

# PUBLIC RECORD OFFICE

C0533/367

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X 10124  
1927

X 10124  
1927

KENYA

From

Date

C0533/367

COMPLICATED CURRENCY CASE OF MESSRS ESMATI  
RAHMATULLA & CO.

Previous paper	(Minutes width)		
<i>See copy 1295/120/61</i>			
Subsequent info			
<i>8/2</i>			
<i>Mr. Allen</i>			
<i>5/16</i>			
<i>Mr. Ebnhardt</i>			
<i>Mr. Allen</i>			
<i>12/16</i>			

1927-1928 (1927/28) Form 1118a

FF No. 11-2157

NOT TO BE TURNED INSIDE OUT

1. ----- McKenna & Co. ----- 7th February, 1927.

Request that certain confiscated currency notes - or their value - sent in 1920 by Messrs Espail Rahimtulla from Bombay to Mombasa may be returned to the senders.

Mr. Elshardt.

Mr. Allen.

I have flagged in the accompanying volume the Special Gazette of the 19<sup>th</sup> July, 1920 containing E.A.P. Proclamation referred to.

Messrs. R. & Co. do not appear to have any case for the return of the notes on legal grounds, but if they really sent them in ignorance of the prohibition - and the fact that they appear to have registered the packages quite openly at the Bombay Post Office would seem to point to their bona fides in the matter - absolute confiscation seems rather a strong measure.

However, I do not know whether exchange consular at the time would have enabled them to make a profit if they had succeeded in getting the notes into the E.A.P. without the knowledge of the Customs authorities.

I suppose we can only refer this to Kenya.

I advise the receipt and say that a copy of their letter is being sent

to the O.A.G. for his opinion.

and send copy of their letter to the O.A.G. with copy of our reply and ask for his obvious:

and explain that with their letter Messrs. McKenna & Co. enclosed copies of Messrs. Payne & Co's letter to the Commr. of Customs dated the 22 April, 1922, copy of the petition to Sir E. Northey of 24<sup>th</sup> April, 1922 and of Priv. Sec's reply of 28<sup>th</sup> June, 1922.

G. Magleris  
10/2/27

The validity of the proclamation is open to some question. Rupee notes are not 'goods' in the ordinary sense of the term. They are transferable acknowledgments of indebtedness by the Govt. issuing them & can hardly be regarded as articles falling within the purview of the Customs Ord<sup>n</sup>.

It will be observed that ~~the~~ the articles which are specifically prohibited by s. 53 are either fraudulent, or indecent or dangerous to health. On a reasonable construction of the section the power conferred on the Govt. in the last para. would be taken to be confined to articles possessing one or <sup>or similar</sup> ~~the~~ of these qualities though they might not be of the same kind as those mentioned. Rupee notes cannot be so regarded.

3  
It wd be interesting to learn how these notes were disposed of. If they have been <sup>appropriately</sup> ~~disposed~~ to general revenue, the transaction seems hard to defend from an ethical point of view; if they have been destroyed, the exchange gov<sup>t</sup> has made a present of their value to the gov<sup>t</sup> of India at the ~~expense~~ <sup>of</sup> complainant's expense.

I should recommend unless the notes or their value be returned minus an moderate fine + expenses.

Dh.  
11/2/27

I do not think that we need worry about the possible illegality of the proclamation. While the question was not referred to the legal advisers here at the time the Govt. was satisfied that his powers under the Customs Ordce. were sufficient and that it was not necessary to pass an Ordinance to enable the proclamation to be issued (see 32982/20).

So far as I know the validity of the proclamation has never been questioned before.

As regards the merits of the case it should be borne in mind that at a time when the exchange value of the Indian rupee was about 1/10 or less, the Govt. of India suddenly removed its prohibition of ~~exportation~~ <sup>exportation</sup> pending the manufacture of

of S.A. currency the Indian currency was still circulating in Kenya at 2/- for the rupee. Anybody therefore who could import rupees into Kenya was certain of a handsome profit at the expense of the Currency Board and ~~the removal~~ the removal of the Indian export embargo was the signal for frank attempts on the part of Indians in Kenya to get in rupees from Bombay: hence the prohibition. The case in question was without any doubt one of these transactions. The normal way of remitting a large sum from Bombay to Mombasa is not by sending registered packets of notes, but by sending a cheque. The sender of the notes may have been unaware that they were ushing illegally but they were no doubt perfectly aware of the nature of the transaction and they deserve no sympathy.

The minutes on 33532/20 show that it was at first proposed to exclude notes in transit from the scope of the prohibition, but this was not done, because it was clear that if anyone was

importing more Indian currency than he required for personal use he was doing so as a speculation and ~~therefore~~ could not complain of hardship. The notes now under cover were not of course despatched until long after the issue of the proclamation. We must clearly assume the legality of the proclamation and consequently of the confiscation of the notes, and I do not consider that we should interfere with the Kenya authorities' handling of the case. I think that we should reply that the matter is one in which the S.O.S. is not prepared to intervene. And send copy of the comm. ~~to A.G. Lt.~~

I agree that it would be interesting to know what happened to the notes. Probably they were taken into revenue and the unfortunate Currency Board eventually had to redeem them from the <sup>notebanks</sup> Govt / at 2/- each, the whole object of the proclamation being thus defeated! But it is not worth while stirring this up at this late date.

Since the Govt didn't do it I wish 'Hadoken'!

J.P.M.

Jeffrey 11.2.47

See further minutes attached.

As proposed by Jeffrey

11.2.47

2 To McKenna 26. (no 1 and) } 28 FEB 1927  
3 To En 193/4/1004/1+2) ep. } JRM

28 February 1927.

.10124/27

Gentlemen,

I am directed by Mr. Secretary Anry to acknowledge the receipt of your letter of the 7th of February regarding the confiscation by the Customs authorities in Kenya of certain Currency Notes despatched from Bombay to Mombasa in November 1920, by Messrs Esmail Rahimtulla and Company and, in reply, to inform you that he regrets that the matter is not one in which he would be prepared to intervene.

I am,

Gentlemen,

Your obedient servant,

(Signed) H. T. ALLEN.

for Under Secretary of State.

MESSRS MCKENNA AND COMPANY.

Mr. Whitehouse 24/2/27

Mr. Jeffries 24/2

Mr.

Mr. E. J. Harding

Mr. Stoahey

Sir J. Shuckburgh

Sir G. Grindis

Sir C. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Earl of Olsendon

Mr. Amerj

X 10124

Kenya

28 February 1927

C. D.  
R 24 FEB  
D 28

Gentlemen,

I am etc. to

DRAFT

Messrs. McKerr

o Bay

ack. the recd. of your letter

g/c of the 7th. of February

regarding the confiscation

by the Customs authorities

Kenya  
in E.Afr. of certain

currency notes despatched  
from

copy to Sir 193  
28 FEB 1927

2  
to



Bombay to ~~Mombasa~~ <sup>in Nov, 1920,</sup> / Bay

Messrs. Esmail Rahimkulla

& Coy. and, in reply to

inform you that ~~the~~

he regrets that ~~the~~

matter is one in which

not

~~the S of S is not~~

he would be  
prepared to intervene.

I am etc ..

(Signed) H. T. ALLEN.

For Under Secretary of State,

7  
Mr. Allen  
~~Mr. Ehrhardt.~~

When you wrote your minute of the 11th February, you had, unfortunately, not been supplied with the previous papers as to the issue of the Proclamation in question. You will see from the telegram to Kenya of the 26th June, 1920, (31958/20) that the Governor was asked for his views as to the desirability of prohibition, and the question was put to him whether it could be effected by proclamation under the Customs Ordinance. In his reply of the 5th July, 1920, (on 32952/20) the Governor said that prohibition could be so effected, and on the 14th July (33532/20) the Governor was authorised to issue the proclamation.

The assumption is, therefore, that the Governor consulted his legal advisers at the time and was satisfied that the proclamation would be valid.

The solicitors do not take this point, and as regards any claim in equity it must be remembered that the notes were sent long after the proclamation, which after all was notified in the press at the time, and I do not see that ignorance of it gives these people any claim at all. I cannot help feeling a little alarmed by your proposal, and I do not think we could possibly adopt it without reference to the Colonial Government.

I should like to make a further point as regards the construction of the Customs Ordinance, but

I do so with the proper deference due from a layman.

I note that the word "goods" used under Section 63 is defined as meaning any article whatever, and as regards the point at "A" in your minute, must we, ~~be~~ (having regard to the view taken locally at the time) go out of our way to arrive at a reasonable construction having regard to the phrase "whether of the like kind as the foregoing articles or not"?

W. H. L.

17/12/27

I did not know of the previous correspondence as to this point. Though I have serious doubts as to the validity of the proclamation, etc. contained in each of the words to which you refer & of which I had taken account, I do not think that in the circumstances we should raise <sup>the</sup> question & I agree that the reply should be as Mr. Jeffries proposes.

A. L.

18/2

~~Letter 193 (copy 1 & 2) 28 FEB 1927~~

Cable Address: INTERCEDE LONDON.

Inland Telegraphic Address: INTERCEDE, AVE, LONDON."

Telephone No. LONDON WALL 3722 (3 Lines)

McKENNA & CO

SOLICITORS

THEODORE WILKINSON  
F. H. HARVEY-BAILEY  
A. S. CHATFIELD  
JOY D. HARVEY-JAMES

CHARTERED PATENT AGENTS  
THEODORE WILKINSON

RECEIVED  
8 FEB 1927  
P.O. OFFICE

IN REPLY PLEASE REFER TO  
G/C

31 to 34, Basinghall Street,

LONDON,  
E.C. 2.

7th February 1927.

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

Sir,

We have been instructed on behalf of Messrs Esmail Rahimulla & Co., of Bombay.

On the 3rd of November 1920 our Clients sent by registered post from Bombay 24,975 Currency Notes of one Rupee each in 27 packages to Messrs Jayer Shivaji & Co., of Mombassa. Each package was registered at the Bombay Post Office.

When sending the notes the Bombay Post Office enquired what each package contained and was informed of the contents.

The notes, on arrival at Mombassa, were confiscated by reason of a prohibition made by the Governor of the East African Protectorate published at Nairobi on the 19th July 1920. The senders were wholly unaware of the prohibition and had no means of becoming aware of it and in fact the prohibition was apparently unknown to the Indian Post Office.

The senders, through their Bombay Solicitors, communicated with the Governor of Kenya Colony and a copy of this is sent herewith and also a copy of the Governor's reply.

8 FEB 1927

*Copy to Gov. 19.3.27*

18

The Under Secretary of State for the Colonies.

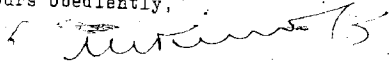
-2-

7th February 1927.

The senders fell that whilst no doubt the prohibition existed, they had no possible means of knowing of the restriction and the confiscation of the notes was a somewhat arbitrary step in the circumstances.

We believe that it is usual, at any rate in this country, where goods have been prohibited and unwittingly imported, for the Customs Authorities to permit such goods to be returned and we should be much obliged if you will give the facts of the case consideration and give instructions that the notes in question or their value may be returned to the senders.

yours obediently,



Enclosures.

By Registered Post.

22nd April, 1922.

To, The Commissioner of Customs,  
Colony and Protectorate of Kenya and Uganda  
Protectorate.

Sir,

We have the honour on behalf of our clients Messrs Esmail Rahimulla and Co., to draw your attention to our letter to the Collector of Customs Mombassa of the 3rd January 1921 and your reply thereto of the 22nd February 1921 copies whereof are sent herewith for ready reference.

Our clients say that they had not the slightest idea of ignoring the law. They never intended to convey or suggest that the law could be ignored. They did not know the law and the Post Office here should have drawn their attention to the matter.

Our clients trust that you will be pleased to reconsider the matter and return their money after levying a small fine if it is deemed necessary for their unintentional offence.

We have the honour to be Sir,  
Your most obedient servants,  
Sgd - PAYNE AND CO.  
Solicitors. High Court.

2 enclos.

BY REGISTERED POST  
-----

24th April 1922.

Sir Edward Northey Major of His Majesty's Forces Knight Commander of the Most Distinguished Order of Saint Michael and Saint George Companion of the Most Honourable Order of the Bath Governor of the East Africa Protectorate.

Nairobi.

(East Africa)

May It Please Your Excellency.

We have the honour on behalf of our clients Messrs Esmail Rahimtulla and Company to submit this petition to you to remove a hardship inflicted on them by the action of the Commissioner of Customs Colony and Protectorate of Kenya and Uganda Protectorate.

We are instructed that on 3rd November 1920 our clients sent 24978 currency notes of one rupee each in 27 insured covers insured for Rs. 24975 to Messrs Javer Shivaji and Co., at Mombassa.

As the addressees did not receive the insured covers we wrote to the Presidency Post Master Bombay to wire at our clients cost to the Postal Authorities at Mombassa to return all the insured covers.

On the 27th December 1920 we received a reply from the Presidency Post Master stating that the insured letters were duly despatched to Mombassa by his office on 4th November 1920 and that the Post Master Mombassa replied by wire to say that the customs authorities there had seized and confiscated the insured letters in question.

17

It appears that in exercise of the powers conferred upon the Governor of the East Africa Protectorate by the Customs Ordinance 1910 section 53 he declared by a notice in the special Official Gazette of the East Africa Protectorate published at Nairobi on 19th July 1920 that the importation of the following articles is prohibited.

"The silver rupee of British India and notes of the denomination of one rupee issued by the Government of India under the authority of the India Paper Currency (Amendment) Act 1917".

Our clients were not aware of such prohibition.

Our clients were informed by the Collector of Customs in his memo dated 1st December 1920 in reply to their inquiry that there were then no restrictions on the export of Indian Government Silver Rupee and currency notes from British India to Mombassa but that importation into British East Africa of Indian Rupee and one Rupee notes was however prohibited.

On 3rd January 1921 we wrote to the Presidency Post Master requesting him to pay to us or our clients Rs. 24975/- the amount for which the insured covers were insured as all the insured covers (with their contents) had been lost to them by reason of their confiscation by the Mombassa Crown Authorities.

On the same day we wrote to the Collector of Customs at Mombassa expressing our clients regret that they were not aware of the prohibition when they sent the insured covers to Mombassa and as there were no restrictions on the export of one rupee notes from British India to Mombassa they never imagined that there was such a prohibition at Mombassa and that our clients had committed a technical blunder but not intentionally and that must be clear as they otherwise would not have sent the notes almost openly so that any one seeing the



13

insured covers would know what they contained and that our clients begged that the Collector would be pleased to hand over the insured covers with their contents to the Post Master Mombassa with instructions to him to return to them to our clients at Bombay. We added that the Post Office here could not have known of your prohibition as it deliberately insured the said covers which they must have known contained one rupee notes.

On the 11th January the Presidency Post Master replied to us that the insured covers had not been lost but were presumably in the possession of the Mombassa authorities who have confiscated them.

On 15th January we wrote to the Collector of Customs with reference to his memo to our clients of the 1st December last that importation into British East Africa of Indian Rupee and one Rupee notes is prohibited to refer us to any notification published in the Government Gazette in British India notifying such prohibition. We pointed out that our clients on the faith of the removal of the restriction on the export of currency notes from British India to Mombassa consigned such notes by registered post and insured to Mombassa where then customs authorities had confiscated them and we required the information to prove our clients bona fides.

The collector of Customs by his letter of the 20th January last informed us that the prohibition had been imposed by the East African Government and not by the Government of India.

On 12th February 1921 we wrote to the Collector of Customs Mombassa that the notification issued by his Government prohibiting the import of one rupee notes was not published in the Government Gazette in India and that our clients were ignorant of such prohibition. We pointed out that the Government Post Office by insuring and transmitting the said currency notes with full knowledge of the contents of the

14

contents of the insured packets could not have intended to act illegally and that our clients were as innocent as the Post Office of any intention to violate the law. We requested the return of the insured covers our clients undertaking to pay the expenses of the return of the covers.

On the 8th March 1921 we received from the Commissioner of Customs Colony and Protectorate of Kenya and Uganda Protectorate informing us that the notes were confiscated under the law which strictly prohibited their importation and he was unable to agree that the law could be ignored as suggested.

Our clients submit that they never had any intention of ignoring the law, nor did they suggest to the Commissioner of Customs that the law could be ignored nor did they ask the Commissioner of Customs to agree that the law could be ignored.

It appears that the Commissioner of Customs has not been convinced of our clients bona fides in spite of all the candid admissions made by them to the authority concerned.

Under the circumstances our clients pray that Your Excellency will be so good as to order the return of the said currency notes to them particularly as they were misled by the fact of the Bombay Post Office having agreed with full knowledge of the contents of the said insured covers to send the said currency notes to Mombasa.

We have the honour to remain,

Your Excellency's most obedient servants,

(Sd.) PAYNE AND CO.

Solicitors, High Court.

H/J.

COLONEY & PROTECTORATE OF KENYA

15  
END

Government House,  
Nairobi,  
Kenya, East Africa.

No. M/1162.

28th June 1922.

Gentlemen,

With reference to your letter No. 10791 of April 24th submitting a petition on behalf of Messrs Khalil Rahimutalla and Company in respect of the confiscation of a number of Rupee notes. I am directed by His Excellency the Governor to inform you that the notes in question were liable to confiscation under the law and were therefore confiscated.

His Excellency regrets that he is unable to order the return of the notes.

I have the honour to be Sir,

Your obedient Servant,

Sgd -

Private Secretary to  
H.E. The Governor.

Messrs. Payne and Co.,  
Solicitors and Notary Public,  
Mercantile Bank Building,  
Esplanade Road,  
Bombay, India.