



DESPATCH

EAST AFR. PROT.

C. O.  
22189

22189

JUL 09

498

Governor. No.

316

1909

Concessions to Lady Mackenzie  
& Mr. Foulkes

10 June.

Previous Paper.

Gov  
20025

Sends minutes by Comm<sup>r</sup> of Lands & instructions  
from by Sir J. A. Saddle. Concessionaires can either  
have the land asked for at once subject to native  
rights, or can wait the decision of the Land Court.

6074 to a 10 Sept  
 1909  
 22673

This adds nothing material to what we  
knew from <sup>W</sup> 19140 & <sup>Gov</sup> 20025. We must now  
start from the letter of the 19<sup>th</sup> of June  
written to Sir K. Mackenzie on the  
latter paper. We shall no doubt get our  
reply to that letter after Mr. Foulkes  
has seen Colonel Seely tomorrow. I  
trust that Mr. Foulkes will be required  
to give in detail, and in writing, his  
reasons for wanting to vary the  
conditions proposed by Sir K. Mackenzie  
in 1907 (<sup>W</sup> 1106/07), which held the field at

Subsequent Paper

present. I am by no means prepared  
to say that there is not ground for  
varying some of these conditions. But, if  
so, it ought to be done carefully and  
deliberately, and not in the strength  
of the somewhat discursive conversations  
to which Mr. Fowler is addicted.

Jas B

July 7

Dr Butler.

Dr Fowler called yesterday  
and Gabriel Leeb asked him to  
write July all his wishes.

G.E.M.V.

97

Wait for Mr Fowler's letter.

Jas B

July 9

at once

See now  $\frac{7}{23198}$

Jas B

July 14

herent. I am by no means prepared  
to say that there is not ground for  
any of these conditions. But, if  
it might be done carefully and  
deliberately, and not in the strength  
of the somewhat discursive conversations  
to which W. Foulkes is addicted.

WFB

July 7

W. Butler.

W. Foulkes called yesterday  
and Gabriel Leeb asked him to  
write July all his works.

G.C.M.V.  
97

Wait for W. Foulkes's letter.

WFB

July 9

at once

See now  $\frac{7}{23198}$

WFB

July 14

35 Lancaster Road,

Belsize Park. N.W.

1st July, 1909.

499

The Right Honorable  
Colonel Seely. P.C.  
Colonial Office,  
Whitehall. S.W.

Sir,

Mr. J. C. Flynn informs me that you are willing to grant me an interview to enable me to explain to you my case re land at Malindi, British East Africa.

Should I not hear from you to the contrary I shall avail myself of the pleasure of calling on you at 12.30 on Monday next.

I remain, Sir,

Yours faithfully,

*Joseph W. Southey*

22189



C.O.  
22189

REC'D  
Governor's Office

Nairobi.

June 10th 1909.

EAST AFRICA PROTECTORATE.

(No. 316.)

(Incl. 3.)

500

Lord,

ca  
18043

With reference to Your Lordship's telegram

of the 3rd instant respecting the present stage of negotiations in regard to the concessions applied for in the names of Lady Mackenzie and Mr. J. Foulkes

I have the honour to transmit herewith copies of minutes by the Honourable Commissioner of Lands dated December 31st 1908, showing the position then existing and by His Excellency Sir James Hayes Sadler giving instructions as to the course to be pursued.

In accordance with these instructions Colonel Montgomery wrote to the Concessionaires on January 8th 1909 but no reply has as yet been received.

18043

Principal Secretary of State

for the Colonies,

Downing Street,

Concessions - 2356-14 LONDON, S.W.

Col. Montgomery  
21st 1908.  
His Excellency  
January 7th 1909.  
Col. Montgomery  
to Sir R. Mackenzie  
January 8th 1909.

5. Your Lordship will observe that two alternatives are proposed. The applicants can either have the land asked for at once subject to reservations for native rights which are certain to reduce the area considerably, or they can await the decision of the Land Court on the various claims arising within its limits, in which case it is hoped that it may be possible to give them land up to the full extent asked though not within the boundaries as defined in the original application.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

Edw. J. JACKSON

2

~~PROCESSED No. ....~~  
~~EXAMINED No. .... of Feb. 10, 1907~~  
*Enula*

Applications for land by Mr. J. Foulkes, Sir  
 Kenneth Mackenzie and others, in the name of  
 a Company named East Africa Plantations.

—00000—

This case has been pending a long time. Applications were made first in the Colonial Office in 1906 for large areas. Eventually they were brought down to three applications for 10,000 acres each to be taken up as cotton grants, viz:-

For Mr. Foulkes 10,000 acres	}	Malindi District.
For Lady Mackenzie 10,000 "		
For Mr. Burton 10,000 "		* Witu district.

The Witu application has been refused.

Inquiries were made whether the 20,000 acres in Malindi were available. A surveyor was sent to the spot, and said that he had tried to locate an area free from Arab and Swahi cultivated shambas, but other native rights must be considered. Eventually in February 1907 the Land Officer sent Mr. Foulkes a permit to occupy 20,000 acres in the Malindi district in the usual form, which saves all native claims.

There is a note at the bottom signed by the Land Officer stating that "the land applied for has been reported on by the District Officer as free from local objections, and by the Government Surveyor as available."

This was added on Mr. Foulkes showing a telegram he had received from the District Commissioner stating that no local objections exist if natives have spaces reserved

for

for development of their shambas. It is a pity that the latter part of the telegram was not added to the foot note. At any rate Mr. Foulkes knew that there were native claims.

Afterwards came a report from another surveyor saying that much of the land was claimed by natives. Mr. Dalbratt stated in his report, "I might add that there is a large amount of Wanyika cultivation, scattered all over the area applied for, and the question of native claims will be a rather large one." Dated 31st July 1907.

In February 1908 Mr. Foulkes and his Solicitor were informed that unless survey fees were paid without delay the application would be definitely refused.

The fees were paid in April 1908, and the Solicitors were written to that month stating that the fees had been received, but the Land Office did not hold itself responsible that the application would be granted.

In May 1908 a plan of the coast area (prepared under Mr. Hollis' orders) was sent to the Solicitors asking them to mark on it the land desired by the applicants. The Solicitors wrote at once saying they were sending the plan home and hoped that vacant land in the neighbourhood would not be allotted until they had heard from their clients. The Land Office replied on the 18th May 1908 that the clients would be given till the end of August to select this area.

It would appear that this was communicated to Sir Kenneth Stirling, for although a copy has only been sent me by Sir Kenneth of the Solicitors' letter to him of the 14th May 08, his letter in reply, without date, acknowledges Messrs. Syme and Harrison's letter of the 14th and 20th

y.

That



That is, Sir Kenneth Mackenzie knew some time in June that he was allowed to the end of August to select his land. Before the receipt of Sir Kenneth Mackenzie's letter Mr. Harrison seems to have interviewed the Land Officer, for there is a letter to Messrs. Byron and Harrison dated 6th July 1908 saying that the two areas of 10,000 acres each will be granted provided there is sufficient land available on survey, and provided that this land is clear of native and other claims. Probably after this Sir Kenneth Mackenzie's letter came, for Messrs. Byron and Harrison write on the 17th July 1908 that they will hold the Land Office to its agreement and must have the land promised them, though they held out a prospect of agreeing to other land in lieu of any portion that may be held by the Land Court to be owned by natives.

On this the Conveyancer, after consulting me, wrote the letter of 28th October 1908 (copy attached) which is the cause of this complaint.

It was at once replied to by Messrs. Byron and Harrison on the same day, and then the Conveyancer wrote his letter of the 18th November 1908 (copy attached) after consulting the Honourable Crown Advocate.

I understand that we were legally right in our action, but having reconsidered the position I think we were hardly justified in taking advantage of a technical point to tell the applicants that their application had lapsed. It would have been better to have suggested the action I have proposed to all those who have been promised grants on the Coast. I give them in effect two alternatives. I say, if you insist

on

on your land being given you at once we shall have it surveyed and a deed prepared, but in the deed it will be definitely stated that any land inside the boundaries found by the Land Court to be private property will be excluded. In that case you will perhaps find yourself eventually left in possession of a very small part of your estate.

The other alternative is to wait till the Land Court has decided claims; we can then let you have all the area we have promised you, only it may not be exactly where you have asked for it.

I propose replying to Sir Kenneth Mackenzie and saying that I am prepared to withdraw the Conveyancer's letter if he will agree to one of the above named courses.

The application for land in Witu was refused, and as I consider that 20,000 acres is quite big enough for any ordinary Company to develop - they will find it difficult to work so much - I propose saying that the total grant will not exceed 20,000 acres.

~~Sd/-~~ J. MONTGOMERY  
COMMISSIONER OF LANDS  
31-12-08.

46 9/2.

300

LAND DEPARTMENT,

Nairobi,

28th October 1908.

Gentlemen,

Re: Mr. J. Boulker and Lady Mackenzie's  
Malindi Application.

You were forwarded, ~~under cover~~ on the 27th May last, a plan of the Coast area with the request that your clients should indicate the area they desired surveyed. You replied on the 14th May as follows:- "In the meantime we shall be much obliged if you will not actually allot any of the vacant land in the neighbourhood of our clients' application in accordance with the arrangement we made with you two days ago." As a special concession your clients were given till the end of August to make their selection.

This condition not having been complied with the application and temporary occupation rights are hereby cancelled.

In view, however, of the expenses that your clients have incurred, I am directed to inform you that the Honourable the Commissioner of Lands is prepared to reconsider a renewed application in respect of the area when the Land Court has finally settled the question of native rights.

The above offer is without prejudice, and on the distinct understanding that the government does not hold itself bound to grant the whole area, or any part thereof, but your clients may be assured that when the above question has been decided every effort will be made to meet them.

I am &c., &c.,

J. GOVER  
Commissioner  
for Land Officer.

S. Byron & Harrison,

Nairobi.

Land Department,  
Nairobi,  
18th November 1908.

507

Sirs,

Re Mr. Foulkes & Lady Mackenzie's  
Malindi application.

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I beg to reply to your two letters dated the 17th July and 28th ultimo.

With very great respect, I do not think your letter of the 28th ultimo correctly sets out the facts with regard to the two areas of 10,000 acres, in which you state - "A survey of the land has already been completed long ago by a duly qualified member of the Survey Department, who was specially sent out to Malindi to survey these and other areas applied for there." I agree that the land in the neighbourhood was surveyed, but no specific survey has, so far as I am able to ascertain, ever been made of the two areas of 10,000 acres. This is quite evident from a letter addressed to your Mr. C. N. M. Harrison dated the 7th February 1908, and your reply of the 31st March 1908. In consequence you were forwarded the plan referred to in my letter of the 28th October last, in order that your clients might indicate the area they desired surveyed.

You further state - "At that time there was no question of any encroachment on native rights". This  
does

Messrs. Byron & Harrison,  
Solicitors,  
Nairobi.

does not appear to be the case, as Mr. Kyle, who made the survey states - "I have arranged the boundary ABC so as to avoid all Arab and Swahili cultivated shambas, in giving this land the other native rights might be considered." It is clear that you were informed that part of the land applied for would be retained for native reserve - see your letter of the 17th July.

With regard to your application for an extension on the western boundary of the 20,000 acres. This area would appear to be same as that referred to by Mr. Foulkes in his letter of the 27th February 1907, and he was informed in March of the same year that the area was covered by a previous application. However no enquiries appear to have been made in respect of the area, and in view of my letter of the 28th ultimo, are unnecessary.

As you are aware the application for 10,000 acres in the Witu district was definitely refused by letter dated 11th July 1907, for the reasons stated in the Land Officer's letter of the 23rd July 1907.

The above letter does not in any way abrogate, affect or alter the contents of my letter of the 28th ultimo, but is only intended to clear up the points raised in your letters under reply, about which there appears to be some misapprehension, owing probably to the fact that part of the correspondence has been addressed to Mr. Foulkes, and may not have been communicated to your firm.

I am &c., *SG*

Sd/- J. GOWER

CONVEYANCER.

*Sup* ENCLOSURE No. *2*  
 In Despatch No. *216* of *Jan. 10, 1909*

MINUTE.

This should meet the case and we can do nothing further. The Company will then be in exactly the same position with regard to their application as other applicants for areas on the Coast where Native and private rights have not yet been determined.

Sir K. Mackenzie seems to have ignored the fact that all grants on the Coast strip are made subject to those rights. It is a pity this point was not made clear.

~~Sd/-~~ J. HAYES SADLER

Nairobi,

January 7th 1909.

Nairobi,

8th January, 1909. 518

Mr.

I have the honour to reply to your letter of the 19th  
November regarding the land which you have applied for in  
the Malindi district.

2. It is true that the Land Officer gave Mr. Foulkes a  
permit to occupy 20,000 acres; this was done at Mr. Foulkes  
request after he had shown Mr. Barton Wright a telegram  
received from the District Officer. The telegram ran as  
follows:-

"I wired to Land Officer re your application. I will  
inform you on hearing from him. No local objections  
exist if natives have spaces reserved for development  
of their shambas".

Mr. Foulkes will have seen from this that there were  
no claims of natives on the land whose claims would have  
been considered.

Mr. Foulkes was also written to on the 12th February  
1907 that forest areas might have to be deducted.

3. The land has been gone over several times by  
Surveyors and District Officers, and all enquiries have  
shown that there are many native claims on the land for which  
Mr. Foulkes received a permit to occupy. This has been  
pointed out the last time in a letter which the Land  
Officer wrote to Messrs. Byron and Harrison on the 6th

July

SIR KENNETH MACKENZIE

OF SCATWELL, BART.;

47 Victoria Street,  
Westminster, London, S.W.

311  
saying that the two areas of 10,000 acres would  
provided there is sufficient land available on  
provided that this land is clear of native and

For this your solicitors, having received  
June, wrote practically in the  
July, stating that their clients  
the Government had any right to  
ve the land which had been previously granted to  
The I say that you might be prepared to take  
land in lieu of any that might be found to belong  
tives. this was left an open question. The whole  
was then considered by my legal adviser, and the  
er written of which you complain. It was written in  
or to make our legal position clear; but you were told  
at your case would still be considered if land could be  
found for you.

3. The position is in effect this. You have asked for  
a large area and we have told we will give it to you. The  
land you want is partly waste land with no claims, partly  
waste land with claims, and partly under the cultivation  
of natives. How far the claims will be proved we cannot  
say until the Land Court has tried the cases. We have  
every wish to give you the area you asked for; but we can  
only do it in one of two ways.

If you must have land at once we will survey the area  
you have asked for and make it over to you, but subject  
to all rights which may be proved on any part of it.  
this case you may find yourselves left with very much  
land than you have applied for.

Or



Or if you will wait till the Land Court has decided claims, we will do our best to give you the full amount you want, though not necessarily in one block.

If you are prepared to accept one of these alternatives I shall cancel the letter to your Solicitors of the 26th October 1908.

6. This applies to 20,000 acres in the Malindi district. I am unable to give you more than this in Witu or elsewhere. The separate fee for the survey fees for the third application for 10,000 acres in Witu will be refunded to your Solicitors.

I have &c., &c.,  
~~Sgt.~~ J. Montgomery,  
Commissioner of Lands.

22189

Governor's Office, 513

Nairobi.

June 10th 1908.

EAST AFRICA PROTECTORATE.

No. 318.

(Incl. 5.)

My Lord,

With reference to Your Lordship's telegram of the 8rd instant respecting the present stage of negotiations in regard to the concessions applied for in the names of Lady Mackenzie and Mr. J. Foulkes I have the honour to transmit herewith copies of minutes by the Honourable Commissioner of Lands dated December 31st 1906 showing the position then existing and by His Excellency Sir James Hayes Sadler giving instructions as to the course to be pursued.

2. In accordance with these instructions Colonel Montgomery wrote to the Concessionaires on January 5th 1908 but no reply has as yet been received.

H.M. Principal Secretary of State

for the Colonies,

Downing Street,

LONDON, S.W.

Montgomery  
List 1908.  
Excellency  
1907-1908.  
Montgomery  
of E. Africa  
January 5th 1908.

5. Your Lordship will observe that two alternatives are proposed. The applicants can either have the land asked for at once subject to reservations for native rights which are certain to reduce the area considerably, or they can await the decision of the Land Court on the various claims arising within its limits, in which case it is hoped that it may be possible to give them land up to the full extent asked though not within the boundaries as defined in the original application.

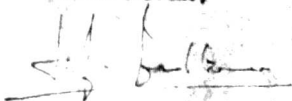
I have the honour to be,

with the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

A handwritten signature in dark ink, appearing to read "S. J. [unclear]", written over a horizontal line. The signature is slanted and somewhat stylized.

Applications for land by Mr. J. Foulkes, Sir  
Kenneth Mackenzie and others, in the name of  
a Company named East Africa Plantations.

—0000—

This case has been pending a long time. Applications were made first in the Colonial Office in 1906 for large areas. Eventually they were brought down to three applications for 10,000 acres each to be taken up as cotton grants, viz:-

For Mr. Foulkes 10,000 acres	} Malindi District.
For Lady Mackenzie 10,000 "	
For Mr. Burton 10,000 "	" Witu district.

The Witu application has been refused.

Enquiries were made whether the 20,000 acres in Malindi were available. A surveyor was sent to the spot, and said that he had tried to locate an area free from Arab and Swahili cultivated shambas, but other native rights must be considered. Eventually in February 1907 the Land Officer sent Mr. Foulkes a permit to occupy 20,000 acres in the Malindi district in the usual form, which saves all native claims.

There is a note at the bottom signed by the Land Officer stating that "the land applied for has been reported on by the District Officer as free from local objections, and by the Government Surveyor as available."

This was added on Mr. Foulkes showing a telegram he had received from the District Commissioner stating that no local objections exist if natives have spaces reserved

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for development of their shambas. It is a pity that the latter part of the telegram was not added to the foot note. At any rate Mr. Foulkes knew that there were native claims.

Afterwards came a report from another surveyor saying that much of the land was claimed by natives. Mr. Galbraith stated in his report, " I might add that there is a large amount of Wanyika cultivation, scattered all over the area applied for, and the question of native claims will be a rather large one." Dated 31st July 1907.

In February 1908 Mr. Foulkes and his Solicitor were informed that unless survey fees were paid without delay the application would be definitely refused.

The fees were paid in April 1908, and the Solicitors were written to that month stating that the fees had been received, but the Land Office did not hold itself responsible that the application would be granted.

In May 1908 a plan of the coast area (prepared under Mr. Hollis' orders) was sent to the Solicitors asking them to mark on it the land desired by the applicants. The Solicitors wrote at once saying they were sending the plan home and hoped that vacant land in the neighbourhood would not be allotted until they had heard from their clients. The Land Office replied on the 18th May 1908 that the clients would be given till the end of August to select this area. It would appear that this was communicated to Sir Kenneth Mackenzie, for although a copy has only been sent me by Sir Kenneth of the Solicitors' letter to him of the 14th May 1908, his letter in reply, without date, acknowledges Messrs. Byron and Harrison's letter of the 14th and 20th May.

That

That is, Sir Kenneth Mackenzie knew some time in June that he was allowed to the end of August to select his land. Before the receipt of Sir Kenneth Mackenzie's letter Mr. Harrison seems to have interviewed the Land Officer, for there is a letter to Messrs. Byron and Harrison dated 6th July 1908 saying that the two areas of 10,000 acres each will be granted provided there is sufficient land available on survey, and provided that this land is clear of native and other claims. Probably after this Sir Kenneth Mackenzie's letter came, for Messrs. Byron and Harrison write on the 17th July 1908 that they will hold the Land Office to its agreement and must have the land promised them, though they hold out a prospect of agreeing to other land in lieu of any portion that may be held by the Land Court to be owned by natives.

On this the Conveyancer, after consulting me, wrote the letter of 26th October 1908 (copy attached) which is the cause of this complaint.

It was at once replied to by Messrs. Byron and Harrison on the same day, and then the Conveyancer wrote his letter of the 19th November 1908 (copy attached) after consulting the Honourable Crown Advocate.

I understand that we were legally right in our action, but having reconsidered the position I think we were hardly justified in taking advantage of a technical point to tell the applicants that their application had lapsed. It would have been better to have suggested the action I have proposed to all those who have been promised grants on the Coast. I give them in effect two alternatives. I say, if you insist

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on your land being given you at once we shall have it surveyed and a deed prepared, but in the deed it will be definitely stated that any land inside the boundaries found by the Land Court to be private property will be excluded. In that case you will perhaps find yourself eventually left in possession of a very small part of your estate.

The other alternative is to wait till the Land Court has decided claims; we can then let you have all the area we have promised you, only it may not be exactly where you have asked for it.

I propose replying to Sir Kenneth Mackenzie and saying that I am prepared to withdraw the Conveyancer's letter if he will agree to one of the above named courses.

The application for land in Witu was refused, and as I consider that 20,000 acres is quite big enough for any ordinary Company to develop - they will find it difficult to work so much - I propose saying that the total grant will not exceed 20,000 acres.

sd/- J. MONTGOMERY

COMMISSIONER OF LANDS  
11-12-06.

LAND DEPARTMENT,

Nairobi,

26th October 1908.

519

Gentlemen,

Re: Mr. J. Foulkes' and Lady Mackenzie's  
Malindi application.

You were forwarded, under ~~separate~~ dated the 4th May last, a plan of the Coast area with the request that your clients should indicate the area they desired surveyed. You replied on the 14th May as follows:- " In the meantime we shall be much obliged if you will not actually allot any of the vacant land in the neighbourhood of our clients' application in accordance with the arrangement we made with you two days ago." As a special concession your clients were given till the end of August to make their selection.

This condition not having been complied with the application and temporary occupation rights are hereby cancelled.

In view, however, of the expenses that your clients have incurred, I am directed to inform you that the Honourable the Commissioner of Lands is prepared to reconsider a renewed application in respect of the area when the Land Court has finally settled the question of native rights.

The above offer is without prejudice, and on the distinct understanding that the government does not hold itself bound to grant the whole area, or any part thereof, but your clients may be assured that when the above question has been decided every effort will be made to meet them.

I am &c., &c.,

Sd/- J. SOWER  
Conveyancer  
for Land Officer.

Messrs. Byron & Harrison,  
Nairobi.



Sirs,

Re Mr. Foulkes & Lady Mackenzie's  
Malindi application.

---

I beg to reply to your two letters dated the  
17th July and 26th ultimo.

With very great respect, I do not think your  
letter of the 26th ultimo correctly sets out the facts  
with regard to the two areas of 10,000 acres, in  
which you state - ' A survey of the land has already  
been completed long ago by a duly qualified member of  
the Survey Department, who was specially sent out to  
Malindi to survey these and other areas applied for  
there.' I agree that the land in the neighbourhood was  
surveyed, but no specific survey has, so far as I am  
able to ascertain, ever been made of the two areas of  
10,000 acres. This is quite evident from a letter  
addressed to your Mr. G. H. Harrison dated the 7th  
February 1908, and your reply of the 31st March 1908.  
In consequence you were forwarded the plan referred  
to in my letter of the 26th October last, in order that  
your clients might indicate the area they desired  
surveyed.

You further state - "At that time there was no  
question of any encroachment on native rights". This

does

Messrs. Byron & Harrison,  
Solicitors,  
Nairobi.

does not appear to be the case, as Mr. Kyle, who made the survey states - " I have arranged the boundary ABC so as to avoid all Arab and Swahili cultivated shambas, in giving this land the other native rights might be considered." It is clear that you were informed that part of the land applied for would be retained for native reserve - see your letter of the 17th July.

With regard to your application for an extension on the western boundary of the 20,000 acres. This area would appear to be same as that referred to by Mr. Foulkes in his letter of the 27th February, 1907, and he was informed in March of the same year that the area was covered by a previous application. However no enquiries appear to have been made in respect of the area, and in view of my letter of the 26th ultimo, are unnecessary.

As you are aware the application for 10,000 acres in the Witu district was definitely refused by letter dated 11th July 1907, for the reasons stated in the Land Officer's letter of the 23rd July 1907.

The above letter does not in any way abrogate, affect or alter the contents of my letter of the 26th ultimo, but is only intended to clear up the points raised in your letters under reply, about which there appears to be some misapprehension, owing probably to the fact that part of the correspondence has been addressed to Mr. Foulkes, and may not have been communicated to your firm.

I am Ac., Ac.,

Sd/- J. GOWER

CONVEYANCER.

ENCLOSURE No. 2.....  
In Despatch No. 3/16 of June 11, 1909

522

M I N U T E .

This should meet the case and we can do nothing further. The Company will then be in exactly the same position with regard to their application as other applicants for areas on the Coast where Native and private rights have not yet been determined.

Sir K. Mackenzie seems to have ignored the fact that all grants on the Coast strip are made subject to those rights. It is a pity this point was not made clear.

Sd/- J. HAYES BADLER

Nairobi,

January 7th 1909.

Office of the Commissioner of Lands,  
Nairobi,  
8th January, 1909. 523

Sir,

I have the honour to reply to your letter of the 18th November regarding the land which you have applied for in the Malindi district.

2. It is true that the Land Officer gave Mr. Foulkes a permit to occupy 20,000 acres; this was done at Mr. Foulkes request after he had shown Mr. Barton Wright a telegram he received from the District Officer. The telegram ran as follows:-

"I wired to Land Officer re your application. I will inform you on hearing from him. No local objections exist if natives have spaces reserved for development of their shambas".

Mr. Foulkes will have seen from this that there were a number of natives on the land whose claims would have to be considered.

Mr. Foulkes was also written to on the 18th February 1907 that forest areas might have to be deducted.

3. The land has been gone over several times by Surveyors and District Officers, and all enquiries have shown that there <sup>are</sup> many native claims on the land for which Mr. Foulkes received a permit to occupy. This has been pointed out the last time in a letter which the Land Officer wrote to Messrs. Byron and Harrison on the 6th

July

SIR KENNETH MACKENZIE

OF SCATWELL, BART.,

47 Victoria Street,  
Westminster, London, S.W.

July, 1908 stating that the two areas of 10,000 acres would be granted, provided there is sufficient land available on survey, and provided that this land is clear of native and other claims.

4. A few days after this your solicitors, having received your letter of the 22nd June, wrote practically in the terms of it on the 17th July, stating that their clients did not recognise that the Government had any right to deprive them of land which had been previously granted to them. They did say that you might be prepared to take other land in lieu of any that might be found to belong to natives; but this was left an open question. The whole case was then considered by my legal adviser, and the letter written of which you complain. It was written in order to make our legal position clear; but you were told that your case would still be considered if land could be found for you.

5. The position is in effect this. You have asked for a large area and we have told we will give it to you. The land you want is partly waste land with no claims, partly waste land with claims, and partly under the cultivation of natives. How far the claims will be proved we cannot say until the Land Court has tried the cases. We have every wish to give you the area you asked for; but we can only do it in one of two ways.

If you must have land at once we will survey the area you have asked for and make it over to you, but subject to all rights which may be proved on any part of it. In this case you may find yourselves left with very much less land than you have applied for.

Or if you will wait till the Land Court has decided claims, we will do our best to give you the full amount you want, though not necessarily in one block.

If you are prepared to accept one of these alternatives I shall cancel the letter to your Solicitors of the 26th October 1922.

8. This applies to 20,000 acres in the Malindi district. I am unable to give you more than this in Witu or elsewhere. The separate fee for the survey fees for the third application for 10,000 acres in Witu will be refunded to your Solicitors.

I have &c., &c.,

Sd/- J. Montgomery,

Commissioner of Lands.