

RONYA

C. O.  
31063  
1 JUL 24

201  
London 518

Date

24 April 1904

Business of Capt. Smith's  
letter

Report on possession of  
collecting fine of the 2860/-  
on 56 natives accidental  
on a farm

Facing Page

MINUTES

Ordinance amended

Mr. Budge

When this committee would I  
sent it, in letter 377 (377) with  
note I feel unhappy. Presumably  
each & have observed, introduced &  
& has now been brought back to  
me.

The Ordinance has, in fact, as  
a means of discouraging crime in  
a highly administered colony in  
which the village, or layer, and  
of native life, may be preserved  
to know of any unscrupulous criminal

Facing Page

10/10/04

1878  
I have made you of the amount  
paid to by the Ord & to land  
over the proceeds of the fine to  
Capt. Hewitt (who certainly seems  
to have had a bad time).

I do not suggest any action  
All you have considered the  
legal construction of the Ord & if  
there is any doubt, I do not  
see how the fine can stand.

C.S.

27 24

Mr. Bottomley

I do not have some doubt as to the interpretation  
which has been given to the expression "area" or  
"district". But if there was no other point I should  
not advise you to take any action, since, having  
regard to the wide meaning which it is possible to  
give to these words, and to the fact that under  
Section 4, the Governor is given power to determine  
the limits of an "area", I think the point, though  
doubtful, is not sufficiently uncertain to warrant  
interference. The Governor, however, has not observed  
the terms of the Ordinance. Under Section 2 he has  
not yet been appointed as to sub-Section (a) (1) of (1)  
and we are clearly only dealing with sub-

Section

all-section (b). Therefore, there has got to be  
some thing in a criminal case; an enquiry as to  
whether evidence has been suppressed; and a decision  
by the Governor that he is satisfied that is the  
case. All we have got is a criminal case, and the  
Governor's decision, but no enquiry. The position  
is most unfortunate, and a remission of the fine  
might be a most embarrassing proceeding, but I  
cannot do else than advise you, that the Ordinance  
has not been carried out, and that, therefore, I  
think the fine is illegal.

AB  
11/1

July 6/1861.

This I understand that you have  
written but being that if the  
enquiry has not in fact been  
held the fine must be  
void. And at the same  
time I think we should not  
let, although the Govt.  
papers must be the signature  
of the Governor, that we  
or the friends of that  
Government, or any one  
connected with it, should  
take any part in the  
case of those who are held  
by the Government.

KENYA.

NO. 518.



480

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

28th April, 1924.

Sir,

I have the honour to inform you that in exercise of the powers conferred by Clause 8 of the Collective Punishment Ordinance No. 4 of 1909, I have approved of the imposition of a collective fine of Shs 250/- on 56 natives resident on the farm of a Captain Hewitt in the Transvaal district.

2. I enclose a copy of the Magistrate's Case File and I am satisfied that there is no doubt, but that the fires were caused deliberately. They appear to me to form the most serious part of a definite campaign of crime against Captain Hewitt who has had his barrow stolen, his food shed and his house-store broken open, his work-shop, guest house and 3 other huts burned down. I cannot credit that the natives who live on this farm are of the same tribe as the suspects are not in possession of such evidence as would support a conviction, and I trust you will approve my action.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*R. Thompson*

GOVERNOR.

RIGHT HONOURABLE

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

SECRETARY OF STATE FOR THE COLONIES,

DOWLING STREET, LONDON, S. W.,

## COLONY AND PROTECTORATE OF KENYA.

In the Resident Commissioner's  
Court.

At Kitale.

Criminal Case No. 332, 1923.

Prosecutor:- Crown

Complainant:

Accused:-

1. Sungora s/o Wanduya.
2. Mungasia s/o Sabura.
3. Sungora s/o Mwendu.
4. Waroka s/o Umeru.

Date of Issue:- 5th Nov. 1923.

Date of hearing 12th Nov. 1923.

Charge:- Mischief by Fire Sec. 436, I.P.C.,

Judgment:- All the Accused discharged.

Criminal Case No. 332 of 1923.

Accused:-

- i. Sungura s/o Manduya
- ii. Mungasia s/o Sabura
- iii. Sungura s/o Mungambe RA Ombigo.
- iv. Naroza s/o Usuru -

Accused present in Court 9/11/23.

Inspector Briscoe for the prosecution.

Ishan s/o Ngawa sworn in as Court Interpreter.

Dd. S.H. LaFontaine.

1st Witness for the prosecution Asmani s/o Abdulla Mwanbu Mohammedan sworn stated:-

I work as fundi for Captain Hewitt - I have no hut there as it was burnt some days ago. I remember when Captain Hewitt's house was burnt - It was on the 29th October - I received a report of it from Accused No 4. He came at 2 A.M. while I was asleep. He said the house of Captain Hewitt is burning. I got up. He said "If you remain silent when the Swana's house is burning, your car must be burnt also". I went to Capt. Hewitt's house which was already gutted and the fire was extinguished. On the morning I went to Mr. Taylor and reported the matter. I thought he would report the matter to the Police. On the evening of the 30th instant Accused No. 4 said "We called you and you did not come at once. Your own hut will be burnt also." On Wednesday the 31st instant at 12 p.m. my own hut was burnt. The fire was light seen at the door and in 3 other places. It began just above the door but I saw it simultaneously - also in another place. I went out with my wife - I saw 2 men running with lighted grass in their hands - I could not recognise the two men running. They ran in the direction of the Sitona Road and through the

maire shamba and the wheat.

I know Accused No. 1 and 3. They live in the Kitosh Reserve. Shillings 100/- belonging to me in notes and property were lost in the fire.

R.O.C.

No questions.

Sd. S.H.La F.

Intd. S.H.La F.

2nd Witness for the prosecution - Lafuya d/o Habiris, Mjinja  
Pagan - Affirmed states:-

I am the wife of 1st Witness. I live on Capt. Hewitt's farm. I remember on a Monday the Accused No. 4 came and called my husband. He said, "the Swana's house is on fire - He said, "Your house also will be burnt." "Get up". He got up. On the Tuesday at 12 p.m. my hut also burnt. I saw the fire start. It waked up my husband - I saw fire starting in several places about half way up the hut. I went out and saw some fire being brandished in the air near the cattle boma in the direction of the Kitosh Reserve.

R.O.C.

No questions.

Intd. S.H.La F.

Intd. S.H.La F.

3rd Witness for the prosecution Munguad s/o Valinula -  
Pagan - Affirmed states:-

I am Capt Hewitt's house boy - on Monday about 11 days ago I remember Capt. Hewitt's house being burnt. I went with the Kiapara and a boy called Dima to the homes of Munguad to collect tette. No one remained in Capt. Hewitt's house and no one in my hut. I know Accused No. 1, 2, 3 and 4. I saw Accused No. 1 and 4 in Munguad's hut at 9 p.m. on the night of the fire. Accused No. 2 left about 4 p.m. saying he wanted to see his cattle

I do not remember Accused No.1 going, but he left about 11 p.m. as I heard he was not in the Hut then. I left the Hut at about midnight. I left with the Niapara Sirrao the pantry-boy and Kiberege - Accused No.4 came with us. When I returned to the house I found my Hut and Capt. Hewitt's house in flames. I did not see any one near the burning houses. She.10/- and She.12/- of clothes belonging to me were lost in the fire. About 2 months ago my Hut was burnt again. On the last occasion the fire began at the door of my Hut. On the first occasion 6 ducks were also burnt in the fire. I gave evidence against Accused No.1 some months ago, when Captain Hewitt was complainant. The charge against Accused No.1 was that of theft.

S. O. C.

No Questions.  
Intd. S.H.La F.

Intd. S.H.La F.

Case remanded till 12/11/23 for the hearing of Capt. Hewitt's evidence.

Sd. S.H.La Fontaine.

R.O., 9/11/23.

Court re-opens on 12-11-23.

COMPLAINT:- Capt. C. Hewitt, British Christian sworn states:- I live in the Town of Elgon - My nearest neighbour is 3 miles away. I know the 1st Accused. He worked for me first as houseboy and later as Nyapara. My posho store was broken into on 2 or 3 occasions and Posho valued at She.120/- was stolen. The Accused No.1 was Nyapara at the time the store was broken into. The store of my house was also broken into. The Accused No.1 was ~~Myapara~~ brought up on the charge and acquitted on account of lack of evidence. He was later convicted on the charge of using my rifle and shooting game during my absence from the farm. He was sentenced to 2 months R.T. When he was released from Gaol he came to me and asked to be allowed to stay on. I refused and told him to leave the farm. He was a registered squatter on the farm. The 3rd Accused one is the 1st Accused's father was a Squatter on the farm.



Farm. I asked him whether he wanted to stay or go. He said he would follow his son. I received information that the Accused Nos. 1 and 3 settled about 3 miles from the border of the farm in the Reserve. I gave the Accused No. 1 definite instructions not to return to my farm again. I instructed my other employees to bring Accused No. 1 up to me if he returned on to my farm. While Accused was in PRISON there was <sup>truth</sup> no talk at all on the farm. In the Criminal Case against Accused No. 1 in which he was convicted Namuaga (3rd Witness) and Namba my house-boys gave evidence against the accused. Namba has left the farm. Their Hut was burnt over their heads about 11 at night, about 3 weeks after the Accused No. 1 left the farm. My workshop was burnt 2 days after the Hut on the 11th October. About £150 damage was done by the loss of the Workshop building and the tools. None of my labourers turned out to extinguish the fire. I spent 3 weeks on the farm and one week at Berguit on my other farms.

My labourers are all Kitch and are registered squatters with 6 exceptions. The fire in the Workshop started in the roof in one place about 14 feet off the ground. I value my guest house which was burnt likewise all in it at £100 sterling. My boys' Hut and funds' Hut which were also burnt I value at £5 each. I know of no native on my farm who would have a grudge against me except the Accused No. 1

R.D.C.

Intd. S.E. 27.

No questions.

4th Witness for the prosecution ~~Maunimua's~~ Magwato, Kitch pagan, affirmed states:-

I know the Accused No. 3. He was formerly on Capt Hewitt's farm. I remember the day he was sent off the farm by Captain Hewitt. About 4 months ago after the Criminal Case against Accused No. 1, Accused No. 3 came to the farm and said:-

"You Kitch have helped Capt. Hewitt to imprison my son" He said "some other day the white man will see trouble (taabu) on

the farm. He said this to me. A few days later Accused No. 3 was told to leave the farm.

R.O.C.  
Intd. S.H. 1a F.

No questions,  
Intd. S.H. 1a F.

On 17/11/44 for the prosecution - Firengs & Sathadi, Kitchan pagam affirmed states:-

I work for Capt. Hewitt as Messpara. I know the Accused No. 1 and 3. They formerly worked for Capt. Hewitt. They went across the Kamakoria and lived just near the border of Capt. Hewitt's farm. If any one called out to them from the farm they could hear. When Complainant told Accused No. 1 and 3 when they were told to leave the farm that they must not return to the farm. I was not present when Complainant forbade Accused No. 1 to return to his farm. I know the Accused No. 4 - Accused No. 4 is son-in-law to Accused No. 1. I have seen Accused No. 1 return 3 times to Complainant's farm since he was told to leave. On the 1st occasion, Accused No. 1 arrived on a Monday and the workshop was burnt on a Tuesday. On this occasion he went to the house of Accused No. 4 and also on a subsequent occasion. I remember when Complainant's guest house was burnt. On the night in question I went with the two Mess-boys of Complainant to Mumarro's Hut to bring Lembo. I went at 9 p.m. Accused No. 1 was there also Accused No. 4. Accused No. 1 left at mid night. He left before me. I left later with Complainant's Mess-boy. Accused No. 4 followed me later. I found that the hut in which I lived and Complainant's Mess Hut had been completely burnt. Everything was lost to me but including my clothes and Shalwa - and everything in Complainant's Guest-House. I did not see any one near the buildings. Before going to bring Lembo I asked the fundi to keep guard over Complainant's house. Mumarro's Hut is about 1000 yards from the Guest House of Complainant.

R.O.C. Intd. S.H. 1a F.

No questions,  
Intd. S.H. 1a F.

the farm. He said this to me. A few days later Accused No. 3 was told to leave the farm.

R.O.C.  
Intd. S.M. 11/7.

NO QUESTIONS  
Intd. S.M. 11/7.

One witness for the prosecution - Jiranga W's Hatahdi, Kithish pagan affirmed states:-

I work for Capt. Hewitt as a servant. I know the Accused No. 1 and 3. They formerly worked for Capt. Hewitt. They went across the Kamakoria and lived just near the border of Capt. Hewitt's farm. If any one called out to them from the farm they would hear. When Complainant told Accused No. 1 and 3 when they were told to leave the farm that they must not return to the farm. I was not present when Complainant forbade Accused No. 1 to return to the farm. I know the Accused No. 1 and 3. Accused No. 4 is a brother-in-law to Accused No. 1. I have seen Accused No. 4 return to Complainant's farm since he was told to leave. On the 1st occasion, Accused No. 1 arrived on a Monday and the workshop was burnt on a Tuesday. On this occasion he went to the house of Accused No. 4 and slept on a subsequent occasion. I remember when Complainant's guest house was burnt. On the night in question I went with the two house-boys of Complainant to Muzerra's Hut to drink tea. I went at 9 p.m. Accused No. 1 was there also. Accused No. 4 and Accused No. 1 left at mid night. I left before me. I left later with Complainant's house-boy. Accused No. 4 followed me later. I found that the hut in which I lived and Complainant's Hut had been completely burnt. Everything was lost to me but including my clothes and Shalwa/- and everything in Complainant's Guest-House. I did not see any one near the buildings. Before going to drink tea I asked the fundi to keep guard over Complainant's house. Muzerra's Hut is about 1000 yards from the Guest House of Complainant.

R.O.C. Intd. S.M. 11/7

NO QUESTIONS  
Intd. S.M. 11/7.

Pay 81063 for house

482

O. O.  
17 SEP  
1934

19 Sept 1934

Amal B  
10887  
25

Sir,

I have the honour to

write you that I have

had under review your

Dept. No 518 of the 28<sup>th</sup>

of April - reporting that

you have approved the

imposition of a fine

under the Collector's Proclamation Order

of SAs 28607. in 56

native resident on the

farm of Capt. C. Hunt

in the Taluk of Mysore

District

I regard you as

DRAFT.

Kanara

Confidential

Shri R. Gopalan

MINUTE.

Inspected 16/9/34

Noted by 17/9/34

Date

Grade

Rank

Signature

Post

Office



19 Sept 1924

Sir,

B

Amul  
10577

I have the honour to

inform you that I have

had under review your

Dep. No 518 of the 28<sup>th</sup>

of April reporting that

you have approved the

imposition of a fine

under the Collective Punishment Ordinance 1909

of SAs 28607. You 56

habits resident in the

farm of Capt. C. Hunt

in the Trans Nyasa

District

I remain, Sir, your obedient servant

DRAFT.

Kanga  
Confidential

Sd/- H. C. Cooper

MINUTE.

marked 16/9/24  
Dated 17.9.24 f.

C. D. D.

B. G. G.

E. S. S.

A. H. H.

F. F. F.

G. G. G.

find it necessary to  
 question the action which  
 has been taken in this  
 case. Section 2 of the  
 Ordinance in question  
 provides that before a  
 fine can be imposed the  
 accused must be taken into  
 custody after an inquiry, and  
 the rights concerned have  
 been guilty of collusion  
 with a criminal, suppression  
 of evidence or other acts  
 which render the trial  
 unfair. It is held in  
 the said section in section 6 of  
 the Ordinance. It follows  
 therefore that before a

in order to impose  
 a fine, the court must  
 be satisfied that the  
 accused has committed  
 an offence which  
 renders the trial  
 unfair.

DRAFT.

MINUTE.

- Mr. Justice
- Mr. Justice
- Mr. Justice
- Mr. Justice
- Mr. Justice
- Mr. Justice
- Mr. Justice
- Mr. Justice

fine can be imposed  
 unless steps are necessary  
 in a criminal case, an  
 inquiry as to whether  
 evidence has been suppressed  
 (or as to whether there  
 has been collusion etc.)  
 and a decision by the  
 Court that he is  
 satisfied that suppression  
 of evidence (or collusion etc.)  
 as the case may be) has  
 taken place in the  
 present case and is  
 sufficient to show that  
 the second stage took  
 place and if the inquiry

has not in fact been  
held / see no alternative  
to directing that the  
five articles should be  
remitted.

I may add that

I feel considerable doubt  
whether the present case  
is one that can properly  
be dealt with under the

Collective Punishment

Ordinance of 1909. Although

that Ordinance leaves it

to the discretion of the

Commander to define a

village area or district

or other suitable or

community for purposes

of the Ordinance

Mass

(for the Secretary of State)  
(Signed) ARNOLD



of the Ordinance

Yours

A handwritten signature, possibly 'Arnold', written in dark ink. The signature is somewhat stylized and appears to be written over a faint circular stamp or watermark.

(for the Secretary of State)  
(Signed) ARNOLD