

1924

KENYA

C. O.  
23452  
16 MAY 24

Date

17th April 1924

Continuation

S. M. ...  
23/5/24

See also letter ...  
all cases to Mr. Bayard

In view of ...  
... ..

MINUTES

This case and that of Mr.  
D. S. McLeod (file 15227/EA) are  
now very much tied up with each  
other, and as I would be  
reluctant to deal with the  
general question involved in the  
file I have ... ..  
in both cases.

I ... ..  
... ..  
... ..  
... ..  
1927 that we have learned  
... ..

29 MAY 1924  
29 MAY 1924  
27 JUN 1924  
... ..  
... ..  
... ..

MINUTES.

MINUTES NOT TO BE WRITTEN  
ON THIS SIDE.

Secretary, I have  
been named that my  
letter June 6th 1874  
was to be read  
and of 8th.

Oct 22 1874

from  
p. 24  
23/27/24

Remains in L.F.

W. H. H. in the room

W. H. H.  
advice

Mrs. Bayne has got an exchange and should now be satisfied. But there are one or two points in connection with her case to which attention should be drawn.

(a) Captain Marsh Smith, her representative, told her in August last (enclosure to 43462/23) that he had seen a bad report on the farm at the Land Office; that the farm was known to be worthless, even for grazing; and that any capital spent on it would be wasted.

(b) But according to the Governor and Mr. Martin the same Captain Marsh Smith admitted that the farm was a good grazing proposition, (57669/23), and only complained because it was not a coffee farm (19007/24). Yet, when the farm was inspected, it was found to be in accordance with the description given to Mrs. Bayne by Captain Marsh Smith.

Assuming that we have the whole story, the only possible explanation seems to be that Captain Marsh Smith took no trouble to represent the true facts to the Land Office, but left Mrs. Bayne to do what she could at this end. This is strange, but Captain Smith may of course not have felt qualified to act without instructions, being only an agent.

In any case it is a pity that the Government inspection was not made before 57669/23 was written.

(2) Mr. Milward

Mr. Milward claimed that there was a breach of contract in that he was not allowed to exchange his farm for another. The Kenya Government takes its stand on the fact that the original scheme provided only for exchange between allottees and that the

right

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right to exchange a farm for one which had been included in the scheme but not allotted was a subsequent concession the withdrawal of which was not a breach of the terms on which the farms were taken up. See in this connection my note attached to 19307724.

As regards the question whether the withdrawal of the right to free exchanges of farms allotted for farms not allotted was a literal breach of contract, I presume the answer depends in each case on whether the allottee concerned was informed of what the Governor said in 48621919. I cannot say whether Mr. Milward was so informed or not, but I do not doubt that the existence of such an arrangement was pretty generally known among the soldier settlers up to July 1920, when the privilege was revoked.

Mr. Milward however takes his stand on more general ground than this. He claims that having undertaken to buy a farm at a certain price, the farm being described in the catalogue as a "good grazing farm" he was entitled to believe that the farm was worth the price or the value put upon it, and was entitled to have it in exchange if it did not answer the description.

This is reasonable, and I think that the Kenya Government lay too much stress on the view that it was very generous of them to admit such a claim.

The ~~same~~ question is whether what the Kenya Government have done for Mr. Milward represents reasonable and just compensation for what he has suffered. In this connection please see my minute of 10/10/22 in file 10337/E.A.

Dated

Dates are of some importance in considering this case, and it may be convenient to give, as far as possible, a chronological table. ~~Yearly 1920-~~

- Mr. Milward went to Kenya.
- July 1920 - finding the farm allotted to him useless he applied for another.
- Believing that exchanges could be arranged without restriction, he did not attempt to see that his farm was no good. It appears that his application was for a particular farm, for which there were other applicants. A ballot was held in which he was unsuccessful.
- Feb. 1921 - he applied again for another and it being established that the farm was useless, he was told he could have another.
- March 1921 - he obtained a temporary appointment as £200 a year in the Medical Research Department. Afterwards he was employed in the K.A.F. Quarantine Section until June 1922.
- Sept. 1921 - he accepted £200 from an Italian for his farm. The Italian wanted the farm and the Italian wanted.
- Apr. 1922 - transfer of the farm to the Italian completed.
- June 1922 - Mr. Milward's employment under the Government ceased, and he afterwards returned home.
- March 1923 - he applied to the C.O. for compensation.

With every sympathy for Mr. Milward's position, I think it is clear that his case is to be

be differentiated from those of the other ~~settlers~~<sup>settlers</sup> chiefly by the fact that he threw up the business rather than try to make good with the farm which the Government was prepared to give him in exchange for his own. He says that by February 1921 the offer of an exchange was of no use as he had not enough capital left. Yet there is no evidence that he pressed for an exchange between July 1920 and February 1921; and by his own admission he was able, after February to build a house valued at £1,600. The facts that he made no effort between February and September 1921, to select an alternative farm, and that at no time while in Kenya did he complain of his treatment, must also tell against his claim. Moreover, there is no evidence that his acceptance of £100 for his right of choice of a second farm represents the best that he could have done in the circumstances.

I would suggest action as follows:-

(1) To Mrs. Bayne give the substance of the Governor's despatch on her case and say she will no doubt instruct her local representative to take up the matter as suggested.

(2) To Mr. Milward - say that the Secretary of State has now received and considered a further despatch from the Governor of Kenya; that the Secretary of State regrets the unfortunate position in which Mr. M. finds himself as a result of his participation in the scheme; it is however the case that no guarantee of success was held out to those who participated in the scheme, and a claim for compensation could only be entertained in any case in which the conditions of the scheme, or the possibilities of any of the farms, were misrepresented. ~~It~~ It appears to be the case that the farm selected by Mr.

Milward

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Milward was incorrectly described in the catalogue, and that the Kenya Government were prepared, as soon as this was pointed out, to recognise the fact by offering another farm. Say that the Secretary of State cannot admit that the Kenya Government broke its contract by not arranging an exchange until the unsuitability of the original farm was pointed out, particularly if, as the Secretary of State understands to be the case, Mr. M's application in July 1920 was for a particular farm for which there were other applicants, one of whom was successful in the ballot held, and no further application for an exchange was made until February 1921; moreover that the Government cannot be held responsible for the fact that Mr. Milward disposed of his right to a second farm for £100. Regret that in all the circumstances the Secretary of State cannot agree to payment of any compensation from Kenya funds.

(3) To the Governor acknowledge both despatches and enclose copies of above letters. With regard to the contention that the original scheme provided only for exchanges between allottees before the 31st of July 1919, refer to 40725/19 and 48621/19 and say that the extension of the time limit to July 1921 was notified to all selected applicants as a copy of the printed notice is attached to 2870. 19 and must be regarded as an integral part of the conditions. The extension of the concession to farms not taken up was not specially notified, but was no doubt generally understood; in any case an allottee who obtained an unworkable or unsuitable farm must be regarded as having a reasonable claim to exchange it for another if another is available, and the Secretary of State trusts that this will continue to be recognised, and that no unnecessary obstacles will be put in the way

of allottees who make bona fide applications for an exchange on these grounds. Conclude by asking for a report as at X in my minute of 1930/34.

(4) To Sir B. Lyndon (non-official)

Acknowledge 19307 and thank for the trouble taken. Refer to official despatch conveying decisions communicated to Mr. Lyne and Mr. Hillward. Say that it is noted with satisfaction that these are isolated cases and that there is no evidence of any general complaint of obstructiveness on the part of the Land Office, and express the view that, as the same must be regarded, in the light of the general concessions which the Government has had to make, as a failure, the best policy will be for the Government to give every possible assistance to those individuals who are really anxious to go on with it and make something out of the land which they have been allotted.



of allottees who make bona fide applications for an exchange on these grounds. Conclude by asking for a report as at I in my minute on 1930/24.

(4) To Sir R. Coryndon (semi-official)

Acknowledge 19307 and thank for the trouble taken. Refer to official despatch conveying decisions communicated to Sir R. Coryndon and Mr. Hilliard. Say that it is noted with satisfaction that these are isolated cases and that there is no evidence of any general complaint of obstructiveness on the part of the Land Offices and express the view that, as the above matter regarded, in the light of the general concessions which the Government has had to make, as a future, the best policy will be for the Government to give every possible assistance to those individuals who are ready and anxious to go on with it and make the best use of the land which they have been allocated.

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(4) To Sir R. Cayndon (semi-official)

Acknowledge 19307 and thank for the trouble taken. Refer to official despatch conveying decisions communicated to Mrs. Payne and Mr. Milward. Say that it is noted with satisfaction that these are isolated cases and that there is no evidence of any general complaint of obstructiveness on the part of the Land Office; and express the view that, as the scheme must be regarded, in the light of the general concessions which the Government has had to make, as a failure, the best policy will be for the Government to give every possible assistance to those individuals who are really anxious to go on with it and make something out of the land which they have been allotted.

*C/22.5.24.*

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(4) To Sir E. Coryndon (semi-official)

Acknowledge 19307 and thank for the trouble taken. Refer to official despatch conveying decisions communicated to Mrs. Payne and Mr. Milward. Say that it is noted with satisfaction that these are isolated cases and that there is no evidence of any general complaint of obstructiveness on the part of the Land Office; and express the view that, as the scheme must be regarded, in the light of the general concessions which the Government has had to make, as a failure, the best policy will be for the Government to give every possible assistance to those individuals who are really anxious to go on with it and make something out of the land which they have been allotted.

*Off 22.5*



15 MAY 27

17th April, 1924.

Sir,

With reference to Colonial Office despatch No. 12 of January 3rd last, I have the honour to inform you that I have caused a detailed inspection of and report on the Soldier Settlement Farm allotted to Mrs. Bayne to be made by a Government Surveyor. The Surveyor's report is that the farm is not a good grazing proposition on account of the broken and rocky nature of the country and because the water is difficult of access.

2. The report made by Mr. Bayne's local representative was not so adverse in my opinion as to justify the case being treated as a special one, but in view of the Surveyor's report, I am in accordance with the practice which has been pursued throughout this scheme, prepared to allow Mrs. Bayne to exchange her farm for another. I would suggest that she should instruct her local representative to take the matter up with the Commissioner of Lands who has been instructed accordingly.

I have the honour to be,  
Sir,

Your most obedient, humble servant,

*R. G. G. G.*

GOVERNOR

HONOURABLE

J. H. THOMAS, F.C.S., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

23452/24 Kenga

29 May 1924

Sir

DRAFT.

The enclosed copy

MINUTE

Buen May 24  
Offices 26/5  
Cottamby 26/5

- 1. U. Gravel
- 2. P. Band
- 3. Madras
- 4. Madras
- 5. Madras

Copy to file 10/1

D 23452/24  
29 MAY 1924  
copy to Gen Kya 539

EA  
 With ref to the letter from this Dept of the 3<sup>rd</sup> of Jan, 1924, by which you stated that you had received and considered a further copy from the Govt of Mysore regarding the portion allotted to you under the Captain's Endowment Scheme of 1875 and the subsequent unfortunate position in which you find yourself as a result of your participation in the same. It is however the case that no amount

also

of success was held out to those  
who participated in the scheme,  
and a claim for compensation  
could only be entertained in any  
case in which the conditions of the  
scheme, or the possibilities of any  
of the farms, <sup>could be shown to have been</sup> misrepresented  
to the allottee.

It appears to be the case that the farm  
selected by you was incorrectly decided  
in the catalogue, <sup>(but it is dead)</sup> and that the Kenya  
part was prepared, as soon as this was  
pointed out, to recognize the fact by  
offering <sup>you</sup> another farm.

3. Thomas cannot admit  
<sup>can be held to have committed a breach of</sup>  
that the Kenya part broke the contract  
by not arranging an exchange until  
the responsibility of the original farm was  
pointed

of success was held out to those  
who participated in the scheme,  
and a claim for compensation

could only be entertained in any  
case in which the conditions of the

scheme, or the possibilities of any  
of the farms, <sup>could be more than seen</sup> ~~was~~ misrepresented  
to the allottee.

It appears to be the case that the farm  
selected by you was incorrectly described  
in the catalogue, and that the Kenya  
Part was prepared, as soon as this was

pointed out, to recognize the fact by  
offering another farm.

3. Mr Thomas cannot advise  
that the Kenya Part <sup>can be held to have commenced as a result of</sup> contract  
by not arranging an exchange with  
the instability of the original farm was  
pointed

pointed out, particularly in,  
as he understands to be the case,

The application in July 1920  
was for a particular farm

for which there were other  
applicants, one of whom was

successful in the ballot, <sup>small</sup> ~~large~~  
and you made further application

for the exchange ~~was made~~  
until February 14 21

The fact can it be held  
responsible in the fact that

you disposed of your rights to  
a second farm for £100.

4. Mr Thomas regrets that

DRAFT

MINUTE

in all the cases he cannot  
agree to the payment to  
or of any compensation  
from Kenya funds.

GEORGE H. J. READ

23452/44 Kenya

Amud  
26026

29 May 1924

DRAFT.

Sir,

H. M. Payne, J.C.C.

with reference to your letter of the 5<sup>th</sup>

of April, I am to inform you that

a copy has been sent from the Dept

of Kenya Station that he has

caused a detailed inspection of

subject to the farm allotted

to you under the said station

to be made by a Port

Surveyor. The Surveyor's report

is that the farm is not at

grazing preparation on account

of the broken and rocky

MINUTE.

21 May 24

Office 26/5-

Bottomley 26

29 MAY 1924

27 JUN 1924

copy to Sir H. Payne

446



nature of the country and  
because the water is difficult  
of access. ~~The further States~~

2. The Governor states  
that the reports made by the  
previously  
local representative was not so  
adverse, in his opinion, as to  
justify the case being treated  
as a special one, but that

in view of the Surveys report,  
he is prepared to allow you to  
exchange one farm for another.

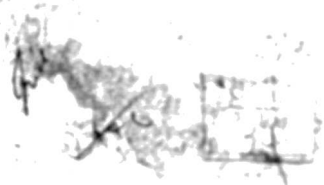
be ~~to~~ let you hand  
instruct the local representative to take

the matter up with the Commissioner of Lands,  
who he has ~~understood~~ understood understood  
3. Mr. Thomas promises to act on

the all no doubt instruct you  
to use the Governor's suggestion  
and representative to take up the matter

Signed H. J. READ

No 23452/24 Kenya



29 Jan 1924

My dear Comptroller,

DRAFT. (21. p. 44  
Patterson's Office)

Comptroller, Kenya

I have not your letter of the  
17th of March ~~concerning~~ for the  
trouble which you have taken to

MINUTE

Shew that 24  
of the 24/5  
Governor 26/5/24

referred to the question which  
you have mentioned in the  
last official statement.

An official despatch  
has not yet been sent  
and the decision communicated

to Mr. Baynes & Mr. Howard  
has not yet been received  
and the matter is still  
under consideration.

There are several cases  
that there is no evidence of

2 - Copied

466

ature of the country and  
because the water is difficult

of access. ~~to further state~~

2. The Governor states  
that the post, made by the  
Secretary

local representative ~~is~~ not in

accord, in his opinion, with

just, in the case being treated

as a special one, but that

in view of the Surveyor's report,

he is prepared to allow you to

exchange the franchise

for ~~the~~ rights set on hand

without the local representative's

approval. The matter up with the Commission of lands,

who has been instructed in the matter.

3. ~~As the Commission has~~

~~the will as doubt in that you~~

~~are now the Governor's suggestion~~

~~local representative to take up the matter~~

(Signed) H. J. READ

ature of the country and  
because the water is difficult  
of access.

2. The Governor states  
last the report made by the  
committee  
local representatives re. not to

advise, in his opinion, ask  
just, in case being treated  
as a special case, but that

in view of the Governor's report  
and

he is prepared to allow you to  
exchange one farm for another.

3. The report says that you should

instruct the local representatives to

the matter up to the Governor's order,  
received in connection with the matter,  
which has been instructed accordingly.

3. In the same premises that you  
are now the Governor's suggestion  
to be of the matter

no suggestion

(Signed) H. J. READ

No 23452/22 Kenya

293

DRAFT. (21. for Mr  
Patterson's office)  
and Gwynon, K.M.F.

MINUTE.

.. Owen May 24  
.. Effros 26/15  
.. Bolton 26/15

.. [unclear]  
.. H. Read  
.. [unclear]  
.. [unclear]  
.. [unclear]

[unclear]



29 May 1944

My dear Gwynon,

I have read your letter of the  
27th of March <sup>in regard</sup> ~~re~~ the  
trouble which you have taken to  
refer to the question which  
raised in our discussion with the  
Land Settlement Commission.

An official despatch  
being sent by the next post  
regarding decisions communicated

to Mr. Bayne & Mr. Howard  
has gone to them and so no copy  
is being sent to you at

these are isolated cases -  
that there is no evidence of

any verbal complaint of  
obstructiveness on the part of the  
Land Office <sup>specimen in enclosure</sup>  
as the scheme must be refused,  
in the light of the formal concessions  
which the Govt. has had to make,  
as a failure, the best policy will  
be for the Govt. to give every possible  
assistance to those individuals who  
are really anxious to do or will  
it had make something out  
of the land which they have  
been allotted.

Yours sincerely,  
(Sd) W. C. Bottrill

For 23452/100 Kenya

299

For  
Arnold  
11556/35

29 July 1924

DRAFT.

539

Portuguese  
MINUTE

Port 24  
Office 26/5  
Bottrill 28/5

1237 EA  
I have to act the deed of  
the despatches No 451 of the  
16<sup>th</sup> of April - No 465 of the  
17<sup>th</sup> of April, regarding the  
farms allotted to Mr D.S.  
Bulward by Mr Burre under  
the Land Settlement Scheme,  
to him, with a view to the  
information of the  
to Mr Milner with regard  
to the land which has been  
allotted to him.

W. C. Bottrill  
29 July  
(Sd) Bottrill

argument in para. 2 of your  
dis. of the 16th of April  
states that the original

scheme provided only for  
exchanges between all offices  
before the 25th of July 1919.

I have to invite your attention

to Mr Edward Northey's letter

no. 44 of the 5th of July of 19th of Aug 1919

the terms of which ~~agreed to~~ <sup>agreed to</sup>  
in which the ~~proposed~~ <sup>proposed</sup> ~~extension~~ <sup>extension</sup>  
A extension of the time limit to

July 1921 and in the letter of

which ~~it is~~ <sup>agreed that unaltered</sup> ~~proposed~~ <sup>proposed</sup> ~~extension~~ <sup>extension</sup>  
which ~~is~~ <sup>agreed that unaltered</sup> ~~proposed~~ <sup>proposed</sup> ~~extension~~ <sup>extension</sup>  
must be available for exchange  
an extension. The extension

to July 1921 was notified to

all selected applicants and

must be regarded as an  
integral

40725/19  
48621/19

argument in para. 2 of your  
letter of the 16<sup>th</sup> of April  
that the original

scheme provided only for  
exchanges between allottees

before the 25<sup>th</sup> of July 1919.

I have to invite your attention

to Mr. Edward Northey's letter

of the 5<sup>th</sup> of July 1919 of Aug 1919

in which he ~~proposed~~ <sup>agreed</sup> an  
extension of the time limit to

July 1921 and in the letter of

which he ~~is~~ <sup>agreed</sup> referred to  
said to be available for exchange  
an extension. The extension

to July 1921 was notified to

all selected applicants and

must be regarded as an  
integral

40725/19  
40721/19

integral part of the conditions  
and, ~~which the extension of~~  
~~the extension of the conditions~~

to farms not taken up  
in those available for  
exchange  
was not specially notified,

it  
was no doubt generally  
understood that such an arrangement existed

an allottee who obtained  
an unworkable or mis-  
described farm must be

regarded as having a  
reasonable claim to exchange

it for another, if another is  
available, and I trust that

this practice will continue  
to be recognized and that

DRAFT.

MINUTE

no unnecessary obstacles  
will be put in the way of  
allottees who make bona  
fide applications for an  
exemption on these grounds.

I take this opportunity  
3 ~~to draw your attention to~~ ~~probable changes~~  
to request that

~~in Parliament, and that I shall be~~

as some time has elapsed  
and settlement  
in the execution of the Scheme, you will

send me with a full report as to the  
progress of the undertaking to settle ex-cess  
man and women on the land in return for the  
number of farms actually taken up, the  
number exchanged for others, the number  
sold by allottees since they were taken up

will be  
useful if  
the report  
can include  
figures  
showing

(with some indication of the prices realised),  
the number simply abandoned, & the position  
& prospects of those who took up farms and have aban-  
-doned them, with particular reference to the  
sufficiency of the capital (£1000) originally provided  
as a memorandum of the progress

Signed J. H. T.

no unnecessary obstacles  
will be put in the way of  
allottees who make bona  
fide applications for an  
exchange on these funds.

I take this opportunity

to ~~make a~~ ~~probable~~ ~~change~~

to request that

~~the~~ ~~number~~ ~~of~~ ~~shares~~ ~~to~~ ~~be~~

~~is~~ ~~not~~ ~~some~~ ~~for~~ ~~has~~ ~~been~~ ~~elapad~~  
~~and~~ ~~settlement~~

is the execution of the Scheme, for all

forms & one with a full report as to the  
results of this endeavour to ~~secure~~ ~~ex~~ ~~change~~  
man - ~~best~~ ~~arrang~~ ~~on~~ ~~the~~ ~~land~~ ~~in~~ ~~regard~~ ~~to~~ ~~it~~ ~~will~~ ~~be~~  
number of farms actually taken up, the ~~useful~~ ~~of~~  
number exchanged for others, the number ~~the~~ ~~report~~  
sold by allottees since they were taken up ~~can~~ ~~include~~  
(with some indication of the prices realised), ~~figures~~  
the number ~~is~~ ~~being~~ ~~abandoned~~, & the position ~~showing~~

& prospects of those who took up farms and houses etc.  
I should then, with particular reference to the  
sufficiency of the capital (£1000) originally provided  
as a memorandum for the purpose

Signed J. H. T.