

1924

461

KENYA

C.O.
20392

29 APR 24

CORYNDON.

TEL
138Date
29th April 1924.

M'BARAKI ESTATES.

States proposals being forwarded separately by tel. as to reallocation of £3,500,000 Loan together with further loan of £3,000,000, latter replacing £4,500,000 authorised. One item of above relates to M'Baraki Pier and equipment of Kilindini Port at cost of 2000,000. African Wharfage Co's option to purchase is legally ineffective. Is taking steps to settle with Wharfage Co and requests permission to negotiate with Grogan as to price.

Previous Paper

MINUTES

There is a copy of the agreement between
Major Grogan and the African Wharfage
Co. in 1917/18. It says you will
the very good value, that the option
to purchase given in favour of the
of the Wharfage Co. is not valid.

Mr. Grogan

I assume that the Kilindini
Harbour Wharf and Estates Company are the
assigns of Grogan who purports to be the
lessor in the somewhat curious instrument

with

Subsequent Paper

22578

24/5

with 6597/23. Since that instrument leaves its duration uncertain it can be construed only as an agreement and not as a lease and I think operates so as to constitute a tenancy from year to year.

If this is so, may it not be contended that "during the currency of this lease" in clause (2) must mean during any year of the tenancy so constituted and that as long as the tenancy continues the right of the "lessee" to exercise the option also continues?

The Kenya Legal Adviser evidently considered that as the instrument, being for an unlimited period, is not a lease, there is no lease on which the option to purchase can take effect. But the explanatory memorandum attached to the instrument indicates a lease for 20 years from 1st of January, 1923 (a perfected and limited duration) as being the intended subject of the option, and this being so it seems to me arguable that the tenant from year to year has during that tenancy an option to purchase if not "the" lease (i.e. the one purporting

Mr. Calder
Private on separate sheets and
drafts to be put in for review
S. H. Reed

You have discussed with Mr. Calder and me. Mr. Calder's view is briefly that we may safely leave the two other parties (Major Grogan and his Company on the one hand and Lord Inchoape and the African Warfage Company on the other hand) ^{to} ~~steering~~ in their own juice, and that Kenya ought not to embark in a large expenditure for the acquisition of a worthless wharf and an estate of some 200 acres of doubtful utility.

(1) Major Grogan's right to use the rest of the foreshore for harbour purposes. The local lawyer said that he had no such right, but our legal advice was that we were bound by the arrangements entered into in 1921. The Governor was informed accordingly on 6/31/24 (approved by Lord Stevenson), and he has made no further move except to put forward this proposal for the purchase of the whole estate, which in itself tends to imply that he accepts the Secretary of State's view.

I see no use in attempting as Mr. Calder advised to take the line that Major Grogan and his Company have no right over the foreshore. Even if they have no right of transferring to others the right which they possess themselves.

(2) The African Warfage Company's right to purchase the 7-acre plot on which the existing wharf stands. Here again there is a difference of legal opinion. The local lawyer's advice that the

aligned

decrepit wharf that we should get, and, one thing appears to be certain, and that is that the port cannot do without the Kharaki facilities, ^{and} now (with a year to go before the Government two-berth scheme at Kilindini is complete) or later (if, as we hope, traffic at the port will, from the start, be in excess of the capacity of our two-berth scheme. It has to be remembered that, even if at our two berths we can dispose expeditiously of two steamers, there may often be other steamers in the harbour which must either be served by a lighter scheme based on Kharaki or be delayed out of reason.

(4) The money value which we should attach to the Kharaki Wharf for the purpose of maintaining the work of the port is, so far as I know, quite impossible to appraise, but, it is, at all events, a consideration to be taken into account in judging the desirability of purchasing the estate as a whole for the whole estate of 200 acres the Governor proposes to offer £500,000. In September last, Major Brown offered it to us for £400,000, as if the two westerly portions, ^{which have no} ~~without~~ sea-front, were excluded) £300,000. The question is if the above views on (1) and (2) are accepted, whether we should go for the whole estate or the whole estate with the reduction suggested by Major Brown, and what price the Government should be allowed to offer.

The conclusion of our discussion was that we should give up this westerly portion, and as it is probably the most valuable from the point of view of development offer a greater reduction on the Governor's proposed

consideration should be regarded as entirely separate from the assisted cotton loan. From the point of view of unemployment in this country it is negligible. As a part, the present war must be regarded in any case as an accessory to the main facilities of Kilindini, and finally, the transaction, though primarily connected with the war at Haraki, is too much one of land purchase to be a legitimate object of the assisted loan.

W. C. 95 24

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 as a smaller paper and
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Secretary of State

I would offer £100,000 -
 for furniture, private advice
 as an amount of £100,000
 £100,000 for restricted
 area including all for
 three nights. I would not
 offer £300,000 for the lot
 St. James

well apart from the legal position as to the
 option I am very unwilling to see Kenya
 spend a large sum of money in acquiring
 Mbaraki estate. The history of the Mbaraki
 project is given in the report of the sub-
 Committee of the Colonial Economic Development
 Committee attached to 52715/pt. It was
 decided to go ahead with the first 1000 acres
 north of Mbaraki and to let Kenya
 go ahead with the 1000 acres at
 Mbaraki. The 1000 acres of Mbaraki
 as compared with the first 1000 acres at
 Mbaraki is as follows set out in the
 report referred to, and are compared as
 2035/pt Kenya and 34519/pt Kenya. The first
 and 1000 acres at Mbaraki are valued at
 £ 30,000 whereas of the land and the rest
 of the 1000 acres at Mbaraki is valued at
 £ 100,000. It is very difficult to compare the
 two 1000 acres at Mbaraki as the 1000 acres at
 Mbaraki is a very large estate and is difficult to compare
 the 1000 acres at Mbaraki with the 1000 acres at
 Mbaraki. It is well not to go on large scale but
 it is to the expense of the option to purchase

The Co says in effect that it was intended
to exercise the option, but unable to permit
acquisition by foreigners until the Govt
made up its mind to purchase. I do not
think there is an alternative, and it
seems clear that when it bought
Mbaraki it was for fear of competition
from foreign buyers. It seems clear that
it now realises that serious competition
at Mbaraki is not possible without
large capital expenditure, and that
it desires to get back some of the
money it has lost ^{by making} ~~through~~ Govt ~~to~~
purchase.

The position already is that Meyer
Goyne Medicines Co and the African
Wholesale Co are all really in need of
lifting of their liabilities for Govt cash,
and if Sir R. Corydon were not re-
frain to purchase, I feel sure Govt
could buy these white elephants very
cheaply. From the point of view of the
present owner, the value is 20 or 30
years time of little moment. The
real point is how far to wait
for the liabilities in the next 5 or 10 years.
Sir R. Corydon has now promised

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his Executive Council to exercise in the morning
an offer of £300,000 for the whole estate
and wants approval to offering acquisition
on that basis. One difficulty in concluding
that price is that we have never received
details as to the complicated ownership of
different parts of the estate, including 150
6587/251, and part 2 on 4431/24, which Sir
R. Corydon definitely promised to send the
particulars by next mail but did not do so.
Another difficulty is that the Executive
Council has not had a copy of the
Muller's report (14.5.51), and it is my
impression that the price, including the
Mbaraki one valued at £105,000, together
with 55,000 is for the land and
finally land purchased by Govt
which the Executive is not disposed to
(see also 15.5.51). Apart from other
difficulties things have now managed to
escape control of Mbaraki as well as
part of the Govt expenditure that will
be no return to pay out on the

until 15 or 20 years hence when the Govt
can sell the portions of the estate at
enhanced prices. The former

Further the former has
not received the last part of our
telegram of 11th April (1865 1/4). We are
perfectly in the dark as to what he
wants to do with the whole collection
has got it up 11 and it is with several
companies at a much less rate than
the former (1) saw it as a job which
requiring large sums in maintenance
and improvements (2) let it down and
offer the Govt. who says it is
it is shown that, when it is intended to
sell present, when at Alibab, the
land may not be required for your
development purposes.

It is important that a selection
of Govt. purchases has been held out, and
when Govt. has purchased, at what price
from the Govt. who says it is
fair price of the land was being a
meeting the Govt. who says it is
will of course be better than a preliminary
attaches. But after all the Govt. has

until 15 or 20 years hence when the Govt
can sell the portions of the estate at
enhanced prices. The former

Further the former has not
not received the last part of our
telegram of 11th April (1865). We are
absolutely in the dark as to what he
wants to do with the land which
has got it by 11th that it will stand
companies at a much less rate than
the former (1) would as a fact which
requiring large sums in maintenance
and improve. to (2) let it down and
extend the Govt. who pay it. It is
it is shown that, when it is intended to
sell present, when at Alibank, the
land may not be required for years
development before.

It is important that a selection
of Govt. portions has been held out, and
when Govt. are prepared at what they
propose. It is also to be understood that
some portion of the land was being
making the Govt. to be sold. It is
willing to sell the same in parcels
attached. But after off the Govt. Govt. has

telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 28th April.

(Received Colonial Office 8.10 p.m. 28th April 1946).

C. O. 489
20392

29 APR 21

132 28th April Your telegram 11th April Mbaraki on putting proposal before you by separate cable reallocation of the 3,500,000 loan together with further loan of 3,000,000. One of the items comprised in these proposals is for "Further port development purchase of Mbaraki pier and estates equipment of Kilindini Port and Mbaraki Pier 2880,000". It is being proposed in the separate cable referred to above that funds be drawn on from the 3,500,000 loan for the different items included in these proposals until that loan is nearly exhausted and then that the unspent balance on each item be incorporated in a 3,000,000 loan. It is suggested that Mbaraki charge may be fairly met from the 3,500,000 now advanced to the Crown Agents as forming part of the harbour development and involving later purchase of material in England otherwise Mbaraki charge will have to be met from further loan of 4,500,000 which you have authorized but which in separate cable referred to I propose to reduce to 3,000,000. I am informed by my legal adviser(s) that the option to purchase granted to the African Wharfage Company in their tenancy agreement from Kilindini Harbour Wharf and Estates Company is of no legal effect because it is for an unlimited period. I understand that Grogan now recognizes that this government is therefore in very strong position with the Wharfage Company and the existence of their tenancy agreement need not hold up negotiations. I am taking immediate steps to settle the matter (with Wharfage Company here but in the meantime I am anxious to commence confidential negotiations with Grogan as to price entirely without prejudice on either side and beg your approval. I urge that the matter be put before the Legislative Council during May and finally settled.

CORYDON.

1924.

PARAPHRASE TELEGRAM from the Secretary of State
for the Colonies to the Governor of Kenya.

(Sent 7.50 p.m., 13th May, 1924.)

13th May. -----

Mbaraki My telegram of to-day's date. Following
for your private information. I would agree to
£150,000 being offered later if necessary but no
more.

THOMAS.

13.5.24
at 11.15 p.m.
at 11.15 p.m.
at 11.15 p.m.

RCA

RECEIVED TELEGRAM

PLEASE SEND ANY REPLY TO THIS TELEGRAM *Via Cable*

C.O.
20392

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As regards purchase by Govt. of the
 whole estate has not yet received
 particulars furnished in para 2
 your despatch of 2nd January confidential (642)
 No. 1, but in any case am
 unwilling to sanction expenditure
 of more approaching £300,000 for
 the purchase. Proposed buildings at
 Alwarhi valued in Mitchell's
 report at £35,000, and value of
 land speculative and dependent
 largely on whether construction of
 permanent class at Alwarhi
 will proceed. Have understood that
 Govt. contemplated building very
 little permanent class.

DRAFT.

MINUTE.

- Dipa
- Arnold
- G. East
- J. H. Gordon Smith
- Arnold
- Thomas

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Alwarhi and see letter
 of 17th of the parties
 involving large capital
 expenditure on permanent
 class at Alwarhi. Consider
 whole question should be further
 discussed on the basis in
 Executive Council, and if
 purchase still desired and
 after difficulty cleared up
 that Govt. should offer
 £100,000 for whole estate
 including some founded of
 high level railway, Alwarhi
 railway and other roads.
 If offer not accepted, still

be glad to receive full report
of business as to present position
& prospects - amount of trade
being done and what difficulties
if any are anticipated in
near future.