

1930

Kenya

No. 16359

SUBJECT

CO 533/404

*Salvage of a Dhow*

*Payment of proportion of salvage money  
to crews engaged*

---

Previous

See 16067/30. (*Shipping  
Cuba*)

See 16274/30. (*Salvage  
of City of  
Sumbal*)

Subsequent

See 17271/31

1 H. Commr. Moore 177 ----- 3rd. Nov. 1930. 2  
Reports salvage of 4 dhay by launches "Mvita" and  
"Nguvu" and payment of claim for £50 for salvage  
by ~~owners~~; recommends payment of £10.0.0 to crew  
~~engaged~~ engaged and requests may be empowered to  
make such payments in future without ~~regard~~ regard,  
reporting facts afterwards.

50  
Def. } Any objection?  
E. Eastwood

15-11-30.  
Col. Reg. Sec (referred to in para. 3) is not intended to  
apply to payments of the kind suggested. Such awards  
should, I think, be regarded as remuneration for  
special services. It is a general practice  
for crews of vessels assisting in Salvage to be granted sums  
from the salvage money - I am not sure Reg cannot  
actually claim a portion. The H.C. might be given  
general authority to pay such awards in future without  
prior reference to the S. of S.

Mr. Eastwood,

In this case the Kenya and Uganda Railways  
and Harbours Administration appears to have  
made a claim for salvage and to have been, by  
the decision of an arbitrator, awarded £50, of  
which it proposes to distribute £10.0.0 among  
the crew of the salvaging vessels;

This raises the interesting question  
whether the High Commissioner for Transport, as  
a Corporation Sole established by law, is  
legally entitled to claim salvage on account of  
the services of a vessel belonging to the  
Railways and Harbours Administration of which  
he is the Head, or whether such vessels are

"ships

"ships belonging to His Majesty" within the meaning of the Merchant Shipping Act 1894.

If they are the latter, the decision on Army/3408/17, Nigeria would appear to apply.

It was there held that the Government of Nigeria could not claim salvage in respect of services rendered to the SS. "Karina" by the Nigerian Marine Department tug "Lagos Remus".

Before the setting up of the Kenya and Uganda Railway <sup>Administration</sup> Department, the property in the railways and harbours - including the Government vessels employed in connection therewith - clearly belonged to the Crown; and I can find nothing in the Orders in Council of 16th December 1925 and 20th December 1927 transferring the property from the Crown to the High Commissioner, though the "control, working, and management of the Services" was transferred to him from the Kenya and Uganda Governments. Subject to the views of the Legal Adviser, I incline therefore to the view that the High Commissioner for Transport was not legally entitled to claim salvage, and that any salvage should have been awarded to the crews of the salving vessels, and - possibly after deduction of expenses - divided up among the crews, and not to the High Commissioner for Transport for the benefit of the Railway and Harbour Fund.

That there is no objection to the officers and men of Government vessels receiving salvage awards is clear from the Nigerian case I have referred to above. I

am

From Admiralty  
Instructions  
CA 25 8903  
the Navy appear  
to have such  
rules

3  
am not sure what is the ordinary rule for dividing up salvage awards between the members of a crew, but the mode of division proposed by the High Commissioner in this case - viz. in proportion to the individual's pay - seems fair, and, if it were laid down as the general rule to be applied, the High Commissioner might well be allowed to apply it when salvage cases occur without prior reference to the Secretary of State.

A. J. Harding

Director of Colonial Audit.

11 - 12 - 30

Mr Duncan

The CA. raises a nice legal point on which we should be prepared for your observations.

E. Easton  
14/12/30

I have read this but should be glad of your views.  
When I was speaking to the Com. C. of the 15/12/30 I had to leave the question of ownership undiscussed. I am of the opinion that the Salvage Receiver is still in the claim. I have not had time to check the decision of 1917 or 16

look at the cases *1/13/31*  
*1/2*

Mr. Bushe.

In Cargo ex Woomera (1876) 1 P.D. 280,  
the Dalhousie (1876) 1 P.D. 271, and the  
Cyclops (1879) 2 P.D. 324 <sup>and S.P.B.</sup> it was held that  
if a vessel was a "ship belonging to His  
Majesty" within the meaning of what is now  
Section 557 of the Merchant Shipping Act, 1894,  
(and a vessel belonging to the Government of  
Bombay was held to be such a ship), no claim  
could be made in respect of the salvage services  
rendered by the vessel herself (e.g. by her steam  
power).

It is true that in the Cyclops case  
it was also decided that a tug which, before  
the passing of the Harbours and Passing Tolls  
Act, 1882, was owned by the Trustees of  
the Harbours, and which was subsequently  
transferred with the Harbours to the Board of  
Trade, was not a "ship belonging to His Majesty",  
although the Board of Trade was a Government  
Department under the Crown; but this ruling  
does not appear to affect the real principle  
of the case, which is that in all such cases.

In the present case the tug "Nguru" and  
the ship "Mvita" belong to the  
Kenya and Uganda Harbours Administration;  
but before that body was set up the property  
of the Harbours and Harbours, including  
Government vessels, belonged to the Crown (i.e.  
the Governments of Kenya and Uganda) and, as

pointed

pointed out in the minutes of 11/12/30 and  
29/12/30 above, there would appear to be nothing  
in the Orders-in-Council of 16/12/25 and 20/12/27  
transferring the property in question from the  
Crown to the High Commissioner for Transport as  
head of the Administration. This being so, I <sup>think</sup>  
think that the "Nguru" and the "Mvita" are "ships"  
belonging to His Majesty within the meaning of  
Section 557 of the Merchant Shipping Act, 1894,  
and it follows that, on the authority of the cases  
cited above, no claim can be made for the salvage  
services rendered by them (i.e. as distinct from  
those rendered by the crews). It seems  
therefore that the £50 awarded for salvage  
services to the dhow should be divided between  
the crew of the "Nguru" (and of the "Mvita" for  
such services as they may be considered to have  
rendered), and should not be applied for the  
benefit of the Harbours and Harbour Fund.

In this connection, however, it is to be  
observed that by the Imperial Merchant Shipping  
(Salvage) Act, 1916, where salvage services are  
rendered by any ship belonging to His Majesty  
and that ship is a ship specially equipped with  
salvage plant, or is a tug, the Admiralty shall,  
notwithstanding anything contained in Section 557  
of the Merchant Shipping Act, 1894, be entitled  
to claim salvage on behalf of His Majesty for  
such services, and shall have the same rights and  
remedies as if the ship rendering such services

did

*See also General 1998/58*  
*Salvage case.*

*1/13/31*

did not belong to His Majesty. This Act, <sup>Apparently,</sup> ~~at present,~~ does not apply to ships specially equipped with salvage plant or to tugs belonging to His Majesty [i.e. to the <sup>Government</sup> ~~Government~~ <sup>of Kenya</sup> ~~of Kenya~~ and, if so, ~~it~~ does not affect the present case of the "M. M. M." but I think it is worth considering whether a provision similar to that put into the Bill should not be introduced into the salvage section of the Kenya Shipping Bill, 1930 (see the Kenya Gazette of 25/10/30), so as to enable the High Commissioner in future to claim for salvage services rendered by such ships and tugs belonging to the Kenya and Uganda Railways and Marine Department.

H. Duncan.

H.B.  
2/1/31

AI P.S. Perhaps the best course in the first instance would be to put the case to the Admiralty — on the assumption, of course, that the property in the ships in question belongs to the Crown (i.e. to the Parliaments of Kenya and Uganda) — and to ask for their observations on the views on the lines of the above minute; saying at the same time, although, of course, it might be possible to argue that the case was covered by the Cyprus Decree, or indeed on the whole that the ships should be treated as ships belonging to H.M. within the meaning of sec. 557 of the M.S.A. 1894, that the £50 should be divided between the crews, and that legislation similar to that contained in the 1916 Act should be introduced into Kenya.

H. Duncan.

1/2/31

code. As regards ownership the following facts investigation of which would lead to some delay.

Mvita This is an old vessel taken over from the Port & Harbours Dept. The first services were transferred.

Ngunu This vessel was ordered in Port & the cost charged to the B.S.M. Echever. Loan guaranteed by both

Kenya & Uganda. but I don't imagine the ultimate ownership would rest with Kenya.

perhaps if the services were to be provided we could ask A. to be P.S. of the East Kenya and Uganda.

Draft Carriage & Stevedoring

J. W. Allen

28/1/31

advance

submit of. A copy of the contract had been sent to the P.S. of the Dept. and they have come into the question of the Drafting Bill & there is now talk of amending it. C. J. Eastwood

30.1.31

the Bill has not been passed & the material for the legislation could be introduced. H.O.

It has not yet been introduced. 2/1/31

to see that the vessels are not M.S.A. 1894 belong to H.M.

44034/24

To Admiralty — cons 10 FEB 1931  
(w/c's 1, O.C. 16/12/25, O.C. 20/12/27)  
and Shipping Ordinance 1930)

To B/T (w/c 2 - all small) 14/15 1931

Secretary Admiralty 5 March  
This matter has been referred to that office  
by Admiralty, agree that vessels should be  
regarded as ships belonging to the Republic

in Duncan

I spoke to the ...  
kindly send the news around a  
discussion.

W.D. Allen

5/3/31

5 Admiralty 28 March  
agree that the two vessels of the U.S.A. should be  
treated as ships belonging to U.S. and that the  
£50 awarded as salvage should be divided between  
the crews

How send copies of the Admiralty correspondence  
to the H.M.T. with a short explanatory despatch. It  
appears no objection to the award without reference  
to the S/S of a proportion of the salvage money to  
the crews of the ships rendering the service, vide  
his Excellency's minutes of 26.11.30 v. Mr. Hardington  
minutes of 11.12.30. Longt. Union.

G. Chamberlain 24/3

I have revised the draft. If approved a  
copy should go to the Admiralty L.E. ref. No. 3 and to the  
Board of Trade, with a copy of No. 5 L.E. ref. No. 3.  
H.M. and D.C.A. should see.

W.D. Allen

1/4/31

W.D. Bushe

The attached draft would appear to be all right.  
As the Naval Agency and Distribution Act  
1884 referred to in the Admiralty letter  
of 17/1/17 (flashed pink on 3/4/28/17  
attached) deals, inter alia, with the  
distribution of salvage money among the Officers  
& crews of H.M.'s ships of war (vide sections  
13+14), I do not think that it affects the  
distribution of salvage money under the provisions  
of the Act. I have referred to the provisions of section 3.  
W.D. Bushe  
8/4/31

W.D. Duncan

6 To. E. G. Young 38. (w/c 275) — 2 APR 1931  
(No. 1. Annual.)

~~Notes & Proceedings  
Notes & Proceedings~~

7 To Admiralty (w/c 6) 18/1/31  
(5 annual)

8 To B.T. (w/c 5+6) 18/1/31

2-4 APR 1931

See ~~W. J. Allen~~  
98 CP  
3/5/31

DESTROYED UNDER STATUTE ~~W. J. Allen~~ for A.C. 61 — 14 April  
Inq. re. reply to no. 1

The copy (no. 6) was dated a  
week later than this.

Put

W. J. Allen

6/6 stance

Index of  
no.

See  
99. P. Allen  
" 10/1/31

6

Mr. P. J. Anderson  
Mr. Tomlinson  
Sir I. ...  
Sir G. ...  
Permit U.S. of S.  
Parly U.S. of S.  
Secretary of State.

DOWNING STREET

April, 1931.

18 PR  
D

**DRAFT.** for consp. vide minutes.

M. ...

I have etc., to refer to your

TRANSPORT

KENYA-UGANDA

No. 38,  
H. Cr.

(11)

Dispatch No. 177 of the 3rd November, 1930,

and to transmit to you, for your informa-

tion and guidance, the accompanying copy

of correspondence with the Admiralty

regarding the salvage services rendered to

and how by the steam launch "Mvita" and the

tug "Nguvu".

2. You will observe that these

vessels must be treated as <sup>ships</sup> belonging to

His Majesty within the meaning of Section 557

of the Merchant Shipping Act 1894, and that

the full amount of £50 awarded for salvage

<sup>should</sup> be divided between the

crews. I approve the distribution being

made to the crews pro rata to their

To Adm. 10th Feb. '31

No. 2  
Copies available.

Fr. Adm. 26th Mar. '31.

No. 5.

copy to Admiralty 19/11/31  
copy to [unclear] 19/11/31

(Copy to Adm. H. ref. No. 5.  
Copy No. 5 and this draft  
to B. of T. Lf. ref. No. 3.

(D. and D.C.A. to see).

1931



emoluments.

3. As the Merchant Shipping (Salvage)

Act of 1916 applies in Kenya and Uganda,

the introduction of similar legislation

locally is unnecessary. It should,

however, be borne in mind that, as

stated in the letter from the Admiralty

of the 23th March, ~~that~~ any claim under

that Act should be put forward in the

name of the Admiralty, but that the

claim is on behalf of His Majesty <sup>and</sup> ~~and~~

in respect of vessels such as those

now in question would be on behalf of

His Majesty in right of the local

Government. This procedure should,

therefore, be followed in any similar

cases that may occur in the future,

and in such cases the amount of any

<sup>to be dealt with</sup> award may without prior reference

to the Secretary of State, ~~be~~

~~be determined~~ <sup>the vessel concerned</sup> had

~~tributed among the crew of the~~  
~~arrangements to the interests of the crew~~  
vessel concerned as in the present

~~instance~~

(is where salvage is claimed for the services rendered by the ship)

~~instance, i.e. pro rata to the pay of the~~

~~individual.~~

I have, etc.

(Signed): PASSFIELD.

1931  
L.P. No. 8



Any further communications  
should be addressed to  
The Secretary of the Admiralty,  
London, S.W.1.

Admiralty, S.W.1.

quoting N.L. 496/31 RECEIVED 28th March, 1931.

RECEIVED  
31 MAR 1931  
COI

Sir,

My Lords Commissioners of the Admiralty have had under their consideration your letter No. 16359/30 of the 10th February last concerning the salvage services rendered to a dhow by two vessels of the Railways and Harbours Administration of Kenya and Uganda.

My Lords agree that the vessels in question must be treated as ships belonging to His Majesty within the meaning of section 557 of the Merchant Shipping Act, 1894, and that the £50 awarded for salvage should be divided between the crews. They are advised that the Merchant Shipping (Salvage) Act, 1916, applies in Kenya and Uganda. Any claim under that Act should be put forward in the name of the Admiralty, but the claim is on behalf of His Majesty and in respect of vessels such as those now in question would be on behalf of His Majesty in right of the local Government.

I am, Sir,  
Your obedient Servant,

Under Secretary of State,  
Colonial Office, S.W.1.

copy to Mr. M.T. 18/10 }  
copy to Mr. M.T. 18/10 }  
APR 1931

10/11

A.9613

RECEIVED

5th March, 1931.

CHARISSE

OFFICE

Dear Parkinson,

I have before me a reference from the Admiralty on the subject matter of your letter to them (No. 16359/30) of the 10th ultimo in reference to certain salvage services by vessels of the Kenya and Uganda Railways and Harbours Administration.

I agree on the Case as stated that the vessels should be regarded as ships belonging to His Majesty within Section 557 of the Merchant Shipping Act, 1894. If the Act of 1894 is in force in the colony, does it not also follow that the Act of 1916 is in force there inasmuch as that Act is to be construed as one with the Act of '94 and its other Amending Acts, and is really an amendment to Section 557 of the '94 Act? If so, the position seems to be that claims for salvage can be made in respect of the tugs now in question, though the claims should be in the name of the Admiralty on behalf of His Majesty-in right, I suppose, of the colony in question; ~~and~~ Local legislation <sup>would</sup> ~~will~~ not seem to be necessary. Would it in fact be possible for the Colonial Legislature to amend the Imperial Act in this respect? My impression is that in similar circumstances the Dominion of South Africa has by

P.T.O.

consent put forward a claim in the name of the Admiralty, but  
I cannot at the moment trace the papers.

It may be advantageous that we should discuss  
the position and, if you agree, I shall be happy to  
call on you at some mutually convenient time.

Yours very sincerely,

Albion

A. S. D. Harrison, Esq.,  
Colonial Office,  
S. S. I.

AS: AM

"ships belonging to His Majesty" within  
the meaning of the Merchant Shipping Act

1894. ~~Third Paerfield would much approve  
into the advice of the Lords Commissioners  
upon the point.~~

*Insert here the  
passage inserted  
on the next page.*

<sup>In</sup>  
~~3.~~ Cargo ex Woosung (1876) 1 P.D.260,  
the Dalhousie (1876) 1 P.D.271., and the  
Cybele (1877) 2 P.D.224 and 3 P.D.8.

it was held that if a vessel was a  
"ship belonging to His Majesty" within ~~the~~  
meaning of what is now Section 557 of the  
Merchant Shipping Act 1894, (and a vessel  
belonging to the Government of Bombay was  
held to be such a ship), no claim could be  
made in respect of the salvage services  
rendered by the vessel herself, (e.g., by  
her steam power). ~~It is true that in the~~  
~~Cybele case~~ it was also decided that a tug  
which, before the passing of the Harbours  
and Passing Tolls Act 1861, was owned by  
the Trustees of Rainsgate Harbour, and which  
was subsequently transferred <sup>with the Harbour</sup> to the Board  
of Trade, was not a "ship belonging to His

12

Majesty", although the Board of Trade was a Government Department under the Crown; ~~but this ruling does not appear to affect the main principle of the decision in all these cases~~ <sup>would I also refer in</sup>

*in* <sup>I am also to refer</sup> this connection to correspondence which took place between this Department and the Admiralty in 1916 and 1917 regarding services rendered by the "Remus", a tug belonging to the Nigerian Government, in the salvage of the s.s. "Karina". The latest Admiralty letter on this subject was dated the 17th January 1917, and the reference was N.L.2/5,3337/16.

3403/17/  
Nigeria.

4. In the present case the vessels <sup>in question</sup> ~~are, as a matter of fact, in the service of~~ belong <sup>to</sup> the Kenya and Uganda Railways and Harbours Administration, which was ~~set up by Orders-in-Council of the 16th December 1925 and the 20th December 1927,~~ ~~copies of which are enclosed.~~ Before this Administration was set up, the property in the Railways and Harbours, including Government vessels, belonged

to

*Insert this at the end of paragraph 2 above.*

to the Crown, i.e., to the Governments of

Kenya and/or Uganda; <sup>and there is</sup> there could appear

of the 18<sup>th</sup> Dec 1925 and the 20<sup>th</sup> Dec 1927 (Copies for which see 2<sup>nd</sup> Part)

nothing in the Orders-in-Council trans-

ferring the property in question from the

Crown to the High Commissioner for Transport,

Head of the Administration. This being

the advice given to the Secretary of

State is that, although it ~~may~~ be possible to

argue that the case is covered by the Cybele

decision, and that the vessels are "not

ships belonging to His Majesty" within the

meaning of Section 557 of the Merchant

Shipping Act 1894, on the whole it would

appear that the vessels should be regarded

as belonging to His Majesty. It would follow

that, on the authority of the cases cited

above, no claim could be made for the salvage

services rendered by them (as distinct from

services rendered by their crews). The Secre-

tary of State is inclined to the view, therefore,

that the 250 awarded for salvage services in the

above should be divided between the

crews of the two vessels, and should not be applied for the benefit of the Railway and Harbour Fund.

5. It may be observed that, by the Imperial Merchant Shipping (Salvage)

Act 1916, where salvage services are rendered by any ship belonging to His Majesty, and that ship is a ship

specially equipped with salvage plant, or is a tug, the Admiralty shall,

notwithstanding anything contained in Section 557 of the Merchant Shipping

Act 1894, be entitled to claim salvage on behalf of His Majesty for such

services, and shall have the same rights and remedies as if the ship

rendering such services did not belong to His Majesty. This Act does not

affect the present case, but it has been suggested that it might be worth

while that a provision similar to it should be introduced into the Salvage

sections of the Shipping Ordinance, which

(As presumably it would not apply to ~~ships~~ ships belonging to the Crown - i.e. to the Government in Kenya and/or Uganda)

Contained in the Act



*Kenya*  
which has been passed in the Colony

~~since the date of the claim in question.~~  
*subsequent to the date of the claim in question.*

so as to enable the High Commissioner in

future to claim for salvage services

rendered by such ships and tugs

belonging to the Administration.

*the ship*  
copy of this Ordinance is enclosed.

6. ~~The Secretary of State would be glad to have the observations~~

~~of the Lords~~  
of the Lords

Commissioners, ~~on the following points~~  
*and to know whether they agree*

(1) ~~Whether~~ *that* the vessels *in question* should be

treated as "ships belonging to His

Majesty" within the meaning of Section

557 of the Merchant Shipping Act 1894.

~~and that~~ *(2) that* therefore the £50 should be divided

between the crews, and

~~that~~ *(3) whether* legislation similar to

that contained in the Imperial Merchant

Shipping (Salvage) Act 1916 should be

introduced into Kenya.

7. A copy of this correspondence

is being sent to the Board of Trade for

their information.

*It was passed 23/11/30  
and assented to 24/11/30 E.S.  
[Signature]  
[Signature]*

*(If the Board wish to  
make some order  
they should indicate that  
by an order dated 6/11/30)*

3 (a), etc.

W. G. PARKINSON



HIGH COMMISSIONER  
FOR TRANSPORT.

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
24 NOV 1930  
COL. OFFICE

3rd November 1930.

My Lord,

I have the honour to inform Your Lordship that in May last the Port Authorities at Mombasa received advice that a Dhow was flying signals of distress and drifting on to the North Reef. The Administration immediately despatched the steam launch "Mvita" to the assistance of the Dhow, but owing to the heavy seas, this launch was unable to get connection with the Dhow and was compelled to return to Harbour. The Tug "Nguvu" was thereupon despatched and after considerable difficulty owing to the dangerous position close to the reef and the high seas, she succeeded in towing the dhow into Port.

2. A claim for 250 salvage was lodged against the matter and owners of the dhow, which was disputed, but eventually settled by arbitration, with the result that this Administration was awarded 250 for salvage and 22 costs. The services rendered by the crew of the two craft belonging to the Administration, and the risks they incurred while engaged on this salvage were outside the scope of their normal duties and I consider that some monetary recognition should be accorded to them. The amount I recommend is the sum of 210:0:0 and that this should be distributed pro rata to the crews, according to their emoluments.

THE RIGHT HONOURABLE  
LORD PASSFIELD,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON S.W. 1

copy to Admiralty  
copy to MT  
Annex - 38 - 21 APR 1931

3. It appears to me that the sanction of this sum would be within the powers granted to me by the Transport Orders in Council, but in view of Colonial ~~Order~~ Regulation No. 3A, I recommend the payment of this total sum of £1048:0 for Your Lordship's sanction.

4. It is possible that similar cases may occur in the future, and as the principle of paying a proportion of the salvage money to the crew of the craft engaged in the salvage operations is of wide world application, and as on such occasions the grant of a monetary reward at an early date is much appreciated by those concerned, I recommend that I should be empowered, should similar cases occur in the future, to make appropriate awards to the crew concerned, without reference to Your Lordship, reporting the fact afterwards.

I have the honour to be,

My Lord,

Your Lordship's most obedient  
humble servant,

*Herbert W. Moore*

HIGH COMMISSIONER