

38020

1936

KENYA

38020

CO. 533/464
533
500

C0533/464
nyali Bridge, mombasa.

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1/25 file

Subsequent

1937

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FILE A

PRINTED IN INDIA BY THE GOVERNMENT PRESS, CALCUTTA

C.L.
Title
Nominal.

L. Travers Smith, Braithwaite & Co. 24th March 1936

States that the Kenya Govt. have been advised of the unsatisfactory state of affairs in connexion with the bridge and that the suggestion has been made that the Coy. would consider the bridge being freed of tolls for a number of years in return for an annual payment for its maintenance and upkeep; failing such an arrangement the Coy. will have no alternative but to close the bridge.

? We can only pass this on to the persons & inform them Travers Smith accordingly.

Druff Wierwille
Ct. for Smith
28/3/36

In this connection see paras 23 & 24 of the report of the Standing Finance Committee on the Kenya Ordinances for 1936.

We can only proceed as proposed.

J.J. Parn
24/3

Sir C. Bottomley

You should see. There is no reason why Govt should take over the bridge. If it did the demand to make it free of toll could hardly be resisted. It will be noted that £6000 is suggested as the annual payment for maintenance & upkeep.

? as proposed

J.S.W. 26/3

W.D. 27.3.36

To Travers Smith, Braithwaite & Co (London) - 2.4.36

DESTROYED BY STATUTE

To Kenya, Conf (2) — A/1
(with 1 + 2)

4 APR 1936

cf. Tolson, vide
draft 2)

30th April 1936
Governor Conf. No. 44.
Transmitting copy of letter from the Nyali Ltd. and
Notes of a Meeting at Nairobi with local Director
on the 18th April, regarding the maintenance of the
Nyali Bridge.

Clause 16 of the Agreement between
The Nyali Bridge Development
Co. & the Kenya Port Works
Act. may purchase the Bridge.

The Company cannot continue to
operate & from financial point
to buy the Bridge but would
be sorry to see it closed.
What the the outcome will be
is difficult to see.

Putt A.G. 11.5.36

J.P. 11.5

This is a possibly artificial affair. The Company
wants but of course gets by the bridge. The cost
would be large and would not be covered by the money
(The cost of the bridge was about £160,000). Now
money is not prepared to contribute the Co. to maintain
the bridge.

The real point is Mr. Ross' remark that it was
that it was a pity the whole thing should be
it is but that if no reason why the whole
should be transferred to the taxpayer.

The Co. has no power to require boat to do
anything, and that is the only thing that can be
if it would.

Since I wrote the above I have received
a telephone message from the Solicitors,
Travers Smith, Braithwaite and Company, who say
that.

that they want to come and talk on Tuesday next.
They have received a letter from Mr. Ross and I
have no doubt that he has given an account of the
conversation on the 18th of April.

Reference to the earlier correspondence
shows that after being first mooted in 1921, the
scheme was put forward in 1926. Neither we nor the
Admiralty had any objection and the would-be
constructors were so informed. In 1928 negotiations
were still proceeding and the Company's representa-
tives were informed in Kenya that it had been
decided to allow them to build that bridge, subject
to Government being satisfied that the bridge and the
site were suitable and that the Company should agree
to the bridge being inspected and, among other things,
appropriation by Government, either for failure to
comply with the Agreement, or if Government wished
to take over the bridge.

The bridge is now a failure and the question
arises, What is to be done about it? The Agreement
governing the construction of the bridge is to be
found in No. 1 on 35020/35. The Clauses about taking
it over are 11, 16, 17 and 18. Of these, 11 provided
that if the Company failed to construct the bridge
in the specified time, or to the proper designs,
Government might call upon them to remove it, or
remove it at the expense of the Company, or alternative-
ly, might take possession of the bridge on such
compensation as shall be agreed upon. The bridge
has been completed and this does not arise.

Clause 16 provides that if, after the
completion of the bridge, the Company goes into
liquidation or fails or cannot operate the bridge in a
satisfactory

RF/4802/26

15223/28 NO6

satisfactory manner, then Government may buy the bridge from the Company on the terms specified in Clause 18 (i.e. agreed price, taking into account cost of construction, depreciation and equitable compensation for compulsory expropriation). Clause 16, however, provides that if Government does take it over owing to failure, nothing should be payable in respect of compulsory expropriation.

Clause 17 falls to two parts, (1) if the bridge becomes a public danger and (2) if the Company fails to perform its obligations to keep the bridge open for traffic and keep it in good repair to the satisfaction of the D.P.W.

In the former event (i.e. of the bridge becoming a public danger), the Government may require the Company to remove it, or if the Company does not remove it, then Government may do so. Nothing is provided in this case for Government taking it over. In the second case (of the Company not observing these stipulations to keep the bridge working) then Government may either operate the bridge and carry out the repairs, recovering the cost from the Company, or alternatively, may take it over on payment of agreed compensation (in accordance with Clause 16 as no allowance will be made for compulsory expropriation).

Clause 18 covers the case where Government wants to buy the bridge, in which case it has to give 12 months' notice and pay an agreed price with equitable compensation for compulsory expropriation.

Government

Government does not want the bridge and has no intention of purchasing it. The most that the Government is prepared to do is to operate the bridge and collect the tolls and recover any deficit from the Company, handing the bridge back when the Company is in a position to operate it. The Government does not want the Company to remove the bridge and has no power to call upon them to remove it, because it is not a public danger.

At the meeting at Government House, Mr. Ross expressed his regret that so much money put into the Company should have been wasted. That is so, but if Government does not want to maintain the bridge, why should it? What the Company wants is, by some means or other, to induce Government to take it over presumably at a large and handsome price. In this connexion the last minutes registered as No. 14 on 15561/29 are interesting. There, Mr. Anthony told us that the bridge would not be satisfactory, would cost far more than was expected (the original estimate was £60,000 and it now appears to have been more like £150,000) and that the whole show was a very bad one. This appears to be abundantly justified.

However, so far as I can see, Government is sitting very pretty. It doesn't want to buy the bridge, to operate it or to subsidise the Company, and there is no power that I am aware of which can make Government do any of these things. One can be sorry for the people who have lost money, but I am not going to give them mine or anybody else's to make up their deficiencies.

13.5.1956

- The purpose of the loan is to
1. Co. stop working & Govt. directors, charging up to the Co.
 2. Co. goes into liquidation & Govt. either continues to operate or operates under § 16. (at ~~the same time~~)

I don't think the clause is very favorable to Govt., especially as § 16 does not contemplate ~~the~~ actual value as a basis of price fixing. The liquidator might be able to exploit the Govt's

position
 Govt. should continue to maintain the Government's attitude

Copy with No 1 on the 1935 file.

a certain number of notes or debentures outstanding and the holders of these notes are now in a position to put in a receiver or enforce liquidation. Mr. Greenwood thinks they will do one or the other and do it fairly soon.

He admitted that Government could not be compelled to take over the bridge in any circumstances. The clauses all say "may" and the rights conferred on Government are only those under the Agreement. He does however think that Government is wrong in its construction of Clauses 16-17. He says the Agreement ought to be read as a whole and that Clause 16 covers the case where the company is unable, by circumstances over which it has no control, to operate the bridge; while Clause 17 is intended only to cover wilful default in their obligation to operate and maintain the bridge. He said that if it came to moving the bridge the company can easily do it, and have their arrangements out and dried for removing the pontoons and stacking them on the company's property. If that contention is right, it follows that since the Government could not take action under 17 it would be driven back on Clause 16, where it has only the option of buying the bridge but has not the right (conferred by Clause 17) to take over the operation and maintain it. I said, of course, that I didn't know and could not advise on the legal construction of the document. There may, however, be something in it.

Mr. Greenwood also admitted very fairly that at the time the bridge was built the idea in the back of everybody's mind was that, if it was anything like a success, Government would be forced by public opinion to buy out the company in order to get rid of

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Mr. Greenwood of the firm of Smith, Braithwaite and Company and Mr. Pinsent duly called and talked for the best part of an hour without stopping. They said that the company's position was pretty much as follows:-

The principal people concerned are Lord Moyne and a group of shareholders in Birmingham and thereabouts whose mainstay is Mr. Pinsent. Up till now Lord Moyne has been putting up money, as required, but has now come to the conclusion that he won't throw any more good cash after bad. The company has also got

an undesirable toll bridge. He admitted that the expectation had not been fulfilled and that therefore Government was perfectly within its rights in sitting back and doing nothing. He did not, however, think that Government could do more than this.

Then he got on to something further. He said that Mr. Ross, their local representative, thought he had been rather summarily treated and, apart from that, he thought that it would be possible to arrive at some agreement on the basis that Government would prohibit the working of organised ferries with equipment to take cars, lorries, etc., in competition with a bridge. They did not mind competition from native boats or canoes but thought they had a reasonable ground of objection if the municipality or Government were allowed to operate a capacity power ferry. Mr. Ross has informed them that there is an idea that the bus company will take on the job of running the ferry when established, and, in that event, it would be for serious consideration whether Nyali ought not to try to get the operation of the ferry for themselves, thereby producing the situation of having to compete with their own bridge. I told him that there might be something in that, that at first we had thought - and everybody else had - that they objected to the ordinary native earning his livelihood by ferrying people across, which is indeed borne out by the language of their earlier letters, and that he had raised a
definitely

definitely further point. I said that if they put it in writing that they thought they could carry on maintaining and working the bridge provided that a proper ferry was not allowed in competition with them, (there would be no objection to a native canoe ferry which did not compete), not making a profit but not making a loss, and that they would be quite content to have their plans investigated and the whole position examined from time to time by some independent person, there would be a new factor for consideration and it might be possible to review the matter again, though I must point out that Government really did not want the bridge - and certainly did not want to and could not afford to pay for it. They will write a letter to us putting this suggestion and I undertook, without committing myself to anything, to forward it to the Governor. I made it quite clear that one of Kenya's troubles was that there is no money available and, further, that if Government did propose to spend some of its scanty cash on taking over the bridge there would be local opposition, more especially if Government tried to interfere with the Mombasa municipal authority and prevented them from working a ferry, because if Government did take on the bridge it would be said that Government was stifling competition in order to make the bridge pay. They admitted this but said that if they could be allowed to go on operating they thought the situation would not arise.

? wait for letter

J. I. O. R. 20 5

Seen. I agree that we should await the letter in question

23/5/66

A. D. M. C. A.

You look up a bus ferry for work & maintenance

itself or lower falls than the bridge
 does, just about equally as in
 looking to bridge down?
 If any thing, the bridge is anyway,
 it would be worse than the old
 relations to provide a lot of
 bridge as if that is the all the usual fee
 W.S. 25.5.36 stone

6. Travers Smith, Braithwaite, and Co. ----- 26th May 1936:
 Draw attention to difficulties experienced in
 continuing to operate the bridge, and to effect of
 the proposed Act to create ferry service; and request
 that Gov. be asked not to continue with this scheme.

M. Duncan

This letter deals with the general delivery
 of my report of the discussion. The 15 June this
 year of the agreement (copy of W.S. 14 1933) (p. 1)
 clause 16 & 17. The 15 June in this
 agreement. The 15 June in this
 if the Co. is honest, it is to be put

The ferry will comply with the position of
 there is to be a ferry worked under license from the
 D.P.O. and of the ferry is to compete with the
 bridge then the competition is allowed. If not then
 the bridge it would not allow a competitor's ferry to
 carry passengers cars etc. I can't say whether a
 ferry would compete because I don't know where it
 would be put. It might be some miles away.

Copy to Gov. explaining that they cannot
 take and say that their view of clause 16 & 17
 requires revision and that the point about bridges
 seems to have subsisted.
 and tell the solicitors we have passed it on.

W.S. 25.5.36
 28.5.

M. Flood

I agree with the action proposed by you
 except that, instead of saying that the
 Company's view of clauses 16 and 17
 "requires consideration", should be included
 merely to ask Kenya for their views on the
 interpretation of these clauses.

2/6/36 A.H. Duncan

Yes, Mr. Duncan agrees that it would be wrong to
 run a ferry which would compete with the bridge, but he
 would concede as to the difficulty between clause 16 & 17 of
 the agreement.

As proposed. The route has to be
 kept open, and the competition
 arrangement would be that of the 15 June
 working to keep the job done well to
 do so, unless if it is necessary. I can
 understand a ferry would be 3.6.36
 stone

Travers Smith Braithwaite & Co. 6th June 1936
 DESTROYED BY STATUTE

To Kenya. Conf. (1/6/36) cons. 8 JUN 1936
 H. Anson

1/6/36
 8/6/36

10.6.36

P. 3 of 2nd ed.
15-N. 4

9. Gov. 63 Conf. states that Mr. Ross has submitted that his remarks on p. 3 of the Report is capable of misinterpretation.

? Putley
C. Ross: 18
8/7/36

2. 87 since

10. Governor No 75 Conf. - 29 June, 1936.

8. and submits observations on the contentions raised by the Company, comment on the effect of ferry competition.

The despatch is Confidential but subject to legal observations we may write to Messrs. Travers Smith, Braithwaite and Company in the terms of the despatch. The Ferries Ordinance is circulated on 38250/36 herewith.

C. Ross

6.8.36.

Subject a legal view on the interpretation of clause 17 of agreement (Agmt No 1 on 1/35)

J. J. Packer
7/8

I thought that Kenya would probably interpret clause 17 of the agreement of 9/10/29 in this way (in this connection see my marginal note to Mr. Flood's minute of 28/5/36 and my minute of 2/6/36), and it seems to me to be a reasonable construction to put upon it. Clause 16 applies if the company, whether through going into liquidation or otherwise, fails or is unable, in the opinion of the Government

8

"to operate the bridge in a satisfactory manner."
In the present case, however, it is not a question of failing or being unable "to operate the bridge in a satisfactory manner", but of not operating it at all and closing it (see the first and second enclosures to No.4); and in my view this would bring the matter within clause 17, the wording of which seems to be quite clear.

I agree that we should pass on to the company the Government's views with regard to the interpretation of clause 17, and also what is said about not instituting any ferry service which would compete with the bridge so long as it is open to traffic.

The Ferries Ordinance 1936 enclosed in No.3 on Kenya 38250/36 should be sent to Mr Dale for examination.

15/8/36.

H. Duncan.

As proposed on this it puts ferries off the map as far as the bridge is concerned so that here is cleared

J.E.V. Head

20.8

alone

11. To Messrs Smith Brothers & Co.

31 AUG 1936

GR

12. Travers, Smith and Braithwaite.-----1.9.36.
Acknowledges No.11 with thanks:

DESTROYED UNDER STATUTE

Put by:
2.9.36.
3/9/36

13

With reference to the attached letter from Lord Moyne there is really nothing new. There is the usual common form accusation that the Governor has been discourteous and hostile. The evidence for the discourtesy is that somebody in Council is alleged to have said that the Governor expressed the view that Lord Moyne could afford to lose a few thousand a year on the bridge. There is no evidence that the Governor ever said it, or that if he did say it he said it in anything but a jocular spirit, and, after all, why on earth should Government have any sympathy towards the Company.

This bridge was put up by the Company to suit itself and develop its property. It is quite true that it was built to Government requirements and that its cost was probably increased thereby. At the same time, the increased cost over the original estimate was more likely due to the estimate's being wrong than to the Government's requirements in the matter of the strength, etc.

The Company built the bridge and Lord Moyne cheerfully admits that they would

never

never have built it had they not hoped that Government would take it over (which has to be done on a valuation). Now there is no reason whatever why Government should, and the Governor's despatch which figures as No. 9 on the 1935 file shows what the position is. In paragraph 10 of that despatch the Governor says that in his view Government is asked to exercise its right to purchase the bridge in order to relieve the Company of financial embarrassment, or to agree to take over the bridge in the future and make some payment to the Company at once. The Governor's view is that Government should not do anything from public funds to assist the Company merely because its estate development programme has failed to materialize, and, quite apart from financial considerations, he thinks it would be most unwise for Government to think of taking over the bridge which it doesn't want.

No. 4 on this paper gives an account of the discussion which took place at Mombasa. The Company's representative could not put up any reason for Government taking over the bridge beyond that "the Company had invested £100,000 in the Colony" and he considered it regrettable that so much money had been put into the Colony should be wasted. The Government's attitude is, I think, perfectly reasonable. It did not want the bridge, does not care about it, and there is no reason why public funds should be handed over to the Company simply because it built a bridge.

With regard to the ferries, the position is this. At the other end of Mombasa Island there

are regular ferries which are to be operated under the control of the Council. In the case of the bridge, which is at the other end of the Island, there never was a set ferry and all we were concerned with was to see that native boatmen did not have their legitimate trade taken away because of the existence of the bridge. Kenya, as stated in the despatch which we quoted to the Company, has no intention of instituting a regular ferry service to compete with the bridge, and in the letter of the 26th of May last (No. 6 on this file) the solicitors to the Company said that the Company had no desire to interfere with small native ferries.

As regards the interpretation of the clauses in the Agree... Duncan is of opinion that Kenya's... on is reasonable.

I cannot agree... moment that the Company has had harsh and unfriendly treatment. The only thing that has happened is that their enterprise has been rather a failure and there is no justification that I can see for the general taxpayer in Kenya coming to their assistance. If people will go in for speculative land development they can take the risks. I am sorry that I cannot suggest any sympathetic reply to meet this letter from Lord Moyns, who has shown himself to be a good friend of Government, but there are times when one must say, "No". I submit a draft with some hesitation. Any... of this is a matter for local decision it is this... be said any credit to help or not and that is all that is in issue

7.12.36.

of Moyns
26th although the bridge was
built to serve the land (which
was successful) of the Royal Society, I
don't know with what road,
the institution is that then I served
in 1926 there was a car ferry
of a poor sort.

I agree the discussion we had
was too long further but
I have added words to the draft.
Lord
July 26
God's faith is established in
the matter of preparation, and
there is no more to be said
except to advise the Commission
was 7.12.36

See on 10

pretty sure that the Secretary of State, in a matter like this, would be entirely guided by the opinions of the Governor and indeed would not wish to be bothered unless some question of finance or important policy was involved. I pointed out to him the advisability of making it clear that they did not want to put any natives out of their livelihood, since that was the sort of thing out of which political capital could be made. Mr. Greenwood saw the point and, I think, appreciated its importance from the window-dressing point of view. They would now proceed to make an application for the right to operate a ferry with motor boats close to their Bridge and we shall have to sit and see what the result is.

They talked of investing money in Kenya and what happened was that it was lost, to which I could only reply that I had invested money in some undertakings in this country which was also lost, and I didn't see that I had any claim against the general taxpayer.

The position in fact remains exactly where it was, except for the idea of the Company starting a ferry service. But the next move will be in Kenya.

J.L.G. 26.5
18.1.37
 In old newspaper review, as I found from Mr. Hood, they would keep the bridge for car purposes.

Obviously it is a matter for local consideration, if they ever stop what they feel that they must come through the ...

of adjustment on some lines
Sir J. Hoffman
You should see Mr. Hood's minutes in case Lord George speaks to you. It will be well to let the Wade know of the interview (S.O.), but without any lead.
Wade 6-1-37
Agree JKH
6/1
at all

AIR MAIL 16
2/1/37
to Wade - 2/11 - 10 - 7-1-37
to Kenya - 2/7 (sup. 11)
DESTROYED UNDER STATUTE

RSD/15

DOWNING STREET.

7th January, 1936.

Dear Wade,

In regard to the Nyali Bridge, as to which please see the correspondence ending with Kenya's Confidential despatch No. 75 of the 29th of June last, Lord Moyne, who, as you know, is very much interested in the Company, approached Sir John Maffey and, as a result, I had an interview with your Mr. Ross from Kenya and Mr. Greenwood, one of the English directors. They were quite nice and friendly and Greenwood recognised, I think, that there is no cause for the Company thinking that Government will take over the bridge simply to help the Company out of a hole, but he feels bound to go through the motions every time he sees me, and I feel equally bound to tell him that the Secretary of State will be entirely guided by the views of the Colonial Government, and that if he can convince

the

A. de V. WADE, ESQ., C.M.G., C.B.E.

the Colonial Government, which lives in Nairobi, that it ought to take over the bridge, then the Colonial Government would have little difficulty in getting the Secretary of State to agree to any proposals which might result, though, said I, there might be difficulty if any large financial or any large principle of policy became involved.

The great burden of their complaint, however, is that the bridge is being ruined financially because of native ferry competition. In a despatch of the 29th of June, it was said that Government has no intention of instituting or entering into an agreement with anybody for carrying on a ferry service which would compete with the bridge as long as the bridge is open for traffic, and it is now contended that the native boats carry on a very considerable ferry service, which they think ought to be regulated.

There may be something in this, though I, personally, am not very much impressed, but that is for local opinion to say. Anyhow, the Company will probably approach Government for a licence to run a ferry of its own at a point across the channel fairly close to the bridge which will, however, cut off a lot of corners. It would be their intention to apply

for a licence under the Ferries Ordinance, and if they do, the application will at any rate have to be carefully considered. They think that they could raise enough money out of a ferry service to make up for any deficit on the bridge. This may seem odd, but in talking to them I am not so sure that it is. The only thing would be, of course, that native ferries would have to be stopped in that neighbourhood. The Company think that they would be able to find suitable employment for all the men who at present work canoes in that region, and say that they would be better off financially working for the Company. I told them that any proposal for replacing the present native service by a ferry with monopoly rights would, of course, be a matter which Government would have to consider very carefully.

There it is, and I am writing so that Government may be prepared for an application from Nyali Limited to run a ferry. We here are not in a position to say anything much about it, since it is so obviously a thing which the Government of Kenya must decide. I find that by some accident, you did not receive a copy of our

letter

letter to the Company of the 31st of August, and I enclose
one herewith. I am also sending one officially, so as to
complete the file.

Yours sincerely,

(Signed) J. E. W. FLOOD

10
17
9th December, 1936.

Dear Walter,

Thank you for your letter of the 3rd December about the Nyali Bridge. From my reading of the Colonial Office files I do not get the impression that the Company have had very harsh and unfriendly treatment from the Government of Kenya, but in order to get this ventilated it might be a good thing if Mr. Horn came and had a talk with the Department here who would be very glad to see him. If this idea appeals to you, you might ask him to communicate with my Private Secretary.

I do not think there would be much point in bringing in the new Governor before he has taken up his appointment, but I will now send him a copy of your letter and of this reply so that he may know that the question

question exists and be prepared for representations
when he is in a position to examine matters on the
spot.

Yours ever,

(Sd) Jack Waffey.

FORM 9281

10, GROSVENOR PLACE
S.W.1
December 3rd, 1936.

13

RECI VED
15 DEC 1936
C. O. REEDY

Dear Jack

You told me some time ago that I might let you know about the difficulties of Nyali Bridge. As the Managing Director has now come home to discuss the position, I am wondering whether the matter might again be examined.

The original capital of the Nyali Company was put up by a Birmingham Group and scheme of construction of a pontoon bridge on the North side of Mombasa Island to join up the coast to the northward which runs through the estate of the Company was well under way before 1929 when I first came in.

The concession gave the Government the right to purchase the Bridge at a valuation without any allowance for disturbance and in view of that right contained provisions for submission of plans and specifications of the Bridge to the Director of Public Works for his approval before construction could be begun. After the estimates were originally prepared modifications increasing the size and cost of the Bridge were insisted on by the Government which completely shattered the financial basis of the undertaking and in the result practically doubled the cost of the bridge as originally designed. The backers of the Company would of course never have raised the further capital and complied with such requirements except on the basis that the Government meant eventually to take over the Bridge, which undoubtedly was the intention at that time.

The Company has hitherto been running at a loss of between £7,000 and £10,000 a year and a large liability is overdue on

notes which there is no possible present prospect of meeting.

Instead of co-operation from the Government, the local Managing Director, Mr. Ross, has been treated not only with discourtesy by the present Governor but also with evident hostility. The Governor was quoted in the Legislative Assembly as having expressed the view that "Lord Moyne could well afford to lose a few thousands a year on the bridge" and at an interview when the critical financial position of the undertaking was put to him, he adopted a most unsympathetic attitude and said that he would not allow the Bridge to be closed and that if the Company failed to carry it on the Government would run it themselves and recover the cost from the Company.

The noteholders have exercised their right to a charge on the land or other assets apart from the Bridge so that there are no resources from which the Governor could recover cost and we are advised that it is very doubtful whether in view of the terms of Clause 17 of the Concession the Government could take over the Bridge in the event of the threatened liquidation without having to pay for valuation, and the correct construction of the Concession was set out in Messrs. Travers Smith and Braithwaite and Co.'s letter to the Under Secretary of State for Colonial Affairs dated 26th May, 1936.

Although the Governor's remarks showed him to be misinformed as to the financial position of the Company and to have an exaggerated idea of my interest in the Bridge, it was felt to be quite hopeless to renew representations during his term of office. In view of Mr. Ross's visit however it might be well for the Colonial Office to review the situation at the present time and perhaps to put the facts before the new Governor. The proposals put forward were that the Company would

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consider proposals that the Bridge should be taken over at a price considerably less than the actual cost if early action was taken or alternatively for a period, at a reasonable annual payment the Company would be willing to free the bridge from all tolls.

Even if the Government are not prepared to give the Company any such financial support it would be of assistance if a more friendly attitude to the Company was in general adopted having regard to the large amount of British capital locked up in the venture and particularly in the matter of competing ferries. Much of the bridge tolls is being diverted by native boats who ferry over at a point a little to the west of the bridge, thus tapping the native traffic to Kisauini village.

The backers of Nyali feel very sore that whereas tenders to operate the Likoni and Mtongwa Ferries have been called for with a view to granting Concessions, the terms of which provide for the suppression of all native competition, corresponding opportunities to the Nyali Company to operate a ferry on their side of the island have not been afforded on the ground that it was not politic to interfere with just the same kind of native competition.

On this point I would draw your attention to the Colonial Office letter of 31st August, 1936, which in paragraph 4 referred to the Ferries Ordinance 1936 and which letter stated that the Ordinance "has no effect on the position of Nyali Bridge which joins the island to the mainland north. He adds that the Company's fears regarding the possibility of a ferry service being established under this Ordinance in competition with the Bridge are quite unfounded, and that the Kenya Government has no intention of instituting or entering into an

agreement with any person for the carrying on of a ferry service which would compete with the bridge, so long as the bridge is open for traffic."

In fact, we are informed that the native boats above referred to, carry on a continuous ferry service the value of which is estimated at little less than £100 a month, and it is idle to suggest that, because such service is not an authorised ferry service, the assurance given by the Colonial Office in the above letter is being honoured. The Nyali Company would of course consider running a ferry service to the point west of the Bridge at present used provided ~~of course~~ it was given a proper concession and as in the case of the South ferries, appropriate protection from irregular competition.

I am sorry to hear you but I am told that the Colonial Office file on this matter would convince you that Nyali has had very harsh and unfriendly treatment. It is felt inadvisable to reopen the matter in Kenya with the present administration but I would be very grateful if you would consider whether a meeting between the Company's officials and your people and perhaps the new Governor, might possibly be arranged to discuss the matter before he goes out to Kenya.

Yours
Moyn

AN AGREEMENT made the 9th day of October 1929 BETWEEN THE NYALI BRIDGE & DEVELOPMENT COMPANY (hereinafter called 'the Company') of the one part and THE GOVERNMENT OF KENYA COLONY AND PROTECTORATE (hereinafter called 'the Government') of the other part

1. THE Company shall submit to the Director of Public Works for his approval all drawings calculations plans and specifications of the design of the proposed Bridge to connect the Island of Mombasa to the Mainland (including the approaches thereto referred to in the proviso to Clause 6 hereof and all works and appurtenances thereto or built in connection therewith) (hereinafter in this agreement referred to as 'the Bridge') and all contracts agreements and documents of whatsoever description relating to the building of the Bridge. Such approval is and when given shall be given by the said Director of Public Works in writing. Provided that before the submission as aforesaid of the drawings and specifications and other documents referred to in this Clause the Company shall satisfy the Government that its resources are adequate to undertake the building of the Bridge and unless the Company shall prove to the satisfaction of the Government that the Company's resources are adequate for such purpose the Government may refuse to allow the Company to erect the Bridge.
2. THE Company shall supply free of charge to the Director of Public Works so many copies of all or any drawings plans specifications contracts agreements and other documents in connection with or relating to the building of the Bridge as the Director of Public Works may from time to time require.
3. THE Company shall not commence the construction of the Bridge until the written approval of the Government through the Colonial Secretary has been given for such commencement.
4. THE Bridge shall be constructed in accordance with the design plans specifications contracts agreements and any other

documents approved by the Director of Public Works

5.

THE Company shall provide anchorage for the Bridge to the satisfaction of the High Commissioner for Transport both as regards the strength and suitability of such anchorages and as regards the position in the Harbour of such anchorages and the Company shall from time to time make such additions and alterations to such anchorages as may be deemed necessary by the High Commissioner for Transport

6.

THE clear headway at the openings provided for navigation shall not be less than twenty feet at high water ordinary spring tides for the full widths of the openings.

7.

THE Bridge shall be so built as to admit of a section thereof not less than 100 feet in width being easily and safely detached and removed so as to admit of the passage of ships and if a ship is unable by reason of its size or otherwise to pass under the Bridge then and in every such case the Company will if required cause such section to be removed for the purpose of admitting of the passage of such ship.

8.

SUBJECT as hereinafter provided the Government shall construct roads along such alignments as the Government shall decide which shall connect the Bridge with Salim Road on Mombasa Island and with the Mombasa-Malindi Road on the mainland and in consideration of the construction of the said roads the Company shall pay to the Government on demand a sum of £1,165 Provided that the Company shall at its own expense construct the approaches to the Bridge including all works incidental thereto within 100 feet from each end of the Bridge in accordance with plans approved by the Director of Public Works and shall thereafter maintain such approaches including the said works in a proper state of repair to the satisfaction of the Director of Public Works

9.

THE Bridge shall be completed within a period of two years from the date of the written approval for the commencement of

the work given under Clause 3 hereof Provided that the Government may extend the time within which the Bridge shall be completed for such period as it may think fit Provided also that in the event of the Company desiring to make any variation in design or method of construction of the Bridge then and in such case the Company shall apply to the Director of Public Works for permission to make such variation and such variation shall not be made unless and until the permission in writing of the Director of Public Works thereof shall have been given

10. THE Government by its duly authorised servants and agents may from time to time during the building of the Bridge inspect all or any part of the work involved in or connected with the building of the Bridge and the Company shall allow such servants and agents free ingress to any part of the Bridge for the purpose of such inspection and shall grant such servants and agents every facility for such inspection If after inspection of the Bridge from time to time the said servants and agents or any of them shall certify in writing that all or any part of the work inspected is not satisfactory then the Company upon demand being made by the Government through the Colonial Secretary shall rebuild or alter such work to the satisfaction of the Director of Public Works Provided that in cases of differences arising between the parties under this Clause such differences shall be referred to the Consulting Engineers for Harbours to the Colonial Office-whose decision shall be final On the completion of the Bridge each span shall be tested All tests shall be carried out by the Company at its own expense under the direction and to the satisfaction of the Director of Public Works

11. IF the Company shall fail to construct the Bridge within the time limited by Clause 9 hereof and/or in accordance with the design plans and specifications contracts agreements documents and requirements referred to or specified in any of the preceding Clauses hereof the Government may require the Company to remove the struc-

73

ture within a stated time and if the Company does not remove the structure within the stated time then and in such case the Government may remove the structure and may recover the cost of removal from the Company or in the alternative the Government may by its servants and agents enter upon the Bridge or any part thereof and take possession thereof and thereafter the Bridge together with all the materials on the spot connected with the building thereof and all the buildings appurtenant to the Bridge or used in connection therewith shall be the property of the Government the Government paying therefor such compensation in respect thereof as shall be agreed upon between the Government and the Company and failing agreement as shall be determined by an engineer to be appointed by the Government and the Company jointly and failing joint approval of such an engineer as shall be determined by arbitration in accordance with the Arbitration Ordinance.

12. UPON completion of the Bridge the Company shall apply to the Government through the Colonial Secretary for permission to open the Bridge to traffic and the Bridge shall not be opened to traffic unless and until the Government through the Colonial Secretary shall have given such permission in writing Upon such permission being given the Company shall open the Bridge to traffic and subject to the payment of the tolls hereinafter laid down the Bridge shall be kept open to every vehicle the weight of which when laden is less than five tons and to all foot passengers and animals Provided that no metalshod vehicles of any description shall be permitted to use the Bridge except such vehicles as Government may for public purposes require to take or to be taken across the Bridge The Government by its duly authorised agents may for public purposes require the Company to allow vehicles the weight of which when laden does not exceed ten tons to cross the Bridge Provided that while any such vehicle is crossing the Bridge the Bridge shall be closed

to all other traffic and provided further that all or any damage of a substantial nature caused to the decking or structure of the Bridge by metal-shod vehicles taken over the Bridge under the provisions of this Clause shall be made good at the expense of the Government.

13. THE Bridge shall be kept open for traffic as aforesaid continuously except when it shall be closed for the purpose of effecting repairs or by order of the Director of Public Works. The Bridge shall not be closed for more than six hours at a time by order of the Company unless the approval in writing of the Director of Public Works for such closing shall have first been obtained.
14. THE Bridge shall at all times be kept and maintained by and at the expense of the Company in good repair and in a proper condition to carry the traffic to the satisfaction of the Director of Public Works and the Bridge shall be kept completely and adequately painted and all defective parts shall be replaced by and at the expense of the Company and to the satisfaction of the Director of Public Works. Repairs to the Bridge shall be done with all possible speed and whenever possible such repairs shall be done during the hours between sunset and sunrise. The Director of Public Works may whenever he is satisfied that any repairs are necessary to the Bridge and that the Bridge must be closed in order to effect such repairs order that the Bridge be closed until the necessary repairs have been effected. The Company shall at all times keep ready for any emergency so many spare pontoons in an efficient state as the Director of Public Works may determine.
15. THE Government may at any time construct and maintain or authorise construction and maintenance across the bridge of such works as water mains telegraphs or telephone cables and similar structures. Provided that such works shall not materially impair the effective carrying capacity of the bridge and no charge

shall be made to the Government for the use of the bridge for such construction and maintenance as aforesaid and the Company shall grant to the Government and its duly authorised servants and agents every reasonable facility for carrying out such construction and maintenance. Such construction and maintenance as aforesaid shall be open to the inspection of and shall be approved by the Director of Public Works or his duly authorised servants and agents and the Company shall grant every reasonable facility to the said Director of Public Works in connection with such inspection and approval.

16. IF at any time after the completion of the Bridge the Company whether through going into liquidation or otherwise shall fail or shall be unable in the opinion of the Government to operate the Bridge in a satisfactory manner then and in such case the Government may purchase the Bridge from the Company on the terms mentioned in Clause 18 hereof provided that in such case or in case the Government takes over the Bridge under Clauses 11 or 17 hereof no compensation shall be payable in respect of compulsory expropriation nor shall exemption from tolls under Clause 19 be granted.

17. IF at any time in the opinion of the Government:-

(a) the Bridge becomes a public danger or

(b) the Company fails to observe or perform the stipulations in Clause 13 and/or 14 hereof

the Government through the Colonial Secretary may call upon the Company to render the Bridge safe or to perform and observe the conditions and stipulations in Clauses 13 and/or 14 hereof and if within three months after being so called upon the Company does not take such action as may be specified the Government may in the case (a) require the Company to remove the structure within a stated time and if the Company does not remove the structure within the stated time then and in such case the Government may remove the structure or in the case (b) the Government may take over the operation of the Bridge and undertake and execute the necessary

repairs and in either case may recover the cost from the Company or in the alternative the Government may take over the Bridge from the Company paying therefor such compensation in respect thereof as shall be agreed upon between Government and the Company and failing agreement as shall be determined by an engineer to be appointed by the Government and the Company jointly and failing joint approval of such an engineer as shall be determined by arbitration in accordance with the provisions of the Arbitration Ordinance and the Bridge shall thenceforth belong to the Government

18. IN the event of the Government desiring to purchase the Bridge from the Company it may do so upon giving 12 months' notice in writing to the Company of such desire. The price to be paid by the Government for the purchase of the Bridge shall be determined by agreement between the Government and the Company and failing agreement shall be determined by an engineer to be appointed by the Government and the Company jointly and failing joint approval of such an engineer shall be determined by arbitration in accordance with the provisions of the Arbitration Ordinance. The consideration on which the price to be paid for the Bridge under this Clause shall be determined shall be the cost of construction of the Bridge the depreciation which has taken place since its construction the general suitability of the Bridge at the time of purchase for the purposes for which it was constructed and equitable compensation for compulsory expropriation

19. IN the event of the Government purchasing the Bridge under the provisions of Clause 18 then and in such case no tolls shall be leviable:

- (a) from the owners or occupiers of land on the Company's present estate as defined in the plan annexed hereto or
- (b) from their families or domestic servants or
- (c) in respect of the personal property of those persons mentioned in (a) and (b) above.

Provided that this concession shall not extend to vehicles or goods used for trade commercial or farming purposes

20. SO long as the Bridge is owned by the Company

(a) the Company shall indemnify the Government against all claims whatsoever arising from any damage which may be caused to the Bridge by floating objects such as ships lighters buoys or any other floating objects breaking from their moorings or which may be caused by or to any craft due to faulty navigation or which may be caused by or any craft while passing under the Bridge

(b) the Company will accept entire responsibility for and will hold the Government indemnified against all damage which may be caused to any floating property in the Harbour or any property on shore by reason of the breaking away of the Bridge from whatsoever cause such breaking away may occur

(c) the Company shall indemnify and keep indemnified the Government in respect of any claims whether public or private arising out of the construction working use control or management of the Bridge

21. THE Company shall not transfer or part with the ownership of the Bridge or assign or mortgage any of its rights or interests therein to any person or persons or Company before or after the completion of the Bridge except with the permission in writing of the Government through the Colonial Secretary and the Government may in its absolute discretion grant or refuse such permission.

22. Tolls payable by members of the public for crossing the Bridge shall not exceed the following:-

	Shgs.	Cts.
(a) All passenger vehicles (persons limited to six	2	00 each
(b) Motor bicycles and rickshaws		50 "
(c) Push bicycles		25 "
(d) Foot passengers or persons in excess of six in number travelling in any vehicle		10 "

	Sgds.	Pts.
(a) Animals		16 each
(b) Animals laden		25 each
(c) Vehicles for commercial purposes loaded or empty not exceeding 1 1/2 tons	2:	50 each
(d) Vehicles exceeding 1 1/2 tons but not exceeding 5 tons (limit 5 tons without permission as in Clause 12)	4:	00 each

NOTE: The tolls payable under (a) (b) (c) and (d) shall cover all baggage goods etc. conveyed.

23. NO tolls shall be levied in respect of police or military on duty or their equipment baggage or transport.

24. TOLLS payable by Government or Government servants on duty other than as provided under Clause 23 shall be those specified in Clause 22 less 25 per cent.

IN WITNESS whereof the Company have caused their common seal to be hereunto affixed and the Governor has hereunto affixed the Public Seal of the Colony the day and year first hereinbefore written.

THE COMMON SEAL of the Company
was hereunto affixed in the presence of:

(Sgd) K. H. RODWELL (Managing Director)

" J. M. D' COSTA (Secretary)

THE PUBLIC SEAL of the Colony
was hereunto affixed in the presence of:

(Sgd) H. M. MOORE.

Colonial Secretary.

9-10-29.

DATED 9th October 1929.

THE NYALI BRIDGE & DEVELOPMENT CO.

-and-

THE GOVERNMENT OF KENYA COLONY AND
PROTECTORATE.

Depts

AGREEMENT

Travers Smith Braithwaite & Co.
4 Throgmorton Avenue, E.C.2.

38020/36.

asked 12

Mr. Grossmith. *22.8.36*

Mr. *Chapman*

Mr. *25*

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly, U.S. of S.

Secretary of State.

25 AUG
D *97*

Downing Street:

31 August, 1936.

Sz

Gentlemen,

DRAFT.

(7)

MESSRS. TRAVERS SMITH, BRAITHWAITE AND COMPANY.

With reference to the letter from this Department of the 5th of June, I am etc. to inform you that he has now received the comments of the Governor of Kenya on the representations contained in your letter of the 26th of May regarding the future of the Nyali Bridge.

The Governor observes that Messrs. Nyali Limited contend that Clause 17 of the Nyali Bridge Agreement, under which the Government right arises to operate and repair the bridge and claim the cost from the Company, is only applicable in circumstances where the Company wilfully fails to fulfil these obligations

copy to Mr. ...

FURTHER ACTION

obligations

joins the island to the mainland north
the Company's fears regarding the
possibility of a ferry service being
established under this Ordinance in

He said that

competition with the bridge are quite
unfounded, and the Kenya Government has
no intention of instituting or entering
into an agreement with any person for
the carrying on of a ferry service
which would compete with the bridge,
so long as the bridge is open for traffic.

I am, etc.

(Signed) J. E. W. FLOOD

KENYA



34
GOVERNMENT HOUSE,

NAIROBI,

KENYA.

No 75

CONFIDENTIAL.

RECEIVED

20 JUL 1936

G.O. REGY

29 June, 1936.

Sir,

(8)
I have the honour to acknowledge the receipt of your Confidential Despatch of the 8th June, enclosing a copy of a letter from Messrs. Travers Smith, Braithwaite and Company regarding this Government's rights under Clauses 16 and 17 of the Nyali Bridge Agreement.

2. The Company contends that Clause 17, under which the Government's right arises to operate and repair the bridge and claim the cost from the Company, is only applicable in circumstances where the Company wilfully fails to fulfil these obligations if it can do so. In effect the Company represents that its circumstances are or will be those provided for in Clause 16, i.e. liquidation or failure, and that Government's only remedy is to exercise its right to purchase under that clause. I am unable to accept this interpretation. Clause 17 quite clearly entitles the Government after giving three months notice to take over the operation of the bridge and recover the cost from the Company in the event of the Company's failure to keep the bridge open for traffic, whatever may be the

THE RIGHT HONOURABLE
W. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON S.W. 1.

the reason for such failure.

3. It would of course be incumbent on the Government to prevent a sudden interruption of traffic such as would be caused by the closing of the bridge, which is a link in the main trunk road northward from Mombasa, and since negotiations with the Company with a view to the waiver of the period of notice would probably be unsuccessful, it might be necessary to re-introduce temporarily the ferry service which was in operation before the bridge was built.

4. As regards competition from ferries, the Ferries Ordinance, 1936, was passed in the Legislative Council on the 23rd May. Copies of the Ordinance were enclosed in Kenya despatch No. 320 of the 22nd June. This is a measure designed to secure the satisfactory operation of the Likoni and Mtongwe ferries, which run from Mombasa Island to the mainland south, and has no effect on the position of Nyali bridge, which joins the island to the mainland north. The Company's fears regarding the possibility of a ferry service being established under this Ordinance in competition with the bridge are quite unfounded, and the Government has no intention of instituting or entering into an agreement with any person for the carrying on of a ferry service which would compete with the bridge, so long as the bridge is open for traffic.

38250/36 (3)

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

Arthur...
GOVERNOR'S DEPUTY

KENYA.

NO. 63 CONFIDENTIAL.



RECEIVED
GOVERNMENT HOUSE
6 JUL 1936 NAIROBI,
C.O. REGY
KENYA
10 JUNE, 1936.

Sir,

with reference to my Confidential despatch
H. No. 44 of the 30th April, 1936, I have the honour to
transmit for your information the following comment
made by Mr. V. A. C. Koss, Local Director of Nyali
Limited, on the notes of the meeting forwarded there-
with.

"My remark as reported on Page 3 appears capable
of misinterpretation, and to the best of my
recollection I stated that it could scarcely be
expected that our shareholders could care very
much whether the Bridge was kept open or not,
as they must have long given up hope of get-
ting any return for their money, but I did not
say that it was a matter of indifference to
them."

I have the honour to be,

Sir,

Your most obedient, humble servant,

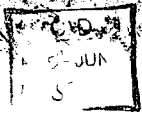

BRIGADIER-GENERAL
GOVERNOR

THE RIGHT HONOURABLE
W. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWLING STREET,
LONDON, S. W. 1.

C. O.

AIR MAIL

- Mr. Greenfield
- Mr. ~~Flint~~ *S*
- Mr. ~~...~~
- Sir C. Parkinson
- Sir G. Tomlinson
- Sir C. Bolton
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.



Downing Street,

8 June, 1936.

Sir,

(Handwritten signature)

I am etc. to acknowledge the receipt of your Confidential despatch No.44 of the 30th of April ^{encl's} transmitting a copy of a letter from Nyali Ltd. together with the notes of ^{the discussion} ~~a meeting held at Nairobi~~ on the 18th of April with the local Director of the Company.

2. Mr. Greenwood of the firm of

Messrs. Travers Smith, Braithwaite and Co. and

Mr. Pincet called at the Colonial Office on behalf of Nyali Limited, on the 20th of May and made

representations with regard to the (apparently plain) ^{of} interpretation ^{at} by your Govt. of Kenya on Clauses 16 and 17 of the Agreement between the Govt. and ^{the} Nyali Bridge and Development Company dated the 9th

DRAFT

KENYA
CONFIDENTIAL
GOVERNOR

From Travers Smith, Braithwaite & Co. No 6

FURTHER ACTION.

of October 1929, and with regard to the effect upon the Agreement of the proposed

legislation relating to ferries. These

*which has been published
in the Gazette*

representations have since been made in

writing and I enclose for your consideration

a copy of the relevant letter from Messrs.

Travers Smith Braithwaite and Co.

3. I shall be obliged if you will

furnish me with your views on the Company's

interpretation of Clauses 16 and 17 of the

Agreement, and you will no doubt consider *also*

the *objections* regarding the operation

of ferries in there appears to be

some substance, since it would be obviously

inexpedient for *the Government* to permit a *concourse*

of large ferries which would compete

with the bridge for the *transport* of vehicles etc. It

will be observed that the Company has no objection

to *other persons* continuing to ply

(Signed) W. ORMSBY GORE

H.

TRAVERS SMITH, GRAITHWAITE & CO

11, GREENWOOD
& 17, WILKINSON

TELEGRAPHIC ADDRESS: TRAVERS SMITH STOCK, LONDON

TELEPHONE NO.: METROPOLITAN 054512 (L. 4951)

3/28
4. Throgmorton Avenue
London W.C.2

26th May 1936.

Sir,

Nyali Ltd. - Ref. 38020/36.

ACKD

Further to our letter of the 24th March last, and our recent interview with you, we write to confirm that, as we reported to you, the Company's representative, Mr. V.A.C. Ross, was interviewed by His Excellency the Governor of Kenya on Saturday the 18th April last, and that there was also present the Colonial Secretary, the Attorney General, and the Director of Public Works and other officials.

At this interview we are informed that Mr. Ross reported the Company's position and the difficulties in which they were placed and was informed by His Excellency that the Bridge must be kept open for traffic at all costs and that if the Company did not do so the Government would, under the Concession Agreement, take it over and operate it until the Company was in a position to do so, and would claim to recover the cost from the Company.

We are bound to point out however, that we think the terms of the Concession do not go quite so far as the Governor suggested. Clauses 16 and 17 of the Concession Agreement deal with the circumstances when the Company fails to operate the Bridge, and it is submitted that it is clear that these clauses relate to different circumstances.

Clause 16 deals with the circumstances in which the Company

Answer - ?
copy to Kenya (6)

34

is unable to operate the Bridge, whereas Clause 17 appears to deal with the circumstances in which the Bridge becomes a public danger or the Company fails to observe or perform the stipulations as to maintenance and repair. We think that it is clear the latter clause under which the Government's right arises to operate and repair the Bridge, and reclaim the cost from the Company, is only applicable in circumstances where the Company wilfully fails to fulfil these obligations if it can do so.

Clause 16 provided for the circumstances in which the Company is now placed or would shortly be placed, of being unable with the best will in the world, to operate the Bridge.

It is true that even so the Government's right to take over the Bridge under Clause 16 is purely permissive, and it can take the attitude, if it considers it right and proper so to do, that it will do nothing in the matter, in which case presumably the Bridge would have to be abandoned.

As we explained at our interview, it is not the Company's desire either to fail in its obligations or in any way to embarrass the Government by requiring anything unreasonable from the Government, but in view of the circumstances which we mentioned, and in particular the increased cost of the Bridge to which we have referred in our previous correspondence, and the ferry competition, the Company has had no alternative but to keep the Government advised of its position.

It must be borne in mind that the Concession Agreement was negotiated in 1929 at a time when the situation was very different and when no doubt both parties genuinely believed it would be to their mutual advantage that the Bridge should be built.

The Company has just been advised that a Bill is being introduced by the Government of Kenya providing for the control of all ferries by the Public Works Department, and that this Bill was being debated in the Legislature this week. We refer to the Notice in the Official Gazette dated 5th May which summarises the objects and reasons for this Act. If this Bill is passed then undoubtedly the operation of certain ferries would be authorised, apparently for transport not only of individuals but also of motor cars etc.

copy attached

It is admitted that there is no restriction on ferries provided for in the Concession Agreement. Having regard however to the fact that the ferries practically ceased on completion of the Bridge and that in the minds of all concerned the Bridge would naturally have taken the place of the ferry service, we are bound to point out that the creation of a full ferry service under this new Act can only have one effect, namely, to prejudice the Company's position and definitely take away from the value of the Concession which the Company has done its utmost to fulfill and has in fact fulfilled.

We are therefore requested to ask that it should be represented to the Governor of Kenya through your good offices.

that this is a step definitely prejudicial to the Concession granted by the Government and inconsistent with the spirit of the Concession Agreement.

The Company is anxious and willing to do its best to maintain the Bridge which may just be possible if there is no undue competition. It is to be borne in mind however that there is no prospect whatever of the Company being more than maintain the Bridge on its tolls, and even then there will probably be for some time further loss. It might be possible at least, putting aside any question of interest on capital and other overhead charges, to keep the Bridge going if a large and active ferry service was not instituted.

The Company has no desire and does not wish to interfere with the ferries which it is understood are used by the national parent points of the coast.

We shall be glad to hear that you will submit this representation to the Government of Kenya so as to avoid if possible the Company being further embarrassed in its efforts to satisfy its obligations under the Concession.

We are,
Yours faithfully,

James Smith Smith

The Under Secretary of State,
Colonial Office,
London, S.W.1.

Mr. Macdonald

KENYA.

NO. 111 CONFIDENTIAL



GOVERNMENT HOUSE

NAIROBI

KENYA

APRIL. 1936.

Sir,

with reference to MR. MALCOLM MACDONALD'S
CONFIDENTIAL despatch of the 30th October, 1935, I
have the honour to transmit for your information copy
of a letter from Nyali Limited together with the notes
of a meeting held at Nairobi on the 18th April, 1936
with MR. V. A. J. ROSS, Local Director of the Company.

I have the honour to be,

Sir,

Your obedient, humble servant,

Macdonald (S)

BRIGADIER-GENERAL
GOVERNOR

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

NYALI LIMITED.

Ref: 170

P. O. Box 117,

MOBASA.

2nd April, 1936

The Private Secretary to
His Excellency the Governor,
Government House,
NAIROBI.

Dear Sir,

NYALI BRIDGE:

Further to my telephone conversation today, I have to request that you will lay this letter before His Excellency the Governor.

I am instructed by the Directors of this Company to acquaint the Government of Kenya of the position with regard to the maintenance of Nyali Bridge.

Nyali Limited cannot continue to operate the Bridge unless it can obtain further capital, and the time has now arrived when this cannot be done, as the Company is unable to borrow more money.

Unless, therefore, some satisfactory arrangement can be made with the Government in the near future, it will become necessary for my Company to close operations and close the Bridge, and I have decided to give formal notification of this.

I am also instructed to point out that it was made clear in a letter addressed to the Secretary of State for the Colonies by Messrs. Travers Smith, Leithwaite & Company on the 1st of August last, that it might become necessary to advise the Government of this Company's inability to continue to operate the Bridge in a satisfactory manner, and therefore the decision now reached is not entirely unexpected.

It is possible that this letter should be addressed to the Honourable the Colonial Secretary, but in order to save time I am sending it direct to you, as the matter is urgent.

I understand that His Excellency will arrive in Mombasa on the 9th instant and I shall be grateful if I may be granted an interview, in order that the matter may be discussed, or I could arrange to come to Nairobi before that date if necessary.

Yours faithfully,

(Sgd:) V. C. HES.

Local Director.

NYALI LIMITED

Directors:

RANOLF NELSON GREENWOOD, M.C., *Chairman*
ROY PINSENT BERNARD LESLIE TAYLOR

Manager and Local Director:

V. A. C. ROSS

REPORT OF THE BOARD OF DIRECTORS for the Ordinary General Meeting to be held at the Registered Office of the Company at 10, 30, rue de la Harpe, Paris, on Thursday, the 12th day of November, 1936.

The Directors present the Balance Sheet as at 30th June, 1936, duly audited.

The revenue from Bridge Tolls during the year to 30th June, 1936, shows an increase of £494 18s. 7d., as compared with the previous year. The Tolls for the use of the Bridge were increased as from the 1st November, 1935.

The Bus Service, referred to in the report of the previous year, commenced to operate on the 15th April, 1936, but it has not, so far as can be ascertained, materially affected the opposition ferry service.

The strictest economy continues to be exercised in regard to the affairs of the Company.

The repairs to the Bridge during the year necessitated the expenditure of over £400.

Notice has been received on behalf of the majority of the Noteholders requiring payment of their Notes on the 31st July last, which the Company was unable to do. The Noteholders have issued a subsequent formal request for a Charge to be created on the Company's assets pursuant to the Conditions of their Notes.

Mr. Ross is now on his way to England, and it is hoped after his arrival to arrange for him to meet the Shareholders in London to discuss the Company's affairs and position.

Under the Articles of Association Mr. R. N. Greenwood retires from the Board by rotation and, being eligible, offers himself for re-election.

RANOLF N. GREENWOOD, *Chairman*
ROY PINSENT, *Director*
BARTON, MAYHEW & Co.,
European Secretaries

1, BOULEVARD HAUSMANN,
PARIS

26th October, 1936.

NYALI LIMITED

Balance Sheet as at 30th June, 1936

LIABILITIES.

	£	s.	d.
Share Capital			
Authorised and Issued			
180,000 Preferred Shares of 20sh. each, fully paid	£180,000	0	0
26,000 Deferred Shares of 20sh. each, fully paid ...	26,000	0	0
		206,000	0
Five year Notes due 1937		115,410	0
Barclays Bank, Ltd.—			
London Overdraft		10,214	18
Sundry Creditors		778	4
Plots Sold		1,800	0

RANOLE N. GREENWOOD, }
ROY PINSENT, } *Directors.*

£384,202 18 7

ASSETS.

	£	s.	d.
Freehold Land and Buildings, at cost			87,636 13 4
Motor Vehicles, less Depreciation	180	0	0
Tug and Barge, less Depreciation	1,860	0	0
Furniture and Fittings, less Depreciation	470	0	0
Saleable Construction Plant and Machinery	2,203	9	5
			4,663 9 15
Sundry Debtors			179 13 7
Cash at Bank and in Hand—			
Barclays Bank (D. C. & O.), Ltd., Mombasa	838	17	6
In Hand	2	17	0
			841 14 16
Goodwill	20,000	0	0
Underwriting Commission	4,000	0	0
Preliminary Expenses	782	13	0
Notes Discount Account	5,749	8	8
			32,532 1 8
Bridge Construction Account—			
As per last Balance Sheet			1,775 13 11
Estate Development Account—			
As per last Balance Sheet	49,779		
Add Excess Expenditure for the Year	6,266		
			56,045 7 7
Bridge Working and Maintenance Account—			
As per last Balance Sheet	6,746	5	11
Add Expenditure for the Year	£4,670	12	8
Less Bridge Tolls for the Year	9,268	8	7
			1,807 8 8
			8,069 14 7
			<u>£384,202 18 7</u>

AUDITORS' REPORT TO THE SHAREHOLDERS.

We have examined the above Balance Sheet with the books and vouchers of the Company. We have obtained all the information and explanations we have required and in our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, according to the best of our information and the explanations given to us, and as shown by the books of the Company.

MOMBASA, 5th October, 1936.

For GILL & JOHNSON, Auditors.
E. L. RELE, A.C.A.

NYALI LIMITED

REPORT OF THE DIRECTORS AND ACCOUNTS

to 30th JUNE, 1936

NOTICE IS HEREBY GIVEN THAT THE NINTH ORDINARY GENERAL MEETING OF NYALI LIMITED will be held at the registered office of the Company on Thursday, the 12th day of November, 1936, at 10.30 a.m., to receive the Directors' Report and Accounts to the 30th June last, and to transact any other business which can properly be transacted at an Ordinary General Meeting.

By order,

BARTON, MAYHEW & Co.

European Secretaries

1, BOULEVARD HAUSMANN

PARIS

25th October, 1936.

NOTES OF A MEETING HELD AT GOVERNMENT HOUSE AT 11 a.m.
ON SATURDAY THE 18th APRIL, 1936:

PRESENT: His Excellency the Governor,
The Hon: Colonial Secretary,
The Hon: Attorney General,
The Hon: Director of Public works,
Mr. Mortimer - Lands Secretary (representing
the Commissioner for Local
Government, Lands and Settle-
ment).
Mr. ROSS - Local Director, Nyali Limited.

Mr. ROSS referred to correspondence between Messrs. Travers, Smith, Braithwaite and Company, and the Colonial Office. He pointed out that Nyali Limited were not in a position to borrow money and that they could not continue to operate the bridge without help from Government. The Directors considered that it would be a catastrophe to close or take away the bridge, but they wished to make it clear that no shareholder or group of shareholders would advance further funds.

HIS EXCELLENCY said that in regard to the circumstances of the case the Government in these circumstances would have open to them to take over the bridge and recover from the Company any expenses incurred in excess of the tolls collected.

Mr. ROSS expressed the opinion that Government could not take over the operation of the bridge indefinitely without purchasing it. He understood that the Agreement had been interpreted to mean that if the Company ceased to operate then the Government would take over the bridge at a valuation.

HIS EXCELLENCY said that he wished to make it clear that Government had no intention of purchasing the bridge. When the concession was made there was no intention that it should do so. Government had in fact objected to the site of the bridge, which had been selected by the Company in order to develop Nyali Estate. He pointed out

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HIS EXCELLENCY said that having due regard to the circumstances of the case the only alternative open to Government in these circumstances would be to operate the bridge and recover from the Company any expenses incurred in excess of the tolls collected.

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that

47
that the object of inclusion of the clause allowing Government to operate the bridge and recover expenses in excess of the tolls collected was to prevent the sudden interruption of traffic.

Mr. ROSS pointed out that the matter had been referred to the Colonial Office as long ago as August last year, and it had been suggested that Government should pay a subsidy to the company.

HIS EXCELLENCY said that he was aware of this but that Government was not prepared to do so.

Mr. ROSS asked what the position of the company would be in the event of Government operating the bridge and collecting the tolls.

HIS EXCELLENCY pointed out that the bridge belonged to the Company and as soon as they were in a position to operate it again Government would gladly hand the operation back. This was the only course which recommended itself to him. There was of course no objection to the Company applying to the Secretary of State.

Mr. ROSS said that the company had invested £400,000 in the Colony, their view was that Government under the Agreement could either buy the bridge or call on them to remove it.

HIS EXCELLENCY said that the situation was a very unfortunate one but that he had to consider the taxpayers. Government could only call on the company to remove the bridge if it became a danger.

Mr. ROSS pointed out that the cost of operating the bridge was very considerable. New decking was required which would cost £5,000 to £6,000. Dry rot had damaged the timber which had been approved by the Consulting Engineers to the Crown Agents. Government had required a bigger bridge than was originally intended. In reply to the Director of Public Works he stated that the

decking/.....

decking of the bridge was supported on 8" by 6" timber beams a foot apart. The decking was composed of 12" by 3" planks. The cost of this decking added to the cost of maintenance made the position impossible for the company, being equivalent to an additional expenditure of £1,000 a year. The expenses of operating and maintenance last year amounted to £3,938 : 19 : 6, whereas bridge tolls amounted to £2,768 : 4 : 11. There had been an increase in revenue this year owing to the cotton crop.

HIS EXCELLENCY pointed out that as the coast developed the takings of the bridge would increase proportionally. He asked if the bridge and the estate were the same Company.

Mr. ROSS said that they were and that a tenth of his salary was charged to the bridge.

THE DIRECTOR OF PUBLIC WORKS pointed out that if government took over the operation of the bridge it would have to replace the decking and recover the cost from the Company.

Mr. ROSS said he was unable to say what the position of the company was. It might cease operation or go into liquidation. It was, in fact, a matter of indifference to the shareholders if the bridge was kept open or not.

HIS EXCELLENCY pointed out that the shareholders might find themselves liable for further disbursement if government were compelled to operate the bridge.

Mr. ROSS referred to the penultimate paragraph of a letter from Messrs. Travers, Smith and Braithwaite, in which the Company had asked for assistance from government. He said that he now understood the view of government and felt there was no more to be said. He considered it regrettable that so much money put into the Colony should be wasted.

HIS EXCELLENCY agreed that the position was regrettable. There was nothing that he would sooner see than the Company being able to operate successfully.

*See
Account
1897*

H.
FRANERS SMITH GRANTHAITE & CO.
10, FINE COURT,
R. F. WILSON ST.,
TELEGRAPHIC ADDRESS: FRANERS SMITH GRANTHAITE LTD. LONDON
TELEPHONE: 40 METROPOLITAN CANTONMENT

Sir,

RECEIVED
26 MAR 1936
C. O. LTD.
Ref. 58020/35.
WYALY LIMITED.

4. Throgmorton Avenue
London E.C.2
49

24th March 1936.

5-28
We refer you to the correspondence we had with you last year in connection with the above Company, in which it was indicated, particularly in our letter of the 1st August, that the Company might before long find itself faced with the impossibility of carrying on and maintaining the Bridge in Mombasa.

10-25 file
On the 29th October you informed us that the Government in Kenya would not entertain the question of taking over the Bridge, and was unable to interfere with the ferry competition which had seriously affected the Company's position.

The Company made its approach to the Government of E. through you, with a view to giving every reasonable opportunity for the position to be considered.

28/3/36
copy to Kenya
We are now directed to inform you that the situation has not improved, and the Company is definitely faced with being unable to continue to suffer the heavy loss it has been making and is unable to borrow further money. It was clearly indicated some nine months ago that this eventuality might well arise, but we feel it only right to advise you that instructions have now been issued to the Company's Local Director and Manager in Mombasa formally to acquaint the Government in Kenya of the position so that an opportunity may be given to the Government

of making any proposals they think fit for the maintenance of the Bridge, and suggestions have been made that the Company would consider the Bridge being freed of tolls for a number of years if an annual payment was made to the Company for its maintenance and upkeep. The annual payment proposed is £6,000 representing 4% on the cost of the Bridge.

If nothing can be arranged within the course of the next few months, there will be no alternative but for the Company to close the Bridge.

We are,

Yours faithfully,

Travis Smith

The Under Secretary of State for the Colonies,
Colonial Office,
10 Downing Street,
S. W. 1.