

EAST AFR. PROT.
 No 7615

1418

1908
 15 Dec
 1st 1/20th Paper

(Subject)

Jurisdiction of Prot. Courts

over foreign subjects residing in the inland
 dominions of Sultan of Zanzibar
 Case brought by Crown Advocate & subject
 question to be decided on other issues

(Minutes)

~~Mr. ...~~
 Mr. Read
 Mr. Cox

This people may fairly
 be left to the F.O. to unravel;
 especially as the abrogation
 of the Treaty with the Sultan
 which causes the doubt to arise
 was accomplished by F.O.
 without consulting us, & without
 informing us until a case arose
 when the abrogation effected.
 Copy to F.O. & ask for what
 answer they have to return, asking
 for a reply early reply

1st 1/20th ...
 1st 1/20th ...
 (Case Cont 14 3rd ...)

... has not the material before ...
 ... to offer any opinion ...

J. Spee

to SR

13/10

in Antwerp
Reference to
the ...

Remond FO

10/12
above

R

1413 637

Governor's Office,

Nairobi

14th December 1908.

EAST AFRICA PROTECTORATE.

Confidential (132)

Encl. 1.

My Lord,

I have the honour to invite Your Lordship's instructions in regard to the following matter.

2. The Crown Advocate, a copy of whose letter is enclosed herewith, has drawn attention to the probability of difficulties arising in connection with the jurisdiction of the Protectorate Courts over subjects of foreign powers residing in the mainland dominions of the Sultan of Zanzibar.

3. It appears that when the various powers gave up their consular jurisdiction they surrendered it not absolutely to the British Court. Such at any rate is the wording of the communications addressed to this office by His Britannic Majesty's Agent and Consul General in the year 1906. It is true that they relate to the Sultan's island dominions only but in the absence of any evidence to the contrary, no trace of which exists in our archives, it may be and has been presumed that they hold good in the case of His Highness' mainland

PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWLING STREET,

LONDON. S. W.

Crown Advocate
- 12 - 08

mainland territories also.

4. Since 1905 therefore the Protectorate Courts embody the functions of the British Court as constituted under the Treaty of 1868 have been considered the tribunals exercising jurisdiction over the subjects of foreign Powers. The recent abrogation of that Treaty has in the Crown Advocate's opinion destroyed their status in this respect since, in the absence of any treaty, they cannot be held to embody the functions of any Court established by the treaty.

5. It is however a question on which Your Lordship's legal advisers might perhaps be requested to give a ruling whether the proclamation of a Protectorate over certain territories does not in the absence of anything to the contrary confer on the courts of those territories the powers of British Courts in such cases as those in relation to which the present uncertainty exists.

Should the decision of the Law Officers of the Crown be adverse to this theory I would ask that the position of the Protectorate Courts may be regularized in the manner suggested in the concluding paragraph of the Crown Advocate's minute.

7. The matter is one of some urgency as a situation in which the jurisdiction of the Courts might be disputed, may be created at any moment and I would therefore venture to solicit the favour of a telegraphic reply.

8. It is of course possible that the wording of the surrender by the Treaty Powers of their mainland consular jurisdiction may be in such terms as to render our apprehensions needless, but, in the absence of any record of the exact text, I have felt compelled to address Your Lordship as above.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

In the absence of His Excellency
the Governor.

Ref No. 1200/18 1908

CROWN ADVOCATE'S OFFICE,
NAIROBI,

RECEIVED 7th 1908.
1418

SIR,

I have the honour to direct your attention to the following matters:-

A notice published in the Official Gazette and dated 15th and 1905 and that the Portuguese and Italian consular jurisdiction in the East Africa Protectorate had been transferred to the British Court which dated 1st and 2nd 1905 and March 1st 1905 and orders had respectively transferred the jurisdiction in the Protectorate to the British Court. I have endeavoured to obtain the communication addressed to this Administration which resulted in these notices being published. The Secretary has been able to hand me the communication from the German Vice-Consul at Mombasa dated March 11th 1908. The translation of that communication reads as follows:-

"I have the honour to inform Your Excellency that in accordance with telegraphic instructions received by me today from Berlin, German Consular Jurisdiction in Mombasa has been abolished, an exception is made in favour of cases still pending".

The Secretary informs me that he is unable to find any communication relating to the surrender of German Jurisdiction by the other Powers named above.

Respectfully,
Nairobi.

2. It is most important that we should immediately ascertain whether the Powers have, as stated in the Notice referred to above, surrendered their jurisdictions to British Court or whether their Consular jurisdiction has been abolished.

3. A British Court was established in the Coast Strip, by virtue of the right conferred upon His Majesty by His Treaty of 1846 with the Sultan of Zanzibar. That treaty has lately been abrogated and no new treaty affecting the Sultan's Mainland Dominions has been entered into.

The root of His Majesty's jurisdiction in the Sultan's Mainland Dominions having now gone, it would seem that ^{not} there can now be no British Court in that part of the Protectorate, until a new treaty is entered into.

The Judges now exercising jurisdiction in the Coast ^{strip} being Sultan's Judges with jurisdiction only over those persons who are subject to the Sultan's jurisdiction.

4. If it is the fact that the treaty Powers have surrendered their Consular jurisdiction generally, and not to the British Court alone their subjects will be subject to the jurisdiction of the same Court as British subjects. Namely the Sultan's Courts presided over by the Protectorate Judges and Magistrate. If on the other hand the notification in the Gazette is correct and the surrender was to the British Court alone it would seem that the Consular jurisdiction of those Powers must now have revived, as the surrender must have been made on the understanding that the British Court should be maintained.

15
15.

1418 CAP

643

Procedural

15 Jan

15 Jan 09

DRAFT

W. A. S.

Foreign Office

MINUTE

- Mr. Deady
- Mr. Reid
- Mr. Juss.
- Mr. Astorbus.
- Mr. Cox.
- Sir C. Lucas.
- Sir F. Hopwood.
- Col. Seely.
- The Earl of Cross.

D. J. S.

I am a ...
to you for the ... of
Sir L. Edward ...
city of a despatch for
the ... of the ...
Prot. ...
... to the ... of
the effect ... of the
abrogation of the ... of
1886 with the Sultan
of ... after the
jurisdiction of the ...
... over ... of
... ...
the Sultan ...
... within the
Prot.

1418
1418

In view of the possibility
of the occurrence of a case
in which the jurisdiction of
the ... might be
... I ...
the ...

... of the ...
... which should be
... of ...
...