

Memorandum
Jenkins
Kenya L.S. Co.

1 W. F. Jenkins - S.O. - 26 2 36 2

Requests an interview with Mr. Jenkins to discuss
matter in connection with the Kenya Landing and
Shipping Co. Ltd. - Suggests any time during week
ending 7th March except Thursday

Mr. Jenkins took the opportunity when he was
in here with Mr. Bovill the other day to discuss the
question which is bothering him.

As regards the application of sanctions in
S. Africa I told him that I could not have any views
on it because, as a Civil servant, it was my duty
to carry out instructions without formulating views.
He explained, however, that what he meant was that
they were uncertain how far they were justified in
engaging in trade with the Italians even so far as
they were allowed to do so and I said that there was
no reason whatever for them to go any further in
the direction of stopping trade than they were
compelled to do by the regulations issued from time
to time, adding that, of course, those regulations
might be varied in accordance with whatever decisions
were reached by H.M.G. Mr. Jenkins said that the
point was being raised in Kenya that since Kenya
Co. were in the conventional basin of the Congo it
was improper for them to impose any restrictions at
all on trade with anywhere, to which I said that I
did not think that argument would hold much water.
So much for that.

*would the argument
that application of
sanctions were
of war*

His other trouble was that the Kenya
Landing and Shipping Company has got an agreement
with the Port of Mombasa to do all the work. The
Registry seem unable to trace any papers about it
but I know it exists and Mr. Jenkins said that the
arrangement was due to end in 1937. They are in

communication

Dated _____

1937

**THE KENYA AND UGANDA RAILWAYS
AND HARBOURS**

AND

Draft

AGREEMENT

**Truck Loading and Off-loading
at Kilindini Harbour**

(Subject to alteration)

H. F. HAWES,
Legal Adviser,
**Kenya and Uganda Railways
and Harbours, Nairobi**

East African Department.
Colonial Office.



26. 6. 36

& encl.

We attach a copy of a letter and its enclosures from the General Manager of the Kenya and Uganda Railways and Harbours regarding an advertisement calling for tenders for the performance of services at the port of Mombasa. We are arranging for the advertisement to appear in the following papers:-

- "The Times"
- "Western Mail (Cardiff)"
- "Liverpool Post and Mercury"
- "Suez and Shipping"
- "Lloyd's List and Shipping Gazette"
- "British Trade Journal and Export World"
- "Mercantile Guardian"
- "World's Carriers & Carrying Trades Review".

In addition, copies of the Notice have been sent to "East Africa", "African World", London Chamber of Commerce, Manchester Chamber of Commerce, and Liverpool Chamber of Commerce.

Is. Thompson
C. Department

Crown Agents' Office,

17th July, 1936

this Agreement shall be construed to prevent the Contractor if he so desires but with the previous consent in writing of the Port Manager from providing at his own cost and expense any other plant or mechanical appliance of any description which he may consider necessary for the due performance of the contract work.

6. The Contractor shall conform in all respects to the provisions of all Ordinances and regulations made thereunder and any other directions which may be issued by the Administration or on its behalf with regard to the Railways and Harbours and the working thereof and the receiving, forwarding and delivery of traffic thereat from time to time in force in the Colony and Protectorate of Kenya applicable to the Railways and Harbours, the contract work the employment of natives or otherwise and the Contractor shall take all requisite precautions and appoint such persons as may in the opinion of the Port Manager be necessary for the prevention of misconduct among the labourers or others employed upon the Contract work and for the preservation of order among them.

7. The Contractor shall load and/or unload during each twenty-four hours such number of railway vehicles as the Port Manager shall direct.

8. (a) The Contractor shall during the continuance of this Agreement save harmless and keep indemnified the Administration from and against all claims costs and expenses of any description whatever (other than those for which the Administration or its servants is or are responsible) for injury to persons loss damage delay misdelivery or detention of or to the traffic whilst it is under the control of the Contractor and the Contractor hereby agrees to pay in full compensation for all injury to the Administration's servants and damage to the property of the Administration arising out of or in connection with the performance by the Contractor of the contract work.

(b) The Contractor shall be liable also to indemnify the Administration against any claim which may be brought against it arising out of or in connection with any strike or lock out of the Contractor's labour.

9. The Contractor shall not without the previous consent in writing of the General Manager assign sub contract sublet mortgage or part with the possession of the whole or any part of his rights under this Agreement nor shall the Contractor appoint by Power of Attorney or otherwise any person to demand or receive any moneys due under this Contract without such consent as aforesaid. Provided that any consent under this clause may be limited and/or restricted in any way the General Manager may think fit.

10. The Administration shall pay to the Contractor :-

- (1) On all public traffic with the exception of passengers' luggage handled by the Contractor under this Contract the sum of..... per dead weight ton.
- (2) On the Administration's traffic :-
 - (a) Railway permanent way material and structural steel work the sum of..... per dead weight ton.
 - (b) All other materials and equipment imported by the Administration the sum of..... per dead weight ton.

The words "Railway Permanent Way Material" and "Structural Steel Work" shall for the purposes of this Agreement have the following meanings respectively :-

"Railway Permanent Way Material" shall mean and include all rails and sleepers fishplates keys bolts nuts distance pieces bearing pieces dog spikes and all and any other articles or things used in the construction or maintenance of a Railway Permanent Way.

"Structural Steel Work" shall mean and include steel girders trusses or columns either completely or partly erected and steel sections and plates which have been drilled and machined ready for erection.

The Administration shall also pay to the Contractor by means of monthly bills such sums as may properly be recoverable from consignors in respect of any work or service performed by the Contractors in connection with special cases of loading securing packing or otherwise of traffic.

11. Accounts of moneys due from the Administration to the Contractor under this Agreement supported by such detailed records as may be required by the Port Manager shall be rendered by the Contractor to the Port Manager on the last day of each month or within seven days thereafter.

12. NOTE:

For a five years Contract Clause 12 will read as follows :-

"This Agreement shall continue in force for a period of five years from the first day of July one thousand nine hundred and thirty-seven and shall be terminable on the thirtieth day of June one thousand nine hundred and forty-two unless previously determined by the Administration under the provisions of Clause 13 hereof."

For a ten years Contract Clause 12 will read as follows :-

"This Agreement shall continue in force for a minimum period of ten years from the first day of July one thousand nine hundred and thirty-seven unless previously determined by the Administration under the provisions of Clause 13 hereof and shall be terminable on the thirtieth day of June one thousand nine hundred and forty-two PROVIDED that the rates quoted in Clause 10 hereof shall be subject to review at the end of every three years. In the event of a revision being desired by either party the matter shall falling agreement be referred to arbitration in the manner provided in Clause 17 hereof."

13. Should the Contractor fail to fulfil any condition of this Agreement or to pay his servants workmen or unskilled labourers or any of them their salaries or wages within seven days of the time when such salaries or wages become due or pass any judgment given against him which being unappealed from he shall fail to satisfy or pay for a period of fourteen days after such judgment was given or enter into liquidation (otherwise than for the purpose of reconstruction or amalgamation and then only with the prior approval of the General Manager) or fail to execute the Contract work with the diligence and despatch or fail to comply with any of the provisions hereof, the General Manager may by written notice dismiss and discharge the Contractor from further execution of the Contract work and terminate this Agreement but without prejudice to the Administration's rights hereunder.

14. The Contractor shall if so required by the Administration provide approved security for the sum of Shillings twenty thousand for the due fulfilment of this Agreement provided that such security shall be forfeited either in whole or in part in the event of the Contractor failing to pay ration or repatriate his native employees in accordance with the provisions of the Employment of Natives Ordinance (Cap. 139 of the Laws of Kenya) or any amendment thereto or in the event of the Contractor failing to fulfil this Agreement should the security be forfeited under the first part of this proviso it shall be lawful for the Administration to pay such amount due to natives for wages or repatriation expenses due to Government to the Chief Native Commissioner any balance remaining after payment as aforesaid shall be handed over to the Contractor within a reasonable time after the termination of this Agreement but without interest thereon.

4. That the charges payable to the Contractor for both a five and a ten years' contract shall be subject to review at any time should additional appliances be provided (see Clause 14).

5. Attention is also invited to the fact that the incoming Contractor will be responsible for satisfying himself in regard to the quantities and conditions of all cargo that should be on hand at the commencement of the Contract. The Administration will afford such reasonable assistance as is practicable to enable the Contractor to effect the necessary check.

6. In the case of all cargo which requires to be lightered, tenders are required to be submitted (a) on the understanding that lighters and tugs, including crews, but excluding labour for handling, etc., the cargo, are provided by the Administration, and (b) on the understanding that lighters and tugs, including crews and labour, will be supplied by the Contractor.

7. Tenderers are invited to consider the question of submitting quotations for the services required according to the total annual tonnage, and in this connection attention is invited to the tonnage particulars contained in the advertisement calling for tenders, which may afford prospective tenderers some guide.

G. D. RHODES,
General Manager.

Nairobi, Kenya Colony,
18th June, 1956.

A.

This Agreement made this day of

19..... Between the KENYA AND UGANDA RAILWAYS AND HARBOURS (hereinafter referred to as "the Administration") by GODFREY DEAN RHODES Knight Bachelor Commander of the Most Excellent Order of the British Empire Companion of the Distinguished Service Order Brigadier-General in His Majesty's Army (retired) General Manager of the Administration (hereinafter referred to as "the General Manager") of the one part and (hereinafter referred to as "the Contractor") of the other part WHEREBY IT IS AGREED as follows:—

1. In this Agreement the following words shall have the meanings set opposite to them respectively *videlicet*:—

- (A) "Cargo" shall mean and include all general cargo goods mails and ivory passengers' movable property of every description and baggage animals and birds whether alive or dead. It shall not include the following cargo when in bulk: cement clinker coal coke patent fuel minerals or oils neither shall it include other bulk cargo which is not at the date hereof ordinarily passing through the Port of Mombasa and which in the opinion of the General Manager should be the subject of a special arrangement.
- (B) "Plant" shall include all ropes slings nets trays and other tackle and all hand or power operated trucks tarpaulins and dunnage necessary for carrying out the contract work but shall not include sheds cranes and other mechanical appliances whether power operated or not weighbridges or weighing scales locomotives and railway rolling stock which shall be provided free of charge by the Administration.
- (C) "Port of Mombasa" shall mean the Port of Mombasa and shall include Kilindini Harbour M'Baraki Shimanzi and Mombasa Old Port.
- (D) "Mombasa Old Port" shall mean the Old Port of Mombasa situated to the East of Mombasa Island.

2. The Contractor shall perform the shore handling work (as hereinafter defined) of all cargo at the Port of Mombasa as Contractors for and in the name of the Administration. The Administration shall be represented at the Port for all purposes connected with this Agreement by the Port Manager to the Administration (hereinafter referred to as "the Port Manager").

3. The Contractor shall nominate a competent and duly authorized agent who must reside at or near Mombasa to represent it and to have on its behalf the management of the contract work. The Contractor shall maintain at its own expense an office at Kilindini Harbour. The Contractor shall also at all times during the continuance of this Agreement employ as many competent and responsible inspectors foremen workmen and labourers as may be necessary for the purposes of the contract work and all clerical and supervisory staff necessary to keep tallies and checks in detail of all cargo handled. All such tallies and checks and all accounts statements and receipts shall be kept in a manner reasonably approved by the Administration and all forms and documents necessary for the performance of this Contract shall be provided by the Contractor at its own cost and expense but the wording thereon shall be subject to the approval of the General Manager.

4. The Contractor shall provide all necessary plant as herein defined for shore handling cargo.

9. (1) In the case of cargo handled by the Contractor by means of lighters including cargo handled at M'Baraki and at Mombasa Old Port :-

(A) Lighters and tugs, including crews, but excluding labour to handle, stow, etc., cargo being provided by the Administration :

	FOR A 5-YEARS' CONTRACT		FOR A 10-YEARS' CONTRACT	
	Per Bill of Lading Ton		Per Bill of Lading Ton	
	In Ordinary Working Hours	In Overtime	In Ordinary Working Hours	In Overtime
(i) IMPORTS — For lightercargo from ship to shore, discharging from lighter into transit sheds on to stacking grounds or any places within the Customs enclosure directed by the Administration; or direct into railway trucks or to coal storage, including tallying : (a) When Craned from Lighters (b) When Man-handled from Lighters				
(ii) EXPORTS — For conveying from transit sheds or stacking grounds or direct from railway trucks or coal storage or any places within the Customs enclosure to lighters, loading therein and conveying alongside ship, including tallying : (a) When Craned to Lighters (b) When Man-handled to Lighters				

(B) Lighters and tugs including crews and labour for cargo being provided by the Contractor :

	FOR A 5-YEARS' CONTRACT		FOR A 10-YEARS' CONTRACT	
	Per Bill of Lading Ton		Per Bill of Lading Ton	
	In Ordinary Working Hours	In Overtime	In Ordinary Working Hours	In Overtime
(i) IMPORTS — For lightercargo from ship to shore, discharging from lighter into transit sheds on to stacking grounds or any places within the Customs enclosure directed by the Administration; or direct into railway trucks or to coal storage, including tallying : (a) When Craned from Lighters (b) When Man-handled from Lighters				
(ii) EXPORTS — For conveying from transit sheds or stacking grounds or direct from railway trucks or coal storage or any places within the Customs enclosure to lighters, loading therein and conveying alongside ship, including tallying : (a) When Craned to Lighters (b) When Man-handled to Lighters				

(2) In the case of Transhipment Cargo when both vessels work alongside the deepwater quay :

(A) Transhipment via the Deepwater Berths.

	FOR A 5-YEARS' CONTRACT		FOR A 10-YEARS' CONTRACT	
	Per Bill of Lading Ton		Per Bill of Lading Ton	
	In Ordinary Working Hours	In Overtime	In Ordinary Working Hours	In Overtime
(i) For handling cargo from incoming vessel to outgoing vessel, other than cargo referred to in (ii) below				
(ii) For handling from incoming vessel to outgoing vessel cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports				

(B) Transhipment direct by Lighters:

1. Lighters and tugs, including crews but excluding labour to handle, stow, etc., cargo, being provided by the Administration.

	FOR A 5-YEARS' CONTRACT		FOR A 10-YEARS' CONTRACT	
	Per Bill of Lading Ton		Per Bill of Lading Ton	
	In Ordinary Working Hours	In Overtime	In Ordinary Working Hours	In Overtime
(i) For handling from incoming vessel to outgoing vessel, other than cargo referred to in (ii) below				
(ii) For handling from incoming vessel to outgoing vessel cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports				

2. Lighters and tugs, including crews and labour to handle, stow, etc., cargo, being provided by the Contractor.

	FOR A 5-YEARS' CONTRACT		FOR A 10-YEARS' CONTRACT	
	Per Bill of Lading Ton		Per Bill of Lading Ton	
	In Ordinary Working Hours	In Overtime	In Ordinary Working Hours	In Overtime
(i) For handling from incoming vessel to outgoing vessel, other than cargo referred to in (ii) below				
(ii) For handling from incoming vessel to outgoing vessel cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports				

(3) For handling cargo requiring special services : as detailed in the Schedule hereto.

The Contractor shall keep all such tallies, statistical records and books of account in such form as the General Manager may direct; and shall at all times provide any details connected with such tallies, statistical records and books of account as the Administration may require.

A firm of chartered accountants agreed upon by both parties to this Agreement shall not less than annually at the cost and expense of the Contractor audit the books and accounts of the Contractor. A copy of the balance sheet together with a copy of the report of such chartered accountants shall be provided by the Contractor to the Administration.

30. All rentals for imports and exports standing in the transit sheds or elsewhere in the port area shall belong to and be collected by the Administration.

31. The Contractor shall not without the written permission of the Administration first had and obtained divulge to any person any information regarding the working of the Port or the work to be performed by it under this Agreement.

32. If any dispute shall arise between the Administration and the Contractor as to the meaning of anything contained in this Agreement or as to any act to be done or service performed hereunder every such dispute shall at the instance of either party be referred to arbitration and unless the Administration and the Contractor concur in the appointment of a single arbitrator the reference shall be to two arbitrators one to be appointed by each party and every such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Ordinance, 1913 (Cap. 19 of the Laws of Kenya) and any Ordinance in amendment thereof or in substitution thereof for the time being in force and shall be subject to the provisions of such Ordinance or Ordinances.

THE SCHEDULE
(hereinafter referred to.)

The amounts to be retained by the Contractor in special cases:—

	FOR A 5-YEARS' CONTRACT		FOR A 10-YEARS' CONTRACT	
	Per Bill of Lading Ton		Per Bill of Lading Ton	
	In Ordinary Working Hours	In Overtime	In Ordinary Working Hours	In Overtime
1. Cement Clinker and Gypsum Rock:				
(a) Landed direct into open and covered truck				
(b) Landed by lighter into open and covered truck				
2. Fertilisers and Manures imported in bulk and bagged for landing:				
(a) By lighters at deepwater berths	(a)			
(b) Direct at M'Baraki or deepwater quay	(b)			
3. For handling Transhipment Cargo:				
(A) When both vessels work in the Stream:				
(1) Vessel to Vessel direct by Lighter:				
(a) Cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports	(a)			
(b) All other Transhipment Cargo	(b)			
(2) Vessel to Deep Water Berth and from Deep Water Berth to Vessel by Lighter:				
(a) Cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports	(a)			
(b) All other Transhipment Cargo	(b)			
(B) One Vessel alongside Deep Water Berth and other vessel in Stream:				
(1) Vessel to Vessel direct by Lighter:				
(a) Cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports	(a)			
(b) All other Transhipment Cargo	(b)			
(2) Vessel to Deep Water Berth and from Deep Water Berth to Vessel by Lighter:				
(a) Cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports	(a)			
(b) All other Transhipment Cargo	(b)			
4. Shore handling of cargo transferred between the holds of a ship berthed alongside the deepwater quay when the cargo touches the quay or is handled direct on and off transfer trucks.				
5. Overlanded and overcarried cargo ex Kenya, Tanganyika, Zanzibar and Seychelles ports, landed and re-shipped.				

*Note.—(a) To be quotation for the services on the understanding that the Administration provides lighters, tugs, including crews, but not labour for handling, stowing, etc. of the cargo.
(b) To be quotation for the services on the understanding that lighters, tugs, crews and labour are supplied by the Contractor.

By Air Mail

TELEGRAMS:-
"CONFID, NAIROBI."

OFFICE OF THE
CONFERENCE OF EAST AFRICAN GOVERNORS
P. O. Box 601,
NAIROBI, KENYA

Ref. No. F/Port/A.1.

1936
O.C. REG

17th March, 1936.

Dear Flood,

In reply to your semi-official note of the 4th March, I enclose a copy of a memorandum circulated to the Harbour Advisory Board for consideration at its meeting on the 25th March, from which you will gather the position in relation to the Cargo-handling Contract at Kilindini, in which Mr. W. F. Jenkins is interested.

There has been no recent correspondence on this subject between Downing Street and Nairobi. The following references, which are barely relevant, are the most recent that can be traced:-

13/15077
50007

- Secretary of State's despatch Transport No. 77 of 2. 8.28
- Secretary of State's despatch Kenya No. 1013 of 25.10.26

J. E. W. Flood

Yours sincerely,

B. D. Hunter

J. E. W. FLOOD ESQ., C.M.G.,
COLONIAL OFFICE,
DOWNING STREET, S.W.1.