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## **From Bad to Worse: The Implementation of the Land Titles Ordinance in Coastal Kenya, 1908-1960s.**

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### **Introduction**

The theme of land reform is obviously one of the most important issues in the modern history of Africa. Throughout the continent, European colonialism introduced new ideas of property in land. Amongst the great body of writings on the impact of colonial land reform in Africa, two works must be highlighted at the outset as having particular importance for this thesis. The first is Elizabeth Colson's discussion of changing land tenure, first published in 1971, and the second is C.K. Meek's 1946 survey of land law in the British Empire. These studies were both landmarks in the understanding of land reform as a significant marker of social change. Both writers give emphasis to the attempts to bring about a more universal notion of property in land.<sup>1</sup> In this respect, the individualization of land ownership was crucial. For the colonizer this reform was essential to bring about economic growth and development, and was considered "a mark of civilization and progress."<sup>2</sup>

In regard to the East Coast of Africa, Middleton, Prins and Caplan's studies of land tenure in Zanzibar showed that the failure to understand local land tenure in the colonial years led to a chaotic situation.<sup>3</sup> Comparatively, land reform in Kenya during the colonial period has been more significant and well researched than elsewhere. This can be seen through in works of Sorrenson, Breen, Leo, Mackenzie, Ley, Kitching, and Brett.<sup>4</sup> These works elaborate the key points raised by Colson and Meek, especially the role of European interests in determining the type of land reform to be introduced. Consequently, studies of land reform in Kenya have concentrated on the Central and Rift Valley Provinces and the Kikuyu in particular. Similarly, studies

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1 E. Colson, 'The Impact of the Colonial Period on the Definition of Land Rights', in V. Turner (ed.) *Colonialism in Africa 1870-1960*, Vol. 3, *Profile of Change: African Society and Colonial rule* (Cambridge University Press, Cambridge, 1971), pp. 193-212; C.K. Meek, *Land Law and Custom in the Colonies* (Frank Cass, London, 1968 [first published in 1946]).

2 Colson, 'The Impact of the Colonial Period', p 197; K. Mann and R. Roberts, 'Law in Colonial Africa', in K. Mann, and R. Roberts, (eds.), *Law in Colonial Africa* (James Currey, London, 1991), pp. 67-9.

3 J. Middleton, *Land Tenure in Zanzibar* (Colonial Research Studies No. 33, London, 1961), pp. 69-70; P. Caplan, *Choice and Constraint in a Swahili Community* (Oxford University Press, London, 1975); A.H.J. Prins, *The Coastal Tribes of the North Eastern Bantu* (International African Institute, London, 1952); A.H.J. Prins, *The Swahili Speaking Peoples of Zanzibar and the East African Coast* (International African Institute, London, 1961).

4 M.P.K. Sorrenson, *Origins of European Settlement in Kenya* (Oxford University Press, Nairobi, 1968) and, *Land Reform*; C. Leo, *Land and Class in Kenya* (University of Toronto Press, Toronto, 1984); F. Mackenzie, *Land, Ecology and Resistance in Kenya 1880-1952* (Edinburgh University Press, Edinburgh, 1998); E.A. Brett, *Colonialism and Development in East Africa* (Heinemann, London, 1973); G. Kitching, *Class and Economic Change in Kenya: the Making of an African Petite Bourgeoisie, 1905-1970* (Yale University Press, London, 1980); C. Leys, *Underdevelopment in Kenya* (Heinemann, London, 1978).



of the process of adjudication and registration of lands in Kenya have focused on the upcountry areas, particularly in the short period before and after independence.<sup>5</sup>

The main focus of the paper is the Land Titles Ordinance (L.T.O.), which was introduced in 1908 as the main legislation behind the implementation of land reform in the region. Previous works did mention the general impact of the Ordinance, but none of these works canvass in detail about the processes of adjudication and registration of land under the Ordinance. Other works have been confused the Ordinance with other legislation on land, namely the Registration of Titles Ordinance.<sup>6</sup> Most of the previous works on the coast only capture the issue of land as a supplementary theme. While Cooper successfully related the theme of land with labour, Salim used it to show the political decline of the Arabs and Swahilis after the L.T.O. was introduced.<sup>7</sup>

### **Coastal Kenya in the 19<sup>th</sup> century**

Before the colonial period, the coastal areas of Kenya were part of the Sultan of Zanzibar's dominions. The relationship between the Sultanate of Zanzibar and the people living along the coast was, however, only vaguely defined and depended very much upon the personality of the sultan.<sup>8</sup> Zanzibar's control over the coastal areas of Kenya also varied from one place to another, according to the importance of internal political and economic factors.<sup>9</sup> This was accentuated further by the differences between the towns prior to rule from Zanzibar. In administrative matters, despite the introduction of the Liwalis (Governors) to represent the Sultan, Zanzibar nevertheless recognised the power of the leaders of the local inhabitants along the coast.<sup>10</sup> Economic development along the coastal strip ruled by the Sultan of Zanzibar provides some background to understand how the problems relating to land evolved in the nineteenth century, especially the rise of the plantation economy based upon slave labour. This had a remarkable economic impact upon the region, but its effects on the ownership of land were also profound.

Perceptions and practices of land tenure were not only influenced by economic changes, but also by political and social ones. Arab immigrants and later Indian immigrants greatly altered the pattern of coastal settlement and eventually made the issue of land ownership considerably more complex.<sup>11</sup> The internal population

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5 To name but a few examples of the literature, S.C. Wanjala, *Land Law and Disputes in Kenya* (Oxford University Press, Nairobi, 1990); K.M. Maini, *Land Law in East Africa* (Oxford University Press, Nairobi, 1967); S. Coldham, 'Registration of Titles to and in the Former Special Areas of Kenya' (Ph.D. Dissertation, University of London, 1977); S. Coldham, 'The Effect of Registration of Titles Upon Customary Land Rights in Kenya', *Journal of African Law*, Vol. 22, No. 2, (1978), pp. 91-111.

6 Romero, Lamu: History; Sperling, 'The Growth of Islam'.

7 Salim, *Swahili Speaking Peoples*, pp. 100-138.

8 R.L. Pouwels, *Horn and Crescent: Cultural Change and Traditional Islam on the East African Coast* (Cambridge University Press, London, 1987), p. 108.

9 Nicholls, *Swahili Coast*, p. 295.

10 Berg, 'Mombasa under the Busaidi Sultanate: The City and Its Hinterland in the Nineteenth Century' (Ph.D. Dissertation, University of Wisconsin, 1971), p. 31.

11 Pouwels, *Horn and Crescent*, p. 113; Ylvisaker, *Lamu in the Nineteenth Century*, p. 37; El-Zein, *Sacred Meadows*, p. 17; F. le Guennec-Coppens, 'Changing Patterns of Hadrami Migration and Social



movements added another layer of complexity as the coast witnessed population movements, some of which occurred because of political uncertainties as witnessed by the emergence of the Sultanate of Witu in the 1860s, saw the development of more new areas.<sup>12</sup> In the southern part of the coast, the majority of the defeated Mazrui of Mombasa moved to Takaungu in the north, and south to Gasi, which affected the system of land ownership in those areas.<sup>13</sup>

At the time when the plantation economy was declining and plantation lands were being abandoned by planters, other groups of people arrived and occupied these lands, which eventually further complicated coastal land problems. The main group were the Mijikenda, a confederation of nine groups of Bantu speaking people comprising the Giriama, Digo, Kauma, Chonyi, Jibana, Kambe, Ribe, Rabai and Duruma.<sup>14</sup> In the last half of the nineteenth century, Mombasa and its surrounding mainland also witnessed an increase in the number of Mijikenda who migrated to the island, or the mainland areas close to the island.<sup>15</sup> At the same time, the decline of the plantation economy may have forced owners to abandon their land, but it did not force slaves off the land. The slaves continued to live on and cultivate land allocated to them by their owners.<sup>16</sup> The abolition of slavery in 1907 aggravated the problem, as most of the ex-slaves continued to stay on their ex-owner's land after they were emancipated as access to, and use of, the land assisted their survival.<sup>17</sup>

Prior to 1895, there were three separate domains of law relating to land tenure, each of which overlapped, to some extent, with the others. For the Mijikenda of the coast, African customary law regulated land disputes, while the coastal Muslim community commonly called upon Islamic law or Shari'a law, but also occasionally reverted to a system known as mila. Mila was a locally negotiated settlement of legal cases, a hybrid system that drew upon both Shari'a law and Swahili customary law. It consists of an accumulation of non-Islamic values, rituals and customs that were absorbed, assimilated, and practiced by the local Muslims and varied from place to place.<sup>18</sup> With these three bodies of overlapping law, the incoming colonial government was confronted by a highly complex situation.

Among the Mijikenda people, it is apparent that there were recognised rights in land and that boundaries between groups were accepted and honoured. Each Mijikenda community had its own council of elders (Kambi) who would meet to adjudicate such

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Integration in East Africa, in W.G. Clarence-Smith and U. Freitag, *Hadrami Traders, Scholars and Statesmen in the Indian Ocean, 1750s-1960s* (Brill, Leiden, 1997), pp. 157-174.

12 Ylvisaker, *Lamu in the Nineteenth Century*, pp. 37, 83-100; J.D.V. Allen, 'Witu, Swahili History and the Historians', in A.I. Salim (ed.), *State Formation in Eastern Africa* (Heinemann, Nairobi, 1984), pp. 216-249; Ylvisaker, 'Origin and Development', pp. 669-689.

13 P.L. Koffsky, 'History of Takaungu, East Africa, 1830-1896' (Ph.D. Dissertation, University of Wisconsin, 1977), pp. 31-81.

14 Spear, *Kaya Complex*, pp. 1-4; Prins, *Coastal Tribes*, pp. 43-50.

15 Koffsky, 'History of Takaungu', pp. 68, 111; Berg, 'Mombasa under Busaidi', p. 258; Willis, *Mombasa, Swahili*, pp. 36-40, 73-6.

16 Cooper, *Slaves to Squatters*, pp. 179-91; Salim, *Swahili Speaking Peoples*, pp. 112-4.

17 KNA(Nbi), DC/Lam/3/2, *Lamu Political Record Book (PRB)*; Cooper, *Slaves to Squatters*, pp. 176-9.

18 Pouwels, *Horn and Crescent*, pp. 67-8; Trimmingham, *Islam in East Africa*, pp. 69, 149-158; J. Middleton, *The World of Swahili* (Yale University Press, London, 1992), p. 119.



matters. Within the Kambi, some Mijikenda groups recognised another body of elders who were directly responsible for land matters. Among the Giriama this body of elders was known as Enyetsi, and among the Digo, as Zumbe.<sup>19</sup> These elders acted as trustees, administrators and judges on land matters. While the boundaries between the Mijikenda groups were hardly defined, a plot occupied by Mijikenda within each group was usually clearly demarcated. Inside the group, as practiced everywhere along the coast, family and individual boundaries were marked either by a permanent tree, such as Mtongo-tongo, or by the pineapple-minanasi.<sup>20</sup>

According to Mijikenda custom, land belonged to the spirit world and could only be 'loaned' by a living person. In this sense, it is important to realise that custom was being used to adjudicate right of use, not the right of ownership of land. The logic of Mijikenda custom was that land could not be owned and therefore could not be sold. Changes in user rights were not uncommon, and it was accepted that a change of use of land could be transacted through the payment of gift to the previous 'owner'. At the same time, a family who maintained a piece of land would look to passing those rights of use down through the family line. Customs were taken to apply only to members of the Mijikenda group, and if a person wanted to give an alien group access to the land then the elders (Kambi) had to be consulted.<sup>21</sup> Such cases were certainly known of in 1907 by colonial officials who recorded information about the Kivanda (compensation) to be paid, including a list of offerings of beer, livestock or cereals given to the elders.<sup>22</sup>

While they also usually practiced customary law concerning land in the countryside, the Arab and Swahili communities of the coastal towns adopted Shari'a law in land cases. This was complicated by the fact that the existing coastal Swahili system of land tenure, to some extent, laid outside the practices of Shari'a law.<sup>23</sup> According to the understanding of the town communities (the Arabs and Swahilis), there were several types of land. The rituals attached to them, the accumulation of effort and financial investment, and the system of tenure used to administer the land could generally identify these types of land.<sup>24</sup> These land types varied from place to place along the coast. For the urban communities in the coastal region of Kenya, there were

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19 Enyetsi was used by Spear, *Kaya Complex*, p. 61; Brantley, *Giriama Uprising*, p. 57; Prins, *Coastal Tribes*, pp. 82-6; Fitzgerald, *Travels in the Coastland*, p. 111. For Digo, see Note by C.C. Dundas in KNA(Nbi), DC/KWL/3/5, Kwale PRB.

20 KNA(Nbi), DC/KFI/3/1, Assistant District Commissioner (A.D.C.) Takaungu to P.C. Coast, 9 July 1913; CHT/MAL/17; CHT/MAL/18; CHT/MAL/19; CHT/MAL/20.

21 Normally, the gift was tembo (African liquor made from palm trees) and a cow. See KNA(Nbi), PC/Coast/1/1/199, Note by R.A. Hosking, D.O. Kilifi District, Note entitled Giriama System of Land Tenure in Kaloleni and Kayafungo; KNA(Nbi), PC/Coast/1/1/138, Memo. Some of the Customs of the Wanyika People in the Mombasa District, by A.C. Hollis, in 1898, enclosed in P.C. Seyyidie to Secretary of Africans Affairs, 27 November 1908; see also R. H. Hamilton, 'Land Tenure Among the Bantu Wanyika of East Africa', *Journal of the African Society*, Vol. XX, No. 20, (1920), pp. 13-8.

22 KNA(Msa), CY/1/2, Note on the History, Customs and Rights of the Wa-Nyika and More Particularly With Regard to the Question of Land Tenure, by A.C. Hollis, 8 December 1907, enclosed in A.C. Hollis to the Secretary for the Administration, 9 December 1907.

23 Prins, *Coastal Tribes*, pp. 84-6, and *Swahili-Speaking Peoples*, pp. 59-66; Middleton, *World of Swahili*, p. 71, and, *Land Tenure*; Caplan, *Choice and Constraint*.

24 Ylvisaker, *Lamu in the Nineteenth Century*, pp. 43-65.



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generally two types of land: Wanda or Kitongo,<sup>25</sup> known as bush land and normally used for shifting cultivation; and Kiambo,<sup>26</sup> which was land within the town area for residential plots, or small scale-shambas.<sup>27</sup>

Within the town, or Kiambo areas, land was owned individually, and was administered and inherited according to Shari'a law. The boundaries of these urban plots (whether residential or cultivated) were clearly marked and the ownership of such land was granted to the first person to clear or occupy the plot, whether by their own labour or that of their slave. Sales and mortgages on these plots were conducted according to Shari'a law and it was not only land that could be involved in the transactions but other items, such as houses, trees or crops cultivated on the land, which could be sold or mortgaged. Recorded transactions of land in this area clearly stated what type of property was involved in the transaction.<sup>28</sup> In these towns, the Qadhi was the person responsible for administering Islamic law with regard to land issues, and transactions involving land or anything on it had to be witnessed by the Qadhi or, occasionally, by the Liwali or Mudir of the area.<sup>29</sup>

Not all land in the coastal towns, however, was fully adjudicated according to Shari'a law. The Wanda or Kitongo forms of land, were often held under the practices of mila. A good example of this can be seen through the practice of people in the Lamu archipelago, in the towns of Lamu, Pate, Siyu and Faza, where cultivated mainland areas, known as bara, were held communally.<sup>30</sup> The boundaries of these communal lands were never properly defined,<sup>31</sup> however, according to the practices of these communities, Shari'a law could be applied in claiming land in the mainland area - baras. In administering this form of land, the mila system prevailed and land could therefore not be sold, nor could absolute boundaries be declared despite individual tenure being permitted. In effect, land was held by the community, as opposed to

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25 Prins, *Swahili Speaking Peoples*, p. 62; Middleton, *World of Swahili*, added another term, "Kitongo", for this type of land, p. 71.

26 Middleton, *World of Swahili*, p. 71; Prins, *Swahili Speaking Peoples*, p. 62, have a similar interpretation of this type of land.

27 A plot of agricultural land, planted with trees and usually near town.

28 See Table 1; Anderson, *Islamic law*, pp. 91-2; Prins, *Swahili Speaking Peoples*, p. 62.

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30 See KNA(Nbi), DC/LMU/3/1, Lamu PRB, *Short History of Tanaland*, by L. Talbott Smith, 1921; similar copy in KNA(Nbi), PC/Coast/1/17/194, known as Lamu Historical Record, enclosed in D.C. Lamu to Senior Coast Commissioner; 12 September 1921; KNA(Nbi) DC/KISM/1/2, Report on the Bajun Islands, enclosed in A.D.C. Kismayu to P.C. Jubaland, 12 December 1916; Ylvisaker, *Lamu in the Nineteenth Century*, p. 39.

31 Information gathered from files in PCLO(Msa), files no. M/499; M/496; M/498; M/497, which dealt with the claims of the people of Faza, Pate and Siyu; CHT/FAZ/1; CHT/PAT/1; CHT/SIY/1; CHT/SIY/2.



individual ownership as required under Shari'a law.<sup>32</sup> Administration of the land in the bara was in the hands of the elders of each community.<sup>33</sup>

The introduction of the Liwali system played their own role in changing the local systems of land tenure. Land ownership became increasingly concentrated in fewer hands as while acting as representatives of the Sultan of Zanzibar, Liwali simultaneously accumulated and in that process, were responsible for introducing new legally approved rights of land ownership.<sup>34</sup> This situation arose because of different interpretations of 'selling' agreements, and the deliberate manipulation of locals' understanding of these by the Liwalis.<sup>35</sup> The coming of the Imperial British East Africa Company (IBEAC) added yet another dimension to land matters. The uncertainties around land ownership practiced under Shari'a law and mila at the coast influenced the Company to introduce a registration system to encourage the practice of systematic recording of land transactions at the the major coastal towns such as Mombasa, Malindi and Lamu.<sup>36</sup> However, the system of registration introduced only recorded very basic details, usually consisting of the name of the seller and the buyer and the price agreed, but no survey conducted and the registrations were only carried out in the coastal region, predominantly Mombasa, Malindi and Lamu.

Importantly, local participation in the system revealed the changing practice as far as land was concerned at the coast at the turn of the twentieth century. The registration of land transactions between 1892 to 1902 show that some individuals mortgaged and sold land claimed to be owned communally. It could be argued that the sellers were only interested in selling or mortgaging their right to use the land, but, as some shambas were sold to Indians, it is questionable whether the buyer would share the same perception as the seller on the nature of the transaction.<sup>37</sup> In the early part of the twentieth century, certain groups of people, such as the Indians and leading Arabs, 'misunderstood' or 'manipulated' the meaning of land transactions according to customary law. In many cases they came to Mijikenda areas with presents and compensation for the elders to obtain permission to occupy (or use) a piece of land,

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32 This system of land tenure was described by the colonial officials as "Nyika[Mijikenda]-Mohamedan", Nyika in the procedure necessary to obtain lawful tenure, and Mohamedan in the tenure once obtained, see KNA(Nbi), PC/Coast/1/11/312, Memorandum on Coast Land Difficulties, by O.F. Watkins, 11 October 1910. Watkins' opinion was based on his experience of working in Mombasa and dealing with land issues derived from the land claimed by the Three and Nine Tribes in the Mombasa locality. In practice, the situation was the reverse: land was claimed using Shari'a law, but once it was occupied, it was administered under a mixture of Sharia law and mila.

33 Ylvisaker, *Lamu in the Nineteenth Century*, pp. 63.

34 Cooper, *Plantation Slavery*, pp. 89-94.

35 Pouwels, *Horn and Crescent*, p. 110; Ylvisaker, *Lamu in the Nineteenth Century*, p. 51.

36 KNA(Nbi), PC/Coast/1/1/130, Principal of Registrar of Documents to Ag. P.C. Coast, 26 September 1907. To say that before the coming of the IBEAC there was no system of documentation of land transactions is highly contentious. In 1907, A.C. Hollis discovered two documents which referred to land in Mombasa localities sold by two Frenchmen to the Liwali of Mombasa in 1873 and 1874, see KNA(Msa), CY/1/2, Report on the Rights of the Africans at the Coast between the Tana River and Mombasa, by A.C. Hollis, 30 September 1907.

37 PCLO(Msa), Lamu Register Book No. 1, Reg. No. 156 of 1895; Lamu Register Book No. 4, Reg. No. 88 of 1899, No. 9 of 1900, No. 41 and No. 42 of 1900. See also Ylvisaker, *Lamu in the Nineteenth Century*, p. 65; Cooper, *Slaves to Squatter*, p. 195.



only later to claim that the land had been sold to them by the elders.<sup>38</sup> At this time, however, land was not generally a major issue of contestation because it was abundant and easily accessible. The problems mentioned above lay down unraised until the implementation of the L.T.O.

On 1 July 1895, the East Africa Protectorate was proclaimed by Sir Arthur Hardinge in Mombasa.<sup>39</sup> Theoretically, the coastal region remained under the sovereignty of the Sultan of Zanzibar, but was to be administered by the new government, which immediately made some radical changes to the administrative structure of the coastal areas.<sup>40</sup> Regarding rights to land at the coast, the colonial government claimed that as the heirs and successors to the IBEAC, they inherited all the rights to acquire, regulate and dispose of land, in the whole of the Sultan's mainland dominion.<sup>41</sup> Having noted the need of the Protectorate to increase its revenue, the Foreign Office saw land as a crucial asset as they received inquiries on how to secure investments from interested individuals and companies and questions related to land rules in the Protectorate and how investors or settlers could own land there.<sup>42</sup> In March 1896, the Under Secretary of State for Colonies, the Marquess of Salisbury, instructed Hardinge to submit a report on the condition of land especially between "unoccupied and uncultivated land which the Administration would be free to deal in" and land that belonged to Africans or was private property.<sup>43</sup> The reports submitted sealed the assumption that there was massive tracts of land available for 'development'. For example, one official claimed that out of 2, 350, 000 acres of land in Malindi, Mambrui, Takaungu and Watamu, only 171,000 acres were occupied, leaving a total amount of 2,197,000 acres of land unoccupied. Without proper surveys being undertaken, the accuracy of this report should be questioned, but it faithfully represented the colonial administrator's perception and vague definition of "unoccupied land" at the coast at that time.

The colonial government was also concerned about the lack of regulation on land and realised that the new Protectorate needed a new set of land regulations that would facilitate new developments.<sup>44</sup> In addition, the building of the Uganda Railways made the price of land around Mombasa increase after 1897 and when railway projects were rumoured at the coast, the areas of Mazaras and Mariakani boomed with land sales based on the speculation. A new set of regulations was needed "to check the creation of fictitious claims to waste and unoccupied land in the coast."<sup>45</sup> Accordingly, in 1897 the Foreign Office issued a new set of Land Regulations which empowered the

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38 KNA(Msa), CY/1/2, Note on the History, Customs and Rights of the Wa-Nyika and More Particularly With Regard to the Question of Land Tenure, by A.C. Hollis, 8 December 1907, enclosed in A.C. Hollis to the Secretary for the Administration, 9 December 1907.

39 The Report of the East Africa Protectorate, 1895-1896, Parliamentary Papers (PP), no. LX, 1898, by Hardinge, p. 1.

40 The Foreign Office Confidential Prints (FOCP) no. 6929, Regulation Notice, 1897.

41 KNA(Nbi), PC/Coast/1/11/22; PC/Coast/1/11/312, Memorandum on Encroachment on Crown Lands, by A.D.C. Rabai, 2 September 1909, enclosed in A.D.C. Rabai to D.C. Mombasa, 11 November 1909.

42 KNA(Nbi), PC/Coast/1/1/98, Sub-Commissioner Seiyidie (Mr. Tritton) to Messrs Barret & Hutson; 20 January 1903; FOCP, Mr. D. Wallace to Marquess of Salisbury, 20 April 1896; Hardinge to Salisbury, 12 October 1895.

43 FOCP, Salisbury to Hardinge, 26 March 1896.

44 The Report of the East Africa Protectorate, 1895-1897, PP, no. LX, 1898, by Hardinge, p. 62.

45 FOCP, Hardinge to Salisbury, 5 September 1897; Willis, Mombasa, Swahili, p. 119.



Commissioner of the Protectorate to grant any person a leasehold certificate authorizing them to occupy the land described in it “for a term not exceeding twenty-one years”.<sup>46</sup> For the coastal areas of Kenya, in reaction to land transactions based on speculation and to avoid illegal land claims, a different set of regulations was introduced known as the Waste Lands (Seyyidieh and Tanaland) Regulations (31 August, 1897). According to this regulation:

“Any person laying claims to any land that may appear to be waste or abandoned shall forthwith apply for a certificate of ownership to the Sub-Commissioner of the Province within which such land is situate, and no private ownership in any land that appears to be waste and abandoned shall be recognized except on production of such certificate, duly registered in the office for register of deeds.”<sup>47</sup>

This regulation was formed based on the British experiences on the island of Zanzibar, where a similar regulation was introduced earlier and was claimed to have been accepted by the local Arabs. The Protectorate officials and the Foreign Office thought that the same regulation could be successfully imposed at the coast because the major landowners in both areas were Arabs.<sup>48</sup> The Regulation did not define “unoccupied or abandoned land”, but emphasized that if a person was claiming land which seemed to be unoccupied or abandoned, they should make their submission to the Collector’s Offices or Commissioner’s Office to be approved, registered and have a Certificate of Ownership issued. This would change the status of that piece of land from a “waste or unoccupied land” to private property.

By 1900, the Protectorate’s administration argued that economic development could only be achieved by European investment - by implication, the encouragement of European planters. and began to encourage European settlers to come to the East Africa Protectorate.<sup>49</sup> In 1902, the Crown Land Ordinance (C.L.O.) was introduced with the major purpose of defining Crown land. The introduction of C.L.O. opened a new era as the colonial government’s policy at the coast was not to encourage European settlers, as happened in the Highland areas, but to open the coast to European planters and develop a plantation economy. Aware of the previous prosperity enjoyed by plantation agriculture along the coast, but not fully appreciating the complexities of the local economy and local land tenure, the colonial officials thought that new plantation crops such as rubber and cotton would be profitable. The C.L.O. gave a ‘right’ to the government to grant large amounts of “unoccupied land” to Europeans whom they thought capable of such development.<sup>50</sup>

In 1904, the colonial government formed a Land Committee to explore the issues relating to land and examine whether the land regulations in the East Africa

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46 The Report of the East Africa Protectorate, 1895-1897, PP, no. LX, 1898, by Hardinge, p. 63.

47 KNA(Nbi), PC/Coast/1/11/137, P.C. Coast (C.W. Hopley) to Attorney General (A.G.), Nairobi; 12 March 1913.

48 FOCP, De Saumarez to Foreign Office; 13 May 1896.

49 The Report of East Africa Protectorate for 1902, PP, no. 45, 1903, by C. Eliot, pp. 18-19. Sorrenson, *Origins of European*, pp. 36-43; Mungeam, *British Rule in Kenya*, pp. 77-109.

50 Cooper, *Slaves to Squatters*, p. 175; Salim, *Swahili-Speaking Peoples*, pp. 116-7.



Protectorate were sufficient.<sup>51</sup> This Committee favoured the opinions of the settlers and was more concerned with the issues of land in areas where the interests of European settlers were prominent, namely the Highland areas. The Committee had, unfortunately, focused too closely upon the Island of Mombasa and assumed that the problems of unsurveyed land and the insecurity of land titles in this area applied to the wider coastal region.<sup>52</sup> By clearing up the question of ownership, the Committee hoped that Arabs and Swahilis would sell their land to Europeans. On the other hand, the colonial government wanted to control land speculation in the Protectorate.<sup>53</sup> However, The Committee pressured the British colonial administration into taking drastic land regulation measures as “speculation is a lesser evil than stagnation”.<sup>54</sup> The Committee also urged the colonial government to end the dual system of laws in the coast as that system would lead to chaotic situations. Therefore the Committee urged the government to overcome this by implementing a single system of land law.<sup>55</sup> However, the existence of customary law, or *mila*, in relation to coastal lands was never discussed, or at least the Committee did not seem to want to discuss it. This represented the general perception of government officials that land at the coast was only adjudicated under Shari’a law.

#### Shari’a law

The government urged by the Land Committee of 1905, began to question what place there would be for the practice Shari’a law, especially in governing land matters in the development of the coast. In 1898, a Declaration on the Limitation of Claims under the Shari’a law was issued. Under this Declaration, once a piece of land was unused for more than twelve years, the land would revert to the government. The consequence of this was that proof of claims to land by Muslim inhabitants had to be supported by a constant occupation over 12 years. This declaration was based on the instruction given by Seyyid Khalifa bin Said (Sultan of Zanzibar, 1888-1890) to the Liwali of Mombasa on 23 Shaaban, 1306 Hijra (Muslim Calendar).<sup>56</sup> The effect of this declaration was that the colonial government made an effort to define what was ‘unoccupied’ or ‘waste land’ under Shari’a law. However, approval of this instruction as a common regulation applied under Shari’a law is questionable. Firstly, there is the question of whether the instruction by Seyyid Khalifa (who was under the sect of Ibadhi) was in accordance with the practices of Shari’a law among the local Muslims at the coast (the majority of whom were under the sect of Sunni). Secondly, it is doubtful that the application of this instruction could be carried out beyond the Mombasa locality as it was raised as the original instruction of the Sultan of Zanzibar to solve one particular dispute in Mombasa. However, as the local officials argued, if the Muslims were permitted to claim land based on Shari’a law, then there would be very little land available for the colonial government. Furthermore, to allow the full application of Shari’a law, would lead to chaos as a massive acreage of land had

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51 British Library, Gov. (Stewart) to Secretary of State, 31 October 1904, in Paper Relating to British East Africa, House of Lord, no. 158.

52 British Library, Report of Land Committee, p. 19.

53 The East African Standard, 21 April 1906; F. Cooper, ‘Subsistence and Agrarian Conflict: The Coast of Kenya after Slavery’ in R. I. Rotberg (ed.), *Imperialism, Colonialism and Hunger: East and Central Africa* (Lexington Books, Massachusetts, 1983), p. 24; Cooper, *Slaves to Squatters*, pp. 194-5.

54 British Library, Report of Land Committee, p. 7.

55 British Library, Report of Land Committee, p. 24.

56 KNA(Nbi), PC/Coast/1/11/312, Declaration of Limitation of Claims under the Shari’a law.



already been granted to European companies and individuals by the colonial government.<sup>57</sup>

A major problem for the colonial administration was that they had no code of Shari'a law written in English that could be used as a reference and. In addition, the practice of Shari'a law at the coast was conducted without easy access to the written law, a situation that had indirectly made the development of the coastal areas very slow.<sup>58</sup> It was maintained that there would be "no real hardship" faced by a new land regulation as the practice of Shari'a law had already been undermined by previous Ordinances, such as the Abolition of Slavery Ordinance. While satisfied with the use of Shari'a law in the areas of marriage, divorce and succession, the colonial administration hoped that the issues of land could be solved by a new regulation that also recognised the practice of Shari'a law on land matters. To clarify the situation without upsetting the local Muslim population, the colonial government eventually agreed to permit land claims based on Shari'a law to be submitted.<sup>59</sup>

#### Boundaries: Legal and Geographical

The ambiguous state of coastal boundaries was another major issue that caused the colonial government problems, particularly determining the correct boundaries of the dominion of the Sultan of Zanzibar. The mainland possession of the Sultanate (widely known as the '10-mile zone') was only vaguely defined:<sup>60</sup>

"It will at once be noted in the concession that the extent of the territory ceded is left magnificently vague. The usual term ten-mile zone is apparently derived from the wording of the international convention of 1880; and it is to be presumed is merely generalisation which like all generalisations does not pretend to accuracy. It is certain that Arab occupation in many parts never extended ten miles inland and in other places extended rather further, following always the configuration of the creeks."<sup>61</sup>

As previously mentioned, land matters at the coast was administered under several form of law notably Shari'a law, mila, and customary law. The problem was that the geographical boundaries of these legal spheres were not defined, in fact the spheres of influence of these laws always overlapped. The gap in land legislation added yet more problems. Because of the overlapping spheres of influence between Shari'a law and customary law, a Muslim could claim land as permitted under Shari'a law within the areas where customary law was practiced. In addition, officials saw the absence of geographical boundaries within which these laws could operate as one of the main reasons stimulating illegal land sales.<sup>62</sup> Some Africans took advantage on this careless

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57 KNA(Nbi), PC/Coast/1/11/22; PC/Coast/1/11/132, Memorandum on Encroachment of Crown Land, by A.D.C. Rabai, 2 September 1909, enclosed in A.D.C. Rabai to D.C. Mombasa, 11 November 1909.

58 KNA(Nbi), PC/Coast/1/11/157, R.M. Byron and G.G. Atkinson to P.C. Coast, 17 May 1910.

59 KNA(Nbi), PC/Coast/1/11/157, P.C. Coast (J.W. Isaac) to Crown Advocate (C.A.), 20 June 1910.

60 KNA(Nbi), PC/Coast/1/11/123, Sub-Commissioner (C.W. Lane) to Ag. Commissioner, 3 November 1905.

61 KNA(Nbi), PC/Coast/1/11/22; PC/Coast/1/11/312, Memorandum on Encroachment of Crown Land, by A.D.C. Rabai, 2 September 1909, enclosed in A.D.C. Rabai to D.C. Mombasa, 11 November 1909.

62 KNA(Nbi), PC/Coast/1/11/22; PC/Coast/1/11/312, Memorandum on Encroachment of Crown Land, by A.D.C. Rabai, 2 September 1909, enclosed in A.D.C. Rabai to D.C. Mombasa, 11 November 1909.



attitude to sell illegally owned land, land belonging to somebody else, or “waste or unoccupied land,” and, in some cases, sold one plot twice to different buyers only a few rupees.<sup>63</sup> Without a report submitted to the District Office, it was nearly impossible for the colonial officials to take action against the allegedly illegal land transactions, as it was impossible to track the illegal sale.<sup>64</sup> New legislation was needed not only to define the geographical boundary of these legal spheres, but also to act as a “universal law” that could be accepted without violating the religious or customary law of the local people.<sup>65</sup>

From the day of the proclamation of the Protectorate in 1895 until the day of the introduction of the L.T.O., a firm set of land legislation was absent at the coast. European Magistrates had no set reference on Islamic law to use when dealing with Muslims.<sup>66</sup> The definition given by the 1898 proclamation on “unoccupied and waste” land was strengthened by the suggestion made by the Land Committee of 1905 which argued that twelve years of active possession on land could be used as proof of the ownership of land.<sup>67</sup> The use of twelve years to define “waste or abandoned land” began to be accepted by the colonial administrators as a matter of fact that should be taken into consideration when defining “abandoned land”.<sup>68</sup>

#### Plantation Labour and Reserves

While the colonial government was not fully certain about their legal rights over lands at the coast, European settlers and planters demanded the government’s help in “developing” the coast.<sup>69</sup> Without understanding local land tenure and usage, European planters kept distributing news of the fertility of the land at the coast and its suitability for cotton and rubber. At the same time, the availability of “waste or unoccupied land” made the planters encourage their compatriots to invest in the coast.<sup>70</sup> The question of the rights of Africans on land within the area granted to them by the colonial government began to worry European planters as early as 1904, they began to complain about this.<sup>71</sup> Certainly, by 1907, it was realised that much of the lands classified as “unoccupied” was in fact occupied by Africans.<sup>72</sup> Without a proper system of land titles being applied and no proper survey ever having been taken, it was nearly impossible for the local colonial officials to ascertain that the land sought by planters was clear of African occupation. In some cases, despite local officials

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63 KNA(Nbi), PC/Coast/1/1/151, Collector Mombasa to Ag. Sub-Commissioner Mombasa, 15 June 1906; KNA(Nbi), PC/Coast/1/1/113, Collector Mombasa to Sub-Commissioner Seyyidie, 20 November 1906.

64 KNA(Msa), CY/1/2; KNA(Nbi), PC/Coast/1/11/75, Sub-Commissioner Coast (Hinde) to Land Officer (L.O.), 9 March 1907; KNA(Nbi), PC/Coast/1/11/75, Sub-Commissioner Tanaland (K. MacDougall) to L.O., 5 March 1907.

65 KNA(Msa), CY/2/6, Confidential, Gov. to Harcourt (Colonial Office), 27 September 1911.

66 KNA(Nbi), PC/Coast/1/1/21A, A.D.O. Malindi (James Weaver) to Sub-Commissioner (H. Craufurd), 3 June 1896.

67 British Library, Report of Land Committee, p. 24.

68 KNA(Nbi), PC/Coast/1/1/120, Sub-Commissioner Mombasa to C.A., 21 May 1906, Sub-Commissioner Mombasa to Collectors of Mombasa, Vanga, and Rabai, 1 June 1906.

69 The East African Standard, 1 June 1907.

70 The East African Standard, 12 January 1907.

71 KNA(Nbi), PC/Coast/1/1/112, A.G.W. Anderson to Asst. Conservator of Forests, 4 December 1904.

72 PRO, CO 533/30, Gov. (Sadler) to Secretary of State, 25 July 1907, enclosed a Memorandum by Secretary for the Africans Affairs and the C.O.L., which raised this issue.



indicating in their reports that Africans occupied the area, the Colonial Office granted the land to European planters.<sup>73</sup>

By 1907, the colonial administration was very aware that the uncertainty of land ownership and title jeopardized investment and development from prospective large-scale planters and was afraid that European investors might have to face expensive law suits because of future land litigation.<sup>74</sup> At worst, land concessions might be invalidated if Africans brought their cases to court because these claims were from people who had occupied those areas for centuries.<sup>75</sup> These worries were now causing delays to applications for land grants because the rights of Africans had to be adjudicated. In some cases, to avoid possible legal agitation, the government only granted a minimal amount of land, far less than required by the planters.<sup>76</sup>

The need to define the extent of African rights was becoming apparent. Planters began to turn away from the coastal areas because they were offered no security of title.<sup>77</sup> The policy to encourage the establishment of European capital investment in the region was in jeopardy. In reality, the colonial government needed land regulations that could be used as an instrument of control and a legal basis for their “economic model” of development. One of the major pillars in the colonial “economic model” to develop the coastal areas was labour. Despite an awareness that local Mijikenda were not interested in working on European plantations, senior officials still strongly believed this was not the case<sup>78</sup> and maintained that those Mijikenda and ex-slaves would be a perfect solution for the supply of labour at the coast.<sup>79</sup> While blame was placed on the bad influences of palm wine, official efforts to induce the Mijikenda to work for Europeans failed as the Mijikenda preferred to work on Arab or Swahili land.<sup>80</sup>

One of the main reasons forwarded by the planters for the shortage of labour was that Africans at the coast had too much of their own land to work on which made them less dependent on wages from European plantations.<sup>81</sup> This made the government introduce “closer administration” to make Africans participate more effectively in the government’s “economic model” by creating Native Reserves. The creation of Native Reserves was seen as a means to “increase the severity of the struggle for existence and force the native tribes to develop more rapidly in the direction of civilization than

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73 PRO, CO 533/74, Private and Confidential, Gov. (Girouard) to Seely, (C.O.), 14 June 1910.

74 PRO, CO 533/33, Gov. (Sadler) to Secretary of State, 9 December 1907; East African Standard, 28 November 1907.

75 PRO, CO 879/99, Gov. (Sadler) to Secretary of State, 8 May 1908.

76 KNA(Msa), CY/1/2, A.D.C. Malindi to Ag. P.C. Coast, 7 September 1907.

77 Report of the East Africa Protectorate, 1910-1911, PP, no. 55, 1912-1913, by E. P. Girouard, p. 21.

78 KNA(Nbi), PC/Coast/1/1/132, Shimoni HOR, by C.E. Spences, enclosed in P.C. Coast to Gov., 23 September 1908; PCLO(Msa), file no. 8117, Report by the Director of Agriculture.KNA(Nbi), PC/Coast/1/1/138, Minute Papers, D.C. Mombasa to Secretary of Africans Affairs, 17 July 1908.

79 KNA(Nbi), AG/1/437, Report on Slavery and Free Labour in the British East Africa Protectorate by W.J. Monson, 14 April 1908, enclosed in Gov. (Eliot) to Lansdowne (C.O.), 2 May 1903.

80 KNA(Nbi), PC/Coast/1/1/130, A.C. Hollis (Secretary for Africans Affairs) to Secretary of Administration, 28 September 1907. Cooper, Slaves to Squatters, pp. 215-232.

81 Native Labour Commission, 1912-1913: Evidence and Report.



they otherwise would if left alone.”<sup>82</sup> ‘Civilization’ in this sense simply meant turning Africans into wage labourers on European plantations. At the coast, officials were concerned about the absence of Reserves for Africans in that area. In 1907, the Secretary of Native Affairs, A.C. Hollis argued that “it is also time that the Africans living near the coast should have Reserves allotted to them.”<sup>83</sup> The creation of Reserves was seen as means of transforming Mijikenda and ex-slaves from squatters with “illegal” land tenure within the 10-mile zone, to wage labourers for European plantations residing in Reserves.

In April 1907, the colonial government realized that the Regulation of 1897 could not be enforced as it had been published without the authority of the Secretary of State.<sup>84</sup> The government reacted and issued a notice to replace the 1897 Regulation, on 18 May 1907, aimed at preventing illegal land claims and, importantly, to define what was “waste or unoccupied land”.<sup>85</sup> This development meant the government had to take drastic measures to legislate land matters and in September 1907, a board was formed consisting of the Principal Judge of the High Court (R. Hamilton), the Commissioner of Land (J.M. Montgomery), the Crown Advocate (R.M. Combe) and the Secretary for African Affairs (A.C. Hollis).<sup>86</sup> Hollis was to be the most energetic of these appointees and he was not a stranger to the coast as he served as Assistant Collector in Rabai from 1896-1898. He traveled to the coast, began collecting evidence, and between June and December 1907, submitted three reports on the land rights of Africans in the coast. He attempted not only to define the land rights of Arabs and Swahili, but also of Mijikenda; furthermore, he attempted to define the geographical extent of the practice of Shari’a law.<sup>87</sup>

Hollis’ first report summarised the issue of rights to land between the Protectorate and the local inhabitants, and argued that as inheritors of the treaties previously signed by the IBEAC, the Protectorate had to recognise African rights on land as the IBEAC had recognised, to some extent, the power of the local elders. Hollis pointed out, that the IBEAC also admitted that “the actual ownership of the land remained in undisputed possession of the native.” He highlighted the government’s previous mistake of not considering the interests of local people when alienating land for Europeans.<sup>88</sup> The second report by Hollis, submitted on 30 September 1907, dealt mainly with land rights among Muslims (Arabs and Swahilis). This report emphasized the different opinions about the definition of “unoccupied” land between Protectorate officials and local Muslim leaders. Hollis reported that within the context of Shari’a

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82 KNA(Nbi), PC/Coast/1/1/124, Circular by Ag. Senior Commissioner to Ag. P.C. Seyyidie, 7 September 1907.

83 KNA(Nbi), PC/Coast/1/1/124, Hollis to Secretary of Administration, 28 August 1907.

84 KNA(Msa), CY/1/2, C.O.L. to Gov., 5 April 1907.

85 KNA(Nbi), PC/Coast/1/1/314, the Notice.

86 KNA(Msa), CY/2/11, The Short Outline of the History of the Coast Land Settlement, by A.J. MacLean, 8 October 1918, C.O.L. to Sherman-Turner, 19 December 1907.

87 KNA(Msa), CY/1/2, Question of Africans Rights at the Coast, 5 June 1907; KNA(Msa), CY/1/2; PRO, CO 533/32, Gov. (Sadler) to Secretary of State, October 22 1907, Report on the Rights of the Africans at the Coast Between the Tana River and Mombasa, 30 September 1907; KNA(Msa), CY/1/2, Note on the History, Customs and Rights of the Wanyika and More Particularly with Regard to the Question of Land, 8 December 1907.

88 KNA(Msa), CY/1/2, Question of Africans Rights at the Coast, by A.C. Hollis, 5 June 1907.



law practiced at the coast, there was no time framework used to define “waste or abandoned” land, rather it was defined by the intention of the owner of the land. He pointed out that the government “has entertained applications for privately owned land and in spite of the protests of the owners has actually in certain instances leased or sold land which is neither waste nor abandoned.”

This was not, however, the major impact of the report, for it was in this report that Hollis lamented the general misconception of officials that there was an area where Shari’a law was the only law that governed land matters. The report indicated that the mainland dominion of the Sultan of Zanzibar could be considered and accepted as the ‘Mohamedan zone’ as most of the land in this area was privately owned by Arabs and Swahili as permitted under Shari’a law. Equally important, Hollis failed to give a full account of the practices of land ownership at the coast and missed one of the main legal spheres, namely mila. The inclusion of mila would obviously jeopardize the perception that there was a ‘Mohamedan zone’ at the coast; the local officials who gave information about land to Hollis could have influenced the exclusion of mila. Hollis’ main informants concerning this matter were only the Sheikh -ul- Islam and the Liwalis. Both officials were the main advocators of the practice of Shari’a law on land in the region. In addition, Hollis’ tour, only covered the mainland areas between Mombasa and the Tana River, and did not reach areas where the mila was still a force to be reckoned with, i.e. Lamu, which, to some extent, explains its absence in the report.<sup>89</sup>

In his third report, Hollis concentrated on the Mijikenda’s rights to land on the coast and their land practices. He re-enforced the colonial perception that there was no concept of individual ownership and land was communally owned. In light of the non-existence of individual ownership, his reports suggested government not investigate land claims by these people, but rather provided them with a bigger area as a Reserve for them to expand in the future.<sup>90</sup> However, despite its flaws, the Hollis reports, being the first be conducted at the time, strongly influenced the government’s perception of land tenure among the local inhabitants at the coast. Not all of his recommendations were accepted, but the principles of what Hollis regarded as the practices of local Africans on land tenure became the pillar of the new legislation and gave the government a glimpse on how to deal with Africans in this new legislation. At a meeting held on the 28 August 1907, the Land Board recommended that a new scheme for the registration of titles should be introduced which would eventually lead to the introduction of the Land Title Ordinance.

### **The New Law: Land Titles Ordinance 1908**

The outline for a new scheme for the registration of coastal land titles first took shape at the meeting of the East African Protectorate’s Land Board on 28 August 1907. The Land Board proposed the establishment of the office of Recorder of Titles, which would be responsible for administering a system of land registration. It was also

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89 KNA(Msa), CY/1/2; PRO, CO 533/32, Gov. (Sadler) to Secretary of State, October 22 1907, Report on the rights of the Africans at the Coast Between the Tana River and Mombasa, 30 September 1907.

90 KNA(Msa), CY/1/2, Note on the History, Customs and Rights of the Wanyika and More Particularly With Regard to the Question of Land, 8 December 1907, by A.C. Hollis, enclosed in A.C. Hollis to Secretary for the Administration, 9 December 1907.



suggested that a Land Court should be formed to adjudicate claims. The government responded very speedily and by the end of September 1907, the appointment of a Recorder of Titles, with judicial and executive powers, had been agreed in principle and moneys (£1,000) was set aside to pay for the creation of the new department.<sup>91</sup> On 1 November 1907, Sherman Turner was appointed as Recorder of Titles (Land), and instructed by the Commissioner of Lands to draft new regulations regarding coastal titles.<sup>92</sup>

After three readings in the Legislative Council, the Land Titles Ordinance finally became law on 30 November 1908.<sup>93</sup> The initial impact of the Ordinance was limited by a provision that allowed a period of twelve months between the announcement of registration of title in an area and the submission of claims.<sup>94</sup> However, it soon became apparent that this severely hampered the working of the Ordinance, and in 1910 the law was amended to shorten the grace period to six months. This speeded up the working of the L.T.O. by allowing claims to be investigated at an earlier stage, and allowing the Recorder to deal directly with any specific cases.<sup>95</sup>

All authority under the L.T.O. rested with the Department of Recorder of Titles. In November 1910, a Deputy Recorder of Titles was appointed to oversee the daily survey and arbitration work of the department.<sup>96</sup> Procedures for this officer were often cumbersome, with other departments having to be consulted before work could go ahead: for example, no survey work could be undertaken without permission from the Survey Department in Mombasa or Nairobi.<sup>97</sup> There were several steps to be taken before a certificate of title could be produced. The first step was to proclaim the district in which the L.T.O. would be implemented. A notice was then published inviting local inhabitants to submit claims within one year.<sup>98</sup> Claims were initially to be submitted to the District Commissioner's office, where it was anticipated that disputes or queries might be resolved most easily.

However, by the end of 1909 it was already realized in the Malindi and Takaungu areas that disputes were a serious barrier to the lodging of claims. Worried by the slowness with which claims were coming in following the proclamation of the Ordinance, provincial officials recommended that an Arbitration Board be set up in each district, to foster the work of the L.T.O. by encouraging the registration of claims and adjudicating disputes.<sup>99</sup> The first Arbitration Board was formed in Malindi in

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91 KNA(Msa), CY/1/2, C.O.L. to Gov., 30 September 1907.

92 KNA(Msa), CY/1/2, C.O.L. to Sherman-Turner, 19 December 1907. After the L.T.O. was introduced, the title was changed to Recorder of Titles (R.O.T.).

93 The Ordinance was published in the government's Official Gazette on 1 December 1908.

94 Section 15 (1) of the L.T.O.

95 KNA(Nbi), AG/22/490, Memorandum on the Land Titles Amendment 1910, by C.A., 29 April 1910.

96 KNA(Nbi), PC/Coast/1/11/313, R.O.T. to P.C. Coast, 16 May 1911.

97 KNA(Msa), CY/3/4, R.O.T. to Dy. R.O.T., 19 October 1912.

98 Because of the multi-racial nature of coastal society, the Notice of the Proclamation of the L.T.O. was published in several languages such as English, Gujarati, Arabic and Swahili and was sent to several places such as India, Arabia, and Zanzibar.

99 KNA(Nbi), AG/22/500, Telegram, C.A. to MacDougall and P.C. Coast, 15 January 1909.



March 1910,<sup>100</sup> where it was at initially concerned solely with the claims of the Mazrui family. As the work of the L.T.O. expanded the role of the Arbitration Board became more vital. The Arbitration Board was charged with responsibility for making investigations to determine the validity of all claims in the coastal areas, being empowered to demarcate boundaries in order to facilitate the granting of certificates of title. The Board could also make suggestion to government on the issue of identifying lands whose ownership should be contested by the government in the courts if they wishes to retain Crown ownership.<sup>101</sup> The Arbitration Board had a European Officer as its chairman, but its membership was otherwise made up of local officials who were familiar with the history of the coast. Eventually, a separate Arbitration Board would be formed in each district.

The Arbitration Board normally began its work some six months after the initial notice of the implementation of the L.T.O. in any district by visiting plots to undertake the laborious work of adjudicating the boundaries of the lands claimed, assisted by a demarcator from the Survey Department.<sup>102</sup> The next step involved the hearing of any contested claims before the Land Registration Court (L.R.C.). A great deal of the work of the Recorder of Titles was concerned with the business of the Court. The Recorder held judicial powers of a magistrate in this court. Every contested land claim under the L.T.O. came before this court. To “put some check on frivolous or vexatious claims”, unsuccessful claimants were ordered to pay Court fees up to 2 percent of the value of the property claimed.<sup>103</sup> The Court was empowered to grant three types of certificate of titles: Certificates of Ownership for the legal freeholder, Certificates of Mortgage on land where ownership was registered, and Certificates of Interest in land where no title had been established and no mortgage registered. As the work of the L.T.O. progressed from one area to another, the sitting of the L.R.C. moved with it. To “safeguard” government interests, a Land Officer was appointed to represent the Crown before the L.R.C.<sup>104</sup>

After the Court passed judgment, the final survey of the plot would be undertaken. Deed plans of the plot would then be prepared in Nairobi, where the plan would be checked in relation to neighbouring plots. Finally, the deed plans would be sent to the office of the Recorder of Titles in Mombasa for attachment to the certificate of title, which would then be issued to the legal owner.<sup>105</sup> To monitor the efficiency of the working of the Ordinance, the government set up the Coast Land Titles Board (C.L.T.B.), which held quarterly meetings in Mombasa. The Board consisted the Provincial Commissioner, as chairman, the Recorder of Titles, the Chairman of the

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100 KNA(Nbi), PC/Coast/1/11/311, Telegram, C.S. to Ag. P.C. Coast, 15 December 1909, Ag. P.C. Coast to D.C. Malindi, 16 December 1909; KNA(Msa), CY/2/11, Short Outline of the History of the Coast Land Settlement, by A.J. MacLean, 8 October 1918.

101 KNA(Nbi), PC/Coast/1/11/313, R.O.T to Secretary of Administration, 16 May 1911; KNA(Nbi), PC/Coast/1/11/314, D.C. Malindi to P.C. Coast, 30 December 1912.

102 KNA(Msa), CY/2/11, Short Outline of the History of the Coast Land Settlement, by A.J. MacLean, 8 October, 1918.

103 KNA(Nbi), AG/22/489, Memoranda by the C.A. to the Clerk of the Legislative Council, 3 April 1908.

104 KNA(Nbi), PC/Coast/1/11/259, P.C. Coast to Land Officer (L.O.), 7 May 1917.

105 KNA(Msa), CY/2/11, Short Outline of the History of the Coast Land Settlement by A.J. MacLean, 8 October 1918.



Arbitration Board and the Director of Survey.<sup>106</sup> It was this body that was responsible for drawing up the policy on the working of the Arbitration Boards and also responsible for introducing rules or imposing new charges in relation to the L.T.O.<sup>107</sup>

(i) Malindi

When the Land Committee of 1905 had first proposed the need for legislation to resolve problems of title at the coast, it was the large number of disputes arising on the island of Mombasa which most concerned them. Four years later, in January 1909, the new Ordinance was first promulgated and applied not in Mombasa, but in Malindi and Takaungu.<sup>108</sup> The decision to act first in these areas clearly showed how desperate the government had become to secure land to attract European capital. In Malindi, large amounts of land had by then already been granted to Europeans but the right of the government to have made these grants was challenged by Africans who claimed prior rights. The successful implementation of the L.T.O. in Malindi was thus seen as a priority in order to regain the confidence of European investors, removing any doubt over title to land already granted to the European planters.<sup>109</sup>

Anticipating a high number of applications, a total of 6,750 forms of application were made available in Malindi and another 6,000 in Takaungu. The response proved very disappointing. By 15 January 1910 - the end of the period required for submission of applications - only 914 forms had been put forward in Malindi and 1,017 in Takaungu.<sup>110</sup> By 15 September 1910, a further 1,254 late applications had been submitted in Malindi, and another 191 claims in Takaungu, giving a total of 2,189 claims in Malindi and 1216 claims in Takaungu (3,405 claims in all).<sup>111</sup> As the process of adjudication got underway in the latter months of 1910, further late claim continued to pour into the district office.<sup>112</sup>

Approximately one month after their formation, on 8 April 1910, the members of Arbitration Board began their work in Takaungu, demarcating lands claimed by the Mazrui family. It was to take the Arbitration Board almost 18 months to complete this task alone. After demarcating land claimed by the Mazrui's, the Arbitration Board dealt with approximately another 300 individual claims in the area.<sup>113</sup> However, when operations shifted to Malindi area at the end of 1911, a majority of claims in Takaungu were left unsettled, especially those within Takaungu township. The decision to move so abruptly to Malindi in September 1911 marked a decision to focus upon those claims concerning Europeans. The Arbitration Board resumed its

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106 KNA(Nbi), PC/Coast/1/11/313, R.O.T. to Ag. C.S., 10 May 1912.

107 KNA(Nbi), AG/22/500, Dy. R.O.T. to C.S., 18 January 1915; KNA(Msa), CY/2/1, Short Outline of the History of the Coast Land Settlement by A.J. MacLean, 8 October 1918.

108 KNA(Nbi), AG/22/500, R.O.T. to C.S., 15 January 1920.

109 KNA(Nbi), AG/22/489, Memoranda by the C.A. to the Clerk of the Legislative Council, 3 April 1908; PRO, CO 533/44, Gov. (Sadler) to Secretary of State, 15 May 1908.

110 KNA(Msa), CY/3/11, R.O.T. to Secretary to the Administration, 5 July 1910.

111 KNA(Msa), CY/3/11, L.T.O. AR 1909-1910, enclosed in R.O.T. to the Secretary of Administration, 15 September 1910.

112 In September 1911, the C.L.T.B agreed that a fee of Rs.1 would be charged on late claims submitted in Malindi and Takaungu areas after 15 October 1911, see PCLO(Msa), file no. 1119/II, vol. II, R.O.T. to Dy. R.O.T. Lamu, 30 October 1922, enclosed the Land Titles Ordinance 1908: Rules & Amendments until 1922.

113 KNA(Msa), CY/3/13, Ch. A.B. to Ag. R.O.T., 30 September 1911.



work in Malindi on 22 November 1911,<sup>114</sup> the delay of one month occurring to allow the C.L.T.B. to decide upon the question of whether survey fees should be charged to claimants.<sup>115</sup> When the work eventually recommenced, MacDougall was called away to perform other duties (in connection with the abolition of slavery), and so by March 1912 little real progress had been made in Malindi. From March 1911 to March 1912, the Arbitration Board only managed to deal with 139 cases, compared with the figure of 305 in the previous working year of 1910-1911. In this early period of the L.T.O. in Malindi, many of the larger holdings arbitrated belonged to Europeans and other prominent Arab leaders, such as Salim bin Khalfan. Of the 126 claims dealt with between January and September 1912, 18 belonged to Europeans and no less than 12 to Liwali Salim bin Khalfan.<sup>116</sup>

By the end of 1914, the work of the L.T.O. in Malindi was still in progress when the decision was taken, at the urging of the provincial administration, to implement the L.T.O. in the area north of Mombasa. It seems that this decision was taken for political reasons. At this point the Arbitration Board was about to begin consideration of some 600 claims made in relation to the area around the Sabaki River.<sup>117</sup> MacDougall, chairman of the Arbitration Board, supported Provincial Commissioner Hobley's assertion that these claims were 'bogus' and should not be investigated. However, the Recorder of Titles disagreed with this opinion, pointing out that it was for the L.R.C. to decide the legitimacy of any claims made under the L.T.O.<sup>118</sup>

The catch was that the adjudication of claims could not proceed without the cooperation of the provincial administration, and in Hobley's view resolution of the situation in the lands the north of Mombasa was more important than dealing with African claims around the Sabaki. More importantly, the Giriama peoples who occupied the lands around the Sabaki had revolted against British rule. In these circumstances, the provincial administration had no interest in settling Giriama land claims along the Sabaki. Having been halted at the end of 1914, the L.T.O. only resumed in Malindi in 1919, with the demarcation of claims on Mambrui Township.<sup>119</sup> By February 1921, a total of 1,969 claims remained to be dealt with by the Arbitration Board for Takaungu and Malindi, mostly being plots located in townships.<sup>120</sup> When the full scale working of the L.T.O. ceased in 1922, demarcation, adjudication and survey of claims in Malindi and Takaungu was still far from complete, and by the end of 1924 there were still 428 claims outstanding in the rural areas, besides township plots.<sup>121</sup>

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114 KNA(Msa), CY/3/13, Ch. A.B. to Ag. R.O.T., 22 January 1912.

115 KNA(Nbi), PC/Coast/1/11/313, Ag. R.O.T to C.S., 2 February 1912.

116 KNA(Msa), CY/3/13, Ag. Ch. A.B. to R.O.T., 3 May 1912, Ag. Ch. A.B. to R.O.T., 25 July 1912; KNA(Msa), CY/3/14, Ag. Ch. A.B. to R.O.T., 28 October 1912.

117 KNA(Nbi), PC/Coast/1/11/315, P.C. Coast to C.S., 30 March 1914.

118 KNA(Nbi), PC/Coast/1/11/315, Telegram, MacDougall to P.C. Coast, 30 March 1914, Ag. R.O.T. to Ch. A.B., 19 June 1914.

119 KNA(Nbi), PC/Coast/1/11/328, Ch. A.B. to C.S., 17 May 1920.

120 KNA(Msa), CY/2/14, R.O.T. to C.O.L., 10 February 1921.

121 KNA(Nbi), PC/Coast/1/11/318, D.C. Malindi to Senior Coast Commissioner, 7 October 1925.



(ii) Mombasa island

The serious ambiguity of land titles on the island of Mombasa had been viewed as a barrier to economic development at the coast since the earliest years of British administration. Aside from the competing claims of rival Arab and Swahili families, there were many European interests on the island to be protected and assured. Furthermore, the island had the highest density of population in the coastal region and land was at a premium for domestic dwelling areas as well as for commercial development. The L.T.O. was proclaimed in Mombasa on the 15 May 1911.<sup>122</sup> But, once again, the local response was very slow as only 2,723 claims had been received by the end of 1911.<sup>123</sup> Because of the multi-racial nature of the population of the Island, the government had difficulties in deciding who to appoint as members of the Mombasa Arbitration Board. When the Board was finally formed on the 15 February 1912, it comprised two Indians, one Goanese, one Arab and one Swahili.<sup>124</sup> It was not until May 1912 that the Arbitration Board held its first meeting, and only one-month later did work begin to demarcate Mombasa's land claims.<sup>125</sup> Matters progressed for two years, until 1914, when a lack of demarcators brought things to a halt. No further progress at all was made between 1915 and 1918.<sup>126</sup> By March of 1919, seven years after the L.T.O. was started on the Island, less than 600 claims had been dealt with by the Arbitration Board and virtually no claims within the township of Mombasa had been tackled.<sup>127</sup> Up to the end of March 1920, a further 153 claims were dealt with on the island,<sup>128</sup> and from April efforts concentrated upon claims submitted to land within Mombasa Township. By December 1920, the Board had successfully arbitrated some 1,766 claims in Mombasa Town.<sup>129</sup>

The slow progress of the working of the Arbitration Board on Mombasa Island was perhaps inevitable. The density of plots on the island generated a far greater number of minor disputes than elsewhere along the coast, requiring the Arbitration Board to have demarcators with them even when undertaking a preliminary visit. Some of the wealthier claimants, among them many Indians, insisted upon solicitors being present in all their dealings with the Arbitration Board, and there were many appeals against the decisions reached.<sup>130</sup>

(iii) Tana River

The application of L.T.O. in Tana River provides a perfect example on how desperate the government was in its efforts to attract the attention of prospective European investors. The district administration strongly insisted that the L.T.O. would foster local economic development on an unprecedented scale.<sup>131</sup> As only one European

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122 KNA(Nbi), PC/Coast/1/11/313, R.O.T. to Secretary to the Administration, 7 June 1911.

123 KNA(Nbi), PC/Coast/1/11/313, Ag. R.O.T. to C.S., 2 February 1912.

124 KNA(Nbi) PC/Coast/1/11/313, R.O.T. to C.S., 10 May 1912.

125 KNA(Nbi), PC/Coast/1/11/313, R.O.T. to C.S., 14 May 1912.

126 KNA(Nbi), PC/Coast/1/11/328, Ag. Ch. A.B. to R.O.T., 9 July 1915.

127 KNA(Nbi), PC/Coast/1/11/316, Ch. A.B. to C.S., 12 May 1919.

128 KNA(Nbi), PC/Coast/1/11/328, Ch. A.B. to C.S., 17 May 1920.

129 KNA(Nbi) PC/Coast/1/11/328; KNA(Msa), CY/2/14, Ch. A.B. to Ag. Colonial Secretary, 28 February 1921.

130 KNA(Msa), CY/3/14, R.O.T. to C.S., 29 July 1913.

131 PCLO(Msa), file no. 47, P.C. Tanaland to Secretary to the Administration, 18 January 1911.



land grant application had been submitted in the Tana River area up to the end of 1910, it is difficult to establish the basis for optimism.<sup>132</sup> It was thought that Europeans might be more encouraged by the absence of competing Arab claims in Tana River, but this overlooked difficulties of access and infrastructure.<sup>133</sup>

After being delayed due to the lack of demarcators and surveyors, the L.T.O. was proclaimed in Tana River on the 15 May 1913, but its effect was limited to those areas adjacent to the coast.<sup>134</sup> Very few claims were lodged in the initial period thus greatly hampering the planning of the demarcation and survey. The district officials encouraged the provincial officials to extend the L.T.O. over the entire Tana District, much of which they believed to be suitable for European exploitation. In this sense, it was their intention not so much to encourage African claimants to come forward, but to ensure that no claims were outstanding so as to free the area for European capital.<sup>135</sup> The extension was made on 15 November 1913.<sup>136</sup> By June 1914, only 817 applications had been lodged for the whole district,<sup>137</sup> strengthening the expectation that vast tracts of land in Tana would be available for alienation once the L.T.O. was complete.

With a relatively small number of claims to be adjudicated, only three local persons were appointed as members of the Tana River Arbitration Board on 6 July 1914.<sup>138</sup> In comparative terms, and from an administrative point of view, the work of the L.T.O. in Tana River could be considered as the most successful of any area during the full implementation of the L.T.O. between 1909 and 1922. The whole process of adjudicating land claims in this area took only three years to complete, hampered only by flooding in the rainy season. There was no disruption to staffing, and the low number of disputes greatly accelerated progress.<sup>139</sup> By June 1915, Land Registration Court held in Tana River had dealt with 419 claims, of which only 39 were disputed.<sup>140</sup> By 27 December 1916, the L.T.O. in this area was considered completed and the Crown land in the district was declared in the government's Official Gazette. A further 72 late claims were processed directly by the Recorder of Titles by March 1917, these mostly relating to plots in Kipini Township.<sup>141</sup>

#### (iv) North of Mombasa

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132 PCLO(Msa), file no. 47, L.O. to C.S., 18 February 1913; PCLO(Msa) file no. 1148, application of the British East Africa (BEA) Corporation;

133 PCLO(Msa), file no. 47, P.C. Tanaland to Secretary to the Administration, 18 January 1911, Minute Paper by the P.C. Lamu, 23 February 1911; PCLO(Msa), file no. 335, Ag. D.C. Kipini to Ag. P.C. Tanaland, 1 July 1911.

134 PCLO(Msa), file no. 47, D.O.S. to R.O.T., 6 March 1912, R.O.T. to Editor Official Gazette, 6 May 1913.

135 KNA(Nbi), AG/22/501; PCLO(Msa), file no. 47, R.O.T. to C.S., 13 September 1913.

136 PCLO(Msa), R.O.T. to Editor Official Gazette, 26 November 1913.

137 KNA(Nbi), PC/Coast/1/11/328, R.O.T. to C.S., 21 June 1915.

138 KNA(Nbi), PC/Coast/1/11/278, Secretariat Minute Paper No. 977/c of 1908.

139 PCLO(Msa), file no. 47, R.O.T. to P.C. Tanaland, 28 August 1914; KNA(Nbi), PC/Coast/1/11/164, R.O.T. to C.S., 30 August 1913; KNA(Nbi), PC/Coast/1/11/328, R.O.T. to P.C. Tanaland, 21 June 1915.

140 KNA(Nbi), PC/Coast/1/11/328, R.O.T. to C.S., 21 June 1915.

141 KNA(Nbi), PC/Coast/1/11/328, R.O.T. to C.S., 16 July 1917.



The decision to extend the L.T.O. into the area north of Mombasa during 1914 reveals the complex pressures working upon government. Provincial Commissioner Hobley, who was principally concerned to thwart encroachment into the area by neighbouring Mijikenda, initially made the request.<sup>142</sup> Hobley won the support of the Chairman of the Arbitration Board,<sup>143</sup> and emphasised the need to concentrate efforts on settling land issues in areas of greatest potential economic value.<sup>144</sup> Politics prevailed, and the L.T.O. was proclaimed in the area North of Mombasa on 1 July 1914,<sup>145</sup> with 1,432 claims being recorded by the end of the year.<sup>146</sup>

In this area the Arbitration Board found itself confronted by a succession of disputes, especially in the areas of Kisauni and Mtwapa. Lands here were subject to numerous competing claims from Europeans and Indians, as well as Arabs and Africans. The work of the L.T.O. in this area was also marked by many legal debates particularly with regard to the claims made by the leaders of the Nine Tribes of Mombasa, who claimed that lands in this area were owned communally by their people.<sup>147</sup> The political ramifications of these disputes absorbed much of the time of the Arbitration Board in North Mombasa, and progress was slow. The Land Registration Court found itself inundated with disputed claims. Between March 1920 and December 1921, for example, of the 303 claims submitted, 142 were disputed.<sup>148</sup> This figure contributed to 25 percent of the total of 558 disputed cases dealt by the Court in the same working years for the whole coastal area under the L.T.O. In many respects, North Mombasa was to prove the most intractable area in the implementation of the L.T.O. up to 1922.

(v) South and West of Mombasa

For this area, the urgent need to define the boundaries of the African Reserves was the principle reason for the proclamation of the L.T.O. Provincial and district officials argued that the land belonged to the Digo people, but that there was constant encroachment by outsiders. Another factor here was the conversion to Islam by some Digo, which introduced Shari'a law into the determination of land cases. This development posed a dilemma for officials who preferred to handle 'Native rights' in Reserves through 'customary' African procedures.<sup>149</sup> The government reacted by recommending the creation of Native Reserves for the Digo, prior to the application of the Land Titles Ordinance to the land south of Mombasa. It was feared that to do otherwise would be "disastrous" for those who held land communally, a view supported in Nairobi and by the Recorder of Titles.<sup>150</sup> The demarcation of the Digo

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142 KNA(Nbi), PC/Coast/1/11/315, P.C. Coast to C.S., 30 March 1914.

143 KNA(Nbi), PC/Coast/1/11/315, P.C. Coast to Ch. A.B., 18 April 1914.

144 KNA(Nbi), PC/Coast/1/11/315, P.C. Coast to C.S. 30 March 1914.

145 PCLO(Msa), file no. 50, C.S. to P.C. Coast, 6 April 1914; KNA(Nbi), PC/Coast/1/11/315, P.C. Coast to C.S., 14 May 1914.

146 KNA(Nbi), PC/Coast/1/11/328, R.O.T. to C.S., 19 August 1915.

147 KNA(Msa), CY/3/11, Ch. A.B. to R.O.T., 3 April 1915; KNA(Nbi), PC/Coast/1/11/328, R.O.T. to Ag. C.S., 16 July 1917.

148 KNA(Nbi), PC Coast/1/11/328, R.O.T. to Senior Coast Commissioner, 17 May 1921, R.O.T. to Senior Coast Commissioner, 11 February 1922.

149 KNA(Nbi), PC/Coast/1/11/356, P.C. Coast to C.S., 28 January 1913.

150 KNA(Nbi), PC/Coast/1/11/315, R.O.T. to Ag. C.S., 12 June 1914.



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Reserves began in 1913, undertaken by O.F. Watkins and assisted by Sheikh Ali bin Salim.<sup>151</sup>

However, the provincial and district administration had doubts about this owing to the fact that large tracts of Digo land lay within the limits of the 10-mile strip. In December 1913, district official submitted a lengthy report on land matters in the area south of Mombasa which argued that while the government had no choice other than to create Reserves for the Digo inside the 10-mile strip, it should also be accepted that the L.T.O. should be applied to the same area. Pointing to the strength of Islamic values among the Digo, Watkins argued that if the L.T.O was not applied to the area, it was likely that individual claims would arise inside Reserve areas. He concluded that the demarcation of the boundary of Reserves must be carried out together with the working of L.T.O.<sup>152</sup> This was not the neat demarcation of large blocks of land into distinct categories that many had hoped the L.T.O. would generate, but implied an untidy patchwork. Provincial administration supported district administration's recommendations and strongly insisted upon the application of the L.T.O. to the areas south of Mombasa. To alleviate any possible contradictions arising from the dual process of creating the Reserves and adjudicating claims under the L.T.O., they suggested two demarcators should be deployed to the area to undertake both the setting out of the Reserve boundary and assistance to the Arbitration Board in demarcating claims.<sup>153</sup>

The L.T.O. was proclaimed to the area west and south of Mombasa on 15 November 1914, but the demarcation of the Digo Reserves went ahead separately.<sup>154</sup> This was to prove a costly administrative blunder. By the end of March 1915, only 536 claims had been submitted under the L.T.O. for all the lands to the west and south of Mombasa. Muslim Digo had in fact submitted many claims, but these were subsequently withdrawn on the advice of district officials in favour of the creation of Reserves.<sup>155</sup> This left open the likelihood of individual claims being revived within the reserved areas at a later stage, and presented district officials with just the kind of problems they had been seeking to avoid. With the suspension of the L.T.O. during part of the war period, the application of the L.T.O. was not resumed until near the end of 1917 and further problems did not become manifest until after 1918.<sup>156</sup>

While the implementation of L.T.O. and the creation of Reserves went ahead simultaneously after 1918, but as separate exercises, the work of surveyors was concentrated on the demarcation of the Reserve boundaries whilst a backlog of individual claims built up. From March 1919 to March 1920 some 5,350 acres had been surveyed, but this amounted to the creation of only two Reserves. By August 1919, 12 Reserves had been proclaimed covering some 88,000 acres, including Diani, Msambweni, Pongwe, Umba, Majobeni and Muhaka, but the bulk of these lands still

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151 KNA(Nbi), PC/Coast/1/11/315, Ag. P.C. Coast to C.S., 15 June 1914.

152 KNA(Nbi), AG/22/506, the Report was enclosed in P.C. Coast to C.S., 17 December 1913.

153 KNA(Nbi), PC/Coast/1/11/315, P.C. Coast to C.S., 28 May 1914.

154 KNA(Nbi), AG/22/501, R.O.T. to C.S., 8 November 1920.

155 KNA(Msa), CY/2/11, Short Outline of the History of the Coast Land Settlement, by A.J. MacLean, 8 October 1918.

156 KNA(Nbi), PC/Coast/1/11/318, Minute of the Meeting of the C.L.T.B, 5 February 1915;

KNA(Nbi), PC Coast/1/11/328, R.O.T. to C.S., 6 June 1919.



awaited survey.<sup>157</sup> Meanwhile, by 1920 the Arbitration Board had dealt with 2,405 claims, of which only 1,043 had been surveyed. It was evident that the creation of the Reserves was a serious hindrance to the processing of claims under the L.T.O.

In the area south of Mombasa, from Tiwi down to the boundary of German East Africa, survey work was necessarily halted for the duration of the war and did not resume until 1919. This area generated such a high number of claims, especially at Changamwe, that it was decided to form a separate Arbitration Board, known as the Western Board, to deal with this area. Of the 1,130 claims handled by the Arbitration Board between March 1918 and March 1919, 1,066 were from the areas surrounding Changamwe, Jomvu and Miritini, and only 64 from the areas south of Mombasa, including Likoni, Tiwi and Timbwani.<sup>158</sup> The Western Board faced many difficult problems in investigating and demarcating the land claimed in the locality of Changamwe. Most of the claims were disputed and a very high proportion of these proved intractable.<sup>159</sup> From March 1920 to December 1921, out of the total number of 691 disputed cases dealt by the L.R.C. throughout the coastal region, 193 cases (28 percent) were from Changamwe. As survey work could not proceed until disputes were resolved by the court, the L.T.O. in this area was brought to a standstill in 1920.<sup>160</sup>

For the area south of Mombasa, the Arbitration Board had dealt with all claims down to Tiwi by February 1921, and by the end of the year some 57,000 acres of Native Reserve lands had been surveyed in the same area as far as Msambweni.<sup>161</sup> To encourage people to lodge claims, district officials organized special barazas at the end of July. Even as a result of this only a handful of claims were put forward, and the decision was taken to create a further Reserve for this area at Vumba.<sup>162</sup> Not all the claims in this area had been properly adjudicated when the full operation of the L.T.O. ceased in 1922, some not being finally settled by district officials until 1925.<sup>163</sup>

#### (vi) Lamu District

The implementation of the L.T.O. was delayed in Lamu district for a number of reasons. With only limited interest in European investments, this outlying area was given a lower priority in the early years of the L.T.O. Land values here were also generally the lowest along the coast, and so there was even less local incentive to seek title than elsewhere. Other than on the island of Lamu itself, where commercial activities gave plots a higher value, and in parts of the Sultanate of Witu, it was doubtful that land values were adequate to sustain the costs of survey and registration.<sup>164</sup> None the less, for Lamu, as for Tana River, arguments could be made

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157 KNA(Nbi), PC/Coast/1/11/66, Ag. D.C. Vanga to C.S., 5 August 1919.

158 KNA(Nbi), PC Coast/1/11/328, R.O.T. to C.S., 6 June 1919.

159 KNA(Nbi), PC/Coast/1/11/328, Ch. A.B. to C.S., 17 May 1920.

160 KNA(Msa), CY/2/14, District Surveyor (D.S.) to Ag. C.O.L., 19 November 1919.

161 KNA(Msa), CY/2/14, D.S. to Director of Land Surveys, 6 February 1922.

162 KNA(Nbi), PC/Coast/1/11/66, D.C. Vanga to C.S., 5 August 1919, enclosing the report of the barazas held by the D.C.

163 KNA(Nbi), DC/KWL/1/12, Kwale AR 1926.

164 PCLO(Msa), file no. 1119/1 vol. I, P.C. Tanaland to Dy. D.O.S, 10 March 1915., R.O.T. to D.C. Lamu, 28 February 1921, enclosed a report on L.T.O. in Tanaland.



that the L.T.O. would foster local economic development.<sup>165</sup> But in Lamu the government had an eye to political rather than economic considerations. British sovereignty over Witu was compromised by counter-claims from Germany.<sup>166</sup> As the First World War erupted, and the working of the L.T.O. in the area south of Mombasa was brought to a halt, the Recorder of Titles suggested this was “a favorable time” to implement the L.T.O. in the north.<sup>167</sup> On 7 May 1915, the Governor proclaimed that the L.T.O. would be applied to the Sultanate of Witu, with effect from 1 June 1915. Although claims were lodged only slowly at first, by early December 1915 a total of 883 claims had been submitted.<sup>168</sup>

A major feature of the Arbitration Board’s work in Witu was the withdrawal of a large proportion of the claims initially lodged under the L.T.O. Of 663 claims dealt with by the L.R.C. in Lamu District from 1916 to 1919, 512 were subsequently withdrawn in favour of a communal claim.<sup>169</sup> The majority of these claimants were ex-slaves, who were advised by members of the Arbitration Board to sacrifice individual claims in favour of a communal claim. They were promised a larger tract of land that could “be surveyed out into commonages of sufficient size” to give each claimant a good holding that would be preserved for their “continual use”.<sup>170</sup> The extension of the L.T.O. to Lamu Island was strongly urged by the local district official, and when the Recorder of Titles finally agreed to temporarily move surveyors onto the island from Witu, the response was overwhelming. The Ordinance was proclaimed on 1 February 1918, and the rush to register claims over the next six months was so great that additional forms of application had to be brought up from Mombasa.<sup>171</sup> By January 1919, 2,697 applications had been submitted. Of these applications, 601 were made for Certificates of Interest, mostly pertaining to houses built on land belonging to other people. This left 2,096 claims to be dealt by the Arbitration Board.<sup>172</sup>

After consultation with the district officials, the Recorder of Titles agreed that a fee of 50 cents would be charged for each application submitted on Lamu island in order ‘to prevent frivolous claims’.<sup>173</sup> Surveyors and demarcators were only made available to work on Lamu island whilst the rains were affecting work in Witu, and this severely limited the progress that could be made on the island. As a consequence, the arbitration of plots in Lamu Township was a slow process, and many of the plots in Shella and Kipungani were among the 1,095 that still had not been arbitrated by the end of 1921.<sup>174</sup> By 1923, this figure had actually increased with new claimants still

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165 PCLO(Msa), file no. 1119/1, vol. I, Ag. P.C. Tanaland to C.S., 3 October 1919; PCLO(Msa), file no. 1119/11, vol. II, Dy. D.S. to C.O.L. 23 March 1922.

166 KNA(Msa), CY/4/20, Minute Paper, C.O.L. to L.O., September 1910.

167 PCLO(Msa), file no. 47, R.O.T. to P.C. Tanaland, 11 February 1915.

168 PCLO(Msa), file no. 52, R.O.T. to Ag. D.C. Lamu, 16 December 1915.

169 KNA(Nbi), AG/22/508; KNA(Msa), CY/2/8; CY/2/14, R.O.T. to P.C. Tanaland, 13 May 1918.

170 KNA(Msa), CY/2/8, R.O.T. to P.C. Tanaland, 24 October 1916; KNA(Msa), CY/2/14, R.O.T. to P.C. Tanaland, 30 May 1919.

171 KNA(Nbi), AG/22/501, R.O.T. to Ag. C.S., 27 July 1918.

172 PCLO(Msa), file no. 1119/II, vol. II, R.O.T. to P.C. Coast, 30 May 1919.

173 KNA(Nbi), AG/22/510, R.O.T. to C.S., 29 January 1918.

174 PCLO(Msa), file no. 119/II, vol. II, R.O.T. to D.C. Lamu, 28 February 1921.



coming forward. In July 1923, 1,385 claims were still outstanding on the island.<sup>175</sup> With the suspension of the L.T.O. in 1922, the adjudication process of land claims on the island never resumed. For the area outside of the Lamu Island, the L.T.O. was not proclaimed until 1 August 1921,<sup>176</sup> and in reality the L.T.O. had no impact whatsoever as fact, the area was left undemarcated, unadjudicated and unsurveyed for the entire colonial period. This ‘unfinished business’ of adjudication was to leave a powerful legacy of problems for the future of the island.

#### Problems during the Working of the Coast Land Settlement

The failure of the L.T.O. was perhaps an inevitable consequence of seeking to implement an overly ambitious and under-resourced piece of legislation. Many of the difficulties encountered were a product of government’s own shortcomings, whilst others arose from the intransigence of the local population. In this section we will consider each of these categories in turn.

#### Expenditure under the L.T.O., 1910-1921.<sup>177</sup>

Year Ended	Recorder’s Department (£.)	Survey Department (£.)	Arbitration Board (£.)	Total (£.)
31. 3. 1911	1,056.19.8	533.17.4	366.3.6	1, 957.0.8
31. 3. 1912	1,881.7.9	2,714.7.9	1,060.15.0	5,656.10.6
31. 3. 1913	1,804.1.2	4,991.6.5	1,203.16.0	7,999.3.7
31. 3. 1914	1,893.5.4	6,919.3.7		8,812.8.11
31. 3. 1915	1,964.4.5	6,447.14.11	2,059.13.4	10,471.12.8
31. 3. 1916	1,996.13.4	5,993.12.5	1,687.18.1	9,678.3.10
31. 3. 1917	1,843.2.1	3,542.6.9	1,512.18.8	6,898.7.6
31. 3. 1918	1,496.18.8	8,033.12.0	1,678.5.5	11,898.7.6
31. 3. 1919	1,544.9.3		2, 123.5.6	3, 668.4.9
31. 3. 1920	3,326.0.8		2,045.8.5	5,371.9.3
31. 3. 1921	1,606.6.5			1, 606.6.5
Total	20, 415.1.8	39, 175.6.1		74, 019.39.5

Financial constraint was the main restriction placed upon the government’s operation of the L.T.O. The work of the L.T.O. was expensive, and despite early expectations that the Ordinance might become self-supporting this never appeared likely. By the middle of 1917 officials were being overtly pessimistic about the financial aspects of the L.T.O. and strongly suggested at this time that “some radical improvement” was needed, especially in the organization of survey work, if the L.T.O. was to be made cheaper and more efficient.<sup>178</sup> Between 1910 and 1918, costs to the Survey

175 PCLO(Msa), file no. 1119/II, vol. II, D.C. Lamu to Ag. R.O.T., 24 July 1923.

176 KNA(Nbi), PC/Coast/1/11/320, Senior Coast Commissioner to Ag. Colonial Secretary, 22 April 1921, Senior Coast Commissioner to Ag. Colonial Secretary, 1 July 1921.

177 These figures cited from the PRO, CO 533/488/4; KNA(Nbi), PC/Coast/1/11/66, PC/Coast/1/11/104, PC/Coast/1/11/164, PC/Coast/1/11/313, PC/Coast/1/11/314, PC/Coast/1/11/315, PC/Coast/1/11/316, PC/Coast/1/11/318, PC/Coast/1/11/328; KNA(Msa), CY/2/8, CY/2/14, CY/3/8, CY/3/11, CY/3/13, CY/3/14, CY/1/11/15. The conversion rate used: Rs. 15 = £ 1.

178 KNA(Nbi), PC/Coast/1/11/328, P.C. Coast to C.S., 6 June 1917.



Department from L.T.O. work amounted to £39,175 - some 53 percent of the total funds spent under the L.T.O. up to 1921. Survey costs inevitably rose as the numbers of small plots increased. Larger plots required less line cutting, and therefore less survey costs per acre.<sup>179</sup> This problem was more apparent in some areas than in others. Survey costs were especially high between 1914 to 1917, when the survey work was mostly conducted in Tana River where the average size of the plots surveyed was only 2.5 acres. The costs of survey in Tana River amounted to £19,360.<sup>180</sup> This contrasted with Malindi and Takaungu, where between 1911 and 1914 expenditure on survey amounted to only £8,238.

Revenue collected under the L.T.O., 1911-1921.181

Year	Certificate Fees (£)	Survey Fees (£)	Miscellaneous Fees (£)	Total (£)
31/3/12	50.4.0	15.6.8	96.2.8	161.13.4
31/3/13	155.4.0	215.4.0	455.0.4	825.8.4
31/3/14	284.9.4	314.12.0	88.5.0	687.6.4
31/3/15	656.8.0	722.13.4	72.17.8	1,451.19.0
31/3/16	106.8.0	28.15.4	239.4.11	374.8.3
31/3/17	255.16.0	84.1.4	215.12.0	555.9.4
31/3/18	1,076.6.8	198.16.0	149.13.4	1,424.16.0
31/3/19	767.0.0	386.14.8	389.16.0	1,543.10.8
31/3/20	286.10.8	63.12.0	75.9.4	425.12.0
31/3/21	355.1.0	219.19.0	1,506.3.5	2,141.4.00
Total	3,994.48.8	2,246.24.6	3,838.4.33	8,079.15.9

Revenues collected under the Ordinance from 1910 to 1921 only covered 11 percent of expenditure on L.T.O. work.<sup>182</sup> Payments for certificates of title, intended to be the main revenue earner under the Ordinance, proved an utter failure. Having lodged a claim and had it adjudicated, the majority of people were prepared to leave matters there and very few bothered to collect their certificate of titles. And in poorer areas, the government simply canceled the charges because it was realized that local inhabitants could not afford to pay: £544 of fees due were canceled in this way between 1909 and 1921. Even the bleak financial picture illustrated presents an overly rosy view, as the application of the Registration of Titles Ordinance (1919) to the coast in 1920, with set survey fees and stamp duties, brought a sharp increase in revenues. Out of the total of £1,506.3.5 collected from the miscellaneous fees in the working year of 1920-1921, £1,272.2.00 was collected under this new ordinance. This amount contributed 15 percent of the total revenue collected under the L.T.O. from 1910-1921.

179 KNA(Msa), CY/3/11, D.O.S. to C.S., 10 September 1915.

180 KNA(Nbi), PC/Coast/1/11/336, D.C. Kipini to Senior Coast Commissioner, 31 July 1922.

181 Figures gathered from PRO, CO 533/488/4; KNA(Nbi), PC/Coast/1/11/66, PC/Coast/1/11/104, PC/Coast/1/11/164 PC/Coast/1/11/313, PC/Coast/1/11/314, PC/Coast/1/11/315, PC/Coast/1/11/316, PC/Coast/1/11/318, PC/Coast/1/11/328; KNA(Msa), CY/2/8, CY/2/14, CY/3/8, CY/3/11, CY/3/13, CY/3/14, CY/1/11/15.

182 See page 102.



A second major difficulty for government was the lack of trained staff available for work on the L.T.O. In 1909, Crown Advocate R.W. Hamilton had emphasized to the Colonial Office the need to grant more staff and machinery to the Survey Department and Land Office of the Protectorate to accommodate the requirements under the Land Titles Ordinance. Hamilton reckoned that “With existing staff [...] it would probably take 7 to 10 years to adjudicate upon original titles alone”,<sup>183</sup> without applying the legislation as it was intended. Hamilton was not alone in putting the case for additional human resources, but there was no increase made in the staff assigned to either the office of the Recorder of Titles or the Survey Department.<sup>184</sup> “Not a single month passed”, declared MacLean, “without interruption and delays occurring through lack of Survey staff”.<sup>185</sup> Each year, in his annual report, the Recorder of Titles lamented the need for additional surveyors and demarcators. The work of Arbitration Board in Mombasa had to be halted for nearly 3 years between 1915 and 1918 for want of survey staff, and the same occurred in Lamu from 1920 to 1922. For the duration of the First World War there was a general shortage of staff.

The quality of survey work also left much to be desired. Surveyors appointed to the coast were often inexperienced, and many found the climate arduous. Mistakes by juniors were far too common, having to be corrected subsequently by a more senior member of the department. These human errors were so seriously delaying the progress of the L.T.O. by 1912, that the Deputy Recorder of Titles felt moved criticized the policy of sending new surveyors to the coast.<sup>186</sup> The lack of surveyors and demarcators also impacted upon the operation of the L.R.C. In many cases the court could not proceed simply because plans were not available in time for the hearing. The same problem also caused the slow progress in issuing deed plans to be attached to certificate of titles. By 1922, there was a backlog of 2,663 deed plans awaiting issue for claims that had already been adjudicated. When the implementation of the L.T.O. ceased at the end of that year, the Court still had 550 cases awaiting judgment, another 8 disputed cases outstanding, approximately 1,500 certificates awaiting issue, and between 5,000 and 6,000 cases awaiting deed plans to be attached to the certificate of titles.<sup>187</sup>

The bureaucratic processing of claims also raised problems. District Commissioners seldom had sufficient staff to deal directly with the claims submitted, so delays in the processing of claims were common.<sup>188</sup> When the L.T.O was applied to the area north of Mombasa, for example, there was only one clerk in the District Office in Kisauni who could read Arabic, the language in most applications were written. At a more prosaic level, clerical errors frequently delayed the work the Arbitration Boards. It was not uncommon, for example, for clerks to forward claims for plots lying outside the area to which the L.T.O. applied.<sup>189</sup> All these difficulties resulted in delay. Had

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183 PRO, CO 533/72, Memorandum by R.W. Hamilton, enclosed in Ag. Gov. to Earl of Crewe, 23 July 1909.

184 PRO, CO 533/62, Acting Commissioner Jackson to Secretary of State, 25 October 1909.

185 KNA(Msa), CY/2/11, A Short Outline of the History of the Coast Land Settlement, by A.J. MacLean, 8 October 1918.

186 KNA(Msa), CY/3/13, Quarterly Report (QR) of L.T.O., ended on 31 December 1911.

187 KNA(Nbi), PC/Coast/1/11/328, Ag. R.O.T to Ag. Senior Coast Commissioner, 6 February 1923.

188 KNA(Nbi), PC/Coast/1/11/311, D.C. Malindi to Ag. P.C. Coast, 17 January 1910.

189 KNA(Nbi), PC/Coast/1/11/318, D.C. Mombasa to R.O.T., 5 January 1915.



the L.T.O. been administered smoothly, it should have taken no more than three years from the date of submitting a claim for a claimant to receive his certificate of title. In practice, this was hardly ever the case; four to five years was more the norm. For example, for the island of Lamu claims submitted in 1918 were only granted title in 1923. Delays were compounded by the slowness of the Survey Department in preparing deed plans to be attached to the certificate before it could be issued. For example, in January 1920, the Land Registration Court had given judgments on 2,764 cases, but only 158 deed plans were prepared. Even though the bulk of these problems lay in the Survey Department, it was the office of the Recorder of Titles which was blamed for the delays.<sup>190</sup>

Lack of cooperation between the various government departments involved in the L.T.O. did little to help the process. As we have seen, whereas the Recorder of Titles preferred to work methodically through one district before shifting work to another area, the provincial administration gave emphasis to the political context in deciding when work should be undertaken in any given district. They wanted the work of the L.T.O. to be applied to as many areas as possible at one time. In these arguments, the provincial administration tended to prevail over the Recorder of Titles, even though this made the work of the L.T.O. both less efficient and more costly.<sup>191</sup> These disagreements undermined the operation of the Coast Land Titles Board, formed to monitor the working of the numerous departments involved in the L.T.O. Members of the Board frequently sought to by-pass discussion with other departments by appealing directly to central government in Nairobi.<sup>192</sup>

To the inadequacies and inefficiencies of government must be added the unwillingness of local people to cooperate with the implementation of the L.T.O. To some extent it can be argued that this was also a failure on the part of government, for little attempt was made to persuade local people of the benefits of obtaining legal title in their lands. But beyond this it is clear that only a minority of the coastal population willingly supported the aims of the L.T.O. Government officials most frequently complained of the failure of local people to submit land claims by the declared dates.<sup>193</sup> This greatly inconvenienced government officers, and certainly added to the costs of implementing the L.T.O. In 1911, to discourage late claimants, the government introduced a charge of one shilling on every late application. Before late claims could be processed, they had to be supported with an affidavit signed by the Recorder of Titles.<sup>194</sup> However, these penalties proved useless in the face of local conditions. As one claimant explained: "I am an illiterate man and ignorant of any law in for except by being told therefore I failed to put in my application in time."<sup>195</sup>

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190 The East African Standard, 27 September 1913.

191 KNA(Nbi), PC/Coast/1/11/315, Ag. R.O.T. to Ch. A.B., 19 June 1914; PCLO(Msa), "157 file", Ag. R.O.T. to Ch. A.B., 25 January 1915.

192 KNA(Nbi), PC/Coast/1/11/316, Ag. C.S. to P.C. (Ch. C.L.T.B.), 27 August, 1917.

193 KNA(Nbi), PC/Coast/1/11/318, R.O.T. to D.C. Mombasa, 23 February 1915.

194 KNA(Nbi), AG/22/502, Ag. R.O.T. to C.S., 16 July 1914; see KNA(Nbi), AG/22/501; AG/22/503, all these files related to late claims submitted and associated procedures.

195 KNA(Nbi), AG/22/502, affidavit of Sahala bin Abdul Azizi from Kisauni, enclosed in R.O.T to C.S., 17 December 1915.



Failure to understand clearly what was required by the Ordinance, or absence from the area at the time of proclamation, were the most familiar excuses used by late claimants.<sup>196</sup> Absenteeism during the demarcation of the boundaries by the Arbitration Board was another – often deliberate - delaying tactic. Despite being reminded to appear before them at the plot to point out the boundary of the land claimed, claimants frequently failed to appear. Much time was wasted simply waiting for claimants. The AB was also aware that many landholders were suspicious of cooperating with the arbitration board.<sup>197</sup> Surveyors complained that local inhabitants often failed to keep the boundary of the land claimed clear for the purpose of the final survey. The Arbitration Board cleared boundaries during the process of demarcation, but claimants seldom adequately maintained their boundaries.<sup>198</sup> In theory it was the responsibility of the district officials to supervise the boundaries lines, but in practice this could not be accomplished.<sup>199</sup> Land owners rarely obeyed requests to clear their boundaries.<sup>200</sup>

Number of Application Causes dealt with by the L.R.C., 1910-1921.<sup>201</sup>

Year	Claims dealt	Disputed claims
1910-11	170	9
1911-12	226	18
1912-13	234	30
1913-14	762	69
1914-15	472	40
1915-16	311*	-
1916-17	862	31
1917-18	925	79
1918-19	916	110
1919-20	1,327	115
1920-21	2,511	443
March-Dec. 1921	651	248
Total	9,367	1,192

But by far the biggest delays, and the greatest additional expense for government, arose from the huge number of claims that were contested in the L.R.C. This court heard 9,367 claims from 1910 to 1921, an average of 781 each year. However, the workload of the Court varied from year to year, partly depending upon the pace at

196 KNA(Nbi), AG/22/501, Ch. A.B. to R.O.T., 17 March 1915.

197 KNA(Msa), CY/3/14, Ch. A.B. to R.O.T., 15 July 1913.

198 KNA(Nbi), PC/Coast/1/11/314, Ag. R.O.T. to C.S., 28 December 1914, P.C. Coast to C.S., 14 January 1915; P.C.L.O(Msa), file no. M/32, D.S. to Surveyor General, 29 July 1929.

199 KNA(Nbi), PC/Coast/1/11/314, S.H. Ramsey (Surveyor in Takaungu) to D.O.S, 23 November 1914; KNA (Nbi) PC/Coast/1/11/382, Ch. A.B. to Ch. of C.L.T.B., 3 September 1918.

200 KNA (Nbi), PC/Coast/1/11/314, D.O.S. to C.S., 22 December 1914.

201 Figures gathered from KNA(Nbi), PC/Coast/1/11/66, PC/Coast/1/11/104, PC/Coast/1/11/164, PC/Coast/1/11/313, PC/Coast/1/11/314, PC/Coast/1/11/315, PC/Coast/1/11/316, PC/Coast/1/11/318, PC/Coast/1/11/328; KNA(Msa), CY/2/8, CY/2/14, CY/3/8, CY/3/11, CY/3/13, CY/3/14, CY/1/11/15.

\* This figure gathered from the only available source on the implementation of the L.T.O. between 1915-1916, the number of claims dealt with by the L.R.C. in Tana River, PCLO(Msa), file no. 1002, vol. II, Ch. A.B. Tanaland to R.O.T, 19 December 1917.



which plans were provided by the demarcators and surveyors. It is notable that between March 1919 and March 1921 the court was at its busiest. During these years 3,838 claims were heard - some 41 percent of the total number of claims dealt with for the whole period from 1910. In these years (1919 to 1921) the work of the L.T.O. was concentrated in the coastal townships of Mombasa, Malindi and Mambui, and it was in this period that the greatest number (10) of demarcators and surveyors were deployed on L.T.O. work.<sup>202</sup> Of the 9,367 cases heard by the Court, 1,192 were disputed claims, amounting to 12.8 percent. The majority of these disputed claims arose in Mombasa Island and its neighbouring areas. For example, out of 248 disputed cases dealt by the Court in March to December 1921, 115 were from claims in Mombasa Township, 73 were from Mtwapa and 57 were from Changamwe area. Disputes of this kind severely delayed the work of the L.T.O., but their frequency only served to underline the need for a resolution to the problems of defining land title in the coastal areas.

In 1932, the British government appointed a commission to enquire into the land needs of Kenya's peoples. The principal concern of the government was to agree upon the extent of Native Reserves in relation to land set aside for European settlement in the highland areas of the Colony. The question of the coastal land settlement was very much a secondary issue, but was nonetheless included within the remit of the Commission. The evidence gathered for the Kenya Land Commission (K.L.C.) marked the most exhaustive examination of coastal land questions since the investigations undertaken in preparation for the drafting of the L.T.O. in 1907. Ultimately, four major issues were to dominate the report of K.L.C. with regard to the coast. These issues were Reserves, squatters, the working of the L.T.O. and the issue of communal claims.

In regard to the working of the L.T.O. the provincial administration had already formed a provincial 'Committee on Land Titles', to review and study the implementation of the L.T.O. Therefore, the meeting suggested that the K.L.C. should not make any recommendations regarding the implementation of the L.T.O. until such time as the Committee finished its work.<sup>203</sup> In effect, the 'Committee on Land Titles' became something of a scapegoat for the Commission, enabling it to ignore the issue. However, the evidence and memoranda submitted to the K.L.C. revealed the chaotic situation left by the abandonment of the L.T.O's implementation a decade ago. The L.T.O. main objective to secure the right of private ownership and to determine the "position and extent" of Crown Land, had only been achieved in a few specific areas, such as between Takaungu (north of Mombasa) and the Ramisi river (south of Mombasa including Mombasa Island), the area between the Sabaki River and Mida (near Malindi), the small area at the mouth of Tana River (Kipini Township), and finally in the Witu's Sultanate. In other areas the situation had not much changed, and to some extent had become worse due to the large numbers of unadjudicated claims.<sup>204</sup> However, Given the numbers of unadjudicated claims, it was simply impossible for the government to produce definite information on land ownership at the coast.<sup>205</sup>

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202 KNA(Nbi), PC/Coast/1/11/328, D.S. to Director of Land Surveys, 24 February 1921.

203 KNA(Msa), CY/1/63, Minute of the Meeting held in Mombasa, 1 and 2 July 1932.

204 K.L.C: E&M, Memoranda by C.G. Fannin, 15 October 1932, pp. 2475-8.

205 K.L.C: E&M, Memoranda by C.G. Fannin, 15 October 1932, pp. 2475-78.



Arguing that the implementation of the L.T.O. over the whole coastal area was unnecessary, as the cost to survey each plot claimed was too high to be implemented in the remote areas, Provincial administration defended the government's decision to halt the operation of the Ordinance recommended the adoption of a new scheme, with a group survey rather than individual surveys, to define the boundaries between Crown land and privately held land.<sup>206</sup> Much of this was endorsed by the Acting Recorder of Titles, E.B. Lloyd, who gave further reasons for the failure of the L.T.O. Lloyd's evidence highlighted the issue of fees and unadjudicated claims contributing the large part to the chaotic situation at the coast. Fees under both the L.T.O. and R.T.O. were too high and could not be paid by local inhabitants, he asserted. In addition, there was the problem of subdivision. Under the current system of registration, the R.T.O., no land could be registered unless it was surveyed by the government or by a Licensed Surveyor. This obviously created problems for any plot to be subdivided; as such, land could not be registered unless it was surveyed first.<sup>207</sup> Lloyd contended that this requirement could only be met in areas where the value of land was high, such as in Mombasa. In most areas, the high survey cost meant that most people did not even bother to register the subdivision of their land. The issue of succession and inheritance practices under the *Shari'a* law compounded the problem. To solve these problems, Lloyd suggested that a more "elastic system of registration," was needed, whereby subdivisions could again be registered under the R.D.O. as was previously the practice.<sup>208</sup>

Lloyd highlighted the fact that there were at least 4,113 claims still waiting to be adjudicated at the coast, most of which were submitted from the remoter areas. In Lamu district alone, 1,293 claims still awaited adjudicated - nearly 25 per cent of the total of unadjudicated claims. The number of unadjudicated claims was also high within the coastal townships. By 1932, the process of the adjudication of claims in coastal townships had only been completed in two townships, Mombasa, Kipini, and only partly in Lamu. The total number of unadjudicated claims in the townships of Takaungu and Malindi was 1,403 claims. As the government was reluctant to survey these claims individually, Lloyd followed Fanning in suggesting that group survey be used. Lloyd stated that local inhabitants in remoter areas were accustomed to identifying their land by descriptions of their boundaries; therefore, the ownership of land within the block surveyed could be established by a description of boundaries. The process to determine those boundaries could be carried out by a district official or through the assistance of the Arbitration Board.<sup>209</sup>

Despite the fact that the K.L.C. realised that the complexity of the operation of the L.T.O. went beyond their terms of reference, they nevertheless made several recommendations relating to the Ordinance. The main recommendation was that the work of the L.T.O. be resumed as soon as possible to address the chaotic situation that existed regarding boundaries between Crown and Private Land. However, the K.L.C. questioned whether this was worthwhile over the whole coastal region. In this respect, the Commission was obviously influenced by the evidence submitted, reflecting the

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<sup>206</sup> K.L.C: E&M, Memoranda by C.G. Fannin, 15 October 1932, p. 2477.

<sup>207</sup> K.L.C: E&M, Memoranda by E.B. Lloyd, p. 2686.

<sup>208</sup> K.L.C: E&M, Memoranda by E.B. Lloyd, pp. 2686-7.

<sup>209</sup> K.L.C: E&M, Memoranda by E.B. Lloyd, pp. 2689-90, Evidence by E.B. Lloyd, 17 December 1932, p. 2678.



view that the cost of surveying each claim individually, as required by the Ordinance, was simply as “prohibitive”.<sup>210</sup>

If the members of the K.L.C. were aware that they had left most of the issues affecting coastal land unaddressed, they could at least console themselves in the knowledge that the coastal ‘Land Titles Committee’ would soon take up the most pressing questions. In the event, such optimism as they may have nurtured proved ill founded: the ‘Land Titles Committee’ did not in fact meet until the 1940s. Although Sir Ali bin Salim had agreed to join the Committee even before the Commission had arrived in Kenya in September 1932,<sup>211</sup> he heard nothing more about the matter until the end of the 1934.<sup>212</sup> Statements made to the K.L.C. by both Fannin and Lloyd can therefore be seen to have greatly exaggerated the position of the ‘Land Titles Committee’.<sup>213</sup>

The report of the K.L.C. had recommended that a means be found to recommence the L.T.O. as soon as possible. However, as had been clear in the evidence gathered for the K.L.C., officials were not convinced of the appropriateness of applying such a stringent definition of property to all parts of the coast. The search to find a cheap and workable scheme for the administration of land at the coast was still very much a concern after the K.L.C. had reported. At the time of the publication of the K.L.C. report, in 1934, the Colonial Office had coincidentally commissioned Sir Ernest Dowson to conduct a study of land tenure in Zanzibar. Dowson had formerly been Director General of the Survey Department of Egypt, and so had extensive experience of land law in Islamic areas. It was therefore decided by the Kenya government to invite Sir Ernest Dowson to conduct a study of land problems on Kenyan Coast.<sup>214</sup> Between 9 - 30 November 1934, Dowson conducted interviews with the local inhabitants in each district visited, from the south of Mombasa right up to the district of Lamu in the north. Dowson, however, considered that the tour “was short and hurried”, and that pressure of time had thwarted his desire to conduct more personal interviews.<sup>215</sup> Dowson managed to utilise this limited hours to get in touch with the problems on *the* land as much as he could. But, the limited time obviously had its effect on Dowson’s tour; the visit to the area south of Mombasa, for example, was conducted only one day after the Public Notice was published, meaning that many local inhabitants outside the government circle were not aware of the visit. Dowson gathered his information on land problems at the coast mostly from the local

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<sup>210</sup> K.L.C: Report, pp. 339-341.

<sup>211</sup> PCLO(Msa), file no. 31045 I, P.C. Coast to Colonial Secretary, 30 September 1932.

<sup>212</sup> KNA(Nbi), CA/16/36, Coast Province HOR, by Ag. P.C. Coast (S.H. Fazan), 12 May 1934. In 1934, the Committee conducted its meeting but to discuss matters related to the gathering of information for the use of the Committee. At the same time, its membership was still not finalised and one of the main objectives of the meeting was to suggest and appoint an individual as a member of the committee.

<sup>213</sup> KNA(Nbi), BN/7/13, Minute of the Meeting of the Coast Titles and Arab Settlement Board, 14 May 1946.

<sup>214</sup> KNA(Nbi), CA/10/92, Crown Notice entitled Coast Belt Land Inquiry, 8 November 1934; E. Dowson and V.L.O. Sheppard, **Land Registration**, (Colonial Research Publications No. 13, London, 1952).

<sup>215</sup> KNA(Msa), CA/10/89, report entitled Kenya Coast Belt Land titles Problem[Here After Dowson Report], by sir Ernest Dowson, October 1938, p. 1, enclosed in Dowson to Sir Rober Brooke-Popham, (Governor), 14 November 1938.



inhabitants: Swahili, Arab, African, Indian and European. Importantly, in all the districts visited, Dowson visited *the* location, *the* plot and *the* owner of land himself, thus gaining a clearer picture of land problems in the region. Dowson justified this approach in strong term: “the defective results of the measures adopted for the settlement and records of titles in the Kenya coast belt were in substance well understood by responsible officers on the spot.”<sup>216</sup>

However, Dowson only managed to complete his report in October 1938, four years after his tour to the coast. “I gathered the impression on both my visits to Nairobi”, Dowson said “that the Government was not then able to entertain seriously the steady allotment of funds for a number of years that any resumption of settlement and record of titles on energetic and effective lines must require”. He added that “[p]roperly or improperly I was to some extent influenced by a consequent reluctance to devote a lot of thought and effort to what appear likely to be a sterile study although I was to be paid for it, when there were other matters of pressing practical concern demanding attention”. Dowson apologised to the Governor about the delay, which partly caused by his involvement with land problems in Palestine. However, he emphasized that “the delays have operated in some important respects to assist the practical possibilities of an effective and economical defensible solution of the problem and are not, therefore entirely to be regretted.”<sup>217</sup>

Dowson did not reserve criticism on the government and their failure to implement the L.T.O. at the coast. To some extent, Dowson’s report blamed the government’s policies on land and the incompetence of the provincial and district administrations in dealing with the implementation of the L.T.O. as the main reason behind the failure of the L.T.O.<sup>218</sup> Concerning expenditure, Dowson argued that there was no alternative for the government other than to implement the Land Titles Ordinance, no matter how much it would cost. Despite admitting that the L.T.O. was a failure, Dowson maintained that the reason for the failure was not financial, as argued by the government but rather a result of the government’s inability to adopt or provide a sufficient solution to the land problems at the coast. Dowson agreed that the expenditure of the L.T.O. was high but he justified it on the basis that it covered the whole period of the full implementation of the L.T.O. between 1908 to 1922. This figure could be justified if the L.T.O. achieved its aim of securing and solving land problems on “a substantial portion of the coast belt” as government wanted.<sup>219</sup> Thus, it was not the cost so much as the ineffectual nature of what the money was being spent on that was a major concern.

Dowson stated that the high cost of the L.T.O. was heavily criticized because officials had politicised it. There were, he claimed two schools of opinion about land titles at the coast. Firstly, there were those who saw “the stark necessity of defining reliably and intelligibly the units of land affected”; and secondly, those who “saw the no less stark necessity of making the cost of the operations conform to their economic value

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<sup>216</sup> Dowson Report, p. 1.

<sup>217</sup> KNA(Nbi), CA/10/89, Dowson to Sir Robert Brooke-Popham (Gov. of Kenya), 14 November 1938, enclosed in Malcom Macdonald (Colonial Office) to Sir Robert Brooke-Popham, 21 November 1938.

<sup>218</sup> Dowson Report, p. 3.

<sup>219</sup> Dowson Report, p. 3.



if they were to be justifiably completed and maintained”. In Dowson’s opinion, it was the second school of opinion that dominated official perceptions of land problems. Dowson suggested that a compromise be made in order to immediately solve land problems without questioning expenditure, and to satisfy not only all persons involved but also to the “general economy of the country”. He also criticised the amount of fees imposed under the R.T.O. and L.T.O.,<sup>220</sup>

On the issue of resuming the implementation of the L.T.O., Dowson argued that it was impossible for the government to resume the working of the L.T.O. based on the previous scheme, as it was partly responsible for the ‘unfinished business’ of the L.T.O. Dowson suggested that this be carried out as an entirely new settlement, and not merely pick up the scheme from 1922. In other words, the government had to start all over again. Dowson did not want to turn the clock back to 1922 because of the intractability of land problems at the coast which he argued, were caused by the poor maintenance of records relating to the working of the L.T.O. by the government. The only record, which could be considered up to date and reliable, he stated, was the one for Mombasa. In other areas where the L.T.O. had been implemented, Dowson commented that they seemed to be neglected and only existed in the “memory” of the officials involved in the L.T.O.<sup>221</sup> The new scheme would also solve the increasing number of land disputes at the coast. He argued that under the previous scheme it was easy for certain groups of people to manipulate the system for their own benefit. By the end of the 1930s, there were many cases of land disputes at the coast, which Dowson speculated had emerged because of “defective applications”, and what he called “defective perpetuation of past findings”.<sup>222</sup> Dowson noticed that disputed title cases of a fraudulent nature occurred throughout the coast..<sup>223</sup>

Dowson argued that the “slowness, ephemeralness and consequent costliness” of the L.T.O. was not because of the high cost of surveying, but because of the overemphasizing of work in the Land Registration Court as too many proceedings depended or were concentrated in the hands of the Land Registration Court. Dowson maintained that the work of L.T.O. should have been concentrated on the operations in the field, with more effort made to understand the local areas. Under the new scheme he proposed that the essential work of hearing and investigating land claims would rest in the hands of what he called “an appropriate executive field operation” and “Perambulatory Court”, thus suggesting a decentralization of field organizations.<sup>224</sup>

A new system of networking should also be introduced with greater emphasis on local participation in determining land titles and less dependence on the Arbitration Board. The local elders and official would work together with the administration officer to solve any dispute on land claimed, thereby limiting the role of the Land registration

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<sup>220</sup> Dowson Report, p. 4.

<sup>221</sup> Dowson Report, p. 3.

<sup>222</sup> Dowson Report, p. 11.

<sup>223</sup> KNA(Msa), PC/Coast/2/11/81, A/C no. 6 of 1923 involving the Mazrui family. The wasi of Sheikh Mbaruk who submitted the claim was Salim bin Mbaruk. In regard to Fihuni landcase, the A/C no. 57/1923, and the plot was numbered L.R. 4821 after C.O.O. was issued.

<sup>224</sup> Dowson Report, p. 9.



Court. Dowson suggested the formation of a “Perambulatory Court” which would be conducted by the local leaders and would work closely with the Survey Department and the district official; with the Land Registration Court only playing a role at the last stage when it would hear exceptional cases, but would mainly issue titles. The process of ‘hearing’ and adjudicating claims submitted would be the function of Perambulatory Court and the Land Registration Court therefore, would no longer be involved in issuing instructions to the Survey Department to carry out land once titles was granted as had happened in the L.T.O. Delays would also be reduced as the Land Registration Court would no longer have to wait for plans from the Survey Department to hear land claims as these matters would have been resolved earlier during the hearing in the Perambulatory Court. The Perambulatory Court would be held in each area where the scheme was applied because it was important for the government to keep in contact with the landowners so that any changes occurred could be easily recorded.<sup>225</sup>

According to Dowson, this measure would be beneficial in two ways. Firstly, it would get more local participation, especially from leaders who were more familiar with local issues and problems in determining land titles. Secondly, the use of local leaders in the process of adjudicating land claims would attract the local inhabitants to participate in the settlement, as it was their practice to solve their land problems among themselves. In addition, local inhabitants would not feel removed from the process of adjudicating titles as had happened previously during the L.T.O. Furthermore, Dowson argued that by using African or Arab personnel, European officers - for whom Dowson considered it “physically impossible” to have more than a limited knowledge of land matters in the area - would be able to concentrate their time and efforts on administrative matters.<sup>226</sup>

The new scheme should be implemented in smaller area first as the economic, political and administrative matters that influenced the priority of land settlement at the coast were very unpredictable.<sup>227</sup> By implementing the scheme in smaller areas first, there would be less effect or disruption once the course of the L.T.O. altered to other areas. In addition, smaller areas under the operation of the L.T.O. also would make the process of maintaining effective records much easier. The implementation of the L.T.O. in the smallest areas first, called ‘working blocks’, would be guided by the economic and political importance of such areas.<sup>228</sup>

Examining the report, it is hard to neglect the fact that Dowson was influenced by his previous work experience in other colonies. He argued that land settlement based on absolute titles would invite delay as happened at the coast, but that a similar situation was alleviated in Palestine, where it was agreed to accelerate the process of land settlement by replacing absolute titles with possessory titles. To strengthen his point, Dowson also used examples of what had happened in Egypt between 1898 and 1906,

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<sup>225</sup> Dowson Report pp. 6, 24.

<sup>226</sup> KNA(Msa), CY/1/81, Evidence collected from Mr. Whitton; *Liwali* of Lamu; Sheikh Abdulla Boke, and Sheikh Mohamed Mawia, from their discussion with Dowson on 30 November 1934; Dowson Report p. 24.

<sup>227</sup> Dowson Report, p. 9.

<sup>228</sup> Dowson Report, p. 14.



stating that over 1.9 million claims on land had been successfully managed and resolved using possessory titles.<sup>229</sup> Dowson also criticized the formation of the Coast Land Titles Committee by the government, as the formation of such a committee could not have solved land problems at the coast because the members had no expertise or external knowledge of operations similar to the L.T.O. in other colonies.<sup>230</sup> Dowson argued that the land issues at the coast would only be solved if the officials involved studied or borrowed from the experience of other similar operations in the rest of the colonies.<sup>231</sup>

The delayed publication of Dowson's finding made not only officials but also the public begin to question the benefit of the inquiry.<sup>232</sup> When Dowson had completed his visit to the districts, the findings of the inquiry were "awaited with interest" by provincial and districts officials.<sup>233</sup> Between 1934 and 1938, land problems at the coast were hardly discussed by the provincial and district officials, as is evident from the annual reports of the coastal districts. Under the section of land administration and surveys - which usually discussed land problems - there were no comments stating that the administrators were awaiting the Dowson study.<sup>234</sup> The high expectation placed on Dowson's enquiry had evaporated. The delay in receiving the report was one of the "most embarrassing" moments in the efforts of the government to solve the land problems at the coast.<sup>235</sup> Frustration led to skeptical opinions being expressed about the extent to which Dowson's expertise would help the government in solving land problems at the coast.<sup>236</sup> While the delay of the report jeopardized his credibility, Dowson's popularity collapsed, as the contents of the report submitted became known and clearly opposed the popular opinion among the provincial and district officials. They saw it as incapable of solving land problems at the coast. They insisted that the report could not be of any use, as it provided no cheap alternative for the government to re-implement the L.T.O. at the coast.<sup>237</sup>

In the 1940s, there were no major developments in land reform at the coast. In fact, the colonial government seemed to have lost interest. So it was that by the end of the 1940s, the Kenyan colonial administration was no closer to finding a solution to the land problems of the coast than in 1920. The loss of will to reform can be seen in the uncertain and hesitant progress that was made from 1922 onward.<sup>238</sup> Officials gave no priority to land reform. Even in regard to pressing local issues, such as the claims of squatters, officials were unwilling to take initiatives.<sup>239</sup> The abolition of the

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<sup>229</sup> Dowson Report p. 7.

<sup>230</sup> Dowson Report p. 4.

<sup>231</sup> Dowson Report, p. 8.

<sup>232</sup> Mombasa Times, 17 October 1938.

<sup>233</sup> KNA(Nbi), PC/Coast/2/1/3, Coast Province AR, 1934.

<sup>234</sup> KNA(Nbi), DC/Mal/1/3, Malindi AR 1934-1938; DC/KWL/1/21; DC KWL/1/22; DC KWL/1/23; DC/KWL/1/24, Kwale AR 1934-1938.

<sup>235</sup> KNA(Nbi), PC/Coast/2/1/42, Coast Province AR 1937.

<sup>236</sup> PCLO(Msa), P.C. Coast to Commissioner of Local Government, Land and Settlement, 7 October 1938.

<sup>237</sup> KNA(Nbi), CA/16/36, Kilifi HOR.

<sup>238</sup> KNA(Nbi), CA/110/181, Ag. P.C. Coast to D.C. Lamu, Kilifi and D.O. Malindi, 27 April 1946; KNA(Nbi), PC/Coast/2/1/29; PC/Coast/2/1/23, Coast Province AR 1928 and 1929, Kwale AR 1935.

<sup>239</sup> KNA(Msa), CY/1/83, Ag. C.O.L. to Permanent Secretary, Ministry of Education, Labour and Lands, 19 March 1959.



Department of Recorder of Titles in 1922 and the vacancy of the post of the Recorder of Titles epitomised the problem. District Commissioners were appointed as Deputies of the Recorder of Titles, but there was neither central office nor single official responsible for carrying out adjudication at the coast.<sup>240</sup>

“No significant progress was made in the years 1923 to 1956 by the Acting Recorders due to the pressure of their duties, and the delay in settling titles was due solely to this inability of the Acting Recorders to deal with Claims and not to defects in the procedure laid down by the Ordinance or to intricate legal questions as to the ownership of land.”<sup>241</sup>

By the 1930s, the security of legal titles for ‘European lands’ in the coastal area were therefore no longer a top priority for the government, as it was clear that the coast had failed to attract European investors. By this time, European interest in land at the coast was only for small residential plots, a situation that grew from year to year, especially in the area between Mombasa and Malindi.<sup>242</sup> By the middle of the 1940s, the government realised that the complexity of the land problems at the coast was worse than before and recommended the formation of a Provincial Committee to solve these problems. In 1946, the Coast Land and Arab Settlement Board was formed to study the extent of the land problems at the coast and “to devise some method of dealing with the coast land titles situation”. The Committee failed to deliver a practical solution to the problems as it agreed that no progress whatsoever could be made until a permanent Recorder of Titles and survey personnel were appointed.<sup>243</sup>

A major development about coastal land problems occurred in the 1950s. In 1950, another Committee, the Land Advisory Committee (L.A.C.), was established to study land problems. The role of this Committee was similar to the role of the C.L.T.B., but was wider. The L.A.C was not only “to receive and consider” all land applications in that region, but also to “advise” the Commissioner of Land about any developments on land.<sup>244</sup> In 1956, the government’s efforts to address the land problems at the coast were aided by the appointment of V.C.W. Kenyon as the Recorder of Titles. Kenyon was an experienced land titles official and had already served in other colonies, namely Malaya and Palestine.<sup>245</sup> At this time, the government estimated that the number of unadjudicated claims had reached 5,000. In his preliminary report on land problems at the coast, Kenyon argued that the previous scheme adopted during the L.T.O. was one of the reasons for the government’s failure to implement the L.T.O. He suggested a new scheme be adopted to resume the land adjudication process. Ironically, this echoed what Dowson had said in 1938, including proclaiming smaller

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<sup>240</sup> KNA(Nbi), PC/Coast/2/1/29; Coast Province AR 1928; KNA(Nbi), PC/Coast/2/1/23, Coast Province AR 1929.

<sup>241</sup> PCLO(Msa), Report on the Problems of Coast Land Titles, by R.O.T. (V.C.W. Kenyon).

<sup>242</sup> KNA(Nbi), CA/16/40, Kilifi HOR, 23 May 1944; Cooper, *Slaves to Squatters*, pp. 203-5.

<sup>243</sup> KNA(Nbi), CA/10/113, Minutes of the first Meeting of the Coast Titles and Arabs Settlement Board, 14 May 1946; KNA(Nbi), PC/Coast/10/121, Memorandum by C.O.L to the Land Committee Meeting, 17 September 1963.

<sup>244</sup> KNA(Msa), CY/1/109, Official Gazette, 27 June 1950; KNA(Nbi), CA/10/113, Minute of Meeting held in Secretariat in Nairobi, 25 June 1951.

<sup>245</sup> KNA(Nbi), CA/10/49, C.O.L. to P.C. Coast, 27 March 1956.



units of land under the Ordinance and using local leaders, not the Arbitration Board to investigate the land claims submitted.

Kenyon's service in the Protectorate ended in 1959 when he was promoted to Aden. During his three years as the Recorder of Titles, Kenyon managed to convince the government that it was necessary to continue the implementation of the L.T.O. especially to deal with the huge number of existing unadjudicated claims - a job he estimated would take at least four years. Kenyon also expected that the process of adjudication would be complicated and lengthened by many new claims submitted by people who had failed to submit their claims during the L.T.O. Kenyon realised that financial considerations were one of the main obstacles in dealing with unadjudicated claims. Because the claims were so numerous and scattered all over the coast,<sup>246</sup> Kenyon estimated that his department alone would cost the government approximately £5,530 a year to carry out the adjudication of outstanding claims. This projected expenditure did not include the cost to other departments involved in the process such as the Survey Department.<sup>247</sup> In total, for a four years period, the cost of adjudicating outstanding claims would be approximately £22,120.<sup>248</sup>

The long awaited re-implementation of the L.T.O. occurred when the Ordinance was re-proclaimed on 24 July 1958.<sup>249</sup> However, Kenyon only managed to adjudicate on outstanding claims in one small area of the coast namely Mida, where he issued 68 Certificates of Title. After Kenyon's departure in 1959, the land adjudication again ground to a halt. It was not until 1961 that the government managed to appoint new Recorder of Titles to resume the process of adjudication of land. One of the tasks of the new Recorder of Titles was to continue when Kenyon had left off. The new Recorder of Titles managed to grant another 857 titles, but the majority of the Certificates issued were based on Kenyon's judgments. The work of the R.O.T. between 1961 and 1963 mainly concerned claims in the Mambrui and Takaungu townships.<sup>250</sup> The unadjudicated land claims in other areas of the Protectorate, such as Lamu, Tana River, north of Mombasa, north of Sabaki River and the area south of Mombasa, were left unresolved and untouched throughout the colonial period.

It is apparent that the work of the R.O.T. between 1956 and 1963 was concentrated in the areas where African settlements were created in the 1940s. This happened primarily because the government did not want uncertainty of titles to jeopardize the security of land in these areas. For example, despite a small number of occupants in the area set aside for African settlement in Mida, the existence of unadjudicated claims was used to justify the re-implementation of the L.T.O. in this area.<sup>251</sup> Another area where land

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<sup>246</sup> PCLO(Msa), Report on the Problem of Coast Land Titles, by R.O.T. (V.C.W. Kenyon); KNA(Nbi), CA/10/49, Memorandum by Registrar of Titles enclosed in the Ag. D.C. Kwale to P.C. Coast, 14 November 1946.

<sup>247</sup> KNA(Nbi), CA/10/49, Memorandum by Registrar of Titles, enclosed in Ag. D.C. Kwale to P.C. Coast, 14 November 1946.

<sup>248</sup> PCLO(Msa), Report on the Problem of Coast Land Titles, by R.O.T. (V.C.W. Kenyon).

<sup>249</sup> PCLO (Msa), Official Gazette 29 July 1958.

<sup>250</sup> KNA(Nbi), PC/Coast/10/121, Memo. by C.O.L. to the Land Committee Meeting, 17 September 1963.

<sup>251</sup> KNA(Nbi), CA/10/19, L.O. to Registrar of Titles, 21 October 1955; PCLO(Msa), file no. M/248, R.O.T. to Ag. C.O.L., 3 July 1958.



adjudication resumed was within the coastal townships. In this case, the government was influenced by appeals made by local officials. Local officials, particularly in Malindi, argued that the unfinished business of the L.T.O. detrimentally effected the development of the district, particularly the Malindi Township, as claims submitted on plots within townships were never adjudicated. The absence of surveys and certificate of titles on plots within the township were, according to local authorities, one of the main reasons for the limited development of the district as claimants were unable to “carry out valuable development” due to the uncertainty regarding their titles. The absence of certificate of titles also limited claimant opportunities to mortgage their land<sup>252</sup> and lost a considerable amount of revenues for townships authorities.<sup>253</sup>

Just before the Kenya’s independence, the work of the Recorder of Titles was again suspended by financial restrictions. In 1962, the Commissioner of Land suggested that the office of the Recorder of Titles be closed in order to cut government spending by an estimated £3200 a year. The decision by the government to resume the process of land adjudication at the coast in 1956 was made too late to control the impacts and damages of the “unfinished business” of the L.T.O.<sup>254</sup> Because the period in which “nothing happened” was so extensive, time itself became one of the major obstacles when the government attempted to solve the land problems at the coast. The political situation in the last decade of the colonial period directly stimulated and changed the issues of land at the coast: land issues, especially relating to land ownership and squatters, became one of the hottest political topics in the region. While the economic and financial fluctuations had already undermined the reciprocity of relationship between landowners and squatters, political agitation made the situation worse.<sup>255</sup>

The government’s stance toward African ownership of land also changed over time. In 1934, the report of the K.L.C. approved the practice of individual ownership among the Mijikenda, but in reality, not many measures were taken by the provincial and district officials to promote this practice. One of the main functions of the L.A.C., for example, was to adjudicate land applications or claims made by Africans, but not many Africans realised that they were permitted to make claims. Therefore, between the 1940s and 1950s, applications submitted by Africans in that region were almost non-existent. By the end of the 1950s, the wind of decolonization began to have an impact. A report by officials on the land problems at the coast at this time suggested that Africans, especially Mijikenda, should be educated about the practice of private ownership. The officials urged the government to recognise the claims made by Mijikenda on area within the 10-mile zone, even on the Crown land, as they had occupied and cultivated the lands for generations.<sup>256</sup> The government was urged to act rapidly to resolve the land problems, especially unadjudicated claims and the problem

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<sup>252</sup> KNA(Nbi), CA/10/49, D.O. Malindi to P.C. Coast, 10 April 1954.

<sup>253</sup> KNA(Nbi), CA/10/49, D.O. Malindi to D.C. Kilifi, 5 January 1956.

<sup>254</sup> However, the re-implementation of the L.T.O. in 1956 coincided with the nationwide implementation of registration of title in Kenya; see Swynnerton, R.J.M., **A Plan to Intensify Development of African Agriculture in Kenya** (Government Printer, Nairobi, 1954), Sorrenson, **Land Reform**; P. Shipton, ‘The Kenyan Land Tenure Reform: Misunderstandings in the Public Creation of Private Property’, in R.E. Downs and S.P. Reyna (eds.), **Land and Society in Contemporary Africa** (University Press of New England, Hanover, 1988), pp. 91-135.

<sup>255</sup> KNA(Nbi), CA/10/298, Confidential, Report on Land Problems-Coast Province, 1961.

<sup>256</sup> KNA(Nbi), CA/10/298, Confidential, Report on Land Problems-Coast Province, 1961.



of squatters at the coast. The local officials argued that the effect of the lack of any continuity of government actions in resolving land issues at the coast had begun to show in the region. Furthermore, the political agitation made the majority of the inhabitants of the region had begun to question the validity of the Land Registration Court. Officials reminded the government that at the coast “the whole prestige and authority of the government” in relation to land was “being brought to disrepute”.<sup>257</sup>

“If we fail to clear up the present anomalies in the Coastal lands before independence, if not before responsible Government is granted, there will be chaos, because even responsible African politicians have queried the validity of titles there to a degree probably not done elsewhere, nor are the Coastal landlords as able as are the European farmers to protect their rights. Since the beginning of the Protectorate they have looked to the British government for protection. When the Protection is removed these claim may very well be solved by expropriation, injustice and violence. Failure to settle these claims may equally prejudice the future of the Protectorate as federal or otherwise autonomous territory.”<sup>258</sup>

### **Conclusion**

Only as the L.T.O was carried out did the government come to realize the true complexity of land tenure in Kenya’s coastal districts, and to a very large extent the problems that were encountered in the field during the work of the L.T.O. took the government by surprise. On one side, local inhabitants showed their passive resistance to the ‘new order’ imposed by their colonial masters through the L.T.O. They showed that they had little inclination to participate in the implementation of the L.T.O. Without their active support, it proved impossible to enforce the legislation in an effective manner. On the other side, the colonial government was in large part to blame for the failure of the L.T.O. Government simply did not devote adequate resources to the problem, either in terms of finance or manpower. The amount of revenue collected under the L.T.O. did not cover even half of the expenditure between 1910 and 1922. The failure to impose the L.T.O. uncovered the main weakness of the colonial government, namely the failure to work as a coordinated unit. In fact, the government had been more concerned with securing land for their own purposes than with establishing title for the peoples of the coast, and in this fact lay the real problem. The Ordinance was conceived primarily as an instrument for securing land and removing the ‘ambiguities’ of local practices.

The implementation of the L.T.O. at the coast was only partially successfully in achieving what was wanted by Government. The Ordinance managed to secure individual title for some people, but others found themselves denied lands they thought they owned. All came to realize that the criteria used by the colonial government in adjudicating land matters bore little relationship to local understandings of custom and rights. The establishment of the geographical and legal boundaries on land ownership at the coast successfully prevented the practice of what government termed ‘illegal’ land

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<sup>257</sup> KNA(Msa), CY/1/83, D.O. Malindi to P.C. Coast, 11 April 1959; KNA (Nbi), CA/10/298, Confidential, Report on Land Problems-Coast Province, 1961.

<sup>258</sup> KNA(Nbi), CA/10/298, Confidential, Report on Land Problems-Coast Province, 1961.



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sale. But the L.T.O. failed to facilitate the transfer of land to Europeans as government had desired. The L.T.O. may have failed in the aims of the colonial government, but it impacted upon the communities of Kenya's coast in important ways all the same. Today, the unfinished business of the L.T.O. especially unadjudicated claims submitted created a strong legacy of colonialism that strongly affected coastal societies in Kenya. The situation of land problems after the introduction and implementation of the Ordinance turned from bad to worse due to its unfinished business.