

EAST AFR. PROT:
7778

C O
7778
REC'D
15 MAR 10

res J.H.
1910
28 Jan
previous Paper

172

Compensation Claim

in respect of injury sustained in road accident
in 1907.
submit petition

Wait for the reply from the Govt.
at once.
H. J. R.
18/10

See now Gen
8155
H.A.B.
March 22

subsequent Page
42
8155

Cross Industrial Home.

NAIROBI.

British East Africa.

28th, January 1910.

7773
Reg^s
15 MAR 10

To

His Excellency His Majesty's
Principal Secretary of State
for the Colonies,

L O N D O N.

May it please Your Excellency,


I have the honour to forward herewith a
Memorial from myself together with enclosures for
favour of Your Excellency's kind and compassionate
consideration.

A copy of the above has also been forwarded
to His Excellency the Governor of the British East
Africa Protectorate.

I have the honour to be,

Your Excellency's

Most obedient and humble servant


Principal & Secretary,
Cross Industrial Home.

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SYNOPSIS.

- 1) Introductory - ground of Petition - serious bodily injury - claim - nonsuccess with Government of British East Africa.
- 2) Explanatory - offering details and plan.
- 3) Accident to Memorialist through neglect and failure of Public Works Department in not adopting usual necessary precautions for public safety.
- 4) Descriptive of route - obstacles encountered - experienced bearers surprised and detached - vehicle upset - Memorialist thrown headlong on to road due to noncompliance of the Public Works Department to place necessary barrier to protect the public while cutting for Drainage System was in progress - serious compound fracture of forearm
- 5) Narrowly escaped being killed.
- 6) Severe shock to aged Memorialist - constitution broken up - work of Rescue (The Cross Industrial Home solely maintained by him) ruined.
- 7) Consequences very serious - injuries sustained permanent for remaining of life.
- 8) Overtures for mutual understanding with Commissioner of Public Works.
- 9) Palliative measures directed by same Official.
- 10) Suggested procedure adopted by Memorialist, but prospects failed.
- 11) Memorialist's attempts thereanent miscarried, he being without necessary equipment or appurtenances for executing certain work which another possessed and underbid him.
- 12) Particulars showing reasons for lapse of time in submitting claim to Government.
- 13) Claim submitted, which Government misjudged and repudiated.
- 14) Quotations from His Excellency the Governor's reply based on assumption of new P.W.D. Officials who were not in office at time of accident.
- 15) Comment on such unreliable testimony of new P.W.D. Officials who were not in service here at time of accident, and previous request for reference to proper Officer having knowledge of facts of the case.
- 16) Visit of Mr. Fletcher's Clerk to inquire about Memorialist's condition.
- 17) Trusting this important matter for just and fair decision by His Excellency The Principal Secretary of State for the Colonies, and pointing out serious inaccurate allegations.
- 18) Maintains practical admission of claim by Public Works Officials by inference and nonrejection by fact of offering Memorialist work after his representations.
- 19) Explains erroneous opinion of His Excellency the Governor regarding delay in submitting claim officially and giving reasons for such supposed delay.
- 20) Submits Medical Certificate showing the extent of the very serious injuries sustained by Memorialist.
- 21) Appeals to His Excellency The Principal Secretary of State for the Colonies to coincide in Memorialist's views on main question at issue
- 22) Prayer for the granting of relief sought as may in equity be deemed reasonable.

Gross Industrial Home.

NAIROBI,

British East Africa,

28th, January 1910.

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To

His Excellency His Majesty's Principal
Secretary of State for the Colonies,

L O N D O N.

May it please Your Excellency.

The Memorial of J.H. Gross u. c. s.
most humbly sheweth :-

- (1) That your Memorialist met with a most serious accident at Nairobi, British East Africa, which but for his previous robust constitution and good health might have ended fatally; and has submitted his petition for compensation to this Government but without success.
- (2) That your Memorialist by reason of the accident having taken place at such great distance, and in order that Your Excellency should know the real facts of the case, now feels it incumbent on him to explain matters in detail and to submit a plan of the scene of the accident showing the roads hereinafter referred to, as also the route taken by your Memorialist to reach his place of residence in Market Street.
- (3) That in April 1907 owing to the neglect and want of the ordinary precautions necessary on the part of the Public Works Department, Nairobi, British East Africa, in not notifying the public by notice by placard and

and placing a barrier to warn the public of a deep cutting made in the public road for the drainage system at the junction of Victoria Street, Market Street, and Government Road, as required by law and custom in order to prevent accidents to life and limb, your Memorialist was as usual returning from Church at noon in his Rickshaw, which was being hauled by two experienced adults who were solely employed for rickshaw-work and who up to the time of the accident had been over two years in the service of your Memorialist.

- (4) That the day of the accident being a Sunday, large numbers of Africans as usual were free, and there being a gang of raw Kikuyu labourers passing in the direction from Victoria Street to Market Street, and to avoid a collision with any of them, his rickshaw men keeping steadily to the left side of the road haled out in Swahili "Simile", i. e., to get out of the way; some heeded but the majority of them did not; and in order to get clear of them, and on to Market Street to your Memorialist's residence it was necessary, as will be seen from the dotted lines in the plan, that your Memorialist's rickshaw men should take a curve in the direction of the construction of the road for this purpose, and in doing so your Memorialist and his rickshaw men were quite ignorant of the cutting existing within the roadway owing to the neglect of the Public Works Department in not placing the necessary and required barrier, and before your Memorialist or his men could realize the position they confronted the cutting when however it was too late the foremost man having tripped and fallen and the rebound of the Rickshaw caused

him to release his grip of the Rickshaw resulting in its upsetting and thus throwing your Memorialist out of it and heavily on to his left side causing him to sustain a very serious compound fracture of the left forearm both bones of which were completely severed leaving the hand hanging on just only by the skin.

- (5) That had your Memorialist not placed out his hand as any one naturally would do, in the attempt to protect himself he might have been thrown on his head and killed.
- (6) That the severity and serious consequences of the shock thus occasioned to your Memorialist's constitution may well be imagined when it comes to be understood what this injury means to your Memorialist who is over sixty years of age with his health thus affected, and his work of Rescue (The Cross Industrial Home, a benevolent and philanthropic Institution for the reception and training of juvenile waifs and strays, the Homeless, and the Outcast, of whom 597 have to date been reclaimed and provided for) ruined.
- (7) That by reason of your Memorialist's advanced age the bones have not yet knit properly together nor is there any likelihood of their ever now doing so as the tendons having contracted proper joints are thus rendered impossible leaving the arm comparatively useless and it is for this cause he is unable to trust it to carry any appreciable weight for fear of its giving way again.
- (8) That your Memorialist at first approached the Honourable the Commissioner of Public Works, offering to waive his claim for compensation if he could in lieu thereof give him some work in the shape of petty contracts, not so much for himself as for the Cross Industrial Home.

- (9) That in pursuance thereof, the Honourable the Commissioner of Public Works after the lapse of six months informed your Memorialist that such contracts were in the hands of the Executive Engineer, directing your Memorialist to see him for such work.
- (10) That your Memorialist duly interviewed the Executive Engineer, and it was after the lapse of about three weeks or so that two Tender Forms were sent to him which were duly filled in and submitted but the contracts were not given to your Memorialist on the grounds that the rates tendered for by him were too high, so that all prospect of compensation failed.
- (11) That in this connection it should be here mentioned that it was manifestly impossible for your Memorialist to tender against that submitted by the Indian Contractor who possessing his own equipment (i.e.: carts, oxen, and other conveniences for the distribution of the necessary earthwork, etc.) was obviously in a better position to undertake the contracts at considerably lower rates than your Memorialist, and in consequence of which the Indian Contractor obtained the work.
- (12) That there has been no undue delay in representing matters to the local authorities, as erroneously supposed, because your Memorialist was unable to approach His Excellency the Governor sooner for the reasons that he was confined to his bed and house for over a year, and that it took the Honourable the Commissioner of Public Works seven months, and the Executive Engineer about a month, to reply to his several letters and reminders, and a further delay was occasioned owing to His Excellency's absence from the Capital on his official visit to Uganda, and a yet further delay for

obtaining the best and unbiased legal assistance from a Bombay Barrister-at-Law, as having no alternative he felt bound to do, with the view to strengthen your Memorialist's case.

- (13) That your Memorialist after this approached His Excellency the Governor with his case, humbly soliciting the very moderate compensation of £.2,000/- for the very serious injuries he has received, *which he regrets to submit, has been*
- (14) *mispaid* That His Excellency the Governor in his reply to your Memorialist's Petition states :-

" That the officers of the Public Works Department
 " so far from admitting, as you suggest in your
 " petition, that they or any of them were responsible,
 " by reason of any act or default on their part, for
 " your accident, deny that they were in any way neglect-
 " ful of their obligations, moral or legal, to the
 " public in connection with the work at or near the
 " place where the accident occurred; and again

" The fact that the allegation of negligence was
 " not made by you until some two and a half years
 " after the incident, has rendered it difficult to
 " ascertain whether directions given by the officers
 " of the Department concerned for the prevention of
 " accidents in the neighbourhood of the work in making
 " or repairing the road were properly carried out by
 " the native employees of the Department. His
 " Excellency, however, has no reason to doubt that all
 " proper directions and precautions to that end were
 " given and taken by the officers in charge of the work,
 " and under the circumstances cannot admit that the
 " Government is under any moral obligation to pay
 " compensation for the injuries and loss sustained by
 " you."

- (15) That your Memorialist in view to the foregoing two paragraphs of His Excellency's letter very humbly ventures to submit that none of the present officers of the Public Works Department were here in service at the time of the accident save Mr. Fletcher, the then Executive Engineer, to whom your Memorialist begged a reference should be made and to whom your Memorialist had written a note about a month or so after the accident apprizing him of the very serious injuries your Memorialist had come by through the negligence

on the part of the Public Works Department in not protecting the open drain, but evidently such reference could not have been made.

- (16) That about three or four days after addressing Mr. Fletcher a Goanese who was quite unknown to your Memorialist, presumably a Clerk from Mr. Fletcher's office, came to see him to inquire how he was, thus proving that his note was duly received.
- (17) That your Memorialist therefore leaves it to Your Excellency to determine if and in what manner could the present officers of the Public Works Department from personal knowledge, make such an allegation obviously with the view to protect the Department and to mislead His Excellency the Governor, who is known to hold such just views, averring that all precautions were taken to prevent accidents when they were never here in service at the time of the accident, and therefore had no knowledge of the true facts of the case.
- (18) That your Memorialist further begs leave to state that he very humbly ventures to maintain that by inference a clear admission was made by the Public Works Authorities offering him contract work in order to recompense him for the very serious injuries he had received, which they might have easily refused if they were not liable.
- (19) That your Memorialist ventures to very humbly submit that the question of delay erroneously raised by His Excellency is not two and a half years, but only one year and eleven months without taking into account his letter addressed to Mr. Fletcher, the then Executive Engineer as will be seen, from your Memorialist's first communication dated the 1st March, 1909 to the Honourable the Commissioner of Public Works and

subsequent letters and reminders; and this delay of one year and eleven months has already been explained in his Petition to His Excellency the Governor vide paragraph 13, and which your Memorialist begs leave to also reproduce shortly here :-

" Confined to bed for over a year.

" In correspondence with the Honourable the Commissioner of Public Works seven months, and the Executive Engineer about a month.

" Waiting for the return of His Excellency the present Governor Sir Edouard Percy Cranwill Girouard from his official visit to Uganda; and

" Seeking legal advice from a Bombay Barrister-at-Law."

(20) That your Memorialist begs leave to submit his Medical Certificate showing the extent of the very serious injuries he has sustained due to the neglect of the Public Works Department.

(21) That your Memorialist therefore humbly prays that Your Excellency, having regard to the facts of his unfortunate case, will concede and decide, That the injuries that he came by were solely due to the neglect and want of proper precautions on the part of the Public Works Department in not placing the usual public notice on the street or a barrier to warn the public, as required by law and prevailing universal custom, whilst the cutting for the drainage system was open and in progress, and for want of such precautions your Memorialist has very seriously suffered and is still suffering through impaired health and ruined business, and That the Public Works Authorities have virtually admitted their liability by the fact of their offering him Tender Forms to fill up for certain contract work (by way of solatium).

(22) That your Memorialist, in view to the foregoing facts, very humbly ventures to crave your Excellency's kind and compassionate sympathy with his unfortunate case, and in consideration of what this very serious injury means to him at his advanced age and for the remaining short span of his life with an injured arm practically lost to him, his health affected, and his business ruined; and be pleased to grant him the very moderate compensation prayed for or such reasonable sum as Your Excellency in Your Wisdom and Mercy may see fit in equity to grant; and for which act of gracious kindness your Memorialist will, as in duty bound, ever pray.

J. H. Cross

Cross Industrial Home.

C/O
7773
REC'D
15 MAR 10

Nairobi, British East Africa

6th, December 1909.

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To.

The Private Secretary
to His Excellency the Governor.

N A I R O B I

Sir,

I have the honour to forward herewith
a Petition for favour of His Excellency's kind
consideration.

I have the honour to be,

Sir,

Your most obedient servant

(Sd.) J.H. Cross.

Principal Secretary
CROSS Industrial Home.

Industrial Home.

Nairobi, British East Africa
6th, December 1909.

To

His Excellency Sir Edouard Percy Cranwill
Girouard, K.C.M.G., D.S.O., R.E.,
Governor and Commander-in-Chief,
British East Africa,

NAIROBI.

May it please Your Excellency.

The Petition of J.H. Cross n. o. s.
very humbly sheweth :-

- (1) That in April 1907 owing to the negligence and want of precaution on the part of the Public Works Department, Nairobi, B.E.A. in not placing the usual barrier to warn pedestrians of a deep cutting made in the public road (at the junction of Victoria Street, Market Street and Government Road) your Petitioner was thrown heavily out of his Rickshaw which was being hauled by two experienced adults thereby sustaining a very serious fracture of the left arm, both bones of which were broken and left hanging by the skin.
- (2) That your Petitioner very humbly ventures to submit to Your Excellency's kind consideration the very serious consequences which this act of negligence has caused him and what this compound fracture means to him at his advanced age - 60 years.

- (3) That your Petitioner was under medical treatment for over a year, being unable during that period to perform his ordinary avocations - his hand is not well yet, nor is there any likelihood of its ever being so, as it has to all intents and purposes become practically useless to him, in as much as he is unable to trust it to carry any appreciable weight for fear of its giving way.
- (4) That this negligence and want of precaution on the part of the Public Works Department in not taking the obligatory initiative to notify the Public of impending danger was the direct cause of the accident to your Petitioner.
- (5) That in the absence of such precaution it was obviously impossible for your Petitioner to know that a deep trench was dug across the public road, and which excavation was the direct cause of the accident herein referred to with such injurious and disastrous results to him.
- (6) That the open drain causing the accident was not covered or protected in any way before it was opened for use of the Public, and had no notice posted up at any convenient spot nor precautions of any kind taken to avoid accidents, as the Public Works Department ought to have done as required by the rules.
- (7) That your Petitioner humbly submits that owing to such neglect on the part of the Public Works Department in not providing for the safety of the Public whilst the cutting was in progress he

- sustained the very serious injury already referred to and which has virtually deprived him of the full use of his affected hand for life, wrecked his business, and ruined his health.
- (8) That your Petitioner approached the Honourable the Commissioner of Public Works, offering to waive his claim for compensation if he could in lieu thereof give him some work in the shape of petty contracts, - not so much for himself as for the maintenance of the Cross Industrial Home.
- (9) That the Honourable the Commissioner of Public Works, after the lapse of six months, informed your Petitioner that such contracts were in the hands of the Executive Engineer, directing your Petitioner to see him for such work.
- (10) That your Petitioner duly interviewed the Executive Engineer and it was after the lapse of about three weeks that two tender forms were sent to him which were duly filled in and submitted, but the said contracts were not given to your Petitioner on the grounds that the rates tendered by him were too high.
- (11) That in this connection it was manifestly impossible for your Petitioner to tender against that submitted by the Indian Contractor, who possessing his own equipment (i.e. carts, oxen and other conveniences) for the distribution of the necessary earthwork, etc., was obviously in a better position to undertake such contracts at a considerably lower rate than your Petitioner.

(12) That your Petitioner very humbly begs leave to submit that the fact of the Public Works Department giving your Petitioner Tender Forms to fill in for certain contracts after his representations is in itself an indication that the Public Works Department have virtually admitted their liability and showed a desire to compensate your Petitioner for the injury he received.

(13) That your Petitioner for the reasons enumerated in paras 3, 9 and 10 as also owing to Your official visit to Uganda he was unable to submit his case sooner.

(14) That your Petitioner having regard to the circumstances surrounding his case viz :-

(a) That the direct cause of the accident which befel your Petitioner was wholly due to the neglect of the ordinary precautions on the part of the Public Works Department in not taking the necessary and imperative initiative to notify pedestrians that the cutting in the public road was in progress, and for the want of such precautions your Petitioner has very seriously suffered and is still suffering.

(b) That under the circumstances your Petitioner prays that Your Excellency may see fit to undertake his unfortunate case and after the necessary inquiry consider him for compensation for £.2,000 or for such relief as Your Excellency may see fit in equity to grant, seeing that his affected

hand is at his advanced age vis ually
lost to him and for which act of
merciful kindness your humble Petitioner
will, as in duty bound, ever pray.

(Sd.) J.H.Gress.

Reply from His Excellency the Governor to your humble
Memorialist's Petition.



communicating on
 subject please
 M. P. No. 2433/09.

SECRETARIAT,

Nairobi,

January 8th 1910.

Sir,

I am directed to inform you that His Excellency after careful consideration of your petition, dated December 6th 1909, finds himself unable to accede to your request for compensation for the unfortunate injuries sustained by you when thrown from a rickshaw in April 1907.

Apart from the consideration of matters which would have arisen to bar your request had it been advanced as a claim of right, His Excellency can find no sufficient justification for awarding to you as an act of grace on the part of the Government of the Protectorate monetary compensation out of the revenue of the Protectorate.

The officers of the Public Works Department so far from admitting, as you suggest in your petition, that they or any of them were responsible, by reason of any act or default on their part, for your accident, deny that they were in any way neglectful of their obligations, moral or legal, to the public in connection with the work at or near the place where the accident occurred.

Cross Esq.,

Cross Industrial Boms.

NAIROBI.

The fact that the allegation of negligence was not made by you until some two and a half years after the incident, has rendered it difficult to ascertain whether directions given by the officers of the Department concerned for the prevention of accidents in the neighbourhood of the work in making or repairing the road were properly carried out by the native employees of the Department. His Excellency, however, has no reason to doubt that all proper directions and precautions to that end were given and taken by the officers in charge of the work, and under the circumstances cannot admit that the Government is under any moral obligation to pay compensation for the injuries and loss sustained by you.

I am however to express His Excellency's regret at the occurrence of this unfortunate accident which incapacitated you for so long from pursuing your ordinary avocation.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) W.J. Monson.

SECRETARY.

Industrial Home.

1173

15 MAR 10

NAIROBI,

British East Africa.

12th, January 1910.

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To

The Secretary

to the Administration.

NAIROBI.

Sir,

I have the honour to acknowledge the receipt of your letter M.P.No.2433/09 dated January 8th. 1910 and in reply to very humbly state that by His Excellency's decision His Excellency has rendered the remaining few years (it may be) of my life painfully miserable and unhappy.

Paragraphs 3 and 4 of your letter under reply read as follows :-

" 3. The officers of the Public Works Department so far from admitting, as you suggest in your Petition, that they or any of them were responsible, by reason of any act or default on their part, for your accident, deny that they were in any way neglectful of their obligations, moral or legal, to the public in connection with the work at or near the place where the accident occurred.

" 4. The fact that the allegation of negligence was not made by you until some two and a half years after the incident, has rendered it difficult to ascertain whether directions given by the officers of the Department concerned for the prevention of accidents in the neighbourhood of the work in making or repairing the road were properly carried out by the native employees of the Department. His Excellency, however, has no reason to doubt that all proper directions to that end were given and taken by the officers in charge of the work, and under the circumstances cannot admit that the Government is under any moral obligation to pay compensation for the injuries and loss sustained by you."

In reply to the above two paragraphs of your letter I have the honour to very respectfully point out that none of the officers at present serving in the Public Works Department were in service here at the time when the accident occurred save Mr. Fletcher (to whom I beg a reference may be made) and to whom I wrote a note after a month or so while confined to my bed informing him of the very serious injuries I had come by through the neglect on the part of the Public Works Department in not protecting the open drain. About three or four days later a Goanese who was quite unknown to me and presumably a Clerk from Mr. Fletcher's Office came to see me to inquire how I was. It is therefore manifestly difficult to understand how the present officers of the Public Works Department could make such an allegation obviously with the view to mislead His Excellency that all precautions were taken to prevent accidents when they were never here in service at the time of the accident.

With regard to the question of delay I may state that it is not two and a half years as stated by you but only one year and eleven months as will be seen from my first communication dated the first March 1909 to the Honourable the Commissioner of Public Works and subsequent letters and reminders and this delay of one year and eleven months has already been explained in my Petition vide Paragraph (13) which I again beg leave to repeat:

" Confined to bed for over a year.

" In correspondence with the Honourable the Commissioner of Public Works seven months, and the Executive Engineer about a month.

" Waiting for the return of His Excellency the present Governor Sir Edmund Percy Granville Girouard from his official visit to Uganda; and

" Seeking legal advice."

In conclusion I beg to thank His Excellency for the kind sympathy he has expressed at the injuries I received and the deprivation of my duties for so long, but feel myself unable to accept the view that His Excellency the Governor has taken of my unfortunate case and am now necessitated to appeal to His Majesty's Principal Secretary of State for the Colonies for a revision of His Excellency's decision.

I have the honour to be,

Sir,

Your most obedient servant

(Sd.) J.H.Cross.

Principal & Secretary
Cross Industrial Home.

ROUGH SKETCH SHOWING PLAN OF ROADS - USUAL ROUTE TAKEN
 BY MEMORIALIST TO REACH HIS PLACE OF RESIDENCE
 (GROSS INDUSTRIAL HOME) SITUATED IN
 MARKET STREET.

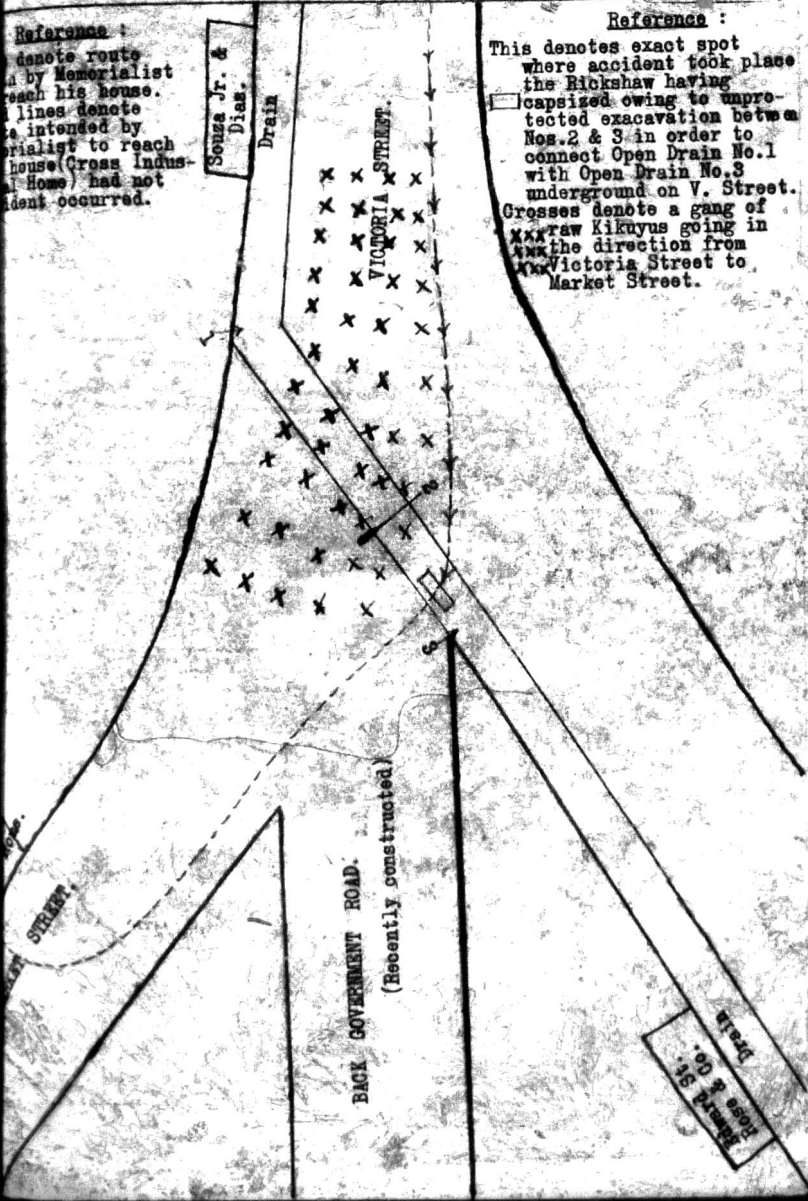
FILED
 MAR 10

Reference :

denote route
 taken by Memorialist
 to reach his house.
 lines denote
 route intended by
 Memorialist to reach
 house (Gross Indus-
 trial Home) had not
 accident occurred.

Reference :

This denotes exact spot
 where accident took place
 the Rickshaw having
 capsized owing to unpro-
 tected excavation betwe-
 Nos. 2 & 3 in order to
 connect Open Drain No.1
 with Open Drain No.3
 underground on V. Street.
 Crosses denote a gang of
 raw Kikuyus going in
 the direction from
 Victoria Street to
 Market Street.



Open Drain
 No. 3
 Road No. 2

7773
15 MAR 10
Copy of Certificate from Medical Expert

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Parklands,

Nairobi, 18th January 1910.

I hereby certify that I have this day thoroughly overhauled and examined the left forearm of Mr. J.H. Cross of the "Cross Industrial Home" and I find that at some recent period probably 20 to 24 months since he must have met with a very serious accident, fracturing both bones of the forearm and dangerously straining all the tendons.

The result being that even if he had the benefit of my services at the time I should never have been able to restore power to the arm with my treatment viz: (Massage and Electric Lt. and Water Treatment) which have been always so successful in restoring lost power in cases of this sort.

The reasons of the hopelessness of the case being 1st. the complex nature of the fracture and great strain on all surrounding tissues and 2nd. the advanced age of patient precluding all hope of my ever restoring any power to the now useless limb.

(Signed) W.A. Radcliffe.

Hydropathist Masseuse and Electric Medical
Expert.

Medlow Bath Australia.