

EAST AFR. PROT.  
 No. 19110

C. O.  
 19110  
 Recd  
 MAY 07

*Handwritten notes:*  
 a. Wright  
 T. P. ...

No. 168

(Subject)

1907  
 April 30

*Mr D W Noble's appl for land*

and previous Papers.

*For copy comes - Requests delay*

(Minute)

*Mr. Keating  
 Mr. Keat*

*I think in view of the Crown  
 Advocate's opinion we may  
 request the Gov to send Mr  
 Noble to be informed, that the  
 Prof P has received his letter  
 but that he sees no reason to  
 interfere with the Gov's decision  
 in the matter conveyed to him  
 in the Secretary's letter of  
 the 15<sup>th</sup> Nov 06 (45,000)*

*for copy  
 at 2/3/5  
 29/5  
 30/5*

C O  
19110

639

Recd

Commissioner  
23 MAY 07

Nairobi,

April 30th 1907.

EAST AFRICA PROTECTORATE

Nº. 188.

(Inc. 25 F.)

My Lord,

With reference to Your Lordship's  
despatch No. 14 of January 4th last respecting  
Mr. F. H. Noble's application for land I have  
the honour to transmit herewith as instructed

copies of

- (1) Sir Donald Stewart's letter of August  
25th 1904 to the Land Officer relating to  
the refusal of any application for land from  
Government officers unless they had actually  
served at least a year in the  
Land Officer's office and all applicants including  
Mr. F. H. Noble.

Despatch No. 14 of Jan. 4th 1907  
 to Land Officer  
 25th 1904  
 Mr. F. H. Noble's application  
 for land  
 Sir Donald Stewart's letter  
 of August 25th 1904  
 to the Land Officer  
 relating to the refusal  
 of any application for  
 land from Government  
 officers unless they had  
 actually served at least  
 a year in the Land  
 Officer's office and all  
 applicants including  
 Mr. F. H. Noble.

H. J. Principal Secretary of State

for the Colonies,

Downing Street,

LONDON, S.W.

Land Officer to  
Noble, Aug. 16, '06.  
to do.  
Committee, 1906.  
to do  
April 26th 1906.

(2.) Correspondence between Mr. Noble and the  
Land Office as noted marginally up to his letter  
of September 8th which was forwarded to Your  
Lordship in my despatch No. 575 of November 15th.

(3) The Crown Advocate's written decision on  
the legal issues involved.

I regret the delay which has taken place in  
forwarding this correspondence, due to a large  
extent to the exceptional pressure of work in the  
Crown Advocate's office.

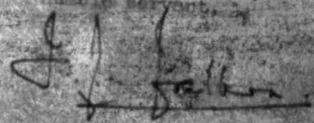
I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

Humble servant,



Acting Commissioner.

INCLOSURE No. 1

In des. No. 188 of 1911

1911  
REC'D  
20 MAY 07  
190

Commissioner's

Muzbasa

August 28th

Sir,

With reference to my despatch of the 18th instant, and your No. 1692/53 respecting the acquisition of land by Government officials, I beg to inform you that I am not prepared to allow any such acquisition by persons in Government service, nor will I entertain any further applications or sign any deeds of this character, as instances have occurred in which the privilege has been abused.

In the case, however, of officers who have erected or are actually at this date in course of erecting a house upon the land of which they are in temporary possession I shall be ready to sign the deeds, in view of the expense which they have incurred, on the strict understanding that the land cannot be dealt with in any way without my sanction.

Yours faithfully,  
Sd/- G. STEWART

Land Officer,

Calcutta.

C. O.  
19110  
Recd  
Ans 29 MAY 07

642

January 11th 1904.

The Land Officer,  
Nairobi.

Sir,

I have the honor to apply for a ten acre plot of land in the Township immediately behind that taken by D. G. Jensen.

I also hereto attach a note from Mr. Noble in which he asks me to have a ten acre plot reserved for his adjoining the piece I apply for.

I enclose a rough sketch showing where the ground is desired.

I have &c., &c.,

Edw. J. M. M. M.

Edw. J. M. M. M.

C. O.  
19110  
Rec<sup>d</sup>  
Rtr<sup>d</sup> 29 MAY 07

Wetmore,  
January 12th 1907.

With reference to attached application for land  
in the Ukamba Province from Mr. A. Stewart and Mr. D.  
W. Noble is there any local objection.

Sd/- S. L. WARING  
For Land Officer, S. A. P.

J. A. ...  
Ukamba Province

Copy.

Nairobi,

January 29th 1907.

C C  
19110  
Recd  
REG 29 MAY 07

To  
The Land Officer,  
Nairobi.

Re accompanying 6 applications for 10 acre plots I have to say that inasmuch as there are native holdings on the land applied for there can be no objection, except any general one on the ground of land being required by Government, or that it is in the Municipal area, or refers to land which you know I have expressed an opinion to the effect that it should be reserved.

Yours faithfully,  
H. N. Sub-Commissioner.

C. O.  
19110  
REC  
29 MAY 07

SECRET

I will indicate to you on plan position of  
plots in question, which lie within Municipal area  
and will be glad if you will favour me with  
instructions re rent to be charged.

Bd/- S. Wright

Cairo,

February 3rd 1904.



O. O.  
19110  
REC 29 MAY 07

M. P. U. R.

I should say about Rs. 5/- per acre

per annum.

S/- J. Ainsworth.

Nairobi.

February 11th 1904.

C. O. 19110  
RECEIVED  
MAY 28 1907

Sir,

In reply to your letter of the 11th ultimo, applying for ten acres of land for yourself and 10 acres for B. Nohie, I beg to inform you that both the plots mentioned are available and may be leased at the rate of Rs. 5 per acre per annum.

I beg to draw your attention to the existing rule whereby it is compulsory that a suitable dwelling house be erected on the land, the length of lease to be dependent upon the class of the building erected.

I am, Sir,

Yours faithfully,  
W. S. Wright  
Land Officer.

W. S. Wright, Esq.,

Land Officer.

Copy.

INCLUSION No. 10  
M. 1000. No. 1000

19110

Commissioner's Office,  
Reg. 29 MAY 07

Nairobi.

650

August 1st 1907.

Sir,

I beg to inform you that the officials in  
the Protectorate service who have acquired land  
are not permitted to deal with it in any way  
without the express permission of His Majesty's  
Commissioner.

I am, Sir, etc.

Sd/- D. STEWART

The Acting Land Officer,

Nairobi.

Copy

1910  
Survey & Land Office,  
Nairobi  
29 MAY 07  
September 1st 1906

Circular No. 2035.

Sir,

With reference to your application for a residential plot on Kikuyu Road, I have the honour to inform you that H.M. Commissioner has seen a return that no person in Government service may acquire land and that he will sign no more orders to that effect in further applications of this character.

H.M. Commissioner, however, in the case of officials who, at the date of his written instructions to me, i.e. the 25th April, had erected or were actually in course of erecting a house on the land of which they were in temporary possession, is prepared to sign the deeds in view of the expense which they incurred, but on the strict understanding that the land cannot be dealt with in any way without his permission.

Will you therefore kindly inform me at your earliest convenience if, in the aforesaid date (25th April), you had erected or were in the course of erecting a house on the land applied for by you, in order that I may sign your application.

I am, Sir,  
Yours faithfully,  
Edw. T. OILKISON  
As. Land Officer.

D. V. NOLLE, Esq.,  
Director

19110

Survey & Land Office,  
Nairobi, Kenya  
28 MAY 07  
September 28 1904.

With reference to his conversation of yesterday  
Und signed has the honour to inform him that the  
Land Officer cannot see his way to allow him the  
transfer of his ten acres to his nominee but that  
it must revert to the first applicant registered  
in the Department in the order of priority.

Sd/- E. E. WARING

As Chief Surveyor.

Mr. D. W. Hobbs,

Essex Street,

Nairobi.

C. O.  
19110  
100.29 MAY 07

Land Office,

Nairn,

August 18th

Sir,

By Circular letter No. 2028 D/1-9-1904

Your application having been cancelled, I  
beg to send herewith a refund voucher in triplicate  
for Rs. 52/- which please present at the Government  
Treasury for payment.

I am, Sir, etc.,

Yr. obedt. Servant,

W. L. WATSON,  
AC. Land Officer.

D. V. No. 10, Sec. 1.

C/o Post Office,

Nairn.

1908

VOUCHER

Amount of Survey Fees and Boundary  
marks to Mr. D.W. Noble for his 10 acre  
plot on Kiskadee road his application  
having been cancelled.

Rs. 15 S. Fees. R.N. 559 of 12-3-08.

Rs. 3 H. Marks 75 00.

R. Form 100.

Rs. 25-0-0

Rs. 25-0-0

I certify that the above amount was paid by me on  
account of Survey Fees &c.

H. J. Waring  
Land Officer,

19110  
MAY 29 1907

LAND OFFICE  
Nairobi

September 29, 1906.

No. 1808.

Sir,

Since up to date I had not in receipt of an acknowledgment from you, I have the honour to request you will please inform me when you have received my letter No. 3236 of the 18th August 1906, enclosing vouchers for survey fees in respect of your application for 10 acres of land at Nairobi.

Your survey fees account has been closed and the application cancelled, and if not already submitted you should present the vouchers to the Treasury for payment prior to the end of the financial year, viz. March 31st 1907.

I have the honour to be,  
Sir, E. I. WATSON  
AG, Land Officer.

D. Watson, Esq.,  
Nairobi.





MINUTE.

In January 1904 Officers in the service of the Government were permitted by the regulations relating to that service to acquire and hold a limited amount of land in the Protectorate.

On January 11th 1904 Mr. Noble applied to the Land Officer for a ten acre plot in Nairobi and was informed by a letter from the Land Officer that the land was available.

Survey fees were paid by the applicant and a draft lease prepared by the Crown Advocate on instructions from the Land Officer was submitted to Mr. Noble and approved by him.

On August 24th the late Commissioner Sir Donald Stewart being of opinion that it was undesirable that officers of the Government should hold land in the Protectorate, informed the Land Officer that in future no person in the Government service would be allowed to acquire land in the Protectorate, and that, with certain exceptions, he would sign no more deeds conveying or leasing land to such persons.

On September 2nd 1904 the Land Officer wrote to Mr. Noble informing him of this new regulation and further informing him that unless he could show that his case

came

case within six months his application would be cancelled.

An interview took place between Mr. Noble and the Land Officer on September 6th. On the following day the Land Officer wrote to Mr. Noble informing him that the land for which he had applied could not be transferred to his nominee but would revert to the first applicant registered at the Land Office.

For over two years, - namely: from September 6th 1904 until October 8th 1906 - Mr. Noble took no action of any kind, with regard to the matter, but on the latter date he having then left the service of the Government he made the claim now under consideration.

The question on which my opinion is invited is as to whether there would be any defence in the event of Mr. Noble bringing an action for specific performance of the contract to grant a lease of the land in question or for damages for breach of contract.

In my opinion there is a good defence to both these actions.

Mr. Noble cannot obtain an order for specific performance as while he remained quiet the land was disposed of to other persons.

With regard to an action for damages for breach of contract I am of opinion that the impossibility of the performance of the contract owing to the Regulations prohibiting any person in the service of the Government from acquiring land within the Protectorate constitutes an absolute defence to such an action.

It

It cannot, I think, be contended that His Majesty's Commissioner had no authority to make a regulation such as the one in question or that such a regulation is not binding on persons in the service of Government.

The position was therefore that Mr. Noble could not as a Government servant acquire land in the Protectorate and the contract could not be performed and was properly rescinded by the Land Officer on behalf of the Commissioner.

The fact that the obstacle in the way of the performance of the contract is removed two years after the contract has rescinded cannot have the effect of reviving the contract.

Edw. J. Collins

Senior Advocate.

Witness,

April 29th 1907.

oals  
19110  
E.A.P.

May

7 June 1907

DRAFT.

E.A.P. n = 329

Govt

Sir

MINUTE.

- Mr. Laidley
- Mr. Treadwell 11/6
- Mr. Just
- Mr. Andrews 7/6
- Mr. Cox
- Mr. Lucas
- Sir F. Hopwood
- Mr. Churchill
- The Earl of Elgin

I have the honour  
to acknowledge the receipt  
of Mr. F. J. T. Jackson's despatch  
No. 165 of the 20th of April  
last, & to inform you  
that I have carefully  
considered the ~~contents~~  
correspondence relative  
to the application of  
Mr. D. W. Noble for a  
grant of land at ~~hand~~  
- the E.A.P.

2. I have to request  
that

that you will  
excuse Mr. Noble to  
be sure that  
~~after~~ I have not  
contradicted his letter  
of the 8:5 Sept. 1906  
but that I see  
no reason to  
vary the ~~letter~~  
decision <sup>regarding his</sup>  
affiliation ~~which~~  
~~was~~ which  
was conveyed to him  
in the secretary's  
letter of the 15:9  
November 1906

Yours

**PUBLIC RECORD OFFICE**

**END**