

1935

1935

38117

KENYA
CO 533/458

38117

Licences & Leases under Native Land Trust Ordinance.

Previous

Mr Duncan
R. 297

26/2/36

23144/34.

Subsequent

1936

Rg 297 9/5

Room 309. 23

R. 297 11/10

Room 309 15/10

Mr Freeston 16

The Wood 17

Mr Duncan
Mr Robert Gray 28/10/36

Mr Flood 30.10

Gen. C. Bathurst 14.11

Sid. Kelly 14/11

GAAD

R. 297 18/2/36

309 19/2

Mr Parkin 19

C.S.

Concessions
Land (N.L.T. Ord.)

1. A/Govs. Deputy Pilling 1971 _____ 6th April '35
Towards return of leases/licences granted under the
Native Lands Trust Ordinance 1930 during the year 1934.

Missions of the Gula Falls.

Put by J. 28.5 same

RM

2. Governor Byrnes 495 _____ 20th Sept. '35

Seeks approval of the grant of a lease to Messrs Small & Co. Ltd
of a plot of ten acres at Kendu Trading Centre, South Kavirondo
District for the purchase of a cotton ginnery for 33 years with the option to
extend for two further periods of 33 years each

It seems that Messrs. Small and Co. Ltd.,
cotton ginners, who already hold a 99 years lease
for a plot at Samia in the Central Kavirondo Native
Reserve, applied for a 99 years lease in respect of
a plot at Kendu in the S. Kavirondo Reserve. (The
Samia lease was granted prior to the enactment of
the Native Lands Trust Ordinance.) The District
Commissioner, S. Kavirondo District, ~~was~~ erroneously
informed Mr. Mohamed Kassim of Messrs. Small and
Company, in a letter dated the 7th of May, 1934,
that the Kendu lease would be granted. ^{Mr. Kassim seems to be the person} Mr. Kassim
forthwith proceeded with arrangements for the
erection of a ginnery and claims to have entered
into commitments on behalf of ~~the~~ ^{the} Company to the
extent of £5,000 between the 7th of May and 15th of
June, 1934, when he was told by the Provincial
Commissioner that the lease could not be granted for
99 years. Under the N.L.T. Ordinance, Section 9(i),
a lease can be granted for a period not exceeding

33 years, save "in exceptional circumstances" where, with the previous consent of the Secretary of State, a lease may be granted for as much as 99 years. Messrs. Small refused to accept a 33 years lease. A compromise has been reached by which it was agreed that the Governor should ask the Secretary of State's consent to the grant of a 33 years lease with the option to extend for two periods of 33 years each, subject to Govt. being satisfied that the ginnery had been properly and efficiently operated. The Governor now asks for the Secretary of State's consent.

It is not clear from the despatch whether the Central Land Trust Board has been consulted and that the Board is satisfied that the conditions in Section 7 of the N.L.T. Ordinance have been complied with. These conditions are briefly described in Mr. Flood's minute of the 1st of May, 1934; on 23144/34 (flag A.).

In the ordinary way there would be a question of whether land should be added to the Reserve as a condition of the grant of the lease vide paragraph 3 of Lord Passfield's despatch of the 22nd of July, 1931, (flag B). The compromise proposed by the Governor makes no allowance for this. The plot is, however, only ten acres and in previous cases where such small areas have been involved substitution of other land has not been insisted upon.

The Governor suggests that if the compromise

compromise is not accepted, the Kenya Govt. will be faced with awkward legal proceedings, ^{I can only suggest that} in the circumstances ~~the~~ the Governor ~~may~~ be informed that provided the terms of the Native Lands Trust Ordinance have been observed in all other respects, the Secretary of State approves the grant of the lease on the terms proposed.

C. H. Grossmith
15715/35-

The District Commissioner, Southern Kavirondo, (whose name is mercifully withheld by the Governor) deserves a severe scolding for the ignorance or carelessness which has landed Government in this mess. It is hardly credible that an officer responsible for the administration of 300,000 natives should be unfamiliar with the Ordinance regulating the conditions under which practically all the land in his district is administered.

There can be no question in this case of suggesting an equivalent addition of land; the Ordinance does not require it and Lord Passfield's despatch did not insist on it as an invariable rule. As regards the statutory conditions in Section 7 of the Ordinance, there can be little doubt that the establishment of a ginnery will confer benefit (over and above the rent) upon the natives who grow the cotton. But the Governor might have assured us that the other formalities have been complied with, and I think we may write as Mr. Grossmith suggests. It might be added that the Secretary of State has no

One could argue that it's necessary

doubt

has read it in
J

doubt that a suitable reprimand has been administered to the officer whose ignorance or carelessness has resulted in considerable embarrassment to Government.

W.D. Duncan

16.10.35.

Duncan.

Mr. Robert Murray

I believe the maxim "ignorantia juris neminem excusat" still holds good. If so, the firm of Small & Co must be deemed to have been fully aware that the D.C. had no power to give them a 99 year lease, and, in that event if they did take any action on that basis and that basis only they have only themselves to blame for any damnification that may have resulted.

I am quite sure that what has happened is that, on getting the mistaken letter saying that a 99 year lease would be given, they, fully realizing the mistake, proceeded to enter into some commitments with the object of pleading those commitments in support of their claim. I don't believe the story that they would not have entertained the idea of starting a quarry on a shorter lease (They are deemed to know the law and therefore to know that a 99 year lease would be exceptional). Their affidavits only say they spent such & such and not that they relied on 99 years, and I regard that omission as very significant. The affidavits are no doubt correct but they don't swear that they relied on 99 years. So they can't be seen in for false declaring.

Would you say, as a legal matter, whether it would not be a complete defense in any kind of action to say that the D.C. had no power to give an assurance that they would get a 99 year lease and that they ought to have known this so that any dealings of theirs based on such assurance are their own fault?

1.10.35

17.10.

Mr. Flood.

With reference to the last sentence but two of the second paragraph of your minute of 17.10.35, it is stated in paragraph 2 of the affidavit of Mohamed Kassim (Messrs Small and Company's Manager) that the Company "relying on the terms of the District Commissioner's letter" (i.e. which said that the lease would be for 99 years) entered into the contracts, and made the arrangements, in question. Of course, if these people were genuinely misled (although, as you say, they should have known the law), there is something to be said for the compromise suggested by the Governor.

As regards the last paragraph of your minute, it is not clear to me on what ground legal proceedings could, in the circumstances, be instituted against the Government or the District Commissioner in question; but, as the Governor apparently contemplates such proceedings, we might in the first instance ask him to get the Attorney General to state what he thinks the cause of action (if any) would be in each case, and also the defence. We can then further consider the legal position.

28/10/35.

W.D. Duncan.

? To recover damages for alleged loss due to entering into contracts & buying stuff on a mistake.
J

I am afraid that I overlooked the sentence to which Mr. Duncan refers, which rather spoils my argument, although I do not believe for one moment the

there is any truth in the contention that it was because of the D.C's. mistake that this Company took action.

With regard to legal actions, I am rather inclined to the opinion that what the Government was thinking about was actions in the Courts between the firm of Small and Company and some of the people to whom they gave orders, or with whom they had made contracts. It is quite possible that Small and Co., might refuse to carry out some obligations into which they have entered and plead ~~as~~ as an excuse that they had entered into those obligations in view of the misrepresentations of Government. That, as the Governor says, would not put Government into a very good light. I think we can assume that all the conditions under Sections 7 and 8 of the Lands Trust Ordinance have been complied with. The plot is small - only 10 acres - and the object of it is to erect a ginnery and a house in connection with the ginnery.

In the circumstances I can only suggest that we proceed as Mr. Grossmith proposes and inform the Governor that the S. of S. approves of the lease for 33 years, renewable for two further periods of 33 years, provided that the terms of the Lands Trust Ordinance have been observed in all other respects. A paragraph might perhaps be added to the effect that the S. of S. presumes that the legal proceedings were ^{meant to be} proceedings between the firm and other individuals in the course of which the mistake might have been used as an argument on one side or the other.

J. S. G. King
30/10

Sir J. Maffey.

I kept this paper for enquiry to be made whether in Uganda leases of cotton ginnery sites are for as long a period as 99 years. There seems to be no information on this subject but my impression is that they are. I think that it might often be found difficult to raise capital for ginnery buildings, machinery and staff residences for so short a period as 33 years.

In this case an expectation of a 99 year lease was held out mistakenly by the District Commissioner, and I think that we should do well to take advantage of the compromise which the promoters are willing to agree to, and to accept the Governor's proposal, writing us at the end of Mr. Flood's minute. (The Governor's reference to avoiding legal proceedings in paragraph 413 of minor importance. I do not think that Mr. Flood's explanation can be right, but if we write as he proposes on this point we shall at all events get a full explanation).

W.C.S.
14.11.35

At no. J.M.
14/11/35

3
14
To Kempa, 942 (2 hundred) acres
20 NOV 1935

4

Gov. Byrnie - No. 51

23.1.36

Juristic explanation of compromise referred to in para. 4 of No. 2.

(No. 4)

The Despatch shows that, in referring to legal proceedings in para 4 of his despatch of the 20th Sept, the Foreman had in mind proceedings by Small Co against the Government.

Put by
C. J. Foxworth
19.2.36.

but he does not say that ~~the~~ ^{either company} the Company was contemplating legal proceedings against the Govt or repudiating its own contracts (which might have led to other legal proceedings). There may however have been some reason to anticipate some such action - possibly mentioned in the discussion with the Co. when legal advisers mentioned in the last sentence of para 3 of No. 2. The point is however not of any importance.

Put by

J. J. Bassett
19/2

No one thought there were any legal proceedings on the topic only that there might be. I agree that it can be put by. Mr. Duncan should see

J. W. Hood
19.

See, thank you.

26/2/36 / J. Duncan.

KENYA.

No. 51



RECEIVED
- 15 FEB 1936
G. O. REGY
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

23 JANUARY, 1936.

Sir,

(3)
I have the honour to acknowledge the receipt of Mr. Malcolm Macdonald's despatch No. 942 of the 20th November, 1935, approving the grant of a lease to Messrs. Small and Company for a period of thirty-three years renewable for two further periods of thirty-three years.

In regard to paragraph 3 of the despatch, the reference to legal proceedings was made in view of the fact that if an action were brought against Government for breach of contract it would have brought into the light of day the repudiation by Government of an agreement entered into by a District Commissioner and this in my opinion would not have been in the best interest of the administration. The Attorney General informs me that in the circumstances of the case he would have been compelled in fairness to Messrs. Small and Company to have advised me to grant my fiat had an action been brought against Government by way of a Petition of Right.

It is not suggested that such an action would be successful but a compromise was decided upon because of the harm which would accrue to the administration by such an action. Moreover, Messrs. Small and Company had made large contracts in expectation of being granted a long lease and just as undesirable a position would have arisen if the company had repudiated its contracts on the grounds that Government had refused to honour the terms of a letter written by one of its senior District Commissioners.

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

THE RIGHT HONOURABLE,
J. H. THOMAS, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S. W. 1.

BRIGADIER-GENERAL
GOVERNOR.

KENYA.
No. 51



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G. O. REGY
GOVERNMENT HOUSE.

NAIROBI,
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It is not suggested that such an action would be successful but a compromise was decided upon because of the harm which would accrue to the administration by such an action. Moreover, Messrs. Small and Company had made large contracts in expectation of being granted a long lease and just as undesirable a position would have arisen if the Company had repudiated its contracts on the grounds that Government had refused to honour the terms of a letter written by one of its senior District Commissioners.

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J. H. THOMAS, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S. W. 1.

BRIGADIER-GENERAL
GOVERNOR.

6
4

C. O.

Mr. Grossmith. 16/11

Mr. ~~Freestone~~ 16

Mr. ~~Hood~~ 16/11

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Handwritten: 16/11
4

Downing Street,

20 November, 1935.

Sir,

~~Handwritten signature~~

I have etc. to acknowledge the receipt of your despatch No.495 of the 20th of September in which you ~~sought~~ ^{seek} my approval to the grant to Messrs.Small and Co. Ltd. of a lease under Section 9(1) of the Native Lands Trust Ordinance in respect of a plot of ten-acres at Kendu Trading Centre for the purpose of a cotton ginnery, inclusive of a five acre residential site to be used only in connection with the ginnery.

(2)

DRAFT.

KENYA.

NO. 942

GOVERNOR.

FURTHER ACTION.

Handwritten: as you recommend,

In the exceptional circumstances ~~as~~ described in the second and third paragraphs of your despatch I approve, the grant of the lease to Messrs.Small and Company for a period of 33 years, renewable for two

further

further periods of 33 years, provided that, as I assume is the case,
the terms of the Native Lands Trust Ordinance
have been observed in all other respects.

3 I presume that ^{by} ~~the~~ legal proceedings ^o
~~to which you refer~~ in the fourth paragraph of
^{you have in mind possible}
your despatch ~~were meant to be~~ proceedings
between the Company and other ^{parties} ~~individuals~~,
in the course of which, the mistake on the
part of the District Commissioner might
have been used as an argument on one side

or the other, and do not contemplate legal action
~~proceedings~~ against Government or against
~~I have, etc.~~
the District Commissioner.

(Sgd.) MALCOLM MacDONALD

KENYA.

No. 495



RECEIVED
10 OCT 1935
O. O. REGY

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

20 SEPTEMBER, 1935.

Sir,

No 23.

16/10/30

General (8)

I have the honour to address you on the subject of the grant of a lease, under Section 9 (1) of the Native Lands Trust Ordinance, No. IX of 1930, to Messrs. Small and Company Limited, in respect of a plot of ten acres at Kendu Trading Centre, South Kavirondo District, for the purpose of a cotton ginnery, inclusive of a five acre residential site to be used only in connection with the ginnery.

2. The relevant section of the Native Lands Trust Ordinance permits leases for any period not exceeding thirty-three years, provided that in exceptional cases with your prior consent leases may be granted for a longer period which shall not in any event exceed ninety-nine years.

In the present instance it is desired to grant a lease for thirty-three years with the option to extend for two further periods of thirty-three years each, subject to Government being satisfied that the ginnery had been properly and efficiently operated.

3. The exceptional circumstances in this case consist in the fact that the District Commissioner/.....

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

KENYA.

No. 495



RECEIVED
10 OCT 1935
O. O. REGY

2
2
1
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

20 SEPTEMBER, 1935.

Sir,

I have the honour to address you on the subject of the grant of a lease, under Section 9 (1) of the Native Lands Trust Ordinance, No. IX of 1930, to Messrs. Small and Company Limited, in respect of a plot of ten acres at Kendu Trading Centre, South Kavirondo District, for the purpose of a cotton ginnery, inclusive of a five acre residential site to be used only in connection with the ginnery.

No 13
11610/30

Macdonald (3)

2. The relevant section of the Native Lands Trust Ordinance permits leases for any period not exceeding thirty-three years, provided that in exceptional cases with your prior consent leases may be granted for a longer period which shall not in any event exceed ninety-nine years.

In the present instance it is desired to grant a lease for thirty-three years with the option to extend for two further periods of thirty-three years each, subject to Government being satisfied that the ginnery had been properly and efficiently operated.

3. The exceptional circumstances in this case consist in the fact that the District Commissioner/.....

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

2

9

sioner, South Kavirondo District, not realising the implications of the Native Lands Trust Ordinance and that it was incompetent for Government to grant a lease for such a term, informed Messrs. Small & Co., Ltd., in a letter dated the 7th May, 1934, this letter confirming verbal arrangements, that they would be granted a lease at Kendu similar to the lease they already hold at Samia, that is to say for ninety-nine years.

As soon as the mistake was brought to the notice of the Provincial Commissioner, Mr. Mohamed Kassim, of Messrs. Small & Co., Ltd., was informed by him that it was impossible to grant a lease for such a term. Messrs. Small & Co., Ltd., refused to accept this amendment, alleging that on the strength of the District Commissioner's assurance they had already entered into various commitments to the extent of £5,000 in connexion with the ginnery and that they would not have entertained the idea of starting a ginnery had they been aware that the term of the lease would be for less than ninety-nine years.

There is apparently no documentary evidence of these commitments, but eight affidavits have been produced in support of the allegation which are attached for your information.

After discussion with Messrs. Small & Co., Ltd., and their legal advisers, by the Acting Colonial Secretary and the Attorney General, the basis of a compromise was recently reached by which it was agreed that I should seek your consent to the grant of a lease of thirty-three years with the option/.....

option to extend for two further periods of thirty-three years each, subject to Government being satisfied that the ginnery had been properly and efficiently operated.

4. I consider that it would be very harmful to the administration of the Colony to repudiate the letter of the District Commissioner and the compromise is desired in order to avoid legal proceedings in which Government would not appear in a very good light.


5. I would draw your attention to the fact that there are already plots in Kendu held on ninety-nine years leases which were granted before the Native Lands Trust Ordinance became law, and that Messrs. Small & Co., Ltd., hold their Samia ginnery plot in the Central Kavirondo Native Reserve on a ninety-nine years lease, this also having been granted before the introduction of the Native Lands Trust Ordinance.

6. In the circumstances I trust that you will regard this as an exceptional case within the meaning of Section 9 (1) of the Native Lands Trust Ordinance, 1930, and will give your consent to the grant of a lease on the terms proposed.

I have the honour to be,

Sir,

Your most obedient, humble servant,


BRIGADIER-GENERAL
GOVERNOR

COLONY AND PROTECTORATE OF KENYA

IN THE MATTER OF A LEASE FOR A GINNERY AT KENDU

A F F I D A V I T

I, MOHAMED KASSIM, make oath and say as follows :-

1. I am the Manager of Messrs Small and Co. Ltd.

2. Subsequent to the letter of the District Commissioner, Kisii, dated the 7th May 1934 and prior to my interview with the Provincial Commissioner, Nyanza, on the 15th June 1934, when it was first intimated that Government was not prepared to grant us a ninety nine year lease, Messrs Small and Co. Ltd., relying on the terms of the District Commissioner's letter, entered into the following contracts and made the following arrangements.

3. The said arrangements were made actually in the name of the Kenya Commercial Company by virtue of a resolution passed by the Directors of Small and Co. Ltd. authorising the Kenya Commercial Company to act on behalf of themselves in connection with all matters concerning the erection of the ginnery at Kendu.

4. Details of the arrangements are as follows :-

(a) About eight or ten days subsequent to the receipt of the District Commissioner's letter a contract was given to Alibhai Jiwa Sanjee to break concrete and collect sand and the said Alibhai Jiwa Sanjee immediately commenced the necessary work.

(b) A contract was given to a leading Kisumu merchant, Rugnath Gokaldas, for a large quantity of corrugated iron sheets.

(c) A contract was entered into with Samjee Harji Brothers for local timber and corrugated iron sheets.

(d) On the 17th May I proceeded specially to Kampala in Uganda by car for the purpose of arranging finance in respect of the purchase of cotton, with Goshō Kabushiki Kisha Ltd., who are very big Japanese cotton buyers. As a result I definitely arranged with them to place at the disposal of Messrs Small & Co. Ltd. at least £2000 (two thousand pounds) prior to the departure of the Manager of the said firm of Goshō Kabushiki Kisha Ltd. for India in June and this finance was provided on the basis of Messrs Small & Co. Ltd. paying 9% interest and 1/- a bale of cotton.

(e) A contract was given to Sarmansingh of Busia and Tororo in Uganda to cut hardwood logs of a special size and the said work was actually commenced before my interview with the Provincial Commissioner, Nyanza, on the 15th June, 1934 and the same were duly railed from Mjanji to Kendu as per Railway Waybill No. 68 of 15/6/34.

(f) Ten tons of cement were purchased from Premji Damji and it was a term of the contract that the said cement should be delivered in June.

(g) Bolts, nuts, screws, washers etc. were purchased from Esoofally Emailji Karachiwalla.

(h) On or about the 29th May 1934 an order for twenty bundles of flat iron bars and one load of bolts was given to Hardware and Ironmongery Ltd., Mombasa, and the said

flat-iron bars were railed on the 31st May 1934 under Railway Waybill 964/20, and the said bolts were railed on the 7th June 1934 under Railway Waybill 512/1.

(i) All preliminary arrangements were made for the erection of the necessary machinery, full particulars having been received from Sir Armstrong Whitworth and Co. Ltd. in England, and on receipt of these particulars I actually travelled to Uganda and visited one of the ginneries equipped with the proposed machinery in order to satisfy myself that it was suitable. But Messrs. Small & Co. Ltd. did not actually give the order for the machinery prior to the interview with the Provincial Commissioner, Nyanza, on the 15th June 1934.

5. I can generally state on oath that all arrangements with regard to finance, purchase of building materials and in fact everything except the actual order for the machinery were entered into on receipt of the District Commissioner's letter of the 7th May 1934.

SWORN at Nairobi this 23rd day of August, 1934, BEFORE ME :-

Mahone J. Kasim

Shawley

FOR OATHS. Commissioner for Oaths
NAIROBI.

SHAWLEY, SCHWARTZE & BARRET,
Advocates,
NAIROBI.



Fee Paid No. 21-
Stamp No. 176100
Date 21/8/35
Institute of Chartered

14

COLONY AND PROTECTORATE OF KENYA.

IN THE MATTER OF A LEASE FOR GINNERY AT KENDU



A F F I D A V I T

SD/-
H

I, PREMJI DHANJI, make oath and say as follows:-

- 1/. I am an Indian Merchant residing and carrying on business in Mombasa in the Protectorate of Kenya.
- 2/. On the 17th day of June 1934 I received an order from The Kenya Commercial Company Mombasa to supply to the Company ten (10) tons cement to be railed from Mombasa to the Company at Kendu during the month of June 1934.
- 3/. The said ten (10) tons of cement were duly railed to the Company at Kendu on 25th June 1934 under Waybill No. 745/56.

Sworn at Mombasa this 21st day
of August, 1935. Before me:

AG-DISTRICT REGISTRAR
SUPREME COURT OF KENYA.

Premji Dhargi

ATKINSON, BOWN, MORRISON & AINSLIE;
Advocates,
MOMBASA.

COLONY AND PROTECTORATE OF KENYA

IN THE MATTER OF A LEASE FOR GINBERY AT KENIA.



Page No. 2/1
Serial No. 126081
Date 14/8/35
Number of Copies 2

A F F I D A V I T

I, **BENWARISHAI GORDEHARIBHAI PATEL** make oath and say as follows:-

- 1/. I am an Indian Merchant and a Director of Hardware & Iron Mongery Limited, Mombasa.
- 2/. On or about the 29th day of May 1934 an order was received by Hardware & Iron Mongery Ltd Mombasa from Kenya Commercial Company to supply 20 bundles flat iron bars and one load bolts.
- 3/. On the 31st day of May 1934 the said 20 bundles flat iron bars were railed to the Kenya Commercial Company Kisumu under Waybill 964/20.
- 4/. On the 7th day of June 1934 the said load of bolts was railed to the Kenya Commercial Company Kisumu under Waybill No. 512/1.

Sworn at Mombasa this 14th day of August, 1935. Before me:

AG. DISTRICT REGISTRAR,
SUPREME COURT OF KENYA.

ATKINSON BOWN MORRISON & AINSLIE
Advocates,
MOMBASA.

16
COLONY AND PROTECTORATE OF KENYA.

IN THE MATTER OF A LEASE FOR GINNERY AT KENIA



_____ *21*
A F F I D A V I T
_____ *12608*
_____ *14/8/35*
_____ *14*

I, MOHAMEDALI ESMAILJI ESSAJI make oath and say as follows:

- 1/. I am an Indian Merchant residing and carrying on business in Mombasa and am the Attorney of Escoofally Esmailji Karackiwalla.
- 2/. On or about the 6th day of June 1934 the said Escoofally Esmailji-Karackiwalla received an order from the Kenya Commercial Company to supply 5 bundles flat iron bars, 4 cases nails, 2 cases screws and washers, 1 bundle nuts, 4 flat iron bars and 1 bundle flat iron plates.
- 3/. On the 8th day of June 1934 the said 5 bundles flat iron bars were railed to Kenya Commercial Company Kisumu under Waybill No. 274/1.
- 4/. On the 13th day of June 1934 the said 4 cases nails and 2 cases screws and washers were railed to Kenya Commercial Company Kisumu under Waybill No. 394/6.
- 5/. On the 18th day of June 1934 the said 4 flat iron bars and 1 bundle flat iron plates were railed to Kenya Commercial Company Kisumu under Waybill Nos. 343/1 and 191/5.

Sworn at Mombasa this 14th day
of August, 1935. Before me:

[Signature]
AG. DISTRICT REGISTRAR,
SUPREME COURT OF KENYA.

M. Elwan
ATKINSON BOWN MORRISON & AINSLIE,

Advocates,

MOMBASA.

STATEMENT OF DEFENSE FOR CIVIL SERVICE

AFFIDAVIT.

I, KOBAYASHI make oath and state as follows:-

- 1./ I am a Japanese subject residing at Kampala and in the Manager of Gosho Kabu Shiki Kaisha Ltd. a firm of Japanese cotton buyers in Kampala.
- 2./ On the 24th day of May, 1936 I had an interview with Mr. J. H. G. (I believe) the Manager of the Bank of India and agreed to finance the cotton buying of that Company for the interest at least to the extent of 25000 to 30000. They were to pay interest at the rate of 9% per annum on commission at the rate of Shgs. 1/- per bale of 48 lbs cotton produced by them.
- 3./ In accordance with this agreement an advance of 25000 was made in June, 1936 (I think) that sum of 25000 remained available at the Barclays Bank (S.D.C. & O.)-----Bank at Kampala to be advanced at the convenience of the Company's cash in October or November, 1936. The advance was repaid by the Company by return of the said sum.
- 4./ Another advance of 25000 was made in July, 1936.

SWORN AT Kampala this 24th day of July 1936, BEFORE ME:-

J. H. Patel
advocate
Kampala.
Commissioner for oaths

For Messrs.

Gosho Kabushiki Kaisha Ltd
K. Kobayashi

ATKINSON, BOWN, MORRISON & ATSLIE,
Advocates,
MOMBASA.



AFFIDAVIT.

I, Shamji Harji make oath and state as follows :-

1. I am a partner in the firm of Shamji Harji & Bros. Merchants and Contractors of Kisumu in the Colony of Kenya.
2. That in the month of May, 1934 the said firm entered into a contract with the Kenya Commercial Company of Kisumu to supply approximately 700 sheets of corrugated iron of various sizes, 15,000 sq. ft or 25 tons timber of various sizes for their Kendu Ginnery at various prices according to size and quality.
3. Delivery was to be made in the month of June, 1934, but in that month we were requested to delay delivery to which we agreed and subsequently the materials were accepted in the months of August and September, 1934

SWORN at Kisumu

this 21st.

day of August, 1935. *4114330 29*

before me :

R.S. Kumar
Notary Public
Kisumu



AFFIDAVIT.

I, MULJI MADHAVJI of Kisumu in the Colony of Kenya do hereby swear and state as follows :-

1. That I am a partner in the firm of Mulji Madhavji & Co. of Kisumu and elsewhere.
2. That on or about the 20th day, 1935 we agreed to sell to Kenya Commercial Coy. a approximately 100 sheets corrugated iron of various sizes at the rate of Shs. 17/0 per square of 22 lbs. delivery to be taken on 22nd day, 1935.
3. That to the best of my information, knowledge and belief the said corrugated iron sheets were for use in the Kenya Commercial Coy. on their own premises.
4. That in the month of June, 1935 we intended to ship the iron sheets to the said Kenya Commercial Coy. but they wished to postpone delivery of the same and in fact delivery was taken in the months of August and September 1935.

SWORN AT KISUMU

this 21st
day of August 1935
before me:

Mulji Madhavji

R. H. Kumar
Notary Public



20

AFFIDAVIT

I, JIVA SHAMJI of Kendu in the Colony of Kenya make oath and state as follows :-

1. That in the month of May, 1934 I entered into a contract with Kenya Commercial Coy. to supply them with concrete, stones and building sand, all to be delivered on the site of their Kendu Ginnery at the rate of Shg. 14/- per 100 cub. ft. of sand, Shs. 10/- per 100 cub. ft of stones and Shs. 10/- per 100 cub.ft of sand. .
2. That work was commenced immediately after the contract was made collecting stones and sand and transporting same to the site of the Kendu Ginnery.
3. That work was also commenced breaking stones for concrete etc. on the site of the Ginnery.
4. That the materials were subsequently taken and paid for by the Kenya Commercial Coy.

SWORN at Kisumu

this 21st
day of August 1935
before me :

Jiva Shamji

*Res. Kumar,
Notary Public*



35

21.

KENYA.

No. 177.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

C. O. REGY

6th APRIL, 1935.

sir,

in accordance with the provisions of Section 8(4) of the Native Lands Trust Ordinance 1930, I have the honour to forward the following return of leases and licences granted under that Ordinance during the year 1934.

2. LEASES.

- (i) An area of 10 acres at Sega in North Kenya, Central Kavirondo District, Nyanza Province, to the mill mill mission for the term of 33 years at a rent of shs.3/- per acre per annum, for the purpose of erecting a church and school and residential buildings (for mission purposes), provided that the applicants surrender 89 acres of their present holding at Ujala, leaving 10 acres only on lease. The 89 acres to revert to the reserve.
- (ii) An area of approximately 100 acres at Kabaa in the Machakos District, Central Province, to the Roman Catholic mission (Society of the Holy Ghost) for the purpose of growing food for the pupils of the Kabaa High School, for a term of 33 years at a rent of shs.2/50 per acre per annum, subject to the following conditions:

(a) ...

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.F.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

- (a) payment of rent to commence from the date of survey;
- (b) area to be fenced to the satisfaction of the District Commissioner within one year from the date of the lease;
- (c) at least one half of the area to be maintained under proper cultivation from 2 years after the date of the lease to the termination of the lease.

- (iii) An area of 6 acres at Mutulukuni in the Kitui District, Central Province, for the purpose of a Mission to the Roman Catholic Mission (Society of the Holy Ghost) Kabaa, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (iv) An area of 11 acres at Mutere, North Kavirondo, Nyanza Province, to the Church Missionary Society, for the purpose of a mission, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (v) An area of 30 acres at Mwarakwet, Elgeyo District, Rift Valley Province, to the Africa Inland Mission, for the purpose of a mission for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (vi) An area of 10 acres at Litein, South Lumbwa District, Nyanza Province, to the Africa Inland Mission for the purpose of a mission for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (vii) An area of approximately 11 acres at Mala Falls in the Central Kavirondo District, Nyanza Province, to the East African Power and Lighting Company Limited, for the purpose of constructing a generating station and a dam, for a term of 99 years at a rent of Shs. 50/- per acre per annum, subject to the following conditions/...

conditions:-

- (1) Ensuring the water supplies as at present enjoyed by the Kenya and Uganda Railway and Mill Hill Mission
- (2) In the event of insufficient water passing over the dam to work the two water maize mills owned by Chief Ogada, the Company to instal an electric motor which they will maintain in running order for a period of five years free of charge, and to supply current to the motor for the period of the lease, free of charge:
- (3) Adequate water to be allowed to pass over the dam to ensure sufficient water power to existing Mills belonging to weya Okuta and Marcel Omara Ugut, or alternatively that arrangements be made with these people as in the case of Chief Ogada:
- (4) Compensation for disturbance be paid to right holders, to be assessed by the District Commissioner and a Committee of the Local Native Council, in consultation with the applicants, as is the case for disturbance of surface rights on the Gold Fields. The compensation to be by one payment only:
- (5) At least one bridge to be built over the canal to allow access to water and grazing for native cattle:
- (6) The Company to deliver for the benefit of the community of Saint Mary's School, Iala, free of charge up to 1,000 units per annum of electrical energy, with a maximum demand of 2 kilowatts.

Approval was given by you to this lease in your despatch No. 354 of the 7th May, 1934.

- (viii) An area of 5 acres at Gatanga, Fort hall District, Central Province, to the Consolata Catholic Mission, for the purpose of a Mission station, for a term of 33 years at a rent of Shs.5/- per acre per annum; back rent at the rate of Shs.10/- per annum for the area occupied since the date of occupation, to be collected.

(ix) An/...

No 3.

23144/34

- (ix) An area of 3 acres at Rocho, Fort Hall District, Central Province, to the Consolata Catholic Mission, for the purpose of a mission station for a term of 33 years at a rent of Shs.5/- per acre per annum; back rent, at the rate of Shs.10/- per annum for the area occupied since the date of occupation, to be collected.
- (x) An area of 10 acres at Nyabondo, Central Kavirondo District, Nyanza Province, to the Mill Hill Mission, for the purpose of a mission station for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (xi) An area of 2 acres at Kilungu, Machakos District, Central Province, to the Roman Catholic Mission (Society of the Holy Ghost), for the purpose of a girls' school, house for sisters and dispensary, for a term of 33 years at a rent of Shs. 5/- per acre per annum. The area to be fenced and demarcated within one year of the date of the issue of the lease.
- (xii) An area of 10 acres at Asundi, South Kavirondo, Nyanza Province, to the Seventh Day Adventist Mission for mission purposes, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (xiii) An area of 2 acres at Nyanchwa, South Kavirondo, Nyanza Province, to the Seventh Day Adventist Mission for mission purposes, for a term of 33 years at a rent of Shs.

- Shs.5/- per acre per annum.
- (xiv) An area of 10 acres at Chepteret, Mandi District, Rift Valley Province, to the Mill Hill Catholic Mission, for religious, educational and eventually medical purposes, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (xv) An area of 10 acres to the Church of God Mission, Kisa, North Kavirondo, Nyanza Province, for the purpose of a mission, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (xvi) An area of 10 acres to the Mill Hill Catholic Mission at mbaja, Central Kavirondo, Nyanza Province, for the purpose of a mission, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (xvii) An area of 4.4 acres at Malakisi, North Kavirondo, Nyanza Province, to the Salvation Army, for mission purposes, for a term of 33 years at a rent of Shs.5/- per acre per annum.
- (xviii) An area of 5 acres to Messrs. Abdulali Jiwaji and Company at Kitui, Kitui District, Central Province, for the purpose of a ginnery site, for a term of 33 years at a rent of Shs. 500/- per annum.
- (xix) An area of $\frac{1}{2}$ an acre at Lambach, Elgeyo Marakwet District, Rift Valley Province, to the Mill Hill Catholic Mission, for the purposes of a Church and School, for a term of 33 years at a rent of Shs.5/- per annum.

3. LICENCES.

- (1) A licence to Mr. Verlaque to quarry building stone, lime and sand on the islands of Ndere, Rambuğu, Nyakagera and Imra, and the rocks adjacent thereto off the Seme Coast, in the Kavirondo Gulf, Central Kavirondo, Nyanza Province, for a term of one year on the following terms:-
 - (a) Royalty for cut stone and sand quarried or dug to be paid at the rate of Shs.20/- per 1000 cubic feet;
 - (b) All such stone and sand to be stacked at Kisumu, or such other place or places as the District Commissioner, Central Kavirondo, may allow, for measurement;
 - (c) No labour camp to be erected on the islands unless the foreshore is first cleared for a width of 400 yards and to a depth of 50 yards from Lake water level to the satisfaction of the Medical Officer, Central Kavirondo;
 - (d) No timber to be cut on the islands, apart from that necessary under (c), without the written permission of the District Commissioner;
 - (e) Royalty for any lime burnt on the islands to be paid at a rate to be fixed by the District Commissioner.
- (ii) A licence to Mr. Hem Singh to win sand from the Stony Athi River over a length of 1½ miles, situated about 5 miles above the Railway Bridge over the Stony Athi River and demarcated by marked trees, for a term of 1 year at a fee of Shs.97/50 per mensem.
- (iii) A licence to Mr. Hem Singh to win sand from the Athi River over a length of 1 mile next above the length of 1½ miles referred to above, and demarcated by marked trees, for a term of 1 year at a fee of Shs.20/- per mensem.
- (iv) A licence to Mr. Hem Singh to win sand from the Orkokoyu River, Masai District, over a length of one mile nearest to the Ulu Railway Station, for a term of 1 year at a fee of Shs.20/- per mensem.
- (v) A/...

- (v) A licence to Mr. Churanjilal to win sand from the Kitangella River, Kajiado District, for a term of 1 year at a fee of Shs.20/- per mensem.
- (vi) A licence to the Magadi Soda Company to remove diatomite where it occurs within the road reserve of the Magadi-Ngong Road in the Masai District, for a term of 1 year at a fee of Shs. 2/- per ton.
- (vii) A licence to the Magadi Soda Company to cut fuel in five areas of the Masai District, as follows:-
 - (a) An area of 30 square miles on the west bank of the river Usao Nyiro, no trees to be cut within 200 feet of the river bank.
 - (b) The afforested belt on the east bank of the River Usao Nyiro for a distance of 5 miles, extending 2½ miles north and 2½ miles south of the point where the new road, at present under construction by the Company, enters the belt; all trees of 18 inches diameter and over to be left; no trees (except 'Msuaki' bush) to be cut within 200 feet of the river bank; and no trees to be cut south of the Ngurma duka.
 - (c) An area of 10 square miles at Mile 26 on the Magadi-Ngong road at Ol Debi Silimana.
 - (d) An area of 4 square miles on the Western Slopes of Ol Orkesalik at Mile 22 on the Magadi-Ngong Road.
 - (e) An area of 14 square miles between Mile 17 on the Magadi-Ngong Road and about mile 70 on the Magadi Railway.

Royalty... Shs.1/50 per ton in Area(a),
 Shs.2/- per ton in the remaining areas.

Conditions additional to those stated above:

- (1) All trees of 3 inches diameter and under in Areas (c),(d) and (e) to be left;
- (2) clumps of not less than 50 trees per 100 acres in all areas to be left for shade purposes and cutting for Masai bomas.

- (viii) A licence to Mr. Mulkraj Nathradass to quarry stone on the land of Kombo wa Kwamunga,

- (v) A licence to Mr. Ghuranjilal to win sand from the Kitangella River, Kajjado District, for a term of 1 year at a fee of Shs.20/- per mensem.
 - (vi) A licence to the Magadi Soda Company to remove diatomite where it occurs within the road reserve of the Magadi-Ngong Road in the Masai District, for a term of 1 year at a fee of Shs. 2/- per ton.
 - (vii) A licence to the Magadi Soda Company to cut fuel in five areas of the Masai District, as follows:-
 - (a) An area of 30 square miles on the west bank of the river Uaso Nyiro, no trees to be cut within 200 feet of the river bank.
 - (b) The afforested belt on the east bank of the River Uaso Nyiro for a distance of 5 miles, extending 2½ miles north and 2½ miles south of the point where the new road, at present under construction by the Company, enters the belt; all trees of 18 inches diameter and over to be left; no trees (except 'Msuaki' bush) to be cut within 200 feet of the river bank; and no trees to be cut south of the Ngurma duka.
 - (c) An area of 10 square miles at Mile 26 on the Magadi-Ngong road at Ol Debi Silimana.
 - (d) An area of 4 square miles on the Western Slopes of Ol Orkesalik at Mile 22 on the Magadi-Ngong Road.
 - (e) An area of 14 square miles between Mile 17 on the Magadi-Ngong Road and about mile 70 on the Magadi Railway.
- Royalty... Shs.1/50 per ton in Area(a),
Shs.2/- per ton in the remaining areas.
- Conditions additional to those stated above:
- (1) All trees of 3 inches diameter and under in Areas (c),(d) and (e) to be left;
 - (2) clumps of not less than 50 trees per 100 acres in all areas to be left for shade purposes and cutting for Masai bomas.
- (viii) A licence to Mr. Mulkraj Nathradass to quarry stone on the land of Kombo wa Mwanunga,

Giriana District, Coast Province, at a fee to be fixed by the District Commissioner.

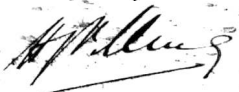
Compensation to be paid to Kombo by the Local Native Council from the royalties received.

(ix) A licence to Mr. Durga Das Bouri to win 25,000 cubic feet of sand from the Central Kavirondo District, Nyanza Province, near Kibos, for a term of one year at a fee of Shs.20/- per 1,000 cubic feet, provided that no disturbance to cultivation takes place.

I have the honour to be,

Sir,

Your most obedient, humble servant,


ACTING GOVERNOR'S DEPUTY.