

1936

38101

2

C0533/466

KENYA

38101

2

Segregation in Townships

Position of Japanese Subjects

Previous

23228/1/34

W Flood 31/8/36

Sir J. Shackleton 31/8/36

S. of S

R. 349 3/9

R. 297 4/9

Subsequent

1937

W Gaurt 2/9

* 297

297

6/1

Mr. Flood 20.7

Sir C. Bottomley 20.7

Sir J. Shackleton 20.7

Mr. Boyd 21/7

SECRETARY OF STATE

Secretary of State

Mr. Flood 30.9 20/7

Mr. Jackson 31/7

297 22/8

Room 309 27/8

Mr. Flood 28.8

Sir C. Bottomley 28.8

R. 309 ✓

Gov. Byrne (Secretariat) 4. 36. 2
 states that an application has been received for permission to lease to Mr. J. Kabeida a house in Bluffs Avenue. Suggests reply should be made that the Govt. would have no objection if it can be shown that the plot owners affected have expressed their concurrence.

2. Col. See open 11. 6. 36
 Enc. copy ltr from Consul for Japan asking that the decision on the general question may be expedited.

The Japanese Consul has now raised, in no measured terms, the whole question of the right of Japanese subjects to occupy plots in Mombasa. It appears that there is already one Japanese family residing in a house in the same road, in spite of the usual restrictive covenant not to let to any person or persons other than a European or to permit a premises to be used as a place of residence for Asiatics or natives.

The Governor points out that the action taken in such cases is to say that if the other owners affected agree, the Govt. will raise no objection and suggests a reply on these lines to the application to transfer the plot to Japanese ownership. This might be satisfactory in the present case, but it will not deal with the general question. The Japanese Consul suggests that the Interpretation Ordinance should be amended so as to exclude Japanese from Asiatics. If this is done, however, it will immediately open the door to protests from the Indians, who would argue that they, though Asiatic British subjects, are being placed in a position which Asiatic aliens, such as Japanese, are not.

The question, of course, will get mixed up with the White Highlands policy since, if you have restrictive covenants in the leases of places like Mombasa and proceeded to ignore them or get round

Cl. hand.

1 Gov. Byrne (Secret Agent) 11.6.36
Notes that an application has been received for permission to lease to Mr. J. Kakeda a house in Cliffe Avenue. Suggests reply should be made that the Govt. would have no objection if it can be shown that the plot owners affected have expressed their concurrence.

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them

them it will be contended that you can do the same in regard to the White Highlands, and that the whole policy is of no effect. This is indeed true, but the remedy for the situation lies not in the hands of Govt. but in the hands of the European settlers themselves who ought to be presumed to be unwilling to sell land to non-Europeans. Money, however, appears to talk louder than racial feeling.

It is easy to see the difficulty but it is not easy to see a way out. We are bound to maintain the open door and racial equality and in that case the only way of keeping out Japanese or Indians is by administrative practice and simply refusing without assigning any reason to agree to the transfer of leases to Japanese, Indians, etc. If that is done Government would have to be careful never to give any reasons, and to maintain a policy of blank refusal is always difficult.

In this case I can only suggest that we accept the Governor's suggestion in paragraph 6 of the despatch and let the Foreign Office have a copy of the despatch and the Consul's letter. I am somewhat doubtful how far a Consul should write like that to the Govt. of a Colony but we can leave the Foreign Office to consider that sort of question.

J. I. G. Flood

Sir J. Molesley
The Secretary of State
is in 3 B. 7 23228/1 of 24.7.36. The final
20.7.36.
must

That is, we hope, all right for the Highland farms, but we can't see it for town plots
W.D.S.

result of discussion that taken was that we had no case for getting rid of the treaties & that we were to "wait & see"

Mr. G. Flood is director, the Govt. suggestion is (1) that the matter might turn on the consent of the plot holders in this "contaminated" area has been trophed by no. 2, but I think we might, who suggest, try the Governor's idea on this.

Apart from that, I see nothing for it than to ~~add~~ wrap the far and "chance" the protests of those plot holders who have not already broken the covenant.

A

W.D.S. 20.7.36.

A rebuttal seems to be the only course to pursue.

But this would be a privileged position supplied by administrative practice in a bad case of the White Highlands.

W.D.S.
20/7

I agree with return proposed by Mr. Flood.

9/24.7.36

This a fair reading of
 dangerous matter. To
 comply with the Japanese
 Council's wishes & to declare
 Japanese "non-amicable"
 is intolerable. Also to
 give privileges to Japanese
 & not to British Indians
 in administrative practice
 seems to me to be treating
 British subjects worse than
 foreign, & must lead to trouble
 in India. Clear the P.O.
 must be consulted before a
 reply is sent, but I am
 prepared to reply generally
 as proposed by Mr. Flood,
 adopting the suggestion in favour
 of the Govt's despatch. I am
 not happy about A at the
 end of Mr C. B. Bultinley's comment.

The wording of the Council
 letter is repeated at length
 in the enclosure.

27 7 36

3. So S.O. (No. 1) (2) - 12 AUG 1936

4. F.O. 4885/4883/23. ----- 21.8.36.

No. 3 and considers that, in the event of a breach of the
 treaty occurring, a demand from the Japanese Govt. for
 the enjoyment of their full legal rights could not be
 resisted.

The 30 reply is not helpful. We fully
 appreciate that action on the lines
 proposed in paragraph 6 of the
 Governor's Despatch offered no
 solution of the Treaty difficulties.
 But such action would perhaps
 keep the Japanese Council quiet
 for the time being.

I should be pleased to see
 Mr. Flood's minutes explaining that
 the P.O. have been consulted and
 that their views are as in No. 4.

C. Brown with
 21/7/36.

We must do this, but the Council's letter & the
 last words of the F.O. are likely to forecast trouble in
 the future. For, if Japanese, whom no one minds, why not
 Indians, to whom every one objects?

However, I have a hope that one result of the new
 constitution in India will be that we shall be more able
 to tell ~~unpleasant~~ aggressive Indians to go to the devil
 than we have been in the past.

The F.O. letter is very weak

J.S.O. 7th

Jfr for Council (the S. H. 22 and) 28-7-36

on these lines, but I still feel that
 the Council's letter has altered the
 position.

Wed. 28.8.36
 P.T.O.

S. A. S.

Draft submitted for your approval →

W.S.

31/8/36

By Air Mail
3/9/36

To General Secret (2) —
(w/c's 3-4)

5 SEP 1936

W.S.
3/9/36
W.S.


38101/2/36.

C. O.

AIR MAIL

Mr. Flood. J/8.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley.

X Sir I. Spacknough 2/8/36

X Form U.S. of S (Army)

Parly. U.S. of S

DOWNING STREET.

August, 1936.

3 SEP 1936



DRAFT

KENYA

SECRET

Gov.

Sir,

I have etc. to acknowledge the receipt of your secret despatch of the 6th of June on the subject of a request for permission for a to allow a Japanese subject to occupy a plot in an area at Mombasa which has been reserved for occupation by Europeans and in the title of which a restrictive covenant is included.

I enclose for your information a copy of correspondence with the Foreign Office to which Department the matter was referred. In the circumstances I am prepared to accept the suggestion put forward in the sixth paragraph of your despatch,

that

S/K
 (1)
 1937
 12/8/36
 21/8/36
 long P.B.

To Foreign Office. 12.8.36.
(No. 3)

Fr. do. 21.8.36
(No. 4)

FURTHER ACTION.

that is, to reply that, if the applicant
can show that the plot owners affected
are prepared to agree to waive the
restrictive covenant, Government will
raise no objection.

3. Generally ~~speaking~~, I agree
that a similar line can be taken with
other applications from Japanese which
may be received. I ~~should~~ recognise, of course,
that difficulty may arise if Indian
applications are put forward, but in such
a case I am inclined to think that the
assent of the other plot holders to the
relaxation of restrictions would not be
easily obtainable as it is in the
case of the Japanese.

I have, etc.

Signed, W. J. MBB CORE.

In any further communication
on this subject, please quote
No. F 4883/4883/23.
and address

sent to this person by name

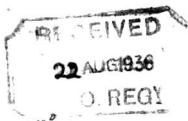
But to
The Under-Secretary of State
Foreign Office,
London, S.W. 1.

DUP

4⁶

FOREIGN OFFICE S.W. 1.

21st August, 1936.



Sir,

(3) I am directed by Mr. Secretary Eden to acknowledge the receipt of Colonial Office letter No. 38101/2/36 of August 12th, regarding the rights of Japanese nationals to purchase and occupy plots of land in areas which have been administratively reserved by the Government of Kenya for occupation by Europeans.

2. Mr. Eden recognises the problems presented by the incompatibility of the Colony's treaty obligations vis-à-vis Japanese nationals and the administrative regulations necessary to carry out the Colonial Government's policy, but the course proposed by the Governor of Kenya would not necessarily offer a solution of this matter. Mr. Eden feels constrained to observe, therefore, that in the event of a breach of the treaty occurring he could not resist a demand from the Japanese Government for the enjoyment of their full legal rights.

I am,

Sir,

Your obedient Servant,

N B Ronald

The Under-Secretary of State,
Colonial Office.

Copy to Kenya (S)

C. O.

Mr. Grossmith 3473

Mr. Parkin 31

Mr.

Sir C. Parkinson.

Sir G. Tomlinson

X Sir C. Bottomley: 31.7.

Sir J. Shuckburgh

* Perm U.S. of S. 4/18 FS

Parly. U.S. of S.

Secretary of State.

SECRET.

Downing Street,

Ann

4

July, 1936.

12 AUG 1936

sir,

I am etc. to refer to the

correspondence terminating with your

letter of the 27th of August 1934,

No. F.4990/3805/23 regarding the right

claimed under treaty by the Japanese

Consul at Mombasa to purchase and

occupy plots in areas which have been

administratively reserved for

occupation by Europeans, and to

transmit to you, to be laid before

Mr. Secretary Eden, a copy of a despatch

from the Governor of Kenya and a copy

of a communication addressed to the

Colonial Secretary of Kenya by the

Japanese Consul at Mombasa.

2 It will be seen from the

sixth paragraph of the Governor's

despatch that the general line of

action

DRAFT.

THE UNDER SECRETARY OF STATE,
FOREIGN OFFICE.

*103
22/8/36*

from Gov Kenya 9/9/36 (No. 1) ✓
from Gov. Gen. 11/9/36 (No. 2) ✓

copy to Kenya (5)

FURTHER ACTION

By the Govt of Kenya
action taken/on applications for release
from restrictive covenant in regard to the
occupation of township plots by Asiatics and
atives, is to say that if the applicant can
show that the plot owners affected have
expressed their concurrence in the release, the
Govt. would raise no objection, and that
the Govt. is not aware of any objection
arising from the possibility of diplomatic
inconveniences. ^{recommends} The Governor ^{considers} that,
in reply on these lines should be made to the
applicant made on behalf of the Japanese
Consul Mr. T. Kakeda.

Having regard to the view expressed
in the last paragraph of your letter under
reference, and to the fact that ^{the Law Officers} ~~it is~~
has been advised ~~that the St. Germain~~
provision cannot be denounced by H.M.G.
Therefore Mr. Ormsby Gore is prepared, ^{disposed}
to approve the course proposed by
the Governor of Kenya.

As the matter is of some urgency
Mr. Ormsby Gore

2. As Mr. Eden is aware, -
admission of the validity of
the claim of the Japanese
Consul that the restrictive
covenants preventing the
occupation by Asiatics of
certain residential plots in
Nairobi are in conflict
with the provisions of the Convention
of St. Germain & the Anglo-
Japanese Commercial Treaty
and have disastrous results
in relation to the police, of 1908
in respect of the Kenya
Highlands, & not otherwise
under the Govt. of Kenya in
a view of a serious contingent
financial liability to the
owners of these plots -
Nairobi.

See minutes
on 23.2.58/1/34

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shackburgh
- Perm. U.S. of S.
- Party U.S. of S.
- Secretary of State

DRAFT.

Mr. Ormsby Gore would be grateful
for an early expression of Mr. Eden's
views.

I am, etc.

(Signed) J. J. PASKIN.

FURTHER ACTION.

AIR MAIL

WHEN REPLYING
PLEASE QUOTE

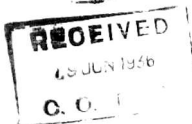
NO. S. G. LIND. 29/1/8/25
AND DATE



THE SECRETARIAT
NAIROBI

KENYA

SECRET:



// JUNE, 1936

2c.

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies and with reference to Kenya Secret despatch of the 9th June, regarding the right of a Japanese subject to occupy a plot in an area at Mombasa reserved for occupation by Europeans, has the honour to transmit for information a copy of a letter addressed to the Colonial Secretary by the Consul for Japan, who is being informed that his letter has been received and is receiving consideration.

copy (w/ft. send) to F.O. (3)

CONSULATE OF JAPAN

MOMBASA

4th June, 1936.

Sir:

With reference to your confidential letter dated 7th April, 1933, and para 3 of my predecessor's under the date of 12th April, 1933, I have the honour to remind you of the fact that although over three years have already elapsed since, no reply thereto from your Government has yet been received by this Consulate. The delay, you will see, is indeed excessive.

2. As you were fully well aware, the issue raised in my predecessor's letters was one having vital bearings on the interests of Japanese nationals in Kenya under Treaty rights. It was, therefore, by no means unreasonable on the part of His Imperial Japanese Majesty's Government in Tokio to have fully expected your Government to be in conformity with the terms of the existing Treaties, in dealing with such matters as affecting its nationals' vital interests.

3. While the fundamentally important issue remaining still unevolved, a similar fresh case has, regret to say, again occurred. I refer to the recent action taken by the Commissioner for Local Government, Lands and Settlement in rejecting the application made to him by Mr. A. L. Block, Nairobi, on May 12th 1936, to lease his house which is situated on Plot No. 47/19, Cliffe Avenue, Mombasa to the Representative in Mombasa of the Osaka Chosen Kaisha (Osaka Mercantile Shipping Co.)

4. I understand that the Commissioner in withholding his approval of the said application has written to the applicant to the effect that the Government is not prepared to grant him sanction pending reference to the Secretary of State. Your Government seem to have taken the same attitude in this case, as did in the former one. I refer you here to the Commissioner's letter Nos. LDN. 29/1/18/17, dated Feb. 5th, 1932, addressed to the then Consul for Japan. The Commissioner expressed therein regret at his Government's inability to deal finally with the matter, and said there was no course open to it but to refer the matter to His Majesty's Government in London. The matter was evidently referred to the Secretary of State, and was carefully considered by him, but Japanese Government is still awaiting the result of his deliberations pending receipt of communication from your Government, as I have mentioned at the outset.

5. The issue raised is quite a simple one, and is clear to any one who has taken the trouble of reading the provisions of the Anglo-Japanese Treaty of Commerce and Navigation of 1911. I may be permitted to add here that no elaborate study thereof is required, nor any argument necessary. All that is really wanted is the spirit of co-operation and good faith on the part of your Government in giving full effect to the terms stipulated therein.

6. While realizing the difficulties created by the restrictive covenants against ownership or occupation by Asiatics of certain plots of land in Mombasa which are held in lease, policy of which was mainly, if not wholly, attributable to purely internal political reasons or administrative necessities, Japanese Government do not consider it right, and maintain that any anomalous state of affairs arisen out of your Government own conduct or action, which can not be held justified in the light of terms of the existing Treaties, should be rectified by your Government so as to be in perfect accordance therewith.

THE COLONIAL SECRETARY,
THE SECRETARIAT, NAIROBI.

7. In order to relieve your Government from the awkward and embarrassing position, my predecessor made a suggestion to your Government, which was not altogether unreasonable. That suggestion refers to an amendment by His Excellency the Governor of the Interpretation and General Clauses Ordinance, thereby clearly defining the term "Asiatic" so as to exclude Japanese from it. That is, however, perfectly within the domains of your affairs.

As to the ways and means your Government is likely to follow in solving this problem, I am not much concerned about, but the matter must be settled in one way or the other, and the earlier its done, the better. Pending solution of this fundamentally important issue concerning the Treaties, there will, I am afraid, occur invariably problems of great difficulty as was evidenced last year in connection with the Education Tax Ordinance, which still remains unsettled. I should, therefore, be grateful if your Government would kindly give the matter urgent and serious considerations, and see its way clear in removing this anomalous and discriminate treatment meted out to Japanese Nationals.

Your early reply will be greatly appreciated by my Government and myself.

I h/s etc.,

(Sgd.)- - - - - ?

CONSUL FOR JAPAN.

COPY/HEB.

AIR MAIL

KENYA

No.



GOVERNMENT HOUSE
NAIROBI
KENYA

SECRET AND URGENT.

RECEIVED
6 JUL 1936
C. O. BIRGY

June, 1936.

Sir,

I have the honour to refer to your Secret Despatch of the 8th April, 1933, and my Secret Despatch of the 13th of May, 1933, on the subject of the right of a Japanese subject to occupy a plot in an area at Mombasa reserved for occupation by Europeans.

2. An application has now been made for permission to lease to Mr. T. Kakeda, the Mombasa Representative of the Osaka Mercantile Steamship Company Limited, a house on Plot No. 19, Cliffe Avenue, in the same general area and held under the same conditions as the plot purchased by the Japanese Consul.

The restrictive covenant in the title reads as follows :-

"AND will not use or occupy the said dwelling house, when erected otherwise than as a private dwelling house, nor permit the same to be used or occupied by a person or persons other than a European nor permit the said premises to be used as a place of residence for Asiatics or Natives who are not domestic servants in the employ of the occupier".

3. The owner of the property stated in his application that "there are already some four Japanese gentlemen residing in other houses in the Avenue". He also enclosed a certificate from the Japanese Consul, a copy of which is attached.

Enquiry has shown that a family, consisting of three Japanese Nationals, husband, wife and child, is occupying

THE RIGHT HONOURABLE
W.G.A. ORMSBY-GORE, P.C., M.P.
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON....S.W.1.

copy (sup. sec) to 1-1-0

a house on Plot No. 10, the Crown lease of which contains the usual restrictive covenant; also that another house in the Avenue was let by the British East Africa Corporation Limited to Japanese, but that the tenancy has now expired. Apart from the occupation by the Japanese Consul of the house purchased from Mr. Warren Wright, no further evidence is obtainable of infringements of the conditions of leases in this area.

4. The applicant has been informed that this Government is not prepared to approve of his application pending reference to yourself. In reply the applicant states that he has informed the Japanese Consul of the position "who will deal with the matter as he thinks fit".

5. No official objection has been raised by any of the European plot-owners or occupiers in Cliffs Avenue to the existing occupation by the Japanese Consul and other Japanese. In view of the high rents which the Japanese are said to be willing to pay for houses in Cliffs Avenue, other property owners would find it difficult to prove material loss or damage from such occupation. If, however, the present application is formally approved and Government acquiesces in the occupation of Plot No. 10 (referred to in paragraph 3), there is a risk of reviving Indian demands and of a contingent serious financial liability in the long run.

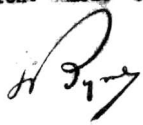
6. The general line of action taken on applications for release from this class of covenant is to say that if the applicant can show that the plot owners affected have expressed their concurrence in the release Government would raise no objection. Apart from the possibility of diplomatic repercussions, I consider that a reply on these lines should be made to

the present application. As you are aware
acquiescence in the transfer to Mr. Kuga was expressly
and solely on-the ground of Government's desire to meet
the convenience of the Japanese Government's
representative.

I have the honour to be,

Sir,

Your most obedient humble servant,



BRIGADIER-GENERAL,
GOVERNOR.

COPY.

CONSULATE OF JAPAN.

MUMBARA.

11th May, 1936.

TO WHOM IT MAY CONCERN.

This is to certify that Mr. T. Kakeda, the resident Representative in East Africa of the OSAKA SHOSHEN KAISHA (Osaka Mercantile Steamship Co., Ltd.) is known personally to me. I understand Mr. Kakeda is at present negotiating with a view to leasing a house on plot No. 47/19, situated in Cliffe Avenue, Mombasa. I have no hesitation in stating that in my own opinion Mr. Kakeda is in every respect a suitable tenant for the house referred to.

C. MOGAKI.

CONSUL FOR JAPAN.