

1933

3140

C0533/435
KENYA

1933

3140

M. Baraki Estate.

Previous

10158/27.

Mr. Flood

21

Sir C. Bottomley

22

Subsequent

Mr. 22/1

12/4

Mr. Casson

13/4

Mr. 22/1

14/4

Mr. Robert Gray

19/4

Mr. French

20

Mr. Flood

20

Sir C. Campbell

21/4

Mr. Flood

21

Mr. Roberts Gray

21

Sir C. Bottomley

24/4

Mr. 22/1

24/4

Mr. French

26

297

19/9

Mr. French

11/1

Mr. French

19

FILE A

1. H. Comm. Transact 49 _____ 31st March 33
 Submits proposals for the purchase of the reversionary rights of the freeholder (Su Ali bin Sulim) of the M. Benaki Estate for the sum of £5,000. Requests reply by 1st April

2. H. Comm. Transact Tel 8 _____ 12 April 33
 States doubts have arisen as to whether in view of Secn 3(A) Harbour Regs Ordinance 1928 land can be purchased from Harbour Fund or requests this aspect of the matter may be considered.

As the area in question is not likely to be required for the development of the port the General Managers view seems sound - ~~that~~ vide Enclosure G - that any unexpended loan balances should be husbanded because the port is run at a loss and cannot with safety undertake new loans.

2 raises the question whether in any case Harbour loan funds can be utilised for the purpose in view of Section 3(a) of ~~the~~ Ordinance No 33 of 1928 (copy at 12 15316/29) which permits acquisition etc of property for harbour purposes. In the G.M.'s opinion the property would not be for harbour purposes.

It seems desirable to support the G.M.

Whether the area should now be acquired from Colonial loan

funds is another matter. If
Treasury advance a £300,000 loan
for land bank etc. Then will the
funds, being repayable to the Govt. £1,500,
authorised by Order 43 of 1930: the
responsibility might be directly and
immediately commensurate if the
bamboo prep scheme materialises.
It is not stated what proportion of the
area required for this scheme is Govt. freehold
land.

It is not clear that this area is essential
as regards the prep scheme - the G.M.R. in
enclosure B states that the Admin. is taking
already has considerable areas of
land available for alienation. Even if
it is essential ~~to~~ it seems open to
doubt if it is necessary for Govt. to purchase
the freehold.

On the whole it seems to me that
as a port extension scheme it is not
necessary and as an industrial or
town planning scheme there are other
sufficient particulars.

A further point is that the bamboo
prep scheme is yet too nebulous to
warrant the Govt. ~~investing~~ indulging
in land speculation.

In the first instance with the
legal adviser's views on the question
raised is 2.

H. P. M. S. M.
13/4/33

3
This mass of literature may be summarised as
follows:-

Of 200 acres of land round Mboraki Creek,
adjacent to Kilindini Harbour, the Crown owns the
freehold of 105 acres (coloured brown on the map
enclosed), and holds the remaining 94 acres (coloured
red and blue) on 99 year leases, (of which 75 are yet
to run) from Sir Ali bin Salim, at an annual rental
of £736.

An option expiring on April the 30th has been
secured from Sir Ali for the purchase of the lease-
hold area for £45,000. The Railway Estates officer,
the Harbour Advisory Board and Sir Joseph Byrne (as
Governor and as High Commissioner for Transport) wish
to accept the offer, finding the money from unexpended
loan balances. The General Manager, however, objects
on two grounds:-

- (a) loan funds should be conserved for their
proper uses and not applied to land
speculation;
- (b) the proposed purchase is outside the power
conferred on the High Commissioner by the
Harbour Regulations Ordinance, 1928.

If the legal objection is valid, the proposal must
drop. It will be convenient, therefore, to consider
it before weighing up the pros and cons of the
transaction from the administrative and financial
points of view.

The relevant Ordinance is flagged in 15616/29.
The question is whether the ^{purpose} purchases, for which it is
now proposed to acquire the freehold can properly be
described as "harbour ^{purpose} purchases" within the meaning of
section 3(a). The General Manager thinks not (see
enclosure G); the contrary argument is set out in

enclosure

enclosure F, especially paragraph 3.

It may perhaps be suggested that, whichever view is ultimately taken and acted upon, it is not likely to be contested in the Courts.

We should be grateful for your advice.

Amended
19/4

Whether this proposal is intra vires is to a large extent a question of fact. I gather that the harbour authorities wish to acquire this land because its value has been enhanced by the construction of the harbour, and, not unnaturally, they wish to reap the benefit, the intention being to lease or otherwise dispose of the land to industrial or commercial concerns. Stated thus baldly, the proposal, in my opinion, is clearly outside section 3(a). On the other hand, if it can be shown that part of the land is required for the harbour ^{purposes} ~~authorities~~ properly so called (I see, for instance, that part of the red area is a road running ^{also} through the brown area), and that it is necessary if part is ^{to be acquired} ~~required~~ to buy the whole, this might be sufficient justification for saying that the purchase is an exercise of the powers of section 3(a). I gather from paragraph 4 of enclosure ~~F~~ ^F that a reason such as this accounted for the original purchase of the leasehold interests. So far as I can ^{see} gather, it is only in this way that the acquisition of the blue area, with which the railway appear to have no concern, could be regarded as possible.

Further, if, as I assume is the case, the value of the leasehold interests is an item which appears on the railway's balance sheet,

4
and a purchase of the reversion is the most prudent course to take in order to safeguard the financial interests of the harbour, it is just possible to argue that the acquisition would be for harbour purposes.

Would not the simplest course, however, be to ignore all these arguments, and immediately introduce and hurry through an Ordinance putting the High Commissioner's powers in this connection beyond question?

Robert-Wray
17.4.33.

On the legal point our information is not sufficient to permit of definite expression of opinion. I would only say, in regard to Mr. Roberts-Wray's minute, that the map enclosed in No. 1 is obsolete; a later one which I have seen shows that the railway has a loop line and sidings on the south side of the main line as shown on the map. The capital value of the lease does not appear in the railway's balance sheet.

To turn to the financial aspects of the proposal, the £45,000 required are to be taken from unexpended loan funds. Section 3 of the Specific Loan Ordinance, flagged in 16100/30, and the loan prospectus placed therewith show that there is no technical difficulty on this score; nor is there any necessity to consult the Treasury. The railway is at present paying, ^(in any case) and will continue to pay, or its unexpended balances 4 per cent interest and 1 per cent sinking fund per annum. All that it would lose by the transaction now proposed

14/52
£1125-736 = £389
proposed would be the 2½ per cent interest which the unexpended balances earn in the Crown Agents Joint Colonial Fund; from which must be deducted the rent for the leasehold area now paid to Sir Ali bin Salim. It thus appears that by forgoing a net amount of £389 per annum the railway (or, strictly speaking, the Crown) would become possessed of ^{the} capital asset which can hardly fail to appreciate enormously during the next half century; and a repetition (on a small scale) of the Grogan fiasco of 1926 would be avoided.

As regards para.5 of the despatch, Mr. W. T. Kerr's bamboo pulp scheme is to be submitted to an early meeting of the C.D.A.C., and Sir John Campbell is hopeful of the prospects. If it goes through, this will mean an additional revenue of £3,060 per annum for the next 33 years and more thereafter.

(From the plan which Mr. Kerr showed me I gathered that the plot which he has been offered is wholly inside the freehold (i.e. brown) area on the map).

No doubt some minor points could be cleared up if the matter were now to wait until Mr. MacEwen's arrival (para.14 of the despatch), but as the option expires four days' later I send the papers on at once.

? Telegraph as in draft.

W. T. Kerr
20/4

5
The position is that Government at present leases a certain quantity of land in the neighbourhood of M'baraki from Sir Ali bin Salim and pays rent for it. Sir Ali is prepared to sell the whole thing outright for £45,000 and the purchase is strongly recommended by the Harbour Board. The only way in which money can be made available for the purchase is out of the unexpended balance of the £3,400,000 loan which, as stated in para.10 of the Governor's despatch, amounts to some £102,292. In the schedule to the Loan Ordinance, however, the money has been earmarked for (a) construction of quays and/or jetties, and (b) port improvements, and the question arises whether the purchase of a piece of land adjoining the existing Government property can be termed a port improvement, it being understood that the land ^{will be} ~~and property is being~~ used for letting to other tenants and that the whole transaction is somewhere in the nature of a speculation. The Board point out in encl. "F" para.3 that a Port Trust would almost certainly require such land as an investment in order to reap the maximum advantage from a large outlay on wharves, etc., which enhance the value of land in the vicinity, and they say that even if the land is not required in the near future for purely harbour development, the land ought to be acquired in any case because it is already held on lease and is presumably wanted by the Railway and Harbour Administration. The General Manager, however, says that if funds were available for investment

investment and the purchase of land, he would have no hesitation in supporting the recommendation, but the port cannot face further capital expenditure at this stage. The port he thinks is already too big for needs and is over-capitalised. Accordingly, he wishes to preserve the port loan balances intact in order to meet unforeseen expenditure. He has further raised the question whether under the Harbour Ordinance powers exist which would enable the port to purchase the land. Section 3(a) of the Ordinance gives the H.C.R. power to purchase land for harbour purposes and the local Adviser to the Harbour Administration thinks that the purchase would be outside the powers conferred by the Ordinance.

My own view is that the purchase of land adjoining existing property held on account of the harbour is essentially a transaction which can be regarded as for a harbour purpose in anticipation of future developments of the harbour. It may be the case that no immediate developments are in contemplation, but it would be a very foolish man who would say that no such developments would take place within even so short a period as 50 years, and experience in other parts of the world has often shown that Governments have erred in not taking up enough land to allow for anything in the future. If development later necessitates the acquisition

6
of these pieces of land, then Government will have to pay for them at a very enhanced price. There is also the ever present risk that the owner will turn the thing into a wakf, in which case we should be done for all time. I therefore think that the purchase of the land should be approved and that we should agree to the virement of the necessary sum for the purpose. Authority exists under Section 3 of the Loan Ordinance to make such an alteration.

As the matter is extremely urgent I think we can do nothing but telegraph as per the draft herewith, but I should like to know whether you have any observations to make.

J. E. G. Head
20.4.53

Considering the matter from a narrow and formal point of view, I think General Rhodes is right. On the other hand, I think he has not given sufficient weight to the "lease position" argument, or to the--apparently, admitted--potentialities of the area. The data given as to that--particularly the Municipal valuation, and the terms which the pulp Co. appear to be willing to accept--indicate that the proposed transaction should turn out very well indeed. In a matter of this kind, one must I think accept informed local opinion.

2. I would therefore agree to the telegram. I have suggested some additions and alterations. The first is intended to soften matters for General Rhodes; and you may perhaps wish to amplify this a little by saying--perhaps--"While fully appreciating Rhodes arguments and point of view,

I agree to----". The first addition is self-explanatory; but seems to me most important. We can't leave any doubt subsisting as to this: we are not buying the "reversionary rights", which materialise many years ahead. We are buying the freehold, now; and the lease will end. That is possible because we are the lessees. The second addition is questionable; but it may help: I suggest it, because Mr. Roberts-Wray has not dealt with this as one of the chief reasons urged for the acquisition from the harbour point of view. It would be advisable to ask if he has any objection to this suggested addition. One does not like the idea of an ad hoc amendment:--with local opinion divided as it is. I'd like him also to see the addition as to the "reversionary rights".

The 21-4-33.

Handwritten signature
21/4/33

Mr Roberts-Wray

Please see Sir J. Campbell's minute & his additions to the draft telegram which I have had fair-copied for convenience. I think it is clear from the offer in p. 3 of enclosure A that the freehold is being offered for sale & that all rent will then determine. The alternative is that he is offering the freehold 75 years ahead (i.e. his reversion thereof) & will expect to get rent as well during the interval. This is almost unthinkable & the court does not seem to justify it. But in paras 9 & 10 the H.C. does talk of 'reversionary rights'.

J.E.W. Hand
21-4-33

Subject to a slight alteration in 7
line 8 of the draft I see no
objection. It is the revision they
are buying even if the lease does
determine now.

Handwritten signature L.F.C.

21.4.

Mr Roberts-Wray tells me his alteration is designed to make it clear to the legal mind in view of his last sentence.

? The telegram can go.

J.E.W. Hand
21.4.33

There seems to be general agreement that the figure is reasonable (though I think that Sir A.C. is making a very good bargain) and there can be no doubt as to the prudence of acquiring as much land as we can afford to buy.

Therefore I agree to the draft, which sufficiently covers the legal doubt.

[The danger that Sir A.C. might turn the land to staff relief is I think a real one - at all events that was always and understood to be his intention with regard to his land (whether he buys) on the South side of the water].

WES 21.4.33

Jague.
21-4-33 *Handwritten signature* at once

3

RP

Tel. No 9 to H.C.T. 24 April 1933
(Nos. 1 & 2 amended).

Mr. T. Ewen called. I gathered (a) that the plot offered to Messrs. Kern & Wall is not wholly comprised in the brown area, but extends into the pink; and that no other land, suitable for their purpose, exists on Pemba Island (though there are available sites at Kilindini)

(b) that at a date subsequent to No. 1,

Mr. T. Ewen succeeded in persuading Sir A. bin Salim to confirm in writing his readiness to extend the option to April 30th.

Mr. T. Ewen offered, if necessary, to telegraph (thru the Office) to Sir A. B.S. for a further extension of time.

Pathy
P. Hancock
21/4/33

4.H.Cr. Transport. Tel. 14.16th Sept. 33.

Reports that various misunderstandings have come to light as regards exact definition of area. Sir Ali bin Salim has withdrawn his offer to sell orig. 94 acres and now asks £45,000 for 77.38 acres south of Rly. West. of Kenya will make own arrangements regard to remaining land north of the Rly. making up the orig. 94 acres. Resolution for re-allocation of loan balance was passed at last Meeting of Leg. Co.

Mr. Freeston

We have spoken about this.

The proposal now is to purchase of

the area marked pink on the map & not the blue area. I.e. the reversion of the land with a lease by the Government (as opposed to the lease lease by the Rly. Administration) is not to be acquired.

It is perhaps surprising that the price has not come down in view of the reduced area it is now proposed to acquire, especially as it will be seen from para. 12 of No. 11 that the reversionary interest in the 8.62 acres (i.e. the blue area) north of the railway is valued at £7,911.

By wire

It would have been useful to have been able to consult Mr. T. Ewen, but as the attached findings show, he proceeded to the Union on Friday.

It seems important that the land should be acquired if possible as it appears on the whole advisable to agree to the A.G.'s proposals, for we are in a position to quote the amount of the purchase price here. The A.G. does not ask for a reply but

we should approve by recd of his proposals subject to the Harbour B.O.'s endorsing them. McDavie - 19/9

It is indeed unfortunate that Mr. T. Ewen is at present inaccessible both to the Co. & the Kenya Govt.; as Railway Lands Office, his opinion of the value of the reduced acreage would have carried much weight.

But the High Commissioner is

apparently satisfied that the 77 acres are worth the £45,000, and we have no material on which to base disagreement.

You are familiar with the position in regard to the Bamboo Pulp scheme. If it goes through, the rent payable (£3000) represents nearly 7% return on the purchase price of the whole area.

? Tal. as in draft.

R. Preston
19/9

I agree: if Kenya is satisfied there is no reason to demur.

J. C. W. Hunt
24.9

Kenya's interest is strictly that of the ultimate guarantor of the loan.

Our position is that we are not getting for the money — only $\frac{2}{3}$ of the area we expected: I agree that ~~there is no intelligent business~~ we are not in a position to demur — or at all events give reasons.

(W) 5

To H/C/R. Transport
for Kenya (K. and)

W.S.B. 22.9.33

and
22.9.33

C. O.

3140/37

9 5

Mr. *Fraser* 19/9

Mr. *Clark* 21/9

Mr.

Mr. Parkinson.

Mr. Tomlinson.

X Sir C. Bottomley. 22/9 *line*

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. O.
R 22 SEP
D 23

*coded + sent
12.30PM 22/9/33
off.*

NO 12

*You til 16 Sept No 14.
Subject to concurrence of
Harbour Board I approve.
SECEP.*

DRAFT. Tel.

*Highways
Nandi*

FURTHER ACTION.

3100
COPY FOR REGISTER

H
10

ans 15

Telegram from the High Commissioner for Transport, Kenya-Uganda Railway to the Secretary of State for the Colonies.

Dated 16th. September, 1933. Received 12.20.p.m. 16th. September.

No. 14.

no 3

Your telegram No. 9 of the 24th. April. Purchase of freeholds at Mombasa. When the necessary documents were prepared for final signature various misunderstandings came to light as regards exact definition of area and Alibinsalim has withdrawn his previous offer to sell original 94 acres and now asks £45,000 for 77.38 acres which lies south of railway. I believe that misunderstanding on the part of Ali genuine (he employed various different agents) and also that freehold of this smaller area is worth £45,000 and if this view is endorsed by Harbour Board at the forthcoming meeting I propose closing with offer forthwith. Government of Kenya are not concerned with this 77 acres south of the railway and they will make their own arrangements with regard to remaining land north of the railway making up the original 94 acres. Reference to paragraph 10 of my despatch of the 31st. March No. 49 necessary resolution for re-allocation of loan balance was passed at the last meeting of the Legislative Council.

Ans. del. 15-

no 1

C. O.

Mr. Freeston 20

Mr. Flood 20

Mr.

Mr. Parkinson.

Mr. Tomlinson.

X Sir C. Bottomley. has seen.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

conson.

DRAFT. TEL.

HIGHCOMB, NAIROBI.

3140/33

fair copy

311
Coded & sent 8/4/33
24/4/33
C. O.
R 25 PR
D 25 -

13c

No. 9 Your despatch 31st March

Transport 49. While I fully

appreciate General Manager's arguments

and point of view, I agree to

proposals for purchase and I approve

necessary re-allocation under Section 3

of Ordinance 43 of 1930. Reference

your paragraph 9 and ~~to~~ ^{assume} ~~the~~ ^{provisions} ~~provisions~~

~~interest is not in question;~~ Government

will acquire freehold rights in the

area now and lease will terminate.

This point is important. Net annual

loss to ~~railway~~ ^{administration} would be interest

earned by unspent loan balance in

Joint Colonial Fund less rent at present

payable to freeholder; i.e. about £390

per annum. In return Crown would

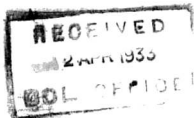
acquire asset of undoubted and increasing

value and would consolidate its position

as controller of harbour.

As regards legal point raised in your telegram 12th April No. 8 information in my possession is not sufficient to advise whether purposes now in view can be strictly construed as harbour purposes. I am inclined to think that the present lease position, supported to some extent by other considerations mentioned in papers, does supply the necessary nexus. If your Legal Advisers and those of Govt. of Kenya consider that serious doubts exist, position could presumably be rectified by an ad hoc amendment of the Harbour Regulations Ordinance.

SECER.



12

Telegram from the High Commissioner for Transport Kenya And Uganda
Railways to the Secretary of State for the Colonies.

Dated 12th April. Received at 11-30am 12th April 1933.

No 8. Reference to my Air Mail despatch Transport No 49 31st

No 1

March re purchase of leasehold portion of Mbaraki estate. General
Manager has since advised me that doubts have arisen as to whether
in view of Section 3 (a) Harbour Regulations Ordinance 1928 the
land can be purchased from Harbour Funds. Administration Legal
Adviser holds opinion that proposed purchase is outside the
powers conferred by the Ordinance. Shall be glad if this aspect
of the matter can be considered before your decision is given.

msd (13)



13

TRANSPORT.

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,

KENYA-UGANDA.

GOVERNMENT HOUSE,

NO. 49

NAIROBI,
KENYA.

RE
10/11/36
Sir

36th MARCH, 1936.

18564/25
244/26

I have the honour to refer to the correspondence on the proposed freeholding of the leasehold portion of M'Baraki estate, Mombasa island, which included the Secretary of State's despatch No.397, dated 28th April, 1925, to the Governor of Kenya, and terminated with despatch No.53 dated the 18th January, 1926, and from which it will be noted that the Crown acquired the interests in:-

(a) 105.018 acres of freehold land,

(b) 94.27 acres of land held by Major Grogan and Messrs. The Kilindini Harbour Wharfs and Estate Co., Ltd., under a series of leases, the average remaining of which is now approximately 75 years.

Ans'd Tel. (13)

2. It has become apparent that if the Crown is to reap the full economic benefit from the whole of the area acquired at M'Baraki, the purchase of the reversionary rights of the freeholder (Sir Ali bin Salim) of the area mentioned in paragraph 1(b) above, which is known as the "Leasehold area" is advisable if funds can be made available. To this end an option, which expired on the 28th March, 1936, was obtained from Sir Ali bin Salim, who offered to dispose of his reversionary interests in this area for the sum of £45,000.

3. The Railway Estates Officer investigated the matter and has stated a case for the purchase of the freehold rights, in a memorandum dated 24th October, 1932, a copy of which is attached for reference.

4. The/

Enclosure A.

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE LISTER, G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES.

4. The matter was thereafter submitted by the General Manager to the Harbour Advisory Board (vide attached copy of a memorandum, dated 6th December, 1932) whose definite recommendation was withheld pending further development of negotiations for the alienation of a portion of the M'Baraki Estate, which alienation - if effected - would yield sufficient rental to cover any additional Loan charges which would be incurred through the purchase of the reversionary rights in the area under consideration. A copy of the extract from minutes of the Harbour Advisory Board is attached.

Enclosure B.

Enclosure C.

5. These negotiations refer to a tentative enquiry for approximately 34 acres of land, situated at M'Baraki, for the purpose of erecting a factory for the manufacture of paper pulp and other by-products from indigenous bamboo. The area required has been offered to the parties interested in the proposal on the following terms:-

- Stand Premium - at the rate of £375 per acre, or £12,750 for 34 acres.
- Annual Rental - for the first 33 years of the lease at the rate of £90 per acre or £3,060 per annum for the 34 acres.
- Annual Rental - for the second period of 33 years at the rate of £135 per acre, or £4,590 for the 34 acres.
- Annual Rental - for the remainder of the lease at the rate of £150 per acre, or £6,120 per annum for the 34 acres.
- Tenure:- (a) 99 years' lease of that portion of the area of which the Crown owns the freehold;
- (b) 70 years sub-lease of that portion of the area which (upon the expiration of the lease to the Crown) would revert to the successor of Sir Ali bin Salim, but subject to agreement that if the freehold of this area is acquired by the Crown the lease will be for a period of 99 years.

A special stipulation in the offer is that activities of an offensive nature will not be permitted in this area and that, prior to definite alienation of this area, the consent of the Local Authority will be sought by the Port Administration.

6. At a special meeting, held on the 8th March, 1933, the Harbour Advisory Board was informed that it appeared unlikely that negotiations for the alienation of the land above referred to would be completed before the expiration of the option period, but notwithstanding this the Board, after full consideration of all commitments involved, unanimously recommended that the Port Administration should purchase the M'Baraki leasehold area from Sir Ali bin Salim. (See enclosure D.)

Enclosure D.

7. As the Harbour Advisory Board's Minute contained no arguments in support of the recommendation, the General Manager requested the Chairman of the Board to submit a memorandum explaining the recommendation of the Board.

Enclosure E.

The reply of the Chairman of the Board is contained in Enclosure F.

Enclosure F.

8. The General Manager, having considered the case feels that in the present financial circumstances of the Railways and Harbours Administration, expenditure of this somewhat speculative nature is not justified, and he is, therefore, unable to support the proposal. His report to me in this connection is attached as

Enclosure G.

Enclosure G.

9. I have given the General Manager's recommendation the fullest possible consideration, but apart from any consideration involved in the likelihood of successful completion of the negotiations for alienation of land/

of land within the area concerned, referred to in paragraphs 4 and 5 above, I have come to the conclusion that the merits of the case justify full support of the Harbour Advisory Board's recommendation that the Crown should acquire Sir Ali bin Salim's reversionary rights in the area under consideration for the sum of £45,000.

10. The following unappropriated Loan Balances are available for Port purposes:-

Loan of £3,500,000 (1928).

Item 5 - General Port Development	£.
	3,098

Loan of £3,400,000 (1930).

Item 7:-

(a) Construction of Quays and Oil Jetty ...	69,321
(b) Port improvements ...	29,873

Total ...	<u>£102,292</u>
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The necessary funds for the purchase of the reversionary rights could therefore be made available by the transfer of Item 7 (a) of the 1930 Loan to Item 7 (b), and I am prepared, in my capacity as Governor, to recommend this re-allocation.

11. Under the present policy, land which is controlled by the Railway and Port Administration (whether placed under such control by Government or purchased from Railway or Port funds) is vested in the Crown, with the right of the Railway and Port Administration to unrestricted use as long as it is required or reserved for Railway or Port purposes. In the event of the acquisition of the reversionary rights of Sir Ali bin Salim's land, the land would - in conformity with this policy - be vested in the Crown.

12. In so far as the Government of Kenya is concerned that part of the "leasehold" area, amounting to

18.62 acres, which is situated on the north side of the Railway line, is outside the defined area of Port lands: and at present Government pays rent for it direct to Sir Ali bin Salim. On the basis of value rather than acreage the purchase price of the reversionary interest in this portion would be £7,911.

The Colony has no Loan funds from which this sum can be found and in the present financial stringency is unable to meet such a charge from Revenue. The Government of Kenya agrees that the proposed purchase is desirable and I have, as High Commissioner for Transport, agreed that, until the Government of Kenya is in a position to finance its share of the purchase price it should pay to the Railway Administration the rent which at present it pays to Sir Ali bin Salim.

The proposal has been considered and approved on this basis by Executive Council, and when it becomes feasible to find the capital sum of £7,911 it will be submitted for the approval of Legislative Council.

13. The option granted by Sir Ali bin Salim expired on the 25th March, 1933, but he has, somewhat reluctantly, agreed to an extension of the option for a reasonable period, to permit reference of the matter to you for decision. Sir Ali, up to the present, has declined to fix a definite period for this extension, but it is anticipated that he will be prepared to wait until April, 30th, and for this reason I should be glad if your decision could be sent to me by cable.

14. The Railway Estates Officer, who is thoroughly conversant with this matter, will reach England on overseas/

overseas leave about the 26th April, 1933, and it is suggested in the event of further information being desired, he should be consulted.

I have the honour to be,

Sir,

Your most obedient, humble servant,

HIGH COMMISSIONER.

STANDARD
S.W.O. & C.
LONDON

MEMORANDUM TO THE HON'BLE GENERAL MANAGER, KENYA
AND UGANDA RAILWAYS AND HARBOURS FROM
THE ESTATES OFFICER ON THE
SUBJECT OF LAND AT
M'BARAKI.

24th October

1932.

L.A.1252/

The Hon'ble the General Manager,
Kenya & Uganda Railways & Harbours,
NAIROBI, thro'
the Chief Accountant.

RE: LAND AT M'BARAKI.

(1) With reference to the definite offer of Sir Ali bin Salim to sell the freehold of certain properties at M'baraki, Mombasa Island, and your instructions to me to state a case, I submit the following comments for your consideration:

(2) As you are aware, I suggested on more than one occasion during the regime of the late General Manager that the possibility of acquiring the freehold of an area of approximately 94.27 acres - at present leased by Government and this Administration from Sir Ali bin Salim - should be investigated.

(3) The position is, briefly, as follows :-

Upon the acquisition of the M'baraki Estate, the land assets acquired by the Crown were :-

(a) an area of 100,010 acres comprising Plots Nos. VIII/27 and VIII/28, the former of which was the freehold property of the Kilindini Harbour Wharves and Estates Company, and the latter had been leased by Major E.S. Greger from the Crown.

(b) transfer of the interest held by Major Greger and the Kilindini Harbour Wharves and Estates Company under various leases of a total area of 1,000 acres comprising Plots Nos. VIII/29, VIII/30, VIII/31, VIII/32, VIII/33, VIII/34, VIII/35 and XI, under

which Major Grogan and the Kilindini Harbour Wharves and Estates Company leased these plots from Sir Ali bin Salim for a period of 99 years, the average unexpired term of which is now about 75 years.

As a result of the acquisition of the M'baraki Estate, his interests in these leases were transferred by Major Grogan to the Crown who then became the tenants of Sir Ali bin Salim to whom a total annual rental of Shs.14,714/54 is paid.

- (4) In their search for measures under which economies could be effected, the subject of the rentals paid to Sir Ali bin Salim was re-opened by the Harbour Advisory Board at their meeting held on the 9th October, 1931, when it was recommended that Sir Ali bin Salim be asked whether he would be prepared to extend the existing lease of 99 years, and, if so, the terms he would require for doing so."

This recommendation was approved by the High Commissioner, and I was instructed to take necessary action in the matter.

- (5) You will probably recall that, on receipt of this instruction, I verbally expressed to you the opinion that our position as regards rentals could not be improved by conversion to a 999 years' lease because,
- (a) the land has improved very materially in value since the date of the original lease from Sir Ali's father (Salim bin Khalifa) to Major Grogan and the Kilindini Harbour Wharves and Estates Company, and should, therefore - were a lease now entered into - be worth a higher rental and,
- (b) I considered it extremely unlikely that Sir Ali would consent to conversion except at a very greatly enhanced rental as a 999 years' lease is generally accepted as the equivalent (for all practical purposes) of freehold.
- (6) For some time, Sir Ali - owing to differences with another Department of Government over land matters - declined to discuss this matter, but I have now succeeded in obtaining from him (through Mr. F.A. Kemister) written confirmation of an offer which was verbally conveyed to me by Sir Ali during May, 1934. Sir Ali very definitely declined to consider conversion of the lease from 99 to 999 years' tenure.

The danger which I foresee in the existing lease under consideration is that in the not far distant future, we will have passed the point at which effective use can be made of that portion of the M'baraki land held under lease, in so far as the sub-letting (which must be the chief source of revenue) is concerned:

Viewed as an industrial area, it is unlikely that private firms or individuals will become the sub-lessees of land upon which substantial buildings (and in fact their whole industry) might become a dead loss through termination of the lease by effluxion of time, without the opportunity of renewal.

- 10) It is the present policy of this Administration to issue only 50 year leases in respect of the Godown, Industrial or Oil Storage areas under its control.

These leases contain provision for renewal for such period and upon such terms and conditions as may (at the expiry of the present lease) be considered desirable and it is to be assumed that the Administration then in power will be no less anxious to establish and foster industries than the present Administration.

Those at present establishing or contemplating the establishment of industries show no disinclination to trust to the good sense and fairness of the Administrators of thirty years hence, but are unlikely to establish their industries in an area over which Government control will cease in 75 years (which period is, after all, not very great in the life of an industry of solid foundation) and wherein it is reasonable to assume that upon reversion of the land to private ownership, the probability of renewal of leases provisionally held from Government would be small but in any case the cost of renewal would be prohibitive.

- (11) In this connection I submit that as this government has been involved in considerable trouble and expense in planning (through the Consulting Engineers) the future of Harbour development, it is just as important that we should by every endeavour to safe-guard continuity of Government control of the areas which, it is reasonable to suppose, will of necessity be complementary to the Harbour development of the future.

-4-

The danger which I foresee in the existing lease under consideration is that in the not far distant future, we will have passed the point at which effective use can be made of that portion of the M'baraki land held under lease, in so far as the sub-letting (which must be the chief source of revenue) is concerned.

Viewed as an industrial area it is unlikely that private firms or individuals will become the sub-lessees of land upon which substantial buildings (and in fact their whole industry) might become a dead loss through termination of the lease by effluxion of time, without the opportunity of renewal.

(10) It is the present policy of this Administration to issue only 30 year leases in respect of the Godown, Industrial or Oil Storage areas under its control.

These leases contain provision for renewal for such period and upon such terms and conditions as may (at the expiry of the present lease) be considered desirable and it is to be assumed that the Administration then in power will be no less anxious to establish and foster industries than the present Administration.

Those at present establishing or contemplating the establishment of industries show no disinclination to trust to the good sense and fairness of the Administrators of thirty years hence, but are unlikely to establish their industries in an area over which Government control will cease in 75 years (which period is, after all, not very great in the life of an industry of solid foundation) and wherein it is reasonable to assume that upon reversion of the land to private ownership, the probability of renewal of leases previously held from Government would be small but in any case the cost of renewal would be prohibitive.

(11) In this connection I submit that as this country has been involved in considerable trouble and expense in planning (through the Consulting Engineers) the future of Harbour development, it is just as important that we should not make every endeavour to safe-guard continuity of Government control of the areas which it is reasonable to suppose, will of necessity be complementary to the Harbour development of the future.

Even now - barely twenty years after the event - we are somewhat critical of the lack of vision of our predecessors as the result of whose actions it was possible for one far seeing individual to eventually (in 1925) force Government into the re-purchase of an area which had, within the previous twenty years, been considered by our predecessors as of very slight significance or value.

- (12) It has been suggested that the expiration of the lease from Sir Ali bin Salim is so far ahead as to be unworthy of consideration by the present generation. This argument, applied in most cases where happenings 75 years ahead are under consideration, is perhaps sound, but my submission in the present case is that it is our duty to succeeding Administrations to safeguard the land position in an area which may become very much more valuable with the progress of development in the hinterland. Such action cannot logically be termed land speculation by Government as, in the event of successful development of the mineral resources - and with the steady progress of the Agricultural industry - of this country, it is reasonable to assume consequential expansion at the Coast which in turn will necessitate perhaps sooner than is now anticipated the absolute ownership by Government of the areas under consideration.
- (13) I have stated in paragraph 3 that the annual rent payable to Sir Ali bin Salim and, later to his heirs is Shs.14,716/54 for 94.27 acres of land. Unless relinquished (which is unthinkable where such valuable land is concerned) this rental will continue for a period of about 75 years representing a total amount still to be paid as rental ONLY, of approximately £86,157.
- (14) All interest in the land or any improvements thereon will then revert to Sir Ali bin Salim's successors and the only benefit left to Government of that period will be any profit which has accrued (through sub-letting) over and above the annual rental paid during the preceding years.
- (15) It is not difficult to imagine the feelings and comments of our successors in office at any date after, say, 1908 when they find themselves committed to a rental of about 2750 per annum for an asset of rapidly diminishing value and utility and for the freehold of which a prohibitive figure would then most probably be demanded.

Even now - barely twenty years after the event - we are somewhat critical of the lack of vision of our predecessors as the result of whose actions it was possible for one far seeing individual to eventually (in 1985) force Government into the re-purchase of an area which had, within the previous twenty years, been considered by our predecessors as of very slight significance or value.

(12) It has been suggested that the expiration of the lease from Sir Ali bin Salim is so far ahead as to be unworthy of consideration by the present generation. This argument, applied in most cases where happenings 75 years ahead are under consideration, is perhaps sound, but my submission in the present case is that it is our duty to succeeding Administrations to safeguard the land position in an area which must become very much more valuable with the progress of development in the hinterland. Such action cannot logically be termed land speculation by Government as, in the event of successful development of the mineral resources - and with the steady progress of the Agricultural industry - of this country; it is reasonable to assume consequential expansion at the Coast which in turn will necessitate| perhaps sooner than is now anticipated| the absolute ownership by Government of the areas under consideration.

(13) I have stated in paragraph 3 that the annual rent payable to Sir Ali bin Salim and, later to his heirs is Shs.14,716/54 for 94.87 acres of land. Unless relinquished (which is unthinkable where such valuable land is concerned) this rental will continue for a period of about 75 years representing a total amount still to be paid as rental ONLY, of approximately 285,187.

(14) All interest in the land or any improvements thereon will then revert to Sir Ali bin Salim's successors and the only benefit left to Government of that period will be any profit which has accrued (through sub-letting) over and above the annual rental paid during the preceding years.

(15) It is not difficult to imagine the feelings and comments of our successors in office at any date after, say, 1965 when they find themselves committed to a rental of about 2750 per annum for an asset of rapidly diminishing value and utility and for the freehold of which a prohibitive figure would then most probably be demanded.

The total sum of instalments and interest over the period of 20 years would, under this proposal, amount to £28,625 which represents £723 per acre for purchase of the freehold.

(b) An alternative method of payment would be the use of Loan Funds and in this connection I am informed by the Chief Accountant and the Port Manager that there is an unexpended balance of about £100,000 or the £5,400,000 Loan (1930) in the items "Construction of Quays and Oil Jetty" and "Port Improvements".

If £45,000 could be made available (for purchase of the freehold of the land under consideration herein) out of this unexpended balance, the annual cost over the repayment period would be :-

Interest.....	£2,025
Sinking Fund.....	£ 450
Add proportion of Interest and Sinking Fund on Expenses of issue and Discount.....	£ 75
	<u>£2,548</u>

The total sum of Sinking Fund payments and interests over a period of 37 years would thus amount to £94,376 or £25,621 more than would be paid under Sir Ali bin Salim's proposal, outlined in (a) above, which - although considerable less expensive is by no means so convenient as regards the annual payments.

(20) The proportions of annual charges payable by Government and the Railway Administration would be :-

(a) Under Sir Ali's proposal outlined in paragraph 12 (a) :-

Government	: £200.2 at the end of the first year decreasing annually by £22.22 to £155.63 at the end of the twentieth year.
Railway	: £341.2 at the end of the first year decreasing annually by £20.22 to £195.87 at the end of the twentieth year.

by use of ... Funds ...
paragraph 19 b) :-

Government : £508.28 per annum
for 37 years

Railway : £2044.78 per annum
for 37 years.

Upon purchase, however, payments of rental to Sir Ali would cease and may be deducted from the figures above-quoted so that the amounts to be found annually by Government and the Railway Administration would be reduced by £140 (approximately) per annum in the case of Government, and £595 (approximately) by the Railway Administration. These offsets reduce the annual charges mentioned in paragraph 20(a) to :-

(a) Government : Approximately £750 at the end of the first year decreasing annually by £22.22 to approximately £326 at the end of the 20th year.

(b) Railway : Approximately £3010 at the end of the first year decreasing annually by £90.26 to approximately £1500 at the end of the 20th year.

The charges mentioned in paragraph 20(b) would be reduced as follows :-

Government : Approximately £263 per annum for 37 years.

Railway : Approximately £1480 per annum for 37 years.

(22) The Municipal Valuation of the area under consideration is at the rate of £1500 per acre, and this valuation is substantiated by the fact that any alienations which have taken place since the Railway Administration came into control of the area have been based upon that valuation.

It is interesting to note that at this figure of £1500 per acre the Municipal valuation of the 94.27 acres under offer by Sir Ali Mir Sultan is £141,405 and that the present rental received by him represents a return of about 0.88 per cent upon that amount.

(85) I have set out the case for purchase of the freehold of this area in some detail, as I am convinced that the acquisition should be made at the earliest possible date.

(24) For your guidance in this matter, I have calculated the present value of the area under offer by Sir Ali and find the result as follows

(25)(a) In order to obtain the actuarial "present value" of the reversionary rights to the area of 94.27 acres under consideration, it is essential to estimate the value of the land and developments at the termination of the lease after 75 years.

b In considering the planning of an Estate, the usual allowance for roads, open spaces, etc., is 33% of the total area available.

(c) Assuming that development of the land under consideration is to be in the nature of a warehouse or Industrial area in close proximity to Port facilities, (and therefore requiring railway access) it is necessary to reduce the area which would be available for division into plots to say 50 acres.

(d) Dimensions usually allowed for such plots are about 50 x 100' or approximately 8 plots to the acre, but as the present practice in this Administration is to provide plots of 50' x 150' or 6 plots to the acre, this figure is accepted for valuation purposes and consequently 50 acres with 6 plots per acre, or in all, 300 plots of 7500 square feet each will be available

(e) It is safe to assume that in 75 years these plots will be worth ten shillings (10/-) per square foot (which is the present day price of a plot in Victoria Street - by no means the most important street in Nairobi - but adopting only one half of this figure, the value per plot of 7500 square feet is $7500 \times 5/- = \text{£}1875$ per plot, or a total land value (for 300 plots) of $\text{£}562,500$.

(f) Allowing for very high development charges of $\text{£}275$ per plot the price per plot is reduced to $\text{£}1500$ or a total valuation of $\text{£}450,000$, the present value of which at a 3% investment = $\text{£}34,096 - 10/-$.

(g) So this must be added the purchase value of £735 (the present annual rental) for 75 years calculated so as to produce interest of 3½% per annum with an allowance for a sinking fund to replace the capital at the end of 75 years, i.e. £735 x 26.407 = £19,409 giving a total present value of the land as = £53,505.

(h) Another item which must be taken into consideration in determining the value of this Estate (if purchased now) is the present value of the reversionary right to any buildings or other developments which may be constructed during the ensuing 75 years, assuming that the purchaser would open up the Estate and grant leases for the usual period of 99 years.

(i) Following the assumption in paragraphs 25(e) and (d) above, it is reasonable to estimate that at least two thirds of the 300 plots will have been built upon at the end of 75 years, and it is safe to assume that the minimum value of each of these buildings will be £1500 which is an average value of the type of warehouse at present erected. The total value of 200 buildings at this figure (which would eventually revert with the land to the freehold owner) is therefore £300,000.

(j) As, however, only 75 years of the 99 years leasehold will then have expired, the proportionate value of the reversionary right held by the freeholder is seventy-five ninety-ninths (say $\frac{5}{9}$) of £300,000 or £225,000, the "present value" of which (to show a 3½% investment) is £17,046.

(k) The total present value of the land and developments taken over a period of 75 years, is therefore, approximately

Land (see paragraph 25 (g) above.....	£53,505.
Developments (see para- graph 25 (j) above....	£17,046.
Total	<u>£70,551.</u>

(26) From the foregoing - which I submit is a conservative valuation - it will be seen that the price of £45,000 is reasonable, and I am firmly

of the opinion that, with each succeeding year that this matter is left in abeyance, the acquisition will become more difficult - if not impossible - and the price for acquisition (if possible) will undoubtedly increase.

- (27) In this connection I must report that Sir Ali bin Salim (in conversation) stated that if the offer now made is not accepted within the specified period, it would not be renewed in his lifetime.

If, however, Sir Ali desires to realize on this property, it is not unlikely that an Insurance Company or an Investment Corporation looking for a sound look-up investment would consider purchase.

If purchased by any person or firm other than the present leaseholder (Government) the item for developments in paragraph 25(j) above, must be considerably reduced, if not entirely deleted.

- (28) If, however, Sir Ali's present offer is accepted, the Crown will acquire a very valuable asset which is unlikely to depreciate in value and will - in my opinion - on the resumption of normal conditions prove a very remunerative investment probably within the next decade

ESTATES OFFICER.

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SECRET

MEMORANDUM FOR THE HARBOUR ADVISORY BOARD.PROPOSED EXTENSION OF LEASE OF SIR ALI BIN SALIM'S LAND
AT H' BANAKI.

At a Meeting held on the 9th October, 1931, the Board, in Minute No. 600 :-

RECOMMENDED that Sir Ali bin Salim be asked whether he would be prepared to extend the existing lease of 99 years to a lease on a rental basis for 999 years, and, if so, the terms he would require for doing so.

2. The High Commissioner approved of enquiries being made as suggested.

3. It is only recently, however, that Sir Ali bin Salim has been prepared to discuss the matter. He has definitely intimated that :-

(1) He is not prepared to sell the freehold interest in the lease, but

(11) he is prepared to sell the freehold interest in the area concerned in the lease for £45,000, under the following conditions :-

(a) The capital sum to be paid within twenty years from this date.

(b) Pending payment of the capital sum, interest at 5% per annum to be paid to Sir Ali bin Salim.

(c) This offer remains open until March, 25th, 1933.

(d) In the event of the capital sum not being paid before the 25th September, 1932, the sale will be cancelled and the freehold interest revert to Sir Ali bin Salim.

4. It has also been intimated to the Administration that if this offer is not accepted within the specified period, it will not be renewed during the life-time of Sir Ali bin Salim.

5. This offer has been examined in the light of :-

(a) The likelihood of the area in question being required for Port purposes within a reasonable time; and, if not,

(b) The justification, if any, for purchasing the land now for the benefit of posterity.

(c) The possibility of other vested interests ultimately being created on this area which would compete with the Port.

Handwritten notes:
B...
L...

6. So far as (a) is concerned, it is most improbable that any possible developments in these territories will necessitate such an extension of the Port as to involve the area in question being required for Harbour purposes for a considerable number of years. Reference to the Consulting Engineers' plan of the ultimate development of the Port will show that it will be possible to provide many more deep water berths before the area in question would require to be encroached upon.

6. It appears to be clear, therefore, that for use within any considerable time, say the next 30 years, the freehold of the land is not required for purely Port purposes.

7. Dealing now with consideration (b) :-

The annual charges on the purchase price of the area, amounting to 94.27 acres offered to the Administration for 245,000, would be :-

(1) Interest.....	£	2,082	
(2) Sinking Fund.....		450	
(3) Proportion of (1) & (2) on expenses of Issue and Discount.....		75	
			22,548

Against which can be set the present rentals paid by the Port and Government..... £755/16/84

Making the total additional annual charge to the Port and Government by purchasing the wharf, 1925..... £1,812/5/44

The liability of the Port would be reduced to £1,812/5/44 p.a.

were Government prepared to purchase that portion of the area in which they are at present interested, amounting to 12.62 acres.

8. The Board is aware of the burden which loan Fund Charges place upon the Port finances at the present time. To add a further amount of £1,812/5/44 or £1,812/5/44 (as the case may be) to that burden in order to prevent posterity, free of capital liabilities, with an area of land which may, or may not, be required for Port purposes, is not considered to be a duty which the present generation should assume, particularly in the light

5. So far as (a) is concerned, it is most improbable that any possible developments in these territories will necessitate such an extension of the Port as to involve the area in question being required for Harbour purposes for a considerable number of years. Reference to the Consulting Engineers' plan of the ultimate development of the Port will show that it will be possible to provide many more deep water berths before the area in question would require to be encroached upon.

6. It appears to be clear, therefore, that for use within any considerable time, say the next 50 years, the freehold of the land is not required for purely Port purposes.

7. Dealing now with consideration (b) :-

The annual charges on the purchase price of the area, amounting to 86.27 acres offered to the Administration for \$45,000, would be :-

(1) Interest.....	£	2,025	11/10 1/0
(2) Sinking Fund.....		450	
(3) Proportion of (1) & (2) on expenses of Issue and Discount.....		75	
		<u>22,548</u>	

Against which can be set the present rentals paid by the Port and Government.....£755/18/84

Making the total additional annual charge to the Port and Government by purchasing the wharf, approx.....£1,812/5/46

The liability of the Port would be reduced to £1,812/5/46 p.a.

where Government prepared to purchase that portion of the area in which they are at present interested, amounting to 18.62 acres.

8. The Board is aware of the burden which loan Fund Charges place upon the Port finances at the present time. To add a further amount of £22,402/16/46 or £1,812/5/46 (as the case may be) to that burden in order to present posterity, free of capital liabilities, with an area of land which may, or may not, be required for Port purposes, is not considered to be a duty which the present generation should assume, particularly in the light

of the provision which is being made through the medium of annual Sinking Fund contributions, and which will redeem the present Loan liability of the Port within a period of 40 years. Should this land eventually be required for the Port, the Port then should be in a far better position than it is to-day to acquire it, even if the purchase of the land then involved payment of a considerably enhanced price.

(9) So far as (e) is concerned, it may be stated that under the provisions of the Harbour Regulations Ordinance and the Regulations framed thereunder the Port is amply protected from any danger of interests being created which would compete with the Port if this area of land is not purchased.

(10) From the point of view therefore of purely Port Development, little justification exists at the present time for the purchase of the freehold rights of the land in question.

(11) From this point of view, however, of the development of Industrial areas requiring access to Port facilities the case is not so clear.

(12) It will be evident that a single alienation of about 15 acres would immediately reimburse the Administration the additional interest charges to be met if the purchase is effected.

(13) The views of the Board are desired. For the information of the Board the Administration has already been approached for the alienation of from 15 to 20 acres, requiring access to the sea, which might very suitably be sited in this area. When considering this point, however, it must also be borne in mind that the Administration already has considerable areas of land available for alienation.

General Manager's Office,

Nairobi,

6th December, 1932.

KENYA AND UGANDA RAILWAYS AND HARBOURS.

MOMBASA PORT

HARBOUR ADVISORY BOARD.

EXTRACT FROM MINUTES

Meeting No. 67

Date 14th December, 1932.

Minute No. 723

BASEHOLD LAND AT M'BARAKI.

D. 7/6/10.

Further to Minute 600, negotiations had been taken place between the Administration and Sir Ali bin Salim, details of the proposals having been incorporated in a memorandum prepared for the Board by the General Manager.

The General Manager informed the Board that a possibility existed for the establishment, in the near future, of an industry on a portion of the land concerned, but that he was not in a position to give details at the moment.

Having discussed the matter in detail it is agreed to withhold a definite recommendation until the February meeting, when it is hoped that further developments may be available for the Board.

General Manager's comments to High Commissioner

No.A.1/457/VII. 21. 12. 1932.

High Commissioner's decision. Reference T/Port/B.7. 31.12.1932.

NOTED J.B.

ACTION TAKEN.

No.A.1/457/VII of the 5th January, 1933, to the P.M.

NOTED.

KENYA AND UGANDA RAILWAYS AND HARBOURS.

MOMBASA PORT

HARBOUR ADVISORY BOARD.

EXTRACT FROM MINUTES.

Meeting No. 69.

Date 8th March, 1935.

Minute No. 751.

LEASEHOLD LAND AT M'BARAKI.

Further to Minute 723: The Estates Officer fully explained the present position in this matter to the Board.

It is RECOMMENDED that the Port Administration should purchase the Mbaraki leasehold estate from Sir Ali bin Salim for the sum of 245,000.

In regard to the question of payment, the Board is of opinion that the most favourable terms appear to be possible ex loan funds, but it is considered that the financial position arising from the two alternative methods (i.e. Sir Ali bin Salim's long term offer, and payment in full from Port loan funds) should be more clearly investigated. In the event of its recommendation to purchase being approved, the Board would appreciate, in due course, information relative to the method of payment which has been adopted.

The thanks of the Board are tendered to Mr. McEwen for his very clear exposition of this matter.

General Manager's comments to the High Commissioner.

See letter L.A.1252/ of the 14.3.35.

38

10th March 1933.

U R G E N T.

L.A.1252.

The Acting Port Manager,
KILINDINI HARBOUR.

LEASEHOLD LAND AT M'BARAKI.

Reference Minute 751 of the Harbour Advisory Board Meeting
of 6th March, 1933.

Beyond recording that the Harbour Advisory Board are in favour of the purchase of the M'baraki leasehold estate, no arguments are included to show why the purchase of such land is justified, taking into consideration the facts :- (1) that the Harbour is already being run at a loss; (2) that this particular area of land is not likely to be required for Harbour development purposes; and (3) that it is, in fact, therefore, a speculation in land which is expected to become particularly valuable in future.

2. I agree that it is very probable that this land will become valuable in the future and that the Port Administration will, therefore, recover its money in due course, but it seems to me that a strong case has to be made out before this Administration, in the present financial position of the Port Administration, can justify expenditure of a speculative nature at a time such as the present.

3. I should be glad if you would kindly ask the Chairman of the Harbour Advisory Board if he can let me have a reasoned memorandum, explaining the recommendation of the Board, for submission to the High Commissioner with my own recommendations.

Sgd. G.D.RHODES.

GENERAL MANAGER.

COPY

H.A.B.404.

HIS MAJESTY'S CUSTOMS,
UNION HOUSE.

M M'BASA. 15th March, 1933.

URGENT.

Copy to :
The Port Manager,
MILINDINI.

The Honourable,
The General Manager,
Kenya and Uganda Railways and Harbours,
Nairobi.

LEASEHOLD LAND AT M'BARAKI.

The financial position in regard to this matter is fully elaborated in a memorandum prepared for your information some time ago by the Estates Officer. The gist of this memorandum was communicated to the Board at the meeting held on the 8th March and was generally approved by the members. It is suggested that a copy of the memorandum might be included in the correspondence to be submitted to the High Commissioner for Transport in order that the purely financial aspect of the proposed operation may be fully appreciated.

2. When reviewing the broad issues, members of the Harbour Advisory Board were naturally alive to the fact that the Port is at present being run at a loss and that every measure of prudence must be exercised before embarking on further commitments. At the same time the nature of existing obligations in the matter of Port Lands, particularly in regard to that portion held under lease, was equally present in their minds and the recommendation to purchase freehold rights of property now held under lease was made not in the sense as a speculative proposition showing some indication of being highly profitable but as a method of improving and consolidating the existing position by converting an expensive and increasingly unsatisfactory leasehold interest into a permanent investment of which full and proper use can be made as opportunity offers.

3. The question as to whether or not land in the vicinity of Port Works (other than land required for Port Development in the most restricted sense of that term) should be acquired is one which would appear to depend on the view taken in regard to Port Administration. A Port Trust if given a favourable opportunity would almost certainly acquire such land as an investment in order to reap the maximum benefit from the large initial capital outlay on wharves, etc., which enhance the value of land in the vicinity, whereas a Harbour Administration which regards a Port as a Railway terminus may take a divergent view. In the particular case under reference however, discussion on

this aspect of the matter does not appear to be necessary as even if it is contended that the land in question is not likely to be required in the near future for purely Harbour development, precisely the same argument must apply to the leasehold interest, responsibility for which has already been assumed by the Railways and Harbours Administration for a period of some 90 years. The existing obligations on the matter of payment of rent, etc., under the lease cannot be escaped or ignored and when it is to be remembered that as time elapses the diminishing period of the lease must exercise a tendency towards sterilisation whilst the effluxion of time in all probability will increase the opportunities for profitable use if the property is un fettered, the case for conversion from leasehold to freehold is enormously strengthened.

4. That the present leasehold interest would have been acquired voluntarily and as a separate transaction by the Railways and Harbours Administration is extremely improbable, but as the M'baraki Settlement involved the transfer of leasehold as well as freehold interests, discussion at the time of this question as an independent issue was impracticable. The outcome has been the assumption by the Railways and Harbours Administration of a leasehold interest in this property with the possibility of abandonment of the lease and continually lessening opportunities of making profitable use of the land as the unexpired period of the lease becomes shorter. It was with a view to rectifying this unsatisfactory position that the Board recommended purchase outright.

5. A further consideration which in the opinion of members of the Board is of some importance is the not unlikely possibility of this property being "wakfed" in due course by the present owner Sir Ali bin Salim, in which event the land would be vested in the Wakf Commissioners, and would be subject to the restrictions in regard to use which are imposed under Mohamedan Law on wakf property, the result being that land in the immediate vicinity of the water front might be largely sterilised in perpetuity.

6. As regards the proposed purchase price, the Board very carefully considered the figures submitted by the Estates Officer and was fully satisfied that the offer of Sir Ali bin Salim is an eminently reasonable one and one which should be accepted.

7. The subsidiary matter of alternative methods of payment, however, formed the subject of considerable discussion as it appeared to members that immediate payment from Loan Funds already subscribed upon which interest and Sinking Fund is now being paid (less the small amount of interest secured on short term loan) should prove less onerous than payment on a long term basis as offered by Sir Ali bin Salim. For this reason further investigation into the alternative methods of payment was suggested before a final decision on this point is taken.

(Signed) G. WALSH,
CHAIRMAN
HARBOUR ADVISORY BOARD.

Kenya and Uganda Railways and Harbours

K. U. R. 74
Revised 1930Telegraphic Address
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GENERAL MANAGER'S OFFICE.

NAIROBI 28th March 1935

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Ref. No. A. 1258.

THE HIGH COMMISSIONER FOR TRANSPORT

SUBJECT

LEASEHOLD LAND AT M'BARAKI.HIGH COMMISSIONER'S
DECISION.

MINUTE

With reference to the High Commissioner's decision to recommend to the Secretary of State the purchase from Sir Ali bin Salim of the M'Baraki Leasehold Estate for the sum of £45,000, in accordance with the proposal contained in the Eastern Advisory Board's minute of the 6th March, 1935, as requested, I submit herewith my reasons for not being able to recommend this expenditure from the Administration's funds.

1. In the first place, it is generally agreed that the land will not be required for purely Port purposes within any reasonable period. If the development of the Port takes place according to the plans prepared by the Government Engineers, at least ten additional berths, increasing by more than 2000 the present capacity of the Port, will have been completed before any further development would be required upon this leasehold site. From then, the whole of the area would not be required for such purposes.

2. Moreover, the cost of reclamation necessary to utilize any of the water-front of this area would be so great that it is probable that for this, and other reasons, further development will be transferred to the Harbour before any expenditure was incurred on development of this site.

3. The case for increasing this expenditure here, therefore, is based on the value of the land as an investment. The arguments in favour of this are clearly stated by the Chairman of the Eastern Advisory Board, and, if these were not sufficient, the Government, in this way, I should like to mention in supporting the recommendation.

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MEMORANDUM FOR THE DIRECTOR

SUBJECT

HIGH COMMISSIONER'S
OFFICE

MINUTE

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6. In my view, however, at the present time, the Port cannot face further capital expenditure which would increase its annual loss - a loss which, in fact, has to be met by the Railway.

6. Both Railway and Port have outstripped Colonial development and are, in consequence, heavily over-capitalised from the point of view of revenues that can be earned. It is clear that a halt must be called in capital expenditure for a considerable time, until, in fact, revenues increase to such an extent that Loan charges represent no more than 50% of the total revenue.

7. Unappropriated Port loan balances now amount to £100,000. Although the Port is now still engaged and no other expenditure of a capital nature is at the moment in view it is imperative that this small sum should be conserved. Over-capitalised as we are from a revenue earning point of view, we cannot contemplate raising fresh loans in the near future and the small balance that remains should, therefore, be retained to meet minor expenditure that cannot at present be foreseen.

8. In these circumstances, I am unable to recommend the expenditure of £45,000 upon something which, so far as can be foreseen, is never likely to be required for purely transport purposes.

9. It has been suggested that, unless this sum is purchased, it will pass into the hands of the "bank" institutions which would result in the area becoming sterilised. While it is

Kenya and Uganda Railways and Harbours

K.U.R. 704
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GENERAL MANAGER'S OFFICE,

NAIROBI

KENYA COLONY

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END
19

THE HIGH COMMISSIONER FOR TRANSPORT

SUBJECT:

HIGH COMMISSIONER'S
DECISION

MINUTE

It is probable that this should occur with regard to land that might be put to many purposes. It appears to be a question which will be considered at the next session in the present financial year.

It is to be noted that, which should be provided for in the first year, are necessary, there is already vested in the first year, which will be provided for all remaining requirements.

It is to be noted, therefore, in my opinion, which will justify the expenditure of the £2,000 in the purchase of the proposed land area.

GENERAL MANAGER.

Kenya and Uganda Railways and Harbours

K.U.R. 764
Revised 8/1950

43
END

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GENERAL MANAGER'S OFFICE,

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KENYA COLONY.

19

THE HIGH COMMISSIONER FOR TRANSPORT

SUBJECT

HIGH COMMISSIONER'S
DECISION.

MINUTE

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regrettable that this should occur with
little or less than might be put to many
useful uses. It appears to be a question
which will be considered at the
next session in the present financial
situation.

10. So far as industrial needs, which
should be provided for in the Port area, are
concerned, there is already vested in the Port
authorities ample land to provide for all
reasonable requirements.

11. It may, therefore, in my opinion,
be said that the expenditure of
the money in the purchase of the M'Baraki
Industrial area.

GENERAL MANAGER.

20/10/50