

1922-23

KENYA

C O
1694
RE
RE 9 23

FROM
GOVERNOR
CORYNDON

DATE
1688 12TH DECEMBER 1922

FOR CIRCULATION :-
Mr.
Mr.
Mr.
Mr. Grindle
Sir H. Lambert
Sir H. Read 8/5/23
Sir J. Masterton Smith
Mr. W. G. ...
Mr. Chamberlain 83

SUBJECT
LAND
CONVERSION OF AN AGRICULTURAL INTO
TOWNSHIP LEASE

Requests ruling whether may be dealt with
by Governor without reference to Secretary of
State.

Order for Attorney General's office

Previous Paper

MINUTES

~~Mr. Busho~~
~~Mr. Bottomley~~

I am sorry that consideration of this
paper has been crowded out during the rush of
~~the last month or two.~~ I now minute after
discussion with Mr. Bottomley.

Para 2. There seems no doubt that the Attorney
General is right as to the interpretation of
Section 6 of the Crown Lands Ordinance 1915. As
I read that section, it was intended to give the
Governor power, subject to the approval of the
Secretary of State, to grant land in special cases
on special terms not provided for in the Ordinance,
otherwise, there would have been no legal power
to grant land on terms outside the provisions of
the Ordinance, even if the special terms had been
approved by the Secretary of State. For the
reasons given by the Attorney General it seems
quite clear that the interpretation which the late
Governor sought to assign to the section, is
incorrect. As the Attorney-General points out,
such an interpretation would provide a case

Feb. Gov. 16th March 1923
Quill 14 - 1st hand 23

Subsequent Paper

39937

MINUTES

MINUTES NOT TO BE WRITTEN ON THIS SIDE

four to the Ordinance generally.

Paragraph 3 of the Original draft has apparently been omitted, and it would be interesting to know what it was.

Paragraph 5. In the circumstances there appears no objection to the conversion of a portion of the Company's agricultural holding into a "private township", whatever that may precisely mean. I have been unable to find a definition of the term in any Kenya Ordinance; but the application should only be granted on terms that will ensure that the Government and not the Company enjoy the additional profit that will be derived by the land being leased in township plots, and not for the purposes of Agriculture. This is practically what the Land Tenure Commission propose, see paragraph on page 5 of Report, (copy herewith). In that paragraph the Commission propose that: "it shall be competent for the authority to take into account, by the way of reduction of premium, how far the applicant is deserving of rebate in proportion to the amount of the development which he has carried out, and which has contributed to the creation of the township in question".

but I doubt whether we need go into this in the present case, especially as I see that the Governor asks for a telegraphic reply.

reply.

I have discussed with Mr. Bottomley the "Indian" side of the question and I gather that he is satisfied that no difficulty need arise on this account, as it is the Company and not the Government who will select the tenants for the town plots.

X

? Telegraph briefly to the Governor that the Secretary of State concurs in the interpretation of the Attorney-General of Section 6 of the 1915 Ordinance; but that in the special circumstances he will agree to conversion in the particular case, on the conditions specified above, and ask that no further applications be entertained pending receipt of the following dispatch.

And follow up the telegram with a despatch setting out the Secretary of State's views at length on the lines of the minute above.

6.11.23.

H.B. 73

The Govt. can't sell its township plots till the quarter is finally given to Government, but I see no bar to private persons disposing of their land for township purposes, at all.

from the "Insider"
of view. It is a
business for the East
in the case of its
own plans will be

→ yes.

H. J. R.

8/23

no real reason to be troubled at
improved & approved directly to
multitude of people by the
hundreds of rich & poor now
be regarded either by
to or Indians as queering
rich in any way, or as
poor in a "political"

8. 23 ——— wog

I agree

D. S. 3

KENYA

NO.1686.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

1694 12th December, 1922.

REC
RE 9 JA 23

451

My Lord Duke,

I have the honour to submit to Your Grace for decision the question whether the conversion of an agricultural into a township lease may or may not be dealt with by the Governor under Section 6 (1) of the Crown Lands Ordinance, 1915, without reference to the Secretary of State.

2. In considering one such application in January last Sir Edward Northey concurred with the majority of members of Executive Council in interpreting that clause to mean that unless specially restricted by the Secretary of State the Governor may proceed as he thinks fit; and in approving the application. The Attorney General, however, advised that such interpretation rendered meaningless the greater part of the Ordinance (vide particularly Sections 25 and 55) and that approval of the conversion of an agricultural to a township lease could not be granted by the Governor without reference to the Secretary of State. I attach an opinion prepared by the Attorney General and the Solicitor General expounding their views.

4. I should be grateful for Your Grace's ruling on the principle involved and, in case a decision in support of the Attorney General's opinion is given, I submit for covering approval the action taken on the particular

application -

HIS GRACE

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

Opinion.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

1694 12th December, 1922.

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DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S. W.,

application in point.

5. Messrs. Kitale Limited the lease holders under the Crown Lands Ordinance, 1918, of Land Office Farm No. 1842 (Trans Nzoia) which adjoins Kitale township applied in December, 1921, for permission to sub-divide this farm and to convert one portion of some 500 acres into a private township. Their application was strongly supported by the Trans Nzoia District Committee and approved by Sir Edward Northey in January on the recommendation of the majority of Executive Council. The Company has accepted the conditions imposed by the Health Board, and - I am informed - is now in a position to offer plots for sale. The rental of the sub-divisional plot leases was fixed at Shs:72/- per annum. I trust that Your Grace will not withhold covering sanction as this undertaking meets a public need in as much as the auction of the Kitale Township plots is stayed by the general embargo on sales of land pending a pronouncement on Indian policy.

6. I should be grateful for a telegraphic reply as another similar application is at the moment under consideration.

I have the honour to be,

My Lord Duke,

Your Grace's most devoted and
most obedient servant,

R. T. Compton

G O V E R N O R .

8th December, 1922.

Kenny

OPINION
ON
THE POWER OF THE GOVERNOR TO CONVERT ON ANY
TERMS HE PLEASES WITHOUT INSTRUCTIONS FROM
THE SECRETARY OF STATE AGRICULTURAL
LEASES INTO TOWNSHIP LEASES.

The argument in favour of the governor's possessing this power is based on the wording of Section 6 (1) of the Crown Lands Ordinance, 1915, which reads as follows:-

"6. The governor, in addition to, but without limiting any other right, power or authority vested in him under this Ordinance may:-
 "(1) subject to the provisions of any order-in-council or to any general or special instructions of the secretary of state, grant lease or otherwise alienate in his Majesty's behalf any crown lands for any purpose and on any terms and conditions as he may think fit."

We agree that prima facie this section may be read as giving the governor power to accept the surrender of an agricultural lease and to make a regrant of the same land to the same individual for the purpose of dividing it into township plots.

We are however of opinion that an examination of the ordinance as a whole shows that it was not intended to give the governor such extensive powers and that therefore section 6 must be given a more restricted meaning. The words "subject to" must be read as equivalent to "in accordance with". This view is supported by subsection (v) of section 6, which would otherwise have little meaning.

An agricultural lease is issued subject to various conditions laid down by the Ordinance e.g. by section 25 the Governor may not lease farms exceeding 5000 acres in extent without the consent of the Secretary of State. Sales must be by auction (27, 28, and 29). Term and rental are fixed by sections 34, 35, 36 etc. Leases are subject to development conditions.

Subdivision is allowed on approval by the Governor-in-Council but only on condition that every new lease is subject (with certain specified exceptions) to the same covenants and conditions as the original lease. Section 44 (2).

No provision is made in the Ordinance for the conversion of agricultural holdings into township plots.

It is to be noted that there is nothing to prohibit a holder of an agricultural lease surrendering his lease to the Governor or transfer him in lieu of a lease of a township plot under part III of the Ordinance always provided that the land is not in a township, which I understand is not the case at present instance.

The conversion however may defeat the purpose of the Ordinance. The land was originally intended for agricultural purposes and subject to development conditions. The holder or a third party may then use the land for a purely speculative purpose.

Assuming the land to be within a Township and to be freely surrendered so as to become Crown-land the Governor may, in certain cases lease it in township plots without an auction. (Section 18).

An examination however of this part of the Ordinance shows that such direct alienation is intended to be exceptional and restricted by special circumstances.

The only special circumstance adduced in the present case is the embargo on alienation in the Highlands till the settlement of the Indian question.

It seems to us that this embargo must apply to all crown land equally whether it is within the Township of Kitale or adjacent thereto.

L. W. G. Gower

ATTORNEY-GENERAL.

Sd. IVON L. O. GOWER

SOLEITOR-GENERAL.

O. D.
12 MAR
12

Gov 1694/23 Kenya.

Code of Stat
1.20 pm
12th March 23
[Signature]

and 12 March

Your despatch of 12th December 1966

DRAFT. Code Del.

Conversion of leases & I concur in interpretation placed by

Governo,
Nairobi

very general Section Six

MINUTE.

Ordinance quoted but in

- Mr. Seel 7/12
- Mr. Parkinson 10/3/63
- Mr. B. St. Onge 20.3.23
- Mr. Davis
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Mr. Ormoby-Gore.
- Duke of Devonshire.

special circumstances & of

conversion in the case of Kitale

Limited provided that

(one) terms of conversion ensure that ~~Government and not Company~~ additional profit due to lease in township plots falls to Government and not to Company

(two) you are satisfied that such conversion at present time

Confidential code
and this is so
1966

circ for
despatch

raise political issue
will not be regarded by either
~~Europeans or Indians~~
as between Europeans & Indians
~~party as a usual affecting~~
or cause embarrassment
political situation w^{to} Indian
views of suppression of
~~question~~ - sale of Government plots

Despatch follows pending
receipt of which no further similar
applications should be granted.

DEVONSHIRE

raise political issue
will not be regarded by either
~~European or Indian~~
as between Europeans & Indians
front as a usual affecting
or cause embarrassment
political situation wto India
in view of suspension of
operation of Government plots.

Despatch follows pending
receipt of which no further similar
applications should be granted.

DEVONSHIRE

103

Govt. 1694/23 Kenya

21 March 1923

457

DRAFT.

Kenya
No 414
London.

MINUTE.

Mr. Seel. 16.3.23.

Mr. Parkinson 17/3

Mr. Bush 17/3

Mr. Davis. 17/3

Sir G. Ormside.

Sir H. Road.

Sir J. Masterton Smith.

Mr. Crombie-Gore.

Duke of Devonshire.

Sir,

I have etc. to ack. the receipt
of your des. No 1686, of the 12th
of December, and to confirm
my ltr. of the 12th of March on
the subject of the power of the
Governor, under Section 6(1)
of the Crown Lands Ordinance,
1915, to convert an agricultural
lease into a township lease, without
reference to the Secretary of
State.

2. On the general
question of principle, as I
informed you in my telegram,
I concur in the interpretation

Section 6(1) of

placed upon the Ordinance
by the Attorney General
in his memorandum. The
object of this section was to
give power to the Governor to
grant land, in special cases,
on special terms not provided
for in the Ordinance; since
in the absence of such a
provision there would have
been no legal power to grant
land on terms outside the
provisions of the Ordinance, even
if such terms had been
approved by the S. of S. ~~The~~
construction it was not
intended to empower the
Governor to proceed as he thinks
fit, unless specially
restricted by the S. of S., and
I agree with the Attorney
General that such an

interpretation would render
meaningless the greater part of
the Ordinance 458

3. In the particular case
submitted for ^{my} covering approval
in para ~~4~~ and 5 of your
despatch, I saw no objection
to the substitution of a township
lease for an agricultural lease
in respect of a portion of the
farm in question. I am not
aware, however, of the precise
significance of the term
"private township" which is
used in this connection, and I
shall be glad to receive an
explanation on this point.

4. I consider ~~that~~
that such applications should
only be granted on terms that

DRAFT.

(2)

MINUTE.

- Mr.
- Mr.
- Mr.
- Mr. Davis.
- Sir G. Sprinello.
- Sir H. Road.
- Sir J. Moxerton Smith.
- Mr. O'Connell-Gore.
- Duke of Devonshire.

will ensure that the Govt,
Lessees,
and not the ~~Govt~~ enjoy the
additional profit that will
be derived ^{in consequence of} by the land being
leased in townships plots ^{instead of} ~~and~~
^{agricultural}
not for the purposes of ~~the~~
agriculture. Such a view does

not appear ~~to differ~~
from that taken by the
Land Tenure Commission
on page 5 of their
Report. I shall be
glad of your views on this
subject.

Having regard to
the fact that in the case
of the Nitrate Company's
township plot, applications
for tenancies will be
dealt with by the Company
and not by the Government,

it may well be
~~I do not anticipate~~ that
the granting of tenancies in the
township will ^{not} raise a
political issue as between
Indians and Europeans,
but this aspect of the matter
is one to which you will
no doubt give ^{best} careful
consideration in receipt of my
letter of the 12th of March.

DRAFT.

3
MINUTE.

- Mr.
- Mr.
- Mr.
- Mr. Davis.
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterion Smith.
- Mr. Ormsby-Gore.
- Duke of Devonshire.

(Signed) DEVONSHIRE