

KENYA

X. 1839

DATE

18 FEB 1926

REG.

Conf 24

22.1.26.

see 274
Stanley

ALLEGATIONS AGAINST MAJ. C. E. V. BUXTON

Encloses copy memorandum by Maj. Buxton and states that he is satisfied that the allegations made by Mrs Rainbow are groundless.

Paper

MINUTES

52057/25

with out the Supreme Court case files it is not possible to make out the rights and wrong of the case. It is clear, however, that the Govt held an enquiry into the allegations against the Buxtons, & that these allegations, so far as they were material, were judged to be unfounded. This will perhaps be a sufficient answer if enquiry arises. Perhaps the Govt should be asked if he has any others!

Paper

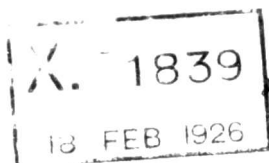
8 Dec 26
In view of the terms of the 1925's order
in 52057 the way to put by
H. Miller 22/2/26
C. J. [unclear]

KENYA.

No 24

CONFIDENTIAL

GOVERNMENT HOUSE,
NAIROBI,
KENYA



24 January, 1926.

Sir,

With reference to your Confidential despatch of the 30th November last on the subject of certain allegations against Major C.E.V. Buxton, M.C., an Assistant District Commissioner in this Colony, made by Mrs. F.M.G. Rainbow, I have the honour to inform you that enquiries have already been made into the facts of the matter and I am satisfied that there exists no ground of complaint against this officer's actions in this connection.

2. In 1924 the Petition, which formed the last enclosure to your despatch under reply, was presented by Mrs. Rainbow to Legislative Council through the Member for Rift Valley who on 30th May, 1924, moved the following motion in Legislative Council:-

"That a Committee of this Honourable Council be formed to inquire into the Petition presented to this Honourable Council by Mrs. Patrice Mary Geraldine Rainbow."

In reply the Colonial Secretary stated that Government would enquire into the question and the motion was then withdrawn. Investigation was thereupon instituted, Major Buxton's comments being invited. On 22nd August, 1924, he submitted a memorandum, a copy of which is enclosed. After consideration of Major Buxton's memorandum the late Sir Robert Coryndon was

HONOURABLE
FRANK COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON S. W.

advised

advised by the Attorney General that Mrs. Rainbow's allegations so far as they were material, appeared to be unfounded and that her conduct from first to last appeared to have been contemptuous of lawful authority. Mr. Lyall Grant added that no disciplinary action against Major Buxton was in his opinion either desirable or justifiable. With this advice the late Sir R. Coryndon agreed and Mrs. Rainbow was so notified.

3. On October 13th, 1925, I received the letter, a copy of which formed the first enclosure to your despatch: I do not however consider that further action is called for on my part in regard to this matter.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Edward Gigg

G O V E R N O R.

22nd August, 1924.

Sir,

I have the honour to acknowledge the receipt of your letter No.S.19095/5/2/41 of the 14th August, together with the petition presented to the Honourable Legislative Council by Mrs. Patrice Rainbow on which you desire my remarks.

2. This petition appears to me so discursive and disconnected that for the sake of lucidity I have not attempted to deal with it paragraph by paragraph. In the memorandum "A" attached I have commented on the main points in Mrs. Rainbow's grievances and in memorandum "B", which also accompanies this letter, I have noted many inaccuracies and distortions in minor points. In memorandum "C" I have made some observations on matters brought up in this petition which are totally irrelevant to any possible issue between the petitioner and myself. For ready reference I have indicated in the margin of my memoranda the numbers of paragraphs in the petition to which my comments relate and the passages in the original Case File which are material.

I have the honour to be,
Sir,
Your most obedient servant,

ad. C.E.V. Buxton.

Clerk of Councils,
Nairobi.

MEMORANDUM "A".

The principal points of Mrs. Rainbow's grievance are apparently as follows:-

(1). The fact that she was acquitted in the Supreme Court of the charge of threatening a public officer whilst in the execution of his duties indicates that no enquiry should have been initiated by me in the first instance.

(The evidence before the First Class Court, Nairobi, was sufficient for her committal to the Supreme Court for trial. In the Supreme Court the evidence was sufficient for the learned judge to frame a charge.

The jurymen, who did not retire to consider their verdict until 18 minutes after the Court should have risen, deliberated for 19 minutes. I submit that there was clearly prima facie evidence of an offence which no magistrate could have properly disregarded.)

(2). The petitioner was not given time to obtain legal advice.

(The nature of the alleged offence demanded, in my opinion, an early enquiry; a further reason for prompt action was provided by the fact that a second application had been received for the execution of a Warrant of Attachment on Mr. Rainbow's property. I considered it necessary to investigate the reasons why two previous attempts to execute the first warrant of attachment had not been successful, particularly in view of the endorsement on the unexecuted warrants and the affidavits supporting those endorsements.

A Second Class Magistrate cannot try a European without the accused's consent and there

no question of the petitioner being so tried. Had she allowed the judicial enquiry to take its proper course she could have refused to be tried supposing the court had found sufficient evidence on which to frame a charge. As a matter of fact the petitioner was not defended by Counsel when she stood her trial in the Supreme Court.

... "C" to Petition.

When the summons was issued I did not know that the petitioner's husband was absent from Narok, but I was informed of this fact when the petitioner returned the summons to me. She then informed me in writing that she expected her husband back on the 18th on which date he returned and was allowed to appear on her behalf on the 19th April.

(I endeavoured to explain to the petitioner that I was only enquiring into the case, but not trying it. The petitioner would not listen but preferred to continue her interruptions; otherwise she would not have been under the misapprehension that "she would that day be put on her trial.") (3). That I should have postponed the case under Section 155 (7) of the Criminal Procedure Ordinance 1914 in view of her objections verbal and documentary to my holding a judicial enquiry into the circumstances alleged by Major Hemsted and the Police.

11. 13.
"C".

on (3).

(The provisions of Section 155 (7) in my opinion refer to trials and not to enquiries. I expressed this opinion in the Supreme Court when the petitioner

Supreme Court
File 85.

explained that she had been relying on that Section).

11 and 12.

(4). The petitioner was not informed of the nature of the accusation which had been brought against her.

(The summons set forth the nature of the offence which it was alleged had been committed and the Section of the Indian Penal Code under which it was punishable and under which a charge would be framed.

Copies of the affidavits were not given to the accused as the deponents were waiting to give their evidence in open court; but I note that on page 19 of the Supreme Court Criminal Case File No.85 the petitioner did not object to the proceedings on the grounds that she was not furnished with the affidavits.

-----oOooooOoooo-----

333

MEMORANDUM "B".

11. 12 and 13. (1). An account of the proceedings in the Court at Narok was given by me on oath and will be found on pages 1 to 7 of the Supreme Court Criminal Case File No. 85.

and 10. (2). The petitioner was not accused of interfering with or obstructing an Askari but of threatening him with a fire arm whilst in the execution of his duty.

12 and 13. (3). The proper native interpreter did not know English. He was employed for interpreting from Masai into Swahili and vice versa. A Mkikuya Native Hut Counter to whom reference is probably made did not talk English as well as the Goan Clerk, or Swahili any better. Had he been called I have no doubt that the petitioner would have seen the same sinister significance as she sees in the fact that Mr. D'Souza was called to interpret. The petitioner has "continuously resided in what is now Kenya Colony for 18 years" and it is surprising that she should not have acquired sufficient knowledge of Swahili to check the interpretation of a simple narration of events.

14. (4). The Native Askari in charge of the Police Unit Narok was not sent by me. He was sent by Major Hemsted originally with a warrant signed by himself and accompanied by the so called interpreter who, the petitioner maintains, should have been called to assist her in understanding the evidence of Sergt. Songore.

A second warrant signed by me was sent by Major Hemsted some days before my return to Narok. As the petitioner objects to the practice

of employing Native police for this duty I would refer to the sworn evidence of Sergt. Songoro on page 8 of the Supreme Court Criminal Case File No. 85 of 1923 to the effect that he performed similar duties during his 6 years at Kyambu.

The jury in Criminal Case No. 51 of 1923 by their verdict have accepted the petitioner's defence that Sergt. Songoro did not know how to perform his duties and invented the story of the threat with the fire arm to shield himself. I satisfied myself that in fact he knew his duties and that the instructions given to him by Major Hemsted were clearly understood by him. It is significant that no disciplinary action was taken against him in spite of this verdict, and he is still in charge of the Police Unit at Narok.

(5). The circumstances to which the petitioner refers in paragraphs 4, 5, 6 and 7 were the subject of correspondence in Secretariat File No. S.19095/5/2, and reference should be made to minutes (1), (3), (12), and (13). It is noteworthy that 4 months had elapsed since the petitioner's complaint had been submitted and though in the document - Exhibit 2 in the Supreme Court Criminal Case File No. 85 and paragraph 8 (a) of the petition - the petitioner asserts that "the correspondence was still open", the officers at Narok did not share any such misconception having seen the minutes (15) (16) and (17) on the above mentioned file.

(6) The petitioner submits that she was "entitled

9, 9, 10 and 11

pure "C".

"entitled to believe" that I would be prejudiced against her, and that therefore I should not have held the enquiry. Although the subjective mental condition of an accused cannot be held, except in the cases of lunacy, to bar judicial proceedings it is an interesting consideration that I had never met the accused till she came to the Narek office on the day of the enquiry in question, as I had spent about 2 months on tour during that year prior to that date.

(7). I would invite attention to paragraphs 2 and 3 of the petition and would point out that the fine is still leviable.

-----oocooocooo-----

1. With regard to the disposal of the cattle the petitioner is inaccurate in stating that the mob of 2,000 head of cattle captured by the K.A.R. together with other captured stock were sold immediately at Narok. About 100 head were sold at Narok at the end of December and subsequent sales took place monthly up to the time when I left Narok in June, when there still remained at Mara with the Senior Veterinary Officer a herd of some hundreds. Owing to the quarantine restrictions the cattle could not be sold out of the reserve.

The Chief Native Commissioner and the Officer-in-Charge, Masai Reserve, gave instructions with regard to the disposal of this stock which was either captured in the Moran village or brought in by the Masai Elders as being the property of those accused of particular offences, and in any case liable to disposal in accordance with the provisions of Section 412 of the Criminal Procedure Ordinance.

2. Regarding the trials of the Masai I would invite attention to Kenya despatch No.1065 of the 14th August, 1924.

3. Although it is true that I have passed the law examination for Administrative Officers in this Colony and also the examination in criminal law and procedure set by the Council of Legal Education for students for the Bar, and I have been entrusted with second class magisterial powers since May 1921, I do not stress these points since I observe that I am pilloried in this petition in company with the Acting Chief Justice and a First Grade Adminis-

6, 7 8 (a).

(d) 9.

17.

trative Officer.

16. 4. I am no more responsible for the arrangements for Mrs. Rainbow's incarceration at Mombasa than I am for the trials of the Masai or the instructions issued with regard to the disposal of the captured stock, but it is characteristic of the draughtsman of the petition to insert a paragraph on this subject.

-----cccccc-----