

EAST AFR PROT.

No. 35070

35070

REC'D  
OCT 3 1907

Form No. 54

Ar Conf

(Subject)

1907

3: 5 Aug 5

of previous Paper.

p. 9  
338

Flogging case at Nairobi

Appeal Case in Grogan v. Govt

Reports withdrawal of appeal. Success  
copy correct and of undertaking given by the  
5 defendants in the original action.

(Notes)

Mr. Head

Mr. Bowker of one of the  
5 defendants has not formally  
joined in the undertaking  
not to bring any action  
against the Govt in the  
matter of their imprisonment  
or either but he is apparent  
by nothing to do so as well.  
On any case it is unlikely  
that they would be so foolish as to  
enter upon such expensive lit-  
igation.

Capt. Grogan's letter

Form No. 54

vol 6 is satisfactory

Cash receipt

10/3/10

in substance

is proved

H. R.

4/10

Capt. [unclear] has also written  
Direct to [unclear] saying  
that he was misled and  
expressing regret for his action.

10/5

John

7-10  
at [unclear]

S. R.

35070

REC  
REC 3 OCT 07 295

Governor's Office,

Nairobi,

August 21st 1907.

AFRICA PROTECTORATE

Ref: (84)

Enc. 93

My Lord,

I have the honour to report that, acting on the approval given in Your Lordship's telegram of the 22nd instant, I have instructed the Crown Advocate to withdraw the appeal which had been entered on behalf of the Administration against the judgment of the Sessions Court in the cases of Captains Hogan and Gray and have informed them accordingly.

2. Copies of the correspondence and of the undertaking given by the five defendants in the original action are enclosed for Your Lordship's information.

The terms of Captain Hogan's letter are I think as satisfactory as we can expect from so unsatisfied a

Principal Secretary of State  
 For the Colonies,  
 Downing Street,  
 London, S.W.

man. The contents of the other carry little weight and the undertaking which they have given to take no further action will I think safeguard us sufficiently as far as they are concerned.

4. In accepting this resolution I have been actuated by a desire to bring the incident to a definite close. General opinion, even among the white settlers has undergone a great change since the events of last March and the public justification of our policy is not so necessary now as it was before it had been enforced by the private judgment of the majority of the European community. In foregoing therefore the trial of judgment which we might reasonably expect

the High Court to give us leaving behind a feeling of bitterness we shall gain a reputation for moderation without incurring the danger of an accusation of weakness, to which any pacific overtures might have laid us open a few

weeks ago.

I have the honour to be,  
With the highest respect,  
My Lord,

Your Lordship's most obedient,

humble servant,

*W. G. ...*

REC'D  
3 OCT 07

Nairobi,

297

August 14th 1907.

His Excellency  
The Governor,  
B.E.A. Protectorate.

Your Excellency,

I have the honour to submit on behalf of Messrs. Low, Gray and Pichat formal withdrawals of certain claims to compensation preferred by them, and on behalf of Mr. Bowker and myself denials of any intention to proceed further against the Government in this matter.

I am to ask your Excellency to consider the submission of these withdrawals and denials as conditional upon the Government withdrawing its appeal against Judge Barth's judgment.

I have &c.,

Sd/- EWART S. BROGAN.

INCLOSURE No. ....  
In Despatch No. 32 of 1907.

35070

Recd  
3 OCT 07

Nairobi,

297

August 14th 1907.

His Excellency  
The Governor,  
B.E.A. Protectorate.

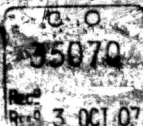
Your Excellency,

I have the honour to submit on behalf  
of Messrs. Low, Gray and Pichat formal withdrawals of  
certain claims to compensation preferred by them, and on  
behalf of Mr. Bowker and myself denials of any intention  
to proceed further against the Government in this matter.

I am to ask Your Excellency to consider the  
submission of these withdrawals and denials as conditional  
upon the Government withdrawing its appeal against  
Judge Barth's judgment.

I have &c.,

Sd/- EWART H. GREGAN.



Nairobi.

August 24th 1907.

His Excellency

The Governor,

E. E. A. Protectorate.

Your Excellency,

I have the honour to hereby finally withdraw any claim to compensation for the term of imprisonment to which I was subjected recently by the Magistrate whose jurisdiction was disallowed by His Honour Judge Barth, while at the same time pressing for a revision of the Magistrate's sentence in my case or a free pardon in the terms of His Honour Judge Barth's judgment.

I would wish to express my regret to Your Excellency for having been present at the incident in question but disclaim any unlawful intention whatsoever and I feel that I labour under some sense of injustice in having been selected from numerous other on-lookers for prosecution.

I have &amp;c.,

Ed/- ERNEST LOW.

ENCLOSURE No. 1

In Despatch No. 17 of 1907

35070

REC  
3 OCT 07

Uthman, Nairobi

S.E.A.

August 15th 1907

His Excellency

The Governor,

S.E.A. Protectorate.

Your Excellency,

I have the honour to hereby finally  
withdraw the claim to compensation preferred by Mr. Burn  
on my behalf.

I have Ac.,

Sd/- T. THOMAS GRAY.



INCLOSURE No. 11

In Despatch No. 67 of 1907

CO  
35070  
3 OCT 07  
300

COPY.

Nairobi,

August 10th 1907.

His Excellency  
The Governor,  
B.E.A. Protectorate.

Your Excellency,

I have the honour to hereby finally withdraw any claim to compensation for the term of imprisonment to which I was subjected recently by the Magistrate whose jurisdiction was disallowed by His Honour Judge Barth, while at the same time pressing for a revision of the Magistrate's sentence in my case or a free pardon in the terms of His Honour Judge Barth's judgment.

I have Ac.,

Sd/- SYDNEY C. FICHAT.

COPY.

Nairobi, P.O.Box 34  
East Africa  
August 8th

His Excellency  
The Governor  
B.E.A. Protectorate.

C O  
35070  
3 OCT 1951

Sir,

In reply to Your Excellency's communication of the 5th instant with reference to Mr. Bowler's application to have the conviction against him quashed, I may say on behalf Russell of Mr. Bowler that as far as I know he has no intention of asking the Government for compensation or damages for the imprisonment he suffered. I think, as Mr. Bowler has himself informed Your Excellency, he admits that his action was outside the law and that he must abide by the consequences but in view of His Honour Judge Barth's decision he would solicit Your Excellency to grant a revision of his sentence and allow the conviction to be quashed in view of the term of imprisonment suffered by Mr. Bowler and the serious consequences to a man of his age and position.

I have &c.

Sd/- RONALD GRANT.

COPY.

Nairobi,

August 14th 1967.

His Excellency  
The Governor,  
Kenya Protectorate.

C O  
35070  
REC'D  
3 OCT 1967

Your Excellency,

I have the honour to inform you that since His Honour Judge Barth's judgment I had decided to prefer no claim whatsoever to compensation for the term of imprisonment to which I was subjected.

Now that I am acquitted I readily admit that the inconvenience suffered was possibly no more than my due. A breach of peace and the consequences it may involve is unpardonable, and my only justification is that of very grave provocation. I was in fact genuinely alarmed by the various complaints of white ladies as to the growing insolence and in some cases indecent behaviour of the floating native population of Nairobi and its vicinity.

My original intention, that of making an example, in itself civically unpardonable, was obscured by a chain of consequences and coincidences for which I have had to take the responsibility; but since the true facts and the gist of the matter have been appreciated by the Government I have had no cause to complain of the manner in which the matter has been handled.

In conclusion I would ask Your Excellency to accept my sincerest regrets for the incident.

I have ac.,

Sd/- EWART S. GROGAN.

ENCLOSURE

Is. No. 57 of 1907

35070

Recd  
3 OCT 07

To

His Excellency

The Governor of the F. A. Protectorate.

We the undersigned having requested that instructions should be given to the Public Prosecutor to withdraw the appeal which has been entered against the judgment and order of His Honour Judge Beth in the cases of Grogan versus the Crown and Thord Gray versus the Crown hereby undertake that if the aforesaid instructions are given that we will not bring any action against the Government or against any officer of the Government or against any person or persons for anything hitherto done said or written with reference to the alleged unlawful assembly for being members of which we have suffered a term of imprisonment.

Ed/- STUART GARDNER

Ed/- Sydney C. Picheat

Ed/- Ernest Low

Ed/- T. Thord Gray

I have no instructions to consent on behalf of Mr. Russell Bowker but I have reason to believe that he will consent and have written him for authority. As sign. Mr. Bowker is now on safari.

Ed/- GEORGE TONGE

17.10.07

Governor's Office

C O  
35070

Nairobi.

Recd  
3 OCT 07

August 24th 1907

Sir,

I am pleased to inform you that in view of the expressions of regret for participation in, and admission of the justifiability of the action taken by Government in relation to, the matter known as the flogging incident contained in your letter of the 14th instant His Excellency the Governor has issued instructions to the Crown Advocate to withdraw the appeal against the judgment of the Sessions Court which had been filed on behalf of the Government.

I am to observe that this appeal was not preferred in any vindictive spirit towards yourself and the other persons concerned but merely to clear up certain ambiguities in the judgment which might be held to lend colour to a contention that the action taken by the Government lacked justification.

The judgment does not in His Excellency's opinion bear such an interpretation and now that you have repudiated any intention of reading it in that sense the Government has no objection to accepting it as finally closing the matter.

I have etc.

W. J. Monson.

Acting Secretary.

Nairobi.

INCLOSURE No. 1  
Despatch No. 57 of 1912

Copy.

Governor's Office,

Nairobi,

AUGUST 1912

35070

3 OCT 07

I am desired to acknowledge the receipt through Mr. A. Grogan of your letter of the 13th instant withdrawing any claim to compensation for the action taken by Government in relation to the matter known as the flogging incident and to inform you that His Excellency the Governor has issued instructions for the withdrawal of the appeal entered against the judgment of the Sessions Court.

I have etc.,

Sd/- W. J. Monson,

Acting Secretary.

Mr. H. H. Gray,  
C/o. Capt. E. S. Crookall,  
Nairobi

Gov. Earl  
35070

DRAFT.

8 October 1907

Earl of Elgin  
Confidential  
Greenwich

Sir,

MINUTE.

- Mr. Stoddham 4/10
- Mr. Read
- Mr. Jupp
- Mr. Ambrose
- Mr. Fox
- Mr. Lucas
- Sir F. Hopwood
- Mr. Churchill
- Earl of Elgin

*[Handwritten signature/initials]*

I have to ask the receipt of your Conf despatch No 54 of the 31st of August last on the subject of the withdrawal of the appeal which had been entered on behalf of the Administration against the judgment of the Sessions Court in the case of Captain Jagers and Gray and others.

Yr