

- (a) To be surveyed into blocks as shown in schedule if on investigation they are found to be suitable. These to be valued.
- (b) To be advertised as available for applications.
- (c) Applications to be considered only from people who do not hold other agricultural land, except where, in individual cases, adequate grounds exist. Applications to be closely examined for evidence of farming experience, financial competency etc.
- (d) Accepted applications to be advertised for objections.
- (e) One man one farm. Allotments as in (f) of III.
- (f) Conditions of grants:

Term - 999 years.

Stand Premia on valuation.

Rent and general conditions of Crown Lands Ordinance.

Special conditions re timber, soil erosion and occupation for three years out of first five. No transfer without consent for first five years. If granted to an adjoining owner title to be consolidated with that of main areas

III. CATEGORY 4.
Other surveyed farms.

- (a) Check list carefully with districts.
- (b) Obtain valuations (Local representative to be ad hoc member of Crown Land Valuation Board or Local Land Bank representative to be asked for advice. Expenses to be paid)
- (c) Advertise that farms are available as shewn on printed schedule. Schedule to have as full a description as possible.
- (d) Applications to be considered only from people who do not hold other agricultural land, except where, in individual cases adequate grounds exist. Applications to be closely examined for evidence of farming experience, financial competency etc.
- (e) Accepted applications to be advertised for one month for objections.
- (f) Refer applications together with objections (if any) to Land Board and subsequently to Government for approval of Land Board recommendations.
- (g) Grants when approved to be under the ordinary terms of the Crown Lands Ordinance but subject to special conditions as to forest and soil conservation.

IV. CATEGORY 5.
Unsurveyed areas.

After consultation with local authorities applications to be considered on their merits by the Advisory Land Board, and, if accepted, to be advertised for objections and recommendations submitted to Government in due course.