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Foreign
Date.
1912
th June
previous Paper.

CLAIM OF EMIL TOST

This copy of letter from German Embassy respecting compensation for a plot of land alleged to have been wrongly seized by the Govt. Enquires what answer?

*Copy to the S.A.F. for report
- & inf: the F.O. that this has
been done. W.P.F.*

at mee

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*copy O. A. S. 202 done 28 June
and 28 June
Approved Case 11 Sep 27659*

sequent Paper
27659

In any further communication on this subject, please quote

No. 26114/1912.
and address—
The Under-Secretary of State,
Foreign Office,
London.

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JUN 26 1912

The Under-Secretary of State for Foreign Affairs presents
his compliments to the Under-Secretary of State for the
Colonies and, by direction of the Secretary of
State, transmits herewith copy of the under-mentioned paper and
enquires what answer should be returned to the
German Embassy.
Foreign Office,

June 25, 1912.

Reference to previous letter:

Description of Inclosure.

Name and Date.	Subject.
German Embassy June 14	Blame of Emil Tost against H.M. Government.

1977

LONDON,

June 14th, 1912.

RECEIVED JUN 12

114)

Sir:-

A German national named Emil Tost has applied to the Imperial Foreign Office for support to a claim against the British Government based on the following circumstances.

In the year 1902, Tost acquired a plot of land at Kipini (British East Africa) from an Indian named Pirbhay; in compliance with the requisite formalities Tost caused the purchase to be registered in August 1904 by the Competent authority at Lamu and received a document dated September 16th, 1904, relating to the registration, from the Acting Sub-Commissioner.

On December 18th, 1906, the Government of British East Africa suddenly took possession of the piece of land and started to erect a building on it. The German Vice-Consulate at Mombasa protested to the Governor against the confiscation of the land. The Governor replied, however, that Tost's predecessor, the Indian Pirbhay, had unlawfully given himself out as owner of the land, for he had merely acquired from a

Swahili

E. Grey, Bart.

&c., &c., &c.

Swahili named Mwalim Tausi about four or five years previously, in settlement of a debt, a cocoa nut tree planted on the plot of land; and that, in the absence of sufficiently long possession on the part of one of these alleged owners, the land continued as before to be crown land.

In May 1908, the Imperial Vice-Consulate at Mombasa made further representations pointing out that the Indian had acquired the land so long ago as 1894 from the Swahili Mwalim Tausi for 7½ rupees and that in the document relating to this transaction the extent of the land was exactly so given as in the document relating to the sale from Pirbhay to Tost. The Government however, declined to admit Tost's claim and based their refusal on a sworn declaration by the Swahili Tausi to the effect that the latter had only alienated a cocoa-nut tree to the Indian and that the document recording the sale was a forgery. This manifestly false declaration by the Swahili would appear to be attributable to the fact that, before his examination, he had twice been summarily imprisoned by Mr. MacClellan, the acting

acting Sub-Commissioner at that time and the official dealing with the case, and that he had consequently come to believe that he was himself to be punished for having illegally appropriated crown land.

The above-mentioned result of the investigation carried out by the British authorities prompted Tost, with a view to clearing up the facts, to bring a criminal suit for forgery against the Indian Pirbhay. The suit ended in the acquittal of the Indian. Hereupon, further steps were taken by the Imperial Vice-Consulate with the result that the Governor expressed his willingness to pay compensation, without, however, implying recognition of Tost's claims. The compensation was to be calculated as if expropriation proceedings had been instituted at the proper time and an addition was to be made of 6% interest from the time at which the Government had taken possession of the land. The Imperial Vice-Consulate at Mombasa estimated that the expropriation money to be paid on this basis would not amount to more than about 100 rupees.

This sum cannot be regarded as even distantly approaching adequate compensation. Even if the land should previously have been crown property, Tost acquired

acquired ownership of it by the fact that he and his predecessors were in undisturbed possession for more than twelve years. As owner he is entitled to demand that an end be put to the disturbance of his possession and that the land be handed back; in view, however, of the use which has already been made of the land, he has expressed his willingness to accept pecuniary compensation.

The Imperial Vice-Consulate at Mombasa consider that 3000 rupees would represent fair compensation and to this would have to be added the amount of the expenditure incurred by Herr Tost. This expenditure amounts, as may be seen from the enclosed statement, to 1486 rupees.

In the name of the Imperial Government I have the honour to inform you of the above and to ask you to use your influence in the proper quarter so that just compensation may be awarded to Herr Tost. In view of the legal position, the value of the land and the losses occasioned to Herr Tost, the estimate arrived at by the Imperial Vice-Consul would not seem to be at all exaggerated.

In the hope that your intervention will result in an early settlement of this long pending matter,

I have &c.,

(Signed)

Kuhlmann.