

1927

Contained in CO 533
KENYA 368

1927

10221

UGANDA

10221

Segregation in Townships and
sale of Land Plots at Mombasa

Previous

J.O. 8426/26

Subsequent

S.F.A. - P.O.'s.

ca X10508/27 (M.A. helik)

X/15049/28

~~DESTROYED UNDER STATUTE~~

_____ 10 March 41

Question by G. Taylor

(copy sent file)

Publ

11/10/40

15/3

12/10/40

Being proper
in sub file

H.O.

1/10

10 March 41

... further copies refer they can request in publication of
... and
... informed of ...
... published ...

~~DESTROYED UNDER STATUTE~~

_____ 10 March 41

in by Mr. Kenneth ...

(copy not sent - Publ)

11/10/40

15/3

12/10/40

Being proper
in sub file A

H.O.

1/10

X. 10221
3
3
~~Mr. Bushe~~
Li C. Strachey

The attached minute by Mr. Bushe was the result of a reference I made to him as he was on the point of going on leave. The questions I put to him were:-

- (i) Is it possible, except on the spot, to judge whether the action in any particular case goes beyond the necessities.
- (ii) Is it practicable for the Colonial Government to supply the Government of India with such complete information as would enable their legal advisers to form a useful opinion.
- (iii) Would he, on such information as India asked for be prepared to express an opinion, and, if he differed, go so far as to recommend the Secretary of State to overrule the local view.

It is not clear whether the Government of India wish to assert any right of review before ^{are} any decision ^{is} put into effect, but if so, it should, I think in view of Mr. Bushe's opinion, be resisted.

I would suggest that the reply to the India Office should be on the following lines, and that a corresponding despatch should be sent to the O.A.G.

Say that a copy of the Colonial Office letter of the 26th November (X.7761/26), of this letter and the reply has been sent to the O.A.G., whose attention is being drawn to the fact that the Government of India cannot at present acquiesce in the publication of papers; that the O.A.G. is also being asked to furnish as far as is practicable the further information

Information desired both as regards Mombasa and Nairobi, and that as regards the latter town his attention is being drawn in particular to para.7 of the Colonial Office letter of the 26th November. Point out that as the Government of India do not challenge the principle the Secretary of State feels that the decision as to its application in individual cases should rest with the authority which is responsible for, and must bear, the consequence of any action that may be taken, and that the Government (see para.7 of the letter to the I.O. of the 26th November on X.7761/26 which referred to Nairobi but is equally applicable to Mombasa) is not called upon to take action which their legal advisers are satisfied would not be sustained in law. While, therefore, the S. of S. is anxious that the Government of India should be kept informed, so far as he is concerned, of the views of the Secretary of State which is shared by his legal advisers, it is not desirable for him to do more than to state the principle already enunciated; and he should not be asked to interfere with the discretion of the local authorities in applying the law, except for very substantial reasons to quash the good faith of the Government or the competence of its legal advisers. Point out that in the contrary case reported in X.8137 (see also copy reporting the waiver of the covenant in respect of certain plots at Nairobi, the Secretary of State ^{has not} ~~has no reason~~ to question the decision taken by the Government in accordance with the views of his

7761/26.
(Kagoo)

unnecessary
I think C.P.

Kagoo

Copy since to ASJ
C.P.

his legal advisers.] Point out that [for the reasons already mentioned.] the Secretary of State stated in the House of Commons on the 14th March (Subfile X.10221) in reply to a question by Mr. Taylor that the Government was not prepared to reconsider the matter with a view to the withdrawal of the consent to sales of plots at Mombasa, and that he sees no reason to vary the discretion given to the Governor in the matter. Add that the Secretary of State has not yet been informed that the plots at Mombasa have actually been sold but the attention of the Colonial Government is also being drawn to the suggestion of the Government of India with regard to the postponement of the sale if it has not already taken place.

is ~~agreed~~ ? Draft certain through to Rusk who returns of outcome.

A. Allen

2/12/27

For brevity I would, instead of C J, say

"is not prepared to interfere with the discretion and the responsibility of the Governor in its application, but will not be bound to furnish the information by the Govt of India"

W. H. M. M. M. M.

25.12.27

Yes. We are not obliged to make an elaborate defence - we should be brief as is consistent with publicity, but the principle is

X.10221

To D.O. (no saved) 11 MAY 1927 11/10
6-40 Gov 387 (w/copy) 3 + 5 pms. 11 MAY 1927

NOTED UNDER STATIONER
Mr. Commons 13 May, 1927.

Question by Mr. Holt Hamilton

put by (A. Chy. on sub. file A)

H. F. Ashworth.

14/5/27

at once. H.A.

Entry paper on sub. file A

8 - India Office - 23 June 1927

Ind. copy of tel from the Govt. of India
and ask that substance be telegraphed to Kenya
(is that, if a decision regarding the sales is
still pending, India's views may receive consid.

Mr. Bostonley

There seems no option but to tel
as requested & in that case I am afraid the
brackets the end of the tel & the best in
the brackets must go as well. I take it the
discretion will not be withdrawn & in that case
the tel shows my so ^{help say} / ask that the D.O. will
I assume I will give consid. to the view of the
Govt. India: I send a copy of the tel to
the S.O. ^{S. Allen} I had of the draft of a tel
& I am sure

24/6/27

And I think that the best B.S.O. might
say that the S.O. is not prepared to
admit that the recognition of a local
position is already existing in any way
disparaging or undermining the local position

X.10224

Yes - There is nothing in the White

Paper informant - The point has been repeatedly
explained in Parliament - C.S.

24.6

at once

Rec. ✓ Tel to Gov. 25th June. 1927.

10 To D.O. (no saved, w/copy) 4 JUL 1927

11 - Gov. Gowers - 7 June, 1927
Uga conf.

Two petitions from Central Council of Indian Association
in Uganda on the subject of racial segregation, an
states that the petition reveals no adequate grounds
for departing from the policy indicated in S.O.S.
desk of 11 Dec, 1924.

Mr. Buxton
Mr. Bostonley

The Gov. deals adequately with
the petition.

? Reply concurring in para.
5 of the desk. & request that the
petitioners may be informed ~~that~~
~~that~~ ~~that~~ ~~that~~ ~~that~~ ~~that~~
as at A of Mr. Bostonley's
minute of 24.6.27.

J. G. G. G.
5.7.27

12 So Govt. (11/1/27) 12 JUL 1927
8X

13) ----- O.A.G. Denham, 580 ----- 19th Aug. 1927

Reports position with regard to sale of plots at Mombasa, and encloses copies of plans showing distribution of plots.

For convenience of reference, I have also put in the envelope attached hereto the plan from 41883/25 which shows the restricted area in red. On points of detail, it may be noted (a) see par. 4(d) of that despatch the mention of Plot 6/A was not due to error on the part of the Govt. of India, but to the fact that the Governor's telegram in 7761/26 so described Plot 6 1/2 A. (b) Plot 107 referred to in the beginning of par. 4(d) of the despatch is the same as that marked VIII/6:1a and 2a: 3215 in the red area. (c) I have also marked with small black circles the plots in the red area which are ^{marked} ~~listed~~ in the Governor's despatch, and are shown on the large plan (of which there is no duplicate), as having been already alienated. The further Plots which it is now proposed to alienate are shown in the blue print, and are, ^{apparently} ~~presumably~~, though this is not clear, limited to the Plots which are lettered A to M, as well as numbered.

Comparing the O.A.G.'s. despatch with the despatch from the Govt. of India enclosed in No. 1 in the File, it will be seen that the Govt. of India was correct in noting that Plots east of ^{the} ~~the~~ Road have been alienated, ^{that} ~~as~~ only a small portion of the whole area shown in red has been alienated and no Plots at all

has refer to
11/1/27
Point this out to
Ja it may be
correct
Lud

all to the west ^{of} ~~in~~ Central road. As regards the reference by the Govt. of India to a definite pledge in respect of the whole area, the O.A.G. points out that it was definitely proclaimed as a European area in 1920, adding that the Proclamation was cancelled in 1921 for a very special reason in accordance with confidential instructions, (this reference to confidential instructions in a public despatch seems a little unfortunate.) Reading the O.A.G.'s. despatch with that from the Govt. of India, one cannot help feeling that the latter will not regard it as adequately meeting ~~the~~ their wishes, but Sir Ed. Denham has looked into the whole matter on the spot, and is quite satisfied that the area is properly regarded as a European residential area, pointing out that there is not a single Indian occupant of any of the area and all the houses erected on it are occupied by Europeans. In any case, the S. of S. has definitely decided not to interfere with the discretion which has already been given to the Colonial Government, and the best course would seem to be to pass this on to the India Office with a ^{minimum} ~~minimum~~ of comment, leaving the Govt. of India to pursue the unprofitable argument if they think fit. In that case, ? send a copy of the despatch, (with the large plan in original, ~~and~~ a duplicate of the blue print), to the India Office for communication to the Govt. of India. Say that it will be observed that under the discretionary powers which the S. of S., as Lord Birkenhead is aware, has not seen his way to withdraw, the Commissioner of Lands has now been authorised to call for tenders for the alienation of certain Plots in the area in question

(The

X. 10221
27

(The large plan, of which there is no duplicate, can, I think, go in original, since we have all the necessary particulars on record without it, and there is a very similar plan already with 41883/25).

17/9/27

17/9/27

20.9.27

14 To Genl Compt J.C. (w/ copy 13) 23 SEP 1927

16 To Genl Compt J.C. (w/ copy 14) 26 SEP 1927

16 Genl Compt J.C. 28 September, 1927.

16 copy errors regarding an appl. by the Japan Cotton Trading Co. asking for permission to purchase of Plot 22 (Mombasa) for occupation by Usakia. Permission was refused.

The fact of the Govt's sub to the principle seems a little marred by the acquiescence in the British treaty between 1895 & 1927: not so when affairs necessary beyond ordinary com. to do it.

The only dispute = fact - 27/10/27 affected in this case appear to be Japanese. No such as above plan.

X. 10221
27

17 To I.O. (w/ copy 16) 26 OCT 1927

18 ----- Gov. Grigg. ----- 30th September, 1927.
651.

Trs. copy question asked by Mr. J.B. Pandya, Indian Nominated Member for the Coast, relating to the alienation of the residential plots in Mombasa, and a copy of the Colonial Secretary's reply.

17/9/27

17/9/27

28/10/27

28/10/27

19 To I.O. (w/ copy no 18) 28 OCT 1927

20 Genl Compt J.C. 14 Oct, 1927

16 copy errors regarding an appl. by the Japan Cotton Trading Co. asking for permission to purchase of Plot 22 (Mombasa) for occupation by Usakia. Permission was refused.

DESTROYED UNDER STATUTE

in by Ed. Wedgwood.

22 mps to I/O - 22 Nov 1927 - in sub file A

MP Allen

The Govt promised these plans in his Dep.

16 Aug 1925, signed red letter: the Nairobi Mombasa plans, which he then sent, were transmitted to I.O. without comment, for comment to Govt of India. He promised

Gov: about the remaining plans (promised in 1928) in §3 of 6.

This is a memorandum - see dist. j. P.P.

This time Gov. has not sent 2 copies of the maps, but we can? send ^{one copy} ~~the~~ ^{feedback} ~~originally~~ to I.O. for communication to Govt of India

Eastmond 24.XI

with ref^{ce} to para 2 of the Govt dist. No 580 of the 19 Aug 1927. Attached has enclosed in the GO. letter of the 23.4.6.

J.W. Allen

22/10/27

Re: one copies of the maps had better go to Library for custody.

R.W. Sime

28/11/27

Recd 28/11/27 in

Memorandum of 27.11.27

copies sent to library

APL 3

copies are used for work

to I.O. (5/4 maps) 1 DEC 1927

~~DESTROYED UNDER~~ of Minutes — 14th Dec, 1917

Question by Mr. Stephen

Working Memorandum sub file A

15 sub 3 to Kya. 29 Dec, 1927. on sub. file "A"

76. J. P. C. (1927/16)

14/1/28

(22 on 18/12/22)

Gov: about the remaining plans (promised in 1916) in §3 of 6.

This is a manufacturing - see esp. 1917.

This time Gov: has not sent 2 copies of the maps, but we can? send ^{one copy} ~~the~~ ^{back} ~~copy~~ to I.O. for communicⁿ to Govt of India

Easton No. XI

with ref^{ce}: to para 2 of the Govt's det No. 580 of the 19 Aug 2 copy which has address in the CO. letter of the 23-6-17.

J.W. Allen

22/11/27

Sanagon 4th 1917

Re: of one copies of the maps had better go to library for custody.

copies sent to library

R.W. Sime

28/11/27

1000 28/11/27

Return when spare copies are used in on draft

To I.O. (5/4 maps) 1 1000 11/27

~~DESIGNED UNDER~~ of Planning - 14th Dec, 1917

Question by Mr. Stephen

History of Planning sub file A

sub 3 B. Lya. 29 Dec, 1927. on sub. file "A"

16 10 15 (1915.16)

(22 on 18/12/27)

Mr. [at hand 29 xi
then 29

- Mr.
- Mr.
- Mr.
- Mr. E. J. Harding.
- Sir C. Strockey.
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Lord Lovat.
- Mr. Amery.



C. D.
R 20 NOV
D 30

DRAFT.

The C.S. of J.
Economic & Overseas Dept.
Co.

4 maps.

Sr

1 DEC 1927

Sr.

With ref^{ce} to paragraph 2 of
no 580 of the C.S. Report
the Dep. / from the Gov. of Kenya
to the C.S. J., a copy of
which accompanied the
~~check was sent to you~~

~~copy of~~ letter from this
Dept. dated the 23rd Sept. 1927
transmit to you
an ~~of~~ to enable for
transmission to the Gov. of

India copies of maps
of the townships of Diderot,
Nyari, Londiani, & Kisii, showing
marked in red the areas in which
any & previous legal constraints
would restrictions as to
ownership & occupation will
be...

(10)

I think that with the
- when the table is set
to the 10th of Dec as directed

2. or by such persons
have maps the Government of
Kenya states that similar maps for

~~Kenya states that similar maps for~~

of the townships of Nakuru
will be provided

c Naivasha & Kisumu in the course.

Lam

Signed: R. A. WISEMAN.

20
9



KENYA.

No. 675

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

October, 1927.

5 NOV 1927

COL. OFFIC

No. 1
10
1 copy each mark to

Sir,

With reference to Kenya despatch No. 580 of the 4th August relating to the question of racial segregation in townships, I have the honour to transmit two copies of maps of each of the townships of Eldoret, Nyeri, Londiani and Kisii showing, marked in red, the areas in which, owing to previous legal commitments, racial restrictions as to ownership and occupation will have to continue.

2. Similar maps in regard to Nakuru, Waivasha and Kisumu will be forwarded to you in due course.

I have the honour to be,

Sir,

Your most obedient, humble Servant,

Edward Denham
GOVERNOR.

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L. S. M. S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

18/10



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.
No. 651

RECEIVED
26 OCT 1927
COL. OFFICE

30th September, 1927.

Copy to I.O. 28 OCT 1927

Sir,

With reference to Kenya despatch No. 580 of the 19th August on the subject of racial segregation in Mombasa, I have the honour to transmit for your information two copies of a question asked by Mr. J. B. Pandya, Indian Nominated Member for the Coast, in Legislative Council on the 15th instant, and the Colonial Secretary's reply thereto.

2. The question relates to the alienation of the residential plots in Mombasa dealt with in the despatch under reference.

I have the honour to be,
Sir,

Your most obedient, humble Servant,

Edward Gigg

GOVERNOR.

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

RESIDENTIAL PLOTS, MOMBASA TOWNSHIP

In Legislative Council on Thursday, 15th September, 1927

the Hon.J.B.Pandya asked:-

"With reference to Notice No.738 appearing in the Official Gazette of 23rd instant, regarding tender for certain residential plots in Mombasa Township -

Will Government state:

1. If these plots are reserved for Europeans only?
2. If the reply be in affirmative will the Government remove these restrictions according to 1924 White Paper policy laying down the principle of no segregation in township areas?
3. If the reply be in the negative will the Government state reasons therefor?
4. Will the Government state reasons of asking for tender in this case instead of the usual procedure of sale by public auction?"

The Hon.Colonial Secretary replied:-

The reply to the first part of the question is in the affirmative.

2 and 3. As regards the second and third parts of the question, the hon.Member is no doubt aware that the declaration of the White Paper of 1923 against residential segregation as between Europeans and Indians cannot in practice be applied without qualification in areas governed by covenants made before 1923 when segregation was, under Imperial sanction, part of the settled policy of the Colony. In such areas the policy of the declaration of 1923 is limited in application by the facts of the situation, since Government can neither unmake covenants entered into before 1923 nor accept the liability involved in ignoring them. The question whether or not a particular area comes under this limitation must depend upon legal opinion as to whether sales without restriction would adversely affect existing interests or render Government liable to claims from holders of existing titles in the area. Government has been advised that in the Mombasa area to which the hon.Member's question refers unrestricted sale would affect existing interests and could expose Government to claims from existing holders. The course taken by the Government is therefore the only course possible, if the plots in question are not to be withheld indefinitely from residential occupation.

4. With regard to the fourth part of the question, tenders were called for at the urgent request of the District Committee and Town Planning Authority. The urgency is due to the lack of houses in Mombasa, which is still very serious.



THE SECRETARIAT,
NAIROBI,
KENYA.

WHEN REPLYING
PLEASE QUOTE
No. & /C. Ind. 5/1/1/17.
AND DATE

10th November, 1927.

RECEIVED
-5 DEC 1927
COL. OFFICE

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies and, with reference to Kenya despatch No. 638 of the 28th September, has the honour to state that the word "your" in the first line thereof should read "Kenya."

~~M. Ashworth~~

I have altered
no 16. ? attach.

THE UNDER SECRETARY OF STATE
FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

M. Ashworth.

5/11/27

KENYA.

No. 638



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

16
13

28th September, 1927.

RECEIVED
21 OCT 1927
COL. OFFICE

De
Kenya

Sir,

No 13

With reference to ~~your~~ *Kenya* despatch No. 580 of the 19th August, 1927, and previous correspondence on the subject of the area in Mombasa in which it has been decided that racial restrictions must continue, I have the honour to enclose a copy of a despatch which I have addressed to the Secretary, Department of Education, Health and Lands at Simla, in regard to correspondence which has passed between us on the subject of a plot held by Mr. Jan Mohamed Hansraj.

2. This plot is No. 22 of Section VIII in Mombasa and falls as you will observe within the area coloured red on the map enclosed with Kenya despatch No. 987 of the 10th August, 1925. Approval of the application of the Japan Cotton Trading Company would have been contrary to the policy agreed upon by you and the Government of India, vide your despatch No. 100 of the 25th January, 1926.

3. I am reporting this matter to you for the reason set out in the fifth paragraph of the enclosure.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

Edward Denham

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE,
LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET.

*Copy to 10. 4. 1927
Copy to F.O. (20) 13*

22nd September, 1927.

14

Sir,

I have the honour to confirm the following correspondence which has been exchanged with you, as under:-

"609-OS. Notice has been received of question in Assembly regarding alleged order by Land Officer in Mombasa requiring Indians to vacate premises in cliff area before end of March 1927 and Indian landholders who had rented out houses to other Asiatics to ask tenants to vacate premises forthwith failing which their leases would be forfeited. Government of India would be grateful if exact facts of case could be telegraphed to them to enable them answer question."

to which the following reply was sent:-

"Reference your telegram 609-OS of 20th July the only case to which these allegations can refer is that of Jan Mohamed Hansraj. He holds a lease of a plot in Mombasa which restricts occupation to Europeans. The house was found to be tenanted by non-Europeans and the lessee was notified this tenancy must cease and has complied with the notice. Regret delay due to necessary investigations."

2. The plot held by Mr. Jan Mohamed Hansraj is No.22 of Section VIII in Mombasa and is situated within the "red" area marked on maps within which the Government of India has agreed that existing obligations as to segregation must be observed. The lease contains a clause which reads as follows:-

"And will not use or occupy the said dwelling house when erected otherwise than as a private dwelling house nor permit the same to be used or occupied by a person or persons other than a European nor permit the said premises to be used as a place of residence for Asiatics or Natives who are not domestic servants in the employ of the occupier."

3.....

3. On the 28th August, 1925, a formal notice was served on Mr. Jan Mohamed Hansraj requiring the non-European occupants of the house on this plot to vacate the premises. On the 2nd September Messrs. Mathuradas Purshotan and Co. of Mombasa, on behalf of Mr. Jan Mohamed Hansraj, who was in Zanzibar, wrote admitting a breach of covenant in that the occupant of the plot was a Japanese representative of the Japan Cotton Trading Co. They argued that since the policy of segregation had been abandoned the covenant had become void and moreover that the real object of the covenant, - viz: to secure tenants of European habits of life - had become secured.

4. No further action was taken in this matter until in January of this year the Japan Cotton Trading Company applied for waiver of the covenant and permission to purchase the plot with a view to its occupation by Asiatics. Approval of this application was strongly opposed by the local authorities in Mombasa and would further have been contrary to the policy agreed to by the Government of India. On the 22nd February therefore a second notice was sent to Mr. Jan Mohamed Hansraj demanding that the Japanese tenants should vacate the plot and this notice was duly complied with at the beginning of April.

5. I have recorded these facts in detail in order that it may be clear to the Government of India that this Government is not departing from the principle of non-segregation in townships as laid down in the Common Paper of 1923 save where definite commitments...

commitments render it impossible to throw open an area to competition on a non-racial basis - which is in accordance with the policy already agreed to by the Government of India.

6. A copy of this despatch has been sent to the Secretary of State for the Colonies.

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

(Sd) H. D. Logan

COLONIAL SECRETARY.

147

Mr. Allen

Mr.

Mr.

Mr. E. J. Harding.

Mr C. Strachey.

Sir J. Shuckburgh.

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore.

Lord Lovat.

Mr. Amery.

mlg

C. O.
R 22 SEP
D

Downing Street.

23 September, 1927.

[Handwritten signature]

26 SEP 1927

DRAFT.

THE U.S. OF S.
ECONOMIC & OVERSEAS DEPT.,
INDIA OFFICE.

Sir,

No 580 : 19 Aug 1927

*(large plan among: dubl
of blue find)*

copy to Sir 517

With reference to the

letter from this Department of the
4th of July, I am etc. to transmit
to you, for the information of
Secretary the Earl of Birkenhead,
and for communication to the
Government of India, the accompanying
copy of a despatch from the O.A.G.
of Kenya on the subject of racial
segregation in townships. Copies
of the plans referred to in the
despatch are also enclosed.

It will be observed

that under the discretionary

Copy to Sir 517

powers which the Secretary of State,
as Lord Birkenhead is aware, has not
seen his way to withdraw, the Commissioner
of Lands has now been authorised to
call for tenders for the alienation,
subject to restrictive covenants, of
certain residential plots ^{oto} in the red
^{sector} map of Mombasa.

~~I am, etc.~~

3. As regards the last
sentence of para 4 (d) of his
despatch ~~See to front at end~~
that the reference to Plot 6A
arose from the fact that Plot
6/3a was given as 6A in
his Governor's letter of the 15th
November 1926, a copy of which
was included in the enclosure
to the letter from this Dept of the
26 Nov 1926.

(7761/26)

R. A. Wiseman

(Signed) R. A. WISEMAN.

powers which the Secretary of State,
as Lord Birkenhead is aware, has not
seen his way to withdraw, the Commissioner

of Mombasa has now been authorised to
call for tenders for the alienation,
subject to restrictive covenants, of
certain residential ^{lots} ~~plans~~ in the red
map of Mombasa.

~~Land, etc.~~

3. As regards the last
sentence of para 4 (d) of the
draft ^{it would appear} ~~Letter to find out that~~
that the reference to Plot 6A
arose from the fact that Plot
6/3a was given as 6A in
the Governor's letter ^{No 393} of the 15th
November 1926, a copy of which
was included in the bundle of
the letter from the Dept of the
26 Nov 1926.

(7761/26)

R. A. Wiseman

(Signed) R. A. WISEMAN.

13
18



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.
No. 580

RECEIVED
8 SEP 1927
COL. OFFICE

19th August, 1927.

10221

Sir,

no 6
no 9

I have the honour to refer to your despatch No.387 of the 11th May last with accompanying enclosures, and to your telegram of the 24th June relating to the question of racial segregation in townships.

ap

2. As regards Nairobi, it is considered that the opportunity should be taken of re-examining the position in conjunction with proposals for the classification on similar lines of areas in other townships. In this connection it is regretted that although investigations by the Land Department are now complete in respect of the townships of Eldoret, Nyeri, Londiani and Kisii, the maps referred to in paragraph 3 of your despatch under reference are not yet ready but their preparation is being expedited.

26 SEP 1927

A-1 117

3. I propose in the circumstances to confine this despatch to the position at Mombasa, since it is especially with regard to Mombasa that information would appear to be required by the Government of India. No sale is at present contemplated in the case of Nairobi either within the area coloured red on Map "A" referred to in my despatch No.987 of the 10th August, 1925, or in respect of the two additional plots

Copies (w/enclosures in original of the papers) to J.O. 23 SEP 1927

7/11/27
4/15/27

THE RIGHT HONOURABLE

LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

Am 29/1/26 plots mentioned in Sir Edward Grigg's telegram No.368 of the 29th October, 1926. I have only to emphasise that the proposal to include the two additional plots in the area coloured red in the case of Nairobi represents a contention submitted by adjacent owners which has not at present been considered by Government. The Government of India may be assured that no action will be taken in the meantime to alienate the two plots in question subject to restrictive covenants.

no 3 4. It is observed from the despatch from the Government of India to the India Office of the 17th February that information is desired as to the number and location of the plots already alienated in the area in Mombasa coloured red and as to the exact nature of the restrictive covenants in force. The particulars are as follows:-

(a) Plots 6/3a, 7/1, 7/2, 7/3, 7/4, 7/5 and 7/6 in Section VIII were sold on the 8th June, 1912, under a sale notice containing the following condition:-

"These plots shall be occupied by persons of European origin only and their domestic servants". All these plots were sold to Europeans and the condition quoted was embodied in the leases.

(b) Plots 10 - 22 inclusive in Section VIII were sold on the 7th October, 1913, subject to the following restrictive covenant embodied in the leases:-

"No building shall at any time during the term of the lease be used for any other purpose than a private dwelling house or occupied by a person or persons other than an European, or used as a place of

of residence for Asiatics or Natives who are not domestic servants in the employ of the lessee". Europeans only were allowed to purchase under the advertised conditions of sale.

(c) Plots 37-45, 47, 48, 51 and 61-69 inclusive in Section VIII were sold on the 2nd September, 1918, the sale notice mentioning 21 European residential plots and containing a condition identical with that quoted above under (b), which was duly inserted in the leases. Purchase was restricted to Europeans.

Plan "A"
 (d) Plots 5, 46, 56-60 inclusive, 72, 99, 6/1a and 6/2a (marked 107 on the accompanying plan), have also been leased on various occasions to Europeans on similar terms or are occupied by Government for the purpose of European official residences, while Plot 36 is leased to the Mombasa Golf Club. Plots 56-60 to the east of Tritton Road are occupied by official residences. The mention of Plot 6a in paragraph 3 of the Government of India's despatch arises presumably from a typographical error, Plot 6/3a being intended, since Plot 6/A does not exist.

(e) Plot 100 is leased to the East African Nursing Association.

These particulars involve the addition of Plots 5, 7/6, 36 and 72 to the list set out in Sir Edward Grigg's telegram No. 393 of the 15th November last from which they were inadvertently omitted. Plot 6 referred to in that telegram should be amended so as to read Plot 6/1a and 6/2a.

5. It is suggested by the Government of India that no plots to the west of Central Road have been alienated. This is the case, though I may mention that the freehold of sub-divisions 120 on Salia Road belongs to Sheikh Ali

bin Balim by title held under Mohammedan law before British occupation and that these plots are leased for European occupation by the freeholder.

6. The area has always been regarded as part of the European Residential area, it was definitely proclaimed as such in 1920 and though the proclamation was cancelled in 1921 it was done for a very special reason in accordance with your predecessor's confidential instructions, which expressly stipulated that it was not intended as any indication of alteration in policy but only to avoid all appearance of prejudging the question at issue. The area has always been included in the European residential area and is so shown on the plans of Mombasa available for purchase by the public. I have delayed replying to your despatch ^{until} I was able to visit Mombasa and see the land in question. I have now visited it and am quite satisfied that it forms part of the European residential area and that it falls similarly with the land surrounding it under the conditions referred to.

The whole extent is very clearly defined. There is not a single Indian occupant of any of the area and all the houses erected on it are occupied by Europeans. While I fully recognise that segregation within townships has been abandoned the principle at stake is that which has been accepted by you and which is expressed in paragraphs 4 and 5 of Colonial Office letter ^{30th} 7761/26 of November 26th, 1926, to the India Office.

I may mention that I met the Indian members for the first time in the session within the past month at Mombasa to discuss with them the area of land to be utilised for

D

the housing of the Asiatic employees of Government and no reference or suggestion was made by them in respect of this area, though the possibilities of finding suitable land on the island for the purpose were fully explored.

I enclose two copies of a plan showing the alienation proposed in the area subject to restrictive covenants.

Plan "B".

7. I trust that in view of the information conveyed in this despatch you will be in a position to satisfy the Government of India that the principle accepted by them as substantiating the imposition of restrictive covenants may be justifiably taken to include alienations of land within the whole of the area coloured red.

The need for early embarkation on European housing schemes for Mombasa is most urgent and an application has been received in respect of part of this area which it is stated would be withdrawn if no decision was reached by the middle of August. I have therefore authorised the Commissioner of Lands under the discretionary powers allowed me to call for tenders for the alienation of small residential plots subject to restrictive covenants in respect of such parts of the red sector in Mombasa as may have been applied for. In the circumstances cited and after giving the fullest consideration to the representations of the Government of India I cannot advise further delay in the matter.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Ernest Denham

ACTING GOVERNOR.

10/21/27
KORVA
UGANDA.

25

12

Mr. C. J. ...
Mr. ...

- Mr. E. J. Harding.
- Sir O. Stroobey.
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Earl of Clarendon.
- Mr. Amery.

O. D.
R. B. J. H.
D. 12/4

DRAFT.

Uganda, Capt.
General Gurney.

Sir.

12 July 1927.

I have the pleasure to acknowledge the receipt of your Capt. despatch of the 7th of June, in which you transmit a petition from the Central Council of Indian Associations in Uganda, on the subject of racial segregation in Kampala.

2. I am in the view expressed in your despatch and shall be pleased to...

petitioners may be
informed that I am not
prepared to admit that
the recognition of a
legal position already
existing in any way
trespasses upon the
principles enunciated in
the White Paper of 1923.

(Signed) L. S. AMERY

Enclosures of

Sketch Plan Approximately Only.

Memboze Island
Section VIII
Scale 1:5000

None
of
these plots
has
yet been
surveyed

Note:-

Plots A1 to A60 have each approx.

C1 to C60

Plots D1 to D20 have each approx.

E1 to E3

Plots F1 to F3 very strong to 1/2 acre each approx.

Plots G1 to G3 1/2 acre each approx.

Plots H1 to H3 1/2 acre each approx.

Plots I1 to I3 1/2 acre each approx.

Plots J1 to J3 1/2 acre each approx.

Plots K1 to K3 1/2 acre each approx.

Plots L1 to L3 1/2 acre each approx.

Plots M1 to M3 1/2 acre each approx.

Plots N1 to N3 1/2 acre each approx.

Plots O1 to O3 1/2 acre each approx.

Plots P1 to P3 1/2 acre each approx.

Plots Q1 to Q3 1/2 acre each approx.

Plots R1 to R3 1/2 acre each approx.

Plots S1 to S3 1/2 acre each approx.

Plots T1 to T3 1/2 acre each approx.

Plots U1 to U3 1/2 acre each approx.

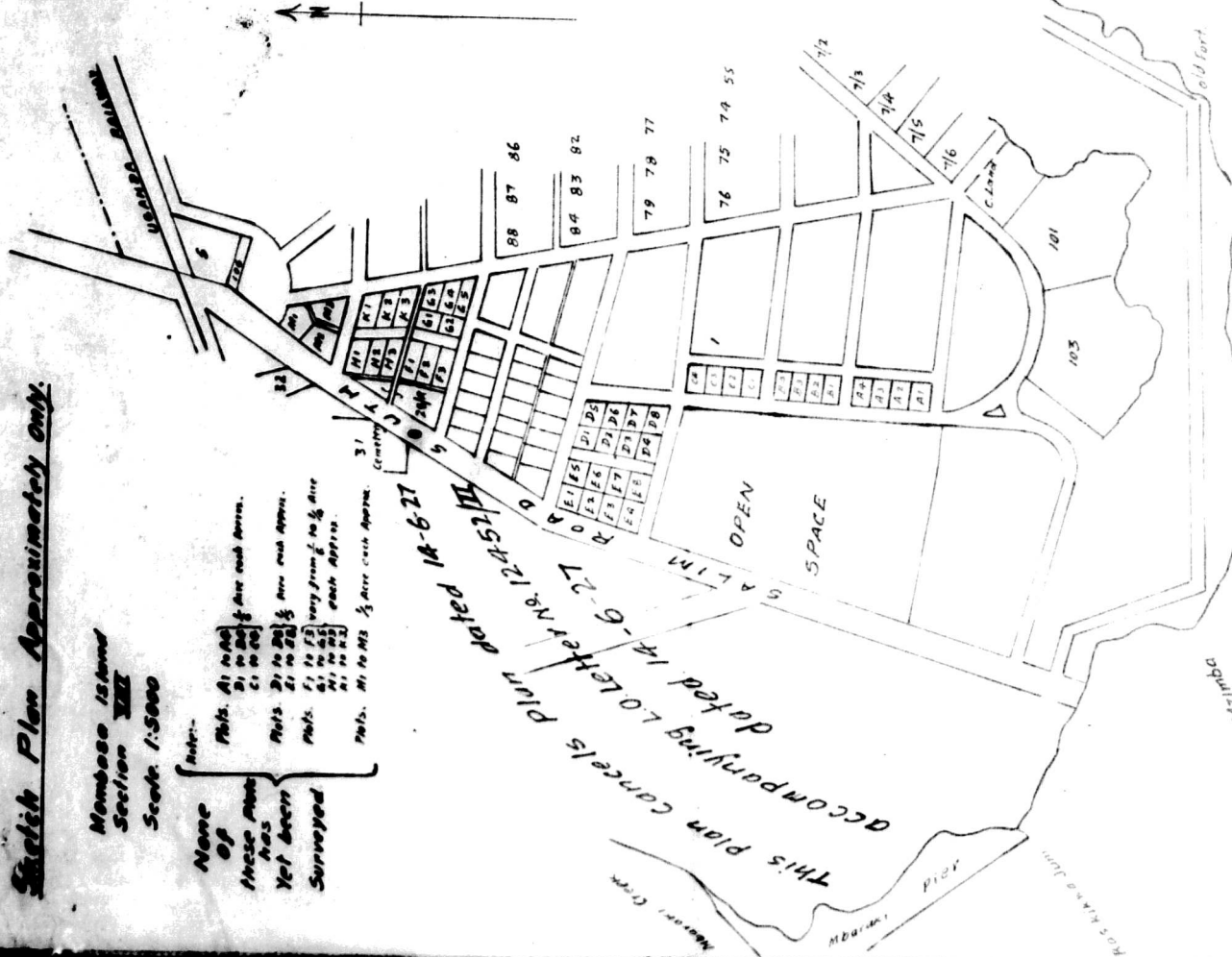
Plots V1 to V3 1/2 acre each approx.

Plots W1 to W3 1/2 acre each approx.

Plots X1 to X3 1/2 acre each approx.

Plots Y1 to Y3 1/2 acre each approx.

Plots Z1 to Z3 1/2 acre each approx.



THIS plan cancels plan dated 14-6-27
accompanying L.O. letter No. 12452/II

Ros Kinga Jim

To accompany L.O. Letter No. 12452/II dated 14-7-27

Land Survey officer
Memboze 11-7-27

Ambo C. Lusua
District Surveyor

X/0221/27
KONYA
UGANDA.

25

Mr. Ciffe 8.vii.27

Mr. Jeffries 8/27

Mr.

Mr. E. J. Harding.

Sir C. Strachey

Sir J. Shuckburgh.

Sir G. Grindle

Sir A. Davis

S. S. Wilson

Mr. Grimley

Mr. ...

Mr. ...

D.
R 8 JUL
D 12-4

12

13.

12 July 1927

Sir

I have the pleasure to acknowledge the receipt of your letter of the 7th of June, in which you transmit a petition from the Central Council of the African Association in regard to the subject of racial segregation in Tanganyika.

2. I am sure that the views expressed in paragraph 5 of your despatch will be met and I shall be glad if the

DRAFT.

Uganda. Conf

Governor General

certainers may be
informed that I am not
prepared to admit that
the recognition of a
local, national already
existing in any way
imposes upon the
principles enunciated in
the White Paper of 1923

(Signed) L. S. AMERY

Uganda Protectorate



GOVERNMENT HOUSE,
UGANDA

Confidential.

7th June, 1927.



Sir,

12 JUNE 1927
Hand Conf

Enclos.

I have the honour to transmit herewith a petition, addressed to you by the Central Council of Indian Associations in Uganda, on the subject of racial segregation in Townships.

2. The details of this controversy are familiar to you. The seeds of the two Gazette Notices, both of which are quoted in full by the petitioners, was sown in accordance with the decision conveyed to this Government in correspondence ending with your despatch No. 632 dated the 11th December, 1924.

Handwritten notes

3. The petitioners claim that the Gazette Notice of 1925 "practically amounts to a complete reversal of the policy enunciated by His Majesty's Government in 1923". It is difficult to believe that the

petitioners are really of this opinion. They are aware that the limitation imposed by the Notice of 1925 affects only the Kibero Hill in Kampala, and the question of large townships, a fact of which I advise you in my despatch, Confidential (2) of the 2nd May, 1925, and they must realise that the Notice in effect reaffirms

Handwritten notes

the

THE RIGHT HONOURABLE,

THE SECRETARY OF STATE FOR THE COLONIES,

etc, etc, etc.

reaffirms the intention of this Government to adhere to the policy previously enunciated, except in cases where Government is already definitely committed by prior contracts. Moreover, the good faith of the Government in the matter is made clear by the facts set out on pages 4 and 5 of the petition, from which it will be seen that this Government has agreed to regard each block of residences within the areas affected as a unit, and to agree to the omission of any clause restricting occupation from the leases, provided that existing lessees in each block are willing to agree to this omission.

4. The petitioners further represent that one or two Indian Firms purchased residential quarters from Europeans in this area after the publication of the 1923 Notice, and are thus suffering hardship as a result. The fact is, however, that no application for consent to transfer these properties was received by the Land Officer until some time after the publication of Gazette Notice No.50 of 1925. Consent to the transfers was given in the usual form which includes a provision that "this consent shall not authorise any further or other transfer or prejudice or affect the covenants and conditions of the said lease." Further, these applicants were explicitly warned that the grant of this consent was not to be taken as implying that the restrictive covenant or occupation would be waived. The Indian buyers, however, have in fact occupied the premises in question. No objection has yet been lodged by European Lessees of plots in the blocks affected, and this Government does not intend to take any action in the matter unless such ob...

objections are received.

*lpm
46145/24
Uga*

5. I submit that the petition reveals no adequate grounds for departing from the policy indicated in your despatch No.632 of the 11th December, 1924, and Gazette Notice No.50 of 1925, and I would strongly recommend adherence to this policy with the proviso, which is already in effect, that the Government will regard the areas affected as divided into blocks for the purpose of the application of the policy and will consent to waive the restrictive covenant in any-lease, provided that existing lessees in the block affected express their agreement to this course.

I have the honour to be,

Sir,

Your most obedient, humble servant,

L. J. G. ...

GOVERNOR.

Enclosure No. 1 to
Confidential despatch
of 7th June, 1927.

Central Council of Indian Associations in Uganda.

30

Head Office Kampala.

Tel. Address:

"Centralism"

Office of the Hon. General
Secretary

P. O. Box 95.

Kampala, 1st January, 1927.

(Uganda)

The Right Honourable the Secretary of State
for the Colonies.

L O N D O N.

C.S.'S. OFFICE
RECEIVED
10 JAN. 1927
UGANDA.

Sir,

Subject:- SEGREGATION.

I am directed by my Council to submit to your grace the following petition, on behalf of the Indian Community residing in Uganda, on the question of segregation.

The policy decided by His Majesty's Government as regards the question of racial segregation has been fully dealt with in the "White Paper" of 1923, and was published locally in the Uganda Official Gazette, dated the 5th September, 1923, in a Memorandum called "Indians in Kenya".

The paragraph dealing with this subject reads as follows :-

"The next matter for consideration is that of Segregation of the European and non-European races. Following upon Prof. Simpson's Report, a policy of segregation was adopted in principle and it was proposed by Lord Milner to retain this policy both on sanitary and social grounds. So far as Commercial Segregation is concerned, it has already been generally agreed that this should be discontinued. But in regard to residential segregation, matters have been in suspense for some time, and all sales of Township Plots have been held up pending a final decision on the question of principle involved. It is now the view of the competent Medical Authorities that, as a sanitation measure, segregation of Europeans and Asiatics is not absolutely essential for the preservation of the health of the community; the rigid enforcement of sanitary, police and building regulations without any racial discrimination, by the Colonial and Municipal Authorities will suffice. It may well prove that in practice the different races will, by a natural affinity, keep together in separate quarters, but to effect such separation by legislative enactment except on the strongest sanitary

Head Office Kampala.

Tel. Address: -
"Centralism"

Office of the Hon. General
Secretary

P. O. Box 45,

- 2 -

Kampala, 1st January, 1925.
(Uganda)

grounds would not, in the opinion of His Majesty's Government, be justifiable. They have therefore decided that the policy of Segregation as between Europeans and Asiatics in the Townships must be abandoned."

The main substance of the above policy was declared as regards the Uganda Protectorate by Gazette Notice No. 483 of 1923, which reads:-

"WHEREAS IN CERTAIN LEASES granted by His Excellency the Governor of the Uganda Protectorate to Asiatics there is contained a covenant by the Lessee that he will not permit or suffer any European to reside upon or occupy the demised premises, and in certain leases granted to Europeans there is contained a similar restrictive covenant against residence or occupation by Asiatics NOTICE IS HEREBY GIVEN that His Excellency the Governor does not propose to insist on the observance of the said restrictive covenants and that as from the date of publication hereof no lease shall contain such restrictive covenants."

This decision of His Majesty's Government was welcomed by the entire Indian Community, although it was the only grievance of the Indians in this country that was remedied by the "White Paper".

As a result of this new decision one or two Indian firms went in for decent residential quarters for their Principals and Managers, in the full hope that the restrictive covenants contained in these leases would be removed as promised in the above Notification. The decision of His Majesty's Government as outlined in Uganda Official Gazette Notice No. 483 of 1923, left not a shadow of doubt as to the Government's declared policy in this matter, and it was certain that the new declaration definitely promised that His Excellency the Governor does not propose to insist on the observance of the said restrictive covenants.

Central Council of Indian Associations in Uganda.

37

Head Office Kampala.

Tel. Address:

"Centralism"

Office of the Hon. General
Secretary

P. O. Box 45.

- 3 -

Kampala, 1st January, 1928.
(Uganda)

It was therefore not a little surprise & shock to the Indian Community to read two years later in the Uganda Official Gazette Notice No. 50 of 1928, that the announcement of 1926, although it clearly dealt with the question of existing restrictive covenants, must be considered null and void in so far as existing contracts were concerned. The Notice No. 50 of 1928 reads as under :-

"NOTICE IS HEREBY GIVEN THAT the announcement contained in Government Notice No. 483 of 1926, published in the Official Gazette on the 29th September, 1926, only applies to cases where the waiver, or annulment of the restrictive covenants shall not interfere with any existing contracts."

My Council submits that the policy of His Majesty's Government is already defined in the contract from the Memorandum set out above, and that the above Notice No. 50 of 1928, issued two years later practically amounts to a complete reversal of the Policy announced by His Majesty's Government in 1926.

With a view to remedy this, a deputation on behalf of my Council, waited upon His Excellency the Governor on 28th October, 1928. Below is reproduced the summary of the discussions on the above subject:-

"Mr. Amin [on behalf of Central Council] quoted the case of Mr. S. V. Patel (Director of the Kampala General Agency, Ltd.) who bought two plots just below the Makasero Club and has applied for the deletion of the Clause. The Chief Secretary then read the Land Officer's reply.

His Excellency commenting on the reply said that it was not a question of waiver of the restrictive clause, but of asking for consent of the Governor.

Head Office Kampala.

Tel. Address
"Centralism"Office of the Hon. General
Secretary

P. O. Box 45,

- 4 -

Kampala, 1st January, 1925.
(Uganda)

Mr. Amin. asked that wherever possible, consent should be given by the Governor.

His Excellency agreed with Mr. Amin that wherever the Governor has power, he should exercise it and that any adjoining occupier could raise no objection.

The Chief Secretary asked if it was meant that there should be free transfer.

Mr. Amin replied "Free Transfer & the right of occupancy.

His Excellency asked if any body had told him that the Governor would not give his consent.

Mr. Amin replied in the negative.

His Excellency stated that he considered that it might be reasonable to leave the clause in, but that he had no objection in most cases to give his consent. He also stated that in view of the policy laid down by the Secretary of State, it was his duty to carry out the Secretary of State's wishes unless he was advised that it was illegal."

Relying on His Excellency's assurances, contained in the above discussions, those few firms, who had acquired properties containing these restrictive covenants, applied to His Excellency, early in 1926, for the necessary consent for the occupation of non-Europeans in these premises, but to their great astonishment and disappointment received the following Circular letter from the Land Officer. "Circular No. L.O.M.P. No. 2691 of 27-3-26.

" I am directed to inform you that the effect of the policy of abandonment of racial segregation annunciated in the Memorandum presented to the Parliament in July, 1925,

Central Council of Indian Associations in Uganda. 3rd

Office of the Hon. General
Secretary.

P. O. Box 45,

Kampala, 1st January, 1927.
(Uganda)

Head Office Kampala.

Tel. Address:
"Centralium"

- 5 -

upon the restrictive covenants on the occupation contained in the leases of the above and adjoining properties has received the consideration of the Law Officers of the Crown.

In regard to the Block of which the above plot forms a part, it appears that the intention to permit only European occupation because, over a considerable period, so widely known that it might be considered tantamount to an implied undertaking on the part of the lessor that the restriction on occupation would be maintained.

The Governor as Lessor, is, however prepared to waive the covenant in each lease upon request, provided the consent in writing of the remaining lessees in the same Block for themselves and their assigns, is obtained by the applicant. Any such applicant will in future be so informed."

It is unnecessary for my Council to criticise the reasonableness or otherwise of the new construction thus placed upon the policy originally enunciated by His Majesty's Government in 1923, but my Council would like to submit that the interpretation put by the Land Officer on the Original pronouncement could not be sustained either on legal, moral, or technical grounds.

My Council therefore prays to Your Grace to kindly consider over this important question very fully in the light of the facts detailed above and favour us with your decision at the earliest possible opportunity. My Council would like to assure Your Grace that the Indian Community in taking their proper share in the development of this country, expects nothing more than what they are entitled as loyal subjects of the British Empire, and that my Council feels convinced that

Central Council of Indian Associations in Uganda. 25

Head Office Kampala.

Cal. Address:

"Centralism"

Office of the Hon. General
Secretary,

P. O. Box 45,

Kampala, 1st January, 1927.

(Uganda)

the sense of British Justice and Fairplay on which the whole fabric of the British Empire is based would, at all times, surely prevail.

I have the honour to be,

Sir,

Your most obedient and

humble servant,

K. A. Babab

SECRETARY GENERAL SECRETARY.

10 0221/27
KENYA 330

- Mr. Clegg 20. vii. 1947
- Mr. Allen
- Mr.
- Mr. E. J. Harding.
- Sir C. Strachey.
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Earl of Clarendon.
- Mr. Amery.

29

15 MAY 1951
Copy to C. A. S. Kenya Conf (2) on 17/7/51

2 JUL 1951

DRAFT

The US of S.
India Office.

To O.A.S. Col 25 June

SV

4 JUL 1951

Sir.

I am to acknowledge the receipt of your letter E.L.O. 4339/27 of the 23rd of June, regarding the question of racial segregation in Councils in Kenya; and to request you to inform the Earl of Birkenhead that the ~~representatives~~ representatives ~~sent~~ sent from the ~~State of India~~ State of India ~~legation~~ legation ~~in London~~ in London have been ~~appointed~~ appointed.

telegraphed to the office

Administering the Govt.

of the Colony in the Tel which
a copy is enclosed

2. ~~Mr. Amery~~ ~~is not prepared~~ that

concerning Mr Amery has not seen by way to withdraw the
idea it to be understood ~~as regards the~~
Barka already given to the Col. Gen. ~~in the matter~~
~~that he is not prepared~~ ~~to propose sales; at~~
~~the same time~~ ~~to~~

to admit that the
recognition of a legal
position already existing

is in any way trespasses
upon the principles of

the late case of 1923

(Signed) T. ALLEN.

for Under Secretary of State.

X. 10221. 27
New

9
37

- Mr. J. W. Allen 20/6
- Mr. B. Stanley 2/8
- Mr.
- Mr. E. J. Harding.
- * Sir C. Strachey. 26 Oct 1927
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Earl of Clarendon.
- Mr. Amery.

Cad 4 Sent
11. 45 A.M.
Amey 25th June 27
No. 13

TO

My despatch 11 May 1927
following representations
received from the Govt
of India begins

DRAFT. Tel

Governor
Mairvi

[Other copy passage in
these brackets in incl 6
No 8 in file.]

Ends new paragraph
I am not prepared

to withdraw discretion
already given you but
I will of course give
fullest consideration to
his representations.

4 JUL 1927
COPY TO J.O.

Case: v. minutes

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Economic & Overseas Department,
 India Office,
 London, S.W. 1.

and the following reference quoted:—

E. & O. 4339/27.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

IMPORTANT

23rd June, 1927.

Sir,

105

I am directed by the Earl of Birkenhead to state, for the information of Mr. Secretary Amery, that a copy of your letter of 11th May, No. 10221/27, relative to the question of racial segregation in townships in Kenya was transmitted to the Government of India, and that a telegram, of which copy is enclosed, has been received in regard to the contemplated sale of plots at Mombasa.

4 JUL 1927

As Mr. Amery may not be prepared to withdraw the discretion which he has given to the Colonial Government in regard to the proposed sales, Lord Birkenhead, having regard to the reasons for postponement urged by the Government of India (which, in His Lordship's view, have great force) would be glad if the substance of their telegram could be telegraphed to the officer administering the Kenya Government for his information, so that, if a decision in regard to the sales is still pending, he may have the opportunity of considering the Government of India's representations. It seems to His Lordship that, without any modification of the discretion given to the Kenya Government, it may be well that they should be informed of the arguments which are so strongly urged by the Government of India, as such information should constitute a factor in arriving at a decision.

I am, Sir,

Your obedient Servant,

E. Turner

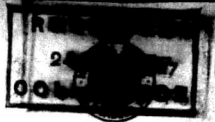
The Under Secretary of State.
 Colonial Office,
 Downing Street,
 S.W. 1.

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Economic & Overseas Department,
India Office,
London, S.W. 1.

and the following reference quoted—

E. & O. 4339/27.



1118c

INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

IMPORTANT

23rd June, 1927.

Sir,

Ac 5
/

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I am, Sir,

Your obedient Servant,

E. Turner

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

4 JUL 1927
Curd

COPY OF TELEGRAM.

From Viceroy, Department of Education, Health & Lands, to Secretary of State for India. 1927 39

(COPIES
CIRCULATED)

Dated Simla, 18th June, 1927.

Received 18th June, 1927, 2.30 p.m.

Reference Colonial Office letter No.10221/27, dated 11th May, forwarded with Walton's letter No.E and O. 3362/27 of 13th ultimo. Sale of land in certain townships in Kenya. In view of request made in para. 4 of our letter dated 17th February, 45 Overseas, that sale of plots should be postponed or grant of Government sanction for sale, if required, held up pending elucidation of points raised in the said letter, we submit that decision of Colonial Office to make our readiness not to challenge the principle stated in paragraph 4 of Colonial Secretary's letter No. X 7761/26 of 26th November, 1926, basis for non-interference with discretion and responsibility of Colonial Government in application of principle, is hardly calculated to help the solution of the problem. We explicitly stated in paragraph 2 of communication that practical application of principle gave rise to difficulties and left room for differences of opinion. It follows logically from this qualification of acceptance of the theoretic principle that its application should be deferred until the information asked for by us has been obtained and the whole question reconsidered in the light thereof and any representation that we might make. If local authorities are given a free hand to apply the principle and proceed with sale, practical value of information asked for will be nugatory. As the issue touches one of the fundamental declarations of policy made by His Majesty's Government in White Paper and may give rise to considerable public misgivings and, possibly, widespread agitation amongst

Lead in No. 2
- copy of
0779

replied
and to
100/213

Indians both in India and Kenya, we think that we can legitimately plead for patience and circumspection in its settlement. A little delay can do no harm. Haste, on the other hand, may have the unfortunate effect of reviving antagonism which is at present happily quiescent. Our impression is that the majority of Indians in Kenya have, by now, come to regard the decisions of 1923 as the best obtainable in the circumstances and are willing to work them. It would be unfortunate if this attitude of acquiescence were disturbed by the action which the irreconcilable elements may exploit to kindle fresh controversy. In India also, recent satisfactory settlement of the South African question has produced welcome lull in the clamour which, for several years past, has been chronic feature of the discussions of questions affecting Indians overseas in political gatherings and the press. We should be sorry to see this disturbed over what appears to be really matter of detail. We would, therefore, strongly urge you to exert your influence with the Colonial Office to postpone the sales until the information required by us to clear up certain obscure points has been obtained and the matter been reconsidered in the light of representations that we may make after its receipt. Mere postponement of the publication of the correspondence will provide no safeguard against the resurgence of the controversy which we anticipate will ensue if the sales are proceeded with unless it can be shown that every possible legitimate objection has been carefully considered.]

6 L1

Mr. Allen 27. 4. 27.

Mr. Rottmley 28. 4. 27 (5)

Mr.

Mr. E. J. Harding.

Sir C. Strachey.

Sir J. Shuckburgh.

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore.

Earl of Clarendon.

Mr. Amery.

Answer no. 13

Downing Street,

11 April, 1927.

May

Sir,

With reference to my

telegram of the 28th December last,

I have etc., to transmit to you the

accompanying copies of correspondence

with the India Office regarding the

question of racial segregation in

townships in Kenya, from which you

will see that the Government of

India cannot at present acquiesce

in the publication of papers.

2. I shall be glad if you

will furnish as far as is practicable

the further information desired

by the Government of India, both as

regards Mombasa and Nairobi; and as

regards Nairobi I have to invite your

attention

DRAFT.

KENYA

No 384

Confidential

O.A.G.

Answer in name of
Colonial Secretary
of Public Instruction
Nairobi

(* Perhaps no need

to make copy: see for
Buckley note in file no 7761/26)

C.O. to I.O. 25th Nov. '26
(7761/26) ✓

I.O. to C.O. 18th March '27
& encl. (X.10021/27) ✓

G.O. to I.O. (companion dft.) ✓
11 MAY 1927

24p.

attention in particular to para.7 of the letter to the India Office of the 26th November.

3. I take this opportunity of pointing out that I have not yet received ^{ki} plans for other townshir areas, to which reference is made in the last paragraph of your despatch No.387 of the 10th August 1925. I have, etc.,

(Signed) L. S. AMERY

for consen. 41883/25.

- Mr. Allen 27. 4. 27.
- Mr. ~~Atkinson~~ 28. 4. 27
- Mr. ~~Baker~~ 29/4
- Mr. E. J. Harding.
- Sir C. Strachey. *SP*
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Earl of Clarendon.
- Mr. Amery.

DRAFT.

The U.S. of S.,
Economic and Overseas Dept.
India Office.

11 - 5 MAY
D ID

11 MAY 1927

copy to Sir 387

Downing Street,
April 1927.
11 MAY 1927

Sir,

I am etc., to acknowledge the receipt of your letter of the 18th March (E.& O.1595/27) relative to the question of racial segregation in townships in Kenya; and to request you to inform the Earl of Birkenhead that copies of the letter from this Department of the 26th November last, of your letter under acknowledgment and of this reply are being sent to the O.A.G. of Kenya, whose attention is being drawn to the fact that the Government of India cannot at present acquiesce in the publication of papers. The O.A.G. is being asked to furnish as far as is practicable the further information

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information desired by the Government of India, both as regards Mombasa and Nairobi; and, as regards Nairobi, his attention is being drawn in particular to para. 7 of the letter from this Department of the 26th November last.

2. As the Government of India do not challenge the principle stated in para. 4 of the Colonial Office letter of the 26th November last,

Mr. Amery is not prepared to interfere with the discretion and responsibility of the Colonial Government in its application. In this respect only am I prepared to state that in view of the fact that the 19th March last is the date of the question by Mr. Taylor,

Mr. Amery states that the Government was not prepared to reconsider the matter with a view to the withdrawal of the consent to the sales of the plots

at Mombasa, and ^{he}Mr. ~~Every~~ sees no reason to vary the discretion which has been given to the Colonial Government in regard to the proposed sales.

I am, etc..

(Signed) W. C. BOTTOMLEY.

Mr. Allen,

If one had all the information asked for by the Government of India together with copies of all the leases and the conditions of sale and what not, one could, no doubt, form a view in relation to each individual site. But I am strongly of opinion that we ought not, and indeed cannot, do more from this end than enunciate a principle. This I have done and it has been accepted by the Government of India. Its application must be left to the local government and I see no reason why it should be assumed that they will not act reasonably and honestly. I should not encourage the intensive form of interference suggested by the Government of India.

4/15 5/4

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Economic & Overseas Department,
India Office, London, S.W. 1,
and the following reference quoted:—
P. & O. 1595/27.



RECEIVED
19 MAR 1927
COL. OFFICE

INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

18^a March 1927.

Sir,

With reference to your letter of the 26th November last, No. X7761/26^K, regarding the question of publication of correspondence relating to racial segregation in townships in Kenya, I am directed by the Earl of Birkenhead to transmit, for

-----	} the information of Mr. Secretary Amery, copy of the papers noted in the margin
Letter to Government of India 2nd December 1926.	
Telegram to Viceroy 21st December 1926.	

Letter from Government of India 17th February 1927.	

on this subject.

2. The Government of India consider that the whole subject requires their further consideration before they can acquiesce in the publication of papers. Lord Birkenhead would accordingly suggest that the Governor should be informed that the papers cannot be published for the present.

3. It will be observed from paragraph 2 of the Government of India's letter that they do not desire to challenge the principle stated in paragraph 4 of your letter under reply, but that they feel that difficulty and room for differences of opinion arise in the practical application of this principle, and that they desire the opportunity of satisfying themselves that the action which it has been decided to take does not go beyond the necessities of each case.

4. The Government of India specify certain points on which they would be glad of further information in regard to the exact nature of the restrictions in force, and the number and location of the plots already alienated.

5. I am to enquire whether further information on these points

11 MAY 1927
Copy to Secy 389

can be furnished for communication to the Government of India. It will be seen that in paragraph 3 of their letter they mention certain questions, in regard to the area at Mombasa, for the elucidation of which the information now requested would be useful. Lord Birkenhead would also be glad if the information asked for in paragraph 5 of the Government of India's letter could be supplied.

6. As regards paragraph 4 of the letter His Lordship understands that it was left to the Governor to decide whether to proceed with the sales at Mombasa pending a decision on the question of publishing papers. He would therefore suggest that the Governor might be informed of the Government of India's request that the sales at Mombasa should be postponed pending communication of the information for which they have asked.

I am, Sir,

Your obedient Servant,

Eg Turner

INDIA OFFICE,

WHITEHALL. S.W.1.

E & O. 7758/26.

2nd December 1926.

Proposed publication of correspondence
relating to restricted ownership of
certain plots in Kenya.

Sir,

With reference to His Excellency the Viceroy's
telegram No. 1488-S, dated 24th August 1926, I am
directed by the Secretary of State for India in Council
to forward, for information, copy of the papers noted

To Colonial Office 26th August 1926. }
From " " 26th November 1926 }
and enclosures. }

in the margin, on the
above subject.

I am, etc.,

Sd. E.J. TURNER.

The Secretary to the
Government of India,
Department of Education,
Health & Lands.

E. & O. 7758/26.

48

Copy telegram from Secretary of State to
Viceroy, dated 21st December 1926.

X

3501.

Education Department. Your telegram 1488 S Kenya. Papers now furnished by the Colonial Office and forwarded with my Economic Secretary's letter 2nd December 7758 show that restrictions on transfer of old plots apply also to alienation of new plots in same area. I am advised that legal position would be the same for both. Please let me have your views on the question of publication of papers.

No. 45- Overseas.

Government of India,

Department of Education, Health and Lands.

New Delhi, the 17th February 1927.

From

J. W. Bhore, Esq., C.I.E., C.B.E., I.C.S.,
Secretary to the Government of India,

To

His Majesty's Under Secretary of State for India,
Economic and Overseas Department,
India Office, London.

Proposed publication of correspondence
relating to restricted ownership of
certain plots of land in Kenya.

Sir,

I am directed to refer to the correspondence resting with the
~~Secretary~~ Secretary of State's telegram dated the 21st December 1926
regarding the restricted ownership of certain plots of land
proposed for sale in Kenya and to say that, in the opinion of the
Government of India, the matter requires further consideration
before they can acquiesce in the release of the papers for
publication.

2. It is observed that the decisions contained in the Colonial
Secretary's despatch to the Governor of Kenya No. 507 dated 22nd
May 1924 and telegram No. 56669/1924 dated 6th December 1924 were
based on the general principle enunciated in paragraph 4 of the
Colonial Secretary's letter No. X 7761/26, dated the 26th November
1926 which forms an enclosure to India Office letter No. R. & C.
7758/26 of 2nd December last. The Government of India do not
desire to challenge the principle there stated. Difficulty,
however, arises in the practical application of this principle
and it is felt that there is room for differences of opinion
on this point especially in the case of Mombassa. In view of the
definite pledge given in the Kenya White Paper that the policy
of segregation as between Europeans and Asiatics in townships.

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See
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26569/24

7761/26

x. A.O. C. 47

must be abandoned, the Government of India consider that they are entitled to an opportunity of satisfying themselves that the action which it has been decided to take to give effect to the principles referred to does not go beyond the necessities of each case. They observe from the Memorandum of the Commissioner of Lands which forms an enclosure to the India Office letter dated the 2nd December referred to above, that apparently in many cases the leases issued contain a clause merely ~~prohibiting~~ prohibiting transfer without the consent of Government. Unless in the advertisement notifying the sale of such plots a definite pledge was made in respect of the whole area intended for European ownership and occupation no legal commitment would appear to have been made by Government, for in giving consent to transfers they are entitled to act in accordance with the policy of the day. Before they are in a position to express any opinion as to the action now contemplated, therefore, it seems necessary for the Government of India to know (a) the exact nature of the restrictive covenants in force; in other words, the precise terms of the leases, the exact grounds upon which any understanding not embodied in the lease or advertisement of sale is said to have been based and the manner in which the limits of such grounds space in respect of which such understandings are to exist have been arrived at; and (b) the number and of the plots already alienated in the light of the law or conditions referred to.

3. In regard to both these points the information in possession of the Government of India is by no means complete. For instance in the case of Mombassa, it is not the whole area shown in red on Map A referred to in the Governor's letter No. 987 dated 10th August 1925 which is a European enclave. While in paragraph 3 of the same letter forms an enclosure to India Office letter No. 10004

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10004

2nd November 1925 the area in question was indicated as bounded by Salia Road, Tritton Road and the Sea front, it is observed from the present Governor's telegram to the Colonial Office dated 15th November last, that plots to the east of Tritton Road have been alienated. It is assumed that the plots mentioned in the latter telegram are, except in the case of No.99, those to which the figure VIII is prefixed on the Map marked A. Plot No.6 A is not traceable thereon. In the case of Mombassa, therefore, it appears that a small portion only of the whole area shown in red has been alienated and no plots at all to the west of Central Road. In the view of the Government of India, while it might be right to retain restrictions on the sale of a few unalienated plots located in the middle of a block of plots which have been alienated subject to restrictive conditions, the case is by no means equally clear when it is proposed to extend such restrictions to plots lying on the outskirts of areas marked for reservation. They would, therefore, be glad if, with the permission of the Secretary of State for India, full information in respect of points (a) and (b) above could be furnished to them in order that they may be in a position to form an opinion on the question how far the pledges or understandings in force must be taken as applying to the whole area marked red on the maps supplied and whether any portions of the same might not justifiably be cut off and treated as non-segregation areas in accordance with the decision contained in the Colonial Secretary's telegram to the Governor of Kenya dated 6th December 1924.

4. It is also not clear which of the plots referred to in His Excellency the Viceroy's telegram dated the 27th May 1926 as recently offered for sale have since actually been sold. From the Governor's telegrams of October 29th and November 15th last, forwarded with the India Office letter No.L & O. 4758/26, dated the

Map 3
H 1883/25
19/6/26

Map 3
H 1883/25

Map 3
H 1883/25

Map 9/24

H 1883/26

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the 2nd December 1926, in which he refers to the area marked red as unalienated crown land with certain exceptions, it would appear that sales have not already taken place. If this is the case, I am to ask that the sales may be postponed or, if the plots are sold subject to the sanction of the local Government, that sanction may be withheld pending the settlements of the points now in issue. 52
END

5. With regard to the area in Nairobi, the Government of India would be glad if the serial numbers of the two additional plots not previously included in the area coloured red could be communicated to them and an explanation given of the restrictive conditions on the strength of which the extension of the reserved area to cover these plots is asked for.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/ H.S. Denny

For Secretary.

1927

Kenya

No. 10230

C0533/368

SUBJECT

Wheat Industry in Kenya.

Report by Prof. Sir Rowland Biffen.

Previous

Gov. 3227/26

Subsequent

10259/27