

C O
1097
REC'D
11 JAN 12

EAST AFR. PROT.
1097

own Agents.

Date.
1912

10 Jan.

previous Paper.

41321/11

E. Africa Syndicate
Supplemental Agreement.

Submit letter from Solicitors explaining their failure to call attention in due time to Synd. delay in completing the Agreement.

Sir G. Fiddes.

My own view of the division of responsibility in this matter is given in the last paragraph of my memorandum of the 8th of December attached to M.P. 36963/10.

I should like to reply, (for I think a reply is needed), that Mr. Harcourt agrees that the Solicitors would have been in a better position to appreciate the importance of the date, the 12th of July 1911, if an fuller explanation had been given to them of the grounds on which the negotiations for the supplementary agreement had been

subsequent Paper

1181.

also in the case of...
makes his provision for the
part of him to the field
beyond a few contributions
by him to the President's fund,
I have to request that you
will suggest clauses for
inclusion in the present form
of agreement to cover these
two points

L

entered into; but that, even so, he considers that, on the ground of ordinary business considerations, the Solicitors should have manifested greater activity in pressing the Syndicate to execute the agreement, and, failing success in this endeavour, should have reported the matter at a comparatively early date.

See also $\frac{M. 9.}{1181}$

2 Feb
Jan. 15

Of course neither CA. nor anyone connected with them can be expected ever to "own up" - Mr's reply should list the J. P. fees & reasons & modify the opinion expressed in my letter of 14/12, but ^{does} not propose to pursue the matter.

- 15 -

as proposed by Mr Patten.

Ch 15.1

H. 17.1.12

E.A.P 36

ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES,
THE ABOVE REFERENCE AND THE
DATE OF THIS LETTER BEING QUOTED

TELEGRAMS "CROWN, LONDON"
TELEPHONE 1622 VICTORIA

WHITEHALL GARDENS,
LONDON, S. W.

10th January 1912

Sir,

I have the honour to acknowledge the receipt of your letter No.36963/1911 of the 4th December in which you advert to the fact that our solicitors did not call attention before the 12th July last to the delay on the part of the East Africa Syndicate Ltd in completing the supplementary agreement arranged with them.

2nd Jan/12 We referred your letter to Messrs Sutton Ommanney & Rendall and I enclose for the Secretary of State's information a copy of their reply. We feel bound to say that, with the information which was in their and our possession at the time, we do not think that there was any reason to suppose that the date in question was a critical one in reference to the signing of the agreement. If Mr Harcourt on further consideration should come to the same conclusion and hold them blameless in the matter, we should be glad to be able so to inform them.

I have the honour to be

Sir

Your Obedient Servant

The Under Secretary of State

&c &c &c

Colonial Office

J. Creech
for Crown Agents

3 & 4 Great Winchester St

E.C.

Sec/E.A.P. 36

2nd January 1912

C O
1097

12

EAST AFRICA PROTECTORATE
East Africa Syndicate Limited

Gentlemen

We have to express our regret that our reply to your letter of the 7th ultimo has been delayed owing to Mr Ommanney's inability, through illness to give his personal attention to the matter before the Christmas vacation.

We feel confident that after consideration of the facts set forth in this letter it will readily be conceded that we have not failed in our duty as your Solicitors.

The only knowledge we have of the matter was derived from a perusal of the file of documents which you transmitted to us with your letter of the 27th March last. The Lease of the 12th July 1904 was not prepared for us and until you asked us to prepare an agreement modifying the terms of that lease, we were not aware of the terms and conditions of the Lease. The question whether the Syndicate had or had not made default in completing certain developments under the terms of the Lease was a matter within the knowledge not of ourselves but of the Government.

On perusing the enclosures to your letter of the 27th March it appeared that the Syndicate by their letter of the 17th January last made certain proposals for modifying the terms and conditions of their Lease. These proposals were dealt with by their letter

all
1783
11

3 & 4 Great Winchester St

E.C.

Sec/E.A.P. 36

2nd January 1912

C O
1097
REC'D
11 JAN 12

EAST AFRICA PROTECTORATE
East Africa Syndicate Limited

Gentlemen

We have to express our regret that our reply to your letter of the 7th ultimo has been delayed owing to Mr Ommanney's inability, through illness to give his personal attention to the matter before the Christmas vacation.

We feel confident that after consideration of the facts set forth in this letter it will readily be conceded that we have not failed in our duty as your Solicitors.

The only knowledge we have of the matter was derived from a perusal of the file of documents which you transmitted to us with your letter of the 27th March last. The Lease of the 12th July 1904 was not prepared by us and until you instructed us to prepare an agreement modifying the terms of that Lease, we were not aware of the terms and conditions of the Lease. The question whether the Syndicate had or had not made default in completing certain developments under the terms of the Lease was a matter within the knowledge not of ourselves but of the Government.

On perusing the enclosures to your letter of the 27th March it appeared that the Syndicate by their letter of the 17th January last made certain proposals for modifying the terms and conditions of their Lease. These proposals were dealt with by the letter

cc
1483
11

3 & 4 Great Winchester St

E.C.

Sec/E.A.P. 36

2nd January 1912

C O
1097
JAN 12

EAST AFRICA PROTECTORATE
East Africa Syndicate Limited

Gentlemen

We have to express our regret that our reply to your letter of the 7th ultimo has been delayed owing to Mr Ommanney's inability, through illness to give his personal attention to the matter before the Christmas vacation.

We feel confident that after consideration of the facts set forth in this letter it will readily be conceded that we have not failed in our duty as your Solicitors.

The only knowledge we have of the matter was derived from a perusal of the file of documents which you transmitted to us with your letter of the 27th March last. The Lease of the 12th July 1904 was not prepared by us and until you instructed us to prepare an agreement modifying the terms of that Lease, we were not aware of the terms and conditions of the Lease. The question whether the Syndicate had or had not made default in completing certain developments under the terms of the Lease was a matter within the knowledge not of ourselves but of the Government.

On perusing the enclosures to your letter of the 27th March it appeared that the Syndicate by their letter of the 17th January last made certain proposals for modifying the terms and conditions of their Lease. These proposals were dealt with by the letter

cc 9
1703
11

all 9.
1732
11

all 9
1753
11

Letter of the Colonial Office of the 27th of February and the terms and conditions of this letter were⁵⁶ accepted without qualification by the Syndicate by their letter to the Secretary of State of the 9th March last.

We submit that the instructions we thus received gave us no indication that there was any desire or intention on the part of the Protectorate Government to enforce against the Syndicate their right of re-entry or indeed that any such right had arisen through any default of the Syndicate to carry out development works under the terms of the Lease. In fact, a reference to such instructions in our opinion evidences an agreement arrived at by the Government to modify the terms of the Lease in respect (inter alia) to the covenant in that Lease contained as to such developments. In pursuance of the Agreement thus come to with the Syndicate they were informed by the letter of the 16th March that pending the signing of an agreement modifying the terms of the Lease the Governor had been informed local arrangements necessary to give effect to the that there was no objection to the Agreement thus come to with the Syndicate being at once proceeded with. We would point out that this communication was made to the Governor at a date when the term of seven years allowed by the Lease for development had all but expired and the breach of covenant, if any, must in fact have occurred already, the covenant in the Lease being impossible of fulfilment in the short period then remaining.

Furthermore, bearing in mind the fact that the failure of the Syndicate to give effect to the terms of the agreement thus come to would not deprive the Government of their right even after 12th July 1911 to re-enter and determine the

all 9
1753
11
The point is that
if that was
the case
the Government
could not
do anything
to prevent
the Syndicate
from
re-entering
the land
after
the 12th July
1911
JAB

and claim payment of the penalty and also the fact that the Syndicate had shown no sign of unwillingness to execute the proposed agreement but had merely made a reasonable request to be allowed sufficient time to communicate with their representatives in the Protectorate on the matter we submit that there was no occasion indeed it would have appeared uncalled for had we then called your attention to facts which, having regard to our instructions we were justified in presuming had been considered before agreeing with the Syndicate the amended conditions of development appearing in the correspondence.

(sd) Sutton Ommanney & Rendall

not present

J. P.

Cr. Acts. E.A.P.
1097

Downing Street,

23 January, 1912.

DRAFT.

THE CROWN AGENTS
FOR THE COLONIES.

MINUTE.

Mr. Butler, Jan. 20 *f.s.*

Mr.

Sir *S. Fiddes.*

Sir H. Just.

Sir J. Anderson.

Lord Emmott.

Mr. Harcourt.

Gentlemen,

I am directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter, Sec. E.A.P. 36, of the 10th of January, relating to the delay on the part of the East Africa Syndicate, Limited, in completing the supplementary *arranged* agreement with them.

2. Mr. Harcourt agrees in thinking that your Solicitors would have been in a better position to appreciate the importance of the date, the 12th of July 1911, in this connexion, if an

explanation