

1925

KENYA

215

C.O.
14505
30 MAR 25

Mr. V.A.G. Denham.

Vol. 136

DATE
27th March, 1925.

CIRCULATION ---
Mr.
Mr.
Mr.
List U.S. of S.
Perm. U.S. of S.
Verb. U.S. of S.
Secretary of State.

Loss of I.I. Swahili.

Submits points for consideration of I. of S. considers £1000 liberal compensation as ex gratia payment in full settlement of all claims for compensation and costs

Previous Paper
M. 12688/25

MINUTES

W.P. Bring up 11 April.

W.C.S. 30.3.25

(For minutes on M. 19509/25)

Copy to Buneloh. 23 JUN 1925
M. 12688/25

Subsequent Paper
M. 16058

Telegram from the Officer Administering the Government of Kenya to the Secretary of State for the Colonies. 216

Dated 27th March, 1926.

(Received Colonial Office 1.13 p.m. 28th March, 1926.)

14505

No. 136, 27th March.

Your telegram 15th March. I submit following points for your consideration at the request of legal adviser who considers

- (i) Government did not submit points to arbitration
- (ii) Court acted ultra vires in appointing arbitrator - see section 4 Petition of Right Ordinance 1910.
- (iii) Failure to persuade Court does not confer jurisdiction - see Brief page 48 case cited
- (iv) On receipt of Award Government immediately notified plaintiff Government would contest award.
- (v) Delays can be defended on the ground of the employment of the Legal Department on other case(s) and the Easter Holidays.
- (vi) For reasonableness of rule in regard to period allowed compare English rule - detailed objection and affidavit sent 1st May
- (vii) Plaintiff not prejudiced (by) delay
- (viii) Court asked to extend the time refused on the ground that it had not power appeal from decision unnecessary because Crown succeeded on the question of fiat simultaneously argued
- (ix) Company no case on merits Arbitrator refused to state case on the question of Law, took no evidence of value and principle of valuation unsound.
- (x) Public purse should not suffer from question of procedure not affecting merits.
- (xi) Desire to point out that the plaintiffs were themselves late bringing appeal to Privy Council and have relied on prerogative

prerogative to enlarge time for appeal while objecting to Crown having enlargement of time in which to file objections to Award.

(xii) While denying all legal liability consider that £1,000 liberal compensation as an ex gratia payment in full settlement of all claims for compensation and costs See my despatch No. 326 14th March in reply to your telegram 3rd March and statement therein of the value of Swahili valuation actual not replacement value see Racine 1906 Probate Kate 1899 Probate.