

Messrs. A. M. JEEVANJEE & CO.

File No.....

SWIFT PRESS, NAIROBI.

SUBJECT.

REFERENCE TO
PREVIOUS
CORRESPONDENCE.

Report on Market Plot

REPORT OF A. M. JEEVANJEE ON FACTS RELATING
TO GRANT OF A LEASE OF THE "MARKET PLOT"

NAIROBI.

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I was first approached in the year 1902 by Mr. John Ainsworth with a view to my erecting a Public Market and I agreed to erect a Market on the distinct understanding that I was to obtain a lease of the Plot for 50 years with a right of extension in the buildings erected justified - I was also promised that no other Public Market would be permitted until such time as the Market to be erected by me should prove inadequate for the requirements of the Town - The site of the Market was selected by Mr. John Ainsworth, a considerable area being reserved for possible extension which might be required by the Government, and I erected the Market at my own expense according to plan approved by the Government.

The terms upon which the building was erected were shortly set forth in a Memorandum a copy of which is annexed hereto and marked "1".

No draft lease was submitted by the Government for many years after the building of the Market and frequent requests were made for issue of a lease.

A Memorandum of "basis of Agreement" arrived was sent to me on the 10th April 1916 with a letter of that date (copy attached hereto marked "2"). In or about the year 1912 the Municipal Authorities were endeavouring to authorise other markets although the reserve allotted to me had not been utilised and I, accordingly, instructed my lawyers to protest which they did (vide their letter copy attached hereto and marked "3").

My representatives had been constantly

pressing for Leases of the various plots to which I was entitled and were put off from time to time on the ground that the question of my Leases had been referred to the Colonial Office.

My Lawyers brought the matter to a head by an interview with Mr. Barton Wright (the Land Officer) in January 1913 when they ascertained that a report had been sent to the Secretariat in June 1910 to be forwarded to the Colonial Office - but that it had never been forwarded to England and was discovered at the Secretariat with no note of its having been dealt with in any way.

My Lawyers then pressed for a settlement of the various matters which were in abeyance before the departure of Mr. Ainsworth for England (vide their letter 5th February 1913 copy attached marked "4" and copy reply marked "5").

Mr. Ainsworth was then invited by His Excellency the then Governor to make a report as to his recollection of what arrangements had been made and he made a very full report dated 31st March 1913 (copy report attached hereto and marked "6").

I need not go into this report in detail as it is very full but would draw attention to the fact that it distinctly states that it was agreed that "so long as the Market met the requirements of the Town the Municipality would not open a similar Market".

It shows the circumstances under which I built the Market and also, in its concluding paragraph, shows that I had not been treated in a spirit "Consonant with the Justice of the case".

With regard to the penultimate paragraph of the report - my objection was not to the opening of shops but to my being deprived of the sole right of "Public Market" until the accommodation reserved to

me was exhausted owing to the increased requirements of the Town.

The Municipal Authorities were at this time doing everything in their power to make it impossible for this Market to be properly run and to deprive me of my rights.

Notwithstanding the contents of Mr Ainsworth's report nothing was done to rectify matters and my Lawyers wrote a letter to the Land Officer asking for a draft lease of some sort to be submitted (vide their letter 9th August 1913 marked "7").

An acknowledgment was sent by the Land Officer on the 30th August 1913 but no draft lease was forwarded and the trouble with the Municipal Authorities continued.

In March 1914 correspondence took place with the Chief Secretary to the Government in connection with the attitude adopted by the Municipal Authorities and a further request for draft leases was made (vide copy of my Lawyers' letter attached hereto and marked "8") - The Land Officer stated that he was unable to issue a draft at the time as the Market had been closed for repairs. I had from time to time carried out extensive repairs and alterations and in complying with the requirements of the Director of Public Works a request for further structural alterations arrived from the Director who was also a very active member of the Municipal Committee - In view of these further demands my Lawyers wrote to the Director of Public Works stating that they were placing the matter before His Excellency - (vide copy letter 18th December 1914 attached hereto and marked "9").

The refusal to carry out further repairs

pending the grant of a Lease was approved by the Chief Secretary to the Government. (vide copy letter from Chief Secretary dated 6th January 1915 attached hereto and marked "10").

A difference of opinion arose as to the area reserved for Market purposes and as I was aware that Colonel Montgomerie who had been Commissioner of Lands had made a report I applied for a copy and was eventually supplied with one. I attach a copy of his report (marked "11") in so far as it refers to the Market Site. No draft Lease being forthcoming in February 1915 my Lawyers again wrote setting out the terms on which they would accept a Lease and asking for a draft.

A draft was eventually submitted on the 24th June 1915 (see copy letter 24th June 1915 marked "12"). This draft was very cumbersome and contained detailed provisions for management which could not suitably be included in a Lease - This draft was really mainly settled by the Municipal Authorities and had no plan attached. The additions made by the Municipality were eventually discarded by the Land Office Conveyancer as being unsuitable. The Draft was repudiated by my Lawyers in their letter dated 28th June 1915 (copy attached and marked "13").

On the 3rd July the Land Officer wrote my Lawyers asking them to agree the draft lease cutting out the Municipal Authorities' additions (vide copy letter 3rd July marked "14").

A letter then was received by my Lawyers from the Attorney General calling on them to accept the draft as drawn within 7 days (see copy letter 6th July 1915 marked "15").

A reply was written by my Lawyers to the Attorney General pointing out that they could not approve the draft as no plan was attached (vide copy letter 8th July 1915 marked "16"). (N.B. there had been a dispute as to boundaries).

This letter clearly shows the attitude which was adopted by me in the matter. A Draft Lease with plan attached showing the correct boundaries was eventually furnished and approved as amended by my Lawyers.

I attach a copy of the draft lease showing the amendments made by my Lawyers and wish to draw particular attention to their note as to "monopoly" which shows that I was not endeavouring to obtain any unfair or unreasonable concession. (See copy draft Lease marked "17").

Just at this time - owing to the state of war which involved more serious work for the Government and also depleted our Lawyers' staff - my Lawyers arranged to hold over all contentious matter while the war lasted although they expressed their intention of referring the whole matter to the Secretary of State for the Colonies.

They received a letter from the Chief Secretary thanking them for their undertaking.

Nothing further was done until 1919 when I saw His Excellency Sir Edward Northey in London and arranged to have an interview with him on my return to East Africa.

His Excellency arranged interviews and expressed himself as anxious to settle matters - He - however - pointed out that he must act on advice given to him. At His Excellency's suggestion my Lawyer Mr. Figgis had an interview with Mr. Muir Mackenzie (Crown Counsel) but -

although I understand that Mr Muir Mackenzie expressed himself as disposed to settle matters - a notification was received from the Colonial Secretary intimating that Government would not delete the clause complained of.

My Lawyers then were preparing a report for transmission to you when His Excellency asked Mr. Figgis to make another effort to settle matter with Crown Counsel.

Another interview took place at Mr. Muir Mackenzie's office and at Crown Counsel's suggestion Mr. Figgis wrote to him making definite propositions with regard to both the Market Site and the Town Hall Site (copy letter attached and marked "18").

No reply was received from Crown Counsel but eventually a letter demanding acceptance of the lease as drawn and threatening action was received from the Acting Commissioner of Lands (copy letter attached and marked "19"). The position therefore is that, having postponed sending my report to you with a view to assisting the Government, I have received an ultimatum threatening legal proceedings. I can attach no other reason for this procedure than an endeavour to prevent your dealing with my case and to avoid the facts with regard to the manner in which I have been treated being laid before you.

The Acting Colonial Secretary has verbally assured my Lawyers that, although action will be filed, proceedings will be stayed pending your decision but having regard to my treatment in the past and in view of the fact that I have had to deal with the same matter with the Attorney General - the Colonial Secretary and the Commissioner of Lands

at various times I cannot feel secure until I have your decision.

The Market was built in 1904 and there could have been no trouble if the Lease had been issued by the Government at the right time.

The question at issue is one of Equite and I feel confident that on consideration of the facts as shown in the correspondence and in Mr. Ainsworth's report you will have no hesitation in saying that I should be granted a lease with the clause to which I object deleted.

I have spent Fls. 100,000 on the Market and owing to the action of the Municipality am loosing on the transaction.

I have always been and still am ready to meet the Government in every reasonable way for the benefit of the Community as a whole but consider the attitude of the Government in this matter to be most unreasonable.

Wm. Ainsworth