

EAST AFR. PROT.

45611

C. O.

4611

Recd
Jan 8 1909

80

Governor. No.

Letter Conf 191

1909

Complaint of C. fraud

11 Jan

in conn. with certain legal proceedings
sends memo by Principal Judge

at Previous Paper

45614

Mr Rosley
Mr Read
Mr Cox

I presume that we must wait
for what our despatch of the 5th of Jan (in
45614) was being.

2/13

Feb. 15

2/16

2/17

2/18

Yes. Wait

about

2/19

2/20

see no 21032

2/21

2/22

at subsequent Paper

21032

C.S.
4511

Governor's Office
8 FEB 09

R

Nairobi.

January 11th 1909.

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EAST AFRICA PROTECTORATE.

Confidential (?)

(Incl. 1.)

My Lord,

With reference to my despatch Confidential
(184) of November 17th. I have the honour to transmit
herewith for Your Lordship's information a copy of a
Memorandum with enclosure by the Principal Judge.

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46
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I have the honour to be,
With the highest respect,

My Lord,

Your Lordship's most obedient,

Humble servant,

H. J. ...

H.M. Principal Secretary of State

for the Colonies.

Downing Street,

LONDON, E.C.

In Despatch No. 7 of 11/11/1908

C.O.

4611

REGD 8 FEB 09

Your Excellency,

After communicating with Mr. Morrison at Nairobi and Judge Lindsey Smith at Zanzibar in a position to give the information required by Your Excellency with reference to the complaint of Mr. Charles Grant.

Mr. Morrison's statement with reference to the letter of Mr. Tonks quoted by Mr. Grant is as follows:-

"Mr. R. Grant" (a member of Mr. Tonks' firm) saw me informally on the question of restoring the petition and on pressure from him I saw the Principal Judge and informed myself in the absence of the files as to the exact stage the proceedings had reached. As a result I informed Mr. R. Grant he must make whatever application he was advised.

"No application was made, no fees paid, no order was passed and no order drawn up. I cannot accept Mr. C. Grant's statement as in any way accurate."

3d - 1. MAR 1908

7-12-08.

With reference to what took place at Zanzibar I beg to quote the following advice from a letter from Judge Lindsey Smith dated 16-12-08 and written in answer to enquiries made by me.

"It was not till May 27, 1908 that Tonks applied for a decree which he suggested would be in a certain form. The necessary Decree however, had already been drawn up and signed by you and Morrison and a copy of that decree was accordingly forwarded to Tonks by Morrison on June 23, 1908. If Tonks objected to the form in which the decree had been originally drawn up his proper course

was

was I should think to ask to have it amended. There is no such application on the file. He asked for the decree to be drawn up and as it had already been drawn up a copy was sent to him and he does not seem to have communicated with this Court further. You will notice that his letter does not state why he wants the decree drawn up in the form he has suggested and he nowhere says that the Town Magistrate has refused to restore the petition until a decree is obtained from the Appeal Court granting leave.

As I read your judgment you do not specially grant liberty to restore the bankruptcy petition but you say he is not precluded from presenting his petition as the Court has so far not entertained the question of fraud. The Decree as signed by you would therefore seem to be perfectly correct

I enclose copies of Tonks letter, notice of motion, draft decree on the file sent to Tonks.

From the foregoing it will be seen that the statements in the letter as to what was done by the Court of Appeal at Zanzibar are no less inaccurate than those relating to the proceedings before Mr. Morrison, the District Registrar.

In conclusion I was unable to say to what the last sentence in the quoted letter refers, except that, no formal application having been made to me in the matter, it is by no means unlikely that I did agree with the Magistrate in declining to advise Mr. Grant's solicitor informally as to the course he should follow.

Sd/- R.W. HAMILTON

21-12-08.

OSMUND TONKS
Solicitor
and
Notary Public, B.E.A.

Mombasa,
East Africa,
27th May 1906.

Sir,

Charles Grant v Smart.

I enclose herewith an application in the above
appeal for a decree to be drawn up on the judgment of
the Court of Appeal. I do not know if a formal
application is necessary or not. If it is I have
the honour to request you to do the same and if you
will let me know the fees payable I will forward the
same.

I have &c., &c.

Sd/- Osmund Tonks.

THE REGISTRAR,
COURT OF APPEAL,
Mombasa.

Certified copy sent 29 June 1906.

(Initd.) J.V.M.

In H.B.M. Court of Appeal for East Africa at Zanzibar
EAST AFRICA PROTECTORATE,
Civil Appeal No.1 of 1907.

Charles Grant

Appellant

Versus

A.T.Smart

Respondent.

Let all parties concerned attend the Judge in
Chamber High Court, Bombay on the day
or at o'clock in the on the hearing of an
application on the part of Appellant that a decree may
be drawn up in the form annexed hereto on the application
of the Appellant for leave to appeal to the King's
Most Excellent Majesty in Council against Judgment of
this respectable Court.

Dated 20 day of May 1907.

This summons was taken out by Solicitor for the
Appellant.

In F.B.M. Court of Appeal for East Africa

helden at Zanzibar.

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Civil Appeal No.1 of 1907.

Charles Grant

Appellant

VERSUS

A.T.Smart

Respondent.

WHEREAS on the 22nd April 1907 the Appellant appealed against the Judgment of His Honour A.T. Berham Carter, Esq Judge of the High Court Mombasa dismissing the bankruptcy petition of the Appellant against the said A.T. Smart on the ground that the English Bankruptcy law did not apply in the said Protectorate AND WHEREAS such appeal was dismissed by this Honourable Court with costs. And Whereas the Appellant by his Attorney has applied for leave to appeal to the King's Most Excellent Majesty in Council against such judgment of this Honourable Court. And Whereas it appeared on the hearing of such application that the question of fraud under Chapter 20 of the Code of Civil Procedure on which the Appellant based his appeal has not been brought before this Honourable Court. It is hereby ordered that this application be dismissed with costs with liberty to restore such petition for bankruptcy filed in the District Registry Nairobi.

IN H.B.M. COURT OF APPEAL FOR EASTERN AFRICA
AT ZANZIBAR.

Appeal No.1 of 1907.

Application of the Appellant Charles Grant for leave
to appeal to the Privy Council against judgment of the
Court of Appeal for Eastern Africa.

The 190

To

Civil

Upon reading the Application of the Appellant for

leave to appeal to the Privy
Council reading the record and
proceedings of the case noted in
the margin and upon hearing Mr.
Gardner Tonks counsel for the
applicant and in the absence of
the respondent the Court of

Civil Appeal No.1 of 1907

Charles Grant Appellant
versus
Arthur Thomas Smart

Appeal has made the following order on the 16th September
1907. The Court for the reasons stated in the accompanying
judgment dismisses the application with costs.

Sd/- E.W. Hamilton

Sd/- J.W. Morrison