

1926

KENYA

33  
X. 334  
11 JAN 1926

DATE

GOVERNOR GRIGG 1539

17th December 1925

CIRCULATION -

Allen  
Baker  
Bostonley

MAGADI SODA CO LTD.

d. U.S. of S.

The copies of the Lake Railway and Port Leases and comments upon the considerations arising out of the corresp.

Form U.S. of S.

Part U.S. of S.

Secretary of State

XSA

Previous Paper

MINUTES

I am afraid I have not been able to get on very quickly with this. I have attached notes on the despatch, para. 4 here; & also a separate schedule of all the amendments to the 3 leases, (as the no. of amendments has become rather bewildering). The time has come for decisions on all outstanding points, and I suggest discussion orally. Subject to such discussion, I think a letter can be sent to ~~the~~ the Magadi Coy. indicating final decisions as to the Lake & Port Leases, & saying that unless they have further objection, the Gov<sup>mt</sup> will be asked to get final drafts printed with a view to execution (when the Gov<sup>mt</sup> has had time to receive copies & consider whether he has further to say).

The same applies to the Port Lease, except that the description part of Clause

26 FEB 1926  
 17/12/25  
 20 MAY 1925  
 29/7/26  
 29/7/26  
 29/7/26  
 29/7/26

Subsequent Paper

HL 802

2 requires completion, in the light of decision  
as to the area (§8 of despatch). We shall probably  
have to ask Gov. to send a description when  
a decision is taken.

Before writing to the Gov, however, we  
shall have to consult the Sol.<sup>on</sup> as to Clauses  
3, 4(v), 14(iii), & 16 of the Ply Lease (as well as Clause  
of the Lake Lease). - see note 4 (Ply Lease) &  
typed note on 45746/25 w.r. to the Bushe's notes.  
Perhaps the Officer can be got over here for this,  
if the Bushe could spare 15 minutes ~~for~~;  
but I would suggest the Dept. discussion  
on general points first, as other things may then  
arise on which the Sol.<sup>on</sup>'s advice might be desirable.

(It is to be feared we can frustrate any  
attempt to involve the C.O. into discussion  
of the terms of the subsidiary leases)

? fit time for discussion.

S. Steel

4.2.26.

(They reminded us  
recently & were promised  
something as soon as possible)

to Bushe

My time next week is limited  
by Botany except 11 Wednesday. Maybe  
I can still suggest a time for passing on to  
the Botany. Make the spec. of the two

note

11/1/26

6/2/26

3 PM

Thursday

ALB  
g/c

Mr. Allen  
Mr. Burke 22  
Mr. Bostromley

See Memo

I send on for course 7th to the Nagadi Soda Coy, (with views on detailed amendments) & to the Sol on to the [CA]. These drafts are based on our discussion on 21/11. & so far as I can assure it, covers all the ground. It will, however, be necessary to add an other long draft subsequently, explaining the various points to the Govt, but I think this can wait until we know what the Coy's views are.

The 7th one of course v largely for conson, but I've particularly draw attention to

- (i) para 3(ii) of 4th to Nagadi. (to the corresponding note a clause 2 of the Post lease in the 1st memo).
- (ii) para 3(iv) of the 1st to Nagadi (to the note on cl. 6 of the 1st lease in the 1st memo)

I have discussed these 2 points with Mr Allen & Mr Burke.

- (i) by indicate the end of the agrees as to the change of designation of the Post lease.
- (ii) The matter dealt with in 2(ii) of the 1st to the Sol on.

8/10/26  
to Stanley  
after Sutton  
reply.  
C.B.

23.2

I have also <sup>referred</sup> on 12/24/26, <sup>to</sup> memo on 12/27/26  
Mr Allen 19/2/26  
19.2.26

Notes on Governor's despatch 1539 of 17th  
December, 1925.

Issue of Titles. (a)

The Registrar of Titles has drawn up a short form of grant by the Governor, which is intended to obviate the necessity for redrafting the leases. (See within each of the draft leases now returned by the Governor). In paragraph (f) below the Governor says that a new Registration Bill is in draft under which the leases could be accepted as they have been drawn up, but that this Bill probably not become law for at least a year. Subject to legal examination of the new "short form of grant", I presume we must adopt this form as we can scarcely hold up the leases for another year. (It should be noted, however, that Secretary of State's telegram on 17/8/25 expressed preference for amending the Ordinance, if the conversion of the leases into agreements for leases was in mind. This conversion, though, is apparently not now necessary).

(b)

We too reached the conclusion, on 4/7/25 (sheet 8 of minutes) that further consideration of the Port Lease would be necessary even when this despatch was in.

(c)

See the alteration to Clause 4 of the Lake Lease, Clause 2 of the Railway Lease, Clause 2 of the Port Lease.

The effect is that rents will be payable on one date, and Royalties (of Lake Leases Clause 5(iii)) on another, but this would not appear to matter. If the Company do not object this is a detail with which the Colonial

Office need not interfere.

(d) and

(e). I take it that when the new leases and the deed of surrender of the old Company's leases, are completed, we shall ourselves send copies to the Governor and ask him to arrange for them to be registered (at the expense of the Company, in accordance with D(4) of the "Memorandum of Agreement").

(f) see above under (a)

25762/24.

Termination of Leases.

(In the draft Lake Lease on 45746/25, the Company have provisionally struck out clause 3, but we were to await the Governor's observations)

I do not follow the argument that the Memorandum of Agreement appears to imply that the termination of one lease involves the termination of all. The memorandum deals with each lease separately.

In view of the terms of the proposed Clause 3 of the Lake lease (which has been struck out by the Company) the proviso which the Governor suggests appears to be unnecessary in any case. The Clause only provided for determination of the Lake Lease if the Port or Railway Lease were determined by default, and not by purchase by Government.

The argument in paragraph 2 of this part of the Governor's despatch is not very strong. The alternative to congestion of Mombasa or Kilindini with soda traffic is apparently the complete cessation of the Company's activities, and this is scarcely less undesirable.

This is one of the most serious points of difference between the local Government and the

Company

Company, and it is now time for a decision to be arrived at. Personally, I think that the Company's view as stated in paragraph 3 of their letter on 33924 is reasonable and that in all the circumstances, it should be decided that Clause 3 of the Lake lease should not be insisted on, and further that the proviso now suggested by the Governor is not necessary. Clause 3 of the Railway and Port Leases are not objected to; in view of B(11) of the Memorandum of Agreement, this would hardly be possible.

Boundaries of Properties.

? The Company can be informed; no other action is necessary.

Capital Cost.

Disposed of on 55744/25. Unless the Governor sends a telegram in reply to despatch to him of 23rd December on that paper no action is necessary beyond referring him to that despatch. The information required in the second half of this paragraph of the despatch will be obtainable from the papers sent to Governor

See how  
1267/26  
The Gov has no  
further down

Subsidiary Interests  
of the Company.

We can pass the information in the last 7 paragraphs of this to the Company with Annexures 1 and II. The lease of 3 acres at K Najiadfo, however, (No. 2 in Enclosure B to 20686/25) is not now mentioned. We should perhaps call attention to this in writing to the Company.

Is there any reason why we should not tell the Company that, unless they are not able to fall in with the Governor's proposals, they should arrange for the execution of these new grants to be carried out locally between the Government of Kenya and their representatives

in the Colony.

As to the last two paragraphs of this part of the despatch, regarding the additional acre for the War Graves Commission see 40865/25 and 35689/25. We should now inform the Company reference on 40865/25 that the Governor is unable to agree to their suggestion that the whole cemetery area should be the subject of a sub-lease, as the I.W.G.C. attach the greatest importance to possessing the freehold of all Cemetery areas. Say that Governor hopes they will agree to the proposal set out in paragraph 5 of the Colonial Office letter to the Company on 35689/25, and is preparing a new grant for the land at ~~Kajindo~~ on this basis and that Secretary of State will be glad to learn whether they are prepared to give the undertaking mentioned in that paragraph

7. Land at Shimanzi.

? inform the Company referring to paragraph 20 of 33724/25.

8. Lease Area at Shimanzi.

The facts in the first 2 paragraphs of this part of the despatch do not appear to be in dispute c/f. paragraph 21 of 33724/25.

In the letter to the old Company on 6356/13 the reserved area of 25 acres is spoken of as having "been set aside with a view to meeting future requirements" whether the exclusive requirements of the Company or not is not stated.

The Governor's reading of the Memorandum of Agreement ("C" lines 11 and 12) seems correct, though the draft lease does not at present contain a clause making it clear that the lease granted to the Company in the port is confined to the works they have erected there

(unless

(unless this will be covered by the definition of the area clause (Clause 2)). If the Governor is correct on this point the Secretary of State would be quite justified in refusing to include any of the lien area in the new lease; and there is a good deal of force in his observations as to the inadvisability in the interests of public policy of continuing this lien.

The matter can perhaps be discussed ( in the Department ) before a decision is taken; as also the question of making to the Company the alternative offer suggested by the Governor - the area involved in which seems about the same as that ( 51/E in plan pn 3648/25 ) which the Company desires.

This matter is not yet settled and the Governor must be referred to despatch on 55273/25. The Company need not hear anything further at present about this.

9. British Imperial (S.A.)  
Oil Company Limited.

10. Stand Premium &  
Rent of Occupied  
Land at Shimani.

The Governor now appears to meet the views of the Company as put forward in the latter part of paragraph 21 of their letter on 33724/26. I am not clear what is the justification for compound interest on the original price; though it seems from 30240/11 that Government actually acquired the land in 1911. Perhaps this point can be discussed.

11. Power of Distress (Clause  
\*9 of Lake Lease).  
(Original Clause 8)

See 13 of the typed notes on the Lake Lease on 45746/25. This is another difference between the Colonial Government and the Company who have now twice deleted this clause.

In strict accordance with the Memorandum of Agreement the retention of this clause cannot be pressed. I adhere to decision on 45746/25.

2. Rates to Kilindini and Mombasa.

I inform Company of this reference 52 of 33724/25. The words "or to Kilindini or Mombasa" inserted by the Company in Clause 10 of the Railway lease must be deleted.

3. Application of Rates.

The arrangement seems to be intended so that the Government shall get their money as they go along.

I inform the Company of Governor's proposals, and leave it to them to object.

4. Amendment on Freight Charges.

See Amendment to Clause 12 of Railway Lease on 45. 10. 25. This amendment (purple ink) can now be taken as agreed.

Interest on difference between payments at old and new rates. Ref. clause 10 of the Railway Lease.

The Governor's suggestion to raise the rate from 4% to 8%, besides being absurd is inadmissible, as paragraphs 12 and 14(f) of the memorandum of agreement have settled the rate at 4%. The Governor gives no reasons for doubling the rate.

5. Current Rates for Freight.

See not only 36319/25 but 36417/25. I think the Company's view, as expressed in paragraph 2 of 36417/25 is the more reasonable but I hesitate to suggest that in this matter the Governor's view (which is presumably also the General Manager's view) should be overruled.

I pass this on to the Company reference 36417/25.

Minimum Freight Payments.

See Page 2 (1st paragraph) of Solicitor's letter on 45739/24& Mr. Bottomley's minutes (a) and (b) on that paper.

This point can perhaps be discussed, without adding to minutes at present.

Mileage from Lake Magadi to Shimani.

The Governor makes agreement on this point conditional on accepting his view on 17 above. But in Clause 4(iv) (a) even as it now stands, the Company do undertake to consign the minimum quantities scheduled, and it is for consideration whether the rate originally put in cannot be restored without condition (See paragraph 13 of letter to the Company on 20666/25 as to the change to the higher figure).

Fuel Oil Tank Cars.  
(Clause 7 Railway Lease).

The words "and maintain" are deleted in the Company's revised draft on 45746/25.

? The Company must be informed of the remarks in this part of the despatch.

Extraordinary Repairs.  
(Clause 8 Railway Lease).

How the words "rendered impracticable" came to be inserted during transmission in the telegram of November 6th (draft on 45746/25) is a mystery. The Governor must be informed that this <sup>is</sup> a mistake.

The insertion of these words seems to have led to some confusion, and it seems doubtful whether the additions to Clause 6 proposed are necessary, in view of the present state of that Clause - see draft on 45746/25, to which it may

be assumed now that Government will not object.

In any event, the Attorney General's amendment at the foot of page 12 of the despatch seems to require consideration. "To" in the last line but one of the page should apparently be "by" and the effect of this suggestion would be that the Lessees would do at their own cost any "extraordinary repairs and renewals" whilst the Railway might do "additions and betterments" for which the Lessees would <sup>eventually</sup> have to pay.

(Clauses 3, 4(v), 14(iii) and 16 of the Lease (dft. on 45746/25) provide that re-entry on the determination of the lease before the expiration of the term shall be subject to the provisions of Clause 13 and <sup>the expiration of the Lease</sup> ~~effluxion~~, or purchase under Clause 13 <sup>with</sup> ~~shall~~ in any case to be the only means by which the Government can acquire the lessees' assets - see flagged note on 45746/25).

1. Sand Siding.

The Company asked in paragraph 25 of 33724/25 for a lease of the right to take sand and maintain the siding but the Uganda Railway evidently do not want this arrangement.

? substance of this part of Governor's despatch to Company reference 25 of 33744/25.

2. Branch Railway at Kilindini.

It will be necessary to inform the Company that the Governor agrees

that

Oct 1922 lease.

that the section of the line in question should be purchased by Government and that this will be taken up as soon as the Port Lease has been executed. The whole of the branch line should therefore be included in the Lease, as at present, and the amendment suggested by the Governor to Clause 10 should be incorporated.

The Governor refers to the "omission" of words " or any part thereof" ~~in~~ Clause 16 of the draft lease on 3648/25. The re-insertion seems necessary - and perhaps a similar amendment should be made to Clause ~~16~~ - under which Clause indeed the purchase now proposed would appear to fall.

23. Minor Railway Facilities.

? Inform Company with reference to paragraphs 23 and 24 of 33724/25. ? the Company's proposed Clause 4(i)D of the Railway lease may stand.

24. Amounts Outstanding

? refer Governor, in replying to Secretary of State's despatch 1198 of 27.11.25 on 52129/25.

25. Telephone line to Ngong.

? inform Company with reference to paragraph 14 of 33724/25.

26. Water Supplies & Native Rights.

(a) ? substance of this to Company reference paragraph 16 of 33724/25(? we might say that further correspondence as to this should be conducted between the Company's local representatives and the Government and say so also to the Governor

Governor in replying).

(b) The Company do not actually propose in paragraph 16 of their letter on 33724/25 that 1000 gallons of water per diem should be supplied in each of the three troughs, but it is reasonable to suppose that this is meant. The substance of (b) may also <sup>be</sup> communicated to the Company

(c) The argument against the proposal in paragraph 29 of 33724/25 to amend Clauses 2(ii) and 6(XIV) of the Lake Lease by inserting words "for their own use but not for sale or barter" does not seem very cogent. If the position is quite clearly understood locally, as Governor suggests, no harm is likely to arise by defining it as clearly as possible in the lease. Unless it is not desired to differ from the Governor's view, I think the Company's amendment (already inserted provisionally in draft lease on 45746/25) might stand.

If however, Mr. Bushe's view coincides with that of the Governor's legal advisers, we should explain to the Company and strike out their amendments on this point.

Quotations.

! We need not alter quotations expressed in pounds.

The mention of pence which requires alteration appears in:-

Railway Lease 10(B) and 10(C)(1).

Final Proposed Schedule of Amendments to February 1, 1924

A.	B.	C.	D.
Case on H.L. 4573/A	Governor's Draft Issues		Remarks.
		Form of Grant.	
Preamble, Rider. (Ry. Loans)		See 2(a) and (f) of 334/25.	
Preamble, Rider. (Pub. Loans)			Agreed.
Preamble, (Change of address)			Agreed to delete.
Preamble, Last Sentence, Deletion of "and"			Agreed.
Preamble, Last Sentence, Deletion of "and"	Not included.		See No. 6 below.
Preamble, Last Sentence, Deletion of "and"	Not before Governor check 334/25 was written.		? Now agreed subject to amendment in 3 (a) of 457/25, on 48/25/25.
Preamble, Last Sentence, Deletion of "and"			Agreed.
Clause 1 (B), (H) to be deleted.			Now deleted. (N.B. have were text of (G) deleted).
Clause 2, Descrip- tion.	Not before Governor		Agreed, based on 20085/25.
Clause 2, Rider.			Deleted by Company.
Clause 2 (i)			To stand as drafted.
Clause 2 (ii) - (iv)			Agreed to delete.
Clause 2 (old (v))	Not before Governor		See 10c of 334/25.
Clause 2 (old (vi))			Agreed.
Clause 3 (new)			Not agreed by Company. See paragraph 3 of 334/25.
Clause 4 (new)			See 2 (e) of 334/25 ? agree.
Clause 5 (ii) (Substitution of "the Government" for "they")			Agreed.

A.	B.	C.
Clause 5 (iv)		Agreed.
Clause 5 (v) (a)		Amendments agreed.
Clause 5 (vi) - (viii)		Agreed to delete, except 5 (vi), which is to stand. (60700)
Clause 5 (xi)		Amendment agreed.
Clause 5 (xiv)	Not before Governor	See 26 (a) of 334/26.
Clause 5 (xvi) (A)	Not before Governor	? agreed. (33724/26).
Clause 5 (xvii)		Agreed.
Clause 5 (xviii) (A)		? To stand, with Coy.'s amendment in purple to (a), subject to insertion of "general" before "working" (H.B. This amendment was not before Governor. (See 45745/26)).
Clause 5 (xxiv)		Agreed, ? including amendment in purple to (B). (not before the Governor).
Clause 5 (xxv)		Now deleted by the Coy.
Clause 5 (i)		Agree.
Clause 5 (ii)		Now deleted by the Coy.
Clause 9 (old clause 8)		Second deletion by the Company not before the Governor, who was informed later in telegram on 45745/26, and presses for retention. See sec. 11 of 334/26.
Clause 15.		Agreed.
	<u>Railway Loans.</u>	
	Form of Grant.	See 2 (a) and (f) of 334/26.
Preamble. (Change of address)		Agreed.
Preamble (2nd recital)		Agreed.
Preamble. (3rd recital)		Agreed.
Clause 1. (Definitions)	Amendment to 1 (f) not before Governor.	? Agree; See similar amendment to take Loans Clause 1.

A.

B.

C.

Clause 2. 1st Paragraph.	Not before Governor	Agreed; based on 20586/25.
Clause 2. Rider.		Now deleted by the Gov. (Deletion not before Governor, but agreed)
Clause 2. (iii) and (iv)		Agreed.
Clause 3.	Clause 2. Last paragraph. Amendment not before Governor	Sec 2 (c) of 334/26. See (4) of typed memo. (Railway Lease Section) on 40745/20. Before a decision is taken the Solicrs. are to be consulted.
Clause 4. (ii) D.	Not before the Governor	See 23 of 334/26.
Clause 4. (iv) (C)	Clause 4 (iv) (A) and (C) (Riders).	See 17 of 334/26 (cf. Clause 5 of Lake Lease).
Clause 4. (v)	Not before the Governor	Agreed.
Clause 4 (vi) (A)		See on item 9 above. To stand as drafted.
Clause 4. (vii)		To stand as drafted.
Clause 4. (viii) (A)		Agreed.
Clause 4. (viii) (B)		Agreed, subject to marginal note.
Clause 4. (xi)		Agreed.
Clause 4. (xvii) (A)	Amendment of (B) not before the Governor	Agree, subject to further deletion from (B) of "whose decision shall be final". (See draft to Solicrs. on 47545/25).
Clause 4. (xviii)	Deletion not before Governor.	Agreed to delete.
Clause 5. (old)		Deletion agreed.
Clause 6.	Not before the Governor.	See 20 of 334/26.
Clause 7.		Agreed, including deletion of "and maintain". (See 19 of 334/26).
Clause 10. 1st paragraph.		Agreed; but ? not insertion of "as to Killindini or ... which must be struck out. See 12 of 334/26.

Clause 10. (B) and  
10. (c) (1)

1. ? alter quotations  
to Sh. 18.00  
Sh. 17.00  
Sh. 16.50 &c. &c.  
2. Addition of riders.  
See 13 of 334/25.

Clause 10. (ix)

Agreed.

Clause 12.

Purple amendments not  
before Governor.

? Agreed, see 14 of  
334/25.

Clause 14. (iii)

See item 9 above.

Clause 15. (iii)

Agreed.

Clause 16.

Purple amendment not  
before Governor.

See item 9 above.

Clause 18.

Stands as originally  
drafted. - but see  
purple note on Coy.'s  
draft on 4754/25,  
and item 9 above.

Clause 19. (ii)  
A & B.

Agreed.

Clause 19. (ii) C.

Company's purple note  
not before Governor.

See 12 of typed Notes  
(Railway Lease Sec-  
tion) on 4754/25.

Clause 20. (A)  
(Purchase price)

? Agreed, unless  
Governor objects by  
telegram on receipt  
of despatch on  
56744/25.

Clause 20. (B).

Not before the Governor.

See item 22 above.

Clause 20. Last  
paragraph.

? (i) See 15 of 334/25,  
as to figure Sh. 17.50,  
which must be altered  
to Sh. 17.72 - but  
see 15 of 334/25.  
(ii) 15 of 334/25.  
? "24 per cent"  
stands.

(ii) Governor alters  
"24 per cent" to "23  
per cent".

Clause 21.

Agreed.

Clause 22.

Company's purple note  
not before Governor.

See item 9 above.

Clause 29.

Agreed.

Part Lease.

Form of Grant.

See 2 (a) and (f) of  
334/25.

A.	B.	C.
Clause 2. Description of Area.		See 2 (b) of 334/25.
Clause 2. (i)	Not before the Governor.	? Agreed - see typed note on 48745/25.
Clause 2. (iii). (Proviso)		(i) See 22 of 334/25 as the land is to be conveyed but proviso is crossed the printed part of this sub-clause stands. (ii) See addition at the end is to be agreed - see typed note on 48745/25.
	(ii) Not before the Governor.	
Clause 2. (Last Paragraph).	(i) Company's amendment not before the Governor. (ii) Alteration as to...	See 10 of 334/25. ? Agreed - see typed note on 48745/25.
Clause 3.		See Railway Lease, item 9, above.
Clause 4.	Not before the Governor.	
Clause 5. (ii)		
Clause 5. (i) & Rider.	Not before Governor when considering draft lease.	See 9 of 334/25.
Clause 5. (iv) (A).	Not before Governor.	? Agreed, cf. 5 (iv) (A) of Lake 1940.
Clause 5. (iii).	Not before Governor.	cf. 5. (i) & (ii).
	Clause 10.	See 22 of 334/25.
Clause 12.		(i) Purchase price agreed as in Clause 20 (i) of Railway Lease, as Governor's objection. (ii) ? Agreed - see typed note on 47745/25.
	See para 267/66	
Clause 12. (A) Company's purple amendment.	Not before the Governor.	
Clause 12. (B).	Not before the Governor.	? Agreed - see typed note on 47745/25 but see also Railway Lease, item 22, above.

Clause 2. Description of Area.		See 2 (b) of 334/25.
Clause 2. (i)	Not before the Governor.	? Agreed - see typed note on 48746/25.
Clause 2. (iii). (Proviso)		(i) See 23 of 334/25. At the time it is to be amended, but purchase is pending the printed part of this sub-clause stands.
	(ii) Not before the Governor.	(ii) The addition of the word is to be agreed. See typed note on 48746/25.
Clause 2. (last paragraph).	(i) Company's amendment not before the Governor.	See 10 of 334/25.
	(ii) Amendment as to date of payment.	? Agreed - see similar provisions in Schedule
Clause 3.		See Railway Loans, Item 9, above.
Clause 4.	Not before the Governor.	
Clause 5. (iii)		
Clause 5. (v).	Not before Governor when considering draft loans.	See 9 of 334/25.
Clause 5. (iv) (2).	Not before Governor.	? Agreed, cf. 5 (iv) (1) of Lake Loans
Clause 5. (iii).	Not before Governor.	Of. G. & S. 1925.
	Clause 10.	See 23 of 334/25.
Clause 12.		(i) Purchase price agreed, as in Clause 20 (1) of Railway Loans, and Governor's telegraph of 1925.
Clause 12. (A) Company's purple amendment.	Not before the Governor.	(ii) ? Agreed - see typed note on 48746/25.
Clause 12. (B).	Not before the Governor.	? Agreed - see typed note on 48746/25, but see also Railway Loans, Item 22, above.

See para 2  
(267/16)

SUTTON, OSMANNEY &amp; OLIVER.

E. W. OLIVER

H. M. OSMANNEY

TELEGRAPHIC ADDRESS: "OSMANNEY, LONDON"

TELEPHONE: NO 1259 } LONDON WALL  
NO 9316 }

3 &amp; 4, GREAT WINCHESTER STREET,

LONDON, E. C. 2.

X334/1926.

1st March, 1926.

Sir,

Magadi Soda Company  
Limited.

*M.P.*  
*1-2-26*  
*26*

we beg to acknowledge receipt of your letter of 26th ultimo and its enclosures relating to the draft leases to the Magadi Soda Company Limited.

Your instructions shall have our immediate attention and we hope to be in a position to communicate our full advice in this matter shortly.

We will, at the same time, take in hand the preparation of revised drafts of the leases incorporating all amendments made up to the present time.

We have the honour to be,

Sir,

Your obedient Servants,

*affairs*  
*see in arc*  
*attach when they*  
*in*

*del*  
*8/3*

The Under Secretary of State,  
Colonial Office,

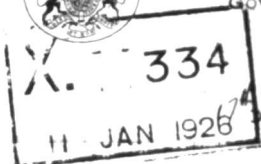
S.W.1.

KENYA

No. 1529



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.



December, 1925.

Sir,

(i) M.L. 33724/25  
(ii) M.L. 33744/25  
(iii) M.L. 33744/25

(i) With reference to your despatches Nos. 733, 792 and 793 of the 6th and 19th August, relative to outstanding matters concerning the Magadi Soda Company, Limited, I have the honour to transmit copies of the Lake, Railway and Port Leases as prepared by the Land Titles Registry in accordance with the Registration of Titles Ordinance and in subsequent paragraphs of this despatch to comment upon the considerations arising out of the correspondence.

For facility of reference I use the following connotations:-

- X = The Magadi Soda Company's letter of the 23rd July 1925 to the Under Secretary of State enclosed to your despatch No. 733 of the 6th August.  
M.L. 33724/25
- Y = The Under Secretary of State's letter No. 33724/25 of the 19th August 1925 to the Magadi Soda Company, Limited, enclosed to your despatch No. 792 of the 19th August.  
M.L. 33714/25
- Z = Your despatch No. 792 of the 19th August.  
M.L. 33724/25

Paragraph 4.

2. Issue of Titles:

(a) It is pointed out by the Registrar of Titles that to be in strict conformity with the Ordinance would necessitate entire redrafting and

in

RIGHT HONOURABLE

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

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

in order to obviate this he has drawn a short form of grant by the Governor and has left the present leases as a Schedule to the grant. This will also allow of the leases being executed by the lessees which although not strictly required by the Registration of Titles Ordinance 1919 is, in this case, probably desirable. I presume that when the leases are finally agreed upon they will be printed in London.

(b) The grant of the Kilindini area cannot be prepared in final form until a decision is reached with reference to the precise area to be demised, vide paragraph 8 infra.

(c) It will be noted that the rent is made payable on the first of January in each year in accordance with the prevailing practice in this Colony.

(d) The Deed of Surrender should be sent to the Registrar of Titles in order to be registered.

(e) In order to effect registration it will be necessary for the copies of each lease to be presented at the Land Office Registration Department in Nairobi and for Deed Plans to be attached to the original.

(f) The new Registration of Titles Bill which is now in draft form provides for the acceptance of an indenture in place of the present form of grant. It is improbable that this bill will become law for at least another year but if this should occur before the final settlement of the leases it would be possible to complete them without the necessity for the inclusion of the form of grant by the Government.

Paragraph 3.  
2(b).  
5

M. 1337/24  
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3. Termination of Leases:

The memorandum of Agreement appears to imply that the termination of one lease involves the termination of all, since in that memorandum the leases are dealt with collectively. The General Manager of the Railways still considers that the clause should stand and with deference to your opinion I am inclined to agree with his views; a proviso might be added that the Lake Lease will not be determined if the Port or Railway leases are determined by Government exercising its option to purchase.

It is obvious, for example, that were this clause deleted Government might find itself in the position of being unable to terminate the Port Lease in any circumstances, because such action would involve the congestion of Mombasa or Kilindini with Soda traffic. The Company would doubtless be well aware of the weakness of Government's position in this respect.

Paragraph 10.  
2(f).

M. 1337/24  
25

4. Boundaries of Properties:

The Director of Land Surveys will give all possible assistance to the local representatives of the Company in identifying the boundaries of the various properties.

Paragraph 6.  
2(c).

M. 1337/24  
25

5. Capital Cost:

5.45746 I note from your telegram of the 6th November that the Company state that £569,582 is the amount of capital outlay upon the Railway; further that the probable corresponding figure for the Port is £45,145. In my telegram No. 529 of the 13th November, I agreed that these figures, which are not available in this Colony, should be accepted after verification by the Solicitors.

Apr. 5/26  
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In this connection I should be grateful if the allocation of the sums under reference may be supplied under the appropriate heads of expenditure since these details will be required to enable depreciation of wasting assets to be assessed.

Paragraph 13.  
2(h).

6. Subsidiary interests of the Company:

There is no serious objection to the proposal that the whole of the old Company's interests be surrendered and new grants issued to the new Company upon payment of such sums as may be due in respect of Stand Premium and rent as detailed in Annexure I.

Annexure I.

Draft grants and plans are being prepared in respect of:-

- (a). L.O.No.1833/1 and 2. Area for European Housing.
- (b). L.O.No.4456 Native Location 2,000 acres.
- (c). L.O.No.4521 Ngong Water Works area 96.8 acres.
- (d). Licence for the Store Plot at Kajiado.
- (e). Ngong water Agreement.
- (f). Serei Pipe Line Agreement.

If approved by the Company they will be engrossed in the Colony and issued in due course.

The Diatomite Concession should be cancelled outright as it has never been worked. Diatomite has been declared to be a "Common Mineral" under the Mining Ordinance 1924. If the new Company desires to exploit this deposit they should take steps under the Mining Ordinance to secure rights.

The Store Plot at Kajiado held on Temporary Occupation Licence is sublet by the Company. I do not recommend any variation of the

form of tenure in this case.

A draft surrender in respect of L.O. No.1833/1 and 2 is forwarded herewith. As the other properties are at present held merely on licence there is no necessity for formal surrender in these cases. The signature to the new deeds will be of even date with the surrender.

All the existing title deeds in respect of all properties will be required in the Colony before the matter can be completed.

With reference to the request of the Imperial War Graves Commission for an area of half an acre adjacent to the Cemetery site at Kajiado for a caretaker's residence I consider that this should be treated as one with the cemetery area. The suggestion that the whole should be the subject of a sub-lease cannot be accepted as the Commission attaches the greatest importance to possessing the freehold of all cemetery areas. I see no reason for making the additional half acre the subject of special terms.

The War Graves Commission can be relied upon to preserve both plots in a clean and tidy condition. I shall be glad, therefore, if you will obtain an assurance from the Company that they will relinquish the portion when called upon to do so. On this understanding the new grant is being prepared for the whole of the original area.

7. Land at Shimanzi:

The survey of the areas coloured green on the plan referred to has now been completed. The precise area in the aggregate is found to be 3.793 acres. The boundaries of the British Imperial Oil Company's plot are correctly shown

on

Annexure II.

Secretary of State's despatch 1927 of 14th September 1925.

M.O. 60865/12

Paragraph 28.  
2(m).  
6.

5/14/25

on the said plan.

Paragraph 21.  
2(n).  
6.

H/3374  
76

8. Lien area at Shimani:

The original Magadi Company was given a lien over an area of 15 acres; making, together with the area granted on lease, a total of 25 acres. The leasehold area was subsequently increased from 10 acres to 13.67 acres (subsequently found on re-survey to be 13.65 acres) by an excision from the lien area.

A portion of the remaining lien area was relinquished by the Magadi Company in order that a lease might be granted to the British Imperial Oil Company Limited for the released area together with other adjoining land.

H.I.  
20332  
1911

It seems clear from the late Lord (then Mr.) Harcourt's despatch No. 409 of the 27th July, 1911, that it was never the intention of Government to allow the Company to retain a lien over this additional area for an indefinite period, but only until such time as the Port Works were definitely established and it could be clearly seen what the land requirements of the Company were likely to be; such portion of the lien area as was not then required was to revert to Government.

was P. Kettle  
Y. m. 6358/1913

In accordance with the terms of the Agreement with Messrs. Brunner Mond and Company (Clause C) the lease to be "granted to the Company in the Port is confined to the works they have erected there".

Paragraph 20.  
1st Clause.

H.I.  
15724  
76

It is agreed by the Company that the portions coloured green on the plan under reference comprise the area actually occupied by the Depot Works.

I do not consider that the continuation

of

of a lien of this character over a considerable area of very valuable land is in the interests of public policy. The available area in this neighbourhood is now exceedingly limited. Bulk storage of petrol and oil is concentrated at Shimansi and the lien area with adjacent land is included in the accepted scheme for an extension of the petrol storage plots.

The size of the plot which it is proposed to grant to the new Company is quite adequate for the storage and handling of all the traffic that may be expected to pass through the Port.

I cannot recommend that any grant of a lien to the new Company be given. If, however, you conclude after hearing the representations of the Company hereon, that further allowance for expansion must be made I suggest that an offer be made to include within the area of the grant, on similar terms to those already specified in respect of the areas coloured green, a portion of the original lien area together with adjoining land. The plan enclosed (in duplicate) illustrates the present position and this proposal. A plot of approximately 5 acres will be left for bulk petrol storage extension in a position adjoining the plot by the British Imperial Oil Company, Limited.

Annexure III.

Paragraphs 27 & 28.  
2 (a).

9. British Imperial (S.A.) Oil Company, Limited:

This matter has now been satisfactorily adjusted for the present - vide my despatch No. 1364 of the 3rd November.

H.L. 33724  
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H.L. 33724/15  
Memo

Paragraph 21.

10. Stand Premium and Rent of occupied land at Shimansi outside original leasehold area.

In 1913 when the leasehold area was extended from 10 acres to 13.65 acres it was made

2 (n).  
6.

H.L.  
33724/15

clear by the Secretary of State that any further acquisitions from the lien area were to be paid for in accordance with clause 5 of the original Contract and paragraph 4 of the letter to the Nagadi Company dated 23rd September, 1911, (Reference Under Secretary of State's No. 6338/1913 of the 26th February, 1913). It appears on investigation that the intention was to charge such a sum for this land as would re-imburse the Railway for the cost of acquisition. This figure I find to have been £50 per acre. The sum to be paid by the Company in respect of the area of 3,793 acres should therefore be at the rate of £50 per acre plus Compound Interest at say 4% per annum for a term of 14 years (1911-1925) i.e. £136/10/- per acre. A total sum would thus be due of approximately £518.

Apr 30 1914

Apr 6 1913

11. Lake Lease - Powers of Distress:

I observe from your telegram of the 6th November that the Company insist on the deletion of Clause 9 on the grounds that it is not in the old lease and I agree that it is not essential in view of the provisions of Clause 10 but I consider it would be very expedient to retain it. The power of re-entry under Clause 10 involving as it does the lapse of not only the Lake lease but also of the other leases of the Railway and the Port could not be readily or hastily exercised by Government and no doubt this is realised by the Company. The power is undoubtedly convenient to Government and both the Attorney General and General Manager agree, and I concur, that its retention should be pressed.

5/4/14

Paragraph 2.  
2(a).

12. Rates to Kilindini and Mombasa:

Individual consignments for export from Kilindini or Mombasa will be accepted at scheduled rates, but so far as the lease is concerned the rates quoted therein should apply to the Company's pier only.

Arrangements are not being made to deal with this traffic at either Kilindini or Mombasa and serious disturbance to other traffic might result if goods in large quantities were diverted to these ports.

13. Application of Rates:

I consider it necessary to stipulate in the lease the manner in which the varying rates in the schedule should be applied, and to cover this point the Attorney General has prepared the following amendments:-

After Clause 10 (B):

"And provided further that in any year until the total weights of 50,000 tons and 150,000 tons have been exceeded the amount charged and payable in respect of freight shall be at the rate of Shs:18/- per ton or Shs:17/- per ton respectively and if and when these total weights are exceeded the Uganda Railway Administration shall credit the lessees with the difference between the higher and lower rate or rates then appropriated".

After Clause 10 (C) (1):

"And provided further that in any year until the total weight of 150,000 tons has been exceeded the amount charged and payable in respect of freight shall be at the rate of Shs:20/- per ton and if and when this weight is exceeded the Uganda Railway Administration shall credit the lessees with the difference between Shs:20/- and Shs:18/-".

14. Interest on Freight Charges:

It is the intention, if payment be made by ledger account, that interest should accrue from the due date of payment as laid down in the Tariff.

Paragraph 7.  
2(d).

I note, with approval, that clause 12 of the Railway lease is being altered to make this point more clear.

15. Interest on difference between freight payments at old and new rates as applied to reduction of purchase price:

Agreement should be reached with reference to the rate of interest to be reckoned. I consider that the rate should be 8% per annum and shall be glad if you will endeavour to obtain acceptance of this figure, vide Section 20 of the Railway lease.

16. Current Rates for Freight:

I do not consider that the new rates should be applied until the new leases are actually signed. It may assist in expediting the completion of these leases, and in obtaining agreement to the proposed amendments if the conditions of the original lease are enforced meanwhile.

17. Minimum Freight Payments:

Full effect does not appear to have been given in the draft leases to the last section of paragraph (7) of the Memorandum of Agreement which provides that Government may, at its discretion, treat defaults as breaches of covenant or require the lessees to pay minimum freights and royalties.

As the draft lease now stands Government has no claim to a minimum freight, but the Company has the option of paying the same to avoid being penalised for breach of covenant. This point I regard as of the first importance. The following amendments have been prepared by the Attorney General. If you concur I shall be glad if you will take the necessary steps to have them embodied

in

Despatch No. 793  
The 19th August,  
Enclosures.

M.L.  
36319/25

A.7.

in the Railway lease:-

Amendment to Clause 4 (iv) (a):

"Provided that whether the minimum weights set out above are despatched by the lessees or not the lessees shall be liable for and shall pay to the Uganda Railway Administration the amount of freight appropriate to and due in respect thereof."

Amendment to Clause 4 (iv) (c):

"Provided further and it is hereby agreed that nothing in this lease contained shall prevent the Uganda Railway Administration at their option from electing to sue the lessees for any unpaid freight and to obtain satisfaction of any judgment by attachment of any of the lessees' property."

I consider that similar amendments should be made in the Lake lease with application to the payment of royalties.

Paragraph 19.  
2(1).

18. Mileage from Lake Magadi to Shimanzi:

If the proposals made in paragraph 17 hereof with reference to minimum annual payments for freight be approved I agree to the reinsertion of the rate of Shs:17.72.

Under the old lease the Company was charged as for 381 miles because the small consignment offered could not be worked direct to Shimanzi but had to be taken to Kilindini and then back to the Company's Port. If the Company now consigns the minimum quantities scheduled the additional mileage charge would be no longer applicable.

Paragraph 22.  
2(c)

19. Fuel Oil Tank Cars:

It is noted that the deletion of the word "maintain" is approved. The Company has apparently not quite understood the intention. In any event the same rate will be charged as to any other person or Company providing stock under similar conditions.

Paragraph 18.  
2(k).

20. Extraordinary Repairs:

The reference to the Railway lease Clause 6 in your telegram of the 6th November was not understood and it is assumed to read:-

"Railway Lease Clause 6 rendered impracticable. General Manager's observations on 2(k) of enclosure to my despatch should be included in your despatch".

There would not appear to be any difficulty in redrafting Clause 6 to provide that lessees shall be liable for the cost of "additions and betterments" instead of "extraordinary repairs and renewals" or in amending Clause 20 (b) to provide that the cost of such additions and betterments should be added to the contract price.

An addition could also be made to Clause 6, providing that the agreement of the lessees must be obtained before any expenditure on additions and improvements is incurred and also that any difference of opinion as to the necessity for same must be referred to arbitration.

It is, of course, apparent that, if the lease runs its full term, large sums are likely to be spent on additions and improvements to the existing property and possibly the lessees realising this object to incurring liability for further capital expenditure.

If this is the case the Railway Administration could assume the liability, and allow the Clauses referred to above to stand as drafted, if the following addition drafted by the Attorney General was added to Clause 18:-

"Provided that should this lease be determined other than by effluxion of the term of 99 years, or by purchase by Government as provided under Clause 19, the lessees will refund to the Uganda Railway Administration all sums expended upon additions and betterments to the Railway after the date hereof, and any difference

M.L.  
3/10/25  
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45746/25

as to whether any sums are properly attributable to this heading shall be referred to an arbitrator under the provisions in that behalf hereinafter contained".

It appears that the Company previously agreed to the intention of Clause 6, vide the marginal references.

Paragraph 25.  
2(q).

M 135714/25

21. Sand Siding at Mile 54:

This siding is and will be maintained by the Railway Authorities. Siding charges are covered by the freight paid. This arrangement will continue as heretofore. There is no objection to the Company obtaining sand from this point provided the Railway retains an equal right.

Paragraph 26  
2(r)

M 135714

22. Branch Railway at Kilindini:

I agree that this Government must purchase that section of the Branch line which forms the link to the new harbour works.

In this connection attention is drawn to the omission of the words in Clause 10 of the Port Lease "or any part thereof". These words should be re-inserted in order to secure provision for the acquisition of a portion of the depot works.

Government will proceed to exercise this right in respect of the section under reference as soon as the lease has been executed. The purchase price will be assessed on the principles laid down in the lease.

Paragraphs 23  
and 24  
2(s).

M 135714/15

23. Minor Railway Facilities:

The Company may rest assured that sympathetic consideration will at all times be given to any reasonable requests put forward.

Permission to run the motor trolley will be accorded in the future on the same lines as in

the past, and the existing arrangements for the running of the Company's coaches will continue.

24. Amounts Outstanding:

In this connection I would refer you to Mr. Denham's despatch No. 1162 of the 15th September and again urge that the payment of the royalties due to the Colony which amount to £9,991.11.0 and of the sum of £4,295, due to the Uganda Railway for freight charges should be settled at an early date.

O.A.C.  
46012  
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Paragraph 14.  
2(i).

25. Telephone Line to Ngong:

There is no necessity for powers to be included in the Ngong grant. The telephone line will be a private one and application for a licence under the Telegraph Act should be made to the Postmaster General. This line being a private one differs from the line along the Railway with regard to which the necessity for a licence was waived.

15/12/15

Paragraphs 16  
and 17.  
2(j).

26. Water Supplies and Native Rights:

(a) In Clause 7 of the Agreement of the 15th March 1915 between the then Governor and the Magadi Soda Company the Company agreed to erect nine troughs at certain places in the Masai Reserve. Troughs at the places mentioned in this Agreement are no longer of service to the Masai.

M.V.  
13724/15

Again by Clause 8 of this Agreement the Company undertook to provide five additional troughs on the Ngong Streams when requested by the Governor. No request has ever been made under this Clause.

In the circumstances therefore I entirely

concur

concur with your suggestion that there should be a discussion between the Senior Commissioner, Masai Province, and the local Manager of the Company with a view to reaching a settlement as regards the supply of water for native purposes and instructions are being issued to that effect.

When a basis of negotiation has been reached I purpose to embody its terms in an Agreement between myself and the Company and, prior to its execution, will address you further in the matter.

(b) In Clause 2 of the Agreement of the 2nd February 1916 between the then Governor and the Magadi Soda Company the Company undertook to keep one cattle trough full of water at or near the point where the Surei pipe line joins the Ngong Hills supply between mile 46 and 47 on the Magadi Railway.

The present Company proposes to vary this agreement by undertaking to supply a limited amount of water, namely 1,000 gallons per diem in each of three troughs which are at present in existence, one at Surei and two at Kora. This proposal is acceptable to the Masai and is preferable to the existing agreement.

I consider, however, that in this case as in the case of sub-paragraph (a) above, it would be advisable were the final agreement to provide that the sites of the troughs may from time to time be altered. This is rendered necessary by grazing conditions and other considerations relative to stock. If the Company will agree to this alteration it will be stipulated in the agreement that the cost of the construction of and fittings to the troughs will be borne by the Masai.

Paragraph 29.  
2(t).

1.1.  
337/14  
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(c) With regard to Section 6 (xiv) of the Lake lease relative to the native right to remove raw Soda "for their own purposes" my legal advisers consider that the words mean "for their own use" and do not cover the right of sale or barter. I think it would be inadvisable to emphasize the position, which is quite clearly understood locally, by the introduction of any further words which would imply still further limitations of the rights of the natives of the area to collect any soda for their own use. If it is found that the privilege is abused or that there is a trade by natives in raw soda the matter can be further discussed. I am satisfied that under existing conditions there are no grounds to suppose that there is any danger of loss to the Company on this score.

27. In conclusion I would ask that all quotations may be made in Shillings and Cents of a shilling and not in shillings and pence.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Edward Gigg.*  
GOVERNOR.

MAGADI FORA COMPANY, LIMITED.

Annexure I.

Amounts due on completion of titles of Subsidiary Holdings.

Annexure I.

L. O. Number	Area Acres.	Locality.	Stems planted.	Rate per annum.	Period.	Amount.
4456	2,000	Kiles 46-48	Shs: 1,000	Shs: 100	6/5/22 to 31/12/26	Shs. 1,860- 00
4521	95.5	Ngong	" 5,750	" 19/80	1/1/26 to 31/12/26	19- 20
<u>Shs. 6,750</u>						<u>Shs: 1,879-20</u>

THIS INDENTURE made the Liquidator was day of 192 BETWEEN THE BRITISH TRUSTS ASSOCIATION LIMITED whose registered office is situate at 52 Bishopsgate in the City of London (hereinafter called the Association) of the first part THE MAGADI SODA COMPANY LIMITED in liquidation whose registered office is situate at 25 and 27 Bishopsgate afore-said (hereinafter called the Company) acting by Herbert Edward Burgess of 33 Carey Street W. C. 2. in the County of London Senior Official Receiver in Companies winding-up the Liquidator of the Company (hereinafter called the Liquidator) of the second part and the within mentioned His Most Gracious Majesty King George the Fifth (therein and hereinafter referred to as His Majesty) of the third part WHEREAS by an Indenture (hereinafter called the Trust Deed) dated the 16th day of May, 1919, and made between the Company of the one part and the Association of the other part being a trust deed to secure debentures to the aggregate nominal amount of £500,000 then about to be and since in part issued by the Company whereby the Company charged (inter alia) in favour of the Association as and by way of a floating security the whole of its undertaking and property for the time being whatsoever and wheresoever exclusive of any uncalled capital with the payment of all moneys intended to be thereby secured AND WHEREAS the security constituted by the Trust Deed some time since became enforceable and thereupon the floating charge contained in the Trust Deed crystallised and became a specific charge upon (inter alia) the hereditaments and premises comprised in and demise by the within written Indenture of Lease AND WHEREAS by an Order of the High Court of Justice (Companies winding up) made on the 8th day of April, 1924 it was ordered that the Company should be wound up by the Court under the provisions of the Companies (Consolidation) Act

1908 and by the same order the Liquidator was appointed liquidator to the Company AND WHEREAS the Association and the Company acting by the liquidator have agreed to execute such surrender and assignment as is hereinafter contained to the intent that His Majesty may grant to the Company or its successors and assigns a new lease of a portion of the piece or parcel of land within described and demised NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Association as Mortgagee and according to its estate and intent in exercise of the power in this behalf conferred by Clause 16 of the Trust Deed and of all other powers it hereunto enabling and at the request of the Company hereby surrenders and assigns and the Company as beneficial owner acting by the Liquidator hereby surrenders and assigns unto His Majesty All and Singular the hereditaments and premises comprised in and demised by the within written Indenture of Lease To Hold the same unto and to the use of His Majesty His Heirs and Successors from the date hereof for all the residue now unexpired of the term of 99 years created by the said lease to the intent that the said term may merge and be extinguished in the freehold and inheritance of the said hereditaments and premises And to the further intent that His Majesty may forthwith grant such new lease as aforesaid And the Liquidator for himself his heirs executors and administrators hereby covenants with His Majesty that he has not at any time heretofore done or knowingly omitted or suffered or been a party or privy to anything whereby or by means whereof the premises hereinbefore surrendered or any part thereof are is or may be encumbered or affected in any manner whatsoever or whereby he is in anywise prevented from assuring the same premises or any part thereof in manner aforesaid.

IN WITNESS, etc.,

1908 and by the same order the Liquidator was appointed liquidator to the Company AND WHEREAS the Association and the Company acting by the liquidator have agreed to execute such surrender and assignment as is hereinafter contained to the intent that His Majesty may grant to the Company or its successors and assigns a new lease of a portion of the piece or parcel of land within described and demised NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Association as Mortgagee and according to its estate and intent in exercise of the power in this behalf conferred by Clause 16 of the Trust Deed and of all other powers it hereunto enabling and at the request of the Company hereby surrenders and assigns and the Company as beneficial owner acting by the Liquidator hereby surrenders and assigns unto His Majesty All and Singular the hereditaments and premises comprised in and demised by the within written Indenture of Lease To Hold the same unto and to the use of His Majesty His Heirs and Successors from the date hereof for all the residue now unexpired of the term of 99 years created by the said lease To the intent that the said term may merge and be extinguished in the freehold and inheritance of the said hereditaments and premises And to the further intent that His Majesty may forthwith grant such new lease as aforesaid And the Liquidator for himself his heirs executors and administrators hereby covenants with His Majesty that he has not at any time heretofore done or knowingly omitted or suffered or been a party or privy to anything whereby or by means whereof the premises hereinbefore surrendered or any part thereof are is or may be encumbered or affected in any manner whatsoever or whereby he is in anywise prevented from assuring the same premises or any part thereof in manner aforesaid.

IN WITNESS, etc.,

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IN WITNESS, etc.,



K34/1926.

Downing Street,

26 February, 1926.

Gentlemen,

With reference to the letter from this Department No. B92/26 of the 1st of February, I am directed by Mr Secretary Amery to transmit to you the accompanying drafts of a letter and a memorandum which it is proposed to send to the Magadi Soda Company, Limited, on the subject of the Company's interests in Kenya.

2. Before this letter and memorandum are despatched to the Company, Mr. Amery would be glad to be furnished with any observations which you may have to offer upon their terms. In particular, he would be glad of your advice on the following points:-

(a) With regard to the amendment of Clause 3, Clause 4 (v), Clause 14 (iii) and Clause 16 of the draft Railway lease by the insertion of a reference to Clause 18 of the lease, it is proposed that these amendments should be accepted. Mr. Amery is advised that the scheme of the lease, as originally drafted, is that on the

SUTTON, OSMANNEY AND OLIVER.

the determination of the lease through effluxion of time, all the assets of the lessees, whether strictly landlords' fixtures or tenants' fixtures, should become the property of the lessors; but that on termination for any cause other than the expiration of the term granted, no assets of the lessees should fall to the lessors; but the lessors are given power to purchase the assets if they so desire. In coming to this conclusion, weight has been given to the express provision contained in the parenthesis in the old clause 18 (now 17), and the consequential power in the old clause 19, (now 18) to purchase the whole of the assets without distinction as to whether they are landlords' or tenants' fixtures. The inference to be drawn from these two provisions seems to be clearly as above, and the various amendments proposed are only designed to bring the respective clauses into harmony with this general scheme.

These remarks apply also to the amendments proposed to the Company to clauses 3, 4, 5 (iii) and 8 (iii) of the draft Port lease.

(b) With regard to paragraph 3 (K) of the enclosed draft letter, the Governor of Kenya has pointed out that in the draft Railway lease now under the Government has a claim to a minimum freight, but the Company has the option of paying the same, to avoid being penalised for breach

breach of covenant. The Governor regards the insertion of provision for a minimum freight as of the first importance, and Mr. Amery is disposed to concur in this view, but he would be glad to learn whether you see any objection to the amendments proposed by the Governor in this connection.

3. I am to add that Mr. Amery would be glad to be furnished with five revised prints of each of the draft leases, incorporating all the amendments made up to the present time, including those indicated in the letter and memorandum enclosed herewith, in order that the Company may be furnished with up to date prints of the leases when the enclosed draft letter is communicated to them.

I am,

Gentlemen,

Your obedient servant,

(Signed) W. C. BOTTOMLEY

See 19/2/26

Allen 1/2

on Quake 22  
Bottles 23 f.

E. J. Harding.

Strachey.

F. Shackburgh.

G. Ormrod.

C. Davis.

S. Wilson.

Dr. Ormsby-Jones.

Earl of Clarendon.

Dr. Amery.

Gov. 334/26 Kenya

Handwritten initials and scribbles

26 Feb. 1926

Gentlemen

**DRAFT**

London

Sutton, Assurance Co.  
and others

5/12/26

With reference to the letter  
from their Rep<sup>y</sup> No 822/26, of the  
15<sup>th</sup> of Feb<sup>r</sup>, I intend to answer  
to you the acc<sup>d</sup> drafts of  
a letter and memorandum  
which it is proposed to send  
to the Nagadi Soda  
Company, Limited, on  
the subject of the Company's  
interests in Kenya.

copy to Ser 463

Nagadi Soda Co. (Memorandum)  
Memorandum (Memorandum)

~~Atchard~~  
~~Opposition~~  
~~St. James's~~

3/4/26. Also on 25/4/26

Recd. O. C. Smith  
Feb. 25/26

2. Before this letter  
an memorandum was  
despatched to the Company

Mr

to be furnished with

any observations which

you may have to offer

upon their terms. I ~~am~~

to invite your attention

particularly to the

following matters, upon

which your advice is

desired. I particularly,

he would be glad of your

advice on the following

points

(a) With regard to the

amendment of Clause 3,

Clause 4 (v), Clause 14 (ii)

and

Seel 19/2/26  
Allen 1/2  
Quake 1/2  
Bottomley 23 fs.

- E. J. Harding
- Strachey
- J. Shackburgh
- G. Grindle
- C. Davis
- S. Wilson
- Mr. Ormsby-Gore
- Earl of Clarendon
- Amery

Gov. 334 126 Memo 1

had

so

26 Feb. 1926

Gentlemen

DRAFT in conca

Sutton, B. M. A. C. C. J.  
and others

5/11/26

With reference to the letter  
 from their Rep<sup>s</sup> No 874/26, of the  
 15<sup>th</sup> of Feb<sup>r</sup>, I enclose to you  
 to you the nec<sup>y</sup> drafts of  
 a letter and memorandum  
 which it is proposed to send  
 to the Nagadi Soda  
 Company, Limited, on  
 the subject of the Company's  
 interests in Kenya.

copy to Ser 463

~~Soda Co. (Ophir)~~  
~~Memorandum (Ophir)~~

~~Atchard~~  
~~to pass to~~  
~~to be sent to~~

3/26. It also on 25/2/26.

Recd. 10/2/26 X  
deb. 2/26

Before this letter  
 an memorandum was  
 despatched to the Company

Mr. Manning would be glad

to be furnished with

any observations which

you may have to offer

upon their terms. I ~~am~~

to invite your attention

particularly to the

following matters, upon

which your advice is

desired. I particularly,

he would be glad of your

advice on the following

points:

(1) With regard to the

amendment of Clause 3,

Clause 4 (v), Clause 14 (ii)

and

Mr. Murray would be glad

to be furnished with

any observations which

you may have to offer

upon their terms. I am

to invite your attention

particularly to the

following matters, upon

which your advice is

desired. In particular,

he would be glad of your

advice on the following

points

(1) With regard to the

amendment, Clause 3,

Clause 4 (v), Clause 14 (a)

and

and Clause 16 of the draft railway lease, by the insertion of a reference to Clause 18 of the lease, it is proposed that these amendments should be accepted. Mr. Amery is advised that the scheme of the lease, as originally drafted, is that on the determination of the lease through effluxion of time, all the assets of the lessees, whether strictly landlords' fixtures or tenants' fixtures, should become the property of the lessors; but <sup>that</sup> on ~~the~~ termination for any cause other than the expiration of the term granted, no assets of the lessees should fall to the lessors; but the lessors are given power to purchase the assets if they so desire. In coming to this conclusion, weight has been given to the express provision contained in the parenthesis in the old clause 18 (now 17) and the consequential power in the old clause 19 (now 18) to purchase the whole of the assets without distinction as to

(See 4. 8 typed  
 in the railway  
 lease no 45/46/25)

whether they are landlords' or tenants' fixtures.

The inference to be drawn from these two provisions seems to be clearly as above, and the various amendments proposed are only designed to bring respective clauses into harmony with this general scheme. These remarks apply also to the amendments proposed by the Company to Clauses 3, 4, 5 (iii), and 8 (iii) of the draft Port lease.

6. With regard to paragraph 3 (K) of the enclosed draft letter the Governor of Kenya has pointed out that as the draft Railway lease now states the Government has no claim to a minimum freight, but the Company has the option of paying the same to avoid being penalised for breach of covenant. The Governor regards the insertion of provision for a minimum freight as of the first importance, and Mr. Amery is disposed to concur in this view, but <sup>would</sup> ~~he will, however,~~ be glad to learn whether you see any objection to the amendments proposed by the Governor in this connection.

7. I am to add that Mr. Amery would be glad to

be

be furnished with <sup>five</sup> 5 revised prints of each of the draft leases, incorporating all the amendments made up to the present time, including those indicated in the letter and memorandum enclosed herewith, in order that the Company may be furnished with up to date prints of the leases when the enclosed draft letter is communicated to them.

~~I am, also, to request that~~

~~to~~ Jan etc.

4. I am to add that the designation ~~title~~ of the Uganda Railway has now been altered to "The Kenya and Uganda Railway", and the references to the Uganda Railway should be amended accordingly. The references to the "Uganda Railway Administration" should be altered so as to read

~~since~~  
since will be  
dated on a date  
in future & understood  
the change has  
already been made.

Jan etc.

Reel. 19.226

Allen. 9/2

She. 2

Stonley. 28 *above for*

*Later draft on X2997/26.*

*Plain draft.*

C. D.  
R 23 FEB  
D 25

*26 FEB 1926*

DOWNING STREET,

February, 1926.

DRAFT. *for*

The Magadi Soda Company, Ltd.,

Gentlemen,

With reference to the letter

from this Department of the 28<sup>th</sup> Jan<sup>y</sup>,

I am, etc., to inform you that we have

now considered the observations

of the Governor of Kenya on the

matters dealt with in your letter of

the

*Copy (as aft) to Secretary, Commission and Police - 26 FEB 1926*

*dur Shp melane  
ration beneath  
17.1  
892/26*

Grandum.

ised Draft beasa.

*116. Sh also on 1284/26*

*not in bundle*

the 13th of July 1925 on the subject

(33724/25)

of the interests of the Magadi Soda Company

is hereby laid that the further amendments <sup>to</sup> of

the ~~draft~~ clauses of the Company's properties

in the Colony, which were indicated in the

revised drafts which you submitted to Messrs.

Tutton, Cranney and Oliver in October last,

(45746/25)

have been examined in this Department.

2. A memorandum is enclosed with this

letter, setting out Mr. Amery's <sup>Viceroy's</sup> opinion after

his consideration <sup>of</sup> the various <sup>amendments in question</sup> points at

issue, including certain further amendments to

the draft leases which have been suggested by the

Governor of Kenya. Mr. Amery will be led to consider

any further remarks which you may have to offer upon

~~any of these points after considering the memorandum~~

~~upon the views set out in this memorandum.~~

upon the views set out in this memorandum.

APL

the 23rd of July 1925, on the subject

(33724/25)

of the interests of the Magadi Soda Company

in Kenya and that the further amendments <sup>to</sup> of

the draft leases of the Company's properties

in the Colony, which were indicated in the

revised drafts which you submitted to Messrs.

Tutton, Cranney and Oliver in October last,

(45746/25)

have been examined in this Department.

2. A memorandum is enclosed with this

letter, setting out Mr. Amery's <sup>views</sup> opinion, after

consideration, <sup>of the</sup> ~~of~~ the various <sup>amendments in question,</sup> points at

issue, including certain further amendments to

the draft leases which have been suggested by the

Governor of Kenya. Mr. Amery will be glad to consider

any further remarks which you may have to offer upon

~~after considering the memorandum~~

~~any of these points after considering the memorandum~~

upon the views set out in this memorandum.

AW

and, In the event of your wishing to make such further observations you will no doubt take an early opportunity of doing so, in view of the length of time which has already been occupied by the discussion of the draft leases. Revised copies of the draft leases, incorporating the further amendments suggested by the Governor, are enclosed herewith. I am to invite your attention to the following

~~points which remain to be considered -~~

(A) <sup>Form of the leases</sup>  
It will be observed from the revised draft leases enclosed herewith that a form of grant has been prepared by the Registrar of Titles which will enable the leases to be executed in their present form, while at the same time conforming with the provisions of the Kenya Registration of Titles

Ordinance, 1919. Subject to any observations which you may have to offer upon this form of grant, Mr. Amery proposes to

adopt

3. In addition to the  
dealt with in the  
memorandum, certain other  
points remain to be  
considered, as follows:-

adopt this form, and to arrange in due course for the execution of the leases in this country and their transmission, after completion, to Kenya for local registration.

In order to effect registration it will be necessary for the copies of each lease to be presented at the Land Office Registration Department in Nairobi, and for deed plans to be attached to the originals. The Deed of Surrender of the interests of the former

Magadii Company should <sup>also</sup> be sent to the Registrar of Titles in Kenya in order to be registered. *The Governor will be asked to make the necessary arrangements for registration, by the Colonial Office after the execution of the Deed of Surrender.*

The cost of registration of the Memorandum of Agreement with Messrs. Messrs. Magadii Company of May 1924, *it is presumed that* the cost of registration of the Memorandum of Agreement with Messrs. Magadii Company.

B. Boundaries of Properties. With regard to paragraph 10 of your letter of the 23rd of July, the Governor states that the Director of Land

Surveys

Surveys will give all possible assistance to your representatives in the Colony in identifying the boundaries of the various properties.

(C) Subsidiary Interests. With regard to paragraph 13 of your letter of the 23rd of July, the Governor states that there is no objection to the proposal that the whole of the former Company's interests should be surrendered, and new grants issued to you, upon payment of such sums as may be due in respect of stand premium and rent as detailed in the accompanying schedule.

Draft grants and plans are being prepared in respect of:-

- (a) L.O.No.183/1 and 2, area for European housing, Miles 46.
- (b) L.O.No. 4456, Native location, 2,000 acres, Miles 45 and 47.
- (c) L.O.4521 Ngongu Water works, area, 95.5 acres.
- (d) Licence for the store plot at Kajiado.

(e)

exure 1 to 334/25)

6 8334/26  
2 Eder E 652064/25

(Page 4  
9334/26)

(e) Ngongu Water Agreement.

(f) Sorei Pipe line Agreement. Subject

to approval by your Company these grants will be engrossed in the Colony and issued in due course. In this connection I am to observe that, unless you are not able to fall in with the Governor's proposals/arrangements for the execution of these subsidiary grants could be carried out locally between the Government of Kenya and the representatives of your Company in the Colony.

With regard to the Diatomite Concession,

the Governor stated that this should be cancelled outright, as it has never been worked. Diatomite has been declared to be a "common mineral" under the Mines Ordinance 1924, and if you desire to exploit this deposit, steps should be taken to register the same under the Mining Ordinance.

The store plot at Kajiado held on temporary occupation licence is stated to be surrendered by your Company. The Governor does

not

80

not recommend any variation of the form of tenure in this case.

(Annexure 2 to 334/26)

A draft surrender in respect of L.O.1833/1 and 2 is enclosed. As the other properties in question are held merely on licence, there is no necessity for formal surrender in these cases. The signature to the new deeds will be of even date with the surrender.

All the existing title deeds in respect of all properties will be required in the Colony before the matter can be completed.

It has been observed that in the list of new grants (given above) which are being prepared in the Colony no mention is made of the lease of 3 acres at Kajiado, which is numbered (2) in the schedule referred to in paragraph 8 of the letter from this Department of the 1st of June. I

(20686/25)

to suggest that any representations

which

which you desire to make on this point should be addressed to the Colonial Government direct.

D. War Secretary at Kajiado. With regard

to the letter from this Department of the 18th of September, and previous correspondence on this point, the Governor of Kenya is unable to agree with your suggestion that the whole of this cemetery area should be made the subject of a sub-lease, as the Imperial War Graves Commission attach the greatest importance to possessing the freehold of all cemetery areas. The Governor sees no reason for making the additional half acre the subject of special terms, and hopes that you will be able to agree to the proposal which was set out in paragraph 5 of the letter from this Department of the 27th of August, 1925. A new grant of the whole of the original area at Kajiado is being prepared on this basis, and Mr. Gregory will be glad to learn whether you are prepared to furnish the undertaking, mentioned in the letter of the 27th of August, to agree to

surrender

*with the additional half acre*  
surrender the area reserved for the cemetery when called upon to do so.

(E) Land at Shimanzi. With reference to paragraph 20 of your letter of the 23rd of July, the Governor reports that the survey of the areas coloured green on the plan accompanying the draft Port Lease has now been completed. The precise area in the aggregate is found to be 3,733 acres. The boundaries of the British Imperial Oil Company's plot are correctly shown on this plan.

The area at Shimanzi. The Governor states that the original Masindi Company was given a lien over an area of 15 acres, making, together with the area granted on lease, a total of 25 acres. The leasehold area was subsequently increased from 10 acres to 13.67 acres (subsequently found on re-survey to be 13.66 acres), by an excision from the lien area. A portion of the remaining lien area was relinquished

by

by the Company, in order that a lease

might be granted to the British Imperial  
(South Africa) released  
Oil Company/Limited for the lease area,  
together with other adjoining land.

Mr. Amery observes that in Section C  
of the Memorandum of Agreement with Messrs.  
Brunner, Mond and Company, it is stated that  
a clause in the lease for the Pier and  
Harbour Works at Kilindini will make it  
clear that the lease granted to the Company  
in the Port is confined to the works which  
they have erected there. After carefully  
considering this matter, <sup>he</sup> Mr. Amery is of opinion  
that the draft Port lease must be dealt with  
on the basis of the original Port lease of 1919,  
together with the area actually occupied by the  
Depot Works as shown in green on the plan  
accompanying the new draft Port lease. The  
question of your requiring any further portion  
of the lien area which was originally reserved for  
future requirements must be a matter for separate  
application to the Colonial Government. In this  
connection I am to observe that the intention of

the

24332/h

the Government with regard to this lien  
area, as indicated in the letter from this  
Office to Messrs. Samuel and Company of the  
27th of July, 1911, was that, if it was found  
when the plans for the Port works were finally  
approved that the whole area was not required,  
such portion as was not required should re-  
vert to the Government. Mr. Amery considers  
<sup>submits</sup> that it should now be possible for you to  
indicate definitely whether you require any  
further portion of the area for the purposes  
of your depot works.

G. Stand premium and rent of occupied land  
at Shimani outside the original leasehold  
area. With regard to Paragraph 21. of your

letter of the 23rd of July, the Governor now  
states that in 1913, when the leasehold area  
was extended from 10 acres to 13.65 acres, it  
was made clear that any further acquisitions  
from the lien area were to be paid for in  
accordance with Clause 5. of the original  
contract, and Paragraph 4. of the letter to  
the Magadi Soda Company, dated the 23rd of  
September, 1911 (reference the letter from  
this

3210/h

this

638/10

this Department to Messrs. Samuel and Company, dated 26th February, 1913). It appears on investigation that the intention was to charge such a sum for this land as would reimburse the railway for <sup>the</sup> cost of acquisition, and the Governor finds this figure to have been £50 per acre. The premium to be paid by the Company in respect of the area of 3.793 acres should therefore be calculated on the basis of £50 per acre. The premium is due as from the 13th of April, 1911, and it is proposed that simple interest at 4% per annum from that date should be paid by the Company on the arrears since that date. The rental for the whole area leased will be, as heretofore, one peppercorn, if demanded.

H, Rates to Kilindini and Mombasa. With regard to Paragraph 2. of your letter of the 23rd of July, the Governor states that individual consignments for export from Kilindini or Mombasa will be accepted at scheduled rates, but so far as the lease is concerned the rates quoted therein should apply to the Shimanzi area only. Arrangements are not being made to deal with the Company's traffic at either Kilindini or Mombasa and

serious /

serious disturbance to other traffic might result if soda in large quantities were diverted to these ports. In the circumstances, it will be necessary to

delete the words "or to Kilindini or to Mombasa" which were provisionally inserted in <sup>Clause (26)</sup> the draft railway lease which you submitted to Messrs. Sutton, Ormaney and Oliver in October last.

(I) Application of rates. The Government considers it necessary to stipulate, in <sup>Railway lease,</sup> the ~~lease~~ manner in which the varying rates in the schedule should be applied, and to cover the point the following amendments, which it is proposed to introduce to the railway lease, have been prepared:-

i. After Clause 10 (B)

"and provided further that in any area until the total weights are of 50,000 tons and 150,000 tons have been exceeded, the amount charged and payable in respect of freight shall be at the

rate

rate of Shgs 18/- per ton or Shgs 17/- per  
 respectively and if and when these total  
 weights are exceeded the Uganda Railway  
 Administration shall credit the lessees with  
 the difference between the higher and lower  
 rates then appropriate".

2 sub. added  
 "High Commission  
 for Transport" for C7  
 see note at end of  
 Memo hereunder

(The Govt. says)  
 "appropriate"  
 but this is clear

After Clause 10 (C) (1)

"and provided further that in any  
 area until the total weight of 150,000 tons  
 has been exceeded the amount charged and  
 payable in respect of freight shall be at the  
 rate of Shgs 20/- per ton and if and when  
 this weight is exceeded the Uganda Railway  
 Administration shall credit the lessees with

2 sub.  
 "High Commission  
 for Transport" for C7  
 (see note at end of  
 Memo hereunder)

2 sub. as above

the difference between Shgs 20/- and Shgs 18/-

X High Commission  
 for Transport  
 see note at end of  
 Memo hereunder  
 23/1

(K) Minimum freight payments. The Governor  
 states that full effect does not appear to have  
 been given in draft leases to the last section  
 of paragraph (7) of the Memorandum of Agreement,  
 which provides that the Government may at its  
 discretion treat defaults as breaches of covenant  
 or require the lessees to pay minimum freights and  
 royalties. The following amendments to the

57 as above?

lease have been approved by the Attorney  
 General of Kenya in this connection, and  
 it is proposed that these amendments  
 should be incorporated in the draft  
 Railway lease.

Amendment to Clause 4 (IV) (a) -

"provided that whether the minimum  
 weights set out are disbursed by the  
 lessees or not the lessees shall be  
 liable for and shall pay to the Uganda  
 Railway Administration the amount of  
 freight appropriate to and due in  
 respect thereof."

Amendment to Clause 4 (IV) (c) -

"provided further and it is hereby  
 agreed that nothing in this lease  
 contained shall prevent the Uganda  
 Railway Administration at their option  
 from electing to sue the lessees for  
 any unpaid freight and to obtain  
 satisfaction of any judgment by  
 attachment of any of the lessees'  
 property".

Cliver <sup>are</sup> ~~will~~ <sup>be</sup> also be instructed to make similar amendments in the draft Lake lease, with application to the payment of royalties.

L. Mileage from Lake Magadi to Shimanzi. The

*With reference to para 19 of your letter of the 23/7/16*

Governor explains that under the old lease the Company was charged as for 381 miles because the small consignment offered could not be worked direct to Shimanzi, but had to be taken in composite trains to Kilindini and then worked back to the Company's port. If the minimum quantities scheduled are now consigned the additional mileage charge would be no longer applicable, and the Governor is therefore prepared to agree to the re-insertion of the rate of Shgs 17.72/11, provided that the amendments proposed in paragraph K above are accepted.

*Para 22 of your letter of the 28th of July, regarding*

With reference to the question of the maintenance of tank cars, and in connection with clause 7 (ii) of the draft railway lease it is noted that you have deleted the words "and maintain" from this clause. The Governor states that in any event the same rate will be charged

*Fuel & Tank*

charged in respect of these cars as to any other person or Company providing stock for the railway under similar conditions.

N.) Extraordinary Repairs to the

(For conson.) Magadi Railway: The Governor agrees that Clause 6. of the Draft Railway

Lease shall be amended by the substitution of "additions and betterments", <sup>for the purpose</sup> instead of "extraordinary repairs and renewals properly attributable to capital expenditure", but he desires that provision should be included for arbitration in the event of any difference of opinion as to the necessity for such expenditure.

O. Sand Siding at Mile 54: With

reference to Paragraph 25. of your letter of the 25rd of July, the Governor states that this siding is maintained, and will continue to be maintained, by the railway authorities, and that siding charges are covered by the freight paid. This arrangement will continue as heretofore.

*35/7/16*

There /

There is no objection to the Company obtaining the sand from this point, provided that the railway retains an equal right.

Branch Railway at Kilindini:

With reference to Paragraph 26. of your letter of the 23rd of July, the Governor agrees that the section of the branch line at Shinanzi which forms part of the line to the Government Harbour works should be purchased by the Government. In this con-

nection attention is drawn to the omission in Clause 11 of the Port Lease, of provision for the purchase of a portion of the Pier and Depot works, if it is not desired to exercise the option of purchasing the whole of the assets and property of the lessees.

It is therefore proposed to insert after the words "Magadi Pier and Depot works", where they first occur in Clause 11, the words "or any part thereof", and also to insert after "at the price hereinafter mentioned" the words "or a proportionate part thereof".

The Government will proceed to exercise

the /

the right to purchase the section in question of the branch railway as soon as the Port Lease has been executed.

The whole of the branch line should therefore be included in the lease <sup>to</sup> ~~at~~ <sup>be executed</sup> ~~the time of execution~~. The purchase price will be assessed on the principles laid down in the Lease.

(Q) Minor railway facilities:  
*with reference to para. 23 and 24 of your letter of the 23rd July*  
The Governor states that the Company may rest assured that sympathetic consideration will at all times be given to any reasonable request put forward. Permission to run the motor trolley will be accorded in the future on the same lines as in the past, and the existing arrangements for the running of the Company's coaches will continue. There will thus be no objection to the additional sub-clause <sup>(4 (ii) b)</sup> ~~(4 (ii) c)~~ which has been inserted in the draft railway lease, providing for the use of the lessees' trolley.

PUBLIC RECORDS OFFICE, LONDON

R. Telephone Line to Ngongu:

With ref. to para. 14 of your letter of the 23rd of July, the Govr. (33724/25)

states that there is no necessity for powers in respect of this telephone line to be included in the Ngongu grant. The line ~~will be~~ <sup>is</sup> a private one, and application for a licence under the Telegraph Act should be made to the P.M.G. The line, being a private one, differs from the line along the railway, with regard to which the necessity for a licence was waived.

S. Water Supplies and Native Rights:

With Ref. to para. 16 of your letter of the 23rd of July, the Govr. points out that in clause 7 of the agreement dated March 15th 1915, between the then Govr. of the East African Protectorate and the Magadi Soda Co., the Company agreed to erect nine troughs at certain places in the Masai Reserve. Troughs at the places mentioned in this agreement are no longer of service to the Masai.

Again,

Again, by clause 8 of this agreement, the Company undertook to provide five additional troughs at the Ngongu streams when requested to do so by the Governor. No request has ever been made under this clause. In the circumstances, the Govr. concurs with the suggestion which was made in para.

2 (j) of the letter from this Dept. of the 19th of August, 1925, that detailed arrangements on this point should be settled locally, and he proposes that there should be a discussion between the Senior Commissioner of the Masai Province and the local Manager of the Company, with a view to reaching a settlement as regards the supply of water for native purposes. Instructions <sup>locally</sup> are being issued to this effect.

When the basis of negotiations has been reached its terms will be embodied in an agreement between the Govr. and the Company. In the circumstances, Mr. Amery would suggest that

that any further correspondence on this matter should be addressed direct to the local Govt.

With regard to the Sarei pipe line, it is pointed out that in clause 2 of the agreement of the 2nd of Feb., 1916, the Company undertook to keep one cattle trough full of water at or near the point where this <sup>pipe</sup> line joins the Ngong Hills <sup>Supply</sup> between Mile 46 and

47 of the Magadi Railway. The present Company proposes to vary this agreement by undertaking to supply a limited amount of water, namely, 1,000 gallons per diem, in each of the three troughs which are at present

in existence - one at Sarei, and two at Kora. *No objection is seen to this proposal, but the this proposal is acceptable to the Masai, and is preferable to the existing agreement.*

The Govr. considers, however, that both as regards the Ngong supply and the Sarei supply, it would be advisable if the final agreement were to provide that the sites of the troughs may from time to time be altered. This is rendered necessary by grazing conditions <sup>stock</sup> and other considerations relative to the staff

If the Company is prepared to agree to this alteration, it will be stipulated in the agreement that the cost of the construction of and fittings to the troughs will be borne by the Masai.

It is considered that any further correspondence connected with the Company's water rights should be addressed to the local Govt.

(T) Native rights to Soda:

(27/24/25)

With regard to para. 29 of your letter of the 25rd of July, the Govr. states that his legal advisers consider that the words "for their own purposes" in section (14) of the late <sup>Lake</sup> lease mean "for their own use", and do not cover the right of sale or barter. He considers it inadvisable to emphasize the position, which is quite clearly <sup>understood</sup> locally, by the introduction of any further words which <sup>would imply</sup> will impose still further limitations on the rights of the natives of the area to collect any soda for their own use. The Governor

PUBLIC RECORD OFFICE, LONDON

Governor is satisfied that under existing conditions there are no grounds to suppose that there is any danger of loss to the

Company on this score. In the circumstances

Mr. Amery considers that it is <sup>rather</sup> not necessary ~~and~~ desirable to amend the lease on this point, as proposed in para. 29 of your letter under reference.

4. Upon the receipt of your reply to this letter, Mr. Amery will instruct <sup>Govt's</sup> the Solicitors ~~to the Crown Agents for the Colonies~~, Messrs. Sutton, Osborn & Co. and Oliver, to have final prints prepared of the Lake and Railway Leases, which will then be ready <sup>in due course</sup> for execution between the Crown Agents and your Company. It will be necessary, before a final print of the Port lease can be prepared, to ~~submit~~ request the Governor to complete the first paragraph of Clause 2 of the lease, describing the area to be demised, in the light of paragraph 3(F) of this letter; and also to await the result of correspondence

Governor is satisfied that under existing conditions there are no grounds to suppose that there is any danger of loss to the

Company on this score. In the circumstances

Mr. Amery considers that it is <sup>rather</sup> not necessary ~~and~~ desirable to amend the lease on this point, as proposed in para. 29 of your letter under reference.

4. Upon the receipt of your reply to their letter, Mr. Amery will instruct <sup>Govt's</sup> the Solicitors ~~to the Crown Agents for the Colonies~~, Messrs. Sutton, Osmauney and Oliver, to have final prints prepared of the Lake and Railway Leases, which will then be ready for execution <sup>in due course</sup> between the Crown Agents and your Company. It will be necessary, before the final print of the Port Lease can be prepared, to ~~submit~~ request the Governor to complete the first paragraph of Clause 2 of the lease, describing the area to be demised, in the light of paragraph 3(F) of their letter; and also to await the result of correspondence

Gov. 334/26 Kenya.

Mr. Peel 19.2.26  
 Mr. Allen 19/2  
 Mr. Bourke 22

Mr. ~~Scott~~ ~~Dubey~~ 23.2.26  
 Mr. E. J. Harding

F

88A<sup>13</sup>

Mr.  
 Mr.  
 Mr.  
 Mr. E. J. Harding.  
 Mr. Strosche.  
 Sir J. Shackburgh.  
 Sir G. Grindle.  
 Sir C. Doole.  
 Sir S. Wilson.  
 Mr. Demetriou.  
 Earl of Sandwich.  
 Mr. Jerny.

with the Governor regarding  
 the British Imperial Oil  
 Coy's ~~(in the Africa)~~ pipeline  
 at Sheikhausi, as to the  
 addition which you have  
 suggested a Clause 2 of the  
 lease on this point

DRAFT.

Jan 26

with the Governor regarding  
 the British Imperial Oil  
 Coy's ~~(South Africa)~~ pipeline  
 at Sheikani, as to the  
 addition which you have  
 suggested to Clause 2 of the  
 lease on this point.

Mr. H. J. Harding.

Mr. Strachey.

Sir J. Shackburgh.

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Osmaly-Gunn.

Earl of Clarendon.

Mr. Amery.

**DRAFT.**

Jan et

No. 334/26 Kenya.

Mr. Seel 19.2.26  
Mr. Allen 19/2  
Mr. Boushe 22

Mr. B. J. Harding. 23.2.26  
for sending to  
Sutton

- Mr. Strachey.
- Sir J. Shuckburgh
- Sir G. Grenville.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Earl of Clarendon.
- Mr. Amery.

F

~~Placeholder~~

Later draft  
on K2557/26

### Nagadi Soda Company

DRAFT. Memorandum  
for consa.

26 FEB 1926

Memorandum regarding  
the amendments to the draft  
Leases made by the Nagadi  
Soda Company subsequent to  
Colonial Office letter of the  
19<sup>th</sup> of August, 1925, and the  
further amendments made  
by the Governor of Kenya.

to be copied as per Mr.  
Sutton's memorandum  
enclosure to letter  
herein.

### A. Lake Lease

Preamble: Recital  
of Post Lease.

The deletion of this Recital  
is agreed.

Preamble, last  
Recital - Clause (d)

The amendment of the definition  
of the Nagadi Soda deposit is agreed,  
subject to the further deletion of the  
words "included in the demise  
heretofore made". The attention of

Mr. H. also on 1254/26

copy to Mr. Sutton and others

Amendment cannot be admitted and the clause should stand as drafted

Clause 3

It is agreed that this clause, provided in for the termination of the lease in the event of the termination of either the Railway lease or the Post lease by reason of default on the part of the lessees, shall not be included.

It must be clearly understood, however, that no undertaking is given by the Government of Kenya, or by the Kenya and Uganda Railway Administration, that

- Mr. J. Harding.
- Mr. Strickley.
- Mr. J. Shuckburgh.
- Mr. Grindell.
- Mr. C. Davis.
- Mr. S. Wilson.
- Mr. Ormsby-Gere.
- Mr. of Clarendon.
- Mr. Amery.

DRAFT.

Mem: Sutton, Dainamere and Oliver has already been drawn back to the necessity for deleting these further words.

Clause 1 (G) & 1 (H)

It is noted that these sub-clauses, defining respectively the Post lease and the Railway lease and Post works, are to be deleted.

(In the amended copy of the lease as furnished to the Colonial Office, the text of Clause 1 (G) has not been deleted, this should be done)

Clause 2

The amendment of the description of the property deemed is agreed.

Clause 2 (H)

In accordance with para 3 (E) of the letter from the C.O. dated the 17 February, 1926, this

(S. Mervin)

PUBLIC RECORD OFFICE, LONDON

The Nagadi Soda Company's  
traffic will be conveyed  
to the ports of Kitindini  
or Mombasa in the event  
of the Company being  
deprived, by any  
circumstances whatever,  
of the use of its port at  
Shaurimoyo.

Clause 4.

The Government  
of Kenya desire that

that that

The Nagadi Soda Company's  
traffic will be conveyed  
to the ports of Kilindini  
or Mombasa in the event  
of the Company being  
deprived, by any  
circumstances whatever,  
of the use of its port at  
Shauri Moyo.

Clause 4.

The Government  
of Kenya desire that

(kept that)

that the rent in respect of the properties demised shall be payable on the 1st of January in every year in accordance with the prevailing practice in the Colony. The following amendments should therefore be made in this clause:-

On line 3, substitute for "November" the word "January" and after the words "in every year" insert "and so in proportion for any less period than one year".

Clause 5.

The solicitors for the C.A. <sup>16</sup> are being instructed to insert additions to this clause, providing for the payment of minimum royalties, on the lines <sup>similar to those</sup> indicated in para. 3 (K) of the C.O. letter of the <sup>17</sup> of February, in the case of minimum freight charges in the draft Railway lease.

(draft herewith)

Clause 6. (XIV)

As indicated in the note of p.

Clause

Clause 2 (II), the <sup>proposed</sup> amendment <sup>cannot</sup> ~~be accepted~~ ~~not be made~~, and the clause should stand as drafted.

The addition of the words " and this restriction shall not apply to <sup>underletting</sup> ~~sublet~~ for residential purposes only" is agreed.

The insertion after the word " thereafter" of the words "provided the interruption shall not effect prejudicially the working of Magadi Soda Deposit" is agreed, subject to the further insertion of the word "general" before "working of the Magadi Soda Deposit".

<sup>proposed</sup> The amendment of this sub-clause is agreed.

It is noted that the Company ~~now wishes~~ to delete this sub-clause in view of the fact that separate grants are to be made in respect of their water rights.

Clause 5 (XXII)(A)

Clause 5 (XXIII)(C)

Clause 5 (XXIV)(B)

Clause 5 (XXV)

Clause 9.

Clause 9.

B. Railway Lease.

Clause I (J)

Clause 2.

Clause 2. (rider\*)

Clause 2. (last para.)

Clause 3.

The deletion of this Clause is agreed

The amendment of the definition of the Magadi Soda Deposit is agreed,

The amendment of the description of the property demised is agreed.

It is noted that the Company now wish to delete the reference to the water rights from the Ngong Streams and the Sirei Falls in view of the fact that separate grants are to be made in respect of these rights.

As in the case of the Lake Lease, the local Government desire that the rent should be payable on the 1st of January in every year, and this para. should be amended in the same manner as in the corresponding section of the Lake Lease.

The addition of the words "subject to the provisions of Clause 18 of these presents

Presents and" ~~and~~ before the word

"without", <sup>on</sup> of line 2, as agreed.

The addition of this clause,

Clause 4 (2) (D)

relating to the use of a motor or  
push trolley on the Railway, is  
agreed.

The provis<sup>e</sup> to Clauses 4,

Clause ~~IV~~ <sup>4</sup>

4 (IV)(A) and 4 (IV)(C) referred

to in para. 3<sup>(k)</sup> of the C.O. letter

of the of February, should be

(draft herewith)

inserted in this sub-clause.

The reference in this sub-

Clause 4 (V)

clause to clause 18 is agreed, as

in the case of Clause 3.

The amendment of this Clause

Clause 4 (XVII) (B)

as suggested is agreed; the words

"whose decision shall be final", which

were not deleted in the copy of the

draft Lease received in the C.O., should

also be omitted.

It is noted that the Company

Clause 4 (XVIII)

desire that this Clause should be

deleted

deleted, in view of the separate grants in respect of water rights which are to be made.

Clause 6.

(Phreath)

2nd OP

In accordance with the remarks in para 3(N) of the letter from the C.O. of the 8 February, this clause should be amended to read as follows: - (Here take in 'A' amended)

Clause 7. (I)

The deletion of the words "and maintain" is agreed.

Clause 1)

As is explained in paragraph 3(A) of the C.O. letter of the 8 February, the insertion of the words "or to Kilindini or Mombasa" cannot be accepted.

[draft herewith]

Clause 10 (B) and Clause 10 (C)(1)

The Governor has requested that all money quotations should be made in local currency, and the rates quoted should be amended as follows:-

For 18/-	Read	Sh.18.00
" 17/-	"	Sh. 17.00
" 16/6	"	Sh 16.50
" 20/0.	"	Sh 20.00
" 18/-	"	Sh 18.00.

The additional provision to Clauses 10(B) and 10 (C)(1) respectively which

3(I)  
 which are referred to in para. ~~3~~  
 of the C.O. letter of the 9 of (draft herewith)  
 Feb., will be inserted.

The amendment of this Clause,  
 relating to the customary date for  
 payment of ledger accounts, is agreed.

The reference (to Clause 18) of  
 this Clause is agreed, as in the case  
 of Clause 3.

This sub-clause is now agreed.

The figure of £569,582 is  
 accepted as the agreed amount of the  
 capital outlay on the construction  
 of the Railway.

The substitution of the words  
 "addition or betterments" for the  
 words "extraordinary repairs and  
 renewals properly attributable to  
 capital expenditure" is agreed.

With reference to the marginal  
 note as to the distance from Shimani  
 Lake, Magadi, see para. 3(L) of the

Clause 12.

Clause 14. (iii)

(for conson)

Clause 19 (C)

Clause 20 (A)

Clause 20 (B)

(for conson)

Clause 20.

(draft herewith)

C.O. letter of the of  
 Feb.

*a few lines space*

(C). Port Lease.

Clause 2.

Subject to any further observations  
 which the Company <sup>may</sup> have to offer on the

subject of the lien area at Shimani  
 (see para. 2(f) of letter from the C.O.  
 of the of Feb.), it is proposed

to ask the Govr. of Kenya to furnish  
 an exact description of the property to  
 be demised.

Clause 2 (I).

The addition <sup>to</sup> of this sub-clause pro-  
 posed by the Company is agreed.

Clause 2 (III).

The proviso <sup>to</sup> of this sub-clause,  
 added by the Company, is agreed. Ref.  
 is invited, in connection with this  
 sub-clause, to para. 3(P) of the letter  
 from the C.O. of the of Feb.

Clause 2 (last para.)

This para. is to be amended by the  
 substitution for the words "first day of  
 November every year" of the following  
 "first day of Jan. every year, and so  
 in

in proportion for no less period than one year".

In accordance with para. 3(G) of the letter from the C.O. dated of Feb.,

~~the rental para. should read be~~

The provisions of this para. of the lease as regards the rental and premium payable by the Company will be altered in the light of para 3(G) of the letter from the C.O. dated the 1 of February.

~~The deletion of the words "and subject to a premium" etc., to the end of the para. is agreed.~~

The proposed reference to Clause 10 of the lease in these clauses is agreed.

Clauses 3, 4, 5(III) and 8(III).

The question of the British Imperial Oil Company's pipe line at Shimansi is still under conson, and a decision regarding this proposed rider is deferred for the present.

Clause 5(II) (Rider).

The addition of the words "and this restriction shall not apply to under-letting

Clause 5(IV) A.

for

for residential purposes only" is agreed.

Clause 11(I).

This clause should be amended as indicated in para. 3(P) of the letter from the C.O. dated of Feb.

Clause 12 A.

The sum of £45,145 is agreed as the amount of the capital outlay of the lessees on the construction of the Magadi Pier and Depot Works. The

additional amendment to this subclause <sup>reference to former</sup> made by the Magadi Co. is agreed.

Clause 12 B.

The substitution of "additions or betterments" for the phrase "extraordinary repairs and renewals <sup>properly</sup> attributable to capital expenditure" is agreed.

Note

By Order in Council dated the 16 of December, 1925, the designation of the Uganda Railway has been altered to the Kenya and Uganda Railway and the references to the Uganda Railway in the

By Order in Council dated the 16 of December, 1925, the designation of the Uganda Railway has been altered to the Kenya and Uganda Railway and the references to the Uganda Railway in the

leases should be altered accordingly.

The references to the Uganda Railway  
<sup>in the Railway and Post Leases</sup>  
Administration should be altered

to "the High Commissioner for

transport", and ~~where necessary~~

~~and define it~~ this expression should

be defined as meaning the High

Commissioner for transport for the

Colony and Protectorate of

Kenya and the Protectorate of

Uganda, as established by

the Order-in-Council of the 16<sup>th</sup>

December, 1925.

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Uganda, as established by

the Order-in-Council of the 16<sup>th</sup>

December, 1925.