

1925

KENYA

52

C.O.
4C204
3 SEP 25

From

Date

A.C. BIRNHAM

CONF
127

5th August 1925

For Circulation

Mr. Allen

Mr.

Mr.

Asst. U.S. of S.

Perm. U.S. of S.

Part U.S. of S.

Secretary of State.

NATIVE RESERVES. TEMPORARY ALIENATION OF CERTAIN SMALL AREAS.

Requests covering sanction to temporary alienations as shown.

Previous Paper

O.A.C. 39320

MINUTES

The respective terms of these leases are not stated, but they are all said to be "temporary alienations" - see para 1.

I do not quite understand why the memoranda were sent home they bear no relation to one another - that if the Attorney Gen^l being on the question of publication of a Gov^t Notice declaring these trading centres, & that if the C.N.C. been ^{affair etc} for the question of revenue for plots in Native Reserves which are leased. This question has already been decided - see 30826/14 - such revenue to go into Native Trust Funds

Subsequent Paper

O.A.C. 43956

?ack. 3 approve the temp

Mr. Bottomley

53

I have had considerable difficulty
in getting papers in C/21287/25 which does
not affect the matter as no change has
been taken in that paper of (1) 0.580/25 as
to consent to grant to a lease in
which it was laid down that it should
be subject to the legislation contemplated as
to the leasing of land without its removal
from the reserve.

Para 1 of this speaks of "temporary
alteration" but para 4 mentions
"quiescent".

This is not approval ^{as} there/also be
subject to the conditions at "A"?

J. H. Allen

21/9/25

KENYA

No. 127

CONFIDENTIAL



C.O.
40204
2 SEP 25

54
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

5th August, 1925.

Sir,

Schedules
Memoranda

With reference to my Confidential despatch No. 83 of 12th June, 1925, regarding the payment into the Native Trust Funds of rents derived from all alienated areas geographically situated within Native Reserves, I have the honour to inform you that since the date of that despatch I have, on the advice of my Executive Council, approved proposals submitted by the Chief Native Commissioner for the temporary alienation of certain small areas in native reserves.

2. These alienations fall under two heads, viz.

- (a) alienations of areas for use as trading centres,
- (b) alienations of small areas for special purposes.

Schedules are annexed showing the situation and extent of the areas in question and in each case the payment of the relative rents into the Native Trust Funds has been approved.

3. I regret that each of these excisions was not reported at once for your covering approval, but delay

arose /

THE RIGHT HONOURABLE

LT. COL. L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

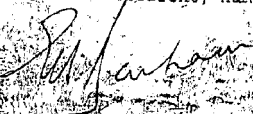
arose over the question of the form which their gazette-ment should take. The Chief Native Commissioner, for administrative reasons, was averse from the issue of the usual notice under the Outlying Districts Ordinance, 1902 and desired to keep these small areas closed as well as the remainder of the district in which they were situated.

I trust that you will accord your covering sanction to these excisions.

I have the honour to be,

Sir,

Your most obedient, humble Servant,


ACTING GOVERNOR.

SCHEDULE I

TRADING CENTRES

<u>Name</u>	<u>District</u>	<u>Situation</u>	<u>Area</u>
1. Koinarak	Nandi	Location 21	100 yds. by 50 yds.
2. Serem	Nandi	Location 22	" " "
3. Maji ya Moto	Masai	Maji ya Moto	160 acres
4. Gori Gori	Masai	Gori Gori	160 "
5. Puni Horu	Masai	Loita	160 "
6. Kilguria	Masai	Uasin Gishu	160 "

SCHEDULE II

Plots for Mills or other special purposes.

<u>District</u>	<u>Situation</u>	<u>Purpose of Plot</u>	<u>Rent</u>	<u>Area</u>	<u>Applicant</u>
1. Nandi	Yala River	Site for Water Mill	12/- p.m.	3 acres	Jamali Bhanji
2. Nyeri	Eratina	Site for Saw Mill	50/- p.m.	4 acres	W. Kenya Saw Mills

MEMORANDUM on Proposed Gazette Notice of Trading Centres
in the Masai Province and payment of rents into
the Native Trust Fund.

His Excellency has decided that the areas referred to in a proposed Government Notice forwarded by the Chief Native Commissioner should be approved as Trading Centres and the rents paid into the Native Trust Fund.

The matter has been referred for my advice as to whether the notice is in order. This action has resulted from the fact that the proposed notice was not sent to me before going before Executive Council and that I there expressed doubts as to its correctness.

The notice appears to be a simple intimation that certain Trading Centres have been opened. It does not state by what authority they have been opened nor does it show who is to sign the notice. On the face of it therefore it is defective and would not appear to have any legal effect.

The covering letter, however, shows that what is wanted is permission from the Governor to open two trading centres. "Trading Centre" is, I believe, the name employed to denote an area excluded from a closed district under the Outlying Districts Ordinance, 1902, or from a Native Reserve under the 1915 Crown Lands Ordinance for the purposes of trade. By the Townships Amendment Ordinance, 1918, Trading Centres are declared by the Governor-in-Council to be such by notice and to be subject to health rules. I cannot find that the expression has been anywhere defined but it has been through a course of years used in the above sense, and I am not aware that it is used in any other sense in any Ordinance.

The idea of a Trading Centre seems rather incompatible with its being a closed district, e.g., a road has been excluded from /

2.

from a Closed District, a trading centre beside the road has not been excluded. A traveller on the road cannot enter a shop in that Trading Centre. It is most undesirable that the term "Trading Centre" should be used to denote an area in a closed district merely marked off for trading purposes and not excluded from the Reserve. I advise accordingly that the notice be not published.

(Sgd.) R. W. Grant,
 Attorney General
 4.8.25

NOTES ON THE ATTORNEY GENERAL'S MEMORANDUM
RELATING TO PAYMENT OF RENTS INTO
THE NATIVE TRUST FUND.

It is not very clear to me whether the Attorney General is advising on law or on policy.

So far as policy is concerned the Secretary of State on behalf of His Majesty's Government, has very definitely declared that the policy is, whatever may be the legal position, that the Crown does recognise native rights in land and is not prepared to treat as ordinary revenue the rents or profits that arise from lands, which have in the past been generally known as native reserves.

2. With respect, I entirely differ from the Attorney General's opinion on the whole question. I do not know what is his authority for saying "the expression of 'Native Reserves' must, what, I think, refer to land reserved for the use of natives under the Crown Lands Ordinance 1915." The expression "Native Reserves" does not occur in the Crown Lands Ordinance 1915. (It does, however, occur in various Government Proclamations from 1906 onwards, and the only definition which the local legislature has ever assigned to the expression "Native Reserves" is contained in the Ordinance No. 12 of 1910, Section 2. In that Ordinance "Native Reserve" means any area which, by notification in the Official Gazette has been declared to be a Native Reserve.

(Sgd.) G.V. Maxwell
C.N.C.
29.5.25

C O
30 SEP
D 850

Mr. Bottemley 29 9.25

Mr.

Mr.

Mr. Strachey

Mr. J. Shuckburgh

Mr. G. Davis

Mr. G. Grindle

Mr. S. Wilson

Mr. J. Maclean

Mr. G. G. G.

Downing Street

September 1925

DRAFT

Sir,

E. A. M. W. A.

Confidential

I have etc. to acknowledge
the receipt of your Confidential
Despatch No. 127 of the 24th August

and to inform you that I approve of
the temporary alienation for
training centres and mill sites on the
small areas in native reserves
described in the schedule which
accompanied your despatch. It will
be a condition in each case that the
fund will be paid to the Native Trust
Fund and that the land will remain
part of the reserve, reverting to

the

be reserve on the cessation of the war
for the purposes indicated.

2. I do not clearly understand
the relation to each other of the
memoranda by the Attorney General and
the Chief Native Commissioner which
you enclosed, and it would appear
that other communications have passed
on this subject which have not been
sent to me. I am not aware what
decision has been arrived at on Mr
Maxwell's view that the small
centres or possibly only the trading
centres should remain "closed
districts". It would appear however
that if it is practicable for trading
centres to remain included as closed
districts by requiring that access
to them by non-natives shall be under
close control, there is no legal

difficulty

difficulty in such an arrangement.

3. I assume that the use of the words "provisions" in the third and fourth paragraphs of your despatch is due to inadvertence, and that it is not intended that in these cases the areas in question shall cease to be part of the reserves.

I have, etc.

(Signed) L. J. AMERY