

1938

38377

CO 533/500
KENYA

38377

macaca limited, Kenya

Previous

all 23188/24

Subsequent

297	27
Mr. Burrows	27
Mr. Parkin	27
303	=
297	27
309	310
Mr. Parkin	4/1
297	8/11
309	9/11
Mr. Parkin	10/11
Mr. 297	21/11
309	29/11
Mr. Parkin	29
Mr. Burrows	30
297	

A. hand
nominal

1. Ellis Peirs & Co. 1-7-38 2
Complain that Bellevue Farm has been
alienated to Mr. Topham instead of Macaca Ltd
asks that the claim of Macaca Ltd may be
considered when the case is referred to S of S. for
final decision.

You saw these people the other day and
they have now written in a full account of their
troubles. At first sight it seems doubtful whether
such a case would normally come to the Secretary of
State. I suggest sending the letter to the
Governor of Kenya and asking what the position is
and whether the matter will be referred to the S. of
S.

Messrs. Ellis Peirs and Company might
be told that a copy of their letter has been sent
to the Governor of Kenya, and that if the question
comes before the Secretary of State they will be given
an opportunity of submitting arguments on behalf of
their client.

Handwritten signature

7.7.38.

*99 Peirs
7/7
done*

~~DESTROYED UNDER STATUTE~~

To Ellis Peirs & Co.

29 JUL 1938

~~DESTROYED UNDER STATUTE~~

To Kenya Dept. (7/c.1)

*3/1
Done*

3 JUL 1938

Ellis Peirs and Co.
Actons 2.

2/9/38

put by.

M. H. H. H.

at once 9/1/38

- 5 Governor's Deputy 5/2 2/9/38
 Ref. 3. reports action taken; hopes to arrange amicable settlement. Will advise when settlement has been reached.

I attach a sketched map showing the position of Lo. 3376 and the other holdings with which this concern is concerned.

In (2) Ellis Peirs & Co were told that if the question of the allocation of Lo. 3376 came before the S.O.S they would be given the opportunity of stating the case of their clients, Macaca Ltd.

The Gov now reports that negotiations are proceeding, & it is hoped that an amicable settlement will be reached.

The Gov refrains from placing that matter before the S.O.S, & confines himself to stating

that the S.O.S will be informed of the settlement when it is reached.

As for action, it would seem therefore that the most that can be done is to inform Ellis Peirs & Co. that the S.O.S has now been informed that negotiations are proceeding & an amicable settlement is hoped for. It is for course however whether even this is necessary. I should be inclined

to put by.

Clothes, while

3/10

99/Passin

4/x

at once

- 6 Ellis Peirs and Co 4/1/38
 Ref. 1. states present position. Requests copy of letter be sent to Kenya Office to call if it will assist matters.

- 8 Ellis Peirs and Co 4/1/38
 C.I. Bellamy
 Farm
 Submits that the whole of the facts should at this point be submitted to the Governor of Kenya.

It seems that the negotiation which it was hoped (S.O.S) would lead to an amicable settlement have broken down.

Drafts submitted

Clothes, while

3/10

DESTROYED UNDER STATUTE

9 To Ellis Piers Co (718 Am) — 16. 11. 38

DESTROYED UNDER STATUTE

10 To Kings 682 (No. 7 (Ambs.), 8 & 9) — 16. 11. 38

11 To Nettlefold Co — 17. 11. 38

[Handwritten signature]

DESTROYED UNDER STATUTE

12 Ellis Piers and Co — 17/11/38
13 Ackns No 9.

14 To Nettlefold Co — 20/11/38
Ackns 11. states can see no reason for alienation of farm to Mr Topham.

12 Can be put by
13 ? Might be act^d by Sir C Parkinair PS.
There is nothing that can be added to No 11
at the moment. Clotley, White 29/11

Handy necessary to see No 13.

[Handwritten signature]
29/11

Noted this date

[Handwritten signature]

M Burns

20/11/38
at home

~~4~~

TELEPHONE:
WELBECK 2988
TELEGRAMS:
SWEETWEED, NORWEST, LONDON.

1, CAMBRIDGE GATE,
REGENTS PARK,
N. W. 1.

22nd. November 1938.

Dear Sir Cosmo,

It is very kind of you to write me, and I thank you for your letter of the 17th. instant.

I have to-day had a letter from Sir Robert Brooke-Popham acknowledging two that I wrote to him. He says that when he gives a decision, such decision will be made on the advice of his Executive Council. It does not seem to me a very satisfactory letter and the most mysterious thing about the whole matter to me is why one of my farms, which I have held on lease from the Government for some years, and for which I have applied to purchase, which purchase has been unanimously recommended by the local Committee in the district, should not be alienated to me without any question, whereas the Land Department in Nairobi, over-riding the unanimous opinion of the local Committee, has suggested that it should be alienated to a Mr. Topham, and I have been able to obtain no reason why such a decision should have been arrived at.

I am replying to the letter from the Governor and shall urge this point of view again.

Yours sincerely,

Sir Cosmo Parkinson, K.C.M.G., O.B.E.,
Colonial Office,
Downing Street,
S.W.1.

116
17th November, 1938.

Dear Mr. Nettlefold,

I told you on Tuesday evening that I would enquire about the position as to the land in Kenya of which you spoke to me. I find that the Colonial Office communicated with the Governor of Kenya early last August at the instance of your Solicitors. Actually, a letter was sent yesterday from the Colonial Office to your Solicitors on the subject. This you will no doubt have seen. When we hear further from the Governor, to whom a copy of the correspondence ending with Colonial Office letter of the 18th November was sent, a further communication will be addressed to your Solicitors. Needless to say, I hope there will be a satisfactory settlement,
but

but there is really nothing which I can add to what
has been said to your Solicitors.

Yours sincerely,

A. C. Parkinson

ELLIS PEIRS & CO

MONTAGUE ELLIS
HUGH JOHN CHEVALLIER PEIRS,
FORMERLY H. J. C. PEARS
CECIL MONTAGUE JACOBS ELLIS
ERIC JOHN WYBEMAN ELLIS
HENRY FRANCIS CHAPPE BORNELL
JULIAN GEORGE HANRAY

TELEGRAMS
POSTSCRIPT PICCY LONDON
TELEPHONE
REGENT 0077

87
3C
JH/VH
17, ALBEMARLE STREET,
LONDON, W. 1.

7th November, 1938.

Sir,

Bellevue Farm, L.R. 3376.
Your ref. 38377/38

Further to our letter to you of the 4th November, we have to-day heard that on the 28th October the District Commissioner, North Nyeri, presented Mr. H. L. Squair with a Notice to Quit Farm L.R. 3376 in three months' time. It should be explained that the lease of this farm is in the name of Mr. Squair, who is Manager of the Bellevue Estate, and he holds it beneficially on behalf of Macaca Limited.

This news confirms the fear expressed in our letter of the 4th November of a decision adverse to Macaca Limited being given in the near future, and we submit that a point has now been reached at which the whole of the facts should immediately be presented to His Excellency the Governor of the The Under Secretary of State.

Copy to Kenya Co

Letter to The Under Secretary of State

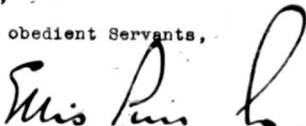
Sheet No. 2

Date 7.11.38.

Colony for his personal consideration.

We are, Sir,

Your obedient Servants,

A handwritten signature in cursive script, appearing to read "Ellis Peirce & Co.", written in dark ink.

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

2/1
ELLIS PEIRS & CO

MONTAGUE ELLIS
HUGH JOHN CHEVALLIER PEIRS
FORMERLY H. J. C. PEARS
CECIL MONTAGUE JAGONS ELLIS
ERIC JOHN WYSEHAM ELLIS
DESBY FRANCIS CHAFFEY DONNELL
JULIAN GEORGE HANNAY

TELEGRAMS
POSTSCRIPT PICCY LONDON
TELEPHONE
REGENT 0077

*Each
with coal*
By Hand.

17, ALBEMARLE STREET,

LONDON, W. 1.

4th November, 1938.

Sir,

Handy 9
Bellevue Farm, L.R. 3376.
Your ref. 38377/38.

We refer to our previous correspondence with you herein. Since our last communication we are informed that at a meeting of the Executive Council, held early in August, the matter was considered and on the 2nd August, the Acting Commissioner for Local Government Lands and Settlement wrote a letter to Macaca Limited advising the Company that the Executive Council was not prepared to approve either of the applications, namely that of Macaca Limited and that of Mr. Topham (for farm L.R. 3376) and that the parties should endeavour to reach a mutual agreement. Messrs. Hamilton, Harrison and Matthews of Nairobi, the legal advisers to Macaca Limited, were instructed to open negotiations with Mr. Topham and on the 22nd September an offer of land on Farm 5127, which adjoins Mr. Topham's The Under Secretary of State.

Copy into to Manager (C)

Letter to The Under Secretary of State

Sheet No. 2

Date 4.11.38.

property, was made to him. This letter was merely acknowledged by Mr. Topham. No further communication was received from him and it is to be inferred that he went direct to the Government Authorities, since on the 19th October the Acting Commissioner for Local Government Lands and Settlement wrote to Messrs. Hamilton, Harrison and Matthews that Mr. Topham was unable to accept the offer made and that in the event of a mutual agreement not being reached at an early date, he would have no other course than to report to the Government that he had been unable to negotiate in the manner required.

We enclose herewith for your consideration a plan of the district upon which the property which Mr. Nettlefold is interested in is coloured and delineated in pink, and from this it is manifest that the severance of the farm numbered 3376 by alienation to another party divides the property in half and, we are informed, makes the two severed halves almost unworkable.

Messrs. Hamilton, Harrison and Matthews have informed us that the matter will be dealt with shortly and there is a real risk of a decision adverse to Macaca

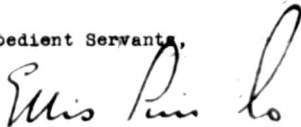
Limited being given. In these circumstances we would ask you to forward a copy of this letter to Kenya. We assume that the matter has not been referred here, since if it had you would have given us the opportunity of putting forward views on behalf of Macaca Limited as suggested in your letter of July 29th.

We shall be happy to call if it will assist matters, and to take any other steps to prevent what appears to us to be a grave injustice.

We are informed that Macaca Limited are willing to negotiate, but they cannot understand why they should be required to give up land which they have held for so many years and round which land they have, after many years, built up a satisfactory dairying business.

We are, Sir,

Your obedient Servants,



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

COLONY & PROTECTORATE OF KENYA

WEST KENYA

AND
SURROUNDING COUNTRY

E

KEY TO PLAN.

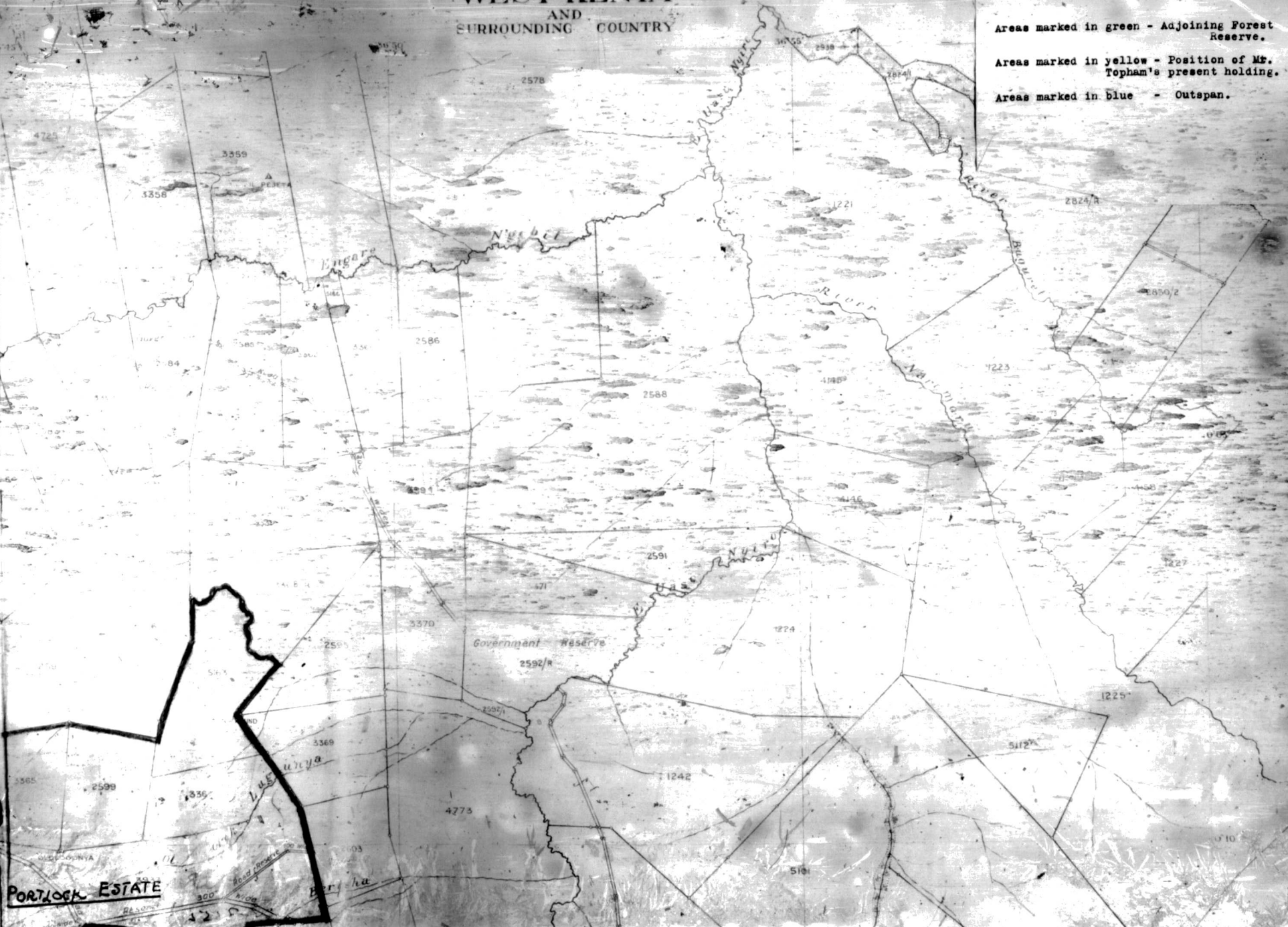
Areas marked in red - BALLEVUR ESTATE
(showing position of 3376 and marking
continuity of estate).

Areas marked in green - Adjoining Forest
Reserve.

Areas marked in yellow - Position of Mt.
Topham's present holding.

Areas marked in blue - Outspan.

SOUTH A.S. 2



PORTLOCK ESTATE

PORTLOCK ESTATE

JOHN BOYES

FOREST RESERVE

CAPTAIN
3376
BAILEY

Shaw Bros

Matthias

CAPTAIN
THORPE

FOREST

FOREST
RESERVE



Northern Aberdare Escarpment

Uta River

Nyariat River

Wanga River

Outspan Reserve

FOREST RESERVE

FOREST RESERVE

FOREST RESERVE

Chania River

Nyeri

Abogga River

FOREST RESERVE

NATIONAL RESERVE

Tharaka River

Mogana River

Nachima River

Wanga River

Chania River

Abogga River

Tharaka River

Mogana River

Nachima River

36° 56' 45" 36° 55' 36° 55' 37° 00'

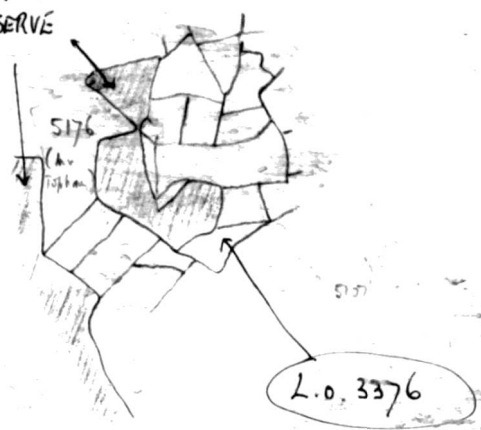
1:2500	1:5000	1:10000	1:25000	1:50000	1:100000
1:2500	1:5000	1:10000	1:25000	1:50000	1:100000

Scale 1:2500 or 10 1/4 inches to 1 mile



202/1120 6
202/11

FOREST
RESERVE



BELLEVUE ESTATE
SHADED RED

(L.O. 3376 is about 15 miles NW
of Nyeri)



RECEIVED
27 SEP 1938
O. O. REG. 2 / September 1938.

Sir,

I have the honour to acknowledge the receipt of your despatch No.441 of the 3rd August, enclosing a copy of a letter from Messrs. Ellis Peirs and Company concerning the allocation of farm L.R. No.3376 in the North Nyeri District.

2. This matter received the consideration of the Governor in Council on the 15th July, when it was decided that the Ag. Commissioner for Local Government, Lands and Settlement should negotiate with Mr. M.H.C. Topham and Messrs. Macaca Ltd. concerning their applications for a direct grant of the farm in question, L.R. No.3376, on the basis of a mutual agreement whereby Messrs. Macaca Ltd. should receive L.R. No.3376 and Mr. Topham should be accommodated with a portion of the Forest Reserve and the Outspan adjoining his present property and also an area to be furnished to him by Messrs. Macaca Ltd.

The Ag. Commissioner for Local Government, Lands and Settlement is taking action in accordance with this decision and reports that he hopes to arrange an amicable settlement.

3. I enclose for your information copies of the relevant papers submitted to the Governor in Council, wherein the position and the representations of the applicants are set forth in detail.

4./
THE RIGHT HONOURABLE
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON. S.W. 1.

100 38313/38

200 1/1

4. In accordance with the procedure proposed in the Governor's despatch No.774 of the 30th December, 1937, and approved by Mr. Ormsby Gore (now Lord Harlech) in his despatch No.44 of the 24th January, specific reference to you in this matter was not contemplated, but since the matter has been brought to your notice by one of the parties concerned, I will advise you in due course when a settlement has been reached.

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

Adwade

GOVERNOR'S DEPUTY

PRECIS FOR EXECUTIVE COUNCIL.APPLICATIONS FOR L.R. NO. 3376 NORTH NYERI.
BY MR. M.H.C. TOPHAM AND MESSRS. MACACA
LIMITED.

Rival applications for the grant of farm No. 3376, North Nyeri, submitted by Mr. Topham and Messrs. Macaca Ltd., have recently been under consideration by the North Nyeri District Committee and by the Advisory Land Board. The former supported the application of Messrs. Macaca Ltd. whereas the Advisory Land Board recommended the claim of Mr. Topham. Both bodies interviewed the applicants and had the claims fully represented to them.

2. Both applicants have been advised of the recommendation of the Advisory Land Board and have submitted written statements of their claims for consideration by Executive Council. Copies of these statements are attached. The plan submitted by Mr. Topham will be available when the subject is being discussed.

3. Farm No. 3376 comprises only 1466 acres and is not large enough for separate development, in view of general farming conditions in this district. Its best use is, therefore, in amalgamation with an existing holding.

4. The claim of Macaca Ltd. rests mainly on the geographical situation of the land. The Advisory Land Board whilst giving full weight to that factor considered that on the balance Mr. Topham's application should receive preference. Mr. Topham's present holding is less than 8,000 acres and his further developments will undoubtedly be thwarted unless he can obtain more land. As his farm is hemmed in by Forest Reserve and the large holdings of farmers who will not sell land, L.R. No. 3376 is the only area in the neighbourhood to which he can turn (with the exception of L.R. No. 5107, about 2 miles further distant,

and ...

and a small Government Reserve (No.2602) which may ultimately be released).

The Board considered the argument advanced by Macaca Ltd. about access from one part of their farm to the other, but felt that the difficulty could easily be overcome. Further, the Board did not attach much importance to the argument based on possible veterinary restrictions.

5. The Board suggested that as Messrs. Macaca Ltd. attach so much importance to the possession of this farm they might be disposed to carry out an exchange of ^{land} land whereby some of the Company's/adjoining Mr. Topham's boundaries would pass to Mr. Topham in exchange for L.R. No.3376. This suggestion has been passed on to both applicants.

HAMILTON, HARRISON & MATHEWS,

NAIROBI HOUSE,

NAIROBI.

15th June, 1938.

Ref. No. 3453/9.

His Excellency the Governor-in-Council,
NAIROBI.

Your Excellency,

re Application by Macaca Limited
for Farm L.R. No. 3376.

On behalf of our client, Macaca Limited, a Limited Liability Company having its registered office at Nairobi, we respectfully beg to set out below the reasons why the recommendation of the Advisory Land Board - as stated in the Commissioner of Lands' letter No. LND.69/6/169 Vol. 2 addressed to our client on 7th inst. - that the above farm should be granted to Mr. Topham instead of to our client, as the owner of Bellevue Estate, should not be adopted by Your Excellency.

- (1) Macaca Limited has been in actual occupation of the farm for over seven years.
- (2) The whole of the extensive development on that Estate, which comprises 17,293 acres, has been built up round this Farm which, in consequence, has become a key farm, the loss of which will cripple an extensive and successful cattle and dairy business which has been developed as the result of careful management and considerable capital expenditure.
- (3) The extent and success of the operations which have hitherto been carried on upon Bellevue Estate can be easily gathered from the facts set out in the following two letters, a copy of each of which is attached:
 - (a) letter dated 1st April 1938 addressed to the District Commissioner at Nyeri by the Manager (Mr. Squair) of Bellevue Estate; and
 - (b) letter dated 1st April 1938 addressed to the District Commissioner at Nyeri by our client (Macaca Limited).

Those operations would never have been anything like so extensive had our client visualized the possibility that farm No. 3376 would be taken away from it and given to another Applicant.

- (4) If this farm is taken away from our client, it will mean that its large dairy herd will have to be reduced forthwith, as Bellevue Estate (including Farm 3376) is stocked up to its full carrying capacity.
- (5) A glance at a map of the District will reveal that, apart from development already effected, this farm 3376 is a necessity to an Estate comprising L.R. Nos. 5127, 5126, 6582, 2606, 4503, 3365, 2599, 3367 and 5163, and it was because our client was convinced that this was abundantly evident ...

evident that it emphasized so much in the second of the letters abovementioned the importance of Farm No. 3376 to it from the point of view of access.

- (6) If Farm 3376 is granted to Mr. Topham, the result will be that an extensive and successful business will certainly be ruined without any certainty that the smaller business it is intended to benefit will prove even a small success.
- (7) Macaca Limited has at all times performed and observed all the covenants and conditions contained in or implied by the Leases of all its various properties.
- (8) The large extent of the personal investments in this Colony of Mr. Nettlefold (the sole Shareholder for practical purposes in Macaca Limited) are indicated in the second of the letters abovementioned, and we venture to urge the benefit those investments have already conferred and are continuing to confer on the prosperity of the Colony.

We, therefore, respectfully pray that Your Excellency may be pleased to direct that Farm L.R. No. 3376 be granted to our client.

We have the honour to be,

Your Excellency's Obedient Servants,

For HAMILTON, HARRISON & MATHEWS,

Sd: R.H. Mathews.

COPY.

Bellevue Estate,
NYERI.

1st April, 1958.

The District Commissioner,
North Nyeri,
P.O. NYERI.

Sir,

Further to my letter of 28th ult., I now beg to make formal application on behalf of Macaca Limited, a Limited Liability Company having its registered office c/o Messrs. Richardson & Martin Ltd., at Nairobi, that Government will alienate Farm L.O. No. 3376 comprising 1469 acres or thereabouts, at such price as may be fixed by Government valuation.

Fuller details will be submitted later of the lands comprising Bellevue Estate, which comprises 17,000 odd acres, and on which an extensive dairy business is carried on as you will be able to judge from the fact that 2,000 lbs. of butter and 1500 lbs. of cheese are produced on that Estate each month.

It is essential to the continued success of that business that this Farm No. 3376 should be acquired by Macaca Limited, which, as you are aware, has been held by me on behalf of Macaca Limited under a Temporary Occupation Licence for the past seven years. Indeed it is not too much to say that the whole of the development on Bellevue Estate has been built up round this key Farm No. 3376.

I shall be grateful, therefore, if you will submit this application to the District Committee which, I understand, meets on the 2nd inst., and at the same time as that Committee considers Mr. Topham's application.

It is hoped that the fuller details mentioned above will be in your hands prior to the consideration by the District Committee of this application, which is sent in advance lest unforeseen circumstances should prevent the fuller details arriving in time.

I have the honour to be,

Sir,

Your obedient servant,

(SIGNED) H.S. SQUAIR.

Copy.

1st April, 1938.

The District Commissioner,
North Nyeri,
P.O. NYERI.

Sir,

re: Application by Macaca Limited for Farm -
L.O. No. 3376.

With reference to the letter of even date addressed to you by Mr. Squair, the Manager of Bellevue Estate, on behalf of this Company (Macaca Limited) the owner of that Estate, we set out below the fuller details referred to in that letter in support of that application.

Bellevue lands comprise an aggregate area of 17,293 acres made up as follows:-

<u>L.O. No.</u>	<u>Area in Acres.</u>	<u>L.O. No.</u>	<u>Area in Acres.</u>
5127)	4,638	2606	1,462
5126)		4503	4,995
		3365	1,274
6382	724	2599	1,298
		3367	1,030
		5163	1,872
			<u>11,931</u>
	5,362		<u>5,362</u>
Total aggregate acreage			<u>17,293</u>

DEVELOPMENT:

- (a) 2 Dwelling houses for Europeans on Farm 5126.
- (b) 1 Dwelling house for European on Farm 4503.
- (c) Cheese factory on Farm No. 4503.
- (d) Butter factory on Farm 5126.
- (e) 1 Cattle Dip on Farm 2606 but now being removed to No. 4503.
- (f) 1 Cattle Dip on Farm 5126.
- (g) Milking bomas, pig houses and other permanent buildings too numerous to mention.
- (h) 300 acres fenced paddocks.
- (i) 11 acres permanent lucerne.
- (j) 2 acres orchards and gardens.
- (k) 1000 yards boundary fence already erected.
- (l) Posts and materials ready to erect a further boundary fence for 2 miles.
- (m) 30 miles of Estate roads, all maintained in good order.
- (n) From the Nyeri/Rumuruti Road to Farm 5126 is a distance of 11 miles and the road of access for this distance is all maintained by the Estate.

STOCK.

950 Milk cows all very high grade-animals.
 150 Heifers in calf.
 1000 Head of stock being partly male for slaughter purposes and partly young male and female stock.
 A small pure bred herd of Ayreshires of approximately 30 animals.

If ...

If reference is made to a map of the District in which the Estate is situate it will be noticed that access from farms 5127, 5126 and 6582 to the other farms and vice versa can only be obtained, either via Farm 3376, or through the Forest Reserve.

Several years ago the Estate cut, with the permission of the Forest Department, a road through very thick forest on the Forest Reserve from Farms 5126 and 5127 to Farm 4503 but the gradients over which this road, which is about 7 miles in length leads, are so steep that only very light loads can be carried or hauled along it in dry weather, while in wet weather it is as a rule impassable for any kind of traffic, and is absolutely impassable for motor traffic; this is only to be expected in view of the steep gradients and of the fact that this road leads over two rivers, the Berisha and the Lughungya.

The only road of access by which communication can at all times be maintained between any of the farms 5127, 5126 and 6582 on the one hand and Farm 4503 on the other is that via Farm 3376, the distance by this road being about 10 miles. There are no steep gradients to be encountered on this road, which leads over open country, the contour of which slopes gently the whole way.

As stated in Mr. Squair's letter of even date 2000 lbs. of butter and 1500 lbs. of cheese are produced on the Estate each month, and all of this cheese is made on Farm 4503 where the cheese factory is situate. A great proportion of the cream out of which the butter is produced is also separated on that farm, and all such cheese and cream have to be conveyed to Farm 5126 for the purpose in the case of the cream being made into butter, and in the case of the cheese being stored. The cheese manufactured by the Estate requires to be stored for a minimum of 6 months after being manufactured. The altitude of Farm 4503 is approximately 7,000' and the temperature there is too hot to allow cheese to be stored, but this does not apply to Farm 5126 where the altitude is from 8,000' to over 9,000'.

The road of access between the two blocks leading through the Forest Reserve is unsuitable at any time for moving stock because of the difficulty of preventing stock from escaping en route into the Forest.

It will be appreciated that a permanent road of access between the two blocks is vital to the carrying on of the Company's dairy business, and a permanent road of access is only possible if the Company acquires farm 3376.

Should disease break out on the Estate, and its lands be put into quarantine, it will be impossible unless the Estate has Farm No. 3376 to move its cattle from the higher altitude to the lower and vice versa, except with the sanction of the Veterinary Department, and also of the Forest Department. The distances between the two blocks are such that motor transport is a necessity at any time, but is only possible via the road leading over Farm 3376. If an epidemic broke out among the stock it is easy to imagine the disastrous results to the Estate if the road over Farm 3376 were not available for motor traffic.

The Estate keeps in permanent employment two European families, and an average of 77 natives and has now, after very careful management over many years, commenced to show a profit.

With regard to the application by Mr. Topham, this Company is quite prepared to be judged by the past history of its activities in the Colony, and the benefits its activities have brought to the Colony.

The other lands in the Colony belonging to the Company are as follows:-

1. 26,000 acres situate in the vicinity of Ruiru, known as Juja Estate on which are 7,000 acres of sisal. A further 4,000 acres are occupied by squatters from which this Estate draws its labour, and the balance is maintained as a Game Reserve, all expenses in connection with which are defrayed by the Company, as can easily be ascertained by reference to the Game Warden, who has many times expressed the gratitude of his Department for this voluntary work on the part of the Company. On this Estate there is a large sisal factory with appropriate buildings for housing Europeans and Natives; the number of Europeans employed being 4 and of Natives 500 : and
2. 15,781 acres situate outside Nairobi known as Dundora Estate of which 5,000 acres are under sisal. A Railway Siding and Godown have recently been constructed in connection with this Estate and a new factory and buildings put up at great expense since this Estate was acquired by the Company two years ago. Six Europeans and 500 natives are employed at this Estate.

To all intents and purposes the sole shareholder of Macaca Limited is Mr. Nettlefold, who is also Chairman and a majority shareholder in Kenya Gold Mining Syndicate Ltd. which latter Company employs 26 Europeans at the Mine, most of whom are married men with children, while on an average 600 Natives are employed at the Mine.

We do not think it is necessary to refer to the financial ability of this Company to develop Farm No. 3376 but should evidence of such ability be required, we shall be happy to supply same.

We do not think there is anything further we can usefully add at the moment, but if there is any further information the District Committee might require when considering the Company's application, Mr. Squair, who, it is hoped, will be in attendance, will no doubt be able to supply same.

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

For MACACA LIMITED.

J. Remi Martin Director.

copy.

15th June, 1938.

The Hon. the Commissioner for Local Government,
Lands and Settlement,
P.O. Box 339,
NAIROBI.

Dear Sir,

re: Application for Farm L.R. 3376.

With reference to your letter No.LND.69/E/169, Vol. II. of the 7th instant, and our acknowledgment of the 10th instant, we have now further considered the matter and wish to lodge the strongest possible protest against the decision of the Land Advisory Board to grant the above Farm 3376 to Mr. H.H.C. Topham.

A meeting of the District Committee held at Nyeri on the 2nd April last unanimously recommended that the farm should be alienated to this Company. That Committee consisted of local men, the majority of whom are practical farmers, know the land, and are in a position to judge the consequences to us of its loss. Only theoretical considerations, therefore, can have prompted the Land Advisory Board to give a recommendation in complete contradiction of that of the District Committee.

In our letter of the 1st April addressed to the District Commissioner, North Nyeri, a copy of which was available to the Land Advisory Board when considering this case, we stressed the importance of L.R. 3376 to provide access from the one block of farms, Nos: 5124, 5127 and 6582, to the other block consisting of Nos: 2803, 4503, 3367, 5163, 2599 and 3365. The emphasis laid on the question of ROAD of access, which is of course of primary importance, has perhaps overshadowed the almost equal importance of access for continuity of grazing.

Any practical dairy farmer will appreciate that without Farm L.R. 3376, our very considerable farming operations would suffer an enormous handicap during one of the periodical outbreaks of cattle disease necessitating quarantine restrictions. It may be argued that in such an event we would have access between the two portions of our Estate through the Forest Reserve or by road of access which Mr. Topham might agree to give us through L.R. No. 3376, but it is extremely doubtful if the Conservator of Forests would be willing to place one of his reserves into quarantine on our behalf, nor do we think that the Veterinary authorities would allow this. It is probable, too, that the latter might even disallow the passage of cattle from one section of the farm to another by a road of access through L.R. 3376.

The loss of Farm 3376 would split our holdings into two and take the centre out of our at present uninterrupted grazing area where a considerable herd of in-calf cows has been trained to night grazing. Our existing holdings are bounded very largely by forest reserves and streams which provide natural boundaries beyond which cattle will not readily stray. The limits of Farm L.R. 3376 having been arbitrarily selected, however, the boundaries are not such as cattle can be expected to respect and two small areas on that ridge would have to be fenced by us. Such expenditure on internal fencing is wasteful and as and when money becomes available to us for this purpose we would prefer to continue our existing policy of fencing our external boundaries.

Farm ...

Farm L.R. 3376 has been leased by Mr. Squair on our behalf since February 1931. We are fully alive to the contention that we should have made certain of securing to ourselves this vital link to our farming activities, but you will readily appreciate that the necessity of maintaining sisal and dairy estates during the slump which commenced in 1931, has been a serious strain on our liquid assets, and the Directors have been anxious to conserve the Company's cash resources to meet any further contingencies. Had Mr. Topham applied for an unoccupied farm, and had we then lodged a counter application, certain conditions might weigh in his favour; but the fact that we have actively farmed this land and improved it by good husbandry over a period of seven years, coupled with the very extensive operations which we have carried on in this and other parts of the Colony, and considered with the serious disorganisation of our activities which would result from its loss, must place us in the position of having an almost indefeasible right to purchase this land.

As to Mr. Topham's right; Mr. Topham owns over 8000 acres which is several miles detached from L.R. 3376 and we understand that he finds himself overstocked, owing to the fact that a farm which he rented from the Crown under a temporary occupation licence was sold over his head. Whilst our claim may be weakened by our having failed to acquire L.R. 3376 it is evident that Mr. Topham has in the past been equally neglectful, and even admitting some delinquency on our part, there is no reason why our operations should be wrecked in order to remedy the results of his neglect.

In conclusion, we would point out that our chief shareholder is Mr. F.J. Nettlefold, whose activities in this Colony have already been detailed in the above mentioned letter of the 1st April to the District Commissioner, North Nyeri. Mr. Nettlefold takes an extremely serious view of the loss which he would suffer by the alienation of this land to any other party. In his various interests he employs some forty Europeans, many of them married men with families, and many hundreds of natives. These are employed in good or bad times, and Government must be well aware of the advantages of having interested in the Colony such a man as Mr. Nettlefold, who is prepared to finance and develop his holdings at all times and under all conditions, even at very considerable personal loss. We venture respectfully to suggest that it would be a short sighted policy for Government over so small a matter to give him the impression that his value to the Colony is not appreciated, and we hope, therefore, that you will favourably consider granting Farm L.R. 3376 to this Company.

We have the honour to be,

Yours faithfully,

MACACA LIMITED.

DIRECTOR.

Copy.

HAMILTON, HARRISON & MATHEWS,

NAIROBI HOUSE,
NAIROBI.
17th June, 1938.

Ref. No. 3453/9.

His Excellency the Governor-in-Council,
NAIROBI.

Your Excellency,
re; Application by Macaca Limited for
Farm L.R. No. 3376.

With reference to our letter to Your Excellency of the 15th inst., we beg to set out below a further reason against the adoption of the recommendation of the Advisory Land Board, namely:-

Rule 2 of the Diseases of Animals Rules, 1931, provides that -

"The term 'farm' means an area of land held by the owner or occupier under one registered title: Provided that if two or more farms in the possession of one owner or occupier shall immediately adjoin each other they shall be deemed to be one farm for the purposes of these Rules, and any two farms so possessed, and divided by a public road only, shall be deemed to be adjoining".

If, therefore, Farm 3376 is granted to Mr. Topham, Farms 5126, 5127 and 6382 would be deemed to be one "farm" for the purposes of the above Rule, while Farms 2606, 4503, 3365, 2590, 3367 and 5163 would be deemed to be a separate "farm". Between these two "farms" the sole road for moving cattle would be that through the Forest Reserve and if either, or both, of these two "farms" were put in quarantine, that road could only be used if the Conservator of Forests agreed to the Forest Reserve being put into quarantine. The minimum period of quarantine is 15 months, but it is not unusual for farms to be in quarantine for several years so that the Conservator of Forests could not be expected to consent to the Forest Reserve being put into quarantine to facilitate the movement of our client's cattle. Even if Farm No. 3376 were granted to Mr. Topham subject to our client's right to fence off and use the road thereover constructed by our client as a means of communication, cattle could only be moved between these two "farms" by that road by the special permission of the Veterinary Department which might at any time be withdrawn.

In a dairy herd comprising approximately 1000 cows it is obvious that daily there must be a transfer of cows, which become dry, from the milking herd to the non-milking herd, and simultaneously a transfer of cows which have calved or are about to calf from the non-milking herd to the milking herd. Such transfers which are absolute essentials to a dairy business would, if either or both of the "farms" were put into quarantine, be impossible if our client is deprived of farm 3376.

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

For HAMILTON, HARRISON & MATHEWS,

Sd: R.H. Mathews.

MEMORANDUM BY MR. M.H.C. TOPHAMP.O. LAMURIA.for submission to
HIS EXCELLENCY THE GOVERNOR IN COUNCIL.In reference to Farm L.O. No.3376, NYERI.

1. I came to Kenya (then British East Africa) in the year 1910 with the object of farming, and to gain experience worked as a manager on various farms until 1914 when I went Home to England and joined the Army. I was on active service in Europe and Near East until the end of 1917 when I was invalided Home.
2. I returned to British East Africa (now Kenya Colony) in 1919 having drawn a Soldier Settlement farm, No. 5176 at Ngobit, comprising about 4000 acres, where I started farming cattle and sheep on my own account.
3. Because the rainfall on this farm was not good and the Farm therefore unable to carry a large amount of stock I purchased the adjoining Farm Cat. No.982 comprising about 3500 acres. As this farm carried a very large proportion of forest land unsuitable for grazing, I surrendered most of it to Government and was allocated in exchange another farm comprising approximately 3000 acres adjoining my Soldier Settlement Farm.
4. Finding through experience that the two farms I now occupied did not provide an economic unit for cattle and sheep farming I applied to Government for a Temporary Occupation Licence in respect of Farm No.2627 (Subdivisions 5 and 6) Laikipia and a Licence was granted to me on the 27th November, 1933. Sub-divisions 5 and 6 being thereafter sold by Government I was granted later a similar Licence in respect of sub-division 7 of the same Farm comprising 822 acres and paid the rent on this sub-division until the end of January 1938. I used this small piece of land semi-permanently for grazing sheep - removing them according to weather conditions.
5. In January 1938, wishing to return my sheep to L.O. No.2627/7 I found the land occupied by Mr. Ryder's sheep and cattle. It transpired, upon enquiry, that Government had sold him this farm in August 1937 - without, by oversight, informing me of the fact - although I had paid the rent for it until the end of January 1938. I had applied in May 1937 to the Government for 2000 acres at Ndaragua but nothing came of this application.
6. In these circumstances I addressed the Land Assistant at Nairobi requesting information as to what Crown Land was available in the North Nyeri District and learned from him that L.O. No.3376 comprising 1466 acres was available for sale to me or, "in exceptional circumstances", for Temporary Occupation. Actually this farm was held by Macaca Ltd. under Temporary Occupation Licence at the time of my application.
7. In consequence of the information received from the Land Assistant I applied on or about the 19th day of March 1938 to the District Commissioner at Nyeri to purchase the Farm L. R. No.3376. I was informed by the Land Office in Nairobi that my application should be addressed to the District Commissioner, Nyeri.

8. The District Commissioner, Nyeri, laid my application before his District Council which refused it. Why they refused it I do not know.

9. I then applied to the Land Advisory Board at Nairobi to review the decision of the District Council and attended in person before the Board which, after considering all the circumstances, on the 28th May 1938 recommended for approval my application to purchase the farm.

10. On the 21st June, 1938 (under LND. Reference No.69/6/197 Vol.II) the hon. the Commissioner for Local Government, Lands and Settlement wrote to me confirming the ruling of the Land Advisory Board and continued that Macaca Ltd. had "registered the strongest possible protest" against the allotment to me as a purchaser(not as a mere licensee) of Farm L.O. No.3376.

The Hon. the Commissioner invited me to submit in writing my own representations upon the subject for consideration by His Excellency the Governor in Council and these representations I now make as follows:-

MY REPRESENTATIONS.

(a) I attach hereto a map illustrating the farms and grazing areas etc. referred to in this Memorandum.

It is absolutely essential to me as a sheep and cattle farmer (using the very best imported Shorthorn bulls) that I should be allowed to purchase or be granted, Farm No.3376 North Nyeri which lies only 3 1/2 miles from my home (Soldier Settlement) farm No.5176, Ngobit. There are two roads of access between my home farm and L.O.No.3376 making it easy to work the farms together for sheep and cattle.

(b) When in August 1937 Mr. Ryder was sold by Government Farm No.2627/7 the Sub-divisions 2627/5 and 6 had already been purchased by Mr. Avery. The sale of Sub-divisions 5 and 6 resulted in my being so short of grazing that I had to sell approximately 50% of my breeding ewes. Now that sub-division No. 7 has been sold to Mr. Ryder my position is still worse unless I am allowed to buy L.O. No. 3376 as recommended by the Land Advisory Board.

(c) I should say that my home farm is much cut up by gullies which deteriorate seriously from its usefulness as a grazing farm. It is surrounded by various large holdings in the ownership of Messrs. Shaw Bros. and Mathias, Macaca Ltd. East Africa Properties Ltd., Mr. Ryder, Major the Hon. R.F. Carnegie and Forest Reserve. These holdings range from about 20,000 acres to 35,000 acres each. It is impossible for me to get additional land immediately adjoining or near to - my home farm otherwise than by purchasing L.O. No.3376 North Nyeri.

(d) East Africa Properties Ltd. in the year 1929 exchanged a portion of its land with the Government Forestry Department so - deliberately - cutting its own large property into two portions which were connected thereafter by a road of access. Please refer to the Map.

(e) East Africa Properties Ltd. and Macaca Ltd. (now in some way amalgamated) are controlled by Mr. Nettlefold so that there can be no possibility of quarantine regulations interfering with the movement of cattle between the properties owned by these Companies.

(f) ...

3.

(f) If the Cattle Cleansing Act should be applied to the Ngobit area the Forest Reserve marked on the map hereto attached could be grazed only by the two Companies I have mentioned and/or myself. I am informed, and believe, that the said two Companies already rent - on most favourable terms - the grazing in both the South Laikipia Forest Reserves (which comprise a very large area) except for 100 acres which I have been allowed to rent for three months only (namely from the 12th April 1938 to 12th July 1938) to assist me during the present Lambing season. Reference to the map attached will illustrate the position.

(g) It may be that the said two Companies find themselves occasionally short of grazing land but they hold very large areas of land and are therefore much better able to arrange their grazing than I am who hold only my home farm.

(h) Including my War Pension my total private income is only £200 a year so that I am otherwise entirely dependent on the success of my farming operations to maintain my wife and myself.

IN CONCLUSION I beg that His Excellency the Governor in Council will confirm the decision of the Land Advisory Board so enabling me to purchase - not to rent - the farm L.O. No. 3376 North Nyeri as it is absolutely essential to me - not merely a convenience - in my cattle and sheep farming operations.

I have produced to the Hon. the Commissioner of Local Government Lands and Settlement written evidence of all the material facts referred to in this Memorandum.

Tanyai.
P.O. Lamuria.

27th June, 1938.

Sd: M.H.C. Topham.

ELLIS PEIRS & CO

MONTAGUE ELLIS
HUGH JOHN CHEVALLIER PEIRS
FORMERLY H. J. PEARS
CECIL MONTAGUE JACOBS ELLIS
ERIC JOHN WYREHAM ELLIS
HENRY FRANCIS CHAPPE DONNELL
JULIAN GEORGE HANNAH

30

C. B. / . H. F. C.
17, ALBEMARLE STREET,
LONDON, W. 1.

TELEGRAMS
POSTSCRIPT PICCY LONDON
TELEPHONE
REGENT 0077

1st July 1938
G. O. 100
Area Plc.

Sir,

Macaca Limited, Kenya
Bellevue Farm - L. . . 3376

Our Client, Mr. F. J. Nettlefold, is the sole Shareholder for practical purposes in Macaca Limited - a Company having its registered Offices at Nairobi.

We are writing to you in connection with the decision of the Land Advisory Board of Kenya to grant Bellevue Farm - L. . . 3376 to Mr. M. . . C. Topham instead of to Macaca Limited as the owner of Bellevue Estate.

We are informed that a meeting of the District Committee held at Nyeri on the 2nd April 1938 unanimously recommended that the Farm should be alienated to Macaca Ltd. The Committee consisted of local men the majority of whom are practical farmers, know the land, and are in a position to judge the consequence to Macaca Limited of its loss.

The grounds on which the Company makes its claim are as follows:

The Under Secretary of State for the Colonies.

copy to Kenya

The Under Secretary of State for the Colonies

- 1. Macaca Limited has been in actual occupation of the farm for over seven years.
- 2. The whole of the extensive development of that Estate, which comprises 17,293 acres has been built up round this farm which, in consequence, has become a key farm, the loss of which will cripple an extensive and successful cattle and dairy business which has been developed as the result of careful management and considerable capital expenditure.
- 3. The operations of the Company would never have been anything like so extensive had our Client visualized the possibility that Farm No. 3376 would be taken away from it and given to another applicant.
- 4. If this farm is taken away from our Client, it will mean that its large dairy herd will have to be reduced forthwith as Bellvue Estate (including Farm 3376) is stocked up to its full carrying capacity.
- 5. A glance at the map of the District will reveal that, apart from development already effected, this farm 3376 is a necessity to an Estate comprising L.R. Nos. 5127, 5126, 6582, 2608, 4503, 3365, 2599 3367 and 5169, ..

The Under Secretary of State for the Colonies.

Letter to

Continuation Sheet No.

2

Date 1. 7. 38

The Under Secretary of State for the Colonies

6. If Farm 3376 is granted to Mr. Topham the result will be that an extensive and successful business will certainly be ruined without any certainty that the smaller business it is intended to benefit will prove even a small success.

7. Macaca Limited has at all times performed and observed all the covenants and conditions contained in or implied by the leases of all its various properties.

8. The large extent of the personal investments in this Colony of Mr. Kettlefold have conferred great benefits.

We understand that the final decision is about to be referred to you and, if possible, we desire to have an opportunity of submitting arguments on behalf of our Client before your final decision is made.

On the 29th June we had an interview with Mr. Paskin, at the Colonial Office and explained the position to him.

We are, Sir,

Your obedient servants,

The Under Secretary of State for the Colonies,
Colonial Office,
Whitehall, S.W.1.

PUBLIC RECORD OFFICE

END

TOTAL EXPOSURES →