

1931

Kenya

No. 1185 D

SUBJECT

CO 533/411

Native Lands Trust Ordinance

grant of leases for periods of 33 years and over

Kenya Sugar Estate

Previous

C File

Subsequent

E File

3765/3/38

1 Hon. Byrne 319 10 June 2
(Reports as ordered an area of 800 acres in S. Nyika Reserve be leased to Ramigi Sugar Estate for period of 33 years from 1st January, 1928, with area of land 15 ft. wide between Bodo and the estate. Recommends lease be increased to 99 years.)

Paragraphs 1, 2, 3 are straight-forward. Paragraphs 4 and 5 are not so simple, since the proposal is that the lease should be extended to 99 years. This is the first case which has come to the Secretary of State under Section 9(1) of the Native Lands Trust Ordinance. That section provides that in exceptional cases, with the ^{prior} consent of the Secretary of State, leases may be granted for a period longer than 33 years, but not more than 99 years. I attach a note regarding the origin of this provision, and the type of exceptional case which was anticipated.

It will be seen that the Secretary of State had two types of exceptional case in mind:-
(1) schemes of co-operative benefit - i.e. of benefit to the native community as well as to the lessee;
(2) cases where permanent buildings are to be constructed of a value substantial in relation to the value of the concession involved in the lease.

It will also be seen that the Governor was told that the Secretary of State "would hold himself free to require" that the grant of leases for over 33 years should be conditional on the substitution of other land.

The present case is exceptional, in that it was informally agreed between the lessee and the local Native Council, before ever the Ordinance was passed that the leases should be for 99 years.

I am not sure that this informal agreement in itself is sufficient to justify an extension to 99 years, and

one would like further information on various points. Perhaps one may take it for granted (since the Native Lands Trust Board have granted a 35 year lease, and in doing so, will have had regard to Section 7(b) and (c)) that the scheme will be of "co-operative benefit" to the native community, but I should also like to know:

(a) whether on the strength of the informal agreement of 1927, the lessees have constructed "permanent buildings of a value substantial in relation to the value of the concession involved in the lease";

(b) whether if not, the construction of such buildings is essential for the proper development of the estate;

(c) whether additional "suitable" and if possible, contiguous "land" of "an area equal in extent and, as far as possible, equal in value" (see Section 15(2) of the Ordinance) could, if necessary, be made available in compensation.

I would suggest making enquiry of the Governor on these three points before approving the extension.

Forwarded
15.7.31

*Impure - reserved
(a) & (b) - what
this stage I doubt if we
need raise the question
of additional land
All Patience
15.7.31*

*As requested I think the
additional part can be
included - by referring to
15540/39. saying that the
S.G.S. will be for the
land, and help to be made
on the basis of the case
The paper must be given
to the committee stage here
soon*

15.7.31

2 to. Gov. Conf. - 1. Approved - 22 JUL 1931

10

3

Gov. Conf. - 11/31
Submit further particulars, as requested in No 2, in support of the recommendation for the extension to 69 years of the lease granted to the Hamini Sugar Co.

*It does not seem necessary to
minute at length on this
In view of the fact that
S.G.S. may agree to the extension of
the lease to 99 years & say that
to do so in the case? desired to
ask that any addition be made to
the Reserve in substitution for the*

N.B.

land now to be leased

Hamilton

12.11.31

W. H. ...

the note 1/11

The position is fully set out in Mr. Eastwood's minute of 15th July. The case for the extension of the lease to 99 years seems clear, and the real question is whether any land should be substituted for that covered by the lease. Land for this purpose is available contiguous to the Reserve but not to the leased areas. It would seem proper that these cases should be decided on their merits, i.e., whether substitution of land is justified in the circumstances of the particular case and not merely by the consideration whether or not land is available. Having regard to all the circumstances of this case, and in particular to the second sentence of paragraph 4 of this despatch, it would not seem necessary to insist on substitution, even though land is available; but a decision to this effect should not be regarded as a precedent and the Secretary of State should remain free to decide in any future cases solely on the merits.

So reply.

J. H. Allen

17/11/31

In all these three cases the Governor has announced the intention to recommend an extension to 99 years because the natives had

had agreed to that term before the Native Land Trust Ordinance was passed. I think we can agree, but I hope that there are not many more cases of the kind.

On this paper the main question is as to substituted area. This was the most difficult part of Lord Passfield's policy to carry out in Africa, but I feel that in the case of an area of 612 acres where alternative land contiguous and suitable is available we ought to apply the rule.

The last sentence of the Governor's despatch does not, I think, carry much weight if the land has been ^{improved} in the Reserve for whatever reason, our only safe course is to regard it definitely as part of the Reserve. I do not want to start off the administration of the Native Land Trust by incurring a suspicion that we are on the lookout for excuses to reduce the effective area of the Reserves.

W. H. ... 18.11.31

Sec of State

(through Sir R Hamilton)

*I agree that the rule of substitution
land should be applied in this
case.*

I entirely agree

W. H. ... 2.12.31

E. H. ... 15.11.31

M. H. ... 10/11/31

H To Gov Conf (2)
(3 Answer)

24 DEC 1937

~~Handwritten scribbles and initials~~

S-

Gov. Keene 105 Conf — 12/18/37
Notes the contents of Keene's
report (for various states) that there
is some ground for suspending the
principle of Abolishing Law for Land
(Case)

Original
revised
on
1/8/38

Original on 18061/32

3
D

105

12th August 1880

(X)

Sir,

I have the honor to acknowledge the receipt of your despatch (2) of 29 December 1879, on the subject of the proposed extension to 99 years of the lease held by the Federal Sugar Company Limited of land in the Northern Native Reserve.

2. I note that you approve the extension of the lease to 99 years, and that your decision in this case is not to be regarded as indicating that you will be prepared in future to accept as conclusive the fact that the agreement of the natives concerned had been obtained prior to the passing of the Native Lands Trust Act.

3. With regard to paragraph 2 of your despatch I ordered with the advice and consent of the Central Lands Trust Board that an area of Crown land be added to the Northern Native Reserve. The acreage originally applied for by the Company was 800 acres but on survey this rough estimation proved to be greatly in excess of the actual area, which is, in fact, only 200 acres.

4. In this connection I undertook on the advice of the members of the Central Lands Trust Board to represent to you that the substitution

of ...

THIS FRONT BOARDER
HAS BEEN
REMOVED BY ORDER OF THE GOVERNMENT,
LONDON, S. W. L.

STANDARD

1917

OF THE UNITED STATES OF AMERICA
 IN SENATE AND HOUSE OF REPRESENTATIVES
 REPORT
 OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
 CONCERNING THE LANDS BELONGING TO THE UNITED STATES
 IN THE TERRITORY OF ARIZONA
 UNDER THE ACT OF MARCH 3, 1879
 AS AMENDED BY THE ACT OF MARCH 3, 1891
 AND THE ACT OF MARCH 3, 1909
 AND CONCERNING THE LANDS BELONGING TO THE UNITED STATES
 IN THE TERRITORY OF ARIZONA
 UNDER THE ACT OF MARCH 3, 1879
 AS AMENDED BY THE ACT OF MARCH 3, 1891
 AND THE ACT OF MARCH 3, 1909
 AND CONCERNING THE LANDS BELONGING TO THE UNITED STATES
 IN THE TERRITORY OF ARIZONA
 UNDER THE ACT OF MARCH 3, 1879
 AS AMENDED BY THE ACT OF MARCH 3, 1891
 AND THE ACT OF MARCH 3, 1909

THE COMMISSIONER OF THE GENERAL LAND OFFICE
 HAS THE HONOR TO ACKNOWLEDGE THE RECEIPT OF
 THE FOLLOWING REPORTS FROM THE SURVEYORS
 OF THE LANDS BELONGING TO THE UNITED STATES
 IN THE TERRITORY OF ARIZONA
 UNDER THE ACT OF MARCH 3, 1879
 AS AMENDED BY THE ACT OF MARCH 3, 1891
 AND THE ACT OF MARCH 3, 1909
 AND CONCERNING THE LANDS BELONGING TO THE UNITED STATES
 IN THE TERRITORY OF ARIZONA
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 IN THE TERRITORY OF ARIZONA
 UNDER THE ACT OF MARCH 3, 1879
 AS AMENDED BY THE ACT OF MARCH 3, 1891
 AND THE ACT OF MARCH 3, 1909

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL

H. M. MOORE

J. R. Ryan

COMMISSIONER

O.D.
R 22DEC
D 23

O. O.

Mr. Eastwood 17/12
Mr. Eresston 17
Allen 21/12
Mr. Tomlinson

Downing Street,

24 December, 1931

X O. Bottomley 22.12.31 f

Sir J. Shackleton
Sir G. Grindley
Fems. U.S. of B.
Parly. U.S. of B.
Secretary of State

DRAFT

(3)

KENYA

GOVERNOR

CONFIDENTIAL (2)

Am...

Sir,

I have the honour to acknowledge the receipt of your Confidential despatch No. 140 of the 1st October on the subject of the proposed extension to 99 years of the leases held by the Ramisi Sugar Company of land in the Southern Nyika Reserve.

2. In view of the further information contained in your despatch, I approve of the extension of the leases to 99 years; but my decision in this case must not be regarded as indicating that I shall in future be prepared to

accept

(The decision in this case is to be regarded as a mere courtesy having a strong inhibitory character - at least that is the impression left.)
Decision as to substitution noted
Extension of leases noted

Conclusion *Just*
accept as ~~valid~~ the ~~argument~~ that the
agreement of the natives concerned had
been obtained prior to the passing of
the Native Lands Trust Ordinance.

3. Having regard to *the* this area
the of land in question and the fact that
alternative land of equal extent and value
is available, I see no justification for
refraining from exercising the discretion
reserved by my predecessor as to requiring
the substitution of other land and I request
that you will make arrangements accordingly.

I have etc.

(Sgd) P. GUNLIFFE-LISTER.

38



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.

No. 140

CONFIDENTIAL.

OCTOBER, 1931.

Sir,

I have the honour to refer to your predecessor's Confidential despatch of the 22nd July, 1931, on the subject of an extension to 99 years of the leases to the Ramisi Sugar Company.

112

2. With regard to paragraph 2(a), the lessees have already constructed permanent buildings on the land, consisting of houses for the staff. These buildings can be regarded as "substantial in relation to the value of the concession involved in the lease".

Answered (H)

3. With regard to paragraph 3, suitable land equal in extent and value to the land now to be leased is available. Such land is contiguous to the Southern Nyika Reserve, though not to that portion of the Reserve, which contains the areas to be leased.

101

4. The acreage of the land referred to in (a) of the first paragraph of my despatch No. 319 of 10th June, 1931, has, on survey, proved to be 612 acres and not 800, as previously stated. This land was originally included in the Southern Nyika Reserve solely for the purpose of facilitating survey and has never been utilized by the Natives.

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

THE RIGHT HONOURABLE
J. H. THOMAS, F.C., M.P.,
SECRETARY OF STATE
FOR THE COLONIES,
DOWNING STREET, LONDON, S.W. 1.

BRIGADIER-GENERAL,
GOVERNOR.

C. O.

2

Mr. Eastwood 1677

Downing Street.

Mr. *Rankin*

22 July, 1931.

Mr. Tomlinson.

C. O.
R 17 JUL
D 1931

Sir C. Bollenby.

Sir J. Shuckburgh.

Sir G. Grindle.

Perml. U.S. of S.

Partly. U.S. of S.

Secretary of State.

Sir,

DRAFT.

Ans. 3

KENYA

Confidential

Gov.

I have, etc., to acknowledge the receipt of your despatch No. 319 of the 10th ~~of~~ June, in which you recommended to me that certain leases granted to the Ramisi Sugar Estate in the Southern Nyika Reserve for 33 years, should be extended to 99 years on the ground that this latter period was agreed to by the Local Natives Council concerned in 1927, before the passing of the Native Lands Trust Ordinance.

2. Before I consider the matter further I should be glad to learn:-

(a) Whether on the strength of the informal agreement of 1927 the lessees have constructed "permanent buildings of a value substantially in relation to the value of the concession involved in

in the lease." (I quote from paragraph 2(b)(iii) of my Confidential despatch

No. 2 of the 1st August 1929).

91.1527/28

(b) Whether, ⁴ or not, the construction of such buildings is essential for the proper development of the Estate.

3. I would also refer to the last paragraph but one of my Confidential telegram of the 1st November 1929, in which I said that as a matter of executive

251.1524/29

action I should hold myself free to require that the grant of leases for 33 years should be conditional on the substitution of other land. I do not

wish it to be necessarily assumed that I shall find it necessary to request the substitution of other land in this case, but I should be glad to learn whether in

fact suitable land, ~~if possible contiguous to the reserve, does exist in this category~~ ^{in fact} which could, if necessary be substituted for the area now to be leased, Such land if found

is to be substituted. It should

should, if possible, ^{be commensurate to the} equal in extent ^{and}
and value to the land not to be leased.

I have, &c.

(Signed) PASSFIELD

la

NOTE AS TO THE ORIGIN OF SECTION 9 OF
THE NATIVE LANDS TRUST ORDINANCE.

on 15027/28.

In a Private and Personal telegram to Sir Edward Grigg sent on the 21st July, 1928, Mr. Amery said as follows:- "The maximum term of lease should in general be 33 years. For longer term (not exceeding 99 years) there must be permanent buildings and scheme must be of co-operative benefit. The 99 years proposal is the feature most strongly criticised here".

on 15027/28.

The point was not pursued further until the change of Government. In paragraph 2(b)(iv) of his Confidential (2) despatch of the 1st August, 1929, the Secretary of State said that the maximum term for leases was a matter requiring careful examination on which he wished for the considered views of the Kenya Government before taking a final decision. He went on as follows:

"I may say that on my present information a maximum term of 33 years commends itself to me as the normal arrangement. I appreciate, however, that there may be exceptional cases in which a longer term would be justified; and if permanent buildings of a value substantial in relation to the value of the concession involved in the lease are to be set up, and the scheme is one of co-operative benefit I should be prepared (if the proposal is otherwise acceptable) to agree to a maximum term of 99 years."

on 15540.

In replying to this despatch the Governor said that after giving the most careful consideration to the Secretary of State's views, he was in general agreement that in normal cases a maximum term of 33 years should apply. He agreed, however, in thinking "that there may be exceptional cases in which a longer

term

term would be justified both in the cases of schemes involving principles of co-operative benefit, and also in cases where the construction of buildings of substantial value forms an essential part of the lease. To provide for such contingencies we submitted a revised draft of the text of the clause. This was, however, not considered satisfactory, as it did not make clear the exceptional nature of leases exceeding 33 years. The Secretary of State therefore suggested a redraft identical with Section 9(1) as passed, with the substitution of the word "sanction" for the word "consent" in the last line but two.

22 on 15540/27

25 on ditto

In a later telegram the Secretary of State telegraphed as follows:

"As regards leases I would observe that as a matter of executive action I should hold myself free to require that the grant of leases for over 33 years should be conditional on the substitution of other land."


On green slip above 20(b)

This was based on a minute by the Secretary of State, as follows:- "Power to lease should be definitely restricted so as not to amount in effect to permanent alienation, e.g. why should buildings be erected so substantial as to warrant a 99 years' lease? I think we should say that the power to lease should only be for strictly temporary purposes (e.g. grazing), anything warranting so long a term as anything over 33 years must be accompanied by the addition of other land to the native reserves equal in area - otherwise the security is destroyed".

This minute was scratched out

In regard to this Sir C. Bottomley minuted as follows:- "On the second page of his minute on green paper the S. of S. laid down that leases for over 33 years should entail substitution of land. That passage is crossed

out



out as being one which did not necessitate provision in the Ordinance - the reason being (as I remember the discussion) that in many cases the buildings which justify long leases might be of such a character (say, water mills or sugar factories) that the natives could take them over at the end of the term so that the land would not be lost to the reserve".



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.

No. 319

RECEIVED
6 JUL 1931
COL. OFFICE

10 JUNE, 1931.

My Lord,

I have the honour to inform Your Lordship that at a meeting of the Central Board under the Native Lands Trust Ordinance held at Government House on the 22nd April 1931, I Ordered, with the advice and consent of the Board, that:-

Memorandum 22 JUL 1931

(a) an area of 300 acres in the Southern Ayika Reserve, Coast Province, be leased to the Hamia Sugar Estate for a period of 33 years as from the 1st January, 1928, at a rental of 20 cents per acre per annum for the first five years and thereafter at 40 cents per acre per annum.

(b) that an area of land 25 feet wide between Soda and the Hamia Sugar Estate in the Southern Ayika Reserve, Coast Province, be leased to the Company for 33 years as from the 1st January, 1928, at a rental of 30/- per annum.

2. This Order is in confirmation of an existing agreement which was arrived at in 1927 and approved by the High Local Native Council by their resolution No. 1/1927.

3. A formal grant of the lease was delayed pending the passing of the Native Lands Trust Ordinance, and now that this Ordinance has become law it is necessary to regularise the position.

4. I further Ordered, with the advice and consent

THE RIGHT HONOURABLE LORD PASFIELD, B.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWLING STREET,
LONDON, S.W.1.

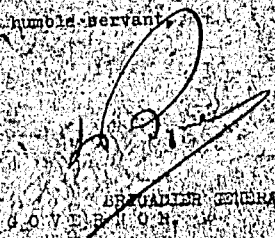
of the Board, that a recommendation should be made to Your Lordship to the effect that these leases for 33 years be increased to 99 years on the ground that this latter period was agreed to in both cases by the Local Natives concerned before the passing of the Native Lands Trust Ordinance.

In view of Section 9(1) of that Ordinance Your Lordship's prior consent to this increase is necessary and this recommendation is therefore submitted for Your Lordship's approval.

I have the honour to be,

My Lord,

Your Lordship's most obedient,
humble servant,



REGISTRAR GENERAL
GOVERNMENT