

B.S.
Nyali Bridge
Nominal
(plate)

Francis Smith, Braithwaite & Co _____ 11th January '35.

Enclosed details of the history of the Nyali Bridge
I suggest that the Company should be assisted either by the Govt
taking over the Bridge or by agreeing to do so at some later date
with some subsidy in the meantime.

Please see record of interview on 23318/34.

This letter, which is not marked
Confidential, tells the whole story, & there
is nothing that we can add.

Reply that a copy is being sent
to Govt. for concn, promising fur.
communication

Copy 1 (with Balance Sheet in orig.,
but without the Agreement) and above
reply to Govt. LP concn.

J. S. O. Flood
15/1

Action must be as proposed but how can
Kenya be expected to pay anything? If they did propose
to take over the bridge I should advise them not to.

J. S. O. Flood
15.1.

15.1.35

since

2 40 Francis Smith, Braithwaite & Co. (Lancs.) 19/1/35

DESTROYED UNDER STATUTE

No reply to NP3 yet received?
remind.

Malone.

I think this might wait until
Messrs Travers Smith Co write
again.

C. H. Brownie
22/7/35

We had better remind

W. A. B. B. B.
note

4 To Kenya 374 - cons - A/2 23 MAY 1935

SM

5. Travers Smith & Braithwaite & Co _____ 1st Aug '35.

Point out that promised further communication regard-
ing the Nyali Bridge has not yet been received & that the
matter has now become pressing.

To in Draft here with

C. H. Brownie
W. A. B. B. B.
6/8/35

6 To Travers Smith, Braithwaite & Co. 7/8/35

(Samud.)

DESTROYED UNDER STATUTE

7 To Kenya 597 (1/255-26) Cons A/1 9/9/35

SM

By Air Mail
15/9/35

Still no reply to NP3 in spite
of 2 reminders (4.4.7).

Inquire by tel when reply may
be expected.

Malone
11/9

W. A. B. B. B.
note

* This should not
have been done
J.

DESTROYED UNDER STATUTE

Tel. to Gov Kenya, No 242

140 Cons.
12/9/35

9. Governor Bygone 120 Conf _____ 14 Sept '35.

Gives details as to the history of the Nyali Bridge &
furnishes his views regarding the acquisition of bridge & completion
by the ferry.

Kenya has at last replied to the despatch
about the Nyali Bridge. As the Governor points out,
the delay has been due to their natural desire to
get the Municipalities (Amendment) Bill passed in
order that they might be able to review the situation
with regard to that amendment.

The Governor points out that there is no
earthly reason why Government should purchase the
bridge except in order to relieve the Company of the
financial mess into which it has got, and I think
it must be admitted that the Governor's view that it
would be most unwise to take over the bridge either

see 3872/35.

now or in the future is the correct one, and we should proceed to tell Messrs. Travers Smith and Company accordingly.

With regard to ferry competition, it now appears that ~~the~~ Railway ferry was dropped when the bridge was opened but individual boatmen then began to ply for hire in competition with the bridge. The Nyali Company object to this and power has now been conferred by the recent legislation for the Mombasa Board to tackle the ferries. The three courses which the Governor suggests as possible are:-

- (1) To leave matters alone.
- (2) To establish a municipal ferry and either run it as a municipal concern or issue an exclusive licence to conduct it in which case, presumably, Nyali Limited would apply for a licence.

(3) The third course is that the Council should prohibit the use of the landing places which are now used by boats competing with the bridge, in the event of a ferry-boat service being established there.

I don't quite follow this. If the municipality propose to run a ferry they would be hotly opposed by Nyali Limited, and if Nyali Limited got the licence to run the ferry I can only assume that they wouldn't do it because the ferry would compete with their bridge. Further, the Governor suggests that the municipality might prohibit the use of the landing places in the event of a ferry-boat

service being established. What I am afraid of is that the municipality will prohibit the use of the landing places and thereby kill the competition to which the Nyali Company object, and will not establish any ferry-boat service on the ground that the bridge is all that is necessary.

I think the action to be taken should be to tell Messrs. Travers Smith and Company that Government has no intention whatever of taking over the bridge; that the control of ferries in the water round Mombasa has now been vested in the Mombasa Council by recent legislation, and that [the Secretary of State does not consider that any action should be taken to prohibit ferry traffic in the interests of their bridge. And tell the Governor that the Secretary of State agrees with his view and trusts that very careful consideration indeed will be given ^{to the} ~~question of~~ prohibiting competition with the bridge, and that on first principles the Secretary of State is inclined to think that the best course to adopt will be to maintain the present state of affairs as far as that bridge is concerned.

*It is not
it possible to
lead into
that action
will*

J. E. W. Head

15.10.35.

*As attached. I do not want to
send on now, but it may be
necessary to do so when we
get their reply.*

W.E.S.

10 To Messrs. Travers Smith & Braithwaite - 29/10/35 ✓

11 To Kenya, Conf (w/c 10) 30 OCT 1935 ✓
9 Annod

~~12~~ Travers Smith & Braithwaite to - 30.10.35
Accts. (10.)

DESTROYED UNDER STATUTE

Part 4
Report
at ml
1/1/35

13

C. O.

Mr. Grossmith. 25/10

Mr. ~~Newton~~ 23Mr. ~~Hind~~ 23 J.S.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

30 October, 1935.

Sir,

I have etc. to acknowledge

the receipt of your Confidential

despatch No. 120 of the 17th of

September on the subject of Nyali Ltd.

and to inform you that I agree that

it would be unwise for the Kenya Govt.

to contemplate taking over the Nyali

Bridge.

As regards the question of

ferry competition, I trust that very

careful consideration indeed will be

given before prohibiting competition

at the Bridge. On first principles

I am inclined to the view that the

most equitable

course to adopt would be to

independently

maintain the present state of affairs

2 DRAFT.KENYA.CONFIDENTIAL.

GOVERNOR.

94

~~(Accomp. D.T.)~~
10

FURTHER ACTION.

my
10/10
6

C. O.

Mr. Grossmith. 23/10

Mr. ~~Rever~~ 23

Mr. ~~Hard~~ 23

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bothamley.

Sir J. Shughburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C.O.
R 24OCT
D 23

Downing Street,

29 October, 1935.

Gentlemen,

I am etc. to refer to the

(6)

letter from this Dept. of the 7th of

August regarding the affairs of

Nyali Ltd. and to inform you that it

has now been ascertained that the

Govt. of Kenya has no intention of

either taking over the Nyali Bridge, and that

now or, so far as can be foreseen, in the future.

by recent legislation the control of

ferris in the water round Mombasa has

been vested in the Mombasa Municipal

Council, has been in preparation & has

now been enacted

2. I am to add that it is not

possible to undertake that action will

be taken to prohibit ferry traffic in

the interest of the Company's bridge.

I am, etc.

DRAFT.

MESSRS. TRAVERS SMITH, BRAITHWAITE & COMPANY.

Sty

A reply has been delayed because legislation to transfer the control of

→

copy to Kenya (1)

FURTHER ACTION.

3. I enclose for your information copy of a letter which is being sent to Messrs. Travers Smith, Braithwaite and Co.

I have, etc.

(Sgd.) MALCOLM MacDONALD

97



GOVERNMENT HOUSE,

NAIROBI,

KENYA.

KENYA.

NO. 180

CONFIDENTIAL:

RECEIVED
70 OCT 1935
C. O. REGD

SEPTEMBER-1935.

Sir,

No. 3

No. 1

revised (11)

I have the honour to refer to Sir Philip Cunliffe-Lister's despatch No. 70 of the 22nd January 1935, under cover of which he transmitted for consideration a copy of a letter of the 11th of January 1935, from Messrs. Travers Smith, Braithwaite and Company on the subject of Nyali Limited, and to express regret at the delay in replying to that despatch. That delay has been due to a desire to defer comment on the letter from Messrs. Travers Smith, Braithwaite and Company, until such time as the Local Government (Municipalities) (Amendment) Bill had been introduced into Legislative Council in order that the representations made in that letter might be examined in the light of the amendments in the law which that Bill introduces.

2. The Bill was read a third time in Legislative Council on the 3rd August 1935, and was assented to by the Acting Governor in His Majesty's name on the 23rd August 1935. Copies of the Ordinance were transmitted to you under cover of the Acting Governor's despatch No. 441 dated the 28th August 1935.

No. 2.
38172/35

3. The letter from Messrs. Travers Smith, Braithwaite and Company raises two main issues:-

- (a) The possibility of the purchase of the Nyali Bridge by Government;
- (b) The question of ferry competition with the bridge;

and I propose to deal separately with each of these questions.

4. PURCHASE OF BRIDGE BY GOVERNMENT: The Board of the Company

maintain that it would be in the interests both of the Company and of this Government for some arrangement to be arrived at whereby responsibility for the Bridge should be taken over by Government, and before considering whether it is in fact to the interests of Government to take over the Bridge, it appears to me to be desirable to recall the more important steps in the negotiations which preceded the construction of the Bridge by the Company.

5. In 1921 Mr. Rodwell applied on behalf of his Company, Nyali Estates, Limited, for the sole concession to bridge Mombasa Harbour from the East or North East shore of the Island to the Mainland, and in 1922 after discussion in Executive Council the principle of the construction of a bridge by private enterprise was approved.

The matter lay dormant however, until 1926, when it was re-opened by Mr. Rodwell, and during a discussion between Mr. Rodwell, the Colonial Secretary, and the General Manager, Kenya and Uganda Railways, the possibility of a bridge being built by Government was mentioned apparently for the first time. The matter was subsequently considered in Executive Council and in minute No. 137A of the 4th of April, 1928, it was decided that Government should build the Bridge connecting the Island with the Mainland though

not necessarily on the site which the Nyali Company had intended to build their bridge. Mr. Rodwell was immediately informed that Government was not satisfied on the question of the site on which the Company proposed to build the Bridge and that it was intended to lay down certain requirements regarding specifications and general conditions. At the same time he was informed that in view of the delays which were likely to take place if the negotiations of his Company were continued, Government was prepared, subject to Legislative Council approval, to build a bridge, and it was suggested that the erection of a bridge by Government would obviate the necessity for the pontoon bridge projected by his Company.

6. Although the Company was not at first opposed to the suggestion that the Bridge should be built by Government, it transpired from correspondence which ensued that the site on which Government proposed to construct the Bridge was not suitable to the Company.

The question was again considered in Executive Council on the 14th of May, 1928, when it was decided (Executive Council Minute No. 222), that in view of the delay which must ensue before Government would be in a position to build a bridge, the Company should be permitted to build a pontoon bridge provided that the specifications were approved by Government, and that the Bridge was maintained up to a certain standard, and provided further, in default of such maintenance, the Government should have the right to take over the Bridge at a valuation. This

decision was conveyed to the local representatives of the Company in a letter of the 29th of May, 1929.

7. At the same time the site, plans, and specifications of the pontoon bridge were being examined by Mr. Mitchell, a partner in the firm of Goode, Fitzmaurice, Wilson and Mitchell, who was in Mombasa at the time.

Mr. Mitchell expressed the opinion that the site selected for the pontoon bridge was reasonably suited to the specific purpose of affording a practicable route between Mombasa and Nyali, although from an engineering point of view it would have been preferable to have chosen a more sheltered position, and one suitable for the later construction of a non-floating bridge, which Mr. Mitchell considered would be necessary owing to the expense of maintaining a pontoon bridge.

It will thus be noted that the Company sited the Bridge in its present position in order to assist development of their Estate and it was not built as part of the mainland communication system.

8. After considerable discussion both in this Colony and in England (in which connection I would invite your attention to correspondence following your predecessor's Confidential telegram of the 4th of July, 1928), an Agreement with the Company was eventually signed by the Colonial Secretary on the 9th of October, 1929. The Agreement provides that Government may take over the Bridge: Under clause 11 if the Company fails to complete the bridge in an allotted time, and in

No 3.

15223/28.

to operate the Bridge in a satisfactory manner;

Under clause 17 on failure by the Company to keep the bridge in a proper state of repair;

Under clause 18 in the event of Government desiring to purchase the Bridge.

9. If the Government were to take over the Bridge at the present time it would presumably do so under clause 18 of the Agreement. It is observed that the Bridge construction account stands in the Company's Balance Sheet as some £150,750 and it is assumed that the actual cost of construction was considerably greater than that figure unless the Company has made no provision for depreciation which must be high. The Company's original estimate of the cost of the bridge was £70,000, and it would appear that in the Company's view as expressed in the fourth paragraph of Messrs. Travers Smith, Braithwaite and Company's letter of the 11th of January, 1935, that the increase in the cost of the Bridge was due to various requirements of the Government. It would be interesting to know what were the requirements which gave rise to the increased cost of the Bridge.

Not

10. The present position appears to be that this Government is asked to exercise its right under clause 18 of the Agreement to purchase the Bridge in order to relieve the Company of the financial embarrassment which it represents, or alternatively to undertake to take over the Bridge at some future date and to make some payment to the Company immediately.

I am of the opinion that this Government should not take the initiative in taking over the Bridge under clause 18 nor should it do anything from

Estate development programme has failed to materialize

After consultation with my advisers I have no hesitation in saying that, quite apart from the question whether, in present circumstances, this Government would be financially competent to take over the bridge, I consider that it would be most unwise to contemplate doing so, either now or, so far as can be foreseen, at any future date.

11. FERRY COMPETITION WITH THE NYALI BRIDGE: up to the time when the Nyali Bridge was opened a ferry at Kisauni was operated by the Railway Administration. Upon the opening of the bridge this service was discontinued, but at a later date individual boatmen began to ply for hire in competition with the bridge. These boatmen did not ply between any two fixed points, and there is considerable doubt if the service which they perform can properly be described as a ferry. It is however, against the competition of these boatmen that the Bridge Company has sought protection on several occasions. The question of the protection of the Nyali Bridge Company was examined in some length in Mr. (now Sir Henry) Moore's despatch No. 521 of the 7th ^{Sekt.} December, 1933, and in that

Not
3276/23. despatch it was pointed out that under the law as it then stood, there was no power to prevent licenced boatmen from competing with the Nyali Bridge. As a result of the amendment in the law introduced by the Local Government (Municipalities)(Amendment) Bill, 1935, to which I have referred in the first paragraph of this despatch, the Mombasa Board is now empowered to grant exclusive licences to operate ferry services within specified areas. It will

therefore be possible for the Board to adopt one of three courses:-

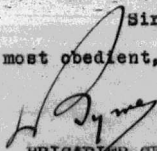
- (a) To leave matters as they are at present;
- (b) Formally to establish a Municipal Ferry Service at Kissauni, and either to run it themselves or to issue an exclusive licence to conduct it, in which case Messrs. Nyali Limited could apply for the licence;
- and (c) To pass a by-law prohibiting the use of the landing places which are now used by Boats who compete with the Bridge, in the event of a ferry-boat service being established there.

12. It remains to be seen which of these courses will be adopted by the Mombasa Board, but in the event of their proposing to adopt either of the last two courses it will be necessary, when the matter is under consideration by Government, to pay careful attention to the question whether the owners of the boats which at present compete with the Bridge have any equitable claim to be allowed to continue such competition, and in deciding this question the comparative convenience to the public of using the boats instead of the Bridge, will no doubt be taken fully into consideration.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL
GOVERNOR

H.

TRAVERS SMITH, BRAITHWAITE & CO

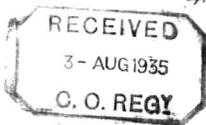
INCORPORATED IN ENGLAND

R. N. GREENWOOD,
R. W. F. WILBERFORCE.

TELEGRAPHIC ADDRESS: TRAVERS SMITH, STOCK, LONDON

TELEPHONE NO. METROPOLITAN 0545 (2 Lines)

14
5
4, Throgmorton Avenue,
London, E.C.2



1st August 1935.

Sir,

Nyal Ltd.
Ref. 38020/35.

ACCD. DEPT. pl

Not
No 2

We refer to our letter of the 11th and your reply of the 19th January last.

We do not appear to have had the promised further communication with regard to the matters raised in that letter.

Some six months has now elapsed, and the situation from the Company's point of view has not changed for the better and the Board of the Company is therefore faced with the problem of continuing to maintain the Bridge and it may well be forced formally to advise the Government that it is unable to continue to operate the Bridge in a satisfactory manner.

The Concession provides in such events for the Government taking over the Bridge, or in certain circumstances calling upon the Company to remove the Bridge. Presumably the latter alternative would not be contemplated, and therefore the Government would consider the taking over of the Bridge on the most favourable terms to themselves, in which case they might claim that no compensation will be payable in respect of compulsory expropriation.

We would refer you to the penultimate paragraph of our letter in which we pointed out that at the present time the Company would consider much more generous terms in disposing

Amend (G)

Copy to Kemp (G)

of the Bridge than if they have to continue and the situation in Kenya improves.

We are to advise you that the matter has become pressing, and ask for the Government's reply to the question raised.

Yours faithfully,

James R. Beattie

The Secretary of State for the
Colonies,
The Colonial Office,
10 Downing Street, S.W.1.

TRAVERS SMITH, BRAITHWAITE & CO

G. H. GRIFFITH
R. H. GREENWOOD

TELEGRAPHIC ADDRESS: "TRAVERS SMITH," STOCK LONDON.

TELEPHONE N° 0546 } LONDON WALL.
8937 }

16
1 Copy 4, Throgmorton Avenue,
London, E.C.2

11th January 1935.

Sir,

Re. NYALI LIMITED.

ACKD. BY P.C.

Answer (2)
As arranged at our recent interview with Sir Cecil Bottomley, we write to set out the matters then discussed with you in connection with the Nyali Company in Mombasa.

Nyali Limited, previously called 'Nyali Bridge & Development Co. Ltd.' which acquired a large area of land on the Mainland, obtained at the end of the year 1929 a Concession to build a Bridge from Mombasa to the Mainland, and the Bridge was duly built and completed, and opened by the Governor of Kenya in August 1931.

The Company's chief object is that of a land development company; their Concession was also one of the purposes which the Company had in view, though it did not and does not desire to be the owner of the Bridge for all time.

The cost of the Bridge, owing to various requirements of the Government, was considerably more than had been contemplated, and at present stands in the Balance Sheet of the Company at something over £150,000.

Since the Bridge has been operating, the tolls have amounted to approximately £3,000 a year, but the maintenance and work on the Bridge in the initial stages have exceeded the amount of the tolls, though with experience it has now been possible to reduce this considerably and it is hoped before long that the tolls should meet this expense, though they do not of course provide interest on capital outlay.

A factor which is causing the Company a certain amount of embarrassment is the competition which is being met with from the ferry at Kisauni. This ferry was officially

Copy of Govt. Sheet in orig. to Kenya (3)

17

closed at the end of 1931, but was reopened on the 15th July 1933 and an appreciable drop in Bridge Tolls has resulted. Representations have been made to the Authorities locally, and to the Governor that it is contrary to the spirit of the Concession that competition of this nature be allowed, but the replies so far received have been unfavourable. It is maintained :

- (1) that no undertaking was ever given that ferry competition would not be permitted;
- (2) that to suppress the ferry would deprive the boatmen of their means of livelihood; and
- (3) that it is shorter to go to and from Kisauni by ferry than by the Bridge.

The Company admits that no written undertaking to restrain competition was ever granted, but has on several occasions pointed out that Mr. Bulkely, when Port Manager, gave a verbal assurance that no ferry licences would be granted, and that in any case the possibility of such competition being permitted was certainly not envisaged when the Concession was signed. As to points 2 and 3, the Company considers that the loss of employment which would result if its activities ceased or diminished would be much more serious than if the ferry were suppressed; that the boatmen must have had some means of livelihood prior to July 1933; and that the natives suffer no real hardship at all by having to walk the extra distance to the Bridge, since it is quite well known to everyone familiar with the native character that time has no meaning for them.

For the reasons given above and for the additional reason that it would greatly simplify control on the part of the Police, Medical and Veterinary Authorities, the Company submits that the ferry should be suppressed, or, alternatively

+
It is also quite well known that the natives don't like to walk a mile in the sun for no reason. No more so!

that it should be handed over to the Company.

The capital of the Company authorised and issued is £206,000, but in addition it has borrowed on short term notes and other securities some £120,000, and is still having to continue borrowing at present.

For your guidance we enclose herewith a copy of the Concession Agreement dated the 19th November 1929, and a copy of the last Balance Sheet of the Company.

The Board of the Company is anxious more adequately to develop the land, but owing to the continued depression in Kenya it is of course impossible to do anything in this direction, so long as the financial embarrassment of the Bridge remains.

The Board therefore feel that it would be in the interests of both the Government of Kenya and the Company if some arrangement could be arrived at whereby they could be relieved of the responsibility of the Bridge.

From the Company's point of view, of course, the most desirable course would be for the Government to take over the Bridge which was at the time of the Concession understood to be the ultimate object of the Government and which you will see is provided for in the terms of the Concession.

It is appreciated that the present is a very difficult time but the Company might be well advised to consider more generous terms in disposing of the Bridge at the present moment than would be the case later on when the situation in Kenya improves. It is hoped therefore that the Government will consider the whole position and make some proposition to assist the Company either by taking over the Bridge, or alternatively by agreeing to do so at some later date, with, perhaps, some subsidy in the meantime.

We understand from our interview with you that you will

19

tions have been given for the Company's Manager in Mombasa,
Mr. V.A.C. Ross, to give every facility for information to the
Government in consideration of any proposal.

We are, Sir,

Yours faithfully,

J. A. Smith Beathwaite & Co

The Secretary of State
for the Colonies,
The Colonial Office,
10 Downing Street,
S. W. 1.