

1921

KENYA

623

57044

FROM

DATE

NAGADI SODA COY LID

14TH NOVEMBER 1921

NOV 21

FOR CIRCULATION:-

SUBJECT

- Mr.
- Mr.
- Mr.
- Mr. Grindle
- Sir H. Lambert
- Sir H. Ross
- Mr. T. Masterton Smith
- Mr. Wood
- Mr. Churchill

REPAYMENT OF FREIGHT CHARGES

Reverts cannot agree to transportation placed on corrag. Butmits Coy never abandoned its claim.

Previous Paper

MINUTE

113  
56742  
(The usual one)

*Mr. Board*  
*S. [unclear]*

I have the honor to  
acknowledge the receipt of  
your letter of the 11th inst. regarding  
the freight charges on soda ash  
and am sorry that we are  
unable to do more for you at  
present.

Yours faithfully  
[Signature]

*Washed 20 Nov 21*  
*In [unclear]*

agreed with the [unclear]  
requested reply. The only alternative  
as he says is to pay the freight  
they are not at all [unclear] we are  
prepared upon [unclear] the  
[unclear] to [unclear] the [unclear]

57928

In 1919 we had to consider the case of two companies, both of whom were due to make payments in East Africa, the amounts of which were expressed in sterling. We consulted the following:

advised:

- (a) that the payments were actually made in East Africa, and

This news was received, the rupee was  
 worth about 2/4d. and the result of  
 this judicial law would have been that  
 the Magadi Soda Company, in order to pay  
 a debt of say £17 would have had to pay  
 17 x 2/4d. = £4 10s. which would be exactly  
 the same as if the rupee had been at par.

Currency Order in Council was when in  
 course of preparation, and as took

into account the possibility of the rupee  
 falling to 2/4d. would be payable at

the rate of 2/4d. This Order in Council  
 did not come into operation until July  
 1930.

The fact that the Government  
 is anxious to see the rupee maintain our  
 position with regard to the Magadi Soda  
 Company remains the agreement which  
 was made with the East Africa Land

Development Company, especially in  
 view of the fact that Colonel C. H.  
 Milliers is a Director of both  
 companies, although his interest in  
 the Magadi company is spasmodic and  
 often critical. The answer is, I  
 think, that the action taken with regard  
 to the East Africa Land Development  
 Company was made in ignorance of the

Judicial

Judicial announcement made as to the East African Law on the subject, an announcement, which, of course, binding in the local courts up to the date of 1930 Order in Council.

In view of the judicial decision, the Magall Company have naturally been liberally treated in being allowed to pay as from the date of their claim in April 1919 the amount due according to the current rate of exchange.

As regards the issue of the claim before April 1919, there is, I should imagine, no doubt as to the correctness of our attitude. In March 1930, the Magall Company was told that the Government of Kenya would accept payment locally at the current rate of exchange for the period subsequent to the 31st of April 1919. The company were prepared to accept this as a full settlement of the matter. It was stated in our letter that it must be clearly understood that this offer was not in any admission on the part of the Government in respect of the claim. The company were asked to state in their reply to our letter. The company gave a statement of the amount

due from the 23rd of April 1919, and at the same time asked that Lord Milner would reconsider his decision with regard to earlier agreement on the grounds:

- (1) that the amounts were expressed in the original in sterling.
- (2) that the payments were made in rupees for the convenience of the parties.
- (3) that the payment of Rs. 16 was due to an oversight on the part of the Company's representative.
- (4) that the Company did not notice the oversight because their officials most concerned were at the time serving in the Army.

They enclosed a statement of the certified payments showing an amount due in respect of exchange of £4,217 prior to April 1919 as against Rs. 111 since that date, and they expressed a hope that Lord Milner would see fit to direct these payments to be made.

The Company were paid the sum due in respect of the parties after April 1919, and we informed them that Lord Milner was in communication with the Governor on the subject of the company's claim, and that a further letter would be sent.

The Governor was invited to consider a possible compromise by which in return for the payment of the £4,217, the Company

would

would agree to a revision of the terms of the lease as regards future payments, but he preferred that the two matters should be kept separate; and accordingly, the Company were informed that it was not possible to consider any claim in respect of exchange with regard to the <sup>13-4-17</sup> charges prior to the date on which the Company's protest was formulated.

On the Company objecting, they were referred to the correspondence in which the Company accepted the repayment in respect of the later period in full settlement of the whole claim, and they were informed that Mr. Churchill could not give a consent except the inference, at the end of their letter of the 26th of October, that their claim had been admitted, first by the refund of the sum in respect of the period since April 1919, and secondly by B.M.C. agreeing that after March 1920 the amounts should be made out in rupees at the current rate of exchange.

The present letter is the Company's reply. It appears to me that we have

only

would agree to a revision of the terms of the lease as regards future payments, but he preferred that the two matters should be kept separate; and accordingly, the Company were informed that it was not possible to consider any claim in respect of accounts with regard to the <sup>interest</sup> ~~over~~ charges prior to the <sup>23-4-17</sup> date on which the Company's protest was formulated.

In the Company objecting, they were referred to the correspondence in which they had accepted the repayment in respect of the later period in full settlement of the whole claim, and they were informed that Mr. Churchill could not for a moment accept the inference, at the end of their letter of the 26th of October, that their claim had been admitted, first by the refund of the sum in respect of the period since April 1915 and secondly by B.M.C. agreeing that after March 1920 the amounts should be made out in rupees at the current rate of exchange.

The present letter is the Company's reply. It appears to me that we have

only

only two possible alternatives:

- (a) to refuse to pay any sum in respect of the period before April 1919.

In this case I assume that the matter must go to arbitration, and that that arbitration will be local in character under clause 56 of the contract.

In that event I take it that in view of the judicial decision of September 1919, the award could be in our favour, since there is no doubt that, according to the law then in force, the Company were liable to pay at least even more than they have paid in respect of the earlier period.

- (b) to say that the Secretary of State will be prepared to agree to the matter being submitted to local arbitration under clause 56 of the contract on the condition that in the first place, the Company will refund the sum of £1,111, <sup>plus</sup> <sup>less</sup> already issued to them in respect of the later period on the express understanding that it was paid in full settlement of their claim, and that the arbitration shall concern the whole period up to the date when the Secretary of State agreed to payment being



made locally in rupees at the current rate of exchange.

This, of course, will add more to the Company's disaster since in 1939 the whole of the Mill will be handed over. Further, the Company are not in a position to part with ready money at the present time since they are heavily overdrawn.

Security at the Bank

I do not wish to press hardly on the Company, which may at some future date receive as great benefits on Kenya as its Directors already allege; but I am convinced that there has been a dishonest and improper practice in obtaining the Mill out of us, and then going back on the terms on which such *offer* was made to pay it. It would be more satisfactory if we knew how far this apparent breach of faith was due to the Company as a whole, and how far it is a try-on on the part of the Chairman, who is heavily committed in guaranteeing the Company's *over* draft in the bank, and whose extreme views we have reason to know, have not been shared, at all events, by colonial officials

(12/11)

their General Manager) in regard to the most important detail of the lease.

On the whole I think, that for the present, we should confine ourselves to pointing out to the company, how much more advantageous the treatment they have received is than that to which they were entitled under the judicial law of East Africa, and at the same time say, that Mr. Churchill must maintain his position that the payment of the £1,111 was made on the condition that the Company abandon any legal claim to their earlier amounts, that

109/70

re-  
 the £1,111 was for consideration in the  
 £1,111 earlier amount was for a  
 payment of £1,111 and that, as the  
 matter had been very clearly stated in  
 the letter from this department of the  
 5th of January 1951, it is impossible  
 to reconcile the Company's acceptance  
 of the £1,111 with any belief on their  
 part that any legal claim to the  
 earlier amount was still in existence.

W.C.S.

22.11.51

Stock

RECEIVED

1921

CO. OFFICE

The Nagati Soda Co. Limited

H. SAMUEL & CO. LTD MANAGER

Manufacturers of Pure Alkali & other Soda Products

COVERED  
WESTERN  
EASTERN

WESTERN  
VOLCANO  
BRAND



EASTERN  
CAMP  
BRAND

WORKS  
MADRAS  
BOMBAY  
CALCUTTA  
SINGAPORE

PRICES QUOTED  
SUBJECT TO ALTERATION  
WITHOUT NOTICE

PLEASE QUOTE GE/DCB

Shell House, 24, Theobalds Road, London, E.C. 4

The Under Secretary of State,  
Colonial Office,  
Downing Street,  
WHITEHALL, S.W. 1.



Sir,

Reference 63394/1921

I beg to acknowledge the receipt of your letter of the 24th inst.

I regret to say that this Company cannot agree to the construction which you place upon the correspondence between us, commencing with your letter of the 23rd January last onwards, on the subject of the repayment in respect of over-charged freight under the 23rd April 1919. I submit that this Company is not liable to claim under this heading.

Your obedient Servant,  
THE MANAGER, Y. LTD.

*[Signature]*  
Manager

DOWNING STREET,

30 November, 1921.

*2nd*

Gentlemen,

I am directed by Mr. Secretary Churchill to acknowledge the receipt of your letter No. 22 of 20th Nov 1921 of 20th November regarding the rate of exchange at which payments in respect of freight charges were to be made in April 1920 made by me to the Regent Soda Company. I would call attention to the advantageous treatment accorded to the Company in this transaction, the facts of which do not seem to be fully appreciated.

Under the law of East Africa as declared in a judgment of the High Court on the 10th of September 1919, it would have been possible for the said payments to have been made at the rate of shillings 10 for every pound sterling up to the 21st of July 1920 when the East Africa and Uganda (currency) (No.2) Order-in-Council, 1920 came into force. The Company have however been relieved of the consequences of this judgment in a great measure, first by the decision, contained in the letter from

DRAFT.

MANAGERS

- Mr. L. ...
- Mr. B. ...
- Mr. W.C.B. ...
- Mr. ...
- Mr. ...
- Mr. ...
- Mr. ...
- Mr. ...

this

this Department on the 16th of March 1920,  
that their payment should be made either locally  
in sterling paper or in the country by the  
payment of the rupee as the  
cost of remittance and,  
secondly by the  
letter of the  
a special conc.

rates of exchange  
effect from the 23rd  
date on which you  
At the rate of  
definitely

his position that  
made by the Company  
arrangement, and  
it should be  
the final amount  
to be paid in  
rupees.

4. In view of the terms of the letter  
from this Department of the 5th of January,  
1921, the Company's request for reconsideration  
in the matter of amounts prior to the 31st  
of April 1919 could only be regarded as an  
application for payment in arrears, and it  
is impossible to reconcile the Company's  
acceptance of the sum of £1,111,7:4 with any  
belief on their part that a legal claim to  
the earlier amount was still in existence.

I am, etc.

50

1150/57000/101/1000

November 1921.

Script

Gentlemen,

I am to thank the act. of your  
letter of 5th/11/21 of the 14th of November

regarding the rate of exchange at which

Mr. Messers

concerns in respect of freight charges paid

should be paid

by the Company

and will attend to

the advantageous treatment accorded

to the Company in this connection, the

fact of which do not seem to be

fully appreciated.

Under the judgment of the

It would have been possible for the local

Government to obtain payment at the rate of Rupees

15 ~~per 100~~ <sup>11.20</sup> of the value of the goods

(Africa and Uganda (Currency) (No. 2)

Under the terms of the agreement... <sup>Kilimanjaro</sup> <sup>Mount Kenya</sup>

The letter from the Dept of Industries of the 16<sup>th</sup> of March 1920... <sup>the goods</sup>

It is suggested that the Government should be permitted to... <sup>the rate of Rupees 15</sup>

... <sup>of the value of the goods</sup>

1919... <sup>of the value of the goods</sup>

payment at the rate of Rupees 15... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

was made on the condition that the... <sup>of the value of the goods</sup>

should be accepted as a full settlement... <sup>of the value of the goods</sup>

Company abandon any legal claim to the legal rights of the... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

DRAFT

MINUTE

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

... <sup>of the value of the goods</sup>

of the sum of £ 1,121-7-6 with any

balance on their part that a legal claim

to the said amount was still in

existence

Yours etc.