

1925

KENYA

189

C.O. 33
41886
15 SEP 25

DATE

20th August 1925.

G. DENHAM.

1038

CIRCULATION :-

COLLECTIVE FINE ON INHABITANTS OF LOMURIAMOI'S
MATHAKTA.

Has ordered imposition of a collective
fine of Shs 3,200 under Collective Punishment
Ordinance, 1908, in respect of theft of three head
of cattle.

MINUTES

The Ordinance is in *Sh*
165/1/108
The evidence is there enough, to
my only doubt is as to the
size of the ~~fine~~ fine. We are
not told the size of the village and
it will be as well to take care that
it has been taken into account.

? Ask. next. & say that the
J. H. however, that the number
of people in this manyatta
is sufficiently large to bear
the fine of 3200 shillings for
being excessive. *W. H. Stanley*
17. 8. 25

Previous Paper

Subsequent Paper

KENYA.

No 1038



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

20th August, 1925.

41886

Sir,

In accordance with Section 8 of the Collective Punishment Ordinance, 1909, I have the honour to report that I have ordered the imposition of a collective fine on the inhabitants of Lomriamoi's Manyatta in the West Side District of Kenya Province under Section 2 of that Ordinance.

This decision is based on a judicial enquiry conducted under Section 6 of the Ordinance by the Assistant District Commissioner, Kacheliba, into the circumstances of the theft of three head of cattle from a Somali residing in Kacheliba. Copies of the judicial enquiry are annexed and I am advised that the evidence set out therein establishes beyond a reasonable doubt the fact that at least one and probably more of the inhabitants of Lomriamoi's Manyatta on the night of the crime must have known of the theft and yet failed either to give the alarm or to take any other steps to effect the arrest of the thieves.

3. The Magistrate holding the enquiry recommended the imposition of a collective fine of Sh. 3,200/- and that of this amount if and when recovered Sh.320/- should be paid as compensation to the Somali owner of the stolen cattle.

The /

RIGHT HONOURABLE

MR. COL. L.C.M.B. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1

The Chief Native Commissioner and my legal advisers recommend the imposition of the fine and concurring with their views and in accordance with the procedure laid down by the Ordinance I have made the necessary order.

I have the honour to be,

Sir,

Your most obedient servant,

G. N. K. K. K.
ACTING GOVERNOR.

Criminal No. 91
192

COLONY AND PROTECTORATE OF KENYA.

In the 2nd Class Magistrate's Court

at Kacheliba.

INQUIRY UNDER THE COLLECTIVE PUNISHMENT
ORDINANCE, 1909.

Inquiry into theft of three head of cattle
from Hadi Hgel, Somali, of Kacheliba.

JLM.

KACHELIBA AUGUST 4TH, 1924.

INQUIRY UNDER SECTION 6 OF COLLECTIVE PUNISHMENT
ORDINANCE, 1909.

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Witness (Name) [Name] duly sworn, states:

I am residing at Kacheliba, District of Kacheliba. They were taken from the herd of Kacheliba cattle belonging to other persons.

On the morning of the 3rd inst. I milked the cattle in the same way as the other cattle. I milked the cow and calf and the milk was put in a wooden bucket. The bucket was placed in a large room which was separate from the group of cattle.

On the morning of the 4th inst. I went to the house and found that my cow and calf were gone. I had been stolen during the night. I went to the pasture house and saw they were gone. I also saw their tracks leading away from the house.

I reported this to the Assistant District Commissioner. He sent me out with a Tribal Retainer to follow the tracks.

We followed them to the village of a Suk named Loumriamoi. The tracks were easy to follow for there had been rain recently. There were tracks of 2 men with the cattle. One wore sandals the other was bare footed.

The tracks led right to the door of Loumriamoi's village. There were some marks shewing that the cattle had stood about near the entrance - about 20 yards from it - for some time. Then the tracks led away from the manyatta. Two men still

went

went with them but this time both wore sandals.

Lomriamoi was at the entrance to his village when we arrived. He asked us what we were looking for, we said "Donkeys" because we wanted to follow the cattle up without interference from him. He gave us some milk.

We followed the cattle until 3 p.m. when the rain came on and we could no longer follow. We returned to the station and reported.

When reporting the matter to the District Commissioner before he left he told me the tracks I followed him that I was following Lomriamoi because he had been a friend of mine and he wanted to sell that cow and only I could buy it. I wanted the cow badly. He asked me to buy it from me several times but I refused to sell. He used to come to me about it about every second day. I refused to sell because this was the only milk cow I had and she was a beautiful cow. Lomriamoi offered me 35 sheep and goats for it but I refused. Another man offered me 40 sheep and goats but they were not good ones as I refused. A Somali here offered me Shs.240/- but I again refused.

The price of sheep and goat in the reserve at present is Shs.6/- . We sell here in Kacheliba at Shs.8/- to Shs.12/- .

R.O.C.

V.M. McKeag.

2nd Witness

WITNESS.

Para g/osianoti (Sabei) duly affirmed, states:-

I work for a Somali, Diria Ali, here in Kacheliba. I milk the cows of all the Somalis and made ghee for them. I know all the cattle. I know Hadi Migel's cattle. Three of them - a cow and calf and a heifer - were stolen from him about



10 days ago. I have been here for 20 years. I have been here longer than any other Tribal Retainer. About 20 days ago I was sent out with a Somali named Hadi Migel to follow the tracks of stolen cattle. We tracked the cattle from the Somali's boma to the manyatta of Lomriamoi. The tracks were easy to follow. We never lost them. There were tracks of three cattle. One of these was a calf. There were tracks of two men with the cattle. One wore sandals and one did not.

The tracks did not lead into the manyatta but up to the entrance. Then they led away - two men still with them but now both of them wore sandals. There were also the tracks of another full grown cow or on with the original three.

We

District Commissioner. Lomuriamoi said he knew nothing about the stolen cattle and had never seen or heard of them.

R.O.C.

V. H. McKeag.

Lomuriamoi, P.O. Barangano

informed that he is not called as a witness in a Court case and that he need not answer any questions or make any statement unless he wishes to do so. I have nothing to say. I know nothing about the cattle. I have not seen any of the cattle since they were taken away from my boma on the night of July 10th. I never left it.

V. H. McKeag.

NOTING.

From the evidence given before me the facts of the matter appear as follows:-

A valuable cow and calf and a heifer are stolen from the cattle boma in Kacheliba on night of July 10th/11th. The owner and a Government Tribal Retainer are sent to follow the tracks. They state that the tracks are quite clear owing to recent rains and that they lead from the Kacheliba boma to the manyattu (village) of a Suk named Lomuriamoi. There are tracks of two men with the cattle. One is shod, the other is not. The cattle appear to halt at the entrance to the village. A fourth animal is added to the stolen three and all four are driven off by two men, both of whom are now shod.

It is therefore clear that some communication has taken place between the two men with

with the cattle and the manyatta in question. The head of the village, Lomiriamoi a/o Barangano, maintains that he knows nothing about the cattle - that he was in the manyatta all the night in question - that he neither heard nor saw the cattle.

He was in the manyatta on the arrival of the thief. He also admits that he saw the cattle. He has also admitted that he has on many occasions tried to induce the owner to sell this particular cow and calf, but without success. While not strictly hearing on the subject of this inquiry I consider that this fact is noteworthy, as is also the deduction, from the fact that the cow and calf were confined in separate enclosures and along with some 60 other cattle on the night of the theft, that the thief or thieves were intent on stealing this particular cow and calf.

From the evidence it appears to me to be clear that

1. Three head of cattle were stolen.
2. They were driven to the village of which Lomiriamoi a/o Barangano is the head by two persons concerned in the theft.
3. One or more of the inhabitants of this village colluded with the cattle thieves.

In view of these facts I find that the provisions of Section 2 (a) of the Collective Punishment Ordinance 1909 are applicable to the inhabitants of the village of which Lomiriamoi a/o Barangano is the head.

V. H. McKeag,

MAGISTRATE II CLASS.

5/8/24.

Kacheliba,

199

13th October, 1924.

RESUMED INQUIRY, UNDER SECTION 6 OF THE COLLECTIVE
PUNISHMENTS ORDINANCE, 1909, INTO THE THEFT OF
THREE HEAD OF CATTLE FROM HADI MIGEL,
SOMALI, OF KACHELIBA.

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Gobhal's b
Giralleh
duly affirmed, states:-

I am Court and General Interpreter in Kacheliba.
I am a Suk. I used to be a Tribal retainer. I
know Lomriamoi. I know his manyatta. It is at a
place called Soroi. There is only one manyatta near
his. It is about half an hour's march from it. The
owner of this second manyatta is Lopetslea. He is a
Government Sub-Headman. I can't say exactly how many
huts are in Lomriamoi's manyatta but it is a large
manyatta. There might even be ten huts in it. All
Suk manyattas are enclosed in a large zariba within
which the cattle sleep at night. This zariba is made
large and strong to keep out lions, leopards and
hyenas. There is one doorway in this zariba and
this is closed with large bulks of timber in the
evening. It is not customary to open this "door"
before sunrise. In each Suk manyatta there is one
man who has authority over the inhabitants of it.
He is called "Kibakan" in Suk language. The
inhabitants of a manyatta are usually related to
each other. At most two or three families live
in one manyatta. These manyattas are usually scattered
about the country and not clustered together.

Lomriamoi's manyatta is a typical Suk manyatta
except that it is larger than most.

Even

Even if two or three families live in one manyatta they all live together as one family. They share their milk and meat - eat together and generally live as a family.

The young men in a manyatta do not sleep in the huts. They sleep outside. Not outside the zariba but outside the huts. Zaribas vary in size according to the number of cattle belonging to the manyatta. A small zariba might be 15 or 20 paces across - a large one 50 or 60. They are usually roughly circular in shape. Lomiriamoi's is round.

The "doors" are barricaded at night from the inside. If the manyatta is not falling to pieces through neglect it would be impossible to open the "door" from the outside. A man trying to open the "door" from outside would have to make noise. The barricade is made by jamming large balks of timber against the opening. This opening is just wide enough to allow one ox to squeeze through. Two men could not go through a door together. The lintel of the doorway is low - a man has to stoop to get in through it.

One ox would be very difficult to get out of a herd inside a manyatta at night - one could not do it at all. A cow in milk would be still more difficult.

R.O.C.

V. H. McKeag.

Mr Arnold
Seldon - duly sworn, states:-

I am Acting District Commissioner, West Suk District. I confirm the evidence of the last witness as to the conditions of Suk manyatta life.

D. A. A. Seldon.

rap s/o Serei - duly affirmed, states:-
Suk.

I live in Lomiriamoi's manyatta. There are 13 huts in it. It is a large manyatta for Suk. I am unmarried. I do not sleep in any hut. I sleep outside. There is a zariba round the manyatta. There is one doorway in the zariba. It is barricaded at night and opened in the morning as in all Suk manyattas.

I remember when the Somali's cattle were stolen. I did not see them. I did not see the people who stole them. No strangers came to our manyatta at that time Lomiriamoi did not go out the night of the theft. Nobody from the manyatta did. All slept inside. Between closing the door of the zariba at sundown until about 8 o'clock the following morning when we opened it nobody came to the manyatta. Nobody came to the manyatta before the Somali and the Retainer did. I know that neither Lomiriamoi nor anyone else went out that night for they would have asked us moran to barricade the door after them if they did - otherwise wild beast would come in and kill the cattle. I know nothing whatever about the stolen cattle.

R. O. C.

V. M. McKeag.

suk s/o Lopeisamal - duly affirmed, states:-
(Suk)

I live in Lomiriamoi's manyatta. I know nothing about any stolen cattle. I never heard anyone in the manyatta talking about the Somali's cattle. I did not know that we were suspected of having anything to do with any cattle theft.

R. O. C.

V. M. McKeag.

NOTE.

This witness appears to think that the safest thing to do is to disclaim all knowledge whatever of the fact that cattle were stolen. He gives his evidence with a smiling face evidently pleased with his ingenuity.

It is obvious that one member of a community or family, such as a Sub manyatta has been shown to be must be cognizant of an event such as the arrival of a Government Tribal Retainer and a Somali looking for or donkeys - not to mention the fact that the Head of the manyatta spent several days in the Station during the inquiry recorded in the first part of the record.

V. M. McKeag

1/24 Inquiry continued.

Widow of Parangone - duly affirmed, states:-

I used to live in Lomiriamoi's manyatta but I left it about three months ago. I was resident there at the time the Somali's cattle were stolen but I was on safari at the time in question.

R. O. C.

V. M. McKeag.

Widow of Kasibel - duly affirmed, states:-

I used to live in Lomiriamoi's manyatta I left it about two months ago. I was living there but was not present when the Somali and Tribal Retainer arrived. I was on safari at Chephulel.

Lomiriamoi and the women and children were in the village - everyone else was away.

R. O. C.

V. M. McKeag.

Widow of Rionalle - duly affirmed, states:-

I live in Lomiriamoi's manyatta. I remember hearing about the theft of the Somali's cattle and

the

the Tribal Retainer and Somali coming to our manyatta. I was on safari at Kibrenge at the time and know nothing about it.

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R. O. C.

V. M. McKeag

Francis N/O
Kibrenge

daily affirmed, states:-

... Some I have seen... These... have been... for the... of other...

... If they are... they are... of... in... They grow... manyatta... for... and... after... of... cattle.

I do not think a cow could wander round outside a manyatta at night without being attacked by them.

We build our zaribas big and strong because there are so many wild animals here which would kill our cattle and goats. A cow would be safer right away from a manyatta than just outside it though normally it would be killed either way.

R. O. C.

V. M. McKeag.
5/11/24.

DING.

In regarding this inquiry on the lines suggested by the Honourable the Solicitor General evidence has also been produced which indicates the somewhat

somewhat peculiar circumstance and condition of Suk villages in general and the one in question in particular. In the light of this evidence the complicity of of Lomriamoi's village in the theft of the cattle becomes more apparant.

I propose to recapitulate the facts of the case as they are shown to be in the original inquiry together with such portions of this later evidence as directly bear on the circumstances considered.

A cow and bull value \$85.240 and 3 heifers, were stolen from the animal cattle house in Kachidiba on the night of July 10th 1914.

The owner and a reliable Government Tribal Retainer are sent to follow the tracks. The tracks are quite clear owing to recent rain and lead direct to Lomriamoi's village. This village or manyatta, is a collection of some 10 huts in a ring fence. The only other human habitation in the vicinity is the manyatta of a Government Sub-Headman and that is some two miles distant.

There are tracks of two men with the cattle. One is shod, the other is not. From the tracks the party appears to halt at the door of the village for some time and then move on, but a fourth animal has been added to the original three and both men with the cattle are now wearing sandals.

This manyatta, like all Suk manyattas, consists of a collection of huts within a ring fence or zariba of a size and strength calculated to prevent lions, leopards and hyenas from entering. It has only one entrance or door. This door, or rather doorway, is barricaded at sundown each day, from the inside, in such a manner as to make it impossible to gain entrance from outside

without



without demolishing the whole construction and erecting such a disturbance as must wake the inhabitants of the manyatta.

How has this 4th animal been acquired by the cattle thieves? It can only have been acquired in one of the following ways:-

1. Found at the door of the manyatta in charge of some person or persons possibly unconnected with the inhabitants thereof and without their knowledge.

2. Found by itself having personally spent the night in the manyatta.

3. Taken by stealth or force from the manyatta.

4. Taken from the manyatta with the knowledge and consent of one or more of the inhabitants. Of the various alternatives the first would seem acceptable were it reasonable to suppose that those in charge of the animal - personally acquainted with the actual thieves - would choose as a rendezvous the door of an isolated manyatta if the inhabitants of that manyatta were not privy to the scheme. If they (or he) were not accomplices their presence there and their joining forces with the thieves is equally difficult of explanation. Further no mention is made of their tracks.

The evidence of a Suk Chief, himself a cattle owner, and presumably a man of intelligence and experience, shows that the 2nd alternative is so unlikely as to be hardly worthy of consideration. From my own knowledge of local conditions - gained over a period of residence of three years in this District - I unhesitatingly accept this evidence.

The 3rd alternative is refuted by the evidence as to the structure of the manyatta and the feasibility

of abstracting a solitary cow from it without the knowledge of its inhabitants.

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There remains the 4th alternative and everything tends to shew that the animal was indeed so obtained - i.e. from the manyatta, with the

knowledge and consent of one or more of the inhabitants thereof. It is a well known fact that the inhabitants of a manyatta are either implacable or vindictive, and that the denial of a fact by those who would be so affected were they to admit it is never offered to support the statement of the defendant. It is therefore the opinion of the Magistrate that the animal was indeed added to the stock of one of the manyattas.

I therefore hold that such was the case and that the animal was taken from the manyatta with the knowledge and consent of the inhabitants thereof.

Does this fact prove that one or more of these inhabitants colluded with the cattle thieves? I consider that it does, beyond all doubt. The thieves, with their booty, came straight to this manyatta - the head of which has the best of reasons for knowing and recognizing the stolen property. They hold intercourse with the inhabitants the while the stolen cattle wait at the entrance of the manyatta.

The inhabitants deny that anyone came with or without cattle. What reason can they have for this denial?

Whatever the reason the effect is to shield the thieves. Therefore I say they are in collusion with the thieves and that the provisions of Section 2 (a) of the Collective Punishments Ordinance 19 are applicable to the inhabitants of this manyatta.

V. M. McKeag
MAGISTRATE II CLASS.

WITNESS (recalled).

Di Migel - Islam - duly sworn, states:-

My boy came to me before the sun had fully risen - about 5.30 a.m. - and told me that the cattle had been stolen.

I went to the Assistant District Commissioner's house as 6 a.m. was striking and reported the matter to him.

The Tribal Retainer and I left Kacheliba about 9 a.m. and arrived at Lomuriamoi's manyatta about 10 a.m.

The manyatta is about half an hour's good marching from Kacheliba (Somali's cattle boma - which is on the cut skirts of the station) going direct. We took longer as we followed the tracks which did not go direct but wandered about somewhat.

I myself along with several others shut the cattle up about 7.30 p.m. the evening before the theft and I myself with my porter took her calf away from the stolen cow and put it in the calves enclosure about 8 p.m. That was the last time the stolen cattle were seen.

R. O. C.

V. H. McKeag

The Crown Counsel requires answers to the following questions:-

- (a) How long would it take the animals to get to the manyatta and could they get there before day?
- (b) How long did it take complainant and Tribal Retainer to get to the manyatta?
- (c) About what time did they arrive there?

From

From the evidence above recorded it can be seen

1. That the cattle probably took about an hour to arrive at the manyatta.
2. That as they were stolen at some time during the 9 $\frac{1}{2}$ hours of darkness before 5.30 a.m. they not only could have got to the manyatta before daylight, but the mathematical chances - apart from the probability of the thieves wishing to get as far as possible from the scene of the theft before daylight - are much in favour of their having done so.
3. That it took complainant and Tribal Retainer about an hour to get to the manyatta.
4. That they arrived about 10 a.m.

V. H. McKean

ASSISTANT DISTRICT COMMISSIONER.

25/2/25.

Pratt Sept 21

O.A.F. 41886/25 Kenya

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- Shuckburgh
- Orinda
- Masterman Smith
- Ormsby, Gore
- Amery

21 Nov 1925

Sir

RAFT.

950
O.A.F.

I have in view the fact of your despatch No 1038 of the

20 of August, reporting the imposition of a ~~fine~~ ^{of 5/-} ~~of 10/-~~ ^{of 10/-}

on the inhabitants of

Lomuriamoi's Manjatta

in the West Suk District

of Kenia Province, under

