

EAST AFR. PROT.
32726

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9 OCT 11

1911



Mr. P. L.

Date.

Bingham & Grogan Commission

9 Oct.

Submits further views on the terms of new Draft Agreement. Encloses plan showing situation of the area in question.

previous Paper.

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W. T. Loder
Mr Fiddes.

This letter clears out of the way completely two out of the five outstanding difficulties with Captain Grogan. With regard to the remaining three, which are numbered as they have been numbered in the correspondence -

(2) Captain Grogan must clearly have some rights to construct roads, buildings, etc., within the limits covered by his licence, if he is to work it properly, but the Governor should have an opportunity of expressing an opinion as to the precise form in which such rights should be conferred. This point must therefore be referred to him.

(4) On this point please see my Minute on C/27362 and Sir John Anderson's Minute on the same paper to the effect that Captain Grogan cannot under his original agreement claim any allowance in respect of rent already paid as the Government locked up the land for Captain Grogan and he cannot have it both ways.

Captain Grogan appears to think that the question whether

Copy to Mr. P. L. 26 Oct.

subsequent Paper

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whether he could deduct rents already paid from Royalties payable hereafter under the provisional agreement was discussed at the interview which Sir Percy Girouard and I had with him in January last. My recollection is that this point was not discussed and the record of the meeting contained in C.O./1217 confirms me in this recollection. I have so informed Captain Grogan verbally. As to the merits of the case, it is no doubt open to the Government to contend that, under paragraph (2) of his original agreement, (See page 8 of the printed copy of Gov/38479/10), Captain Grogan could only deduct rent from Royalties in one and the same year. In this letter Captain Grogan fails to quote the very pertinent words - "provided that in no case shall a less sum than Rs.2,000 be paid by the tenant in each year." I imagine that he ^{would} contend that, though rent might be paid in each year, it could still be deducted from Royalties payable in subsequent years. However this may be, I do not think that we are in a position to isolate this point and decide it simply by reference to the original agreement. It is only one of the points on which the Government and Captain Grogan have differed. The Government have been advised that they do not stand a good chance of getting their view of the whole case upheld by a Court of law. They have therefore consented to compromise, and I think that we must compromise on this point as well as on the others. Moreover it is always open to Captain Grogan to assert, as he has done to me verbally in this very connection, that he was prevented from earning the Royalties which he could have set off against the rent in each year by the action or inaction of the Government in regard to facilities for entering the forest; in other words that he has been called upon to pay the rent without the Govern-
ment.

The contract has been set up and now the whole matter is in the hands of the Government.

Government fulfilling their part of the contract. I would therefore suggest that it would be unwise to be adamant on this point. The condition proposed in this letter by Captain Grogan as that on which he would consent to waive his claim ^{as he has already paid} ~~in this connection~~ cannot, however, be accepted. Sir Percy Girouard was quite clear that he could not justify giving Captain Grogan an option to take up glade land in the new district to be covered by his licence which is close to the railway on such favourable terms, namely, 6 cents; that is one penny per ~~annum~~ ^{per annum}, as are prescribed in the provisional agreement in respect of the area covered by the original Lingham and Grogan Concession. We must therefore reject this alternative, and I see nothing better than to do as I proposed on 27362, and say that the Government is prepared to allow one half the rents previously paid in respect of the forest lease to be deducted from future Royalties, pointing out that, as the whole arrangement is in the nature of a compromise, it is reasonable that some middle point should be found between the conflicting views of the parties on this particular question. Captain Grogan is fully aware that the rent paid in respect of the land at Kilindini will not fall within this arrangement, but this point should be made quite clear in writing to him.

(5) The plan of Kilindini Harbour supplied by Captain Grogan does not show any material inaccuracy in the guess sketch which I attached to 27362. He still maintains that the arrangement contemplated between him and Mr Combe will be carried out if the land is divided from

from a point half way on the harbour frontage of the concession, and that it never occurred to him that the point of division should be half-way between the two extreme points of the whole water frontage. If the latter plan were adopted, he would get chiefly the Mbaraki Creek, which he describes as a mud creek, while the Government would get ^{just nearly} the whole of the ~~main~~ deep water frontage on the main harbour. We must, as I remarked on 27362, go back to the Governor on this point, and request him to recommend a definite line of division, and in particular to say what effect the division will have on Government projects for the development of the harbour, and to send home with his reply a sketch plan showing exactly the plot in question and the division proposed.

? Write to the Governor in the sense suggested on the three outstanding points, sending a copy of our correspondence with Captain Grogan, and tell Captain Grogan that we are communicating with the Governor and will write to him again when we get the Governor's reply.

27363

Oct. 13

S. C. T. 16^{1/2}

at once

Ch 19.10

Pr. 19

336



61 Eaton Place.
S.W.
October 9th 1911

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

Re. 27362/ 1911.

Sir,

I have the honour to acknowledge receipt of your letter of September 18th and beg to submit my views on the observations contained therein.

2. The matters referred to are numbered as in your said letter:-

(1) I find, on further reference to the forestal conditions of the proposed license as agreed upon by myself and the Chief Conservator of Forests, that this matter is therein sufficiently provided for. I regret the oversight and withdraw my request for the insertion of any further clause relating to the matter.

(2) The measures proposed by Mr. Combe might give the licensee the necessary protection against fire or other risks arising from unauthorised trespass.

The other proper interests of the licensee could be secured by the insertion of a clause giving the right to construct roads tramways mills sheds dwelling-houses cattle-yards and fences, to cut hay, to drain plough and cultivate open spaces and, subject to the supervision of the Chief Conservator of Forests, to perform any acts conducive to the protection and economical development of the area covered by the license. Such powers are required by the necessity of providing housing and food for the natives employed and for the cattle used in lumbering.

(3) Your proviso adequately meets the point raised in my letter of March 14th.

(4) Clause (2) of the Grogan lease explicitly provides - that the "Rs. 2000 reserved as rent shall be deducted from any sum payable as fees or royalties..."

I have never doubted but that this proviso entitled us to deduct any amounts paid as rent from the amounts payable in respect of royalties at any time during the currency of the agreements. Mr. Combe did at first contend that the phrasing was ambiguous. I submitted that it was only my interpretation of the meaning which had led me to accept the unusual obligation of paying rent for land previous to its selection and survey and to continue paying rent during the years when I was denied access to the land. Thereafter Mr. Combe recognised my interpretation and wrote (page 2 Mr. Combe's memorandum on our interview with The Governor) as follows:-

"Under both agreements Messrs Lingham and Grogan are under

XN^o 27362
TN^o 8385

"an obligation to cut, fell and utilize well or export at least
"1000 trees in every year.
"I have recommended that Messrs. Lingham and Grogan should
"be released from this latter obligation. The consideration
"for such release being the surrender by Messrs. Lingham and
"Grogan of the right (if any) given to them under the existing
"agreements of deducting from royalties payable in one year
"rent paid in respect of previous years."

On January 10th at my meeting with The Governor and Mr. Butler
I agreed to accept this exchange but I expressly excepted my ac-
cumulated rights in this connection, rights which the exchange itself
substantiates.

I submit that the above extract from Mr. Combe's
Memorandum and the emphasis laid upon the alteration by clause (2)
of your letter of February 10th clearly suggest that I am entitled
to be credited, on account of royalties, with all rentals hitherto
paid.

I would however be willing to waive my claims in this
connection if you would consent to the rent payable for any land
to be leased in the new area covered by section (b) clause (1) of
your letter of February 10th being fixed at the same rate as the
rent payable in the other areas of the license instead of being left
an open matter as at present provided.

(5) I regret that I have not the original agreement with
plan in this country, but I have procured a blue-print of Mombasa
Island published by the E.A.P. Land Office which print shows the
boundaries and situation of the area in question. I enclose the
same herewith having marked the area with blue pencil for iden-
tification.

3. I understand from Messrs. Ashurst, Morris, Crisp and Co.
that they are taking the necessary steps to facilitate your enquiries

I am,
Sir,
Your obedient servant

Wm. S. Grogan

11 3340





MOMBASA

PORT KILINDINI

MOMBASA STATION

POLICE STATION

THE WHITE BUILDING STATION

THE MOMBASA RAILWAY STATION

INDUSTRIAL AREA

MOMBASA STATION



MOMBASA TOWN

Mombasa Station Yard

Ras Jibuti

EAST AFRICA ROAD

The William Richard Station

Nyeri Hospital

Mombasa Station

PUBLIC RECORD

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Gen/32726/E.A.P.

DRAFT

Downing Street,

26 October, 1911.

CAPTAIN E. S. GROGAN.

Sir,

MINUTE.

Mr. Butler 23rd Oct.

Mr. *f-3*

Mr. Fiddes

Sir H. Just.

Sir J. Anderson.

Lord Lucas.

Mr. Harcourt.

I am directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 9th of October relating to the concession granted to you and Mr. Lingham in the East Africa Protectorate.

2. Mr. Harcourt is in communication with the Governor on the points still outstanding, and a further communication will be sent to you on the receipt of the Governor's reply.

I am, etc.,

S. Fiddes

(2 drafts)

Copy for 627. Ans 26 Oct.

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DRAFT

(5) You will see from the correspondence that, in the absence of more precise information, ~~from you~~, I have not been able to arrive at any conclusion as to the division of the land held by Captain Grogan under ^{the} ~~his~~ agreement dated the 14th of July 1904. I would call your attention to what is said by Mr. Colmbe in his memorandum of the 27th of August on this point.

(27362)

I have to request that you will definitely recommend a line of division of the area in question as between Captain Grogan and the Government which will, while dividing the land into parts of approximately equal ^{area and} value, give Captain Grogan the land lying along the Mbaraki Creek, and at the same time divide into approximate equal portions such part of the water frontage as possesses any substantial value. You should

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32726/E.A.P.

should, in replying on this point, explain what effect the division which you are able to recommend will have on Government projects for the development of ^{Kilindini} the Harbour, and it would be of great assistance to me if you would send with your reply a sketch plan showing the plot in question in its relation to the Harbour generally and the division which you recommend.

I have etc.,

L Harcourt



Downing Street,

26 October, 1911.

DRAFT.
EAST AFRICA PROTECTORATE.

No. 67
 Governor
 COLONEL SIR PERCY GILQUARD,
 K.C.M.G. D.S.O., R.E.,

and 4/10/11

MINUTE.

- Mr. Butler 23rd Oct.
- Mr.
- * Mr. Fiddes. *[Signature]*
- Sir H. Just. (25592)
- Sir J. Anderson
- Lord Lucas.
- Mr. Harcourt.

To Capt. Grogan. 18th Sept.
 (27362)

Captain Grogan. 9th Oct.
 (27228)

To Capt. Grogan. Oct.
 (draft herewith)

Memo. 27th August.
 attached (1/27362)

Sir,

I have the honour to acknowledge the receipt of Mr. Currie's confidential despatch No. 60 of the 11th of July relating to Messrs. Lingham and Grogan's concessions, and to transmit to you a copy of correspondence with Captain Grogan and a copy of a memorandum by Mr. Currie on the subject.

2. You will see from the correspondence that two out of the five outstanding difficulties have now been

settled.

2 4/5
 Concessions = 950-20 + N 2559
 T No 27362 + 32726 + drafts.
 + N 27362

settled. On the remaining points, which are numbered as they have been previously numbered in the correspondence, I have the following observations to make:

(2) It seems clear that Captain Grogan must have some right to construct roads, buildings, etc., as stipulated in his letter of the 9th of October, within the limits covered by his licence, if he is to be in a position to work ^{the area} properly. It is ^{demanded} necessary, however, that you should prescribe the precise form in which such rights should be conferred, and I have to request that you will now do so.

(4) You will see that, in his letter of the 9th of October, Captain Grogan proposes a condition on which he would be willing to waive his claim to deduct from royalties payable hereafter the ^{amount of the} rents already paid in respect of the forest concessions. I fear, however,

that

that the condition which he proposes cannot be accepted. My recollection is that when the subject was before you during your last visit to this country, you were clearly of opinion that you could not justify giving Captain Grogan an option to take up ^{area} "glade" land in the new ~~district~~ to be covered by his licence, which is close to the Railway, on such favourable terms, namely, six cents per acre per annum, as are prescribed ^{in paragraph 2 (b) of} in the provisional agreement as already drafted in respect of the area covered by the original Lingham and Grogan concessions. I presume that you ^{are} still remain of this opinion. If so, the only proposal that I can make is that the Governor should allow one half of the rents ^{paid} ^{before the date of the agreement} previously paid in respect of the forest leases to be deducted from future royalties

on the ground that, as the whole arrange-
ment is in the nature of a compromise,

it is reasonable that some middle course

should be found between the conflicting

views of the parties on this particular

question. (I may observe that there is

no trace in the record kept in this

Department that Captain Grogan ^{expressly accepted} reserved his

^{accumulated} rights in this ^{connection} respect at the interview

which took place on the 10th of January

last). In making any such proposal to

Captain Grogan, it would of course be

made clear that the rent paid in

respect of the land ^{on Mombasa Island} at Kilindini does not

fall within this arrangement. I

should be glad to be informed what is the

amount of the rent already paid in

respect of the ^{that} plot of land at Mombasa

Island and what is the amount

of the ^{of the} rents already paid in respect

of the forest concessions. (5)