

East Africa Protectorate

Confidential (30)

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Office
Lahore
2 April 1908

My Lord,

I have the honour to acknowledge
the receipt of Your Lordship's despatch
confidential of the 6th of February last.

1. The file on the subject of the rights
of the Sultan of Wotia has been kept strictly
confidential. Though through an error my
despatch of the 22 November last was
not marked confidential.

2. With regard to para. 3 of Your
Lordship's despatch under reply I have
the honour to submit the desired report
by the Crown Advocate as to the validity
of Protectorate Ordinances in the Sultanate
together with a copy of the Proclamations
and Agreements asked for.

3. I am arranging to effect an
agreement with the Sultan of Wotia
whereby

Principal Secretary of State

W. S. W.

S. W.

shewby he makes over to us the
right to dispose of all waste and not
privately owned land, and I shall
address your lordship again on the
conclusion of the registration

The instructions contained in
paragraph 5 of your lordship's
despatch will be observed.

I have the honour to be
with the highest respect
my lord,

Your lordship's most obedient
humble Servant,

Frederic Sullivan

15170

30 APR 08

REPORT

On the facts material in considering the question as to whether the laws applied to the Protectorate by and under the Orders-in-Council relating to the East African Protectorate are in force in the Sultanate of Witu.

Treaty of Berlin. 1.

By Article 2 of the Treaty of Berlin entered into by Great Britain and Germany on July 11th 1890 Germany withdrew in favour of Great Britain her Protectorate over Witu and Great Britain engaged to recognise the Sovereignty of the Sultan of Witu over the territory extending from Kipini to the point opposite the Island of Kikryho.

British Protectorate declared over Witu November 1890.

2. In the London Gazette of November 28th 1890 a British Protectorate was declared over the territories of the Sultan of Witu.

Arrival of Mackinnon and Mackinnon's Expedition.

3. In or about September 1890 an expedition under Admiral Fremantle was despatched to Witu for the purpose of purchasing Sultan Fusa Bahari for the passage of certain German ships, had been admitted in Witu. The Sultan fled on the approach of the force and some two months later died. At the time of his death he was an outlaw, an offer of £10,000 having been made by the British Government for his capture. On the death of the Sultan, his eldest brother was proclaimed Sultan by the people of Witu, but as he showed himself to be favourably disposed towards the British Government he was

deposed and put in irons by the younger brother
 Fuma Omani who then ruled the Sultan in his
 stead. Fuma Omani was never recognized as
 Sultan by the representatives of the British
 Government, but by the terms of peace concluded
 on 17 January 1902 (see Appendix A.3) between
 the Sultan and the British
 Government, and the people of Witu it was agreed
 that Fuma Omani should receive honorable treat-
 ment and a pardon for his life, conditional
 upon his good behaviour, and in return for
 colonial services to be rendered by him to the
 Imperial British East Africa Company.

CGI

Administration of
 I.B.E.A. Company
 1902-1903.

In March 1901 the Administration of the
 territories of the Sultan of Witu was handed over
 to the Imperial British East Africa Company who
 were authorized by the British Government to fly
 the flag of the Company to the exclusion of all
 others. A copy of the agreement which was
 entered into by H. M. Agent and Consul-General
 and the Administrator-in-Chief of the Company
 relating to the handing over of the Administra-
 tion is attached hereto (Appendix B.1).

Agreement between
 I.B.E.A. Co.
 and the
 Sultan of Witu.

On the 10th of March 1901 fourteen days
 after the last mentioned agreement an agreement
 was entered into between the Sultan of Witu
 and the Administrator of the Imperial British
 East Africa Company and certain representatives
 of the people of Witu (including Fuma Omani) by
 which the people of Witu accepted and recognized
 that the territory of Witu was henceforth under
 the control of the Company and pledged themselves

3.

faithfully and loyal support and they the Governor's (Annex A, Appendix C.)

On the 10th March 1895 notice was published in Witu by the Director of the Company by which the Company purported to apply the Indian Penal Code and the Criminal Codes and the regulations then in force in the towns and territories under the Administration of the Company to the territory of Witu. During their administration the Company made laws, imposed and established duties, and exercised their sovereign rights.

In the 11th July 1895 the German Government relinquished the administration of the Witu territories and in the following month that territory was placed under the administration of the Sultan of Zanzibar as its Sovereign.

The notification of the transfer was published in the Zanzibar Gazette in the name of the British Consul and was signed by the First Minister of the Zanzibar Government. By the same notification Mahommed Ilw was applied to that territory. From that time until July 1895 Witu territory continued under the Sovereignty of the Sultan of Zanzibar.

Early in 1895 Germany pressed for the fulfilment of Article 2 of the Treaty of Berlin relating to the territory and as a result the present boundaries of that territory were a result of German pressure on the Sultan of Zanzibar. On July 11th 1895

made by the
map for the
territory.

Witu placed
of the Boye -
ity of the
ar of Zanzibar
1895-1897.

Witu
Sultan
1895

the Sultan of the territory was appointed for
Witu was an act of annexation made by the Sultan with

reference to his transfer of his sovereign right
or his right to make laws in the British
Government.

In February 1907 Sir Arthur Hardinge address-
ed a despatch in the following terms to the
Secretary of State for Foreign Affairs.

"My Lord,

I have the honour to enclose herewith a
draft Ordinance for the constitution of Native
Courts throughout the East Africa Protectorate
exclusive of Vitu, to which it will be necessary
that the Sultan of the country should under my
advice formally make applicable.

I have, etc.

(Signed.) Arthur N. Hardinge.

This Ordinance was with the approval of the
Secretary of State applied to Vitu by a Procla-
-mation made by the Sultan. I have endeavoured
to obtain a copy of the Proclamation but have
been unable to obtain one. There is however a
record of instructions being sent to the British
Resident at Vitu to advise the Sultan to issue
the Proclamation and also of the Resident's reply
to the effect that the instructions would be
carried out.

The object of this incident lies in the
fact that in 1907 before the day of the East
Africa Protectorate in the hands of the British
opinion both in the Foreign Office and in the
local Administration that any law which it was
desired to apply to Vitu should be applied by
the Sultan of Vitu. An opinion which would

appear to be sound having regard to the fact that the Sultan has been appointed with the intention being placed upon his position rights beyond an obligation to the Sultan and the British Government.

East Africa
Orders in Council
1897-1902

By the East Africa Orders in Council 1897 and 1902 the East Africa Protectorate was defined so as to include the territories of the Sultan of Vitu and H.M. Commissioner was authorized to make laws for the whole of the Protectorate. Under the East Africa Order in Council the power to make laws was transferred from H.M. Commissioner to the Governor with the advice of a legislative Council.

Laws have from time to time been made under each of these Orders in Council, but so far as I have been able to discover none of these laws have been applied by the Sultan of Vitu to his territories.

Now the question arises as to whether these laws are in force in the Sultan's territories. The Orders in Council read by themselves purport to confer upon His Majesty's Commissioner or Governor the power to make laws on behalf of His Majesty for the good government of the whole of the Protectorate without reference to the Sultan who may have no sign rights over any part of the Protectorate.

I am of the opinion that prior to the East Africa Order in Council 1897 the only authority for the making of laws applicable to the natives of Vitu was the Sultan or the person

persons at the time being exercising the powers of the Sultan, and in this opinion I am supported by the fact that since the restoration of the Zanzibar Society in 1891 laws have been made for Zanzibar (2) by the Imperial British East Africa Company when administering the country at the time when there was no recognised Sultan (3) by the Sultan of Zanzibar when the country was under his sovereignty (3) by the present Sultan as mentioned in paragraph 4 of this report. It is difficult to find any convincing arguments to support the contention that an Order in Council which purports to define the manner in which His Majesty's jurisdiction in and over this Protectorate shall be exercised can confer upon an officer of His Majesty the powers to exercise on behalf of His Majesty Sovereign rights which His Majesty has hitherto not claimed the right to exercise and which in fact were at that time exercised by a Sultan appointed and recognised by His Majesty.

Resolution
passed by the
Board 1907.

9. As it is highly necessary that the local Ordinances which have been made for the Protectorate, especially those relating to the administration of justice, the protection of game and the prevention of the spread of diseases among animals, should apply to the Sultan's dominions, I have on the advice of the Secretary of State (D.) in a letter to him, authorised all laws made or hereafter to be made for the Protectorate by or on behalf of His Majesty.

W. G. ...

APPENDIX A.

SETTLEMENT OF WITU.

Treaty of Peace, signed 20th Jan 1891.

BE it known that the people of Witu have sued for peace and pardon from the great English Government for all the evil that they have done, and the people of Witu promise to obey any future orders whatever that the great English Government may issue with regard to the territory and State of Witu, and they will not oppose any measures whatever that the great English Government may consider it advisable to adopt in this matter. And it is understood that honourable treatment and subsistence (vide Memo attached) will be accorded to Fumo Ovari and his relatives. And when this paper has been signed by Fumo Ovari and the people all war and fighting shall cease, and the people of Witu have permission to go where they please and attend to their business. And every person in Witu who has stolen or seized the property of Europeans shall remain at Fortwith. But certain people who have done very bad things, and whose names are given in the above, shall not be pardoned and are not included in this general pardon.

MEMO ANNEX.

It is agreed that the amount of subsistence allowance to be accorded to Fumo Ovari shall be the sum of £100 (one hundred) annually. Such payment being conditional on his good behaviour, and for monthly services to be rendered by him to the Company. The subsistence allowance to be limited to the life of Fumo Ovari himself.

(Initials) G.S.N.

APPENDIX
AGREEMENT

Her Majesty's Agency and Consulate, Zanzibar,
Zanzibar, 31st March 1891.

Preamble:

It is hereby understood between Colonel Sir
Charles N. Ross-Smith, K.C.M.G., Her Majesty's
Agent and Consul-General at Zanzibar, acting on behalf
of Her Majesty's Government on the one part, and
between Mr. George Nathaniel Mackenzie, Acting Adminis-
trator-in-Chief of the Imperial British East Africa
Company on the other part both having been duly
empowered to make and sign this Agreement - that the
Imperial British East Africa Company shall take over
and assume the charge and administration of the State
and Territory of Witu under the following conditions:

Article I.

The Imperial British East Africa Company with the
consent of Her Majesty's Government will assume direct
charge of the Administration of the Territory of Witu
under the terms of their Charter from the earliest
possible date not later than the 31st March 1891. The
sole responsibility regarding the administration and
the proper Government of the province will rest
with the Imperial British East Africa Company. The
Imperial British East Africa Company shall have
the sole right to collect all taxes and
custom duties, and revenue to be for the Imperial
British East Africa Company's sole use and account,
but the said taxes and custom duties to be subject if
necessary to revision by Her Majesty's Government. The
Judicial administration of the territory shall be in
accordance with the procedure and provisions of the
Criminal and Penal Codes.

Article III.

The Imperial British East Africa Company binds themselves to constitute an efficient administration in the territory of Witu under the direct control with the least possible delay and to maintain the same.

The Imperial British East Africa Company binds themselves loyally to fulfil each and all of the conditions of pacification recently concluded by Sir Charles V. Fisher-Smith with the Witu leaders, of which a copy is attached.

Article IV.

The Prohibition regarding the entry of Europeans into Witu territory to be withdrawn simultaneously with the assumption of Administration by the Imperial British East Africa Company, who will exercise sole control in this respect.

Article V.

Martial law which was proclaimed and is now in force throughout Witu territory to be abolished at the same time.

Article VI.

The Imperial British East Africa Company reserves to themselves the right of deciding at any time and to whatever extent, if any, the abolition of martial law shall be extended to Witu and the adjacent territory. The question of the abolition of martial law is also reserved for their decision.

Article VII.

The Imperial British East Africa Company's flag may be flown throughout Witu territory as soon as they

as in a p... provided the name,

(Signed) C. S. Ryan-Smith, Colonel,

U. S. Army, ...

(Signed) George ...

...-Chie, ...

... Company,

...

Witness:-

(Signed) Ernest J. L. Berkley,

H. V. Vice-Consul,

5/3/21.

APPENDIX C.

AGREEMENT ENTERED INTO BETWEEN

- (1) Mr. Rudolf J.B. Berkeley, F.R.S., Vice-Consul at Zanzibar
- (2) Mr. George B. Mackenzie, Director, Imperial British East Africa Company.

(The undersigned representatives of the people of Witu at Zanzibar, in the territory of Witu, on March 14th 1891.

Article I.

Beke, Fuma, Amari, Fuma Ayatalla, and the notables of Witu having fully received and read the letter addressed to them by Sir Charles Euan-Smith, H.M. Agent and Consul-General at Zanzibar, dated March 4th 1891, and having discussed all the matters therein referred to with Mr. Berkeley and Mr. Mackenzie aforesaid, do hereby, on behalf of themselves and the people of Witu, fully, freely and loyally, accept and recognise that the territory of Witu is henceforth under the control and administration of the Imperial British East Africa Company, and they further pledge themselves faithfully and loyally to serve and support and obey the said Company's administration.

Article II.

The Imperial British East Africa Company, and its agents, shall be recognised throughout the territory of Witu.

Article III.

The Imperial British East Africa Company, and its agents, themselves faithfully to observe such and all of the conditions of the peace concluded between the people of Witu and Sir Charles Euan-Smith, H.M. Agent and Consul-General at the 22nd and 24th of January, 1891.

Article IV.

The British law which, on the 21st of October 1850, was proclaimed throughout the territory of Victoria, and which is withdrawn in accordance with the official notification that effect should be given to the same, which is dated 11th March 1861 by the Hon. Sir R. Peel, Senior Naval Officer, on the East coast of Africa.

Article V.

Vice-Consul Berkeley, on behalf of her Majesty's Government, hereby declares the province of Vitu to be fully and finally handed over to the Administration of the Imperial British East Africa Company, and remains under the terms of the Agreement entered into on the 6th of March 1861, between Sir Charles Baird-Smith and Consul General at Zanzibar, and Mr G. S. H. M. Agent, Imperial British East Africa Company.

change direction

Article VI.

The notables and people of Vitu, being aware of and desirous to support the efforts that have continually been made by her Majesty's Government and by the British Company to suppress the slave trade and slavery in East Africa, do hereby freely and solemnly pledge themselves henceforth to have no dealings of any kind or description with ^{the} slave trade, and to use their best endeavours to suppress and obstruct it. They further engage and declare that from this day forth the inhabitants of Vitu are to be free, and that in the province of Vitu the status of slavery is abolished and the danger hereby eliminated. All the said inhabitants of Vitu are to be free persons and shall enjoy all the rights and privileges appertaining to free persons. And the Imperial British East Africa Company shall use their best endeavours

...this provision regarding the freedom of all Witu subjects is put into full and legitimate execution, it shall not in any way affect the lawful rights of the ... of his rights ... the Sultan of ... and the territories adjoining the Province of Witu.

But regarding the general emancipation of slaves referred to it is agreed, with a view to prevent an immediate and heavy loss to the owners of plantations, shambas, etc., at present worked solely by slave labour, to defer the actual process of liberating bona fide slaves thus employed for a period of five years; the slaves nevertheless retaining the usual right to purchase their freedom by mutual consent at any time, the total abolition of slavery throughout the province of Witu is fixed to take place finally and absolutely on the 1st of May, 1896.

Article VII.

In consideration of the provisions of Article VI. the Imperial British East Africa Company pledge themselves to use their best endeavours, should it be requisite, to obtain and encourage the importation into Witu territory of coolie labour for agricultural and other legitimate purposes.

Done in Triplicate in English and Swahili, at ...

I, J. ...
S. ...
Witness to above ...
Witness to above ...
Witness to above signature, said his ...
(Swahili Translation)

ARTICLE D.

PROCLAMATION.

WHEREAS HIS HIGHNESS THE SULTAN OF SUDAN
 has under the provisions of the said Treaty of the United
 Kingdom of Great Britain and Ireland, Emperor of India, and
 part of the territories known as the British East Africa Pro-
 tectorate AND WHEREAS HIS MAJESTY has jurisdiction by Treaty, Grant,
 Usage, Sufferance and other lawful means within the said Protec-
 torate AND WHEREAS in exercise of the said jurisdiction laws
 have been made and are from time to time made in the said
 Protectorate by or with the approval and accordance with the
 Orders of His Majesty, AND WHEREAS doubts have been expressed
 as to whether the laws so made do apply to that part of the said
 Protectorate as is within the Vicinities of His Highness the
 Sultan of Suda. NOW KNOWING ALL MEN THAT I, OMAR BIN
 MAHOMED SULTAN OF SUDAN do hereby proclaim and declare that ALL
 LAWS already made or which may hereafter be made for the British
 East Africa Protectorate by or with the authority of His Majesty
 the King of the United Kingdom of Great Britain and Ireland,
 Emperor of India are and shall be in force within my Dominions
 save in so far as any such law shall provide to the contrary,
 and shall be enforced by my Officers and by such Officers as His
 Majesty may be pleased to appoint to assist me in administering
 the said laws and the Government of my Dominions.