

1923

KENYA

27A 94

CO  
33651  
REC  
JUL 23 1923

FROM  
JEEVAN JEE, A.M.

DATE  
5TH JULY 1923

CIRCULATION :-  
Mr. *Edwards*  
Mr. *Robinson*  
Mr. *D. M. Gandy*  
Asst. U.S. of S.  
  
U.S. of S.  
U.S. of S.  
Secretary of State.

SUBJECT  
  
NAIROBI TOWN HALL PLOT  
  
Enclosed statement by his advocate stating why in his opinion it is rendered impracticable to take action in Courts. Requests early reply and grant of interview.

Previous Paper  
*500*  
*32862*

MINUTES  
  
*This is a statement which require answer by a legal expert.  
May we have your opinion please?  
All  
6.7.23*  
  
*The point mentioned by Mr. Higgins if sound, will prevent the merits of the case being adjudicated on by the Court. I suggest we should telegraph to the D.A.G. as follows: "My copy of the Report" may not be an follows: J's legal advisors states that action for specific performance as to Town Hall site would be barred by limitation which is not merely a ground of defence but*

*Tell Mr. Gowan July 1923  
And*

Subsequent Paper  
*608*  
*33421*  
*73*

MINUTES

MINUTES NOT TO BE WRITTEN  
ON THIS SIDE.

but absolute bar which cannot be  
waived & must be taken account  
of by Court. Do you advise appeal?  
- & ask for early reply.

If Mr. J.'s opinion is  
correct (& I think it is) it  
seems of little use to refer J.  
to his legal remedy & the question  
whether we are justified in  
taking advantage of the technicality  
will arise. In my opinion the  
course which the Govt ought to have  
taken in 1905 is clearly indicated  
in the sub. letter of 5 Aug. 1905  
of the sub-commissioner who made  
the arrangement with Tevanga  
on behalf of the Govt. The whole of  
the difficulties seem to me to  
have arisen through the efforts of  
the Land Office & of the Municipality  
to evade that position.

A.S.

? See on proposed  
revised as int. reply  
during night. Has first  
been referred to Mr. Xerill

7/7/23

sent further comm  
to Tevanga when  
in receipt of reply  
from Mr. J.

Ad

7.7.23

We must resist firmly  
any temptation to believe  
that the Govt has been  
"played out time". But that  
the same treatment would  
have been accorded to  
a European I don't believe  
for a moment.

As proposed.

Ad.

7/7/23

A.S.

C/o Kenya Indian Delegation

389, Strand, N.C.2

5th July, 1923.



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

Sir,

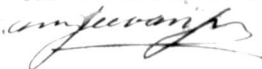
I enclose herewith, the written statement which my advocate has forwarded on to me, and in which he states why, in his opinion it is rendered impracticable for me to take the matter of "The Town Hall plot" to the Colonial Courts.

I trust you will give an early reply, and see your way clear of granting Sybil, together with my advocate an interview in the near future.

I am,

Sir,

Your obedient servant,



As I understand the Secretary of State for the Colonies requires a statement as to the reasons which, in my opinion, render it impracticable for Mr. Jeevanjee to take action against the Government in respect of the plot known as the Town Hall plot, I would point out that, in view of the law applying in East Africa, an action for Specific performance of the contract to grant a lease would, under the rulings of the Courts, which are undoubtedly correct, be barred by limitation, in my opinion.

This is due to the fact that Limitation is there, not merely a ground of Defense but an absolute bar which cannot be waived and which the Courts must take notice of.

I have suggested to the Crown Office at Nairobi that I am quite prepared to advise Mr. Jeevanjee to file proceedings if the Crown Office agree to indemnify him in the event of the case being dismissed on this technical ground. The fact that this bar now applies is due to the fact that Mr. Jeevanjee withheld pressing his claim at a time when Government were attending to more serious matters, in the year 1915, on the understanding that the matter would be referred for consideration to the Secretary of State for the Colonies when the war terminated.

Apart from the question of bars by limitation, a serious drawback to the taking of action would arise from the fact that two, at least, of the most essential witnesses have retired from Government Service, and the taking off their evidence on Commission would be expensive and, as is always the case in regard to evidence on Commission, most unsatisfactory.

The only witness to the draft of the approved lease who is now in East Africa is Mr. Hargreaves. In view of these difficulties and of the fact that the Equities of the case appear to be quite clear, I should have thought that the claim might be settled by amicable arrangement. I have not the full correspondence before me, owing to the fact that I am merely home on leave, but my recollection is fairly clear on the facts, and I consider it doubtful whether the point at issue could even be laid before the Courts or in a request as to facts and references for interpretation.

Sd. E. J. F. G. H., M.C.

20th June, 1916.

As I understand the Secretary of State for the Colonies requires a statement as to the reasons which, in my opinion, render it impracticable for Mr. Jeevanjee to take action against the Government in respect of the plot known as the Town Hall plot, I would point out that, in view of the law applying in East Africa, an action for specific performance of the contract to grant a lease would, under the rulings of the Courts, which are undoubtedly correct, be barred by limitation, in my opinion.

This is due to the fact that Limitation is there, not merely a ground of Defense but an absolute bar which cannot be waived and which the Courts must take notice of.

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Apart from the question of bars by limitation, a serious drawback to the taking of action would arise from the fact that two, at least, of the most essential witnesses have retired from Government Service, and the taking off their evidence on Commission would be expensive and, as is always the case in regard to evidence on Commission, most unsatisfactory.

The only witness to the draft of the approved lease who is now in East Africa is Mr. Harwood. In view of these difficulties and of the fact that the Equities of the case appear to be quite clear, I should have thought that the claim might be settled by amicable arrangement. I have not the full correspondence before me, owing to the fact that I am merely home on leave, but my recollection is fairly clear of the facts, and I consider it doubtful whether the point at issue could even be laid before the Courts of law and reduced as to facts and references to interpretation.

Sd/- E. C. W. G. K.C.

1st June, 1917.

re: Town Hall Nairobi.

97

As I understand the Secretary of State for the Colonies requires a statement as to the reasons which, in my opinion, render it impracticable for Mr. Jeevanjee to take action against the Government in respect of the plot known as the Town Hall plot. I would point out that, in view of the law applying in East Africa, an action for specific performance of the contract to grant a lease would, under the rulings of the Courts, which are undoubtedly correct, be barred by limitation, in my opinion.

This is due to the fact that limitation is there, not merely a ground of Defense but an absolute bar which cannot be waived and which the Courts must take notice of.

I have suggested to the Crown Office at Nairobi that I am quite prepared to advise Mr. Jeevanjee to file proceedings if the Crown Office agree to indemnify him in the event of the case being dismissed on this technical ground. The fact that this bar now applies is due to the fact that Mr. Jeevanjee withheld pressing his claim at a time when Government were attending to more serious matters, in the year 1915, on the understanding that the matter would be referred for consideration to the Secretary of State for the Colonies who then terminated it.

Apart from the question of bars by limitation, a serious drawback to the taking of action will arise from the fact that two, at least, of the most essential witnesses have retired from Government Service, and the taking of their evidence on Commission will be expensive and, as is always the case in regard to ~~quasi-judicial~~ Commission, most unsatisfactory.

The only witness to the draft of the approved lease who is now in East Africa is Mr. MacCreaver. In view of these difficulties and of the fact that the Equities of the case appear to be quite clear, I should have thought that the claim might be settled by amicable arrangement. I have not the full copy of the evidence before me, owing to the fact that I am merely home on leave, but my recollection is quite clear of the facts, and I consider it doubtful whether any case at all could even be laid before the Courts, and if so, the case to facts and referred to the Courts.

Yours faithfully,

W. G. ...

11 9 JUL  
10 9 9

33657/23 Kenya

Codes + Sent  
3.10 pm  
4.4 July 23  
①

Code Tel.  
DRAFT.

Governor  
Nairobi

July 9<sup>th</sup>

~~Very confidential~~

Underhatch 11 May 1922

MINUTE.

Mr Seel 9.7.23  
Mr Parkinson 17/7/23  
Mr. Davis  
Mr. G. Grindle  
Mr. H. Road  
Mr. J. Maclean Smith  
Mr. Ormsby Gore  
Duke of Devonshire

Confidential for Jeevanjee  
Legal Adviser states that  
action for specific performance  
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2 Mr

11 9 JUL  
D 9 9

33657/23 Kenya

Codes + Sent  
3.10 pm  
4.1 July 23  
7.4 J  
(C)

JC

Code Tel.  
DRAFT.

July 9<sup>th</sup>

Governor  
Nairobi

~~My confide~~

My despatch 11 May 1922

MINUTE.

Confidential for Jeevanjees  
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- Mr Seel 9.7.23
- Mr Parkington 17/23
- Mr. Davis
- Mr G. Grindle.
- Mr H. Road.
- Mr J. Masterton Smith.
- Mr Ormsby-Gore.
- Duke of Devonshire.

2 Mr



~~must be taken notice~~

of which notice must be  
taken by Court. Do  
you advisers agree.

Reply by telegraph  
as soon as possible

SECRET.

~~must be taken notice~~

of which notice must be  
taken by Court. Do  
you advisers agree.

Reply by telepath  
as soon as possible

SECRET.

7/K  
 Hall No. 3 10 pm  
 9.7.23

Colonial Office

Gwabner

Governor Nairobi

DOYPEUP	XEEBUEIDIEH	ZYKOSTAAZO
OPLENEU	SGUOUAEOHB	HIEOTSEMUY
YAWOND	TYOERIMERL	SAHTIUXREQ
OMLISRY	BACAXURABO	MINTEABABY
UKENYA	CORUZACBIP	BIMFAUPWHO
ODANIUL	UPVAWNYEINY	NAAGZSUSWA
KRAIBYTA	EYAKOAGUTH	AILEUNIBYTA
ISECER		

57/K  
Hall Nbr 3 10 pm  
9.7.23

Colonial Office

G. Dabner

Governor Nairobi

DOYPEUP	XEEBUEIDIEH	ZYXOSTAAZO
DOPLENEU	SGUOUAEOHB	HIEOTSEMUY
UYAWOND	TYOERIMERL	SAHTLUXREQ
OMLISRY	BACAXURABO	MINTEABABY
OKENOVA	CORUZACBIP	BIMFAUPWHO
DOANIUL	UPVAWNYEINY	YAAOZSUSWA
KRAIBYTA	EYAKOAGUTH	HILONIBYTA
YUSECER		

J. 33651/23 Kenya.

Sir

~~Se~~ 9 July 1923.DRAFT.

Mr. Jeevanji Esq.

MINUTE.

Mr. Seal 9.7.23

Mr. Parkinson

Mr.

Mr. Davis.

Mr. G. Grindie.

Mr. H. Read.

Mr. J. Masterton Smith.

Mr. Ormsby-Gore.

Mr. C. of Devonshire.

I am directed to acknowledge the receipt of your letter of the 5<sup>th</sup> of July regarding a ~~matter~~ <sup>matter</sup> that must be <sup>by Mr. E. H. Figgis</sup> on the subject of the Town Hall

site, Nairobi, and to inform you that a telegram has been sent to the Acting Governor of Kenya in the matter. A further communication will be sent to you when the Acting Governor's reply is received.

(Signed) H. J. READ