

1923

KENYA

C.O
46261

FROM African Progress Union

DATE 17th Sept, 1923

REC'D 19 SEP 23

FOR CIRCULATION:-

Mr. *Beyle*

Mr.

Mr.

Asst. U.S. of S.

See H. Head

17/9/23

SUBJECT

Flagging of Kilash

- Form U.S. of S. ✓
- Part U.S. of S.
- Secretary of State

Reports circumstances concerning in death of Kilash and employment of Justice O'Brien that further investigation may be made

Previous Paper

\$00

x 424

MINUTES

We had no discussion of the case when the report first arrived. I thought, I think, that we shall get no further with this trial by jury system until we institute a system of reports by the J. of all cases going to court, & (as Mr. Justice has suggested) kindly also require reports of at least the main points up

2. I think that we may expect a special report from the Gov. or O.A.G. in this case, which he knows we are interested, the press accounts, which we have received are not satisfactory

To Sec. tal. cons. 29 Sept 23. Amed. 2 Oct. 1923.

Subsequent Paper

Gov 46394

used in this letter. ~~and~~
~~name of the~~
~~name~~

In my view,
it is not at all
defensible on the ground
that they did not
know that that
would be the
consequence of a certain
action. And, it
is a great deal to
expect of a lay jury
that they should
know or see a criminal
act the flogging of a
white employee, which
has been generally
regarded as the best
means of correction:
if it was not a
criminal act in their
eyes they could not
find a verdict of
murder.

It is not a criminal
act for a father to beat
his son - but sufficient
to beat him to death?

H.A.

Unless intent can be
proved I do not say it
is manslaughter. That is
what I do not say.
See what is
the A. case

? Ask. ret. & say that
the S. of. is awaiting
a report on the
trial and verdict from
the S. of. & the A. of.

the case.

H. J. R.

20/9/23

Mr. Ameyson ✓

SAS

Japan. This case is
due to the intervention
in Parliament.

20.9.

This would seem
to be a pretty bad
example of what
has happened only
too often in the
East in Kenya.

21.9.23

I am afraid the case
to be raised at the
Parliament meets
at the moment
we must proceed
as suggested.

22.9

the case.

H. J. R.

20/6/23

Mr. Amey Jones ✓

SAS

Jaynes. This case is
seen to be mentioned
in the minutes

20.9.

This would seem
to be a pretty bad
example of what
has happened only
so often in the
past in Kenya.

with 21.9.23

I am afraid the case
will be raised at the
Parliament meeting
but in the meantime
we must proceed
as suggested.

2. 23.9

Sep. 20th 1873.

My dear Duke of Devonshire,
is the thing in the

much trouble?

How can I get an account of
Zepher's trial - is it possible
to get a copy from Mr. Col. A.?

He is a very wonderful fellow
than than all & Zepher - full of
such steadiness & gentleness!

Believe me Sir sincerely
Yours,
Wm. P. Chapman.

20-9
Borne Hill
Rapha

Sep. 20th 1923.

From Hill
Rapha

My dear Duke of Devonshire,
is the thing for us

much trouble?

You can get an account of
Papier's trial - (if possible
get a copy from Mr. Col. St.')

We've had such wonderful letters
from Mr. Hill & Rupert - full of
such steadiness & gentleness.

Believe me I'm sincerely
Yours,
Mr. T. Graham.

Downing Street.

28th September, 1933

Dear Madam,

The Duke of Devonshire desires me to express his regret for the delay in answering your letter of the 20th instant and to say that he is afraid he has no information about the case beyond what has been communicated to the Bishop.

Yours faithfully,

E.M.

Downing Street.

26th September, 1923

Dear Madam,

The Duke of Devonshire desires me to express his regret for the delay in answering your letter of the 20th instant and to say that he is afraid he has no information about the case beyond what has been communicated to the Bishop.

Yours faithfully,

E.M.

C.O.
46261
RECS
19 SEP 23

AFRICAN PROGRESS UNION.

1260, Park

23, Westburne Park Road,
London, W.2.
17.9.23.

His Grace The Duke of Devonshire, K.G.
Secretary of States for the Colonies,
Downing Street,

Your Grace,

Flogging and death in British East Africa.

A correspondent of British East Africa sends to the African Progress Union the East African Standard of August 4th. 1923. in which is reported the trial of a mole settler, Jasper Abraham, by a court, who, with three of his native employees, was charged with the death of Kifosh another of his employees.

Two of these men stated that Kifosh was ordered by Abraham to lead a mare some seventeen miles. Kifosh rode the mare part of the way without his employer's permission. On being informed of this Abraham ordered his three men to catch Kifosh which they did. The unfortunate man was held down and Abraham taking a double hide rain flogged him till he (Abraham) was tired. The flogging was continued in turn by Killel, Chumbwa and Chibuli, Abraham's men. Kifosh then became unconscious, about seven bucketsful of water were thrown over him, his hands and feet were tied with rein after which he regained consciousness. He was lifted up and ordered to go to the house. He fell, whereupon Abraham struck him with his fist and kicked him on the head and ribs. The third native witness said he saw deceased being led towards the store after being beaten, he was unable to stand; in the store his hands were tied behind his back by Abraham, This witness was placed on guard all night and stated deceased cried in his sleep and died at 4 o'clock in the morning.

Michael Abraham, brother of the accused, gave evidence to the effect that he was present for ten or twelve minutes at the flogging which he described as "not severe." The boy was obstinate and defiant, and refused to answer questions as to who gave him permission to ride the mare. Witness did not interfere because he "thought there was no need to do so."

On further cross-examination he admitted he had himself given a boy "six with the kiboko" and he should think they hurt the boy more than those he saw inflicted by accused.

In the very brief accounts which appeared in the press of this country it was reported the mare died in consequence of the treatment meted by deceased. It was proved that the mare presumably lame at the time, was in good condition the day after.

Dr. F.F. Henderson, District Surgeon of Nakuru then gave evidence. The body, he said, was that of a well-built native, all the internal organs were healthy; the injuries were extensive and severe; there were two cuts with purple bruises around the inner side of the lower lip, abrasions on the right wrist, a distinct swelling on the right groin and numerous horse-shoe shaped marks with dried blood on the outer side of both thighs and buttocks; these marks were half to one inch wide. There were incisions and severe bruising of the muscles of the buttocks which were congested and full of blood. The same condition prevailed down the back of the left thigh with considerable haemorrhage. The swelling in the right groin consisted of clotted blood the size of his fist.

Dr. Henderson was apparently subjected to a very severe cross-examination which left his evidence unshaken. He reiterated that the flogging of the boy must have been severe and extended and concluded the report of his post-mortem examination with the words "I can find no disease that I can certify as the cause of death."

Abraham gave evidence on his own behalf, he made a full statement of the sequence of events before and after the flogging, pleading illness as evidence of his incapacity to inflict such injuries. He intended, he said tearing up the labour ticket of the boy as punishment for riding the mare without leave. It was as a result of "insolence" that the boy was flogged and he took full responsibility for the actions of the three natives accused with him, for they acted under his orders. Other witnesses were called to support Abraham.

Abraham was sentenced to two years imprisonment with hard labour and three natives to one day imprisonment each.

I would point out the utter inadequacy of the sentence on Abraham for this monstrous crime of murder, and the injustice of sentencing the natives inasmuch as they acted under compulsion.

-2-

cross-examination he admitted he had himself given a "kiboko" and he should think they hurt the boy more than he saw inflicted by accused.

Very brief accounts which appeared in the press of this case reported the mare died in consequence of the treatment she received. It was proved that the mare presumably at the time, was in good condition the day after.

Dr. Henderson, District Surgeon of Nakuru then gave evidence. The body, he said, was that of a well-built native, internal organs were healthy; the injuries were extensive - there were two cuts with purple bruises around the corners of the lower lip, abrasions on the right wrist, a laceration on the right groin and numerous horse-shoe shaped abrasions on the outer side of both thighs and these marks were half to one inch wide. There were also severe bruising of the muscles of the buttocks congested and full of blood. The same condition was seen on the back of the left thigh with considerable swelling. The swelling in the right groin consisted of a collection of blood from his fist.

Dr. Henderson was apparently subjected to a very severe cross-examination which left his evidence unshaken. He said that the beating of the boy must have been severe and extended over a long time. The report of his post-mortem examination with the findings was that I can certify as the cause of death.

When he gave evidence on his own behalf, he made a full statement of the sequence of events before and after the flogging. He said that the beating was as evidence of his incapacity to inflict such a punishment as intended, he said tearing up the labour ticket of the boy as punishment for riding the mare without leave. It was his opinion that the boy was flogged and he took responsibility for the actions of the three natives accused. He said they acted under his orders. Other witnesses were called to support Abraham.

Abraham was sentenced to two years imprisonment with hard labour and the three natives to one day imprisonment each.

At this point out the utter inadequacy of the sentence for this monstrous crime of murder, and the injustice done to the natives inasmuch as they acted under compulsion.

We press for some investigation into these verdicts and reconstruction of trial by Jury in the protectorate in question. Apart from its illegality, flogging is brutalising and degrading to a degree; it is certainly a practice which should not be countenanced by the civilized peoples of the world and we have no doubt your Grace will be good enough to adopt immediate measures to take from the hands of white settlers in East Africa this dangerous weapon now being utilised for the purpose of extracting obedience from and terrorising the natives. We have always understood and known British power in conquered, ceded or acquired territory to be demonstrated and maintained by constitutional means and not by brute force. This dehumanising treatment of the native on his own soil by his more privileged white fellow-subjects is creating in different parts of the Empire varying degrees of dissatisfaction, which, unless appropriate measures for their early removal are adopted, will inevitably lead to disaffection, which in its turn, may result in a lamentable state of affairs for the Empire.

My Committee would be pleased to send a deputation of three of our members for the purpose of discussing this important matter with your Grace.

I have the honour to be

Your Obedient Servant

John Alcock

PRESIDENT

46261 Kenya

450
Coded & sent
11.45 am 29.9.23
CP

O. D.
R 29 SEP.
D 102

9 Sep.

DRAFT. Telegram

8

London

Nairobi

MINUTE.

Ans. 2-48394

Presume that report on
trial and verdict

Mr. Jewell 27.9.23
Mr. Jeffries 27.9
Mr. Boltonley 28.9.23 for
Sir G. Davis. advice

Abraham has been sent
when may it be received.

Sir G. Grindle.

Sir H. Read.

Sir J. Masterion Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

Send also copy of

summing-up if one
exists also information
as to maximum

draft

46261 Kenya

450
Cable 'saul'
11.15 am 29.9.23
C.P.

O. D.
A-29SEP
D 100

9 Sep

DRAFT Telegram

Lanua

Nairobi

MINUTE.

Ans - 48394

Presume that report on
trial and verdict

- Mr. Jewell 27.9.23
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- Mr. Bottomley 28.9.23 for
 ance
- Sir O. Davis
- Sir G. Grindle
- Sir H. Ross
- Sir J. Masterton Smith
- Mr. Ormsby-Gore
- Duke of Devonshire

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Send also copy of
summing-up if one
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as to maximum

draft

h/ 46261/23 Kenya

Se

2 Oct. 1923

Sept 1923

DRAFT.

President

Progress Union

MINUTE.

- Mr. Jewell 27.9.23
- Mr. Joffe 27.9
- Mr. Bottomley 29.9.23
- Sir C. Davis
- Sir G. Grindle
- Sir H. Read
- Sir J. Masterton Smith
- Mr. Ormsby-Gore
- Date of Despatch

Sir,

I am sorry to ask the rest of

your letter of the 17th of Sept.,

regarding the trial and sentence

passed upon Jasper Abraham

in Kenya, and to inform you

that the Govt. is awaiting a

report on the trial and

verdict for the Governor.

(Signed) M. J. READ.

2 drafts