

1/ Governor Byrne 85 _____ 3rd Feb 33

Trans. a petition from C.K.D. Beales alleging injustices resulting from the application of the Townships (Private Streets) Ordinance to certain roads in Nairobi, & claiming that these roads should have been made up at public expense & not at the expense of the frontagers. States there are no grounds for an enquiry & that Petitioners have been informed their petition could not be granted.

This petition to the Secretary of State asks for an enquiry to be made into the alleged irregular and unjust action on the part of the Nairobi Municipal Council in applying the Private Streets Ordinance to certain roads in the municipality.

One allegation is that the municipality has failed to adopt the recommendations of the Feetham Commission in regard to access roads.

The Feetham Commission Report pp.72-73 and 159 suggests that "necessary roads to provide suburbs with adequate means of access to the centre of the town should be provided for as soon as possible at the expense of the Council, but that the question of applying the Townships (Private Streets) Ordinance to obtain contributions from owners concerned towards the cost of other roads in suburban areas will have to be considered. It is in connection with the construction of internal suburban roads which have to be regarded as private as long as no public money has been expended upon them and which are required to serve particular groups of properties as distinct from roads which are of importance as a general means of communication that this question will arise."

The

The petitioners went to the Supreme Court on the question whether the roads to be constructed were public roads or private streets. The Supreme Court decided that they were private streets.

It appears, therefore, that in applying the Townships (Private Streets) Ordinance the Council is following the recommendations of the Feetham Commission.

As regards the further complaints that a Magistrate dismissed the plottolders' appeal against the specification of the roads and that the contract was irregular, these appear to be matters entirely for the Courts and not for the S. of S. to determine.

Finally, the Council is accused of discrimination in the application of the Private Streets Ordinance. The Governor refused an application for an enquiry in the absence of evidence that the Ordinance was being harshly administered, and, in the opinion of the Attorney General, the petition was no more than an attempt to nullify the judgment of the Supreme Court.

Request the Governor to inform Council the petitioners that the S. of S. has received their petition, but sees no reason to intervene.

H. P. Smith
13/3/33

yes: they have been to the Courts & failed: the allegation of (unspecified) "irregularities" in the contracts leaves me cold. If there were any such proceedings can be and should be taken.

It is clearly an attempt to Dodge a Court judgment.

J. H. Hood
14.3.33

W. Roberts Wray

I think you should see -
Do you agree, please?

W. Roberts Wray

I see no ground for intervention and agree to the action proposed.

W. Roberts Wray
24.3.33

PS I think the "irregularities" in the contracts are those specified at A B C in the last enclosure.

W. Roberts Wray

W. Roberts Wray
24.3.33.

I agree as proposed.
P, at mel
27.3.33.

To Gov. 225 (unanswered) 30 MAR 1933

C. O.

5100/33 KENYA.

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Ed
2

- Mr. Priestman 29/3/33
- Mr. [Handwritten Name] 29/3/33
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

29 MAR
D 30 ✓

DOWNING STREET,

30 MARCH, 1933.

DRAFT.

KENYA.

NO. 223

GOVERNOR.

Sir,

I have etc., to acknowledge

(1) the receipt of your despatch No.85 of the 3rd of February, with which was transmitted a petition addressed to me by Mr.C.K.D.Beales on behalf of certain European residents of Nairobi in regard to alleged injustices resulting from the application of the provisions of the Township (Private Streets) Ordinance, 1924, to certain roads in the Nairobi Municipality.

2.

I shall be glad if you will cause the

petitioners to be informed that I have received

their petition, but that I see no reason to

intervene.

I have, etc.,

(Sgd.) P. CUNLIFFE-LISTER.

KENYA.

No. 85



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
- 31 MAR 1933
COL. OFFIC.

3rd February, 1933.

Sir,

I have the honour to transmit a Petition addressed to you by Mr. C.K.D. Beales on behalf of certain European residents of Nairobi in regard to alleged injustices resulting from the application of the provisions of the Township (Private Streets) Ordinance, 1924, to certain roads in the Nairobi Municipality. The petitioners claim in effect that these roads should have been made up at public expense and not at the expense of the frontagers.

Amward (2)

2. The facts are that on the 17th March, 1931, after repeated pressure from the residents in this area for the construction of these roads, the Nairobi Municipal Council passed a Resolution in the following terms:-

"Whereas Davidson Road, portion of Church Road and portion of the Ring Road, Groganville, within the Municipality of Nairobi, is not constructed to the satisfaction of this Council; and whereas notice has been served in accordance with the provisions of section 8(2) of the Township Private Streets Ordinance, 1924, upon the owners of premises affected thereby; and whereas objections have been received from certain of the said owners; and whereas an opportunity has been afforded for the hearing of such objections and the same have been heard. Now therefore in the exercise of the powers conferred upon local authorities by the said Ordinance it is hereby resolved :-

That the following works be carried out in the said road and portions of roads hereinbefore referred to, that is to say: to drain, level

and

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

and construct a carriage-way in accordance with the plans and specification prepared by the Municipal Engineer and approved by this Council: and that the expenses incurred by the Council in executing the said works be apportioned upon the premises fronting, adjoining or abutting upon the said road and portions of roads according to the respective frontages thereof."

The plotholders took proceedings by way of certiorari to test the validity of the Resolution in the Supreme Court, relying on the ground that the roads in question were public and not private streets. The claim was dismissed with costs by His Honour the Chief Justice, and Mr. Justice Dickinson, who found that the roads were private streets.

The plotholders then appeared under section 8(7) of the Township (Private Streets) Ordinance, 1924, to the Resident Magistrate, Nairobi, who framed the issue as follows:- 'Is the road as specified a proper type of road for this area or are appellants entitled to ask for any modification under section 8(8) of the Ordinance?' The Magistrate sat with two assessors and, finding that the specification was reasonable, dismissed the appeal.

The plotholders say: the assessors disagreed. Did they?

3. In the meantime, the contract for the work had been let by the Council. This originally provided for a water-bound macadam road, but the specification was later amended so as to include bitumen surface-treatment, for which the Council paid a sum of £897. The actual cost apportioned among the frontagers was £22 per 100 lineal feet or 23% less than the estimated cost, which was found by the Resident Magistrate to be reasonable.

4. In August, 1932, the plotholders requested the Government to hold an enquiry "with a view to rectifying what is considered by us an unjustifiable and, in part

part

part, an irregular action on the part of the Municipal Council".

5. The legality of the Council's action had already been upheld in the Courts. The roads in question, far from being main arterial roads as alleged by the petitioners, are access roads on a privately held residential estate in the suburbs of Nairobi.

In the absence of evidence that the Township (Private Streets) Ordinance was being harshly administered, there appeared to be no grounds that would warrant an enquiry and the Petitioners accordingly informed that I was unable to grant their petition. In any case an enquiry would have been practically abortive, since the only possible course of action would have been to cancel the application of the Township (Private Streets) Ordinance to the Municipal area, and no case for any such action was, in the view of my advisers, made out by the petitioners. The petition appeared to the Attorney General to be no more than an attempt to nullify the judgment of the Supreme Court.

6. To avoid hardship the Municipal Council has agreed to payment of the amounts due by the plottolders in five annual instalments. The petitioners have, in fact, been treated by the Council throughout with consideration.

Their sole grievance in reality is that they are called upon to meet a liability which legally and properly falls upon them.

I have the honour to be,
 Sir,
 Your most obedient and humble servant,

BRIGADIER GENERAL,
 GOVERNOR.

BOX 320,

NAIROBI,

KENYA COLONY.

December 22nd. 1932.

The Right Honourable The Secretary of State,

LONDON.

Sir,

I have the honour to enclose herewith copy of a Petition which was submitted to the Government of this Colony praying for an enquiry to be made into what is considered an irregular and unjust action on the part of the Municipal Council in connection with the application of the Private Streets Ordinance to certain roads in this town, which petition has not be granted.

At a Meeting of subscribers to the said Petition, the following Resolutions were passed :-

1. That owing to the refusal of Government to grant the Petition of Plotholders on Ring, Davidson and Church Roads, praying that an enquiry be instituted into what is considered, by the Petitioners, to be an unjust action by the Municipality, in the construction of those roads, under the provisions of the Private Streets Ordinance- a copy of such Petition be submitted, through the Honourable The Colonial Secretary, to the Right Honourable The Secretary of State, for review.

It to be stressed that the following points were not the subject of argument in the Courts:-

- (1) Failure of the Municipality to adopt, in the case of the above-mentioned roads, the recommendations of the Feetham Commission, in regard to access roads to the town being given to inhabitants in outlying districts.
- (2) That it was only on the recommendation contained in the Feetham Report that inhabitants, in outlying areas, were induced to agree to their districts being included in the Municipality of Nairobi.
- (3) That there were considerable irregularities by the Municipality, in the letting of the contract, for the construction of Ring, Church and Davidson Roads, which roads were constructed at the cost of Plotholders.

- (4) That an Appeal before the First Class Magistrate was dismissed notwithstanding the opinion of the two Assessors that the specification for the roads in question was too expensive, taking into consideration the class of traffic using such roads.
- (5) That the provisions of the Private Streets Ordinance have been applied by the Municipality in some cases and not in others, without their being any reason given for such discrimination".

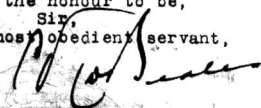
2. That as a Resolution asking Government to appoint a Commission to investigate the grievances of the inhabitants of outlying district is shortly to be placed before the Municipal Council by one of its Members, the forwarding of the application to the Secretary of State be postponed until it is seen whether the Council agree to the appointment of the Commission of Enquiry.

In the event of no Commission being appointed, the application to the Secretary of State shall be made".

I am asked to respectfully point out that certain irregularities in connection with the contract for the construction of the roads occurred subsequent to the Court proceedings. Therefore these irregularities were not the subject of argument in the Courts. Also that copies of Plans prepared in connection with the Peetham Commission report have only recently come to light. These plans define the Davidson Road and portion of Ring Road as roads which were in existence at the date of the Peetham Commission.

The original plans which, doubtless, were in the possession of the Municipal Council were not produced at the Supreme Court proceedings.

As the Municipal Council have now definitely refused to re-open the subject, I am requested, in terms of Resolution No. 2, to forward a copy of the Petition to you and respectfully pray that the grievances set forth in the same may receive your sympathetic consideration, and be ameliorated in such manner as you should think fit.

I have the honour to be,
 Sir,
 Your most obedient servant,


THE MUNICIPAL COUNCIL OF NAIROBI,
MUNICIPAL OFFICES,
NAIROBI.

21st December, 1932.

Mr. C.K.D. Beales,
Avenue House,
NAIROBI.

Dear Sir,

DAVIDSON ROAD.

I duly received your letter of the 9th instant, which I brought to the notice of the Council at their Meeting held yesterday, when I was instructed to inform you that the Council definitely decline to re-open this matter.

yours faithfully,

F. S. Eckersley (Signed).

TOWN CLERK.

R/P

December 9th, 1932.

THE TOWN CLERK,
NAIROBI MUNICIPAL COUNCIL,
NAIROBI.

Dear Sir,

DAVIDSON ROAD, CHURCH ROAD, AND
PORTION OF RING ROAD.

I was requested some weeks ago, at a Meeting of Plotholders on the above-mentioned roads, to lay before the Right Honourable The Secretary of State the whole matter in dispute in connection with the construction of these roads under the provisions of the Private Streets Ordinance.

Before doing so, I should be obliged if you would inform me whether, or not, the Municipal Council are aware that plans were prepared in support of the Feetham Commission Report, which defined a portion of Ring Road, Davidson Road, and the road between Plot No.26 on Davidson Road and Plot No.42 on the Slaters Road as existing roads.

You will recollect that evidence in the Courts seemed to be in conflict with the information shown on the Plans in question.

I should also be glad to know before communicating with the Right Honourable The Secretary of State, whether the Municipal Council definitely refuses to allow the question of Davidson Road to be the subject of arbitration in a similar manner to the arbitration proposed in the case of other roads in the outlying districts, which come under the same category.

Yours faithfully,

C.K.D. BEALES (Signed).

P.O.Box 621..

THE SECRETARIAT,
NAIROBI, KENYA.

20th September, 1932.

Sir,

I have the honour to inform you that the petition and memorandum accompanying your letter of the 31st August on the subject of Davidson Road have been laid before His Excellency the Governor. His Excellency notes that the matter in dispute has been fully argued in the Courts, and directs me to inform you that he regrets that he is unable to grant the petition.

I have the honour to be,

Sir,

Your obedient servant,

S/d. H.L.Gurney.

For. AG. COMMISSIONER FOR LOCAL
GOVERNMENT, LANDS AND
SETTLEMENT.

C.K.D.Beales Esq.,
P.O.Box 320,
NAIROBI.

August 15th, 1932.

The Hon: The Commissioner for Local Government,
Lands & Settlement,
The Secretariat,
NAIROBI.

Sir,

We, the undersigned, owners of property, situated in the Groganville District, served by Ring Road, Davidson Road and Church Road, respectfully forward herewith a Memorandum relating to the re-construction of the aforesaid roads, by the Municipal Council, under the provisions of the Private Streets Ordinance, 1924.

It is considered by the subscribers, hereto, that the action of the Municipal Council in the application, by it, of the provisions of this Ordinance, to these roads- thereby compelling owners of property abutting on the roads mentioned to incur heavy liabilities- was not only unnecessary, at the present time, but extremely unjust, for the reasons submitted in the enclosed Memorandum.

We therefore, request you to lay the matter before Government, with a request that a full enquiry be instituted, with a view to rectifying what is considered by us, an unjustifiable, and,

in part, an irregular action on the part of the Municipal Council.

We have the honour to be,

Sir,

Your obedient servants,

(Signed):-

W. Cobbett,
 Mabel Poole,
 E. J. Codd,
 Robert Fittall,
 For Mrs. G. M. Fittall.
 Valentine Henderson,
 R. B. Thornton,
 F. S. Dunn,
 By His Attorney,
 A. Hornby.
 For the Upper Nairobi
 Township & Estate
 Co., Ltd.,
 E. M. Finsley,
 A. Snelgar,
 C. S. Terry,
 C. D. S. Guthbert,
 D. Thompson.

Lucie McMillan,
 A. E. Walter, Lt: Col:
 T. L. Pringle,
 C. Trickey,
 C. K. D. Beales,
 H. A. Gardner,
 C. H. Slater,
 E. F. Luckes,
 J. Williams,
 George Foster,
 R. L. O'Shea,
 J. Kelly,
 P. S. O'Shea,
 Mrs. Hynes,
 E. Gardner,
 H. C. Howard.

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MEMORANDUM ON THE CONSTRUCTION OF DAVIDSON ROAD, UNDER
THE PROVISIONS OF THE PRIVATE STREETS ORDINANCE, 1924.

HISTORY.

On the 6th September, 1930, a letter of protest by Mr. Beales, residing on Davidson Road, was addressed to the Town Clerk pointing out that Rates were being imposed, but no services were being given in return, by the Municipality.

In reply, the Town Clerk stated that the Municipal Council levied Rates to cover the expenditure (inter alia) of (a) the reconstruction and maintenance of Highways, (b) Street Lighting (c) Town Planning, etc., etc.,

On the 29th November, 1930, a Petition, signed by twenty-six Residents of the Groganville Area, which is served by Davidson Road, Church Road and Ring Road, was forwarded to the Municipal Council, requesting that repairs be made to Davidson Road, as it had become almost impassible owing to the wet weather.

No repairs were carried out, by the Municipality as asked for by the Petitioners, but tenders for the reconstruction of Davidson Road, Ring Road, and Church Road combined, were called for, and a tender, submitted by Messrs. Maula Dad, at Shgs.568/- per 100 lin.foot was accepted by the Tender Board held on January 20th, 1931.

This tender was accepted previous to any notice being given to owners, abutting on the roads, that it was the intention of the Municipality to make up such roads under the provision of the Private Streets Ordinance and before opportunity was given to owners to object to the proposed works under Section 8 of the Ordinance:

Notwithstanding the Municipal Council was

- 2 -

committed to a contract for the re-construction of these roads, notice was given to Owners of plots that it, the Council would hear objections on the 9th March, 1931.

It was pointed out by the Owners concerned, to the Committee, hearing the objections, that a contract had already been entered into by the Council; therefore any objections submitted by such Owners could be of no value. The Town Clerk replied that no formal contract existed.

On the 19th March, 1931 - notwithstanding many objections having been raised, by Owners, at the Meeting on the 9th March- the Municipal Council, on a recommendation of the Committee, passed a resolution that the works be proceeded with, and a period of one month be allowed to elapse during which the Owners, or any of them, might appeal to the Court against the Council's proposals.

Proceedings were instituted by certain Plot Holders in the Supreme Court of Kenya on the 17th March, 1931, to test the validity of this resolution; judgement being given that such Resolution was "Intra vires".

On the 16th April, 1931, an appeal was filed in the Court of the First Class Magistrate, under Section 7 of the Private Streets Ordinance, on the following grounds :-

1. That the appellants were aggrieved by the Resolution of the Respondents passed on the 17th day of March, 1931, inasmuch as they are owners of premises affected by such Resolution.
2. That the Davidson Road referred to in such Resolution is not a private street within the meaning of the

- 2 -

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1. That the appellants were aggrieved by the Resolution of the Respondents passed on the 17th day of March 1931, inasmuch as they are owners of premises affected by such Resolution.
2. That the Davidson Road referred to in such Resolution is not a private street within the meaning of the

Ordinance.

- 3. That the Resolution referred to is "ultra vires" and that the works contemplated by the said Resolution were incompatible with the requirements of the district served by the said road and are unnecessarily extensive and costly.

This appeal was heard before the Resident Magistrate, and two Assessors, Mr. J.C. Coverdale and Mr. J. Scott, on the 22nd January, 1932.

Although the opinion of both Assessors that the road asked for was considered by them, too expensive, as the traffic in the area, was only light motor traffic the appeal was dismissed by the Magistrate.

Notwithstanding the statements made by the Town Clerk that no formal contract existed (a) in a letter to Mr. Beales dated 12th March, 1931, (b) at the Meeting when objections were heard on the 9th March 1931, and (c) in the Courts, the Contract, without calling for further tenders, was allowed to remain with Messrs. Maula Dad, which firm had ceased to exist in December, 1931, the business having been taken over by Messrs. Sardiq and Rose.

This firm carried out the work, on behalf of Mr. Maula Dad, who was a partner in the original firm of Messrs. Maula Dad, which firm had tendered in the latter part of 1930, (some fifteen months previously).

SUBMISSION.

It is submitted :-

- 1. That it was not the intention of Government when Local Government was instituted, that the Private Streets Ordinance, 1924, should

be applied to main arterial roads, in outlying districts, of which Davidson Road, was one. This was clearly laid down in the report of the Feetham Commission.

2. That the rights of owners to object, under Section 7 of the Private Streets Ordinance, 1924, was prejudiced by the acceptance of a tender by the Council, for the reconstruction of the roads in question, before such objections were heard.
3. That the Municipal Council- having accepted a tender for the construction of the roads in question before the Resolution to make them up, under the provisions of the Private Streets Ordinance, was passed- was not in a position to consider the question of a temporary road, as provided by Section 9(1) of the Ordinance.
4. The Municipal Council has constructed streets recently, on which no public money had previously been spent. A case in point being the streets on either side of the New Municipal Market. The Private Streets Ordinance was not applied in this case.
5. That Rates are collected yearly from the Owners of property for, inter alia, the reconstruction of highways. Therefore the owners of property on Davidson Road are contributing to (a) construction of roads generally, (b) construction of Private Streets and (c) by a special levy to the cost of reconstruction of Davidson Road, Ring Road, and Church Road.

- 6. That the reconstruction of Davidson Road, Church Road and Ring Road was carried out under a contract accepted in January, 1931, at which time prices for materials were considerably higher than in March, 1932, when reconstruction was commenced.
 - 7. That the original specification tendered for by Contractors was materially altered, and no amended tenders were called for under the revised specification.
 - 8. That the cost of the construction of Davidson Road, Ring Road, and Church Road was reduced not by a lower price having been submitted, by the Contractor, but by the reduction of the quantity of materials used in the road and by less work being required under the amended specification.
 - 9. That although the Private Streets Ordinance, 1924 provides for appeal to the First Class Magistrate against the passing of the Resolution to make up the roads, under the provisions of the Ordinance, and against the specification and apportionment of the cost of such road, no protection from the injustice, which it is considered has been caused to owners of property, situated on the roads in question, can legally be sought in the Courts.
- Therefore the only course remaining is to seek the protection of the Government.

(Signed) :-

W. Cobbet,	Lucie McMillan,
Mabel Poole,	A. E. Walter, Lt: Col:
E. J. Codd,	T. L. Pringle,
Robert Fittall,	C. Trickey,
For Mrs. G. N. Fittall,	C. K. D. Beales,
Valentine Henderson,	H. A. Gardner,
R. B. Thornton,	C. H. Slater,
F. S. Dunn,	E. F. Luckes,
By His Attorney,	J. Williams,
A. Hornby.	George Foster,
For the Upper Nairobi	R. L. O'Shea,
Township & Estate	J. Kelly,
Co., Ltd.,	P. S. O'Shea,
E. M. Finsley,	Mrs. Hynes,
A. Snelgar,	E. Gardner,
C. S. Terry,	H. C. Howard.
C. D. S. Cuthbert,	
D. Thompson.	
