

1925

KENYA

19788
2 MAY 25

AGENTS.

DATE

1st May 1925.

ULATION

MAGADI SODA CO. CAPITAL OUTLAY ON CONSTRUCTION OF RAILWAY.

222

Unable to furnish information desired. Doubtful whether it can be obtained from any other source than Company's books.

U.S. of S.
U.S. of S.
ory of State.

Previous Paper

MINUTES

S 19788

The local Govt. cannot state the sum to be credited in Clause 20(a) of the Railway lease (see F of let. in 17/5/15)

As the Crown Agents cannot furnish that being it appears that there is no alternative to the undisputed course of asking the Coy if they can make any suggestion. I have therefore included this in the draft which I submit for comment to the Coy in reply to 9479. (1978)

When the promised despatch of April 9 is received, we must ~~but~~ hope that the corresponding

Subsequent Paper

2-10 20423

*copy sent to Mr. 497. 2 June 25
copy sent to Mr. 497. 2 June 25
copy sent to Mr. 497. 2 June 25*

The Kilmine Harbour

Work, I am to request that, in
accordance with the delay & serious nature,

that the Contractors may
be ~~forced~~ ^{it should not} that every

effort ^{will} should be made

to expedite the completion

of the works

L. 2

Signed W. O. BOTTOMLEY.

petition of His Honor
that the first seven
days of the first shed
will be ready on the
15th August 1925

May 15
encl 15/5

Ca. 19233/25 Kenya

231

May 1925

Sentⁿ

With ref. to your letter,
E 432/5, of the 24th of April,
& the reply from this Office
of the 1st of May, regarding
the date of completion of the
contract for the construction of

... to the ... and ...
... of the ...
... to the ... and ...
... and the ...
... with ...
... as ...
... If you agree to such a course
to go into the ... with the
... to request you to arrange
... and the ...
... East ...
... convenient ...
...

I am ...

HENRY W. B. TOMLEY.

July 15
July 15/25
Cd. 19233/25 Kenya



230

Edoat ...
16. 6. 25
S.D. 10

code tel

Nairobi
15/56/25
16th May 1925
Telegrams

23rd April Kilindini
Harbour Works Contractors
are being informed that
every effort should be
made to expedite Com.

Edoat

engineer, after consultation with the local Authorities, before
the handing over takes place. If the claims were of any
dimension it would of course be a matter for consideration
whether it would not be best to defer the taking over. We
discussed the possibility of such claims with Colonel Lyell, who
considered them remote. We mention it, however, so that the
local Authorities may be forewarned if the question should arise.

18. To sum up we recommend that the Colony should take
over the portions of the work indicated above as soon as the
Contractors are prepared to hand over, provided such handing over
is accompanied by an undertaking from the Contractors to the
effect that the handing over will not give rise to any claim.

We have the honour to be

Gentlemen,

223

Your obedient Servants,

Per COOKE, FITZMAURICE, WILSON AND MITCHELL.

(Sgd) H. S. G. Mitchell.

south of cross section No. 10 provides the Contractors Agent can give him a letter to say that this handing over will not hamper their work or give rise to any claim. On or about 31st December, 1925, a similar procedure should, we recommend be adopted with regard to the taking over of the whole of No. 1 shed and the Wharf etc. south of cross section 12.50.

9. When the question of handing over a portion of the work ~~the whole~~ is completed, was taken up with the Contractors last year, they asked that they should be relieved of the maintenance of so much of the work as was handed over. We were not prepared to recommend that this request should be acceded to wholly but informed them in our letter of 25th April, 1924, that:-

"With regard to the maintenance of the portion of the work handed over we are prepared to recommend that you should be relieved of all maintenance of this part of the work except in so far as it may be necessitated by unsound or defective work, i.e. in relation to the portion of the works handed over clause 45(A) of the contract would read as if it ended with the words "unsound or defective" in the 8th and 9th lines. We shall be glad to know if you agree to this procedure with regard to the maintenance of the portion of the work under consideration."

To this they agreed. As may be seen from the letters quoted in paragraph 6, this arrangement still holds good.

10. Seeing ~~the~~ Contractors are not under the terms of the Contract to hand over any portion of the work before the whole is completed, we are of opinion that in consideration of their going so it is equitable that they should be relieved of their maintenance to the extent indicated above and we recommend that the Colony should confirm our proposed action in the matter.

11. It is possible, but we hope unlikely, that the Contractors may have some claim to have ~~some~~ and re-stacking material stored ~~in~~ so, any such claim should be settled by our Resident

5. Since then we have been in negotiation with the Contractors with a view to a portion of the work being handed over before the whole is completed.

220

6. On the 31st March 1925, we wrote them as follows:-

"We are informing the authorities of the dates on which you now contemplate completing various portions of the work. As soon as we hear from them we will address you again on the subject of handing over a portion of the work before the whole is completed. You will remember that at our interview on the 24th April, 1924, Colonel Lyell asked that in considering your handing over a portion of the work before the whole was completed you should be relieved of so much of the work as is handed over. In the subsequent correspondence, vide our letter of the 25th April, 1924, and your reply of the 30th April, 1924, we came to an agreement on this subject. We presume this arrangement, which we are prepared to recommend the Colony to accept, still holds good"

to which they replied on the 2nd April, 1925:-

"We are ready and willing to assist the Railway Department in any way we can provided it will not hamper our work to bring into use as much of the Wharf as possible after arrangement with our Agent at Milindini. The arrangement as regards maintenance, see your letter of the 25th April, 1924, and our reply 30th April 1924, will hold good".

7. We have since had interviews with Colonel Lyell, of Messrs. Pauling and Co., Ltd., at which he stated that provided the handing over of the portion did not hamper them in the completion of the remainder of the work, they would not make any claim against the Government on account of this handing over. He also expressed the opinion, in which we concur, that it should be possible to hand over certain portions of the work as completed without interfering with the progress of the remainder. This question of interference could, however, only be settled definitely on the spot at or about the time the handing over is to take place.

8. We recommend that if, as we believe to be the case, the Authorities in the Colony wish to take over portions of the work as they are completed, the procedure should be, that on or about the 15th August 1925, our Resident Engineer should arrange to take over 7 Days of No. 1. shed and the Wharf etc.

9, Victoria Street,

London. S.W. 1.

23rd April, 1925.

233

KILINDINI HARBOUR CONTRACT.

Gentlemen,

When our partner, Mr. Mitchell was at Kilindini in December 1924, the Contractors' Agent stated that he hoped to have No. 1 Transit shed sufficiently far advanced to be able to hand over a portion of it and the quay in front, by 1st May, 1925.

From the amount of work done during January and February of this year it became evident that there was no possibility of the above date being adhered to, so thereupon requested the Contractors to give us dates for the completion of the various parts of the works.

They replied on the 21st March 1925, to the effect that they anticipated that:

- (a) 7 Bays of No. 1 Shed will be complete ready to hand over including Wharf etc. to the south of cross section NO. 10 by the 15th August 1925.
- (b) The whole of No. 1 Shed including the Wharf etc. south of cross section NO. 50 by the 31st December 1925.
- (c) The completion of the whole work by the 31st August 1926.

The late date for the completion of the works is much later than the present extended date for completion, May 1st 1925. Though every endeavour will continue to be made to expedite the date of completion, we fear it is unlikely that the Contractors will complete the various parts of the work much earlier than the dates they have now given.

forwarded to the Crown Agents



C.O.
19233
29 APR 25

224

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES
THE DATE OF THIS LETTER BEING QUOTED
THE FOLLOWING REFERENCE:

B.430/5

4 MILLBANK,
WESTMINSTER,
LONDON, S.W. 1

TELEGRAMS: "CROWN", LONDON
TELEPHONE: 7320 VICTORIA

28th April, 1925.

Sir,

I have the honour to transmit for the information of the Secretary of State, the enclosed copy of a letter from Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the date of completion of the Contractor for construction of the Kilindini Harbour Works and the question of certain portions of the work being taken over beforehand by the Colonial Government.

A copy of this letter has been forwarded to the Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. A. Mitchell

for Crown Agents.

Secretary of State,
COLONIAL OFFICE.

CA.



C. O.
19233
29 APR 20

27

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES,
THE DATE OF THIS LETTER BEING QUOTED
IN THE FOLLOWING REFERENCE:
TELEGRAMS "CROWN, LONDON."
TELEPHONE, 7225 VICTORIA

R. 430/5

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1

28th April, 1925.

Sir,

I have the honour to transmit for the information
of the Secretary of State, the enclosed copy of a letter from
Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the
date of completion of the Contract for construction of the
Kilindini Harbour Works and the question of certain portions
of the work being taken over beforehand by the Colonial
Government.

2. A copy of this letter has been forwarded to the
Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. H. Mitchell
for Crown Agents.

Under Secretary of State,
COLONIAL OFFICE.

CA



C. O.
19233
29 APR 25

224

ALL COMMUNICATIONS
TO BE REFERRED TO THE
CROWN AGENTS FOR THE COLONIES
THE DATE OF THIS LETTER BEING QUOTED
THE FOLLOWING REFERENCE:

E. 330/5

TELEGRAMS: CROWN, LONDON
TELEPHONE: 7785 VICTORIA

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1

28th April, 1925.

Sir,

I have the honour to transmit for the information
of the Secretary of State, the enclosed copy of a letter from
Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the
date of completion of the Contract for construction of the
Kilindini Harbour works and the ^{completed} question of certain portions
of the work being taken over beforehand by the Colonial
Government.

A copy of this letter has been forwarded to the
Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. H. Mitchell

for Crown Agents.

Secretary of State,
COLONIAL OFFICE.

CA.



C. O.
19233
29 APR 25

224

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES.
THE DATE OF THIS LETTER BEING QUOTED
IN THE FOLLOWING REFERENCE:
TELEGRAMS: "CROWN, LONDON"
TELEPHONE: 7266 VICTORIA

E. 530/5

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1

28th April, 1925.

Sir,

I have the honour to transmit for the information
of the Secretary of State, the enclosed copy of a letter from
Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the
date of completion of the Contractor construction of the
Kilindini Harbour Works and the ^{completed} question of certain portions
of the work being taken over beforehand by the Colonial
Government.

A copy of this letter has been forwarded to the
Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. H. Nicholls

for Crown Agents.

Secretary of State,
COLONIAL OFFICE.

CA.



C. O.
19233
29 APR 25

224

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES
THE DATE OF THIS LETTER BEING QUOTED
IN THE FOLLOWING REFERENCE:

E. 50/5

TELEGRAMS "CROWN, LONDON"
TELEPHONE 7180 VICTORIA

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1.

28th April, 1925.

Sir,

I have the honour to transmit for the information of the Secretary of State, the enclosed copy of a letter from Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the date of completion of the Contractor construction of the Kilindini Harbour Works and the ^{completed} question of certain portions of the work being taken over beforehand by the Colonial Government.

2. A copy of this letter has been forwarded to the Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. H. Mitchell
For Crown Agents.

Under Secretary of State,
COLONIAL OFFICE.

CA.



C. O.
19233
29 APR 25

22

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES,
THE DATE OF THIS LETTER BEING QUOTED
IN THE FOLLOWING REFERENCE:

B. 530/5

4, MILLBANK,
WESTMINSTER,
LONDON, S.W. 1.

28th April, 1925.

Sir,

I have the honour to transmit for the information
of the Secretary of State, the enclosed copy of a letter from
Messrs. Coode, Fitzmaurice, Wilson and Mitchell, regarding the
date of completion of the Contractor construction of the
Killick Harbour works and the question of ^{completed} certain portions
of the work being taken over beforehand by the Colonial
Government.

2. A copy of this letter has been forwarded to the
Colony for the information and guidance of the Government.

I have the honour to be,

Sir,

Your obedient servant,

W. H. Mitchell

for Crown Agents.

Secretary of State,
COLONIAL OFFICE.

CA

or even to give notice to them that they will claim later.

(It will be noticed that the contract is on the basis of schedule rates, but I ascertained that this and the alteration of the work in regard to the sheds will not in fact make any appreciable difference to the cost of the work to the Government.)

In favour of A + B +

WCS

also telegraph to King in reply to 16586 saying that we have proceeded as at B, + giving August 15th 1925 as the date when it is hoped that the first extra boys will be ready.

WCS

13.5.25

CS-13.5.25

Mr 14/5/25

at once

WCS 15.5.25

held back by the late delivery of the cranes, which are not part of the contract. The work is now well in hand, and the cranes will be ready when the 7 bays are open. Another point is the railway connection with the ^{Main Line} mainland, which is also outside the contract. Mr. Mitchell's impression is, however, that this is already completed.

The date for the completion of the first 7 bays (15th August 1925) is not mentioned in the Governor's telegram (18566/25), and it is important from the point of view of making a start. All the dates quoted in paragraph 3. of the Consulting Engineer's letter of the 23rd of April are not committal, ^{and} ^{but} Paulings are not anxious to offer any earlier dates.

Mr. Mitchell's idea is that the contractors must certainly have a further extension of time, and he proposes to give them to February. Then, in his opinion, the liability for penalty should begin to run. But, he considers that a further extension will in fact be necessary. February is chosen because they began work on the second shed last April, and he considers that ten months, or at the most 12 months should be sufficient if the contractors use proper expedition. He will write on this question of extension of time.

The immediate point is that, which (as shown in the letter of the 23rd of April) he has discussed with Messrs Pauling, ~~and~~ the details of handing over. I think that the arrangement proposed, namely, that for those portions of the work which they hand over before the completion of the whole, the contractors should be relieved of the cost of maintenance, except
for

for defective work, is reasonable, and Mr. Mitchell hopes that it will satisfy the contractors. In order to put matters on a definite footing it is proposed that he should send to the contractors a copy of his letter of the 23rd of April, and receive from them a copy of the instructions which they send out to their local man similarly embodying the results of the discussion.

I asked that this should wait until I had put the papers forward, lest these friendly arrangements should be held to defeat whatever ^{good} position we have over the delay in completing the whole work. But I think (in view of the failure to fix a time limit for the work on the sheds, which was not included in the contract) we are on very weak ground, and that I might at once tell Colonel Carmichael that the exchange of letters is agreed to.

As regards pressing the contractors, as the Acting Governor desires, to expedite the work, I think that we might write to the Crown Agents and ask that every effort should be made. But there are, of course, limits to the extent to which pressure of this kind could be exerted, as it may recoil on our Consulting Engineers when the time comes for them to act as Arbitrators in the final clearing up of matters in dispute. I may mention that they have been advised that it is not necessary for them to claim penalties under Clause 44 of the contract as soon as they begin to run,

Sept 1888
Mr. Ormsby Gore

Kilindini Harbour Work

203

Mr. Mitchell, Colonel Carmichael and Mr. Spiller called ~~this~~ ^{Monday} morning.

The actual construction of the ~~wharf~~ ^{wharf} reclamation etc., is now finished, and what prevents the wharf from being used is the non-completion of the sheds. The original contract provided for one double story shed at the back (i.e. under the cliff) and two single story sheds in the front. Soon after the contract was signed this was changed to two double story sheds at the front, with no shed at the back. Nothing was said regarding extra time for this variation, and the contractors were simply told to carry out ~~the~~ work. It is probable that if the Government had told them that they were expected to complete in the contract period of three years, they would have demanded extra time, and we should have known better where we stood. On the other hand, as they did not say that extra time would be necessary, it is doubtful how far they can claim it now.

Mr. Mitchell pointed out that the change made extra time reasonable, as the construction of heavy ~~two~~ story sheds at the front of the work could not be taken up until the ground work was complete, or nearly so.

Everything now turns on the sheds, and the wharf is useless until, at all events, the first 7 bays of the first shed are ready. The wharf can then be used for lighters, but not for ships until the two sheds are completely finished.

The use of the wharf would in any case have been held