

EAST AFR. PROT.
No. 36076

36076
3 OCT 08



No. 468

(Subject.)

1908

Kingham & Fagan treat Accidents.

to Capt

of previous Paper.

Sends letter from Capt Fagan re: threatened forfeiture of lease with remarks by Admin. of lands & land for.

10/22/08

W. H. H. (Minutes.)
20th Nov

copy of the 2nd paper to the 13th

This despatch makes it clear that Capt Fagan has not been materially hindered in his operations in the actual area of concession by native troubles. There is no reference here to any 'proclamation' such as Capt Fagan speaks of in 1935; but I assume that he wrote under misapprehension.

inform Capt Fagan ref. to 1908 that the info obtained from the Gov. does not support his contention that he was materially hindered in his operations by native troubles; & say the S. of S. does not propose to interfere with the action of the Gov. in the matter.

copy to Gov. inf. Paper - 10/22/08

of previous Paper.

10/22/08

and on the pro-cesses of previous
years on the question, but it would
refer to my minutes on 19350/08
for a short history of the question

The effect of the action proposed
will be that the proceedings for
foreclosure will go forward if
Capt Gosson does not fulfill
his obligations under the agreement
before the end of the current year
(which he is not in the least
likely to do), & the best
course is to proceed with the
foreclosure of the forest.

This is not I think to be regret-
ted and seems clear to me
that even with a railway the
Udema timber could not
profitably be exported, & it will
be long before the local market
is large enough to make its
exportation on a large scale
practically profitable.

W. S. R.
14/10

Yes. But let him know what the
information is which does not support
his contention. We want to convince

him, but if our answer is not explicit, it will only
irritate him. Let me see if

Dec. 5th 1908

Dear Auntie,

Captain Foye

has been sent to me

by J. W. Feininger sub. -

Law. See him. -

The subject is of course

the "Foye" Commission. -

He says he wants to

try a matter on

arrangement if he can

see a full hearing. -

I should

be

the paper

was your

Captain Grogan called here on the 5th inst. and saw his J. Hopwood - see his J's note of the interview. He also saw me. I reminded him of what we had said in our letters of the 4th Sept. and 27th Oct., ~~and~~ and suggested that his best course would be to answer them in writing. I impressed upon him that our object was not to insist upon the forfeiture of his present confinement but to get a workable arrangement substituted for it; and I assured him that we should be prepared to ^{consider in} consultation with the local authorities any reasonable proposals which he might put forward, but that we couldn't give to postpone indefinitely the proceedings for the cancellation of the confinement.

W. D. H.
at once

Governor's Office,
Nairobi,

September 10th 1908.

EAST AFRICA PROTECTORATE

No. 455

(Incl. 4)



My Lord,

I have the honour to acknowledge Your Lordship's despatches of the 15th June (No. 276) and 29th July (No. 347) respectively regarding Captain Grogan's forest lease.

2. Captain Grogan sent me a letter on the same subject, a copy of which is enclosed. The arguments used by him in his letters to Your Lordship and to me are mainly dealt with in two notes written by the Commissioner of Lands which I forward for information. As to the allegation that native troubles hindered the development of the forests, I would observe that the district was quite free from all such troubles in the middle of 1906, and the Eldama Ravine Station diary shows that Captain Grogan's surveyors were at work in the forests for a great part of 1906.

3. I attach a Minute by the Lieutenant-Governor, whatever may have been the case with regard to the new area, Captain Grogan wished to survey to the East of the Nandi country, the only time it could be held not to be safe to work in forests near the Ravine was from October 1905 to May or June 1906; and the whole of the Nandi country has been perfectly quiet for the last year.

I have, the honour to be,
With the highest respect,

My Lord,

Your Lordship's most obedient,
humble servant,

H.M. PRINCIPAL SECRETARY OF STATE
FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

Handwritten signature: J. H. ...

1908
1905
1905
Lt. Grogan
Jul. 18th
Com. of Lands
Jul. 28th
Com. of Lands
Mar. 28th
Lt. Governor
Sept. 9th

106-18

R.

INCLOSURE

145

In Despatch No. 258 of 22.11.1908

COPY, ©

28862

Camp Hill, Nr. Newcastle,
Staffs, July 15th 1908.

C O
36076

Your Excellency,

With reference to certain notices threatening legal proceedings for the forfeiture of forest agreements made between H.M. Government and myself and Mr. Linsam, I have the honour to inform you that I have been in communication with the Colonial Office direct. You have, no doubt, received copies of the correspondence.

3 OCT 1908

In these notices you refer to Forest Concessions as having been granted to us.

I would venture to remind Your Excellency that no specific land areas have yet been granted to us and until specific land areas are defined the fulfilment of conditions is impossible.

I would further remind Your Excellency that the district in question has been a closed district for some years and that such closing has involved us in considerable pecuniary loss for which we have refrained from making any claim.

I hope to reach Nairobi about Christmas and in the meanwhile I am endeavouring to come to an agreement with the Colonial Office as to what constitutes workable forest. Without such a definition completion of a Government agreement with ourselves is impossible.

I trust that you will see your way to withdraw or modify these notices, since, as they stand, I am

H.M. the Lieut. Governor,

Nairobi.

left with no alternative but to proceed against
H.M. Government for specific performance and damages
for delay.

I have Ac.

Sd/- Ewart S. Grogan.

Concl. No 2 in 1908

147

INCLOSURE No. 2

In Despatch No. 15 of Sept. 1908

Minute.

The Nandi troubles occurred before I came to the country.

It is true that Mr. Grogan in sending his rent on the 5th October 1906 to the Land Office said that he paid under protest since owing to the Nandi trouble he had been denied access to the forest.

But it is also true that a month or two after that he accompanied Mr. Hutchins over the forest, and there was no question at that time of danger to parties going in that direction.

It should be remembered that the area we admit as conceded to Messrs. Lingham and Grogan is situated near Eldama Davine Station; Mr. Grogan's contention is that, as there is not 128,000 acres of workable forest inside that area, he and Mr. Lingham are entitled to go far afield in search of such forest, and this necessitates their going into the Nandi country.

We must be careful to show when it was safe to go into the forest admitted by us as part of the concession.

I imagine it was no safe certainly towards the end of 1906. Since then Mr. Grogan has disputed the terms of the agreement and has done nothing.

At any rate when we sent the notice in February 1907 we intimated that we were prepared to do our part of the bargain this year, and he must fulfill his part this year also.

For the rest I wish to note on two points made in Mr. Grogan's last letter.

He refers to promises made to him by Sir Donald Stewart.

He

He should be called on to produce those promises in writing.

Secondly he contends that he should not have been asked for survey fees when he had already had an expensive survey made with the approval of the authorities.

Mr Barton Wright tells me that Mr Grogan particularly wished his own Surveyor to do the work because he was also a timber expert.

When the result of the survey was examined it was found that it did not show more than half the land mentioned in the agreement, and it did show a great deal more outside it. Obviously then a fresh survey was necessary.

J. Montgomery
Commissioner of Lands.

22-7-05.

In Despatch No. 105 of Sept. 10, 1908.

Minute.

Since I wrote my minute of 22nd July two fresh sets of papers have come:

- (1) a letter from Mr. Grogan dated 15th July to His Excellency the Governor,
- (2) C.O. Despatch 347 dated 29th July.

I propose to deal with Mr. Grogan's arguments in each.

(1) "I would venture to remind Your Excellency that no specific land areas have yet been granted to us, and until specific land areas are defined the fulfilment of conditions is impossible."

This is contrary to the facts. Each agreement to lease conveys to the lessee "all that and those pieces and parcels of land situated and being near the Eldama Ravine, comprising together sixty-four thousand acres or thereabouts, which said pieces are more particularly delineated and described on the sketch plan annexed and in the schedule further described." The Schedule carefully defines the boundaries which are well known to Messrs. Grogan and Lingham. I have instructed the Director of Surveys to put up beacons on the area mentioned in Mr. Grogan's agreement, as that has first to be marked off.

It is left afterwards to the Chief Conservator of Forests to alter these boundaries so as to enclose if possible an area of sixty-four thousand acres of workable forest. But this is entirely discretionary; the words are "the boundaries may be so modified".

Mr. Grogan's

Mr. Grogan's next point is that the district question has been a closed district for some years and that being so the forest could not be worked.

This is a matter for the Administrative Officers to comment on. I would only repeat that towards the end of 1906 Mr. Grogan went over the forests with Mr. Hutchins, that I believe there was nothing to prevent his obtaining permits to work in the forest at any time after that, and that Boers (the Van Bredas) have actually been living for some time on their land beyond the Grogan and Lingham forests.

Then comes his excuse that the term "workable forests" has not yet been defined.

This is also contrary to the facts. It will appear from copies of letters which are enclosed, from which it will be seen that a definition of the term was sent to Mr. Grogan on the 2nd. November, 1906; that he then made no objection to the definition, but afterwards, writing on behalf of Mr. Lingham, he proposed another definition which seemed to me not as clear as the one I sent him.

(2) The letter of the 18th. June to the Colonial Office covers a good deal of the same ground.

He here also says that no forest has been closed.

He adds that the census of surveying 64,000 acres of workable forest lay with the Government which is not quite correct. The census of surveying the area mentioned in the schedule lay with the Government

(3.)

Government, and that can be done at any time. It does not prevent the lessees beginning work within the well defined limits stated in the agreement.

I have already commented on the survey done by Mr. Grogan's Surveyor.

This letter has been replied to by the Secretary of State, and Mr. Grogan has been told that forfeiture will not be enforced if he bona fide intends to work the forest, and will agree to the conditions which were sent him long ago.



Commissioner of Lands.
25-5-06.

Encl. No. 4 in No. 152
INCLOSURE No. 4

152

No. 152
By Despatch No. 152 of Sept. 1906

MINUTE.

Mr. Forder, who was District Commissioner at the Ravine throughout 1905 and the early part of 1906, tells me that the survey of the two forest areas in question was completed some months before the Nandi troubles began, and that the surveyors returned to the Ravine about July 1905.

It was not until about October 1905 that it became unsafe to move about in the forests without an escort, and it remained so until about May or June 1906. From that time onwards it was safe.

The "new area in Nandi" referred to is the forest area on the East side of the Nandi Country. Mr. Crogan was anxious to survey this area with a view to applying for it in the event of there not being 64,000 acres of workable forest in each of the Lingham and Crogan concessions.

Nairobi,
Sept. 9th 1906.

~~W. F. JACKSON~~
F. F. JACKSON,
Lieutenant-Governor.



Gov. 36076 E.A.P.

153

26
16

1906
27 Oct.

Ans'd 4/3/19

Capt. E.S. Grogan

Sir,

With ref. to the letter from this Dept. of the 4th Sept., ~~1906~~ on the subject of your agreement with the Govt. of the E.A.P., I am so. to inform you that the infn. obtained from the Govt. does not support your contention that you were materially hindered in your operations in the area of concession by native troubles.

H.R.C. 19/10

Mr Ellis

Mr Antrebus 21

Mr J. H. ... 21.10
Mr Seely 2.10
Lord Crew 25

Copy to Gov. L.F.

It appears that the survey of the two forest areas in question was completed some months before the Nandi troubles began, and that, while from Oct. 1905 to June 1906 the district was disturbed, from the latter date it has been safe to move about the forest; and it is stated that some months later you accompanied Mr Hutchins over the forest, and there was no question ~~at~~ at that time of danger to parties going in that direction. The Gov. adds that the whole of the Nandi country has been perfectly quiet for the last year.

In these circumstances Lord Crew sees no sufficient reason for interfering with the action ~~taken by~~ the Gov. in the ~~steps which~~ steps which he is taking to ~~refuse~~ *refuse* ~~conflict with the condition~~ *conflict with the condition* of the ~~land~~ *land*.

F.S.H.