

DOMESTIC



EAST AFR. PROT.
No. 28862

C. C.
28862
8 AUG 08

Individual
1908
Aug
Pages
2205

(Subject)

Messrs Dingham & Grogan Messrs T.

See out arguments in support of his statement that no forest has been leased to him sends copy of his reply to G. G. Requests necessary for withdrawal of notice of Feb 2 10

(Minutes)

Mr Cos. Would you kindly advise as to the legal side of the matter?

H. J. R.

12/8

Mr Reed

I agree with the view expressed by Mr Comber & by Mr Ellis (on 22805). I think that the Govt ought to push on with their marking of the trees for filling & do all in their power to fulfil the terms of the agreement. Meantime the notices should not be withdrawn.

Mr Grogan should have a short reply to the effect that the S/S is unable to admit the contention

Have a copy from Mr. Jones

Subsequent Page

1/20/15

in his letter or to withdraw the
notice & must have been
to take such action as he
may be advised, City Council
to file.

H.B.

13/8

at me

H. J. D.

14/8

in his letter or to withdraw the
notice & must leave him
to take such action as he
may be advised. Of course
to for.

H B
13/8

at me
H. J.
14/8

22803/1908

London House
Palace Gate

6th August, 1908.

Under Secretary of State
Colonial Office

C O
228862
REC
8 AUG 08

Sir,

I have the honour to acknowledge receipt of your letter of July 25th 1908. The contention elaborated in the first paragraph of your letter is generally admissible.

I venture to submit, however, that an agreement can only be interpreted relatively to the physical status of the matter to which it refers: and that any provisions, which for any cause (temporary or otherwise) are inherently impossible, must be held to be in abeyance until such time as they become possible.

The forest district of the Ravine was at the time of the agreement an unsurveyed part of Africa, and the area agreed to be leased was therefore a paper abstraction.

For practical purposes, such as felling timber, it remains a paper abstraction until such time as it has been projected upon concrete land, beacons erected, and the confirmatory plans accepted and endorsed by the Survey Department. Until such final endorsement no specific tree can be defined as within the area agreed to be leased. and I must therefore urge that my statement "no forest has been leased to me" is in its concrete application correct, and that felling would not appear to be an enforceable provision.

The payment of royalties in advance on the other hand is possible, and that and all other possible provisions have been complied with.

I would remind you that the schedule to the Agreement, wherein an attempt to define the geographical location of the forest is made, was at the period of execution admittedly symbolic in nature since the only available information as to the existence of any workable forest was a rough calculation made by a prospector.

I only consented to the insertion of the schedule in its verbal form because the then Crown Advocate (His Honour Judge Barth) urged the necessity of some approximate geographical reference.

The only available specific formula was therefore adopted as a pointer and the provision for modification was inserted on my behalf.

Subsequent investigation has shown that a very small proportion of the specified area carries timber.

The results of these investigations were submitted to the Chief Surveyor about three years ago, where the matter rests.

As I have stated elsewhere, the district has been closed for some years; we were compelled to stop our exploratory work; and I imagined the whole question of the Survey was now in abeyance until the operations of the Survey Department could extend into that particular field.

The fact that the Survey Department have held the survey fees deposited by Mr. Lingham for his concession for a period of over

three years lends support to my interpretation of the position.

With reference to paragraph 2 of your letter, I assume that the modifications which we are desired to adopt are such as are purely forestal and not calculated to increase the working cost or diminish the period of lease.

I have already expressed myself as ready to adopt any modification which the Forest Officer desires provided that such modification does not increase the working cost without some compensatory equivalent.

Our bona fide intention to work the forest has been, I venture to assert, sufficiently demonstrated by the expenditure which we have already incurred in connection therewith, since it is only by working the forest that the considerable monies sunk therein can be recovered.

With reference to the railway question, it is clearly impossible to independently finance a short feeder to a short line with no better security than a lease based on royalties charges which exceed those levied by the Canadian Government on timber growing on the sea-board. It is equally impossible to carry two thousand trees weighing anything up to 10 tons apiece a distance of forty miles on natives' heads.

If then it is proposed to enforce the fulfilment of the provisions whereby we must on obtaining possession fell and utilize, well or export at least two thousand trees in every year, there must shortly be an accumulation of stacked logs which would

represent a serious menace to the forest.

This danger of fire would be enormously accentuated by the large accumulation of leppings and slabs which would arise from the impossibility of their utilisation as fuel.

I must further point out that even after the outside boundaries of the area to be leased are delimited an enormous amount of inside exploratory and survey work is necessary before it is possible to decide upon the proper location for milling operations and the necessary radial system of exploitation.

The whole success of timbering operations depends upon the correct adjustment of the focus of this radial system; and this again depends upon whether the object is bulk ^{lumbering} timbering or selective lumbering: which again depends absolutely upon the means of access.

I enclose for your information a copy of the reply which I have sent to the formal notice of H.E. the Deputy Governor under date of February 10th, 1908.

I trust that the argument herein elaborated will appear reasonable and that you will give the necessary instructions for the withdrawal of the notice of February 10th, which has been very damaging to our position.

I have the honour to be, Sir,

Your obedient servant,

W. S. ...

July 15~~th~~, 1908.

H.E. The Lt. Governor,
NAIROBI.

Your Excellency,

With reference to certain notices threatening legal proceedings for the forfeiture of forest agreements made between this Government and myself and Mr. Lingham, I have the honour to inform you that I have been in communication with the Colonial Office direct.

You have no doubt received copies of the correspondence.

In those notices you refer to Forest Concessions as having been granted to us.

I would venture to remind Your Excellency that no specific land areas have yet been granted to us and until specific land areas are defined the fulfilment of conditions is impossible.

I would further remind Your Excellency that the district in question has been a closed district for some years and that such closing has involved is in considerable ^{pecuniary} preliminary loss for which we have refrained from making any claim.

I hope to reach Nairobi about Christmas and in the meanwhile I am endeavouring to come to an agreement with the Colonial Office as to what constitutes workable forest.

Without such a definition completion of the Government's agreement with ourselves is impossible.

I trust that you will see your way to withdraw or modify these notices, since, as they stand, I am left with no alternative but to proceed against H. M.'s Government for specific performance and damages for delay.

I have the honour to be, *vc*

Your Excellency's obedient servant,

~~(Signed) S. G. M.~~



19 Aug 19

Encl.
(no. 409)

Sir,

With ref. to my desp. no. 347 of the 29th July, I have the honour to transmit to you for your info. copies of corresp. with Capt. Grogan on the subject of his lease of certain forests in the E. A. Prot.

I am of opinion that the Prot. Govt. should push on with the marking of trees for felling in the area in question, and should do everything possible to fulfill the terms of their engagement. In the meantime the notices issued should not be withdrawn.

M.S.O. 14/8

Mr. Road 15

N. C. 15 f

2 dfts.

W. G. 6 Aug (2002)
C. G. 8 Aug
S. G. (Smith)

4 to 22805
+ 22862 + 22863

28862



G. 28862 E.A.P.

290

19 Aug 1901
Secretary of State
for the Colonies

Sir,

I am so. to ack. the recd. of your letter of the 6th Aug., on the subject of your agreement with the Govt. of the E.A.P., and to inform you that the S. of S. cannot admit the justice of your contentions, nor is he prepared to order the withdrawal of the notices which have been issued to yourself and Mr Lingham. The S. of S. must leave you to take such action in the matter as you may be advised.

Capt. E. E. Grogan

H. F. C. 14/8

Mr Read. 15

Mr Cox 15 for 2dfn

~~XXXXXXXXXX~~

Vertical stamp: RECEIVED 1901

I see
15/8/01
B. & C.

to 28862

53 - 82 - 15