

The Ten Miles Coastal strip: An Examination of the Intricate Nature of Land Question at Kenyan Coast

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Abstract

In 1886, the Anglo-German Treaty was signed between Britain and Germany to determine their spheres of influence in East Africa. Since none of them wanted to be in direct conflict with the sultan of Zanzibar, they decided to allocate him ten miles coastal strip running from Kipini in the north to Ruvuma River in the south. The Germans thereafter paid for the right to use the sultan's ten mile possession on the German East African section. The British on the other hand opted to pay annual rent to the sultan equivalent to the amount of tax collected by sultan in that part adjacent to East Africa protectorate(EAP). The complexity of this treaty came into focus in 1920 when the British government wanted to change the status of EAP into a colony. The British realized that the ten miles coastal strip could not be annexed without causing international conflict because of the various treaties that the sultan had entered with various powers guaranteeing their sovereignty and control over her coastal dominions. Thus, the colonial government went for a quick fix by renaming the territory, Colony and Protectorate of Kenya. The protectorate designated the ten miles coastal strip while all the land from the ten miles became the colony. It was this quick fix that later reared its ugly face at the time of independence when the Arabs in the coastal strip rejected to be incorporated in independent Kenya. They wanted to secede to join fellow Arab administration at Zanzibar. Just like the colonialists, Kenyatta went for another quick fix by signing an agreement with the then Prime Minister of Zanzibar guaranteeing land ownership to sultans' subjects at the expense of African inhabitants who for many centuries had remained as squatters. This paper examines the historical injustices that African inhabitants have endured over the centuries and how the various administrations have overlooked their interests. Consequently, land at the coast has become so expensive to an extent that ordinary people cannot afford. It is argued that a solution has to be found to contain the recurrent land conflicts experienced every election year.

INTRODUCTION

East Africa Protectorate (EAP) as Kenya was known from 1895 to 1920 has a complex history compared to other British possessions in Eastern Africa like Uganda and Tanganyika (Tanzania). EAP attracted European settlers from Britain, South Africa and a few from other British dominions. These European settlers desired to create a "white colony" like Canada, New Zealand, Australia and South Africa. However, their population was too low to force the Imperial government to grant them such status. It was this realization that made the British government in 1923 to issue the Devonshire White paper to the effect that where interests of alien races (meaning the British and the Asians) conflicted with African interests, the latter would be paramount.¹ While this declaration was hollow in all intent and purposes it gave precedent on how to resolve conflicts arising from the interests of Europeans, Asians and Arabs and the inhabitants of the country. However, this declaration, it would seem it did not change the uneasy relations that existed between the Africans and the Arabs residing within the ten mile coastal strip which was assumed to belong to the sultanate of Zanzibar. This sultanates nominal possession of the coastal strip as per 1895 agreement between the British and the sultan later proved to be a major obstacle to the development of EAP. This anomaly was detected when the European settlers and the Colonial Office hoped to finance major developments in the protectorate using cheap loans borrowed under Colonial Stock Act of 1900.²

*Paper prepared for Moi University and Indiana University symposium on dialogue and Peace and Reconciliation in Kenya. Moi University, 13-15 May 2009.

¹ Robert Maxon, *Struggle for Kenya: The Loss and Reassertion of Imperial Initiative, 1912-1923* (Mudson: Fairleigh Dickinson University Press, 1993), 276-79.

² This Colonial Stock Act was passed when Joseph Chamberlain was Secretary of State and was a great advocate for the development of what he called "Imperial Estates" to refer to British overseas possessions.

However, they were advised that the protectorate could not benefit from such funds since it was not a colony or a British dominion. The Crown Agents for the Crown advised the CO to look for ways of changing the status of the protectorate to a colony. It was this desire to change the status of the protectorate to a colony that exposed the intricate political arrangement of the territory. It became clear that the incorporation of the ten mile coastal strip into the colony would arouse international conflicts from other countries that had entered into trading agreements with the sultan of Zanzibar. The sultanate of Zanzibar for instance had signed various treaties with United States of America in 1833,³ France in 1862, and Germany in 1886, which recognized his sovereignty. Notably, the 1886 Anglo-Germany treaty did not abrogate the former treaties. In fact, the 1886 treaty is the one that internationally recognized the ten mile coastal strip as the rightful dominion of the sultanate of Zanzibar.

A minute by Herbert Read, the then Assistant Undersecretary of State observed that whether the loan was raised by Lloyd, a private bank that had showed interest to fund railway construction in EAP or by the Colonial Agents of the Crown (CA), the protectorate would only get better terms if annexed and made a colony. He thought there was no reason not to annex EAP with the exception of the Sultanate of Witu. He further observed that the control of the protectorate at the time had been tightened and there would be no objection by the subjects.⁴ Ideally, what the CA were suggesting seemed to be a sensible economic argument that through the Colonial Stock Act of 1900, the country would get a loan at a low interest rates, but they overlooked the political and constitutional implications to the Africans in the protectorate who were not privy to what was being schemed. Admittedly, if the First World War did not break out in 1914, it seems the protectorate would have become a colony by then.

Thus, after the First World War the proposal to annex the protectorate was revisited. Read suggested that the matter of annexation of EAP and the construction of the Uasin Gishu railway be discussed with the newly appointed governor, Sir Edward Northey, who was in London at the time.⁵ A minute by William Cecil Bottomley, First clerk, East Africa Department shows that Northey agreed to take up the matter after reporting to his station in Nairobi. As a result, the Secretary of State (S of S) Walter Long wrote him a letter authorizing him to enter negotiations with the Sultan of Zanzibar to allow the annexation of his ten-mile coastal strip to be part of the new colony.⁶ Northey visited Zanzibar in September 1919 and discussed the matter with British Resident in Zanzibar, Sinclair who thereafter met the Sultan on 13 September 1919.

What is interesting about the deliberations between the sultan and Sinclair is that the Resident tried to convince the sultan that the annexation of his ten miles coastal strip was to ease administration of EAP and “there was no intention of detracting from His Highness’s prestige and that the revenue of sultanate would not suffer in consequence.”⁷ As would have been expected from a “puppet” administration, the sultan accepted the proposal by stating that:

He was the child of His Majesty’s Government and was always ready loyally to carry out its wishes. If His Majesty’s government considered the alienation desirable he was quite prepared to agree to it.⁸

But Sinclair observed that although the sultan did not object to the proposal, Zanzibar had unique and complicated treaties with both the governments of France and United States of America and therefore advised that the two governments should be approached to agree on cession.⁹ When reporting the deliberations with the sultan, Northey on his part reinforced the need for the S of S to approach France to request them to modify their 10 March 1862 Declaration that had guaranteed the Independence of the Sultans of Muscat and Zanzibar.¹⁰

It is not clear why the representatives of the British and the Germans thought that the sultan’s territory extended for only ten miles from the sea. They also assumed that any person residing within the ten miles was a subject of the sultan. After the 10 miles, the British protectorate was recognized.¹¹

³ Robert Maxon. *East Africa: An Introductory* (Morgantown: West Virginia University Press, 1994), 117.

⁴ Minute by Read, 27 July 1914, CO 533/144.

⁵ Minute by Read, 29 October 1918, CO 533/196.

⁶ Long to Northey, 18 November 1918, CO 533/196.

⁷ Sinclair to Northey, 13 September 1919, CO 533/214.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Northey to Milner, 31 October 1919, CO 533/214.

¹¹ Maxon, *East Africa*, 131.

By another treaty arrangement with the sultan of Zanzibar, the British government was allowed to administer the 10 miles coastal strip on condition that the government in EAP would pay £6,000 as interest for the £200,000 paid to Imperial British East Africa Company for the company assets in the sultanates Zanzibar by 1895 plus £11,000 being annuity previously paid by the company. In total the government was required to pay £17,000 to the Sultan of Zanzibar.¹² Unfortunately, the 10 miles coastal strip was not clearly delimited, and the treaty remained a thorny issue when deliberating the status of Africans residing in the controversial area. Even at the time it was noted by Bottomley that it was difficult to determine “who British subjects were and which the sultan’s were.”¹³

The annexation was officially issued on 11 June 1920 when the Order-In-Council was passed,¹⁴ but the Legislative Council in the EAP was supposed to ratify it. Accordingly, when Northey returned to the protectorate he announced the annexation of the EAP during a Legislative Council session on 9 July 1920.¹⁵ He told the councillors that the annexation was passed to enable the colony raise cheap development funds to construct the Uasin Gishu railway, Kilindini harbour and the Thika railway extension. Thus, Northey, observed:

We shall now be able to float a loan for the development of the country. I anticipate roughly that we shall require £2,000,000 for Plateau railway, £500,000 for Thika extension, £1,000,000 for Kilindini harbour.¹⁶

The name, Colony and Protectorate of Kenya, remained unquestioned until 1960 when discussions started on the future independence of Kenya. The Arabs within ten Mile coastal strip waged a protracted struggle to pull out and join Sultanate of Zanzibar or form a self governing Mwambao territory. In an attempt to seek compromise between the coastal inhabitants, a joint commission under Sir James Robertson was put in place to seek views on the future of the ten miles coastal strip.

THE GENESIS OF THE LAND QUESTION AT THE COAST

A protracted debate has been ranging on the legitimate owners of land within the ten miles coastal strip. The earliest documents demonstrate that Africans inhabited the region. The Periplus of the Erythrean Sea written around 100 AD by anonymous writer mentions the inhabitants of the region as men who were black and of great stature ruled by chiefs.¹⁷ They also used wicker baskets to fish. These inhabitants traded with merchants from Mediterranean world, Persia, Oman, India and China. These were probably the proto Swahili. There is no doubt that the Swahili controlled the coast before Arabs settled in the area. It would seem the conquest of the coast by the Portuguese from 1500 and the ruthless administration they established was very unpopular with East Africans and was the main cause for the Swahili to enter into a marriage of convenience with the Oman Arabs.

In 1660 Swahili sent a delegation to Muscat the headquarters of Oman leadership seeking military support to raid the coast of the Christian presence. The delegation was led by Mwinyi Nguti, Mwinyi Mole bin Haji, Mwinyi Ndao bin Haji, Motomato wa Mtorogo and Kubo wa Mwamzungu but the sultan refused to assist.¹⁸ A second delegation was sent in 1729 and was able to convince the sultan to offer military assistance. It was this military assistance that routed the Portuguese out of East Africa in 1798 after a series of battles over Mombasa.¹⁹ Later sultan Said Seyyid transferred his headquarters from Muscat to Zanzibar in 1856 which enabled him and his descendants to have full political control over East African coast.²⁰ The colonial domination created by the Arabs at the coast made various European powers to enter into various treaties with the sultan for they assumed he was the master of all inhabitants of the coast. It was on this assumption that the British and the Germans decided to set aside the ten mile coastal strip for the sultan of Zanzibar.

¹² William MacGregor Ross, *Kenya From Within* (London: Frank Cass, 1927), 30.

¹³ Minute by Bottomley, 23 October 1918, CO 533/196.

¹⁴ Milner to Bowring, telegram, 23 June 1920, CO 533/240.

¹⁵ East African Standard, 10 July 1920.

¹⁶ Ibid.

¹⁷ Robert O. Collins, *Eastern Africa: VOL. II of African History, Text and Readings* (New York: Markus Wiener Publishing, 1990), 48-49.

¹⁸ Amos Kareith, “revisiting ten-mile strip controversy,” *The Standard*, September 30, 2007.

¹⁹ Maxon, *East Africa*, 46-50.

²⁰ Ibid., 113-117.

The Germans later paid £200,000 to the sultan as compensation for the control of the coastline adjacent to their German East Africa.²¹ The British on their part they opted to pay an annual rent of £17,000 to the sultan of Zanzibar. It was this political arrangement that made the Arabs at the coast to claim autonomy once it was clear to them that the British were about to grant independence to African nationalists.

LANCASTER HOUSE CONFERENCE AND TEN MILE COASTAL STRIP

The first Lancaster House Conference on the independence of Kenya opened the Pandora's Box in as far as coastal strip was concerned. Consequently, during the second Lancaster Conference there were two parallel conferences, one on colony and the other on the protectorate. The protectorate which covered the ten miles coastal strip was represented by Arabs, but Jomo Kenyatta and Ronald Ngala and a few other African delegates attended the deliberations of both conferences. The Arabs wanted the ten miles coastal strip to either be given autonomy or secede to join the sultanate of Zanzibar instead of being incorporated in independent Kenya. Sheikh Salim Muhaahamy submitted that:

The Arab community would not regard their rights and interests as being adequately protected if the government of the protectorate were ceded to a Kenya government responsible to Kenyan electorate.²²

Their observation was that if Her Majesty's Government was to cede the territory to Kenya it would be a breach of faith entrusted on them by 1895 agreement. The African elected leaders led by Ngala were of the view that the coastal strip was rightfully African territory and should be part and parcel of independent Kenya.²³ In fact, Oginga Odinga wanted the 1895 agreement between the sultan of Zanzibar to be declared null and void.²⁴ Tom Mboya was even more candid and proposed that those Arabs that were not ready to join Independent Kenya were free to go back to Arabia.²⁵ It was due to this conflicting positions presented by Africans and Arabs at the conference that made the British government and the sultanate of Zanzibar to appoint Sir James Robertson, the former governor of Nigeria to head a joint commission to inquire on the future of the ten miles coastal strip in 1961.

Nevertheless, the appointment of a commission did not end the conflict. The debate continued in Kenyan Legislative Council (LegCo) and among the various political parties formed after the first Lancaster Conference on the future of Mwambao. While African political parties; Kenya African National Union (KANU) and Kenya African Democratic Union (KADU) supported integration of the coastal strip, the Arabs formed Mwambao United Front to further their political interests. No wonder O. S. Bassaddiq argued that "the coastal strip is not a part of Kenya and has only been linked with Kenya for the convenience of the administrators."²⁶ However, Jomo Kenyatta countered such claims by declaring that:

Kenya is one and nobody can remove any part of it without encroaching seriously on our present nation. Any move to separate the strip from the reminder of the colony would be resisted without reservation by our people.²⁷

Sir JAMES ROBERTSON'S REPORT

Robertson's commission received presentations from Africans and Arabs and made important observations. First, the autonomy of the coastline was complicated by Mombasa being the chief port serving not only Kenya but Uganda, the great lakes region, Sudan and Northern Eastern Tanzania.²⁸ Furthermore, the development of the port was financed by loans paid by subjects of Kenya and could not be controlled by a small part of the country. Second, the ten mile coastal strip was always administered as part of Kenya and the boundaries of the coastal strip have never been marked nor observed by the British administrators.

²¹ Colonial Office: The Kenya Coastal Strip: Report of Commissioner, Cmnd 1585 (London: Her Majesty's Stationary Office, 1961), 31.

²² The Times of London, January 29, 1960.

²³ East African Standard, March 9, 1962. East African Standard, March 10, 1962.

²⁴ The Times of London, January 20, 1960.

²⁵ The Times of London, June 2, 1961.

²⁶ East African Standard, March 9, 1962.

²⁷ Ibid.

²⁸ Colonial Office: Report of the Commissioner, presented to Parliament by Secretary of State for Colonies by command of Her Majesty, December 1961. Cmnd 1585. (London: Her Majesty's Stationary Office, 1961).

The incorporation of the coastline into independent Kenya would not cause any administrative problem. However, its secession would make Kenya a landlocked country. The report noted that the sultan's sovereignty, although not in doubt, was nominal, but was emotionally a fact that could not be ignored despite the fact that the only manifestation of his authority was the flag which flew everywhere in the strip.

Third, it was noted that the protectorate government continued to pay annual lease of £1700 a year as compensation and therefore the British government should pay some money to compensate the sultan for the loss of revenue.

Fourth, the Arab population was a minority at the coast and its autonomy would not make any economic sense. African in the coastal strip had asked for integration with the rest of Kenya.

Fifth, the sultan had no objection to incorporation of the coastal strip as long as some safeguards were put in place to protect the interests of the subjects, allow Islamic traditions and education to continue and guarantee of land titles for Arabs.

ROBERTSON'S RECOMMENDATIONS

In view of the varied presentations, Sir James Robertson recommended that:

- (1) Muslim law, religion and education should be incorporated in the Kenyan constitution, which later became the basis of establishing the Kadhi's Courts in Kenya.
- (2) The strip should be integrated with Kenya before independence and that the 1895 agreement should be abrogated.
- (3) Proposed retention of Arab administrative officers; the Liwalis and Mudirs at the coast to ensure Muslim traditions are observed.
- (4) Recommended that land titles should be acknowledged and guaranteed. This could be safeguarded by creating Coast Land Board with executive and advisory roles to handle land disputes, its disposal and transfer of titles.
- (5) He recommended that the sultan should be paid compensation of £675,000 by the British government for agreeing to forfeit his claim over the coastal strip. The government should also pay £400,000 for the £200,000, plus interest loaned by the sultan after the Germans bought their section of ten mile coastal strip from the sultan but the money was banked in London.

These recommendations were presented to British Parliament by Secretary of State for colonies (S of S) in December 1961. The document became part of discussion items during the second Lancaster House Conference in 1962. During the conference the Queen's Counsel Dingle Foot represented the sultan of Zanzibar and emphasized that the sultan's desire was to have an agreement that would take into consideration the welfare of the coast peoples.²⁹ Thus, the Kenyan leaders were required to show good will and commitment in protecting the rights of the sultanates subjects so as to end fear and suspicion on the part of the Arabs. As a demonstration of this good will, Jomo Kenyatta signed two agreements; one with the Prime Minister of Zanzibar on 5th October, 1963. The second agreement was between Kenyatta the Secretary of State for Colonies, Prime minister of Zanzibar and the sultan on 8th October, 1963.

KENYATTA AGREEMENT WITH PRIME MINISTER OF ZANZIBAR

The agreement was signed in London on 5th October, 1963 and Kenyatta placed on record the following undertakings by the government of Kenya.³⁰

- (1) That free exercise of any creed or religion will at all times be safeguarded and, in particular, His Highness's present subjects who are the Muslim faith and their descendants will at all times be ensured of complete freedom of worship and the preservation of their own religious buildings and institutions
- (2) The jurisdiction of Chief Kadhis will at all times be preserved and will be extended to the determination of questions of Muslim law relating to personal status in the proceedings in which all parties profess the Muslim religion

²⁹ East Africa Standard, March 12, 1962. Also East African Standard, March 14, 1962.

³⁰ The agreements are presented as appendix to presentation in British Parliament by Secretary of State for Colonies in October 1963. Kenya Coastal Strip: Agreement between the Government of the United Kingdom, His Highness the Sultan of Zanzibar, the Government of Kenya and the Government of Zanzibar. Cmnd. 2161. (London: H. M. Stationary Office, 1963).

- (3) The freehold titles to land in the coast region that are already registered will at all times be recognized, steps will be taken to ensure the continuation of the procedure for the registration of new freehold titles and rights of freeholders will at all times be preserved save for so far as it may be necessary to acquire freehold land for public purposes, in which event full and prompt compensation will be paid.

This document was signed by Jomo Kenyatta and Mohammed Shamte, Prime Minister of Zanzibar.

As a follow up to this agreement, on 8th October, 1963 the two Prime Ministers and the Sultan of Zanzibar His Highness Seyyid Jamshid bin Abdula signed a joint agreement with the S of S for Colonies Duncan Sandays to revoke 1890 and 1895 agreements it was agreed further that:

- (1) The territories comprised in the Kenya protectorate shall cease to form part of His Highness dominions and shall thereupon form part of Kenya
- (2) The agreement of 14th June 1890 in so far as it applies to those territories and the agreement of 14th December 1895 shall cease to have effect.

OBSERVATION

- (1) The commitment by the Prime Minister Jomo Kenyatta minimized the fears of the Arabs over their future stay in Kenya by reassuring them of their land security at the coast. However, the commitment ignored the aspirations of Africans who thought that independence would address centuries of land dispositions by Arab settlers. It meant that Africans would continue to be squatters. The coastal politicians thought that Kenyatta's commitment would be revoked once Kenya attained her independence; Kenyatta had no intention of revoking it. He actually became a beneficiary for managed to substantial amount of land within the coastal strip and other parts of the coast. Apparently, he became like the new sultan and spent most of his vacation time at the coast.
- (2) Further by accepting to recognize freehold title deeds held by a few Asians overlooked African traditional land tenure system. The Miji Kenda continues to have rightful claims over certain sacred Kayas within the former ten mile coastal strip, but have no title deeds to support their traditional claims. Consequently, tourists' hotels and cottages have been built on some of these sacred places.
- (3) Additionally, Kenyatta recognized the concept of willing seller and willing seller. Consequently, only those with money could own land within the coastal strip based on the law of supply and demand. This has led to exorbitant price for land within the coastal strip especially land adjacent to the beaches.
- (4) The land that did not have title deeds was thereafter declared trust land which the government exploited to settle both politically and ethnically correct people. This policy has left many coastal people landless while upcountry people own fertile land in the region. No wonder, every election year since 1990 there have been ethnic conflicts between the coast people and upcountry people who are referred to as "watu wa bara."
- (5) Admittedly, the thirst to own land at the coast by private developers has led to grapping of beaches which has denied citizens the right to enjoy and have access to these natural resources. In normal circumstances the beaches should have been retained as public recreational areas like Mama Ngina Gardens instead of being exclusive areas for tourists.
- (6) It is equally disheartening to observe that international agreements which did not recognize the rights of the Africans have continued to affect the Kenyan people fifty years after independence. There is need to re-examine all colonial agreements to address adequately historical injustices. The government should come up with a land policy that would address these historical injustices without creating new ones. The policy should address land use, protection of wetlands and environment in general for the future generations.

CONCLUSION AND RECOMMENDATION

From the foregoing discussion it is apparent that the question of historical injustices is a very complex matter. It is noted that the land question at the coast pre dates British colonization. The British accepted the status quo and also the post colonial regimes. However, Africans at the coast still feel that their land rights have been ignored all this time. On the other hand, the Arabs who have freehold title deeds have been in the area for a long time and are citizens of this country. The solution to the problem is not to ignore it, but to accept that it is there and should be sorted out. The remedy is to identify first the land owned by absentee landlords.

Then the government should repossess such land and distribute it to deserving squatters who have been living and working on such land for a long time.

Secondly, all the idle land or the one kept for speculative purposes should be repossessed and distributed to the only the people willing to develop it for the well being of the people of Kenya. This policy should be applied in all parts of the country. Before land title is granted there should be a development plan to prove that the applicant would adequately develop it.

Third, land already conserved as kayas and other areas of public interest should be gazetted as national monuments and protected to thwart foreign hunger for land to construct tourist hotels and cottages.

Finally, the problem faced by people in coast province is failure by the government to review some draconian colonial agreements that do not serve the welfare of the people of Kenya. The government should be bold enough to put its foot down to address land situation in the country for the benefit of all inhabitants. It should be emphasized that it is not a must that every individual should have a share of a small piece of land. It is the high time that Kenyans considered land planning and utilization seriously.