

70
61-1-62

Tanganyika

2, 1962

IN THE PRIVY COUNCIL

No. 29 of 1960

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT DAR ES SALAAM

B E T W E E N :-

ALIMAHOMED OSMAN

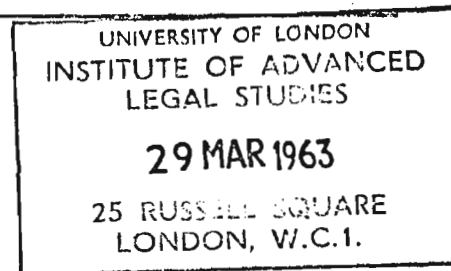
Plaintiff-Appellant

- and -

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

Defendant-Respondent

RECORD OF PROCEEDINGS



68188

GRAHAM PAGE & CO.,
Whitehall House,
41, Whitehall,
London, S.W.1.

Solicitors for the Appellant.

KNAPP-FISHERS & BLAKE & REDDEN,
31, Great Peter Street,
Westminster, S.W.1.

Solicitors for the Respondent.

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT DAR ES SALAAM

B E T W E E N

ALIMAHMED OSMAN

Plaintiff-Appellant

- and -

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

Defendant-Respondent

RECORD OF PROCEEDINGS
INDEX OF REFERENCE

| No. | Description of Document | Date | Page |
|-----|---|--|----------------|
| | <u>IN THE HIGH COURT OF TANGANYIKA</u> <u>AT DAR ES SALAAM</u> | | |
| 1 | Plaint | 26th August 1957 | 1 |
| 2 | Written Statement of Defence | 2nd December 1957 | 3 |
| 3 | Reply | 9th December 1957 | 5 |
| 4 | Ruling of Mahon, J. | 28th February 1958 | 6 |
| 5 | Decree rejecting Plaintiff. | 28th February 1958 | 8 |
| | <u>IN THE COURT OF APPEAL FOR</u> <u>EASTERN AFRICA AT DAR ES SALAAM</u> | | |
| 6 | Memorandum of Appeal | 15th April 1958 | 9 |
| 7 | Judgment of Court of Appeal. | 29th April 1958 Reasons given 5th May 1958 | 10 |
| | <u>IN THE HIGH COURT OF TANGANYIKA</u> <u>AT DAR ES SALAAM</u> | | |
| 8 | Amendment of Pleadings | 16th June 1958 | 14 |
| | <u>Evidence for the Plaintiff</u> | | |
| 9 | Alimahomed Osman | 16th June 1958 17th June 1958 11th July 1958 | 15 20 26 |

| No. | Description of Document | Date | Page |
|-----|---|-------------------|------|
| | <u>Evidence for the Defendant</u> | | |
| 10 | Allen Stewart M. Hall | 11th July 1958 | 28 |
| 11 | Hisancinus Raymond Msefya | 14th July 1958 | 35 |
| 12 | Nelson Sundelt Uhamgama | 14th July 1958 | 37 |
| 13 | Yashwont Savailal Amin | 15th July 1958 | 40 |
| 14 | Notes of Address by Counsel for Defendant | 19th July 1958 | 44 |
| 15 | Notes of Address by Counsel for Plaintiff | 19th July 1958 | 46 |
| 16 | Judgment. | 4th November 1958 | 48 |
| 17 | Order. | 4th November 1958 | 60 |
| | <u>IN THE COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM</u> | | |
| 18 | Memorandum of Appeal | 6th January 1959 | 61 |
| 19 | Order. | 11th June 1959 | 63 |
| 20 | Judgment. | 3rd December 1959 | 64 |
| 21 | Order of Court of Appeal for Eastern Africa at Dar es Salaam | 3rd December 1959 | 83 |
| 22 | Order allowing Final Leave to Appeal to Her Majesty in Council | 20th May 1960 | 84 |

E X H I B I T S

| Exhibit Mark | Description of Document | Date | Page |
|--------------|--|-----------------|------|
| | <u>Plaintiff's Exhibits</u> | | |
| P.1. | Contract, Ngoni-Matengo Co-operative Marketing Union Ltd. and Alimahomed Osman | 14th April 1955 | 107 |
| P.2. | Tender, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 28th March 1955 | 104 |

| Exhibit Mark | Description of Document | Date | Page |
|-----------------------------|--|---|---|
| P.3. | List of Collecting (or Buying) Centres in Southern Province covered by Ngoni-Matengo Co-operative Marketing Union Ltd. | Undated | 160 |
| P.4. (1) to (4) | Various Order Forms, Ngoni-Matengo Co-operative Marketing Union Ltd. to Alimahomed Osman | June 1957 | 136 |
| P.4-(5) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Alimahomed Osman | 28th June 1957 | 140 |
| P.6. | Running Cost per mile of an Austin Truck | Undated | 162 |
| P.7(a) | Letter, Dodd & Co. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 8th July 1957 | 140 |
| P.7(b) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Dodd & Co. | 11th July 1957 | 141 |
| P.8. | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Smith Mackenzie & Co. Ltd. | 6th September 1955 | 114 |
| <u>Defendant's Exhibits</u> | | | |
| D.2. | Contracts, Ngoni-Matengo Co-operative Marketing Union Ltd. and United Africa Company (T) Ltd. | 4th July 1957 6th August 1957 19th August 1957 23rd August 1957 2nd September 1957 24th September 1957 17th October 1957 1st November 1957 14th November 1957 | 126 127 128 129 130 131 132 134 135 |
| D.3. | Delivery Note, 337. | 27th February 1958 | 159 |
| D.4(i) | Delivery Note, 169. | 13th November 1957 | 156 |
| D.4(ii) | Delivery Note, 168 | 13th November 1957 | 156 |

| Exhibit Mark | Description of Document | Date | Page |
|----------------|---|---------------------|------|
| D.4. (iii) | Delivery Note, 167. | 13th November 1957 | 155 |
| D.4(iv) | Delivery Note, 171. | 15th November 1957 | 157 |
| D.4(v) | Delivery Note, 170. | 15th November 1957 | 157 |
| D.4(vi) | Delivery Note, 166. | 11th November 1957 | 155 |
| D.4(vii) | Delivery Note, 172. | 5th December 1957 | 158 |
| D.5(i) | Delivery Note, 165. | 11th November 1957 | 155 |
| D.5(ii) | Delivery Note, 1229. | 15th June 1957 | 149 |
| D.6(i) | Delivery Note, 1385. | 20th June 1957 | 149 |
| D.6(ii) | Delivery Note, 1386. | 21st June 1957 | 150 |
| D.6(iii) | Delivery Note, 1387. | 22nd June 1957 | 150 |
| D.6(iv) | Delivery Note, 1388. | 24th June 1957 | 151 |
| D.6(v) | Delivery Note, 1389. | 25th June 1957 | 151 |
| D.6(vi) | Delivery Note, 1390. | 26th June 1957 | 152 |
| D.6(vii) | Delivery Note, 1391. | 27th June 1957 | 152 |
| D.6 (viii) | Delivery Note, 1392. | 28th June 1957 | 153 |
| D.6(ix) | Delivery Note, 335. | 12th December 1957 | 158 |
| D.6(x) | Delivery Note, 336. | 27th February 1958 | 159 |
| D.7. | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 15th June 1957 | 138 |
| D.8. | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 3rd August 1957 | 142 |
| D.9(i) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 22nd June 1957 | 139 |
| D.9(ii) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 24th August 1957 | 143 |
| D.10(i) | Delivery Note, 397. | 18th September 1957 | 154 |
| D.10(ii) | Delivery Note, 1240. | 26th September 1957 | 154 |
| D.10. (iii) | Delivery Note, 389. | 20th August 1957 | 153 |

| Exhibit Mark | Description of Document | Date | Page |
|--------------|--|--------------------|------|
| D.11. | Bye-Laws of Ngoni-Matengo Co-operative Marketing Union Ltd. | 4th January 1937 | 86 |
| D.12(a) | Letter, Tanganyika Transport Co. Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 27th November 1957 | 146 |
| D.12(b) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 29th November 1957 | 147 |
| D.13. | Letter, United Africa Company (T) Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 25th February 1958 | 147 |
| D.14(a) | Letter, Tanganyika Transport Company Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 1st June 1957 | 138 |
| D.14(b) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 31st May 1957 | 137 |
| D.15. | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 26th November 1957 | 146 |
| D.16(i) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 23rd November 1957 | 145 |
| D.16(ii) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 31st August 1957 | 144 |
| D.16 (iii) | Letter, Tanganyika Transport Company Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 30th August 1957 | 144 |
| D.16 (iv) | Letter, Tanganyika Transport Company Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 24th August 1957 | 143 |

| Exhibit Mark | Description of Document | Date | Page |
|--------------|--|------------------|------|
| D.16(v) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 23rd August 1957 | 142 |
| D.16(vi) | Letter, United Africa Company (T) Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 12th May 1958 | 148 |
| D.18(a) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 28th March 1955 | 105 |
| D.18(b) | Tender, Another Party to Ngoni-Matengo Co-operative Marketing Union Ltd. | 26th March 1955 | 101 |
| D.18(c) | Tender, S.S.Lodhi to Ngoni-Matengo Co-operative Marketing Union Ltd. | 28th March 1955 | 103 |
| D.18(d) | Tender, Tanganyika Transport Company Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 27th March 1955 | 102 |
| D.19(i) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Alimahomed Osman. | 31st July 1956 | 115 |
| D.19(ii) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 1st August 1956 | 116 |
| D.19(iii) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Alimahomed Osman. | 2nd August 1956 | 116 |
| D.19(iv) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 6th August 1956 | 117 |
| D.19(v) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 14th August 1956 | 119 |
| D.19(vi) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Alimahomed Osman. | 15th August 1956 | 119 |
| D.20(i) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 9th August 1956 | 117 |

| Exhibit Mark | Description of Document | Date | Page |
|--------------|--|---------------------|------|
| D.20(ii) | Letter, Tanganyika Transport Co. Ltd. to Ngoni-Matengo Co-operative Marketing Union Ltd. | 9th August 1956 | 118 |
| D.20(iv) | Letter, Ngoni-Matengo Co-operative Marketing Union Ltd. to Tanganyika Transport Company Ltd. | 15th August 1956 | 120 |
| D.21(i) | Letter, Department of Co-operative Development to Alimahomed Osman and Others | 17th August 1955 | 113 |
| D.21(ii) | Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd. | 12th September 1955 | 115 |
| D.22(i) | Contract, United Africa Company (Q) Ltd. and Ngoni-Matengo Co-operative Marketing Union Ltd. | 28th July 1956 | 121 |
| D.22(ii) | Contract, United Africa Company (Q) Ltd. and Ngoni-Matengo Co-operative Marketing Union Ltd. | 10th September 1956 | 122 |
| D.22(iii) | Contract, United Africa Company (Q) Ltd. and Ngoni-Matengo Co-operative Marketing Union Ltd. | 18th September 1956 | 123 |
| D.22(iv) | Contract, United Africa Company (Q) Ltd. and Ngoni-Matengo Co-operative Marketing Union Ltd. | 15th October 1956 | 124 |
| D.22(v) | Contract, United Africa Company (T) Ltd. and Ngoni-Matengo Co-operative Marketing Union Ltd. | 6th November 1956 | 125 |
| D.23. | Running cost of a 5-ton Austin Truck | 15th June 1958 | 163 |

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT PRINTED

| Description of Document | Date |
|--|--------------------|
| Order granting Conditional Leave to Appeal to Her Majesty in Council | 10th February 1960 |
| Security Bond by National and Grindlays Bank Limited, Dar es Salaam, to Deputy Registrar for Court of Appeal for Eastern Africa at Dar es Salaam, on Appellant's behalf for the costs of this Appeal up to £500. | |

LIST OF EXHIBITS NOT TRANSMITTED TO THE PRIVY COUNCIL

| Exhibit Mark | Description of Document |
|--------------|--|
| P.5. | List of Lorries and Registration Numbers, two of them. |
| D.1. | Comprising of :- <ul style="list-style-type: none"> (i) Paddy Marketing Account (Ungeni) 1957 (ii) Unyanja Paddy Marketing Account 1957 (iii) Groundnuts Marketing Account 1957 (iv) Sunflower Marketing Account 1957 (v) Sesame Marketing Account 1957 (vi) Schedule of Motor Vehicles as at 31st December 1955. (vii) Schedule of Motor Vehicles as at 31st December 1954. |
| D.17. | A Delivery Book |

LIST OF EXHIBITS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT PRINTED

| Exhibit Mark | Description of Document |
|--------------|---|
| D.20(iii) | Letter, Tanganyika Transport Co. Ltd. to Unyanja Farmers Co-operative Society Ltd. 7th August 1956 |

1.

IN THE PRIVY COUNCIL

No.29 of 1960

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT DAR ES SALAAM

B E T W E E N :-

ALIMAHOMED OSMAN

Plaintiff-Appellant

- and -

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

Defendant-Respondent

10

RECORD OF PROCEEDINGS

No. 1.

PLAINT

In the High
Court.

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA AT
DAR ES SALAAM

Civil Case No.86 of 1957

No. 1.

Plaint.

ALIMAHOMED OSMAN

Plaintiff

26th August,
1957.

versus

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

Defendant

20

The Plaintiff above named states as follows:-

1. The Plaintiff is an Indian Merchant and Transport Contractor of Songea whose address for the purpose of service in this suit is care of Messrs. Dodd & Co., Advocates, National Bank Chambers, Dar es Salaam.

2. The Defendant is a body corporate registered with limited liability under the provisions of the Co-operative Societies Ordinance (Cap.211), carrying on business and having its registered office at Songea, which is its address for service.

30

3. The Plaintiff is entitled, under the terms of a contract in writing made between the parties to this suit and dated the 14th April, 1955, to the

In the High Court.

No.1.

Plaint.

26th August, 1957

- continued.

exclusive right to supply motor transport for the carriage of the goods mentioned in the Schedule to the said contract, and the Defendant is bound by a corresponding obligation to employ the motor vehicles of the Plaintiff for the carriage of all such goods. The Plaintiff craves leave to refer the Honourable Court to the terms of the said contract, a copy of which is annexed hereto and marked "A".

4. In breach of the said contract the Defendant has entered into contracts with a third party, upon terms which provide for the transport and carriage of the current year's crops of oil seed and other produce handled by the Defendant, in motor vehicles belonging to persons other than the Plaintiff. 10

5. In further breach of the said contract and, in disregard of the exclusive right which it has granted to the Plaintiff, the Defendant has allowed, and is permitting, the said crops to be transported and carried during the current produce season in motor vehicles belonging to a firm of transport contractors, other than the Plaintiff. 20

6. By reason of the said breach of contract, the Plaintiff is being deprived of his exclusive right to perform the said contract for the supply of motor transport and has suffered loss and damage and is likely to suffer further loss and damage amounting to Sh.121,635/- particulars of which are as follows:- 30

PARTICULARS OF DAMAGE

Plaint amended by Judge.

| | |
|---|-----------------------|
| Profit on moving an estimated 765 tons of produce to Mtwara; | |
| 150 trips @ Shs.695/- per trip | Shs.106,335.00 |
| Profit on supplying local transport; 756 tons of produce @ Shs.20/- per ton | Shs. 15,300.00 |
| | <u>Shs.121,635.00</u> |

7. For the purposes of jurisdiction the value of the subject matter of this suit exceeds - Shs. 30,000.00. 40

WHEREFORE the Plaintiff prays judgment against the Defendant for :-

3.

- (a) Shs.121,635/- by way of damages.
- (b) Interest on the decretal amount until payment.
- (c) Costs of this suit.
- (d) Such further or other relief as this Honourable Court may deem fit to grant.

In the High Court.

No.1.

Plaint.

26th August, 1957

- continued.

Sgd. H.G. Dodd

for PLAINTIFF.

10 What is stated above is true to the best of my knowledge, information and belief.

DATED at Dar es Salaam this 28th day of August, 1957.

Sgd. Y.M. Desai,
COURT CLERK.

No. 2.

WRITTEN STATEMENT OF DEFENCE

No.2.

Defence.

2nd December, 1957.

The Defendant above-named states as follows :-

1. Paragraph 1 and 2 of the Plaintiff are admitted.

20 2. The Defendant admits that a contract was made between the parties and that the copy annexed to the Plaintiff is a correct copy, but does not admit that the effect of the said contract is as alleged by the Plaintiff in paragraph 3 of the Plaintiff.

3. As regards paragraph 4 of the Plaintiff, the Defendant admits having entered into contracts with certain other parties for sale to them of certain produce, the particulars of which are as follows:-

30 A. With the United Africa Company (T) Limited for the sale of sunflower seed and sesame-seed "ex sellers godown at buying centres". Copies of contracts Nos. UAC 866 of 4/7/57, UAC 54 of 6/8/57, UAC 140 of 19/8/57, UAC 189 of 23/8/57, UAC No.288 of 2/9/57 and UAC 321 of 24/9/57 are annexed hereto and marked "A", "B", "C", "D", "E" and "F".

Exhibit D.2.

40 B. With the Tanganyika Transport Company Limited, for the sale of paddy 1957 crop, as set out in two letters, one dated the 31st

Exhibit D.14(b).

In the High
Court.

No.2.
Defence.
2nd December,
1957
- continued.

Exhibit
D.14(a)

May 1957 from the Defendant to the Tanganyika Transport Company Limited dated 31/5/57 and one from the said Tanganyika Transport Company Limited to the Defendant dated 1/6/57. The said letters are annexed hereto and marked "G" and "H" respectively.

4. The Defendant states that in the case of oil seeds no road transport is used or required prior to delivery to the buyer at the sellers godown at buying centres, and that after delivery to the buyer at the said buying centres the Defendant has no property in the said oil seeds and the said oil seeds are not after delivery as aforesaid being handled by the Defendant within the meaning of the contract between the Plaintiff and the Defendant, and that the Defendant has committed no breach of the said contract. 10
5. The Defendant states that in the case of paddy the buyer that is to say the Tanganyika Transport Company Limited took delivery at the buying centres, and this variation of the terms of the contract mentioned in para. 3 B of the Written Statement of Defence was mutually agreed between the said Company and the Defendant. 20
6. The Defendant further states with reference to the sale of paddy that the property passes to the buyer at the places where delivery to the buyer is made and that after delivery the said paddy is not being handled by the Defendant within the meaning of the contract between the Plaintiff and the Defendant, and that the Defendant has committed no breach of the said contract. 30
7. As regards paragraph 5 of the Plaint, the Defendant denies that it has allowed or is permitting the said crop (which the Plaintiff has particularised by letter as meaning groundnuts, sunflower, simsim and paddy) to be transported and carried in motor vehicles belonging to the firm of transport contractors other than the Plaintiff. The Defendant states that all transport of crops over the movement of which the Defendant has control has been and is offered to the Plaintiff under the contract between the Plaintiff and the Defendant. 40

5.

8. The Defendant accordingly denies that there has been any breach of contract by the Defendant, and that the Plaintiff has suffered damage as alleged or at all.

WHEREFORE the Defendant prays that the suit be dismissed with costs.

Sgd. Adam Rashidi
President

for and on behalf of
NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

DEFENDANT.

Ngoni-Matengo Co-Operative
Marketing Union Limited

S E A L

Songea District.

VERIFICATION

What is stated above is true to the best of my knowledge information and belief.

DATED this 2nd day of December, 1957.

Signed: Adam Rashidi.

No. 3.

REPLY.

The Plaintiff above-named states as follows :-

1. The Plaintiff joins issue with the Defendant on its written statement of defence save in so far as the same consists of admissions.
2. The Plaintiff denies each and every allegation contained in the written statement of defence, other than admissions, as if such allegations were individually set out and denied seriatim.

WHEREFORE the Plaintiff repeats his plaint and prays that judgment be entered for the Plaintiff on the Plaint as prayed.

Sgd. H.G. Dodd
for PLAINTIFF.

In the High
Court.

No.2.

Defence.

2nd December,
1957
(continued)

No.3.

Reply.

9th December,
1957.

In the High Court.

What is stated above is true to the best of my knowledge, information and belief.

No.3.

DATED at Dar es Salaam this 9th day of December, 1957.

Reply.

Sgd. H.G. Dodd
for PLAINTIFF.

9th December, 1957
- continued.

PRESENTED for filing this 13th day of December 1957.

Sgd.
Court Clerk.

10

No.4.

No. 4.

Ruling of Mahon, J.

RULING OF MAHON, J.

28th February, 1958.

In this suit the Plaintiff's claim is for damages for breach of contract. The Plaintiff is entitled under the terms of the contract in writing made between the parties on the 14th April, 1955, to quote paragraph 3 of the Plaint to the exclusive right to supply motor transport, for the carriage of the goods mentioned in the Schedule of the said contract, and the Defendant is bound by a corresponding obligation to employ the motor vehicles of the Plaintiff for the carriage of all such goods

20

..... The alleged breaches are pleaded thus in paragraphs 4 and 5:

"4. In breach of the said contract the Defendant has entered into contracts with a third party, upon terms which provide for the transport and carriage of the current year's crops of oil seed and other produce handled by the Defendant, in motor vehicles belonging to persons other than the Plaintiff.

30

5. In further breach of the said contract, in disregard of the exclusive right which it has granted to the Plaintiff, the Defendant had allowed, and is permitting, the said crops to be transported and carried during the current produce season in motor vehicles belonging to a firm of transport contractors, other than the Plaintiff".

It is submitted on behalf of the Defendant by Mr. Murray that the Plaint discloses no cause of action. It is, I think, well settled that this expression means every fact which if traversed it

40

would be necessary for the Plaintiff to prove in order to succeed. It does not comprise all the evidence necessary to prove each fact but every fact which must be proved if the Plaintiff is to succeed. This claim, being brought on a contract, the contract must be alleged, as has been done in paragraph 3, and then its breach. As regards the alleged breaches, it is contended by Mr. Murray that as pleaded they do not necessarily constitute breaches.

In the High Court.

No.4.

Ruling of Mahon, J.

28th February, 1958

- continued.

Mr. Dodd, for the Plaintiff, has argued on the other hand that it is only necessary to plead that a contract has been made and that it has been broken. I agree, but particulars of the alleged breaches should, in my opinion, be set out in the Plaint and this has not been done. For example, in paragraph 4 reference is made to contracts with the third party, but there is nothing to indicate that these contracts are breaches of the contract between the parties to this suit and the same comment applies to paragraph 5 of the Plaint. If, as the Plaint suggests, a quantity of produce has been removed to Lindi, this does not necessarily constitute a breach, because the relevant clause in the contract, a copy of which is annexed to the Plaint, refers to the transport of baled tobacco or any other primary produce from the Defendant's factory or godown at Songea, to the ports of Lindi and/or Mbamba Bay or to any point on the Southern Province Railway or port, served by that railway or to Mjombe in the Southern Highlands Province. If the contention is that this produce was transported from the Defendant's factory or godown at Songea in breach of contract, this is a fact which the Plaintiff would have to prove. It would thus be part of the cause of action and as such would need to be pleaded. To merely allege breaches, as has been done here without giving any particulars, is in my opinion too general an averment. The Defendant is entitled to have particulars of the alleged breaches set out in the Plaint so that they may be dealt with. From the fact that the Defendant has entered into a contract with a third party upon certain terms, it does not necessarily follow that there has been any breach of its contract with the Plaintiff. The Plaint is in my view too vague and lacks details of the alleged breaches which should have been pleaded.

For the reasons given I uphold the submission

In the High Court.

No.4.

Ruling of Mahon, J.
28th February, 1958
- continued.

made by learned Counsel for the Defendant and order that the Plaint be rejected with costs.

G.M. Mahon,
JUDGE.

Dar' es Salaam.
28th February, 1958.

Read over in presence of Harrison for Dodd and Murray.

Sgd. G.M. Mahon
28/2/58.

No.5.

Decree rejecting Plaintiff.

28th February, 1958.

No. 5.

DECREE REJECTING PLAINT.

(Issued under Rule 21 of E.A.C.A. Rules, 1954)

Claim for Shillings Ninety-six thousand (Shs.96,000/-) as damages, together with Interest and costs.

This case coming on this day for final disposal before the Honourable Mr. Justice Mahon in the presence of J.V.S. Harrison, Esq., Advocate for Messrs. Dodd & Co., Advocate for the Plaintiff and Fraser Murray, Esq., Advocate for the Defendants It is ordered that the Plaint be and is hereby rejected.

IT IS FURTHER ORDERED that the Plaintiff do pay to the Defendants the taxed costs of this suit with interest thereon at the rate of six per cent per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this 28th day of February, 1958.

B.O. Nicholson
ACTING REGISTRAR.

Issued & Signed: 20/3/58.

No. 6.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA AT DAR ES SALAAM

CIVIL APPEAL NO.29 of 1958

(In the Matter of an intended Appeal)

BETWEEN :

ALIMAHOMED OSMAN Appellant

- and -

10 NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED Respondent

(Appeal from a ruling of the High Court of Tangan-
yika at Dar es Salaam (The Honourable Mr. Justice
Mahon) dated the 28th day of February, 1958 in
Civil Case No.36 of 1957

Between:

ALIMAHOMED OSMAN Plaintiff

- and -

20 NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED Defendant

MEMORANDUM OF APPEAL

The Appellant above-named appeals against the rul-
ing of the Honourable Mr. Justice Mahon that the
Plaint disclosed no cause of action on the follow-
ing amongst other grounds -

1. The Honourable Judge erred in law in ruling
that the Plaintiff disclosed no cause of action.

2. The Learned Judge misdirected himself in law
on the submissions by the Respondent that the
30 Plaintiff disclosed no cause of action.

3. The Learned Judge erred in disregarding the
Pleadings in paragraphs 4, 5 and 6 of the Plaintiff
which, it is submitted constitute a valid cause of
action where it is alleged that the Defendant com-
mitted a breach of its contract with the Plaintiff
by entering into a contract with a third party
which caused the Plaintiff to be deprived of his

In the Court
of Appeal.

No. 6.

Memorandum of
Appeal.

15th April,
1958.

In the Court
of Appeal.

exclusive right to transport the goods of the De-
fendant in accordance with the terms of the Con-
tract between the parties.

No. 6.

WHEREFORE the Appellant prays:-

Memorandum of
Appeal.

(a) That the Ruling of the Learned Judge be
set aside with costs.

15th April,
1958

(b) That the High Court of Tanganyika be or-
dered to try the suit according to law.

- continued.

(c) That such further or other relief be
granted to the Appellant as this Honour-
able Court may deem fit.

10

DATED this 15th day of April 1958.

Sgd. H.G. DODD
ADVOCATE FOR THE APPELLANT.

To The Honourable The Judges of Her Majesty's
Court of Appeal for Eastern Africa

and

To Fraser Murray, Thornton & Co., Dar es Salaam,
Advocates for the Respondent.

The address for service of the Appellant is care
of Messrs. Dodd & Co., National Bank Chambers,
Dar es Salaam.

20

FILED the 15th day of April, 1958, at Dar es
Salaam.

(Sgd.) R. Mackay
Deputy Registrar of
the Court of Appeal.

No. 7.

No. 7.

Judgment of
Court of
Appeal.

JUDGMENT OF COURT OF APPEAL

29th April,
1958.

BRIGGS, V.P.

30

Reasons given
on 5th May,
1958.

The Appellant sued the Respondent Company in
the High Court of Tanganyika for damages for
breach of contract. His suit was dismissed on
the ground that the Plaintiff disclosed no cause of
action. We allowed his appeal, set aside the
judgment and decree, remitted the case to the
High Court for hearing and ordered that the Re-
spondent should pay the costs of the appeal, but

that the costs in the Court below should be costs in the cause.

In the Court
of Appeal.

We now give our reasons -

No. 7.

Judgment of
Court of
Appeal.

29th April,
1958

- continued.

Reasons given
on 5th May,
1958.

10 The Plaintiff duly pleaded the contract and a copy of it was annexed and identified. It was a contract for the exclusive supply of motor transport for conveying specified goods, being the property of the Defendants or otherwise relating to their business, on specified routes. The allegations of breach were contained in paragraphs 4 and 5. The breaches intended to be alleged were that the Company had themselves conveyed, or caused to be conveyed by others, goods within the terms of the contract over routes within the terms of the contract and had thereby deprived the Appellant of the profit which, as being exclusively entitled to supply the transport for those journeys, he had the right to make. The Respondents contended however, that the form of paragraphs 4 and 5 of the Plaintiff was such that it was not possible to say that they referred only to transport of goods within the terms of the contract, or to journeys over the routes within the terms of the contract, and that, in consequence, it was not possible to say that all acts of the type alleged were, or must have been, breaches of the contract. They submitted that this vitiated the Plaintiff as a whole, since, if the acts pleaded as breaches of contract were of such a character that they might, or might not, have been in breach of it, there was not sufficient allegation of any breach at all.

20

30

The paragraphs in question were as follows :-

"4. In breach of the said contract the Defendant has entered into contract with a third party, upon terms which provide for the transport and carriage of the current year's crops of oil seed and other produce handled by the Defendant, in motor vehicles belonging to persons other than the Plaintiff".

40 "5. In further breach of the said contract and, in disregard of the exclusive right which it has granted to the Plaintiff, the Defendant has allowed, and is permitting, the said crops to be transported and carried during the current produce season in motor vehicles belonging to a firm of transport contractors, other than the Plaintiff".

Mr. Fraser Murray's argument for the Respondent

In the Court
of Appeal.

No. 7.
Judgment of
Court of
Appeal.

29th April,
1958
- continued.

Reasons given
on 5th May,
1958.

is succinctly set out in the Learned Judge's
note in this form,

"Para. 4.

Cause of action - entering into another con-
tract - is not in itself a cause of action.
No indication that Defendant does not in-
tend to fulfil his contract with Plaintiff.

Para. 5.

Submit no breach of contract. Contract pro-
vides for carriage of certain items from one 10
point to another; it is not a contract which
gives Plaintiff a right to carry goods where-
ever they may be. Plaintiff has not pleaded
that Defendant has not permitted them to be
carried between points over which the Plain-
tiff has the exclusive right of transport.
If I contract to carry goods for A-B, Plain-
tiff does not plead against the cause of ac-
tion against him when he says that I have
allowed other people to carry my goods. 20
Carriage between A & B must be pleaded".

The Learned Judge held that, although the
Plaint contained allegations of breach, these were
in too general terms. He considered that particu-
lars should have been given in the Plaint to enable
the Defendants to deal with the allegations, and
to distinguish between acts in breach of the con-
tract and acts not in breach. It will be seen
that these grounds are not in accordance with the
submissions made to him by the Respondents' Coun- 30
sel. On appeal we did not hear Counsel for the
Appellant, but invited the Respondents' Counsel to
support the judgment. He did so, not on the grounds
given by the Learned Judge but on the lines of his
previous argument. We thought that the judgment
could not be supported on either basis.

As regards the Learned Judge's grounds, it
was conceded by Mr. Murray that he could have asked
for particulars of goods alleged to have been con-
veyed and journeys made and that, if he had done 40
so, particulars could properly have been given,
within the ambit of paragraphs 4 and 5 of the
Plaint, on which it would have been apparent that
the journeys were in breach of the contract. He
added that, if this had been done, the defects in
the Plaint might have been remedied, and that it
was not for him to correct the Plaintiff's mis-
takes. With the last words we agreed, but we

10 thought the remainder of this submission exposed the errors both of the High Court's judgment and of Mr. Murray's own argument. If it was possible, without going outside the bounds of the general allegations of paragraphs 4 and 5, to give particulars which would be specific allegations of acts which were undoubtedly in breach of the contract pleaded, it seemed to us that paragraphs 4 and 5 must sufficiently allege breaches for the purpose of constituting a cause of action, notwithstanding that similar particulars might have been given of acts which would not have been in breach of the contract. But indeed on a more strict view, allegations of acts not in breach would have been outside the true ambit of the paragraphs since the whole of the two paragraphs must be read together, and the words "in further breach of the said contract and in disregard of the exclusive right which it has granted to the Plaintiff", governed the whole. Acts not satisfying those words would not be acts of which particulars would properly be given under the paragraphs. These considerations suffice also to answer Mr. Murray's submissions. The paragraphs did not relate to permitted acts and acts in breach, but only to acts in breach.

30 This does not mean that we in any way approve of the form of the Plaint. We thought it was thoroughly badly drawn. There ought at least to have been some attempt to give particulars of breaches, although it is probable that full particulars could not have been given before discovery. The Plaintiff was, however, content to go to trial without discovery. It is even possible that the Plaint in its present form could have been struck out as embarrassing, although not as disclosing no cause of action. We had therefore little sympathy for the Plaintiff, but equally little for the Defendants who could, as they well knew, have put matters right by a request for particulars, but preferred to stand on an arid technicality, and chose the wrong one. These remarks explain our order as to costs in the High Court.

40 We would add finally that, in our view, the Learned Judge ought, in order to dispose, on the merits of the matters actually in controversy between the parties, to have ordered particulars of the alleged breaches. If this had been done, a good deal of money would probably have been saved. We presume that particulars will be requested and given before the suit is again listed for trial.

In the Court
of Appeal.

—
No. 7.

Judgment of
Court of
Appeal.

29th April,
1958

- continued.

Reasons given
on 5th May,
1958.

10

20

30

40

50

In the Court
of Appeal.

It will then be possible to try the case without
embarrassment or difficulty on either side.

No. 7.

Sgd. K.K.O'Connor,
President.

Judgment of
Court of
Appeal.

F.A.Briggs,
Vice-President.

29th April,
1958
- continued.

A.G.Forbes,
Justice of Appeal.

Reasons given
on 5th May,
1958.

Dar es Salaam 3rd May, 1958.

In the High
Court

No. 8.

10

AMENDMENT OF PLEADINGS

IN HER MAJESTY'S HIGH COURT AT TANGANYIKA
AT DAR ES SALAAM

CIVIL CASE NO.86 OF 1957

No. 8.
Amendment of
Pleadings.
16th June, 1958.

ALIMAHOMED OSMAN Plaintiff

versus

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED Defendant

Coram: Crawshaw, J.

16.6.58. Dodd for Plaintiff.
Fraser Murray for Defendant.

20

Dodd asks that defence witnesses should leave
Court.

Murray objects as not normal practice.

Ruling I see no reason to order the witnesses to
leave, even if I had power to do so.

- Issues
1. What is the true construction of the contract attached to the Plaint, including the meaning of the word 'exclusively' in para. 1 of the Schedule thereto?
 2. Has the Defendant created a breach of the said contract?
 3. If there has been a breach of contract by the Defendant, what damages if any has the Plaintiff suffered?

30

Dodd asks leave to amend Particulars of Damage in Plaint. The amendments have been made in the Particulars of Damage and the written Statement of Defence as printed in this Record.

Murray No objection.

Order Leave granted.

Murray Asks leave to amend para. 5 of Plaint by substituting 'Defendant' for 'Plaintiff' in para. 5 of Written Statement of Defence, and adding words 'mentioned in para 3B of the Written Statement of Defence' where shown. x

10

Murray No particulars have been called for as suggested in final paragraph of E.A.C.A. judgment of 5.5.58, as it was not thought necessary to do so.

x The amendments have been made in the Particulars of Damage and the Written Statement of Defence as printed in this Record.

In the High Court.

No.8.

Amendment of Pleadings.

16th June, 1958
- continued.

No. 9.

EVIDENCE OF ALIMAHOMED OSMAN

Plaintiff's Evidence.

20 P.W.1. Alimahomed Osman - Mohd., affirmed:

No. 9.

My name is Alimohamed Osman, Plaintiff. Read and write English reasonably well, but difficulty in speaking certain words. Entered into agreement attached in Plaint. That shown me is it (put in as Exhibit P.1.) Document now shown me is tender (put in as Exhibit P.2. Murray not objecting). During currency of P.1 no other transport was used by the society other than mine until middle or end of June 1957. Then Defendants gave transport to Tanganyika Transport Co. (hereinafter referred to as T.T.Co.). Since June 1957 I have not been used by the Defendant to transport any of the produce mentioned in Schedule to P.1 except tobacco. Document shown me is list of collecting (or buying) centres in Southern Province covered by the Defendant (put in as Exhibit P.3). It was from these centres that I supplied transport to collect produce for the Society under the Schedule to P.1.

Alimahomed Osman.

16th June, 1958

Examination.

30

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

16th June, 1958.

Examination
- continued.

West of Songea is produced tobacco, simsim, sunflower, paddy and wheat. East of Songea sunflower, simsim paddy and tobacco. East produces more than West. From West side all produce is brought to Songea. Tobacco from West and North and South is brought to Songea. The other produce is kept in markets on main road to Lindi and Mtwara. From East of Songea produce other than tobacco is taken either by Defendant or me to Lindi or Mtwara. In 1955 I provided Defendant with transport for tobacco and a little paddy and wheat from collecting centres. Defendant Company that year did not start buying in bulk. They started in bulk in 1956 and 1957. All produce is brought to main road from interior by transporter. P.3 include the interior and main road centres. At main road centres the produce is weighed and re-bagged. Defendant's produce not carried by me to Lindi and Mtwara in 1956, some of it was carried by T.T.Co. about which I had complained to the Defendant's Secretary. The Secretary told me Defendant was suffering loss in sunflower business and that in future I would be given the transport and no one else. I did not file suit against Defendant in 1956 because I wanted to keep on good relations with them for purposes of my business. Para.1(a) relates to local markets in P.3. In 1956 I carried Defendant's produce from local markets; I carried it all, including from main road markets. In 1956 and 1957 and 1958 I carried all the Defendant's tobacco as shown in para.1(b) of Schedule. In 1955 I did not think I carry anything but tobacco as Defendant bought very little other produce. In 1956 I carried no other produce other than tobacco from Songea to Mtwara or Lindi. In 1957, apart from tobacco, I carried no other produce from Songea to Lindi or Mtwara. In June 1957 I carried 4 loads of sunflower seed from local centres; the order forms shown me relate. On 28th June 1957 I received letter shown me from Defendant (put in as Exhibit P.4 collectively with forms). Since that letter I have not been asked by Defendant to supply any transport under paras. (a) or (b) of para. 1 of Schedule. Defendant has during 1957 handled produce at local centres and under 1(a) of Schedule - paddy, sunflower, wheat and simsim. By 'handled' is meant produce bought by the Defendant.

In contracts attached to Written Statement of Defence, the "buying centres" mentioned therein would be those in P.3. Simsim and sesame are the same. Letters of 31st May and 1st June 1957 attached to Written Statement of Defence refer to

produce carried by T.T.Co. T.T.Co. transported the whole of the produce covered by the contracts annexed to the defence. I was not asked to transport any of it, although I have always been able and willing to do so. I have been given no work under 1(a) and (b) of the Schedule since June 1957, although there has been a good deal of produce handled by Defendant. I have been deprived of the work. I know of no reason for being excluded. No complaint of my work. No notice was given to me under para. 8 of Schedule. I was never consulted before being deprived of the transport. I have always carried out satisfactorily my obligations under P.1. In 1957 I had about 22 vehicles available for P.1. During the currency of P.1 I have used these vehicles for transporting about 25 tons of tobacco for another concern and have used them in my own business a little, including building materials and cement from Lindi. I produce list of vehicles showing date of purchase up to 1957 (put in as Exhibit 5). I bought 12 in 1955 in order to do the work for the Defendant. The list shows value of vehicles, depreciation and vehicles sold and loss and profit and capital value on end of year. The figures were produced by me for income tax purposes. The vehicles bought in 1955 were in June and July. I would not have bought them but for the contract with the Defendant, or if I had known work would be terminated by them. I had told them I would have the vehicles. The Defendant never raised any question under Sec.4 of Schedule. Figures in para. 5 were based on P.2. P.2. was based on exclusive right to do all the work for 3 years. I would have quoted higher prices if contract would have been less than 3 years. I have been a transporter for over 22 years and for Defendant for about 10 years. Before 1952 under contracts for 1 year each. T.T.C. did their work for one year, I forget which. I have provided transport in 1955, 1956 and 1957 for Defendant for purposes in 1(c) and (d) of Schedule and I have no claim against Defendant thereunder. Never had any trouble with Society except in 1956 when they used other transport. We always got on well.

Adjourned to 2.15.

Sgd. E.D.W.Crawshaw

JUDGE.

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

16th June, 1958.

Examination
- continued.

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

16th June, 1958.

Examination - continued.

2.15 Court as before.

Since June 1957 I did not obtain transporting from Defendants for produce other than tobacco to any place in the Southern Province Railways, nor Songea-Mtwara or Songea-Mzimbe nor Songea-Mbando Bay, Songea-Ruhinga, Songea-Nachingwea, Mlinga-Mbando Bay or Mbinga. T.T.C. did that transporting. I knew nothing of the discussions by Defendant with T.T.C. relating to contracts in letters attached to defence. They are competitors of mine in transport business. I do not know why I was not asked to quote for paddy in 1957 crop. Tenders were invited by Defendant for sale of their simsim and sunflower 1957 crops. I was asked to tender, but my tender was not accepted. My tender for sunflower seed was -/38 per kilo including Defendants bags ex-sellers godowns at buying main-road centres. My price was on same terms as those quoted in the contracts of the 4th July attached to defence. The bags would become my property, such is the custom. In my tender, transport would have been at my expense, as I had included that in my offer. I would have been entitled to charge for transport from interior centres to main road centres, but I would have been prepared to have foregone that if my offer had been accepted. I have for some years bought produce from Defendants - sesame and sunflower seeds. My tender for contract referred to in contract of 6th August attached to defence was, I think, -/80 to -/85 per kilo. My terms would have been the same as those in the contract of 6th August to defence. My price was lower and so I did not expect it to be accepted. As to contract to defence of 19th August, my price of -/38 for sunflowers was for whole crop. T.T.Co. were acting as agents for United Africa Co. in purchase of produce in the contracts. I do not know if they were acting as agents in respect of the paddy though, and they may have been principals (Dodd puts in 5 sheets of figures which have been supplied him by Murray for the defence relating to marketing accounts, without necessarily admitting them as correct - put in collectively as D.1 for proving). I have no objection to these accounts (now put in by consent - Murray explains that "P/Receipts" means Receipts of Primary Societies, which are societies which buy from growers and are distinct legal entities from Defendant). I take P/Receipts weights as basis for my claim as they were the weights I carried from interior centres.

10

20

30

40

50

I now say I was to be paid on mileage basis and not on weight -- para. 5(1) of Schedule. "Union weight" in D.1 I understand to mean market main road weight. The Primary Societies are those referred to in para.1(a) of Schedule. I have no concern with primary societies. When charging on weight basis I take the "Union Weight". Everything up to Songea is on mileage basis, but transport of produce from East of Songea to Mtwara and Lindi is on Kilo basis, whether tobacco or other produce. I then take Union weight as basis of claim. Places East of Songea I charge mileage basis from interior to main road even if produce is then going direct to Lindi or Mtwara without passing through Songea, and then weight basis from main road to Lindi and Mtwara. Simsim and sunflower go direct to Lindi or Mtwara if coming from East of Songea.

10

20

30

40

(By consent 9 contracts between Defendant and United Africa Co., put in as D.2 - 6 of them are originals of those attached to defence - Murray says the other 3 had not been received when Written Statement of Defence was prepared, although had been when filed). I produce list of estimated profit I should have made on journeys from Songea to Mtwara (put in as P.6). The -/90 is included in the 405/-. I accept the figure 765 tons in D.1 which increases my claim in first part of particulars to 106.335/-.

The 15,000/- in my claim represents mileage based on 10,000 miles to carry 750 tons. At 765 tons I claim 300/- more. In 1956 I carried on local transport 600 tons; I was told this by Secretary of Defendant. This included tobacco. My lorries are all 5 tonners and each therefore carries 5,000 kilos. (At request of Dodd the figure in plaint of 104,250/- is now amended, on the figures in D.1, to 106,335/- and the tons to 765. It is agreed that with the figures of weight in D.1 and known mileages and the number of journeys necessary with 5 ton lorries, the amount of the claim for local transport can now be worked out). Until June 1957 no other transporter but I was used to transport Defendants' produce.

End of Examination in chief.

Adjourned to tomorrow at 9 a.m.

Sgd. E.D.W.Crawshaw,
JUDGE.

☐ So amended as printed in this Record.

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

16th June, 1958

Examination
- continued.

In the High
Court.

17.6.58. Court as before.

Plaintiff's
Evidence.

P.W.1. Alimahomed Osman - re-affirmed:

No. 9.

I now claim 15,300/- for local transport instead of 15,000/-. This is based on the 765 tons in D.1. (Plaint is amended accordingly^x). In respect of periods prior to 1957 I have worked out my profit on local transport for the Defendant at 20/- per ton, which I regard as reasonable figure.

Alimahomed
Osman.

17th June, 1958

Cross-examined

Examination
- continued.

Litola is 27 miles on main road from Songea to Lindi. Transport is required from interior producers to Litola; the areas are shown in Exhibit P.3. There is market in Litola and also in interior places. Produce from Litola to elsewhere is not local transport. By local transport I mean tobacco carried to Songea and other produce carried from interior to main road and from the main road in Songea. Produce taken from main road depots to anywhere but Songea is not local transport. Produce from Litola usually goes to the Coast unless specially asked by Defendants to go to Songea. Matombo, Mdomba I think are the only other places on main road on sunflower marketing account. Mzinga is also on main road. The names of the places in left hand column of this account are also the names of primary societies. Primary societies each have outlying collecting centres to which growers carry their produce on their heads. I claim for local transport from these collecting centres. I cannot say how much produce came from each collecting centre in 1957. Some produce is also brought personally by growers to Litola itself and to other main central collecting centres. I cannot say how much was personally carried by growers to the centres. I should not be entitled to claim for this. Until I get figures I cannot adjust my claim. I claim 20/- per ton for local transport. The average journey for local transport would be 140 to 150 miles. Some journeys are short and some long. It is possible the average single journey between the places on the sunflower marketing account and the main road is 25 miles. My charge was 1/50 mile. That is 75/- for 50 miles. If lorry is full it works out at 15/- per ton, but lorry not usually full. This is before deduction of running costs. I cannot say how much my lorries would have carried for Defendant in 1957 if they

10

Cross-
Examination.

20

30

40

^x So amended as printed in this Record.

had used me. Sunflower and other produce was generally taken to Mtwara, that is why I based my claim on it. It is the farthest place for transport. In years prior to 1957 I had never transported produce to Mtwara. The transport work I did in 1956 for the Defendant was from interior centres to the main road and tobacco to Lindi and Mtwara the railhead. I cannot remember carrying any produce to Mtwara in 1956 for the Defendant although I may have done so once or twice. Defendant has always instructed me to take produce to Lindi or Mtwara. I cannot say what instructions the Defendant would have given me in 1957. The Defendants were under an obligation in the contract to employ me to transport all their produce in Songea district to the coast, but not if the produce goes only to an intermediate place. In fact it must all go to the coast, because they are export products. I cannot say if in fact it all went to coast in 1957, but most of it has gone and on that I based my claim. I claim in respect of the 1553 kilos of sesame shown still at Songea D.1 as I am entitled to transport it. The letters to defence show that produce has been sold. The delivery note shown me is mine (put in as Exhibit D.3). It is possible I may have forgotten transporting the 1553 kilos into Songea (the witness had previously said he had not done so); I did not mean to tell a lie. It is possible that a lorry called to carry tobacco may have been used to carry other produce; in that case I would not know. It may have happened. Twice my lorries were used in 1957 for carrying coffee and chillies for Defendant. I think these are the only times my lorries were used in 1957 for carrying non-tobacco produce for Defendant. I also carried wheat for Defendant in 1957 from interior to Songea. The delivery notes shown me are mine (put in collectively as D.4). These other nine delivery notes are mine (put in as Exhibit D.5). I cannot say whether D.5 relate to tobacco or other produce. They relate to produce carried for Defendants. My driver has signed them. I do not know why the word "Tobacco" in any of the notes in Exhibit D.5 has been crossed out and other words substituted. As to P.4 I was only interested in mileages and not as to produce carried about which I do not know. I have forgotten details of the local transport I in fact did. I have a record which shows the mileage done and is signed by Defendant; it is in Songea. I get

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

17th June, 1958.

Cross-
Examination
- continued.

In the High
Court.

Plaintiff's
Evidence.

No. 9.

Alimahomed
Osman.

17th June, 1958.

Cross-
Examination
- continued.

order forms from the Defendant saying what my lorries are required for but I do not know what in fact they are used for. I admit carrying $1\frac{1}{2}$ tons (25 bags) of chillies in November 1957 for Defendant to Lindi. I was given work under the contract in 1957 by Defendant in respect of produce other than that in respect of which I am claiming and I have no complaint about that. I have carried paddy for the Defendant since June 1957. I agree the 2 delivery notes shown me (put in as Exhibit D.6) relate to my transport of paddy for Defendant - over 5,000 kilos. I have been paid for this and it is not included in the 765 tons of my claim. It might be included in D.1. Paddy is sold on coast or anywhere else. T.T.C. are merchants like me as well as transporters. They have rice and flour mill at Tunduru. They were entitled to buy from Defendant. Defendant's are in breach of contract if they sell to T.T.Co; that is what they have done wrong. I am not objecting to the sale, but only to the transport. Leaving out of the question the matter of transport I had no objection to the sale to T.T.Co. The paddy bought by T.T.Co., from Defendant might have gone to T.T.Co's. mill at Tunduru, or they might have sold to someone else at higher price. I should have expected to transport the paddy for T.T.Co. If transport was to Tunduru I could not charge price to coast. I only tendered in 1957 for purchase from Defendant of sunflower, simsim and groundnut. The Secretary wrote me a chit inviting me to tender. I had written to Defendant saying that if they invited to sell I should be informed. The 2 letters shown me are they (put in collectively as Exhibit D.7). I knew other people were making tenders. I knew that in 1956 the United Africa Co. had been successful in tendering. I had objected. They had taken delivery at main road depots. I did not remind the Defendant in 1957 that if I was not successful in my tender, yet I must be given the transport; I relied on my complaint to secretary of Defendant in 1956. I did not complain in 1957 that Defendants were not entitled to sell ex-Songea. If my tender for purchase of produce had been successful I should not have charged to (sic) transport as I had already taken that into consideration in my tender price. My prices offered in my letter of 22nd June 1957 in D.7 were ex - main road depots. If my tender had been accepted I should not have charged for local transport if the Defendant had asked me to forego those charges.

10

20

30

40

50

Adjourned to 2.30.

Sgd. E.D.W. Crawshaw,
JUDGE.

2.30 p.m. Alirahomed Osman - reminded still on oath.

Cross-examination continues:-

10 I have never reduced into writing my complaints against the Defendant made in 1956. I made this verbally to Wilson (identifies), the Secretary. He said the Defendant was selling sunflower at a loss and asked me not to object in writing or anything like that. He promised that Defendant would not give the work of transport to anyone else the following year, 1957. That was all he said. The Defendant had in 1956 given the T.T.Co. transport work. I do not know if T.T.Co., was given the work by United Africa Co. I came to know this when the sunflower was transported; I
20 I knew in 1956. I knew it was ex - main road godowns. I knew T.T.Co. were transport agents for United Africa Co. I cannot say if I knew that the Defendant had not given the transport work to the T.T.Co. The Defendant buys produce from interior markets for it buys from the Primary Societies. I know this because the Defendant orders my lorries to go and collect produce. I have not studied Co-operative Societies Ord. or the Bye-Laws of the Defendant. In 1956 I bought sunflower from the Defendant.
30 The Defendant leads the Primary Societies. It is Defendant's obligation to bring produce to main-road depots. The Defendant manages the Primary Societies. I say this from the contract attached to the plaint and the order forms to supply transport. I do not know that before 1958 there was no obligation on Primary Societies to deliver produce other than coffee and tobacco to the Defendant. I remember being asked on 3rd August 1957 by Defendant to transport produce for them to Mbando Bay. The letter shown me is my reply (put in as Exhibit D.8). I refused to supply the lorry because of
40 the letter from the Defendant to me of the 28th June 1957 refusing to give me transport work. I regarded it as equivalent to refusal. The Defendant had sold other produce likewise apart from sunflower. I did not regard the action of the Defendant as justifying my refusing to carry out my obligation under the contract. If I could not get the Defendant's general or long distant transport,

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

17th June, 1958.

Cross-Examination - continued.

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

17th June, 1958.

Cross-Examination
- continued.

I did not consider I was under obligation to supply local transport. I would have therefore refused any other request for local transport if I could not have got the general transport. By general transport I mean main road transport anywhere on road to Lindi. By local transport I mean anywhere from interior to main roads and main road in Songea district. D.8 refers to local transport. I regarded letter of Defendant of 28th June as justifying me in refusing local transport. I agree document shown me is carbon copy of delivery order relating to D.8 (put in as Exhibit D.8(a)). The work in this order would have taken as many days as necessary to complete the carrying. The bulk of paddy crop has been collected by beginning of August on the lake. The total paddy from Unganja marketing account is approx. 77 tons; I did not know this at the time. I regarded the contract attached to plaint as at an end because of the terms of the sale of the produce therein by the Defendant and as they had broken the contract I was free of any obligations, and that is why I wrote D.8. I wrote the letter shown me of 24th August 1957 (put in as Exhibit D.9). I did not write it on daily basis because of Defendant's breach of contract. I regarded D.9 as being written (sic. ? within) the terms of the contract. Daily rates are not provided for in the contract. My main business is transport. I buy and sell goods. I have stalls at various outlying markets where I buy produce. I have another transport contract in addition to Defendants. I do transport work for my own business. I have a shamba 45 miles from Songea. I keep books of account; they are in Songea. I own a big building in Lindi which I let to tenants. My total profit from all sources in 1956 I am not able to disclose in public. I keep a book showing how much work my lorries do during the month; it is in Songea. I keep no record of what any particular lorry does on any particular day. I cannot say for how many days in any period any particular lorry was standing idle.

Question: There is plenty of opportunity for transport work.

Answer: I live in Songea and do my work there and Southern Province is a big Province and I do not go everywhere. Some of my lorries have been idle since June 1957. Since June 1957 between 8 and 10 of my lorries have been idle every day on

10

20

30

40

an average. They have been in Songea. Idle throughout the whole day. I have no records to substantiate this. Since June 1957 I have made no efforts to make use of these lorries as I was living in Songea. In 1957 I transported between Dar es Salaam and Lindi between July and December, but not since as roads have been closed in rainy season. It would not be possible for me to leave Songea to use lorries elsewhere. I had an office in Lindi which looked after transport to Dar es Salaam. Most business people have their own lorries in Songea. My conscience does not permit me to switch my transport business from Songea to Lindi. I do not want to go to Lindi. Why should I suffer if Defendant makes breach of agreement.

10

Question: You do not consider you are under a duty to minimise the loss?

Answer: If someone had come and asked me about transport I would have given it them, but you cannot expect me to go from house to house looking for customer.

20

Question: Is it not true that after December there is no transport of produce.

Answer: There is no buying, but if a person has surplus there may be.

Question: Is there not ample opportunity for transport of produce between July and December in Lindi area.

30

Answer: I do not know. I do not want to leave Songea

Question: What records have you to support your claim of 20/- profit per ton of produce?

Answer: I have none. My figures is Ex.P.6 shown. My cost at -/90 per mile and this leave a balance of -/60 profit per mile.

Question: Yesterday you said your claim for 15,000/- was based on 10,000 miles and now it appears profit would be 6,000/- at -/60 per mile?

40

Answer: I may have been mistaken yesterday about the 10,000 miles but not the 15,000/-. It should have been 25,000 miles. The 15,000/- is not profit after deducting all running costs including depreciation.

Question: You said local transport was not profitable?

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

17th June, 1958.

Cross-Examination - continued.

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

17th June, 1958.

Cross-Examination
- continued.

Resumed Hearing.

11th July, 1958.

Cross-Examination
- continued.

Answer: It is a botheration in spite of profit.

Question: It is easier to let your lorries lie idle and make the present claim?

Answer: It was in the contract. General transport.

Adjourned to 11th July and to continue on 12th, 14th and 15th July.

Sgd: E.D.W. Crawshaw
JUDGE

17.6.58.

10

11.7.58. Court as before.

Alimahomed Osman - re-affirmed.

Cross-examination continues:-

The signature on the 3 delivery notes shown me (put in as D.10) is that of my driver. I do not know to what they refer. I do not know if they relate to paddy. Each has the word 'punga' written on it, which is paddy.

Exhibit P.6 shows costing for lorry. I got cost of claims from T.O.T. Lindi. I paid this price of 17,500/- for it. I have not the invoice with me. I got 10% discount. List price is 19,200/- less discount. I cannot say whether or not list price is £990. It would take not less than 2 years to run lorry 60,000 miles. Licence of 900/- is for one year only. Insurance of 100/- is for 1 year only - the minimum required by law. It does not cover persons carried on vehicle. I do not agree I had to insure my lorries against more than bare minimum Ordinance liability. Full 3rd party insurance I am not concerned with. Cost of body 2,250/-; I have not invoices with me, they are in Songea. My lorries have tarpaulin on them; their cost is not included in P.6 nor cost of tools. Average of 10 miles to gall, not 8 (it being put to him that there is makers figure). Tyres and tubes -/10 p.m.; I have to replace them twice p.a. "Drivers etc" means, driver and 1 turnboy. Driver I pay 150/- to 200/- turnboy 30/- p.m. 250/- p.m. I have made no allowance for major breakdowns. I have no records to show costing of vehicles. My Commer and Bedford lorries are more expensive than my Austins.

20

40

RE-EXAMINED

Re-examination Dodd:-

It is true I have taken the lowest costs of running. It is not true I have done it to inflate profits. Income tax allow 50% depreciation. I have more Austin than others that is why I took Austin for costing. Austin lorry cheaper to run as well as capital costs - approx. 5% cheaper.

10 Orders from Defendant came as "truck order forms". Some order forms specify nature of goods to be carried and some should not. Local transport includes tobacco and everything I had contracted to carry (In D.1 "C/N" means "credit note" says Murray). I think the numbers are contract notes exhibited to defence. I agree the sales figures in the amounts, but the total number of quantities of 110,384 and 573,165 are not correct, they total 683 tons. This shows a balance of 82 tons which I assume to be paddy and groundnuts - the balance
20 from 765 tons which represents total commodities in D.1 (referred to earlier in witnesses' evidence on p.7 of typescript). My claim is for transport of 765 tons, which under contract I had the right to transport, and which was transported by T.T.C. Local transport is 'botheration' because in 800 tons profit is only 15,000/-. Wear and tear on vehicles for local transport is very much more than main road transport because of the condition of the roads which are hilly.

30 P.3 does not show Mbando Bay, which is additional station which serves a number of primary centres. When I did not send a lorry to Mbando Bay Defendant had sold the paddy to T.T.Co. who were to transport the paddy. Because conditions of road bad they wanted to use my lorries altogether. T.T.Co. had many lorries. Defendant made no criticism of me when I refused. Defendant have never criticised performance of my contract in any simple respect. I have had no notice to produce documents
40 as to costing.

Sgd. E.D.W. Crawshaw,
JUDGE.

Close of case for Plaintiff.

Sgd. E.D.W. Crawshaw,
JUDGE.

In the High Court.

Plaintiff's Evidence.

No. 9.

Alimahomed Osman.

11th July, 1958
- continued.

Re-Examination.

In the High Court.

No. 10.

EVIDENCE OF A.S.M. HALL

Defendant's Evidence.

Murray addressed Court

Main object of Defendant is to help Primary Societies to market their produce, although it can also purchase from them.

No.10.

Allen Stewart M. Hall.

Evidence of Allen Stewart M.Hall, sworn

11th July, 1958.

Examination Murray :-

Examination.

My name is Allen Stewart M.Hall Co-operative Officer in Co-Op Development Dept. stationed Songea for 7 years. I assist and advise the various Co-op Societies in my area - societies formed under Co-op Societies Ord. I have during the 7 years experienced an intimate knowledge of the Defendant Co., which has been in operation since 1936 I think. I am acquainted with its disposal of its 1957 crops. The Defendant is non-profit making. I produce copy of bye-laws of Defendant made under the Ordinance.

10

(Put in as Exh.D.11) Functions of Defendant in Rule 2(1).

20

(Murray refers p.46). Defendant has amended 46 to include all crops handled by Defendant including tobacco and coffee; it was made in November 1957. It is not legally effective until registered which it has not been. The Defendant regarded it as effective when made.

Primary Societies are incorporated under the Ord. There are 16 P.S. of the Defendant Society, and one affiliated to it. They have their own bye-laws, and not bound by Exh. D.11. The Defendant sells the P.S's crops on commission and does not use any of the other methods provided for in Rule 2(1), and this was also the position in 1957, and in fact all the 7 years I have been in Songea. It sells on the P.S's behalf, takes its commission and hands it over to P.S's after deducting costs. The grower carries produce on his head to P.S. centres. From there it is loaded on to lorry and later to a main road godown, where it is checked and weighed and consigned to coast or wherever it is going. Re-bagged if necessary. 5 main road godowns; they are Mbando Bay, Songea itself, Litola, Namturubo, Mohando. P.S. owns all except the Songea one, which Defendant owns. Defendant has tobacco factory in Songea. When grower brings produce to P.S. he gets an advance payment from P.S. on security of his produce. The P.S. weighs it and gives grower receipt. Defendant has nothing to do with this - the weighing

30

40

and paying; etc. and nothing to prevent the P.S. selling its produce itself there and then. No obligation on Defendant to transport produce for P.S. to main road godowns. In 1957 the Defendant could not require the P.S. to transport the produce to main road or anywhere.

10 Paddy and groundnuts came mainly from the Lake shore through Mbando Bay. Sesame and sunflower mainly from the East of Songea District. In D.1 paddy is shown in 2 parts - Mjinga and Unganja. The latter comes from Mbando Bay and Unganja straight to Songea. Produce from the main road godowns East of Songea is not taken into Songea; I do not think it goes there at all. D.1 was prepared by me as to simsim and sunflower a/cs. The other 3 a/c's prepared under my direction and checked by me. Prepared from records of Defendants. They show disposition of entire crop for 1957 of the various commodities.

20 In D.1 "Union Levy" means commission of Defendant, referred to in Rule 2(1). Names in left column are P.S.'s; in some cases they are groups not yet registered, but operate as P.S.'s. and are affiliated to Defendant. "But for P.R." means may be for produce receipt given to grower when he brings produce to P.S. collecting centre. "Union is weight checked as main road godown - usually less through leakage etc. Payment to P.S. by Defendant is on Union weights. Right hand side of e.g. Manjani, shows what is sold by Defendant. "Inv.717" is Union invoice. Mbinga is P.S. which has bought paddy. 30 "Indalu" is a man. "Union" means Defendant has itself bought the paddy. "Stocks" shows paddy still in godown at time a/c made up. Sales to T.T.Co. in Ungani a/c is covered by exchange of letters, being 31st May and 1st June 1957. The Ungani a/c is the Songea, Litola and Manlimba a/c. The prices are those at the main road godowns. In fact they took delivery at the P.S.'s. although they need not have done so. I do not know if it was by agreement with 40 Defendant. Defendant was not paid anything more for it. Defendant was therefore relieved of the expense which otherwise it would have had to transport the produce to the main road. This is not quite correct as the duty is on the P.S. to deliver to the main road godowns, although in practice the Defendant normally if not always helps out by arranging transport itself. The Defendant charges the cost of this transport to the P.S. Mbinga is 65 S.W. Songea.

50 Unganja a/c shows Union Levy of -/02. "Unganja Farmers" is a P.S. on Lake shore. The sales here to T.T.Co. are covered also by the letters of 31st

In the High Court.

Defendant's Evidence.

No.10.

Allen Stewart
M.Hall.

11th July, 1958.

Examination
- continued.

In the High
Court.

Defendant's
Evidence.

No.10.

Allen Stewart
M. Hall.

11th July, 1958.

Examination
- continued.

May and 1st June to w/s, and the -/60 is the price mentioned in these letters. T.T.Co. took delivery at Mbando Bay for purposes of contract, but first they took delivery at P.S.centres. They did this because the P. refused to do the transport. This answer does not apply to the Unganji contract. In fact the Plaintiff did or may have transported some of the Unganji paddy, and other paddy taken by T.T.Co. lorries sent to P.S.centres for other work. Extremely difficult to give details, I refer D.8(a) and D.8 in connection with Plaintiff's refusal to supply lorries. I inspect Defendant's books.

Groundnut a/c shows levy at -/05. T.T.Co. purchase is shown in letters 27th and 29th November 1957 (put in as Exhibit D.12 collectively for identification). "Buying centres" referred to them it means the P.S. centres along the Lake shore. I agree that letter of 29th here is ambiguous. In fact the produce was collected by T.T.Co. at the P.S. collecting centres and was sold to them there.

In Sesame a/c levy is -/05. The a/c's in D.1 are all correct to my satisfaction. United Africa Co. produced 103,013½ kgs. "C/N" means "Credit Note". Contract relating to these sales are those dated 6th August, 2nd September attached to W/S. There are 1016 kilos in a ton weight. This contract of 70 tons relates to the 1st two items in a/c, the other 3 amounts were dealt with in other arrangements. I refer letter of 25th February from United Africa Co. to Defendant relating to 10 tons of sesame (put in as D.13 for identification); this relates to the item of 11,137 kilos, in a/c. The "10 tons" in letter was only approx. (Murray puts in for later identification 2 letters of 31st May and 1st June from Defendants to T.T.C. and from T.T.C. to Defendant, respectively as D.14 collectively). Exh.D.2 comprises one original of these attached to w/s. I see the one 552 relating to 20 tons sesame at 1/17 per kilo. It is the contract which covers the 2 items in the sesame a/c of 29369 and 391½ kilos. The 20 tons in contract was approx. All sales of sesame for 1957 were sold to United Africa Co. Plaintiff refused to (? carry) the 1553 kilos stock, and it is that which was carried by P from Mbamba Bay to Songea. D.3 is delivery note to this; it is dated February '56 but was 1957 crop. 1957 crop usually disposed of by January or February '58, but might be as late as March. Marketing such as D.1 is usually ready by May of the following year; such a/cs are prepared annually. D.1 is the ordinary annual a/c as prepared for audit; not prepared for purposes of this case.

10

20

30

40

50

Right hand side of sunflower a/c shows disposition of the '57 crop. 454, 789 3/4 kilos sold to United Africa and 533.034 1/4 to T.T.Co. Contracts 866 of 4th July, 140 of 19th August, 189 of 23rd August, 321 of 24th September, 460 of 17th September and 608 of 14th November, all part of Exh.D.2, totally 450 tons relate to the total sales to the United Africa Co. Approx. figure is given in such circumstances, and a margin of approx. 5% is allowed by them either side of this. I refer to bundle of letters between T.T.Co. and the Defendant (put in collectively for identification as D.15). They relate to sale by Defendant to T.T.Co. of sunflower seed '57 crop. "Gulies" is for P.S. collecting centre - it means "market" literally. I have only heard it used in connection with P.S. centres. It may be a tribal word. The offer of -/37 related to anything over the 50 tons. D.15 relates to the sale to T.T. Co. in the sunflower a/c. A mistake was made by the Defendant in suing because more was charged at -/33 than should have been. It should have been 50 tons at -/35; other balance at -/33. The "stocks at Mtwara", 19,248 kilos, were also sold to the United Africa Co. I refer to letter of 12th May, '58 (put in for identification as D.16) from United Africa Co. to the Defendant recording sale of tons which is the "stock at Mtwara" in sunflower a/c. The -/25 in the a/c was because it was held on stock, but it was sold for -/27 after a/c was drawn up. All produce in D.1 relates to '57 crop.

The tonnage claimed by P. is made up from D.1 18 tons to Unyani a/c, 72 tons on Unyaja, groundnuts 8 tons, sesame 104 tons, sunflower 553 tons - all approx. (N.B. Counsel agree this adds up to 755 tons approx and not the 765 claimed). ✖

T.T.Co. are S. Province transport and general produce merchants. They own a paddy mill at Tunduru, 165 miles from Songea. I presume the paddy they bought they took to their mill.

If Defendant itself sends produce out of the Province, it would go by sea and be transported to coast by P's transport lorries under the contract; normally to Mtwara, which is a point on the Rly. to Mtwara, and not all the way to Coast. It is the place referred to in agreement annexed to plaint. The produce is never carried in lorries as far as Mtwara. It is cheaper to put produce on train at Mtwara than the rates in agreement attached to Plaint. P transported some of Defendant's produce in '57, principally tobacco. No-one else transported tobacco for Defendant. No-one, to my knowledge,

In the High Court.

Defendant's Evidence.

No.10.

Allen Stewart
M. Hall.

11th July, 1958.

Examination
- continued.

In the High Court.

Defendant's Evidence.

No.10.

Allen Stewart
M.Hall.

11th July, 1958.

Examination
- continued.

transported any produce for Defendant except P. P would know of practice of sending produce only as far as Mtwara; he never, to my knowledge, suggested to Defendant that the Defendant was not entitled to send produce from Mtwara to Coast. The 1st year Defendant dealt in simsim, groundnuts and sunflower seeds was in '56. Previously, paddy of the 4 crop concerned. In '56 there were sales by Defendant to United Africa Co. of simsim and sunflower. Delivery had then, as contracted, to be taken at main road godowns. In 1957, in every case, delivery sale to United Africa Co. was at P.S. collecting centres.

It is not correct that P. has been given no such since end of June '57 under 1(a) and (b) 9 agreement. Activity in transporting tobacco is in 2nd half of the year. Transporter for United Africa Co. are T.T.Co.

CROSS-EXAMINED

Cross-examined Dodd:-

Cross-
Examination.

I was away from Songea in '57 from Jan. to beginning of July, so I had no personal knowledge at the time of the contract for sale of paddy to T.T. Co., marked confidential because it was relating to the price as it always is. I should imagine I was present, though I cannot remember, when contract between P and Defendant made attached to plaint. The form of contract was drafted before I went to Songea, and I do not know who drafted it. In 1955 the Defendant intended to have one transporter for all produce for 3 years to include '57. By 'handled' I mean the Defendant negotiating the sale of produce and providing transport if necessary on behalf of P.S.'s. If it went into godowns of Defendant at Songea, it would be 'handled' by Defendant; if it was taken into godown other than by way of negotiating sale. 24 P.S.'s in Songea District, of which those affiliated to the Defendant are included. All 24 come within definition in clause 1(a) of agreement I think. The agreement was to cover transport of produce from the P.S. collecting centres if required. None of my functions is to act as adviser to Defendant. Produce of P.S. is not necessarily transferred from them to Defendant to sell. The practice of operation between the Defendant and P.S. was that P.S. hands over the produce to whom they are told to by the Defendant. The Defendant makes out delivery note. The P.S. may send a summary of the produce receipts to my office, duplicates of the receipts to the growers, and in that the Defendant obtains information concerning receipts of produce at the P.S.; I am link in the chain. The second way in which Defendant gets information is by P.S. making out

10

20

30

40

50

form called 'produce record' which is sent direct to Defendant. This information consists of the amount of produce. P.S. has for disposal. The Defendant is then in a position to make contracts for sale. I do not think it first makes arrangements for transport. I see P.4. I have seen similar blank forms. It is a truck order from Defendant to Plaintiff. P.4 are requests for transport from P. under the agreement, and I suppose are for transport from P.S. centres to Songea. Accounts between Defendant and Plaintiff are left in a transport book. I audit Defendant's a/cs. Defendant's a/cs show the costs incurred for transport which are then paid. I would say I am intimately connected with business of Defendant; I do not see everything, but nearly everything. I supervise one other Union, that is Matanga. I have seen letters between Plaintiff and Defendant after July, 1957, of rather quarrelsome nature, but I know of no complaints prior to then. I know of P.4; I was not consulted about it. Mr. Slaymobs was acting for me on my work and he is now on leave. If Defendant was to contract from P.S., they would pay the P.S. I see D.2. There is no mention of any particular P.S. The signature opposite 'sellers' is of an officer of the Defendant. The contracts do not show that the Defendant is selling on behalf of the P.S. and suggest that sales are by the Defendant as principals. I see D.12, 13 and 14; I should say they give the impression that Defendant is selling as principal. The P.S.'s. have issued transport orders direct on P. but it is discouraged as the proper orders come through Defendant; the P.S. have only occasionally issued them. The practice is for the Defendant to issue them. The P's. rate from Songea to Lindi was -/18 and the T.T.Co. rates Makunja Union was -/22 from Mbinga to Lindi through Songea. Mbinga is 75 miles West of Songea. 400 miles Songea Lindi approx. Matanga Union have transport contract with T.T.Co., and the rates for local transport at 1/50 per miles are the same as P's agreement with Defendant.

Adjourned to Monday 14th.

Signed: E.D.W.Crawshaw, J.

10.7.58.

In the High Court.

Defendant's Evidence.

No.10.

Allen Stewart
M.Hall.

11th July, 1958.

Cross-
Examination
- continued.

In the High
Court.

Defendant's
Evidence.

No.10.

Allen Stewart
M.Hall.

14th July, 1958.

Resumed Hearing

Cross-
Examination
- continued.

14.7.58. Court as before.

D.W.L. (Contd.) A.S.M. Hall re-sworn

Cross-examined, Dodd (Continued)

I do not agree that the transport mentioned in bye-laws 2(1) concerns the produce complained of by the Plaintiff. He had right to transport all produce handled by Defendant as may have been necessary. In 1(a) of the agreement are the words "denied by the Union" which relate "to any other place". 1(a) and 1(b) are not specifically qualified as to produce to be carried. In '55 the Defendant marketed the tobacco of the P.S. and local transport of paddy very little. In 1956 it marketed tobacco, wheat, paddy, sesame and chillies. In 1957 it did the same and about the same quantity as in '56. The amendment of bye-laws 46 in November last made obligatory a procedure which was previously being followed. I do not know about the discussions referred to in letter of 31st May to W/S. It would not, I think, be unusual for the Defendant to have discussions with T.T.Co. Ltd., only in respect of paddy, but it would be unusual without special circumstances which I think existed in this case. I was on leave at the time. I know the outcome of them from the letters. The T.T.Co. mill at Tunduru is called the Coronation Flour Mill; it may be a separate limited Co. but is, I understand, owned by T.T.Co. Exh.D.14 of 1st June does not refer to rice or paddy in headnote of paper but to transport only. T.T.Co. are in competition with P. in transport business. If P. tendered -/38 for sunflower on same conditions otherwise as United Africa tendered, his price would have been better, but it depended on bagging, etc. (Dodd having referred to D.1 a/c). If P. offered -/90 for Sesame on a/c D.1, it would be less than that shown as paid by United Africa Co. Taking Sesame and sunflower together on the quantities shown in D.1 the Plaintiff's offers are on the same terms. Otherwise the net overall would have been higher than United Africa. The quantities would not, however, have been known early in the season. Error in D.1 a/c invoice 715 should, I think, be 50,000 and not 44,339; this mistake was I think first noticed in this court. The balance, if recovered, will go to a Defendant appropriation a/c, as the P.S. have already been paid out. I cannot recall at the moment why P's offer was not accepted. Bye-laws of Defendant govern the relationship between the Defendant and the P.S.; the P.S's also have

10

20

30

40

50

their own bye-laws. As P.S. is a large area, it might be treated for convenience and unofficially in 2 parts. There are only 16 P.S.'s. In D.1 paddy Unjani a/c. a higher price was paid by Mbinga because, I suppose, it is smaller parcel. The Defendant bought paddy for, I think, its employees at Songea. Since start of P's contract, I do not think any other transporter has transported produce of Defendant. It was common knowledge the destination of the Defendant's produce in '57; and P. would not know destination of every parcel. In 1956 I do not remember any complaint by P. about the Defendant using other transport; if it had been anything important I would have been told.

RE-EXAMINED

Re-examination - Murray :-

To my knowledge the people who control T.T.Co. and the Casanalian Mill are the same. It is customary to deal with the mill through director of T.T.Co.

Signed: E.D.W.Crawshaw, J.

No. 11.

EVIDENCE OF HISANCINUS RAYMOND MSEFYA

D.W.2. Hisancinus Raymond Msefya - Sworn

Examined - Murray :-

My name is Hisancinus Raymond Msefya, Assistant Secretary, Defendant Union. Also Manager Defendant's tobacco factory, Songea. As Asst. Sec. particularly concerned with sale of produce. I am aware of disposal of '57 produce crops. I see D.1. So far as I know they correctly show disposal of the '57 produce. I see Exh. D.12, 13, 14, 15 and 16. I produced them from records of Defendant. It is not true that P. was not used to transporting any crop other than tobacco after June '57; he did transport some. D.3 is an example of simsim being transported by him on 27th February '58. D.4 shows other delivery notes all relating to wheat carried by P. D.5 are delivery notes relating to sunflower seeds carried by P. in last week of June. D.6 are 2 delivery notes of 12/12/57 and 27/2/58 relating to paddy carried by P. I produce 2 transport order books of Defendant (put in as D.17 (a) and (b))

In the High Court.

Defendant's Evidence.

No.10.

Allen Stewart
M.Hall.

14th July, 1958.

Cross-
Examination
- continued.

Re-Examination.

No.11.

H.R. Msefya.

14th July, 1958.

Examination.

In the High Court.

Defendant's Evidence.

No.11.

H.R. Msefya.

14th July, 1958.

Examination
- continued.

containing carbon copies of Orders, the originals of which have been sent to P. ordering transport, between 5th August '57 and June this year. Up to March '58 the orders are directed to the P. After March the agreement terminated. The Defendant has now contracted with T.T.Co. for future transport. During the period of the agreement with the Plaintiff the Defendant did not employ any other transport to carry goods on behalf of the Defendant. I produce bundle of correspondence in '55 dealing with the agreement entered into with P. (put in collectively as D18). That of 28th March '55 have enclosure P.2.

10

CROSS-EXAMINED

Cross-Examination.

Cross-examined - Dodd:-

I have been Asst. Sec. 6 years. D.5 relates to sunflower seeds, the last being 24th June. There was no decision by Defendant to terminate P. contract re sunflower seed. P.4 was signed by Defendant sec. Uhangama. It is not a termination of P's contract. If we wanted transport we would ask the P. for it. P.4 says that the sunflower had been sold at P.S. centres; it does not say that no further transport for sunflower would be required by P. Exh.D.17(a) and (b) signed some of them by me and some by my clerk. On 12th August the delivery note shows transport of sunflower by P. (folio 105 in D.17 (b)). Most of D.17(a) and (b) relate to tobacco and wheat and building materials. P has not complained about transport of wheat, tobacco or trading materials in '57. Defendant received letter of 8th July '57 and reply of 11th July (put in as Exh. P.7 collectively) prior to 12th August - on or about 10th August. I cannot remember if the sunflower in folio 105 was part of that sold to T.T.Co. No-one else but T.T.Co. and United Africa Co. bought sunflower seed. That in folio 105 was of the seed sold either to T.T.Co. or United Africa Co. was local transport at 1/50 per mile. It was one truck only. I cannot remember if P carried any more. D.6 relates to transport of paddy - local transport - by the P in December and February, after the filing of this suit. I know about D.14. The "discussions" I do not know about, the secretary may know. I was overseas from October '56 to July '57. I do not remember P complaining to me in July '56 about transport. I do not know if he complained to Defendant. Any discussions arising from contract

20

30

40

with P might be with me as the secretary. D.1 was not prepared by me. I did not have any discussions with P. about sale of crops; I was not here.

RE-EXAMINATION

Re-examination - Murray :-

10 It is not necessary so that folio 105 refers to transport order for sunflower sold to T.T.Co. or United Africa Co; it might have been in connection with stocks at Godown at Songea or Mtwara (having been referred to a/c D.1).

Signed: E.D.W. Crawshaw, J.

In the High Court.

Defendant's Evidence.

No.11.

H.R. Msefya.

14th July, 1958.

Cross-Examination - continued.

Re-Examination.

No. 12.

EVIDENCE OF NELSON SUNDELT UHAMGAMA

Examined - Murray :-

20 My name is Nelson Sundelt Uhamgama. I can speak English but prefer to speak in Kiswahili. Sec. of Defendant Society for 14 years. Msefya dealt with marketing of produce, and if he is absent I do it. I see D.14 letter 31st May, it is signed by me, but drafted by Mr.Slaymober, a European who had taken over from Mr. Hall then. The executive council of the Defendant asked me to try and market the sale of the rice. As a result there were discussions between Slaymober and T.T. Co. I was not present, but was informed. The rice crop was not ready for harvesting and we sent out notices that anyone who wanted to buy it should contact us. There were many traders and much competition. The P would know; he was one of the traders. We received no offers. P. could have offered. The paddy was sold in the same way as in the previous year. In '56 it was sold to T.T.Co.; in '56 P. offered to buy it from Defendant. The correspondence shown me is in respect of the sale of the '56 paddy; correspondence with Plaintiff (put in collectively as D.19). The correspondence showed me relates to sale of paddy to T.T.Co. in '56 (put in D.20 collectively). He rejected P's offer and accepted T.T.Co's. The correspondence shown me (put in as D.21 collectively) relates to

30

40

No.12.

N.S. Uhamgama.

14th July, 1958.

Examination.

In the High
Court.

Defendant's
Evidence.

No.12.

N.S. Uhangama.
14th July, 1958.

Examination
- continued.

sale of '55 paddy, in which P. offered. In '55 and '56 there was no complaint by P. as to the sale of paddy. The '55 paddy was not sold to P; it was sold to Nyasaland. The bundle of documents shown me are in respect of sunflower seed sale in '56 (put in as D.22 collectively). It was sold transport to be arranged by buyers. P. never complained about this. He did not complain about the '55 crop, delivery of which was taken at main road centres - the crops were rice and wheat. P. did not complain to me about the '56 sale. I did not say the Defendant was suffering losses in sunflower and in future he would be given the transport. I did not intend to use another transporter than P, we intended to use him when we required transport and in fact did so.

Adjourned to 2.15 p.m.

Signed: E.D.W.Crawshaw, J.

CROSS-EXAMINED

2.15 p.m. Court as before

Cross-examined - Dodd :-

Cross-
Examination.

Agreement with P. provides for produce from P.S. centres to Songea to be by P. Some produce was sold at places where we did not have to transport it. It was not in the agreement that Defendant should sell produce at P.S. centres. P. had exclusive right to transport produce handled by Defendant. I do not agree that the produce was handled by Defendant in '57; Defendant first examined and weighed it. Defendant gave the purchasers the list of crops at the various centres and weights. Purchaser would not have taken the produce if the conditions as to quality and quantity had not been complied with. Any claim by purchaser would have been to Defendant. Contract was between Defendant and buyers. Contract with buyers was that buyers should provide transport from centres to Mtwara. P. and T.T.Co. were both asked to tender for transport agreement before that with P. was entered with. I made P.4 of 28/6/57 re transport of sunflower. On 31st May '57 I wrote to T.T.Co. (D.14 annexed to W/S). It has "confidential" on it because the file is marked 'confidential'. The 'discussions' were about buying. I was not there, but Slaymober. I had no knowledge as I was not present then. Amin did not come to discuss the transaction with me. I did not have discussions with any other prospective buyer, but Slaymober

10

20

30

40

did. I do not remember if I discussed with P. We received D.7, making offers for certain produce.

Question: Discussions were of a secret nature?

Answer: Yes, business was secret. We looked for buyers by secret; only paddy. P. not present during discussions. Price offered by P. for sunflower was -/38 per kilo, and -/33 minimum by United Africa. Some sold -/34 $\frac{1}{2}$. I do not agree that failure to accept P's offer has resulted in loss to growers. I know 532 tons sold. The -/33 was more profitable than the -/38 because the produce was sold at P.S. centres. The offers were not on the same basis.

Question: P. said in court that he would not have charged transport.

Answer: He did not like this. The contracts between Defendant and T.T.Co. and United Africa Co. was not a conspiracy to deprive P. of transport. I may have borrowed money from Mr. Amin but I cannot remember. I have not borrowed from T.T.Co. If I borrowed from Amin, it may have been before 31/5/58. If I had borrowed I would have been reminded. I do not remember receiving a gift. On 3rd April '56 I borrowed 240/- from P. I have not repaid it. He has not pressed me for it. In 1956 P. did not come and complain to me about giving transport to another transporter. I did not reply "we are losing money on sunflower seed this year, but I will see you have all future transport". Letter shown me (put in as Exh. P.8 by consent) is signed by Asst. Sec., Msefya. P. carried all goods from Lindi to Songea. We send letters to possible buyers when wanting to sell produce. It was not an exception as favour in selling to T.T.Co. In 1957 there were some offers from Nyasaland for paddy. No other local trader other than T.T.Co. was to tender for paddy in '57. In one the T.T.Co. have the Defendant's exclusive transport contract - since April '58 for 1 year.

RE-EXAMINED

Re-Examination - Murray :-

In '55 tobacco, paddy, wheat were the only produce sold by Defendant. In '54 also there was no simsim or sunflower or groundnuts sold by Defendant. '56 was 1st year simsim, sunflower and groundnuts were marketed by Defendant.

Signed: E.D.W.Crawshaw, J.

Adjourned to 2.15 p.m. tomorrow.

Signed: E.D.W.Crawshaw, J.

14.7.58.

In the High Court.

Defendant's Evidence.

No.12.

N.S. Uhangama.

14th July, 1958.

Cross-
Examination
- continued.

In the High
Court.

No. 13.

Defendant's
Evidence.

EVIDENCE OF YASHVANT SAVAILAL AMIN

No.13.

Y.S. Amin.

15th July, 1958.

Examination.

15.7.1958. Court as Before

D.W.4. Y.S.AMIN - HINDU AFFIRMED

Examined - Murray :-

My name is Yashvant Savailal Amin - Director of T.T.Co. Ltd., and of Coronation Flour and Mills, Ltd. They are in close connection, the directors and shareholders being the same. I live in Songea. In charge of T.T.Co. in Songea District and was in '57. Contract with defendant for paddy in '57 was made by me, and is contained in the letter of 31st May and 1st June '57. D.14(a) and (b). One delivery at Songea and the other at Mbamba Bay. The paddy was actually loaded onto our lorries at P.S. centres, off the main road. It was by agreement between us and the Defendant. There was no charge for that transport. In addition to paddy we carried groundnuts, sesame and sunflower seed of the 1957 crop on behalf of the United Africa Co. Ltd. The crop belonged to the Defendant. We carried them from the P.S. centres to Mtwara on instructions of United Africa Co. The United Africa Co. had bought the crop obviously from the Defendant, before we transported them. At time of transporting them the crop did not belong to the Defendant, but had been crop in which they had previously dealt. T.T.Co. were the regular transporters of United Africa Co. In '57 we did all the transporting for United Africa Co. in S. Province. The paddy we bought from the Defendant we took to Tunduru to the Coronation Flour and Oil Mills. It is a legal question whether T.T.Co. own the Coronation F. and O. Mills Co. Ltd. Tunduru is 170 miles approx. from Songea. T.T.Co. are merchants as well as transporters and in both capacities are in competition with the P. In 1957 we were instructed on one occasion by the Defendant to collect paddy from P.S. to Mbamba Bay. We knew that P. was the Defendant's transporter. I understand P. had refused to carry it. There was no other occasion in '57 when Defendant asked us to transport for them. I was in court when P. gave evidence. I heard his evidence about damages. I do not agree with his figures. I have prepared figures in same manner as P.6. The Schedule shown me is the one I prepared. I tender it (put in as

10

20

30

40

Exh. D.23). The information in it is true to the best of my knowledge. Cost of Austin 5 ton truck chassis is £990. In S. Province a lorry will do 60,000 in about 2 years. Petrol there is 7 to 8 miles per gallon, depending on road, set of 6 tyres last about 15,000 miles if all well. 3 sets in 60,000 miles. Cost shown in D.23 is correct. Spares and maintenance about 6,000/- - 60,000 miles. Driver and turnboy minimum about 250/- p.m. I pay turnboy 45/- to 50/-. The items made "booking cost" is per mile. The 40.7 cents is cost written off in 60,000 miles. Total cost per mile is 1/23 cts. I judge these figures by experience. 27 cents profit per mile is not bad. (i.e. 1/50 less 1/23). If P.6 shows cost per mile at 90 cents it is very high profit. I do not think transporters ever make that profit. It would not be a botheration. Profit Songea to Mtwara shown in P.6 works out at 171% and I have never ever dreamed of a profit like that.

I know of the tender for transporting contract with Defendant in '55, there was quite keen competition for it. T.T.Co. tendered for it, but it was rejected. I see D.18 and one letter of 27th March '55. We reckoned to make about 20% profit on the offer. Plenty of opportunities for transport work in 2nd half of '57 in Lindi District and Songea District and between Lindi (this answer after being referred to P. saying he had idle lorries). The P. could of course have obtained work for his lorries in that period; a man in his position could have obtained work for all his lorries without, I think, any previous contracts. So far as I remember, some of his trucks were transporting between Lindi and Dar, and between Songea and Lindi.

CROSS-EXAMINED

Cross-Examination - Dodd :-

P. used his lorries to go to DSM many times. I saw them on the road, I cannot say how many times. Lorries had to be licensed by Transport Licensing Authority. I saw them between July and December, I saw them myself in October 3 or 4 trucks but heard of them between July and December. I look after Songea end of T.T.Co. business. In letter head does not mention trading. In July and September last I was in Songea, but did safaris including Lindi. T.T.Co. buys produce at Lindi and

In the High Court.

Defendant's Evidence.

No.13.

Y.S. Amin.

15th July, 1958.

Examination
- continued.

Cross-
Examination.

In the High Court.

Defendant's Evidence.

No.13.

Y.S. Amin.

15th July, 1958.

Cross-Examination
- continued.

Tunduru also. We generally sell to United Africa Co. Apart from paddy, we buy for Coronation Mills, we sell most of produce to United Africa Co. We are not their buying agents in S.Province. I agree we acted as agents as described in "special conditions" in contracts to W/S. We were agents of United Africa Co. for all their purchases from Defendant. Payments are made to Defendant direct by United Africa Co. We did the transporting of the crops they bought from Defendant. I was not present when United Africa Co. negotiated contracts with Defendant, nor was any member of T.T.Co. I cannot say who negotiated contracts with on behalf of United Africa Co. M.Waller of United Africa Co. visited Songea in 1957, I think at beginning of season; I cannot say if it was before contracts made. He saw me there, but he did not say why he had come, but it was generally routine for him to come and I know it was to visit the Defendant. I was not present at meeting between Waller and Defendant. United Africa Co. pay us for packing, but not for buying. I have been in Songea 6 years. I know P. very well. We had transport contract with Defendant in 1949 and I think 1950. We are naturally eager to get Defendant's contract; it is a valuable one. I am director, Coronation Mills. Exactly same shareholder as in T.T.Co.

10

20

In D.14 no mention of transport. T.T.Co. were going to do the transport, not the P. In some way we were to transport for United Africa Co. I do not know if Defendant agreed with United Africa Co. for us to transport the United Africa Co. Defendant did not say we must use P. as transporter. We now have transport contract with Defendant for one year. Other people tendered for the contract, including P. I was present when tenders opened. Keen competition. Costs of running local transport higher than main road. Main road transport more profitable than local. In '58 contract terms for transport are very similar to our '55 offer. We have right to transport goods belonging to Defendant but not necessarily sold by them. If goods sold by United Africa Co. we have no complaint if other transporter transports it. It is valuable contract, chiefly because of tobacco. A lorry's life is usually not more than 2 years; we do not throw them all away after 2 years. It may be 2 to 3. We use 6 tyres at a time on an Austin lorry. Commer lorries are dearer to buy and run.

30

40

50

maintenance is connected with management. Directors remuneration not included. D.23 prepared after seeing P's similar statement. My figures are not inflated 8 m.p.g. is v. good.

10 In D.14(a) the "discussions" were with the Slaymober in 1st instance, and after that I went to Defendant's secretary. Slaymober said he was going round getting quotations - offers - for paddy. Discussions may have been on 31st May, I cannot remember. I do not know if Slaymober asked any other people. T.T.Co. were the only people with Mill in the district and one would have the best chance. We had bought paddy from Defendant since '55. To my knowledge P has not bought paddy from Defendant since 1955. I put "confidential" on D.14(b) as letter D.14(a) was so marked. Obviously I did not want the P. or others to know. In '55 we had no contract but our buses were not idle. We have bigger business than P. P. could have used his transport in latter ½ of '57 for carrying produce from Songea to Lindi. I cannot give figures of crops other than the Co-op crops. I know there was over 1,000 tons of sunflower seeds from District. I am not on speaking terms with P. I do not agree of having persuaded Defendant to break contract with Defendant. T.T.Co. in Songea District have about 12 vehicles, lorries are used for about ½ year only because of rains and roads. D.23 is prepared in DSM from experience and memory, not from books.

20

30

RE-EXAMINED

Re-Examination - Murray :-

40 S.Province is a produce growing area. A number of our administrative district, about 8, all growing produce. Songea is one of them. Defendant are of many Co-op Societies. Not obligatory on growers to market through Co-op Societies. There is one other Co-op Union in Songea District. Apart from it and the Defendant, in '57, about 60% of total crop marketed privately and not through Unions. In average the same in other Districts in Province. Tobacco is principle crop of Defendant.

Signed: E.D.W.Crawshaw, J.

Close of case for defence.

Signed: E.D.W.Crawshaw, J.

Adjourned to 19/7/58 at 9 a.m.

Signed: E.D.W.Crawshaw, J.
15.7.58.

In the High Court.

Defendant's Evidence.

No.13.

Y.S. Amin.

15th July, 1958.

Cross-
Examination
- continued.

In the High
Court.

No. 14.

NOTES OF ADDRESS BY COUNSEL FOR DEFENDANT
(RESPONDENT)

No.14.

Notes of
Address by
Counsel for
Defendant
(Respondent)

19th July, 1958.

19.7.58. Court as before.

Paragraphs 4 and 5 of Plaintiff state claim.

P's claim is that the Defendant was under obligation to ensure that come what may the produce was carried by Plaintiff.

Defendant says all they had to do was to give their produce to P, and that sales could take place at P.S. centres. 10

1(a) provides for local transport.

1(b) " " main road transport.

"The Union agrees to use . . . exclusively", which Defendant says he has done.

(a) and (b) merely provide the geographical points.

Words of contract do not support P's construction. Such an unusual condition or term must surely be specifically provided for. 20

Cl. (d)(ii) ". . . as required by the Union"
". . . so required".

In fact the Union did not require transport.

(2)(a) "the goods of the Union".

In fact the goods were not the Union's

(2)(d) "for the Union"
"on behalf of the Union"

(e) "goods of the Union"
"loss to the Union"

(b) "use by the Union" 30

5 (2) Proviso "Union wishes to be carried".

5 (4) "Union business".

5. "Union business".

"Handled" is not the operative word, but anyway in reading contract as whole must mean produce for which Union responsible for having carried.

P. himself refused to goods bought by Defendant.

Union cannot 'handle' goods after sale and delivery. 40

P. says he himself tendered for the produce at a price which included transport. In his argument he must, logically, also say he can in addition transport - p.5 transcript.

In the High Court.

No.14.

Notes of
Address by
Counsel for
Defendant
(Respondent)

10 P. admits '56 crops were sold to United Africa Co. ex main road godown. Nothing in correspondence of any complaint and Defendant, witnesses deny it. P. should not be believed as to this. Value of the transport would have been £4,000 to £5,000, and unlikely P. would merely have made a verbal complaint if he thought he had been wronged.

19th July, 1958
- continued.

Bye-laws show the function of the Defendant.

Bye-laws 2(1) and 4 methods of marketing up to end of '57. P.S. could sell otherwise than through Defendant.

Produce brought to P.S. centres did not belong to Defendant.

20 '56 crops were about same quantity, and only difference in marketing then was that in '57 delivery was given at main road godowns. Exh.D.14 obligation to transport from P.S. to main road, not the Defendant's although Defendant usually did so, through Defendant.

Refers P.4. In fact Defendant did continue to employ P -- D.3, D.4, D.5 and D.6. No repudiation by Defendant at any time.

P.11 transcript. P. refused to transport.

No single instance of Defendant employing other transporters.

30 P.9 transcript - paddy carried by P.
8 transcript - 1953 kilos sesame.

Damages

Contract by tender and competitive to get....

P. says he would have made £6,000 profit since end June '57 (Plaint), and that in respect of only 4 commodities. This excludes tobacco, the main crop. Submits claim grossly exaggerated and not substantiated by other evidence.

40 P. claims for transport to Mtwara, the furthest point. Evidence is that produce is only taken to Mtwara or Lindi.

Paddy went to Tunduru, where was the mill, yet P. claims for it being taken to Mtwara.

P. claims for produce 'in stock'.

In the High Court.

No.14.

Notes of Address by Counsel for Defendant (Respondent)

19th July, 1958
- continued.

P. claims for paddy he himself carried.

P. does not analyse which godowns' produce went through. I(b) of contract relates to Songea godown only, but some godowns nearer the coast. There could have been 'discovery' of true facts by P. in this case - e.g. how much from each godown..

.....

Austin lorry used for calculating costs shows profit of 171%. Rates of profit unreasonable.

Cost figures low in order to enhance paper profits. 10

P.6; As to the 695/- the defence witness is to be preferred.

Local transport 75/- per round trip for carrying say 3 tons or 25/- per ton. He claims 20/- per ton or 400% difference.

Certain amount of produce goes to main road on grower's head.

Claims 15,000/- for local transport which he describes as a 'botheration'. Says he refused Mbamba Bay produce as not profitable. Possibly he would not carry it. He did not get the more profitable long distance work. 20

P. has not mitigated damages by getting other work.

In evidence, impossible to say P. has suffered any loss. On him to prove it.

No.15.

Notes of Address by Counsel for Plaintiff (Appellant)

19th July, 1958.

No. 15.

NOTES OF ADDRESS BY COUNSEL FOR PLAINTIFF
(APPELLANT)

30

1(a) and (b) contract. No claims in respect of (c) and (d).

Submits (a) gives right to carry all produce 'handled' by Union.

Important words 'exclusively' and 'handled'.

Submits intention of contract was that transport would be 1(a) local transport to Songea and 1(b) from Songea to Coast.

"Handled" is linked with objects in Bye-law 2(1). 40

Produce was handled by the Union, as is shown by Union selling it.

Exclusive right is to take all produce to Songea or to any other place desired by Union and, if later to Songea, then to take it from Songea to any further place it is to be delivered.

Refers. Mulla 4th Edn. p.113, s.39.

Note "disabled himself from performing"

s.51, 52, 53, 54.

s.54 illustration (a) and (c)

10 MacElroy on Impossibility of performance - p. 235, Lovelock v. Namblin 1, J. (1846) XI 15 p.148
Disabling himself from ability to perform contract.

South Foundries v. Shirlock 1940 App. C.701.

Defendant could have made it a term of sale contracts that produce had to be carried by P.

Defendant accepted lower tender.

Cl.2(d) imposes heavy responsibility on P.

P. left the lorries available and only refused once to carry to Mbamba Bay.

20 Defendant put itself in position where it became impossible to carry out contract.

P. has not claimed for produce carried by growers to main road. P.7.

"Require to be transported" in 1(c) does not appear in 1(a) or (b), which are absolute.

"Desired by Union" refers only to place and not to carrying in general.

Cl.3 of agreement - suggest absolute right.

30 P. said in evidence that had he obtained sale contract he would not have charged for local transport.

P. offered higher price for sunflower than other tenderers, but not for sesame, but more sunflower than sesame.

Impossible to frame accurate figures in compensation until case started.

Submits contracts to W/S suggest goods being taken to Mtwara.

40 P. has transported this produce over several years and his evidence as to costs should be accepted.

In the High Court.

No.15.

Notes of Address by Counsel for Plaintiff (Appellant)

19th July, 1958
- continued.

In the High Court.

No.15.

Notes of Address by Counsel for Plaintiff (Appellant)

19th July, 1958
- continued.

Mitigation - licensing authority permission registered.

If compensation is to be amended, suggests order for a/cs as not known at present where the produce was carried to by T.T.Co.

Judgment reserved.

Signed: E.D.W.Crawshaw, J.
19.7.58.

No.16.

Judgment.

4th November, 1958.

No. 16.

JUDGMENT

10

4.11.58.

Court as before.

Crawshaw, J. :-

The Plaintiff is a merchant and also owns motor vehicles for use in a transport business. The Defendant, as its name implies, is a company registered under the Co-operative Societies Ordinance (hereinafter referred to as the Ordinance). By an agreement dated 14th April, 1955, between the Plaintiff and the Defendant the Plaintiff engaged to do transport work for the Defendant on the terms stated therein. The agreement was to run from the 1st April 1955, to the 31st March, 1958. I reproduce the following clauses thereof :-

20

"1. The Union agrees to use, and the Contractor agrees to supply, the Contractor's lorries or other sufficient and suitable motor vehicles exclusively for the period of this agreement for the following purposes, namely:-

(a) for the transport of leaf tobacco, bagged paddy, and bagged wheat from all markets maintained by or for the affiliated societies of the Union, or agricultural produce of any kind being handled by the Union from these or any markets established by or for a Native Authority in the District of Songea to the factory of the Union situated at Songea, or to any other place in the Songea District desired by the Union; together with such members of their

30

40

Managing Committee of the Union, or Union Staff, and Members of the Committee of Primary Societies and Primary Societies Staff as may be duly authorised from time to time;

In the High Court.

—
No.16.

Judgment.

4th November,
1958

- continued.

10 (b) for the transport of baled tobacco, or any other primary produce, processed or unprocessed, in suitable packing, from its factory or Godown at Songea to the ports of Lindi and/or Mbamba Bay or to any point on the Southern Province Railway or port served by that Railway or to Njombe in the Southern Highlands Province;

2. The Contractor agrees with the Union:-

20 (c) to carry and deliver to or from any point mentioned in 1(a), (b) and (c) above, as called upon, goods to the extent of any tonnage not exceeding five hundred in all in any calendar month from April 1st until such time as the road to such points shall be officially declared closed;

30 (d) to operate and maintain and keep available for the Union at all times such minimum number of the lorries and other motor vehicles as will be sufficient and suitable to lift and carry not less than twenty-five tons of goods or produce in any one day of twenty-four hours on behalf of the Union, the onus of proof of availability thereby to lie upon the Contractor;

3. The Contractor agrees to refrain from undertaking any contract to supply transport to another party during the period of this agreement, and to discharge such contract if in force during such period, unless he shall first satisfy the Union that he is in fact maintaining and able to maintain, the said minimum number of lorries and motor vehicles.

40 4. The Contractor shall maintain within the township of Songea an office and a responsible office staff, capable, at all times within normal office hours of conducting the Contractor's business in accordance with the terms of this agreement, and the closure of such office, or the absence of such staff at any time within normal business hours shall be deemed a breach and repudiation of this agreement".

In the High Court.

No.16.

Judgment.

4th November,
1958

- continued.

It will be seen, therefore, that the agreement contained onerous conditions requiring the Plaintiff to maintain an organisation and fleet of vehicles sufficient to meet a heavy demand from the Defendant.

2. The Plaintiff, without giving any particulars, alleges in his plaint that the Defendant is in breach of the agreement in that it "entered into contracts with a third party, upon terms which provide for the transport and carriage of the current year's crops of oil seed and other produce handled by the Defendant, in motor vehicles belonging to persons other than the Plaintiff", and "in disregard of the exclusive right which it has granted to the Plaintiff . . .". The Plaintiff claims substantial damages.

10

3. The Defendant maintains in his written statement of defence that in fact all crops "over the movement of which the Defendant had control" were offered to the Plaintiff under the terms of the contract, but that crops of sunflower seed and sesame seed were sold to the United Africa Company (T) Ltd. (hereinafter referred to as U.A.Co.) "ex seller's godown at buying centres", and the 1957 paddy crop was sold to Tanganyika Transport Co., Ltd. (hereinafter referred to as T.T.Co.), delivery of which was also given at the buying centres. The Defendant maintains that after delivery of these crops to U.A.Co. and T.T.Co. respectively, the Defendant had no further property in them, and they ceased to be "handled" by the Defendant for the purposes of the agreement.

20

30

4. The issues framed were:-

"1. What is the true construction of the contract attached to the plaint, including the meaning of the word 'exclusively' in paragraph 1 of the Schedule?

2. Has the Defendant created a breach of the said contract?

3. If there has been a breach of the contract by the Defendant, what damages have been suffered by the Plaintiff?"

40

5. In order to understand the relationship which existed between the Defendant and the affiliated societies mentioned in Clause 1(a) of the contract I set out the following bye-laws of the Defendant:-

"2. The objects of the Union are to promote the economic interest of the affiliated societies in accordance with co-operative principles, and more particularly to -

- (1) undertake the marketing of all tobacco, coffee and other agricultural produce, should the Union decide to deal in such produce, handed over to the Union by the affiliated societies or their members through the purchase thereof by the Union either outright or by instalments or by sale on commission or by any other means of disposal. To these ends the Union may acquire land and provide such offices, storage accommodation, transport, and other services, as may be necessary to fulfil these and any other of its objects;
- (4) exercise regular and careful supervision over the accounts of affiliated societies, and to this end to make frequent inspections;
- (7) act as agents for the affiliated societies and to arrange on their behalf for the purchase in bulk of agricultural requirements;

5. The members shall consist of :-

- (1) registered societies who join in the application for registration;
- (2) registered societies affiliated in accordance with these bye-laws.

Members are also termed affiliated societies in these bye-laws".

Member societies have a right to appoint a delegate or delegates (according to the size of the society) with power to vote at general meetings of the Defendant, and the societies have shares in the capital of the Defendant. A managing committee of the Defendant is selected from the delegates. It will be seen, therefore, that the Defendant has very close associations with the societies, and is in fact really composed of their representatives, and its purpose is to advance their interests and to market their produce, or at least such of it as is "handed over to the Union by the affiliated societies or their members". These societies are in fact what are called in the Ordinance "primary

In the High Court.

No.16.

Judgment.

4th November,
1958

- continued.

In the High
Court.

No.16.
Judgment.
4th November,
1958
- continued.

societies", i.e. those whose members are individuals, and I will in future refer to them merely as "societies".

6. Bye-law 42, under the heading "General Provisions" reads :-

" Every affiliated society and member thereof shall be bound by the rules or instructions of the Managing Committee as to the planting, grading, care and sale of any agricultural produce dealt in by the Union".

10

Bye-law 45, under the heading "Binding Rules" makes it obligatory for the Defendant to sell all tobacco and coffee "which may be handed over to it" by the societies, but with regard to other produce it "may (not must) undertake to sell". Bye-law 46, under the same heading, imposes a penalty on any society which sells tobacco or coffee to anyone other than the Defendant, but makes no such provision in respect of other produce.

7. Reading bye-laws 2(1), 42, 45 and 46 together, it would therefore appear to be that, subject to any special instructions, the societies could themselves negotiate the sale of their produce either to the Defendant or else privately or through the Defendant to anyone else. Bye-law 42, however, seems to permit the Defendant, if it sees fit, to give instructions to a society as to the sale of its produce, though whether it could instruct a sale to itself, and if so how the terms (including price) would be arrived at, is another question.

20

30

8. Mr. Hall, an Officer of the Co-operative Department, who has been seven years in Songea and says he has intimate knowledge of the Defendant's affairs and audits its accounts, says that in fact bye-law 46 was amended in November 1957 to bring within its provisions all crops handled by the Defendant and not only tobacco and coffee. He says the amendment was not however registered with the Registrar of Co-operative Societies, and is therefore ineffective. This would appear to be so by virtue of the provisions of Section 69 of the Ordinance and Rule 6(4) of the Co-operative Societies Rules.

40

9. With this background, let us again return to the agreement. It is clear that Clause 1 of the contract provides that the Plaintiff's transport shall be used to the exclusion of that of anyone

else, in the circumstances thereafter prescribed. These include, under clause 1(a), firstly transport of leaf tobacco, bagged paddy and bagged wheat "from all markets maintained by or for the affiliated societies of the Union, and secondly "agricultural produce of any kind being handled by the Union from these or any markets established by or for a Native Authority . . ." I think there has been no mention of any markets established by a Native Authority.

In the High Court.

No.16.

Judgment.

4th November,
1958

- continued.

10

20

30

40

50

10. Mr. Hall says the societies have their own bye-laws but that the bye-laws of the Defendant govern the relationship between the societies and the Defendant, and this I think must be so as the societies are members of the Defendant. He says that in his experience the Defendant has always sold the societies' crops, on commission, and has not used the other methods of disposal mentioned in the Defendant's bye-law 2(1). The normal procedure is for each African to carry his produce (usually head portorage) to a society centre, where it is collected, loaded on to lorries and transported to a main road godown. There it is checked, weighed and consigned to its next destination, and if necessary rebagged. There were five of these main road godowns, and the societies owned all of them except the Songea one which the Defendant owns. Mr. Hall says the Defendant could not dictate on the matter of transport and that there was nothing to prevent the societies selling their produce themselves. He says that when the Defendant dealt with the produce (which it appears in practice they always did) the arrangement was that it should take delivery at the main road godowns, and that it was really the responsibility of the societies to transport it there, but that in fact the Defendant normally provided the transport, debiting the cost to the society. The "markets" referred to in clause 1(a) of the agreement are therefore, I take it, the society centres and the main road godowns. In cross-examination Mr. Hall said, - "Produce of primary societies is not necessarily transferred from them to the Defendant to sell. The practice in operation between the Defendant and the primary societies was that the primary societies hand over produce to whoever they are told to by the Defendant".

11. In 1956 the Defendant made bulk sales to T.T. Co. on similar terms as to transport as the sales now complained of by the Plaintiff. The Plaintiff

In the High
Court.

No.16.

Judgment.

4th November,
1958

- continued.

says he made verbal complaint about the former transaction to the Defendant's secretary but took no action for breach of contract as he wished to maintain good relations with the Defendant. This attitude may seem somewhat surprising in view of the large amount involved and the fact that the contract still had a considerable time to run, and anyway the Defendant denies that he received any such complaint. It is perhaps also surprising that the Plaintiff did not complain to the Co-operative Society Officer, who says, "In 1956 I do not remember any complaint by the Plaintiff about the Defendant using other transport; if it had been anything important I would have been told". The fact however that the Plaintiff may either not have realised the breach at the time, or have waived it, does not mean that he has no cause of action in respect of a subsequent breach.

10

12. The defence witnesses gave instances of simsim, wheat, sunflower seed and paddy being carried by the Plaintiff's transport at various times during and after June 1957, and they maintained that at no time during the course of the agreement with the Plaintiff did they employ any transport other than his to carry their produce. This would be apparently so, excluding for the moment the question of the sale to U.A.Co. and T.T.Co.

20

13. The terms of sale between the Defendant and a purchaser are, of course, generally speaking no concern whatever of the Plaintiff and there is nothing specific in the agreement between the Plaintiff and the Defendant to prevent the Defendant agreeing with a purchaser for the latter to take delivery at one of the markets, i.e. a society's centre or main road godown, or anywhere else for that matter. The question is whether there was a condition implied or in the wording of the agreement that the Defendant would do nothing which would alter the circumstances in such a way as to take from the Plaintiff the right to transport produce which otherwise he would have under Clause 1(a) and (b) of the agreement.

30

40

14. Cockburn, C.J. in Stirling v. Maitland 5 B.M.S. 840, said :-

"If a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an

end to that state of circumstance, under which alone the arrangement can be operative".

In the High Court.

10 Lord Atkin in Southern Foundries (1926) Ltd. v. Shirlaw, 1940, App.C.717, referred to this proposition as being well established. Viscount Maugham, in a dissenting judgment in that case, said in relation to the proposition, "This, as the Master of the Rolls observed, is not a rigid rule; it is capable of qualification in any particular case; and it is a rule the application of which depends on the true construction of the agreement". Lord Romer in the same case said, "The principle is one that is founded upon good reason and good sense, and is therefore to be applied in any particular case only so far as in the circumstances of the case good reason and good sense may require". Viscount Maugham observed that "An implied term ought to be one which the parties must necessarily have intended at the date of the agreement" and

20 later in his judgment in giving certain examples said, "If, under an agreement between A and B, A can lawfully do an act (e.g. by a sale of property) which gives power to an independent third party, C, to do a number of things some one of which may injure B, I do not see that A can be sued for a breach of the agreement which he cannot prevent". The circumstances of the Southern Foundries case were, however, different from those in the instant case.

No.16.

Judgment.

4th November, 1958

- continued.

30 15. Kennedy, L.J. in Measures Bros. Ltd. v. Measures (1910) 2 Ch.248, put the proposition a little differently. He said, "It is elementary justice that one of the parties to a contract shall not get rid of his responsibilities thereunder by disabling the other contractor from fulfilling his part of the bargain".

40 16. The implications in the instant case are a little different from those in the cases cited, for whereas in the latter express liabilities were avoided, in the instant case the defence is that the liabilities were never created. By this I mean that it is alleged that there was no obligation on the Defendant to have any produce transported by anyone, e.g. because there might be no produce, or if there was it might not be handed in by the growers to the societies, or if handed in to the societies it might be disposed of by them otherwise than to or through the Defendant, or, as in the instant case, disposed of through the agency of the

In the High
Court.

No.16.

Judgment.

4th November,
1958

- continued.

Defendant but by delivery to the Purchasers ex primary society centres or main road godowns. It is argued that unless the produce at the time of transportation is under the control of the Defendant, the agreement between the Defendant and the Plaintiff does not come into operation.

17. This, however, is not the interpretation I place on the agreement. The part of clause 1(a) relating to tobacco, paddy and wheat would seem to be absolute. It gives the exclusive right to the Plaintiff to transport these commodities "from all markets maintained by or for" the societies; there are no words of limitation and I would say that if there was any such transporting to be done it was the duty of the Defendant to see that it was given to the Plaintiff. The clause then provides (presumably subject to the conditions relating to tobacco, paddy and wheat) for "agricultural produce of any kind being handled by the Union from these (markets) . . ." The meaning of the word "handled" is the chief bone of contention. It does not in the context apply to tobacco, paddy or wheat, but only to any other kind of produce. Further, it must I think in the light of the agreement as a whole, be given a broad interpretation. As I have said, the agreement imposed onerous conditions on the Plaintiff, and contemplated heavy consignments of produce. Onerous conditions are often to be found in, for instance, those classes of contract which require a tenderer to supply goods on demand without any corresponding obligation on the part of the purchaser to buy any minimum quantity; I merely mention the conditions were onerous in the instant case, as being a pointer to what I think was in fact the intention of the parties at the time the agreement was made.

18. The word "handled" was I think intended to apply to any produce of the societies over which the Defendant exercised any control, and this would include produce the sale of which the Defendant negotiated. That being so, the Defendant was under an obligation to do nothing which would avoid the produce they handled being transported by anyone other than the Plaintiff. The sales ex markets were clearly such avoidance, and therefore breaches of the agreement, and the Plaintiff has suffered damage. Admittedly the Plaintiff in evidence said, "By 'handled' is meant produce bought by the Defendant". He might have thought the produce had been bought by the Defendant, for it

10

20

30

40

50

was the Defendant which sold it, and in the agreements for sale it is described as the seller, and the secretary himself expressed it as his view that any claim made by the purchasers would be against the Defendant. I think the Plaintiff was merely mentioning circumstances as he thought them to be, and did not mean that if in fact the Defendant was not the owner, but merely the agent of the societies, his negotiating the sale of the produce would not be "handling". Mention has, I think, been made of the words "desired by the Union" in Clause 1(a). I think it is clear that they relate to the words "any other place", and not to the desire or otherwise of the Defendant to employ the Plaintiff's transport. Similar expressions appear elsewhere in the agreement which do relate to the Defendant's requirement for or desire to employ transport, but they follow quite naturally the construction I have placed on the word "handled", and the duty of the Defendant to the Plaintiff which arises under the agreement as soon as produce became handled by the Defendant. Issues one and two have now been answered.

19. The final issue is the quantum of damages. No damages are claimed in respect of the alleged 1956 breach, which, if breach there was, was presumably waived. By a letter dated 28th June, 1957, the Defendant wrote to the Plaintiff, "We beg to inform you that the sunflower seed has been sold ex buying centres of the societies and no transport of that produce will be made by us". The Plaintiff's lawyers, Messrs. Dodd & Co., replied on the 8th July complaining that the sale constituted a breach of the agreement and calling for damages and an undertaking that future breaches would not occur. This the Defendant on the 11th July merely acknowledged, and thereafter continued to enter into further transactions of a like nature although believing, I think, that it was committing no breach. It appears from the evidence, however, including delivery note books, that concurrent with these breaches the Plaintiff continued from time to time throughout the remainder of the year, and indeed within the first three months of 1958 also, to accept transport work from the Defendant of produce subject to the agreement, and that in spite of and subsequent to a letter of the 3rd August, 1957, from the Plaintiff to the Defendant refusing to comply with a request from the Defendant for the use of the Plaintiff's transport to carry paddy

In the High Court.

—
No.16.

Judgment.

4th November,
1958

- continued.

In the High
Court.

No.16.

Judgment.

4th November,
1958

- continued.

from one specified place to another. This letter is no general repudiation of the agreement for breach, but appears to be an isolated case of refusal in respect of certain transport only. From the Plaintiff's evidence this was because this particular transport was for short distance work, and he was disinclined to operate it if he was not also to be given the longer distance transport. The fact remains, however, that he did on many occasions carry produce, as I have said, after this letter. He says that when from time to time his transport was called for he himself did not know for what produce it was required. I very much doubt if this is true for if his drivers filled in or kept the order books, the pages usually contained the produce carried and presumably the books were required for purposes of costing. Anyway, even if the Plaintiff had regarded the contract as repudiated, he continued in my opinion to transport goods thereafterwards at his own risk as to this. That he continued to carry produce subject to the agreement without notice of general repudiation to the Defendant was sufficient to give the Defendant to believe that the agreement was still operative, and the Plaintiff is estopped now from denying it. Indeed the Plaintiff in his plaint complains of continuing breaches of the agreement.

10

20

20. On the evidence as a whole I find that the agreement was never repudiated and that the Plaintiff continued to transport under it, although holding the Defendant responsible for individual breaches, and was in fact himself in breach in respect of the transport referred to in the letter of the 3rd August. The Plaintiff's breach in turn appears to have been waived by the Defendant. In these circumstances can the Plaintiff claim damages for breaches after the filing of the suit on the 26th August, 1957? I think not, for the agreement being still in force it could not then be said that there would be any future breach.

30

40

21. The position is a little unusual in that before this case came on for hearing by the trial Judge, a preliminary point had been taken before another Judge who had ruled that the plaint did not disclose a cause of action. This ruling was reversed on appeal, but the Court of Appeal observed that the Plaint was "thoroughly badly drawn" and that it made no attempt to give particulars of the alleged breaches of agreement, and that the Plaintiff had made no discovery. At the same time

50

the Defendant was criticised for not having asked for further particulars, which the Appellate Court presumed it would do following the result of the Appeal. When the case came on for hearing Mr. Fraser Murray for the Defendant informed the Court that no such particulars had been called for as suggested by the Court of Appeal as it was not thought necessary to do so. Nor had there been any amendment of or application to amend the plaint in this respect. Both parties were ready to proceed with the hearing, and apparently wished to do so on the pleadings as they stood, and rightly or wrongly I allowed the proceedings to continue without further order.

In the High Court.

—
No.16.

Judgment.

4th November,
1958

- continued.

22. It has become clear from the evidence, however, that the alleged breaches were in fact in respect of produce sold to the U.A.Co. and T.T.Co. as referred to in paragraphs 3A and B of the written statement of defence. In view of what I have said I can only award damages in respect of the sales to T.T.Co. referred to in paragraph 3B, and to the sales to U.A.Co. of the 4th July, 6th August, 19th August and 23rd August referred to in paragraph 3A, the remaining alleged breaches being subsequent to the filing of the Plaint.

23. Mr. Dodd asked that, if damage was found, an order be made for accounts to be taken. It is not, for instance, before the Court what distances were covered by the transport concerned. It may be that after accounts have been taken there may still be material matters of contention on which evidence has already been given, and on which I grant liberty to apply, but perhaps Judgment on these if they are not settled between the parties had better await the result of the accounts. The Defendant, I find, is liable to the Plaintiff in respect of the six breaches I have mentioned, but before arriving at the quantum I order that accounts be taken, the Defendant to supply such accounts and give access to the Plaintiff, to such books and documents, as may be relevant.

Signed: E.D.W. Crawshaw,
JUDGE.

4.11.58.

Dodd asks for costs.

Murray says that question of costs should be

In the High Court.

reserved, as it may be found that the amount of damages allowed will be great deal less than those claimed.

No.16.
Judgment.
4th November,
1958
- continued.

Order: The question of costs to be reserved.

Signed: E.D.W. Crawshaw,
JUDGE

4.11.58.

No.17.
Order.
4th November,
1958.

No. 17.

ORDER

D E C R E E

10

(Issued under Rule 21 of E.A.C.A. Rules, 1954)
Claim for Shillings ninety-six thousand (Ss.96,000/-) as damages, together with interest and costs.

This case coming on this day for final disposal before the Honourable Mr. Justice Crawshaw in the presence of H.G. Dodd, Esqr., advocate for the Plaintiff and Fraser Murray, Esqr., advocate for the Defendants.

IT IS DECREED THAT the Defendant is liable to the Plaintiff for breaches of the contract in suit in depriving the Plaintiff of his rights under the said contract to transport produce sold by the Defendant on 5 contracts, namely -

20

No. 866 of 4/7/57 with United Africa Company Limited

No. 54 of 6/8/57 with United Africa Company Limited

No. 140 of 19/8/57 with United Africa Company Limited

No. 189 of 23/8/57 with United Africa Company Limited

30

Contract with Tanganyika Transport Company Limited contained in letters dated 31/5/57 and 1/6/57.

IT IS FURTHER ORDERED THAT accounts be taken and the Defendant do supply such accounts and give access to the Plaintiff to such books and documents as may be relevant.

IT IS ALSO FURTHER ORDERED that the question

of costs be reserved.

GIVEN under my hand and the seal of the Court, this 4th day of November, 1958.

R. Mackay
REGISTRAR.

In the High Court.

No.17.

Order.

4th November, 1958

- continued.

No. 18.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM.

CIVIL APPEAL NO.6 of 1959

BETWEEN:

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

Appellant

- and -

ALIMAHOMED OSMAN

Respondent

(Appeal from a judgment of Her Majesty's High Court of Tanganyika at Dar es Salaam (Mr. Justice Crawshaw) dated 4th November 1958 in Civil Case No. 86 of 1957.

Between:

Alimahomed Osman

Plaintiff

- and -

Ngoni-Matengo Co-Operative
Marketing Union Limited

Defendant)

MEMORANDUM OF APPEAL

Ngoni-Matengo Co-operative Marketing Union Limited, the Appellant above-named, appeals to Her Majesty's Court of Appeal for Eastern Africa against the whole of the decision above mentioned on the following grounds, namely :-

- 1.(a) The learned Judge erred in holding that the first part of Clause 1(a) of the Annexure to the Plaint imposed an absolute duty to see that if there was any transporting to be done it was given to the Plaintiff.

In the Court of Appeal

No.18.

Memorandum of Appeal.

6th January, 1959.

10

20

30

In the
Court of Appeal

No.18.

Memorandum of
Appeal.

6th January,
1959

- continued.

- (b) The learned Judge erred in interpreting the second part of the said clause and in particular in holding that the Defendant was under an obligation to do nothing which would avoid the produce being transported by anyone other than the Plaintiff, and in construing the word "handled" in the said clause.
2. The learned Judge failed to direct himself as to certain matters of evidence and as to certain implications in particular the following :- 10
- (a) That the failure of the Plaintiff to take action as a result of similar conduct of the Defendant in the preceding year was evidence of true intention of the parties, namely that the Defendant should not be bound to see that the Plaintiff transported produce in all cases.
- (b) That the price tendered by the Plaintiff for certain produce was operative at main road centres and included according to the Plaintiff the cost of transport therefrom. 20
3. The learned Judge erred in ordering the taking of accounts. The learned Judge should have held that the Plaintiff had failed to prove that he had suffered any damage as a result of any default of the Defendants, and should have dismissed the claim or alternatively awarded only nominal damages.

DATED the 6th day of January, 1959.

Sgd. F.M.

30

ADVOCATE FOR THE APPELLANT.

To the Honourable the Judges of Her Majesty's
Court of Appeal for Eastern Africa.

And to: Alimahomed Osman,
c/o Messrs. Dodd & Co.,
Advocates,
National Bank Building,
Dar es Salaam.

The address for service of the Appellant is:

c/o Fraser, Murray, Thornton & Company,
Advocates,
Bank House,
Acacia Avenue,
Dar es Salaam.

40

FILED at Dar-es-Salaam the 6th day of January, 1959.

In the Court of Appeal

Deputy Registrar
for the Court of Appeal for
Eastern Africa

No.18.
Memorandum of
Appeal.

6th January,
1959
- continued.

No. 19.

No.19.

ORDER

Order.

10 (Reference to the full Court under Rule 19(6) of Eastern African Court of Appeal Rules from the Order dated 25th April, 1959 of Mr. Justice Law sitting as a Judge of Her Majesty's Court of Appeal for Eastern Africa at Dar es Salaam).

11th June, 1959.

IN COURT this 21st day of May 1959 and
this 11th day of June 1959.

BEFORE The Honourable the President (Sir Kenneth O'Connor)
The Honourable Mr. Justice Gould (a Justice of Appeal)
20 The Honourable Mr. Justice Windham (a Justice of Appeal)

O R D E R

30 THIS APPLICATION coming on the 21st day of May for hearing in the presence of Fraser Murray, Esquire, Counsel for the Respondent AND UPON READING the record herein AND UPON HEARING Counsel for both parties IT IS ORDERED that this application be stood over for judgment and upon the same coming up for judgment on the 11th day of June, 1959, which was delivered by Mr. Justice Crawshaw sitting as a Judge of this Court at Dar es Salaam in the presence of Counsel for the Appellant and for the Respondent, IT IS FURTHER ORDERED:

- (1) That the Order of Mr. Justice Law dismissing an application by the Appellant for leave to lodge the appeal out of time be reversed, and
- (2) That the time allowed to the Appellant for lodging the appeal from the judgment and decree of Her Majesty's High Court of Tanganyika at Dar es Salaam (Mr. Justice Crawshaw) dated

In the
Court of Appeal

No.19.
Order.
11th June, 1959
- continued.

the 4th November 1958 in Civil Case No.86 of 1957 be extended for a period of ten days from the date hereof.

- (3) That the appeal be deemed to be lodged upon the filing by the Appellant of a supplementary record containing a copy of the Decree appealed from and of this Order.
- (4) That for the purposes of the present intended appeal the record of appeal in Civil Appeal No.6 of 1959, together with the supplementary record aforesaid, shall be the record of appeal. 10
- (5) That the Notice of Appeal in the said Civil Appeal No.6 of 1959 shall be deemed to be the notice of appeal in the present intended appeal.
- (6) That the Respondent do have the costs of this application in any event, both as to the hearing before Mr. Justice Law and before the full court. 20

GIVEN under my hand and the seal of the Court at Dar es Salaam this 11th day of June 1959.

Sgd. R. Mackay
DEPUTY REGISTRAR
H.M. COURT OF APPEAL FOR
EASTERN AFRICA, DAR ES SALAAM.

Issued this 19th day of June, 1959.

Sgd. R. Mackay
DEPUTY REGISTRAR.

No.20.
Judgment.
3rd December,
1959.

No. 20.

JUDGMENT OF FORBES V-P

This is an appeal from a judgment and decree of the High Court of Tanganyika.

The Appellant Society was the Defendant in the suit. It is a society whose registered office is at Songea, registered under the provisions of the Co-operative Societies Ordinance (Cap.211), and is what is termed in the Ordinance a "secondary society", being comprised of certain other societies, known as "primary societies", also registered under the Ordinance. Songea is a town in southern Tanganyika which gives its name to an administrative district known as the Songea District. One 40

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

of the principal objects of the Appellant society is to undertake the marketing of agricultural produce produced by its member primary societies or their members, the marketing being done on a commission basis. This produce consists of tobacco, coffee, paddy, ground-nuts, sesame-seed and sunflower-seed, and the Appellant society is only responsible for marketing such produce as is "handed over" to it. The system generally employed in collecting and marketing the produce at the material time was for the produce to be brought in the first instance to markets or "buying centres" scattered over the area covered by the primary societies, that is, the Songea District. The buying centres were apparently points on feeder roads to which motor transport had access. Transport to the buying centres would normally be by head-load. From the buying centres the produce would be brought by lorry to the main road, the only one in the Songea District, whence it might go either to the Appellant society's tobacco factory in Songea, or out of the Songea District, westwards to Mbamba Bay and across Lake Nyasa, or eastward to ports on the coast. The main road runs from Mbamba Bay, which is on Lake Nyasa, through Songea to Tunduru, the latter being outside the Songea District, and on to the coast, giving access to the ports of Lindi and Mtwara, and also giving access to Nachingwea, whence access by rail is available to the coast.

Leaf tobacco would, no doubt, usually be brought from the buying centres to the Appellant society's factory. Apart from this, there were five godowns along the main road in the Songea District to which produce would be brought for storage, and re-bagging, if necessary. Of these five godowns, only one, which is situated at Songea, is owned by the Appellant society. The other four, one situated at Mbamba Bay to the west of Songea, and the others at points on the main road to the east of Songea within the Songea District, that is to say between Songea and Tunduru, are owned by one or other of the primary societies. All were however, as I understand it, used by the Appellant society for the storage of produce brought from the buying centres.

The Respondent, the original Plaintiff, is a merchant and transport contractor carrying on a considerable transport business in addition to other business.

On 14th April, 1955, the Respondent entered

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

into a written contract (hereinafter referred to as "the contract") with the Appellant society for the provision by the Respondent of transport for the Appellant society. The agreement was to be in force for a period of three years, from 1st April, 1955 to 31st March, 1958. I will refer later to the terms of the contract.

On the 26th August, 1957, the Respondent as Plaintiff filed a plaint against the Appellant society claiming Rs. 96,000/- damages, interest, costs and further or other relief from the society for breach of the contract. Paragraphs 3, 4 and 5 of the Plaint allege:-

10

"3. The Plaintiff is entitled, under the terms of a contract in writing made between the parties to this suit and dated the 14th April, 1955, to the exclusive right to supply motor transport for the carriage of the goods mentioned in the Schedule to the said contract, and the Defendant is bound by a corresponding obligation to employ the motor vehicles of the Plaintiff for the carriage of all such goods. The Plaintiff craves leave to refer the Honourable Court to the terms of the said contract, a copy of which is annexed hereto and marked 'A'.

20

"4. In breach of the said contract the Defendant has entered into contracts with a third party, upon terms which provide for the transport and carriage of the current year's crop of oil seed and other produce handled by the Defendant, in motor vehicles belonging to persons other than the Plaintiff.

30

"5. In further breach of the said contract and, in disregard of the exclusive right which it has granted to the Plaintiff, the Defendant has allowed, and is permitting, the said crops to be transported and carried during the current produce season in motor vehicles belonging to a firm of transport contractors, other than the Plaintiff".

40

In its written statement of defence the Appellant society admitted entering into the contract, but did not admit that the effect of the contract was as stated in paragraph 3 of the Plaint. It further admitted entering into six contracts with the United Africa Company (T) Ltd., (hereinafter referred to as "U.A.C.") copies of which were annexed to the defence, for the sale of sunflower-

seed and sesame-seed "ex seller's godown at buying centres", and one contract with the Tanganyika Transport Company, Ltd., (hereinafter referred to as "T.T.Coy.") copies of the relevant letters constituting the contract being also annexed to the defence, for the sale of "paddy 1957 crop". Paragraphs 4, 5, 6 and 7 of the written statement of defence read as follows :-

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

10

"4. The Defendant states that in the case of oil seeds no road transport is used or required prior to delivery to the buyer at the seller's godown at buying centres, and that after delivery to the buyer at the said buying centres the Defendant has no property in the said oil seeds and the said oil seeds are not after delivery as aforesaid being handled by the Defendant within the meaning of the contract between the Plaintiff and the Defendant, and that the Defendant has committed no breach of the said contract.

20

"5. The Defendant states that in the case of paddy the buyer that is to say the Tanganyika Transport Company Limited took delivery at the buying centres, and this variation of the terms of the contract was mutually agreed between the said company and the Defendant.

30

"6. The Defendant further states with reference to the sale of paddy that the property passes to the buyer at the places where delivery to the buyer is made and that after delivery the said paddy is not being handled by the Defendant within the meaning of the contract between the Plaintiff and the Defendant, and that the Defendant has committed no breach of the said contract.

40

"7. As regards paragraph 5 of the plaint, the Defendant denies that it has allowed or is permitting the said crop (which the Plaintiff has particularized by letter as meaning groundnuts, sunflower, simsim and paddy) to be transported and carried in motor vehicles belonging to a firm of transport contractors other than the Plaintiff. The Defendant states that all transport of crops over the movement of which the Defendant has control has been and is offered to the Plaintiff under the contract between the Plaintiff and the Defendant".

The Appellant society accordingly denied that there

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

had been any breach of contract by it, or that the Respondent had suffered damage.

The Respondent filed a reply joining issue on the written statement of defence.

When the suit first came on for hearing objection was taken that the Plaintiff disclosed no cause of action. The objection was upheld by the High Court, but this decision was reversed on appeal, this Court saying, inter alia:

"This does not mean that we in any way approved of the form of the Plaintiff. We thought it was thoroughly badly drawn. There ought at least to have been some attempt to give particulars of breaches, though it is probable that full particulars could not have been given before discovery. The Plaintiff, was, however, content to go to trial without discovery. It is even possible that the Plaintiff in its present form could have been struck out as embarrassing, although not as disclosing no cause of action. We had therefore little sympathy for the Plaintiff, but equally little for the Defendants, who could, as they well knew, have put matters right by a request for particulars, but preferred to stand on an arid technicality and chose the wrong one. These remarks explain our order as to costs in the High Court.

We would add finally that in our view the learned Judge ought, in order to dispose, on the merits, of the matters actually in controversy between the parties, to have ordered particulars of the alleged breaches. If this had been done, a good deal of money would probably have been saved. We presume that particulars will be requested and given before the suit is again listed for trial. It will then be possible to try the case without embarrassment or difficulty on either side".

Notwithstanding the remarks of this Court, particulars of the alleged breaches of contract were not asked, and the case went to trial on the pleadings as they stood. However, as the case proceeded it became evident that the alleged breaches complained of were in respect of the transport of the produce sold to U.A.C. and T.F. Company under the agreements mentioned in the written statement of defence.

10

20

30

40

The issues settled at the commencement of the trial were :-

"1. What is the true construction of the contract attached to the Plaint, including the meaning of the word 'exclusively' in para. 1 of the Schedule thereto?

2. Has the Defendant created a breach of the said contract?

10 3. If there has been a breach of contract by the Defendant, what damages if any has the Plaintiff suffered?

After hearing evidence the learned trial Judge held that breaches of contract had been committed by the Appellant society. His decision as embodied in the decree is as follows :-

"IT IS DECREED THAT the Defendant is liable to the Plaintiff for breaches of the contract in suit in depriving the Plaintiff of his rights under the said contract to transport produce sold by the Defendant on 5 contracts, namely -

No.866 of 4/7/57 with United Africa Company Limited

No. 54 of 6/8/57 with United Africa Company Limited

No.140 of 19/8/57 with United Africa Company Limited

No.189 of 23/8/57 with United Africa Company Limited

30 Contract with Tanganyika Transport Company Limited contained in letters dated 31/5/57 and 1/6/57.

IT IS FURTHER ORDERED that accounts be taken and the Defendants do supply such accounts and give access to the Plaintiff to such books and documents as may be relevant.

IT IS ALSO FURTHER ORDERED that the question of costs be reserved".

40 The Appellant society now appeals to this Court against the whole of this decision.

As regards the other two contracts with U.A.C. which were mentioned in the written statement of defence and which are not mentioned in the decree, these were entered into after the filing of the Plaint, and the learned Judge held that the

In the Court of Appeal

No.20.

Judgment.

3rd December, 1959

- continued.

In the
Court of Appeal

No.20.
Judgment.
3rd December,
1959
- continued.

Respondent could not recover damages in respect of them. There is no cross-appeal by the Respondent against this decision.

It is now necessary to refer to the terms of the contract. These are contained in a Schedule to the contract, the Appellant society being referred to as "the Union", and Respondent being referred to as "the Contractor". Paragraph 1 of the Schedule contains the most material provisions of contract so far as this case is concerned, and I set out paragraphs 1(a), (b), (c) and (d) in full:

10

"1. The Union agrees to use, and the Contractor agrees to supply, the Contractor's lorries or other sufficient and suitable motor vehicles exclusively for the period of this agreement for the following purposes, namely:-

(a) for the transport of leaf tobacco, bagged paddy, and bagged wheat from all markets maintained by or for the affiliated societies of the Union, or agricultural produce of any kind being handled by the Union from these or any markets established by or for a Native Authority in the District of Songea to the factory of the Union situated at Songea, or to any other place in the Songea District desired by the Union together with such members of the Managing Committee of the Union, or Union Staff, and Members of the Committee of Primary Societies and Primary Societies staff as may be duly authorised from time to time;

20

(b) for the transport of baled tobacco, or any other primary produce, processed or unprocessed, in suitable packing, from its factory or Godown at Songea to the ports of Lindi and or Mbamba Bay or to any point on the Southern Province Railway or port served by that Railway or to Njombe in the Southern Highlands Province;

30

40

(c) for the transport, either inwards or outwards, of all such other goods or building materials as the Union may, from time to time, require to be transported from place to place in the Southern Province or between Songea/Njombe in the Southern Highlands Province;

(d) for general transport in and around Songea
PROVIDED ONLY THAT:

In the
Court of Appeal

No.20.
Judgment.
3rd December,
1959
- continued.

- (i) the Union shall at all times have the right to employ one 3-ton lorry, and one motor car or vanette of one ton capacity under, both being the property of the Union, for any of the purposes above mentioned, if it so elects, and
- (ii) if, after due notice of 3 days to the Contractor, the Contractor be unable to supply sufficient and suitable lorries or other motor vehicles as required by the Union, the Union shall forthwith have the right, notwithstanding this agreement, to obtain the lorries or motor vehicles so required for any other person, firm or company".

There follows in paragraph 1 a "Note" which defines what is meant by "suitable vehicles" and which is not material to this case. In paragraph 2 of the contract the Respondent undertakes, inter alia:

- "(a) to carry and deliver the goods of the Union in good order and condition;
- (b) to carry and deliver to and from any point mentioned in 1(a), (b) and (c), above, as called upon, goods to the extent of any tonnage not exceeding five hundred in all in any calendar month ;
- (c) to operate and maintain in working order and carry out all necessary repairs to lorries and other motor vehicles supplied for the use of the contract;
- (d) to operate and maintain and keep available for the Union at all times such minimum number of the lorries and other motor vehicles as will be sufficient and suitable to lift and carry not less than twenty-five tons of goods or produce in any one day of twenty-four hours on behalf of the Union ;
....."

Paragraph 3 provides:

"3. The Contractor agrees to refrain from undertaking any contract to supply transport to another party during the period of this agreement, and to discharge such contract if in force during such period, unless he shall

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

first satisfy the Union that he is in fact maintaining, and able to maintain, the said minimum number of lorries and motor vehicles".

In paragraph 4 the Respondent undertakes to maintain an office and responsible office staff within the township of Songea. Paragraph 5 provides for rates of payment. It is to be noted that the specified journeys to points outside the Songea District mentioned in paragraph 5(2), for which special rates are prescribed, are all journeys originating at Songea. The remaining clauses are not material to the question of construction which arise in this case. 10

Ex. D.2.

It is convenient to set out here also the terms of the agreements with U.A.C. and T.T. Coy. which are alleged to constitute breaches of the contract. Three of the agreements with U.A.C. relate to sunflower-seed and are identical except as to dates and details of quantities, price and time of delivery. It is sufficient to set out the first, dated 4th July, 1957, the material part of which is as follows: 20

"SELLERS: Ngoni-Matengo Co-operative Marketing Union Ltd., Songea.

BUYERS: The United Africa Co. (T) Ltd., Dar es Salaam.

DESCRIPTION: Tanganyika Sunflower seed

QUANTITY: 100 (One hundred) tons each of 1016 kilos nett.

QUALITY: Fair average quality of 1957 season crop, sound dry free from admixture and without castor seed. 30

PRICE: -/33 cents (thirty three cents) per kilo including bags ex seller's godown at buying centres.

TIME OF DELIVERY: August 1957.

PAYMENT: Against Landing and Shipping Co.(EA) Ltd., Mtwara. Weight notes which are to be accepted as final.

TYPE OF PACKING: In new 2½ lb. "B" twill gunny bags, sound for export. The bags to be packed to a standard weight of 115 lbs. nett to be doubly and securely sewn with blue thread and marked in blue with the words "SUNFLOWER SEED" in block letters of not 40

less than 2" in height, in accordance with Government regulations.

TARE: 1 $\frac{3}{4}$ kilos per bag.

SPECIAL CONDITIONS: The goods are to be rebagged at Seller's godowns on the main road between Songea/Tunduru to a standard weight of 115 lbs. nett, and cleaned if necessary, by our agents The Tanganyika Transport Co. Ltd. Sellers to provide additional new bags as required. Transport from buying centres to Mtwara to be arranged by buyers".

The fourth contract with U.A.C. relates to sesame-seed and follows generally the pattern of the sunflower-seed agreements. The "Special Conditions", however, read :-

"SPECIAL CONDITIONS: Sellers to provide additional new bags if required. Transport from buying centres to Mtwara to be arranged by buyers".

The agreement with T.T.Coy. which is the subject of complaint is contained in two letters dated respectively 31st May, 1957 and 1st June, 1957, the material parts of which read as follows :-

"Dear Sirs,

PADDY 1957 CROP

With reference to discussions re the marketing of paddy 1957 crop, we hereby confirm that your offer of -/60 (sixty cents) per kilogram without bag at Mbamba Bay and Lituhi, and -/65 (sixty-five) cents per Kilogram without bag at Songea (godowns at Songea, Litola and Namtumbo) has been accepted.

Please acknowledge receipt of this letter.

Yours faithfully,

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD.

Sgd. N.S. Mkangama

Secretary".

"dear Sir,

PADDY 1957 CROP

We thank you for your letter Ref.1/CONE/

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

Ex. D.14.

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

Sales dated 31st May 1957 in connection with marketing of PADDY 1957 Crop, and we hereby confirm that we agree to buy PADDY @ 00/60 (SIXTY CENTS) per kg. without bag at M'BAY and Lituhi, and @ 00/65 (SIXTY-FIVE CENTS) per kg. without bag at Songea (godowns at Songea, Litola and Namtumbo).

It is understood that ALL Paddy that will be handled by your Union or your associates shall be sold to us exclusively.

10

Yours faithfully,
Sgd. Y.S. Amin,
DIRECTOR".

As mentioned in the written statement of defence, and confirmed in evidence, delivery under this contract, in fact, by agreement between the parties, took place at the buying centres.

The learned trial Judge, after reviewing the facts, in paragraph 13 of his judgment poses the question to be determined as follows:-

20

"13. The terms of sale between the Defendant and a purchaser are, of course, generally speaking no concern whatever of the Plaintiff and there is nothing specific in the agreement between the Plaintiff and the Defendant to prevent the Defendant agreeing with a Purchaser for the latter to take delivery at one of the markets, i.e. a society's centre or main road godown, or anywhere else for that matter. The question is whether there was a condition implied or in the wording of the agreement that the Defendant would do nothing which would alter the circumstances in such a way as to take from the Plaintiff the right to transport produce which otherwise he would have under clause 1(a) and (b) of the agreement".

30

The learned Judge then considers the cases Stirling v. Maitland 5 B. & S. 840, Southern Foundries (1926) Ltd. v. Shirlaw (1940) A.C. 717, and Measures Bros. v. Measures (1910) 2 Ch. 248, and continues:

40

"16. The implications in the instant case are a little different from those of the cases cited, for whereas in the latter express liabilities were avoided, in the instant case the defence is that the liabilities were never created. By this I mean that it is alleged

10 that there was no obligation on the Defendant to have any produce transported by anyone, e.g., because there might be no produce, or if there was it might not be handed in by the growers to the societies, or if handed in to the societies it might be disposed of by them otherwise than to or through the Defendant, or, as in the instant case, disposed of through the agency of the Defendant but by delivery to the Purchasers ex primary society centres or main road godowns. It is argued that unless the produce at the time of transportation is under the control of the Defendant, the agreement between the Defendant and the Plaintiff does not come into operation.

20 17. This, however, is not the interpretation I place on the agreement. The part of clause 1(a) relating to tobacco, paddy and wheat would seem to be absolute. It gives the exclusive right to the Plaintiff to transport these commodities "from all markets maintained by or for" the societies; there are no words of limitation and I would say that if there was any such transporting to be done it was the duty of the Defendant to see that it was given to the Plaintiff. The clause then provides (presumably subject to the conditions relating to tobacco, paddy and wheat) for "agricultural produce of any kind being handled by the Union from these (markets)"

30 The meaning of the word 'handled' is the chief bone of contention. It does not in the context apply to tobacco, paddy or wheat, but only to any other kind of produce. Further, it must I think in the light of the agreement as a whole, be given a broad interpretation. As I have said, the agreement imposed onerous conditions on the Plaintiff, and contemplated heavy consignments of produce. Onerous conditions are often to be found in, for instance,

40 those classes of contract which require a tenderer to supply goods on demand without any corresponding obligation on the part of the Purchaser to buy any minimum quantity; I merely mention the conditions were onerous in the instant case, as being a pointer to what I think was in fact the intention of the parties at the time the agreement was made.

50 18. The word 'handled' was I think intended to apply to any produce of the societies over

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

which the Defendant exercised any control, and this would include produce, the sale of which the Defendant negotiated. That being so, the Defendant was under an obligation to do nothing which would avoid the produce they handled being transported by anyone other than the Plaintiff. The sales ex markets were clearly such avoidance, and therefore breaches of the agreement, and the Plaintiff has suffered damage. Admittedly the Plaintiff in evidence said, 'By 'handled' is meant produce bought by the Defendant'. He might have thought the produce had been bought by the Defendant, for it was the Defendant which sold it, and in the agreements for sale it is described as the seller, and the Secretary himself expressed it as his view that any claim made by the Purchasers would be against the Defendant. I think the Plaintiff was merely mentioning circumstances as he thought them to be, and did not mean that if in fact the Defendant was not the owner, but merely the agent of the societies, his negotiating the sale of the produce would not be 'handling'. Mention has, I think, been made of the words 'desired by the Union' in Clause 1(a). I think it is clear that they relate to the words 'any other place', and not to the desire or otherwise of the Defendant to employ the Plaintiff's transport. Similar expressions appear elsewhere in the agreement which do relate to the Defendant's requirement for or desire to employ transport, but they follow quite naturally the construction I have placed on the word 'handled', and the duty of the Defendant to the Plaintiff which arises under the agreement as soon as produce became handled by the Defendant. Issues one and two have now been answered".

10

20

30

Document No.17.

The learned Judge then proceeds to consider the quantum of damages, and makes the order for accounts which appears in the decree.

40

Document No.18.

The grounds set out in the memorandum of appeal are as follows :-

"1.(a) The learned Judge erred in holding that the first part of Clause 1(a) of the Annexure to the Plaint imposed an absolute duty to see that if there was any transporting to be done it was given to the Plaintiff.

50

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

- (b) The learned Judge erred in interpreting the second part of the said clause and in particular in holding that the Defendant was under an obligation to do nothing which would avoid the produce being transported by anyone other than the Plaintiff, and in construing the word 'handled' in the said clause.

10 2. The learned Judge failed to direct himself as to certain matters of evidence and as to certain implications in particular the following:-

20 (a) That the failure of the Plaintiff to take action as a result of similar conduct of the defendant in the preceding year was evidence of true intention of the parties, namely that the Defendant should not be bound to see that the Plaintiff transported produce in all cases.

- (b) That the price tendered by the Plaintiff for certain produce was operative at main road centres and included according to the Plaintiff the cost of transport therefrom.

30 3. The learned Judge erred in ordering the taking of accounts. The learned Judge should have held that the Plaintiff had failed to prove that he had suffered any damage as a result of any default of the Defendant, and should have dismissed the claim or alternatively awarded only nominal damages".

40 For the Appellant Mr. Fraser Murray has argued that no question of an implied condition arises, and that the question for the Court is solely one of construction. He contends that on a true construction of the contract no breach has been committed by the Appellant society. In particular he contends that the contract provided for transport to be provided by the Appellant between certain definite points, and that the learned trial Judge misdirected himself when he said in his judgment:

"It" (that is, the contract) "gives the exclusive right to the Plaintiff to transport these commodities 'from all markets maintained by or for' the societies; there are no words of limitation and I would say that if there was any such transporting to be done it was

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

the duty of the Defendant to see that it was given to the Plaintiff".

And Mr. Fraser Murray argued that there was no evidence that the produce referred to in the sales to U.A.C. and T.T.Coy. had been transported between any of the points covered by the contract.

I agree that the first task in this matter must be to arrive at a true construction of the contract. Thereafter, in the light of such construction, it may be necessary to consider whether an implied term arises. There is no dispute as to the facts in the case, and the contract is a written contract, so that this Court is in as good a position to consider the matter as was the trial Court. 10

For the Respondent, Mr. O'Donovan complained that the question as to the construction of the contract in relation to points of departure and destination was not raised in the memorandum of appeal, though I do not think he sought to rely on this contention. I think that the question of construction of the contract is sufficiently raised in ground 1 of the appeal, though it could have been more clearly expressed. On the merits Mr. O'Donovan argued that there was prima facie evidence that contract goods referred to in the U.A.C. sale agreements were carried between points covered by the exclusive right given to the Respondent; that the journey contemplated was in two stages: first from a buying centre to a godown in Songea District; then from that godown to Mtwara; that both stages are covered by the exclusive right given to the Appellant by the contract; that even if such journeys do not fall within the terms of paragraphs 1(a) and 1(b) of the contract they fall within paragraph 1(c). As to the contract with T.T.Coy., Mr. O'Donovan conceded he was in some difficulty since the paddy in question was taken from the buying centres direct to Tunduru, a point outside the Songea District which is not mentioned in the contract, but he argued that the Respondent's exclusive right at least covered the journey from the buying centres to the border of the Songea District. 20 30 40

As regards paragraph 1(c) of the contract, Mr. O'Donovan's argument was that the phrase "all such other goods" should be interpreted as meaning not goods other in kind from those mentioned in paragraph 1(a) and 1(b), but goods, including the kinds

mentioned in paragraphs 1(a) and 1(b), for the transport of which from or to any particular place provision was not made in paragraphs 1(a) and 1(b). I am unable to accept this interpretation. I think that in the context the only interpretation to be placed on the phrase "all such other goods" is goods different in kind from those specifically mentioned in paragraphs 1(a) and 1(b).

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

10 As regards the construction of paragraphs 1(a)
and 1(b), I agree, with respect, that the learned
trial Judge has misdirected himself in saying
that the contract gives the Respondent the exclus-
ive right to transport the commodities mentioned
from all markets maintained by or for the societies
without limitation. It seems to me that very
definite limitations are provided. Paragraph 1(a)
is restricted to what may be termed local transport
from buying centres in the District of Songea "to
20 the factory of the Union situated at Songea, or to
any other place in the Songea District desired by
the Union". Paragraph 1(b), which provides for
transport to points outside the Songea District, is
even more restricted. It must be considered in the
light of the existing facts (a) that the Appellant
society owned a tobacco factory in Songea; (b) that
the Appellant society owned a godown in Songea; and
(c) that the Appellant society did not own the go-
downs outside Songea which were used for the stor-
age of produce. When these facts are borne in mind
30 it is clear that the paragraph is restricted to
transport from the factory and godown owned by the
Appellant society. It refers specifically to trans-
port "from its factory or godown at Songea". This
cannot extend to cover transport from the other
godowns outside Songea which, though used by the
Appellant society, were not owned by it. And this
is confirmed by reference to paragraph 5(2) which,
as stated above, provides rates for transport from
Songea alone to the various points mentioned out-
40 side the Songea District. I am therefore of opin-
ion that transport of produce from godowns outside
Songea - that is, from godowns owned by the primary
societies, (which, though in the Songea District
are not in Songea) to points outside the Songea
District are not within the terms of the contract.
Accepting for the moment that by the terms of the
sunflower-seed sale agreements with U.A.C. the sun-
flower-seed was first to be transported to "Seller's
godowns on the main road between Songea/Tunduru" in
50 order to be re-bagged, and thence was taken to

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

Mtwara, and that the two stages of the journey are separable, I think the transport from such godowns to Mtwara was clearly outside the contract. "Seller's godowns" in the U.A.C. contracts is a misdescription of the ownership of the godowns, but it does not affect the fact that such godowns are not the Appellant society's and are not at Songea and that therefore transport from them to places outside the Songea District is not provided for in the contract. I think the Respondent can have no possible claim in respect of transport under the U.A.C. contracts from the main road godowns to the coast.

10

I turn now to the local transport, that is, the transport referred to in paragraph 1(a) of the contract. This presents more difficult problems of construction. Mr. Fraser Murray did not, I think, seriously contest the construction placed on the words "handled by the Union" by the learned trial Judge, though formally submitting that that construction was wrong. I think the broad construction placed on the words by the learned trial Judge is to be supported. That construction, in my view, accords best with the fact that leaf tobacco, bagged paddy and bagged wheat, the commodities specifically mentioned in the paragraph, are not subject to the qualification "being handled by the Union", which one would have expected if the phrase had been intended to restrict the application of the clause.

20

30

Mr. Fraser Murray relied on the words "desired by the Union" and argued that once produce was out of the Appellant society's hands the Appellant society was not in a position to form a "desire" as to its destination. I do not think, however, that the phrase is intended to indicate more than "any other place in the Songea District designated by the Union". On the whole I am inclined to the view that the paragraph confers an exclusive right on the Respondent to transport produce from the buying centres to any destination in the Songea District.

40

Apart from the point raised by Mr. O'Donovan that the "local" and "external" parts of the journey under the U.A.C. sale agreements are separable, all the sale agreements complained of provide for the transport of the produce concerned from the buying centres to points outside Songea District. Such transport certainly does not fall

within the express terms of the contract as I read the contract, the "external" transport referred to in the contract being restricted to transport from the Appellant society's factory or godown in Songea. Can it be said that there is an implied term or an obligation that the Appellant society will not dispose of the produce handled by it until after it has been brought from the buying centres to a destination in the Songea District, such as the main road godowns, or that, if it does so, it must provide for transport by the Respondent, at least to some point within the Songea District? I think not. I accept for the purposes of this argument the statement of the law in the passage from the judgment of Cockburn, C.J. in Stirling v. Maitland 5 B & S 840 cited in Southern Foundries (1926) Ltd. v. Shirlaw A.C. 712 which was referred to by the learned trial Judge in his judgment, and which runs as follows :-

10

20

"If a party enters into an arrangement which can only take effect by the continuance of certain existing set of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances, under which alone the arrangement can be operative".

30

40

50

I do not think, however, that that statement of the law is applicable in the circumstances here. The contract provides for the exclusive right to transport produce from buying centres to destinations within the Songea District; and from the Appellant society's factory or godown in Songea to specified points outside the Songea District. It is not expressed to confer on the Respondent any right to transport produce from any place other than the Appellant Society's factory and godown in Songea to destinations outside the Songea District. This limitation has every appearance of having been deliberate, and it must be taken that the parties contemplated that transport other than the Respondent's would or might be used for the conveyance of produce from points in the Songea District other than the Appellant society's factory and godown at Songea to places outside the Songea District. It may well be that the Appellant society had in mind precisely the type of sale agreement with which this case is concerned, and wished to limit their obligation to use the Respondent's transport to produce which it was "handling" itself, in the narrow sense of that word, being

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

produce which would pass through its own godown. However that may be, apart from transport outwards from the Appellant society's factory and godown in Songea, there is no limitation in the Respondent's favour on transport of produce from any point in the Songea District to destinations outside the District. As I have said, the omission of such a provision appears to have been deliberate, and in the circumstances I can see no reason to imply in the Respondent's favour an obligation on the Appellant society to transport produce in the first instance from the buying centres to destinations within the Songea District, notwithstanding the fact that the produce is in fact intended for a destination outside the Songea District. If this had been the intention it could have been so expressed. The fact that it was not seems to me to indicate a contrary intention.

10

As I have already mentioned, Mr. O'Donovan argued that three of the U.A.C. sale agreements provided for the produce (sunflower-seed) to be "rebagged at seller's godowns on the main road between Songea/Tunduru", and that this should be treated as a splitting of the journey into "local" and "external" parts, the Respondent having the exclusive right to provide transport for the "local" portion of the journey. The argument is attractive at first sight, but I do not think that it is correct. As I read the U.A.C. sale agreements the provision amounts to no more than licence to use the godowns in question for purposes of rebagging and cleaning in course of the journey to the coast, which is to be effected by the Purchasers or their agents. I think the whole journey is to be regarded as one, and that the transport is from the buying centres to the coast.

20

30

So far as the T.T.Coy. sale agreement is concerned, the produce in question was transported from buying centres to Tunduru, and such transport in my view is clearly outside the terms of the contract.

40

Other points were argued in the course of the appeal, but in the view I take of the construction of the contract it is unnecessary to go into them. In particular it is unnecessary to consider the second and third grounds of appeal.

I would allow the appeal with costs, set aside the decree of the High Court, and order that the Respondent's suit be dismissed with costs. The

costs of the earlier proceedings in the High Court were reserved by the first judgment of this Court to be dealt with by the trial Judge. I think the Appellant should have such costs also.

DATED at Dar-esSalaam this 3rd day of December, 1959.

A.G. FORBES,
VICE--PRESIDENT.

JUDGMENT OF GOULD, J.A.

10 I agree with the reasoning and conclusions of the learned Vice President and with the orders proposed by him. I have nothing to add.

T.J. GOULD,
JUSTICE OF APPEAL.

JUDGMENT OF WINDHAM, J.A.

I also agree.

R.WINDHAM,
JUSTICE OF APPEAL.

20 DELIVERED by the Deputy Registrar, E.A.C.A., Dar es Salaam on the 3rd December, 1959.

No. 21.

ORDER

In Court this 3rd day of December, 1959.

30 Before the Honourable the Vice-President Mr. Justice Forbes the Honourable Mr. Justice Gould, a Justice of Appeal and the Honourable Mr. Justice Windham, a Justice of Appeal.

O R D E R

THIS APPEAL coming on for hearing on the 23rd day of October 1959 AND UPON HEARING Fraser Murray Esquire, of Counsel for the Appellant and Bryan O'Donovan Esquire, of Her Majesty's Counsel and J.V.S. Harrison Esquire, of Counsel for the Respondent IT WAS ORDERED that this appeal do stand for judgment and upon the same coming up for judgment this day IT IS FURTHER ORDERED -

40 (1) That this appeal be allowed with costs;

In the
Court of Appeal

No.20.

Judgment.

3rd December,
1959

- continued.

No.21.

Order.

3rd December,
1959.

In the
Court of Appeal

No.21.

Order.

3rd December,
1959

- continued.

- (2) That the Decree of Her Majesty's High Court of Tanganyika be set aside and that the Respondent's suit be dismissed with costs;
- (3) That the costs of the earlier proceedings in Her Majesty's High Court of Tanganyika be granted to the Appellant.

GIVEN under my hand and the Seal of the Court at Dar es Salaam this 3rd day of December, 1959.

SEAL of Court of
Appeal for E.
Africa.

M.D. DESAI,
ACTING REGISTRAR

10

H.M.COURT OF APPEAL FOR EASTERN
AFRICA.

No.22.

Order allowing
Final Leave to
Appeal to Her
Majesty in
Council.

20th May, 1960.

No. 22.

ORDER ALLOWING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

CIVIL APPLICATION NO.1 of 1960

In the Matter of an Intended Appeal to Her Majesty
In Council

Between:

20

ALIMAHOMED OSMAN

APPLICANT
(Original Respondent)

-- and --

NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LIMITED

RESPONDENT
(Original Appellant)

(Intended Appeal from the judgment and order of
the Court of Appeal for Eastern Africa dated the
3rd day of December, 1959 in Civil Appeal No. 6
of 1959

30

Between:

Ngoni-Matengo Co-operative
Marketing Union Limited

Appellant

-- and --

Alimahomed Osman

Respondent

In Chambers

This 20th day of May, 1960.

Before the Honourable Mr. Justice Windham, A Jus-
tice of Appeal

O R D E RIn the
Court of AppealNo.22.Order allowing
Final Leave to
Appeal to Her
Majesty in
Council.20th May, 1960
- continued.

10

UPON application made to this Court by Counsel for the above-named Applicant on the 17th day of May, 1960 for final leave to appeal to Her Majesty in Council as a matter of right under subsection (a) of the section 3 of the East African (Appeal to Privy Council) Order in Council, 1951 AND UPON READING the Affidavit of Henry George Dodd sworn on the 17th day of May, 1960 AND UPON HEARING Counsel for the Applicant and for the Respondent THIS COURT DOETH ORDER that the Applicant do have final leave to appeal as a matter of right to Her Majesty in Council from the judgment and order above-mentioned and that the costs of this application be costs in the intended appeal AND IT IS FURTHER ORDERED that the record of the intended appeal be dispatched to the Registrar of the Privy Council within ten days from to-day.

20

DATED at Dar es Salaam this 20th day of May, 1960.

Sgd: R. Mackay

Deputy Registrar,

H.M. COURT OF APPEAL FOR EASTERN
AFRICA.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing Union,
Limited.

4th January,
1937.

E X H I B I T S

D.11. - BYE-LAWS OF NGONI-MATENGO CO-OPERATIVE
MARKETING UNION, LIMITED.

(Registered No.27)

1. This Society shall be called the Ngoni-Matengo Co-operative Marketing Union, Limited, and its registered address shall be at such place as the Committee shall determine from time to time and notice thereof shall be given to the Registrar of Co-operative Societies, and to the Societies Affiliated to the Union. 10

OBJECTS

2. The objects of the Union are to promote the economic interest of the affiliated societies in accordance with co-operative principles, and more particularly to:-

- (1) undertake the marketing of all tobacco, coffee and other agricultural produce, should the Union decide to deal in such produce, handed over to the Union by the affiliated societies or their members through the purchase thereof by the Union either outright or by instalments or by sale on commission or by any other means of disposal. To these ends the Union may acquire land and provide such offices, storage accommodation, transport and other services as may be necessary to fulfil these and any other of its objects. 20
- (2) advance loans to the affiliated societies or the members thereof according to the Bye-laws; 30
- (3) encourage the development of co-operation among the existing affiliated societies, and to settle all matters of common interest, and to assist the organisation of further co-operative societies for affiliation to the Union;
- (4) exercise regular and careful supervision over the accounts of affiliated societies, and to this end to make frequent inspections;
- (5) raise loans, subject to any limit imposed by the Registrar, from financing institutions for the furtherance of these objects; and in particular but without prejudice to the foregoing raise such advances on the security of produce delivered to the Union for marketing under Bye-law 45. 40

- (6) receive and invest deposits from affiliated societies and the members thereof;
- (7) act as agents for the affiliated societies and to arrange on their behalf for the purchase in bulk of agricultural requirements;
- (8) promote other measures designed to encourage the spirit and practice of thrift, mutual help and self-help.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing Union,
Limited.

4th January,
1937

- continued.

- 10 3. For the furtherance of these objects the Union may take shares in other registered Co-operative societies of which the liability is limited.

PURPOSES OF THE FUNDS

4. The funds of the Union may be applied to the furtherance of the stated objects of the society and to the purposes set forth in Bye-laws 3, 34, 47 and 49 and to the maintenance of such staff as is necessary for the due performance of such objects in a strictly economical manner.

MEMBERSHIP

- 20 5. The members shall consist of :-
- (1) registered societies who join in the application for registration;
- (2) registered societies affiliated in accordance with these Bye-laws.

Members are also termed affiliated societies in these Bye-laws.

6. Every affiliated society of the Union must be a registered society within the District of Songea.

- 30 7. Registered societies shall be affiliated after election by the Managing Committee subject to the confirmation of a General Meeting, and on payment of an affiliation fee of Sh. 10/-.

- 40 8. Any society desiring affiliation must submit to the Committee of the Union a certified copy of a resolution passed at a General Meeting of the society authorising the application and declaring its acceptance of all the rights, duties and liabilities prescribed in these bye-laws, and the Co-operative Societies Ordinance of 1932, and the Rules made thereunder. It shall also name the person who shall be authorised to sign the register of members.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

9. Every Society which is a member of the Union shall have the right to elect delegates to represent it at a General Meeting of the Union in the proportion of one delegate for a Society consisting of 100 members or less, two for a Society consisting of 101 to 200 members, three for a Society of 201 or more. A delegate shall be member of the Society he shall represent and shall have only one vote at a General Meeting. A society may also elect one substitute for their delegates. The substitute shall have the right to attend General Meeting of the Union but shall have no right to take part in the proceedings or to vote at the meeting if any of the Society's delegates are present. In the absence of all a Society's delegates the substitute shall represent the Society and enjoy the full rights of a Society's delegate. Every Society shall pay annually to the Union a fee of Shs.5/- for the registration of every delegate or delegates substitute.

10

20

10. Membership shall be terminated by :-

- (1) cancellation of the registration of a society;
- (2) ceasing to hold one full share;
- (3) expulsion by the Union following the suspension by the Managing Committee under Bye-law 31 (22). Every case of expulsion shall be reported as soon as possible to the Registrar. An affiliated Society may be expelled for any action which may be held by a General Meeting to be dishonest or contrary to the stated objects of the Union or prejudicial to Union or to the interests of co-operation. Before any action is taken under this sub-section, the Committee of the Union shall appoint such person or persons as they consider fit to enquire into the conduct and affairs of the affiliated society member;
- (4) withdrawal after six months' notice to the Union, provided that the member withdrawing is not in debt to the Union.

30

40

Notice of withdrawal must be signed by the Chairman and Secretary of the withdrawing society and shall be accompanied by a certified copy of a resolution passed at a General Meeting of the Society sanctioning the proposed withdrawal.

11. Any affiliated society whose membership is terminated under bye-law 10 shall be entitled to

receive the value of its share or shares in the Union on the expiry of two years from the termination of its membership. The value of the share or shares shall in no case be more than the sum received by the Union in payment thereof

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

SHARE CAPITAL AND LIABILITY

12. (1) The liability of each member is limited to the nominal value of the share capital subscribed by him;
- 10 (2) Every affiliated society must hold one full share of Shs.100/- for every hundred members or fraction of hundred members; but no affiliated society shall hold more than half of the total share capital subscribed. Shares shall be paid for by a member within one year from date of admission to the Union.
- (3) Shares shall be numbered serially and share certificates shall be issued.

20

FUNDS

13. The funds of the Union shall consist of :-
- (1) An indeterminate number of shares of Shs.100/- each;
- (2) affiliation fees; mentioned in bye-law 7;
- (3) fees for the registration of delegates and delegate substitute mentioned in bye-law 9;
- (4) a levy imposed in accordance with Bye-law 15;
- (5) loans from financing institutions and other sources approved by the Registrar in writing;
- 30 (6) Such portion of the reserve fund and other funds as sanctioned by the Registrar in writing;
- (7) selling commissions and other commercial charges on business transacted for affiliated societies and the members thereof as mentioned in bye-law 16;
- (8) deposits from affiliated societies and from non-members as sanctioned by the Registrar in writing;
- 40 (9) miscellaneous items.
14. An affiliated society shall not transfer its

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

share or shares without the previous permission of the Managing Committee.

15. The Union shall be authorised to levy and retain each year upon all produce marketed by or through its agency a contribution not exceeding twenty per cent of the nett sale proceeds after all charges have been deducted, save in the case of coffee a levy of not more than six cents a Kilo reckoned on parchment weight may be charged in lieu thereof after all charges have been deducted.

10

16. The Union may charge a commission on sales and purchases and other commercial charges on business transacted for affiliated societies and the members thereof as may be fixed from time to time by the Managing Committee of the Union.

17. Deposits of the members of affiliated societies shall be invested in such manner as the Registrar shall direct, and shall not be used in the business of the Union.

GENERAL MEETINGS

20

18. A General Meeting of the Union shall be convened at least once a year, if possible in the month of April or May or as soon after as may be found practicable, and at other times by the President or by the Committee on their own motion, or by resolution passed by not less than four Affiliated Societies. Fourteen days notice shall be given in the case of an annual general meeting or a special general meeting. The notice shall specify the date, hour and place of the meeting and the business to be transacted, and shall be sent to each affiliated society.

30

19. At all general meetings the President, if present, shall preside. In his absence the Vice-President shall preside. In the absence of them both, or if they are unwilling to act, or if they are not present within 15 minutes after the time appointed for holding the meeting, the delegates present shall choose someone of their number to be Chairman and preside.

40

20. The presence of the delegates or their substitutes of at least half of the affiliated societies shall be necessary to the disposal of any business at such meetings.

21. All questions (other than amendment to the bye-laws) presented to the meeting shall be decided

by a majority of votes of the delegates present voting. Every delegate shall have one and only one vote. When votes are equal the motion shall be postponed to a subsequent meeting.

22. Not less than one month prior to the annual general meeting an agenda paper containing such subjects of import that have arisen for consideration shall be circulated to the affiliated societies who may express their views on the matters therein. Their replies may be brought by the delegate of the society. The general meeting shall consider the views expressed therein, but is not necessarily bound by them in coming to any decision.

23. The general meeting of the Union shall be the ultimate authority in all matters relating to the administration of the Union. The following amongst other matters shall be dealt with by a general meeting :-

- 20 (1) the fixing, subject to the approval of the Registrar, of the maximum liability as required by Rule 6;
- (2) the election, suspension and removal of members of the managing committee including a president, and vice-president, all of whom shall be chosen from among the delegates of affiliated societies;
- (3) the consideration and adoption of the annual statement of accounts and of the audited annual balance sheet and auditor's report;
- 30 (4) the consideration of the audit note and any inspection note by the Registrar or other inspecting officer;
- (5) the disposal of the funds available for distribution;
- (6) the fixing of the levy on produce in accordance with Bye-law 15;
- (7) the annual report to the Registrar;
- 40 (8) the confirmation of the admission of new members and the consideration of the report of the committee on any society suspended by the committee to decide whether the society concerned should or should not be dis-affiliated. Every case of dis-affiliation should be reported as soon as possible to the Registrar;

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

- (9) the fixing of the rates of travelling and subsistence allowance to be drawn by the delegates and delegates substitute for travelling done on necessary business for the Union;
- (10) the fixing of the honoraria for unsalaried officers of the affiliated societies and the Union at a rate to be approved by the Registrar in writing;
- (11) the amendment or repeal of any existing bye-law or the amendment of a new bye-law in the manner required by Rule 5; 10
- (12) the fixing of the rate of pay for the supervisors and for the clerical establishment of the Union;
- (13) the consideration of the circulated agenda;
- (14) the investigation of any complaints which any affiliated society may bring against the committee of the Union;
- (15) the framing of the annual budget of estimated receipts and expenditure for submission to the Registrar; 20
- (16) the election of delegates to represent the Union at other societies of which the Union may be a member;
- (17) the consideration of any other business duly brought forward.
24. Committee members of affiliated societies may attend general meetings, but at no expense to the Union, and only as spectators to listen to the proceedings. 30
25. All business discussed or decided at a general meeting shall be recorded in a minute book, which shall be signed by the Chairman of the meeting and by the Secretary.

MANAGING COMMITTEE

26. The Managing Committee shall consist of not less than four and not more than ten delegates including the President and Vice-President, and each member shall hold office for a period of three years from the date of his election under this bye-law; one third of the committee shall retire annually, the order of retirement being in the first instance by ballot and thereafter in rotation. 40
Retiring members may be re-elected. The Committee

may co-opt a member to fill a vacancy occurring during the year. A member of the committee ceasing to be a member of the society he represents shall vacate his seat on the Committee.

27. The Committee shall appoint a person who shall be acceptable to the Registrar as the Supervising Manager of the Union at such salary and upon such terms of service as may be agreed upon with the sanction of the Registrar in writing.

10 28. The Committee may delegate, by a resolution in Committee, to the Supervising Manager of the Union those of its powers which relate to business transactions.

20 29. The Committee shall meet as often as necessary and at least once in three months. The Supervising Manager shall be present to advise the Committee if necessary but shall not vote. The President or the Vice-President, or in their absence, one of the other members shall preside. Each member shall have one vote.

30 30. The meetings may be held at the registered office of the Union, or at any of the affiliated societies, or at any other place selected by the President with due regard to the general convenience. The quorum for a meeting of the Committee shall be three. Any member who shall fail to attend four consecutive meetings of the Committee of the Union shall be liable to be removed by the Committee, but may be reinstated for the unexpired portion of term of the Committee for satisfactory reasons given.

31. The Committee shall exercise all the powers of the Union, except those reserved for the General Meeting, subject to any regulations or restrictions duly laid down by the Union in a General Meeting, or in the bye-laws, and in particular shall have the following powers and duties :-

- 40
- (1) to maintain true and accurate accounts;
 - (2) to keep a true account of the assets and liabilities;
 - (3) to keep a correct register of members;
 - (4) to lay before the annual general meeting a profit and loss account and an audited balance sheet;
 - (5) to assist the inspection of the books by any person authorised to see them;

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

- (6) to watch that the bye-laws or contract binding members to deal with the Union are observed;
- (7) to make subsidiary rules of business for regulating their work. Such rules shall be entered in the minute book of the Union;
- (8) to fix with the sanction in writing of the Registrar their maximum credit of societies, and alter it when required;
- (9) to maintain the books prescribed by the Rules and by the Registrar; 10
- (10) to decide the terms on, the period for and the rates of interest (if any) at which loans are to be given, and to arrange for the recovery of loans and interest if any;
- (11) to inspect and check the accounts of affiliated societies and in particular to supervise the expenditure of loans made to the affiliated societies;
- (12) to receive deposits and to decide the terms on, the period for, and the rate of interest at which they shall be received, and to arrange for their repayment or return in conformity with Bye-law 17; 20
- (13) to contract loans subject to any registration imposed by the General Meeting or by the Registrar;
- (14) to prepare and forward any statement of accounts or reports required by the Registrar and to consider the inspection notes of the Registrar and his staff, and to take the necessary action, and to report to the next General Meeting the action taken by them; 30
- (15) to decide the terms on which agricultural produce shall be received from affiliated societies, or the members thereof, for marketing, and to arrange for the safe custody of such while in store;
- (16) to decide the terms on which seed and agricultural requirements shall be bought and sold for the use of members; 40
- (17) to watch and guard against the adulteration of produce sold through the Union;
- (18) to affiliate new societies in accordance with the Bye-laws;

- (19) through any member of the Committee, or the secretary or any employee specially authorised to institute, defend, compromise, refer to arbitration or abandon, any legal proceedings by or against the Union or Committee or officers or employees concerning the affairs of the Union;
- (20) to summon general meetings as required by Bye-law 18;
- 10 (21) to appoint, dismiss, suspend or punish employees;
- (22) to enquire into the conduct of any affiliated society and if it considers that any such society is violating the Bye-laws or acting in any way prejudicial to the Ngoni-Matengo Co-operative Marketing Union Ltd., shall suspend it and report thereon to the General Meeting of the Union in accordance with Bye-law 23 (8);
- 20 (23) to appoint any agents necessary for the marketing of members produce, provided that the appointment or change of any agent shall be subject to the approval of the Registrar in writing;
- (24) to transact all other such business as may be necessary in the interests of the Ngoni-Matengo Co-operative Marketing Union, Limited, in accordance with these Bye-laws and generally to conduct the business of the Union.
- 30 32. In their conduct of the affairs of the Union the Committee shall exercise the prudence and diligence of ordinary men of business and shall be responsible for any loss sustained through acts contrary to the Ordinance Rules, or these Bye-laws.
33. All business discussed or decided at a meeting by the Committee shall be recorded in a minute book which shall be signed by the Chairman of the meeting and by all the members of the Committee who are present.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

40

LOANS TO SOCIETIES

34. (1) An affiliated society may receive a loan only from the Union, and the Committee of the Union may advance the amount desired from the funds of the Union provided that no loan exceeding Shs.500/- may be made to

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

any affiliated society without the prior approval of the Registrar, except in the case of loans under Bye-law 34(3);

- (2) The rate of interest on loans shall not exceed 8 per cent, but interest need not necessarily be charged;
- (3) The maximum amount which may be advanced (except in the case of loans under Bye-law 34(1) to an affiliated society or to a member thereof against produce delivered at a godown for sale shall not be more than 75% of the nett local market value as fixed by the Committee of the Union with the advice of the Supervising manager; 10
- (4) The purposes of loans shall be for advance against produce delivered for sale in accordance with Bye-law 34(3), or for a society to carry on its activities, subject to Bye-law 34(1); 20
- (5) security for repayment shall be the produce delivered to an affiliated society's godown, the assets of the affiliated society to whom the loan is given, and the liability of each member of an affiliated society for that part of the loan received by him and not repaid by him.

35. If the borrower fails to pay any interest due or any instalment or principal, and the Committee of the Union does not grant an extension of time, the whole loan shall become immediately due and repayable irrespective of any conditions in which the loan was made. 30

SUPERVISING MANAGER

36. The powers and duties of the Supervising Manager shall be :-

- (1) generally to manage and conduct the current business of the Union, and if necessary to sign on behalf of the Union;
- (2) to see that subsidiary rules framed under Bye-law 31(7) are adhered to; 40
- (3) to perform all duties entrusted or delegated to him by the Committee of the Union under Bye-law 28;
- (4) to attend, where necessary, all meetings of

the Committee and General Meeting for the purpose of giving advice.

SECRETARY - TREASURER

37. The Committee shall appoint a Secretary-Treasurer who shall work under the control of the Supervising Manager, and whose powers and duties subject to that control shall be:-

- (1) to carry on the correspondence of the Union, and to maintain all its books, accounts and registers, and to sign on behalf of the Union;
- (2) to receive applications for deposits and withdrawal of deposits etc., and to lay them before the Committee of the Union, and to prepare receipts and vouchers;
- (3) to receive and disburse money on behalf of the Union;
- (4) to maintain correctly the register of members and share list;
- (5) to summon and attend general meetings and meetings of the Committee;
- (6) to certify copies of entries in books under section 27 of the Ordinance and for any other purpose where a Certified copy of an entry or resolution of a general meeting of Committee is required;
- (7) to keep in safe custody all monies, books and records of the Union;
- (8) to perform any other duties entrusted to him by the Committee.

30 He shall give such security as the Committee deem necessary but not less than Shs. 200/-.

GENERAL PROVISIONS

38. All shares or other instruments executed on behalf of the Union except receipts shall bear the signature of the President or Vice-President and also the Secretary-Treasurer, as representing the Union.

40 39. Copies of the Bye-laws and of the balance sheet shall be supplied free to all Affiliated Societies. The last balance sheet shall be open to public inspection during office hours. The books shall be open to the inspection of anyone interested in the funds as member except that no

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

one shall be allowed to see the deposit account of any person without that person's consent in writing.

40. The Union may join in co-operative purchase and sale with other Unions in Tanganyika Territory.

41. All transactions shall be strictly on cash terms and no credit shall be allowed save as provided in these Bye-laws.

42. Every affiliated society and member thereof shall be bound by the rules or instructions of the Managing Committee as to the planting, grading, care and sale of any agricultural produce dealt in by the Union. 10

43. In applying to a financing institution for an advance the Committee shall, if so required by such institution, furnish a statement of all outstanding advances from any source whatsoever, certified by the Registrar.

44. The Committee shall effect all ordinary business insurances and take such other precautions as are customary in connection with the marketing of agricultural and other produce. 20

BINDING RULES

45. The Union shall undertake the joint sale of all tobacco and coffee which may be handed over to it for sale by affiliated societies or the members thereof, or by any person required to do so by order under section 36 of the Ordinance, and may undertake the sale of any other produce provided such produce is delivered in good condition and at such time and places as may be notified by the Committee. 30

45A. For the purpose of raising money to make advances to Societies on the security of produce delivered by them to the Union for marketing, the Union may pledge all or any of the produce so delivered by any society either separately from or jointly with all or any produce so delivered by all or any other Societies;

46. Should any affiliated society or member thereof without the authority of the Ngoni-Matengo Co-operative Marketing Union, Limited, deliver, sell, give or otherwise dispose of any tobacco or coffee to any firm, person or body of persons other than the Ngoni-Matengo Co-operative Marketing Union, Limited, he shall pay to the Ngoni-Matengo Co-operative Marketing Union, Limited, by way of liquidated 40

damages a sum of three shillings a kilo on such tobacco or coffee or such less sum as the Ngoni-Matengo Co-operative Marketing Union, Limited, may be willing to accept.

DISTRIBUTION OF ACCUMULATED FUNDS

47. Of such nett surplus as may be available for distribution (as passed by the Registrar) there shall be placed :-

- 10 (1) not less than 20 per cent, to the statutory reserve fund;
- (2) 10 per cent to a contingency reserve fund;
- The remainder may then be distributed as follows with the sanction in writing of the Registrar:-
- (3) honoraria to the unsalaried members of Committee of the Union, and the Committees of the affiliated Societies;
- (4) a dividend on fully paid up shares not exceeding five per cent;
- 20 (5) to a bonus fund for the permanent employees of the Union;
- (6) an amount not exceeding 50 per cent to be allocated to affiliated societies as the General Meeting of the Union may decide, to be distributed proportionately to the amount of produce sold by each society through the Union;
- 30 (7) any unused balance after provision has been made for normal current expenses, shall be paid to a building, depreciation or such other fund or purpose as may be prescribed by the Registrar.

Provided that no rebate shall be made unless 50 per cent of the nett accumulated funds available in the year in question have been carried to the reserve fund, this restriction to continue till the reserve fund amounts to Shs. 60,000/-.

48. The Reserve Fund or part of it, may be used in the business of the Union, as the Registrar sanctions in writing, and exists to :-

- 40 (1) cover liabilities in case of dissolution;
- (2) cover losses arising from any unforeseen circumstances, such drawings upon it being reimbursed from the next accruing available funds;
- (3) build up a working capital which will be independent of loans.

49. A Bonus Fund may be formed for the benefit of

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937

- continued.

Exhibits

D.11.

Bye-laws of
Ngoni-Matengo
Co-operative
Marketing
Union, Limited.

4th January,
1937
-- continued.

the permanent salaried staff of the Union. If formed the Committee shall frame rules to the satisfaction of the Registrar for the formation, running and maintenance of this fund and disbursements therefrom. The fund shall be invested in a manner approved by the Registrar in writing.

DISPUTES

50. Should there be a conflict between the bye-laws of the Union and an affiliated society, the bye-laws of the Union shall prevail. In cases of doubt in the interpretation of the bye-laws the Registrar shall be consulted and his decision shall be accepted as final.

10

LIQUIDATION

51. The Union shall be liquidated only by order of the Registrar under Section 45 of the Ordinance.

52. Notwithstanding anything contained in these bye-laws, the Registrar by order in writing shall have power to suspend, remove, or dismiss any officer, official or employee of the society, and if he sees fit, may appoint for such time as he considers necessary any other person, whether a member or not of the Society, to fulfil the duties of the office or offices of such officer, official or employee to such extent as the Registrar may prescribe, and such person shall have all the powers and duties attached to the office or offices by the rules and bye-laws. His remuneration, if any, shall be fixed by the Registrar and paid by the Society.

20

30

AMENDED BYE-LAWS

53. Old bye-laws Nos. 1 to 55 are hereby rescinded, and the bye-laws 1 to 52 recited above are hereby adopted.

(Sgd.) ? ? ?

REGISTRAR OF CO-OPERATIVE SOCIETIES

4th of January, 1937.



D.18(b) - TENDER, ANOTHER PARTY TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION, LIMITED

The Chairman and Committee,
Ngoni-Matengo Co-operative Marketing Union Limited

Exhibits
D. 18(b)

Tender, another
Party to Ngoni-
Matengo Co-
operative
Marketing Union,
Limited

26th March,
1955.

We submit hereunder the terms of our tender
for the carriage of goods as specified below:-

- (1) Leaf Tobacco from primary markets within the
District to the factory in Songea. Shs. 2/- per
mile for a lorry capable of loading 5 tons.
- 10 (2) Baled Tobacco and any other goods or produce
inwards or outwards between :-
- | | |
|---|--|
| (a) Songea/Lindi 0/22 cts per kilo | } These rates in- clude carriage of any goods of the Societies on return trip, which we under- stand is quite negligible. |
| (b) Songea/Mtama 0/20 | |
| (c) Songea/Nachingwea 0/19 | |
| (d) Songea/Mtwara } THAT IS WITHOUT ANY CHARGE | |
- (e) Songea/Njombe -/15 cents per kilo
- 20 (f) Songea/Mbamba-Bay - Shs.2/- per mile per 5 ton
lorry
- | | | |
|-----------------------|-----|-----------------|
| (g) Songea/Mbinga | do. | } Hire Rates |
| (h) Mbinga/Mbamba-Bay | do. | |
| (i) Mbinga/Peramiho | do. | |
- (3) Bagged Wheat from primary Societies markets in
Umatengo to:
- | | |
|----------------|---|
| (a) Mbinga | } Shs.2/- per mile for a lorry of 5 tons as hire rate. |
| (b) Mbamba-Bay | |
| (c) Songea | |
- (4) Bagged Paddy from primary societies' markets
within the District to :-
Songea Shs.2/- per mile per 5 ton lorry hired
rate
- (5) Under section (2) above we do/ do not wish to
carry wheat
- (6) Under section (2) above we do/ do not wish to
carry paddy
- (7) Under section (2) above we do/ do not wish to
carry tobacco

Sgd: ?
Box 81.
MBEYA.

Date 26/3/1955.

delete whichever is inapplicable.

Exhibits

D.18(d)

Tender, The
Tanganyika
Transport Company
Ltd., to Ngoni-
Matengo Co-
operative
Marketing Union,
Limited.

27th March,
1955.

D.18(d) - TENDER, THE TANGANYIKA TRANSPORT COMPANY
LTD., TO NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 27th MARCH 1955

The Tanganyika Transport Company Ltd.

Your Ref. TT/18/26. Our Ref. 5/1/55 SONGEA
27th March, 1955.

Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sirs,

TRANSPORT CONTRACT TENDER

10

We thank you for your letter dated the 17th
January '55 under Ref. TT/18/26 inviting tenders
for a TRANSPORT CONTRACT covering period 1st April
'55 to 31st March 1958; and we have pleasure in
submitting our rates as specified hereunder :-

- (1) LEAF TOBACCO from primary markets within the
District to the Factory in Songea @ Sh.1/40
per running mile for a truck capable of load-
ing 4 to 4½ tons.
- (2) BALED TOBACCO and any other goods or produce 20
from -
 - (a) Songea to Lindi @ 17 cts per kg.
Lindi to Songea @ 13 cts per kg.
 - (b) Songea to Mtama @ 16 cts per kg.
Mtama to Songea @ 10 cts per kg.
 - (c) Songea to Nachingwea @ 16 cts per kg.
Nachingwea to Songea @ 10 cts per kg.
 - (d) Songea to Mtwara @ 19 cts per kg.
Mtwara to Songea @ 14 cts per kg.
 - (e) Songea to Njombe & v.v. @ Shs.140/- per 30
ton
 - (f) Songea to Mbamba Bay @ Sh.1/50 per running
mile.
The loading capacity of the truck to be 4
to 4½ tons.
 - (g) Songea to Mbinga @ Sh.1/50 per running
mile loading 4 to 4½ tons.
 - (h) Mbinga to Mbamba Bay @ Sh.1/75 per running
mile loading 4 to 4½ tons.
 - (i) Mbinga to Peramiho @ Sh.1/75 per running 40
mile loading 4 to 4½ tons.

We would command your attention to rates quoted for inward journeys under (2) 'a', 'b', 'c' and 'd'; the rates being much lower than the outward journeys.

(3) BAGGED WHEAT from primary societies' markets in Umatengo to:

(a), (b) and (c) @ Sh.1/75 per running mile loading 4 to 4½ tons.

10

(4) BAGGED PADDY from primary societies' markets within the District to Songea @ Sh.1/60 per running mile loading 4 to 4½ tons.

It is hardly necessary to bring to the knowledge of the Union the capability and efficiency coupled with sound and wide organisation of which our Company is renowned throughout the Province, and we sincerely hope that the Union would find our quotations fair and reasonable.

Hoping that our tender would receive your due consideration and

20

Assuring you of our best attention at all times.

Yours faithfully,
THE TANGANYIKA TRANSPORT CO. LTD.

Sd. Y.S. Amin
DIRECTOR.

Exhibits
D.18(d)

Tender, The Tanganyika Transport Company Ltd., to Ngoni-Matengo Co-operative Marketing Union Limited.

27th March, 1955
- continued.

D.18(c) - TENDER, S.S.LODHI TO NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD., 28th MARCH 1955

The Chairman and Committee,
Ngoni-Matengo Co-operative Marketing Union Ltd.,

30

We submit hereunder the terms of our tender for the carriage of goods as specified below :-

(1) Leaf Tobacco from primary markets within the District to the Factory in Songea: 1/25 per mile for a lorry capable of loading 4 tons.

(2) Baled Tobacco and any other goods or produce inwards or outwards between :-

(a) Songea/Lindi 1/- one shilling per running
(b) Songea/Mtama) mile for four tons
(c) Songea/Nachingwea } load
(d) Songea/Mtwara) (Return load free)

40

D.18(c)

Tender, S.S.Lodhi to Ngoni-Matengo Co-operative Marketing Union Ltd.

28th March, 1955.

- Exhibits
D.18(c)
- Tender,
S.S.Lodhi to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.
28th March,
1955
- continued.
- (e) Songea/Njombe 1/50 per mile for 3 tons
(f) Songea/Mbamba-Bay 1/25 per mile for 4 tons
- (g) Songea/Mbinga 1/25 per mile for 4 tons
(h) Mbinga/Mbamba-Bay 1/25 per mile for 4 tons
(i) Mbinga/Peramiho 1/25 per mile for 4 tons
- (3) Bagged Wheat from primary Societies' markets in Umatengo to :-
- (a) Mbinga 1/25 per mile for 4 tons
(b) Mbamba-Bay do.
(c) Songea do.
- (4) Bagged paddy from primary societies' markets within the District to :-
Songea 1/25 per mile up to 4 tons load.
- (5) Under Section (2) above we do/do not wish to
carry wheat.
- (6) Under Section (2) above we do/do not wish to
carry paddy.
- (7) Under Section (2) above we do/do not wish to
carry tobacco.
- Signed Suleman S. Lodhi
for
- Date 28/3/1955.
- ☒ Delete whichever is inapplicable.

- P.2.
- Tender,
Alimahomed Osman
to Ngoni-Matengo
Co-operative
Marketing Union
Limited.
28th March,
1955.
- P.2. - TENDER, ALIMAHOMED OSMAN TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LIMITED
- The Chairman and Committee,
Ngoni-Matengo Co-operative Marketing Union, Ltd.,
Songea.
- We submit hereunder the terms of our tender
for the carriage of goods as specified below :-
- (1) Leaf Tobacco from primary markets within the District to the Factory in Songea: Shs.1/50 per mile for a lorry capable of loading 5 tons.
- (2) Baled Tobacco and any other goods or produce inwards or outwards between :-
- (a) Songea/Lindi cts Eighteen per Kilo.
(b) Songea/Mtama cts Eighteen per Kilo.
(c) Songea/Nachingwea cts Eighteen per Kilo.
(d) Songea/Mtwara cts Twenty two per Kilo.
(e) Songea/Njombe cts Twenty per Kilo.

- | | | |
|-----|-------------------|---------------------|
| (f) | Songea/Mbamba Bay | cts Seven per Kilo. |
| (g) | Songea/Mbinga | cts Four per Kilo. |
| (h) | Mbinga/Mbamba Bay | cts Four per Kilo. |
| (i) | Mbinga/Peramiho | cts Four per Kilo. |

Exhibits

P.2.

(3) Bagged Wheat from primary societies' markets in Umatengo to :-

- | | | | |
|-----|------------|-------------------|------------------|
| (a) | Mbinga | Sh.1/50 per mile. | Laden or unladen |
| (b) | Mbamba Bay | Sh.1/50 per mile | " " |
| (c) | Songea | Sh.1/50 per mile | " " |

Tender,
Alimahomed Osman
to Ngoni-Matengo
Co-operative
Marketing Union
Limited.

28th March,
1955

- continued.

(4) Bagged Paddy from primary societies' markets within the District to :-

Songea Sh.1/50 per mile. Laden or unladen.

- (5) Under Section (2) above we do/do wish to carry wheat.
- (6) Under Section (2) above we do/do wish to carry paddy.
- (7) Under Section (2) above we do/do wish to carry tobacco.

Signed Alimahomed Osman
P.O. Box 18, Songea.

Date: 28th March, 1955.

D.18(a) - LETTER, ALIMAHOMED OSMAN TO NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD., 28th MARCH, 1955

Alimahomed Osman,
P.O. Box 49, Lindi.
Lindi/Songea.
28th March, 1955.

D.18(a)

Letter,
Alimahomed
Osman to Ngoni-
Matengo
Co-operative
Marketing Union,
Ltd.

28th March, 1955.

The Chairman and Committee Members,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sirs,

Re: TRANSPORT CONTRACT TENDER

I beg to submit herewith my Tender for transport duly filled in the form supplied by you.

EFFICIENCY OF MY SERVICE. I would like to mention that I have purchased brand new 20 (twenty) lorries which I will reserve to give quick and entirely satisfactory service to your Union, during the duration of my contract. Secondly, I have my own Garage, Mechanic and Office under my personal

Exhibits

D.18(a)

Letter,
Alimahomed
Osman to Ngoni-
Matengo
Co-operative
Marketing Union,
Ltd.

28th March, 1955
- continued.

supervision and in my absence there will always be my clerk in the office to supply transport at any time required by the Union. I know by my previous experience that how immediately it requires to transport Tobacco leaves from the market centres before it gets dry or weathered and transport of Tobacco bales to reach safely at their destination port.

Re. Local Transport rates. The local transport takes considerable delays in loading and off-loading and therefore it requires to keep some extra lorries in spare to meet your demand for which, just for your information, I have decided to keep 10 lorries. Still, the rate which I have quoted is the same fixed by the Government.

10

Re. Transport of Tobacco Bales. My quoted rates are quite reasonable for the following reasons and I hope that you will also agree with that:-

1. Now a days, Songea District is growing more foodstuff crop every year. According to Agriculture Report the crop, including tobacco, was about 5,000 tons and even in this year as rains is quite satisfactory it would be more or less the same. Most of the produce is to be transported to the coast, say Lindi and in return to cope with the same quantity of cargo for Songea is impossible to obtain and consequently lorries have to return empty, without any load for Songea. Under this circumstances, if there is any load for your Union to bring here from Lindi I will charge half rate only on weight (say only on total kilos).

20

2. It is of no use to quote you unreasonable rates in hope to obtain the contract and when the time arrives for the supply of transport then to make unnecessary delays and if enough load is not loaded from the market centres, to make false excuses and that puts your Union in inconvenience and in heavy loss.

3. To a transporter it does not make any difference in transporting from here, either to Nachingwea, Mtama or Lindi unless and until the Union has fixed to transport all the Tobacco bales to the certain port because transporter cannot remove his office from Lindi to different ports, time to time and therefore lorries have to go to Lindi even empty after off-loading bales to Nachingwea or Mtama as the transporter has to bring some return load from Lindi.

30

40

Finally, I may remind once again to your Committee, that I have given my services for many years to your Union even during the last war, but unfortunately I had to cancel my contract because there was a lot of misunderstandings between the Union and myself.

I hope you will give your kind consideration to my Tender and hope to receive your favourable reply,

Yours faithfully,

Sgd: Alimahomed Osman.

10

Exhibits

D.18(a).

Letter,
Alimahomed
Osman to Ngoni-
Matengo
Co-operative
Marketing Union,
Ltd.

28th March, 1955
- continued.

P.1. - CONTRACT, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION, LIMITED AND ALIMAHOMED OSMAN

Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

This Agreement made the 14th day of April 1955
Between the Ngoni-Matengo Co-operative Marketing
Union, Limited, of Songea, Tanganyika Territory
(hereinafter called "the Union") and Mr. Alimahomed
Osman of Songea (hereinafter called "the Contractor")

20

This Agreement is subject to the conditions
set forth in the Schedule hereto annexed and the
Schedule shall be read and construed as a part of
the Agreement

As witness our hands the day and year written
above.

Signed by L.O.Mbawal, Secretary
Ngoni-Matengo Co-operative Mar-
keting Union Limited, on behalf
of the Ngoni-Matengo Co-operative
Marketing Union Ltd., in the
presence of :-

30

} Seal of Union
} 14th April,
} 1955.

Sgd: Luxford C. Mbawala

Sgd: ? ?

Signature and
Address of Witness

P.1.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

14th April,
1955.

Exhibits

P.1.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

Signed by Alimahomed Osman on)
behalf of Mr. Alimahomed Osman)
in the presence of :-)

Sgd: Kassamali Gulemhusein
P.O. Box 23, Songea.

Signature and Address of Witness

Stamp Duty 1/-.

SCHEDULE

14th April,
1955
- continued.

1. The Union agrees to use, and the Contractor agrees to supply, the Contractor's lorries or other sufficient and suitable motor vehicles exclusively for the period of this agreement for the following purposes, namely :-
 - (a) for the transport of leaf tobacco, bagged paddy, and bagged wheat from all markets maintained by or for the affiliated societies of the Union, or agricultural produce of any kind being handled by the Union from these or any markets established by or for a Native Authority in the District of Songea to the factory of the Union situated at Songea, or to any other place in the Songea District desired by the Union together with such members of the Managing Committee of the Union, or Union Staff, and Members of the Committee of Primary Societies and Primary Societies Staff as may be duly authorised from time to time; 20
 - (b) for the transport of baled tobacco, or any other Primary produce, processed or unprocessed, in suitable packing, from its factory or Godown at Songea to the ports of Lindi and or Mbamba-Bay or to any point on the Southern Province Railway or port served by that Railway or to Njombe in the Southern Highlands Province; 30
 - (c) for the transport, either inwards or outwards, of all such other goods or building materials as the Union may, from time to time, require to be transported from place to place in the Southern Province or between Songea/Njombe in the Southern Highlands Province; 40
 - (d) for general transport in and around Songea PROVIDED ONLY THAT :-
 - (i) the Union shall at all times have the right to employ one 3-ton lorry, and one

motor car or vanette of one ton capacity or under, both being the property of the Union, for any of the purposes above mentioned, if it so elects, and

- (ii) if, after due notice of 3 days to the Contractor, the Contractor be unable to supply sufficient and suitable lorries or other motor vehicles as required by the Union, the Union shall forthwith have the right, notwithstanding this agreement, to obtain the lorries or motor vehicles so required from any other person, firm or company.

10

NOTE: Suitable vehicles should be taken to mean:-

- (a) for leaf transport: vehicles capable of minor District roads and tracks; fitted with bodies capable of taking a full load of leaf at 150 c.ft. per metric ton;
- (b) for bale transport: vehicles for main road running loading bales 30" x 30" x 20" approximate at the rate of 10 bales per metric ton, alternatively packing cases of 33" x 33" x 22" approximate at the rate of 10 cases per $1\frac{1}{2}$ metric ton or cases 48" x 30" x 30" at the rate of 4 cases per metric ton;
- (c) on no account will vehicles be permitted to carry petrol, oil or lubricants on the truck platform, and, if necessary provision should be made for the carriage of these in special compartments fitted under the truck platform;
- (d) that all vehicles are fitted with uprights and ridge poles which should provide an adequate pitch for rain to run off;
- (e) that tarpaulins of vehicles are efficient and extend fully down the sides, front and back of the lorries with efficient lashings;
- (f) that a tarpaulin is laid over the floor of the vehicles;
- (g) that tarpaulins have been inspected prior to loading and those with holes or having lost their waterproof qualities have been declared inefficient;

20

30

40

Exhibits

P.1.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

14th April,
1955

- continued.

Exhibits

P.1.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

14th April,
1955

- continued.

2. The Contractor agrees with the Union:-
- (a) to carry and deliver the goods of the Union in good order and condition;
 - (b) to carry and deliver to or from any point mentioned in 1(a), (b) and (c), above, as called upon, goods to the extent of any tonnage not exceeding five hundred in all in any calendar month from April 1st until such time as the road to such points shall be officially declared closed; 10
 - (c) to operate and maintain in working order and carry out all necessary repairs to lorries, and other motor vehicles supplied for the use of the contract;
 - (d) to operate and maintain and keep available for the union at all time such minimum number of the lorries and other motor vehicles as will be sufficient and suitable to lift and carry not less than twenty five tons of goods or produce in any one day of twenty four hours on behalf of the Union, the onus of proof of availability thereby to lie upon the Contractor; 20
 - (e) to indemnify the Union against any expenses incurred by the Union under the conditions of Clause 1(d)(ii) of this agreement, save only when such failure to provide transport shall be proved to the satisfaction of the District Commissioner, Songea, to have been due to circumstances entirely beyond his control; and against any and all damage however caused to goods of the Union in transit in his lorries or motor vehicles; and for any other breach default or delay on the part of the Contractor, his servant or agents, occasioning actual financial loss to the Union; 30
 - (f) to keep insured at all times during the period of this agreement by a policy and with a company to be approved by the Union each and every lorry or motor vehicle supplied for use by the Union in accordance with the motor vehicles insurance (Third Party Risks) Ordinance 1945 and against all legal claims that may be made in respect of damage, loss or injury, including injury to passengers, caused by or arising out of the use of the said lorry or vehicle on the road. 40

3. The Contractor agrees to refrain from undertaking any contract to supply transport to another party during the period of this agreement, and to discharge such contract if in force during such period, unless he shall first satisfy the Union that he is in fact maintaining, and able to maintain, the said minimum number of lorries and motor vehicles.

10 4. The Contractor shall maintain within the township of Songea an office and a responsible office staff, capable, at all times within normal office hours of conducting the Contractor's business in accordance with the terms of this agreement, and the closure of such office, or the absence of such staff at any time within normal business hours shall be deemed a breach and repudiation of this agreement.

20 5. The Union agrees to pay, and the Contractor agrees to accept remuneration for all services rendered under this agreement at the following rates and subject to the following conditions; and both parties to this agreement undertake to accept the arbitration and final rulings of the District Commissioner, Songea, in all disputes arising out of any ambiguity contained in such rates and conditions:

30 (1) specifically for the carriage of tobacco leaf and other primary produce from any market mentioned in clause 1(a) to the Unions factory at Songea or any other place within the district at the rate of one shilling and fifty cents (Shs.1/50) per running mile for a vehicle capable of loading 5 tons, the above rate being payable for a vehicle laden or unladen.

(2) specifically at the following rates for the transport of baled tobacco and any other goods or produce inwards or outwards between the following places :-

- 40
- | | | |
|-----------------------|---|----------------------------------|
| (a) Songea/Lindi | : | cents eighteen per kilo (-/18) |
| (b) Songea/Mtama | : | cents eighteen per kilo (-/18) |
| (c) Songea/Nachingwea | : | cents eighteen per kilo (-/18) |
| (d) Songea/Mtwara | : | cents twenty-two per kilo (-/22) |
| (e) Songea/Njombe | : | cents twenty per kilo (-/20) |

Exhibits

P.1.

Contract
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

14th April,
1955

- continued.

Exhibits

P.1.

Contract
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

14th April,
1955
- continued.

- (f) Songea/Mbamba Bay : cents four per kilo (-/04)
- (g) Songea/Mbinga : cents four per kilo (-/04)
- (h) Mbinga/Mbamba Bay : cents four per kilo (-/04)
- (i) Mbinga/Peramiho : cents four per kilo (-/04)

PROVIDED ONLY THAT in the case of loads of whatever nature the Union wishes to be carried from Lindi, Mtama, Nachingwea and Mtwara to Songea shall be at HALF the rates quoted in (a), (b), (c) and (d) above, respectively.

10

- (3) specifically for the transport of other goods from place to place within the district of Songea at the rate of one shilling and fifty cents (Shs.1/50) per running mile for a vehicle laden or unladen.
- (4) specifically without charge or payment, in respect of :-

20

Persons mentioned in Clause 1(a) duly authorised by the Union to travel anywhere on the legitimate business of the Union, to any place on the route of any of the Contractor's lorries engaged on the Union's business under this agreement.

- (5) No passengers other than those aforesaid shall be carried on the Contractor's vehicles when engaged on Union business, unless such passengers hold specific authority in writing from the Union so to travel.

30

6. The Contractor shall not at any times assign or transfer the benefit or obligation of this agreement without the previous consent in writing by the Union.

7. This agreement shall remain in force for the term from the 1st day of April 1955, to the 31st day of March 1958, subject nevertheless to the right of revision and option to determine next hereinafter contained.

40

8. If the Union shall be desirous of reviewing and modifying the terms and conditions of this agreement and the rates of payment hereunder at the expiration of the first and/or second years of the said term and of such their desire shall (on or before the 28th day of February in each year) give to the Contractor one month's notice in

10 writing setting out such reasonable modifications or revisions to the contract as the Union shall consider necessary and if the Contractor shall within seven days after the receipt by him of such written notice as aforesaid signify to the Union in writing his refusal to continue this agreement upon such modified conditions or rates or payment as required by the Union then this agreement and everything herein contained shall immediately cease and be determined at the expiration of the first or second years thereof as the case may be. If, however, the Contractor shall be willing to accept such modifications as required by the Union and shall in writing notify the Union to that effect subject to the terms and conditions herein contained but subject nevertheless to such modifications required by the Union as aforesaid

Exhibits

P.1.

Contract
Ngoni-Matengo
Co-operative
Marketing Union
Limited and
Alimahomed
Osman.

14th April,
1955

- continued.

20 D.21(i) LETTER, DEPARTMENT OF CO-OPERATIVE
DEVELOPMENT TO ALIMAHOMED OSMAN AND OTHERS,
17th August 1955.

Department of Co-operative Development,
P.O. Box 42,
Songea,
Tanganyika,
17th August, 1955.

Ref.132/161.

Messrs. Gulamali Jadavji, Songea.
Hassanali Ladha Dimani, Songea.
T.T. Co. Ltd., Songea.
30 Alimahomed Osman, Songea.

D.21(i).

Letter,
Department of
Co-operative
Development to
Alimahomed
Osman and Others.

17th August,
1955.

Dear Sirs,

It is anticipated that sale of Songea paddy will not be permitted in Nyasaland. Consequently this paddy will be diverted elsewhere - probably to Kyela Mill near Mwaya. However, should the Local price be competitive consideration would be given to sale of paddy in Songea itself. There is a further possibility that the paddy may be milled at Keta Keta and ultimately disposed of as rice.

40 In this connection I should be grateful if you would let me know whether or not you would be interested in buying either paddy or rice. Should you wish to do so, please let me know as soon as possible how much paddy or rice you would require

Exhibits

D.21(i).

Letter,
Department of
Co-operative
Development to
Alimahomed
Osman and Others.

17th August,
1955

-- continued.

and what price you would offer. It is expected that 250 tons of paddy or 150 tons of rice will be available. Prices quoted should be for paddy or rice in bags at Mbamba-Bay or Songea.

This is not an offer for sale; availability of this produce in Songea would depend on prices offered.

Yours faithfully,

Sd. ? Hall
CO-OPERATIVE OFFICER.

10

c.c. Ngoni-Matengo Co-operative Marketing
Union Ltd.,
P.O. Box 3, Songea.

P.8.

Letter, Ngoni-
Matengo Co-
operative
Marketing
Union Ltd., to
Smith Mackenzie
& Co., Ltd.

6th September,
1955.

P.8.- LETTER, NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., to SMITH MACKENZIE & CO., LTD.

G/13/107.

6th September, 1955.

Messrs. Smith Mackenzie & Co., Ltd.,
P.O. Box 2,
LINDI.

20

Dear Sirs,

We refer to our letter No.G/13/105 of 8th August, 1955 and your letter No.N.N.3/35 regarding transport of cargo from Lindi to Songea. May we remind you that in future all the cargo to be carried by Alimahomed Osman and nobody else.

Yours faithfully,

Sd.

Ag. SECRETARY,

for NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD.

c.c. Alimahomed Osman.

D.21(ii) - LETTER, ALIMAHOMED OSMAN TO
NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 12th SEPTEMBER, 1955

Exhibits

D.21(ii)

Alimahomed Osman,
P.O. Box 49, Lindi,
Songea.
12th September, 1955.

Letter,
Alimahomed Osman
to Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

12th September,
1955.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

10

Dear Sir,

Regarding letter dated 17th August from The
Co-operative Officer asking us to offer for the
sale of Songea Paddy.

I am offering today my price for the Songea
paddy, subject to the District Commissioner Songea
should give me permission to send to Lindi.

My price will be Shs.50/- per 100 kilos,
W/Bags, and for Mbambabay paddy I am not interest-
ed.

20

Yours faithfully,

Sgd: Alimahomed Osman.

D.19(i) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., to ALIMAHOMED OSMAN,
31st JULY, 1956.

D.19(i).

Letter, Ngoni-
Matengo Co-
operative
Marketing Union
Ltd., to
Alimahomed
Osman.

NM/3/3/33.

31st July, 1956.

Mr. Alimahomed Osman,
Songea.

Dear Sir,

30

With reference to our talk on paddy yesterday,
I should be grateful if you would confirm your offer
in writing which was as follows :-

Mbamba-Bay Price -/50 per kilo.
Songea " -/56 per kilo.

this price is without bag.

Yours faithfully,
for NGONI-MATENGO CO-OPERATIVE MARKETING UNION
LTD.

Sgd: ?
Secretary.

40

31st July, 1956.

Exhibits

D.19(ii)

Letter,
Alimahomed Osman
to Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

1st August,
1956.

D.19(ii) -- LETTER, ALIMAHOMED OSMAN TO
NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 1st AUGUST, 1956

Alimahomed Osman,
P.O. Box 49, Lindi.
1st August, 1956.

The Ngoni-Matengo Co-operative Marketing Union Ltd.
Songea.

Dear Sirs,

Re: SALE OF PADDY

10

I thank you for your letter of 31st ult. ref.
NM/3/3/33 and in reply I agree to take paddy at
the following price

Mbambabay delivery including bag Sh.51/- per
100 kilo.
Songea delivery including bag " 57/- per
100 kilo.

Thanking you,

Yours faithfully,

Sgd: Alimahomed Osman.

20

Reply: We acknowledge with thanks receipt of your
letter dated 1st August quoting price for the 1956
paddy crop. This will be placed before the Com-
mittee meeting on 10th August. In the meantime
will you please state for what quantity you are
offering.

D.19(iii)

Letter, Ngoni-
Matengo Co-
operative
Marketing
Union Ltd., to
Alimahomed
Osman.

2nd August,
1956.

D.19(iii) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., to ALIMAHOMED OSMAN,
2nd AUGUST, 1956.

NM/3/3/37.

2nd August, 1956.

30

Mr. Alimahomed Osman,
Songea.

Dear Sir,

SALE OF PADDY

We acknowledge with thanks receipt of your
letter dated 1st August, quoting price for the
1956 paddy crop. This will be placed before the
Managing Committee Meeting on 10th August.

In the meantime will you please state for what quantity you are offering.

Yours faithfully,
for NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD.
Sgd: ?
SECRETARY.

Exhibits
D.19(iii)

Letter, Ngoni-Matengo Co-operative Marketing Union Ltd., to Alimahomed Osman.

2nd August, 1956
- continued.

D.19(iv) - LETTER, ALIMAHOMED OSMAN TO NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD., 6th AUGUST, 1956

Alimahomed Osman,
P.O. Box 49, Lindi.
Songea 6th August, 1956.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sir,

I thank you for your letter of 2nd inst. Ref. No. NM/3/3/37 and in reply I agree to buy all the Crop 1956, whatever quantity you get from the Societies, I agree to take delivery.

Meantime thanking you,

Yours faithfully,

Sgd: Alimahomed Osman.

D.19(iv)

Letter, Alimahomed Osman to Ngoni-Matengo Co-operative Marketing Union Ltd.

6th August, 1956.

D.20(i) - LETTER, NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD., to TANGANYIKA TRANSPORT CO., LTD., 9th AUGUST, 1956

NM/3/3/40.

9th August, 1956.

Messrs. Tanganyika Transport Co., Ltd.,
Songea.

Dear Sirs,

In view of the fact that the Committee will be considering definitely the sales of paddy for 1956 at their meeting tomorrow, and in view of the fact that a considerable space of time has

D.20(i)

Letter, Ngoni-Matengo Co-operative Marketing Union Ltd., to Tanganyika Transport Co., Ltd.,

9th August, 1956.

Exhibits

D.20(i)

Letter, Ngoni-Matengo Co-operative Marketing Union Ltd., to Tanganyika Transport Co., Ltd.,

9th August, 1956
- continued.

elapsed since you first made known the prices you were willing to pay, perhaps you would like to give us your present views.

We should perhaps mention that agreements with the Unyanja Farmers will normally be subject to the approval of the Union Committee.

Yours faithfully,

for Ngoni-Matengo Co-operative Marketing Union Ltd.

Sgd: ?
Secretary.

10

D.20(ii)

Letter, Tanganyika Transport Co., Ltd., to Ngoni-Matengo Co-operative Marketing Union Ltd.,

9th August, 1956.

D.20(ii) - LETTER, TANGANYIKA TRANSPORT CO., LTD., TO NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD. 9th AUGUST, 1956.

The Tanganyika Transport Co., Ltd.,
Songea,
9th August, 1956

Your Ref: NM/3/3/40
Our Ref: 14/5/56.

CONFIDENTIAL

Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

20

Dear Sir,

We thank you for your letter dated the 9th August under Ref: NM/3/3/40 in connection with Paddy of Unyanja Farmers for the year 1956.

In this connection, we have to inform you that we had series of correspondence with Unyanja Farmers regarding their Paddy, and recently they wrote to us with copy to you. For your easy reference, we are enclosing herewith copy of our letter Ref: 13/5/56 dated 7th August written to Unyanja Farmers in reply to their letter dated 28.7.56. Since the letter in question is self-explanatory, we do not go into discussion here.

30

We would recapitulate our quotation for Paddy as under :-

Paddy delivery ex M'bay Godown 51 cts per kg.
nett.
" " " Songea " 56 cts per kg.
nett.

40

It is clear that above prices are nett, i.e. they are without bags.

In the end, we have to assure you that we are genuinely interested in purchase of Paddy, and we sincerely hope that your Union would give sympathetic consideration to our offer.

Yours faithfully,
For The Tanganyika Transport Co., Ltd.

Sgd:

10 Ngoni-Matengo Co-operative Marketing Union Ltd.,
10th August, 1956.
SONGEA.

Exhibits

D.20(ii)

Letter,
Tanganyika
Transport Co.,
Ltd., to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.,

9th August,
1956

- continued.

D.19(v) - LETTER, ALIMAHOMED OSMAN TO
NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 14th AUGUST, 1956.

Alimahomed Osman,
P.O. Box 49, Lindi.
Songea 14th August, 1956.

20 The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sir,

I should be very grateful, if you would let me know regarding my letter of 6th inst., price I offered for Paddy, whether is agreed by your Members.

Thanking you for an early reply,

Yours faithfully,

Sgd: Alimahomed Osman.

D.19(v)

Letter,
Alimahomed
Osman to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.

14th August,
1956.

30 D.19(vi) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., to ALIMAHOMED OSMAN
15th AUGUST, 1956.

NM/3/3/45.

15th August, 1956

Mr. Alimahomed Osman,
Songea.

Dear Sir,

We acknowledge with thanks receipt of your

D.19(vi)

Letter, Ngoni-
Matengo Co-
operative
Marketing
Union Ltd. to
Alimahomed
Osman.

15th August,
1956.

Exhibits
 D.19(vi)
 Letter, Ngoni-
 Matengo Co-
 operative
 Marketing Union
 Ltd. to
 Alimahomed Osman.
 15th August, 1956
 - continued.

letter dated 14th August, but regret to inform you that your offer for paddy at 57/- per 100 kilos bagged at Songea, and 51/- at Mbamba-Bay, was not acceptable to the Committee.

Yours faithfully,

For NGONI-MATENGO CO-OPERATIVE MARKETING
 UNION LTD.

Sgd:

SECRETARY.

D.20(iv)
 Letter, Ngoni-
 Matengo Co-
 operative
 Marketing Union
 Ltd., to
 Tanganyika
 Transport Co.,
 Ltd.,
 15th August,
 1956.

D.20(iv) - LETTER, NGONI-MATENGO CO-OPERATIVE
 MARKETING UNION LTD., TO TANGANYIKA TRANSPORT
 CO., LTD., 15th AUGUST, 1956.

10

NM/3/3/46.

15th August, 1956

M/s. Tanganyika Transport Co., Ltd.,
 Songea.

Dear Sirs,

We acknowledge with thanks receipt of your letter No.14/5/56 dated 9th August, and have pleasure in confirming that the price for 1956 crop paddy as quoted hereunder viz:-

20

Delivery at Mbamba-Bay -/51 cts per kilo nett
 " " Songea -/56 " " " "

and offered by you, are accepted by us.

We shall inform you from time to time as and when the paddy comes forward. It would be appreciated if weighment be done by you at the Mbamba-Bay and Songea godowns in the presence of our consigning clerk, as this will avoid the necessity for adjusting invoices should any claim arise. And we should also be grateful if you would accept delivery as soon as possible after having received notice from us that paddy is available.

30

Please confirm that you will accept all paddy coming forward from us in 1956.

Yours faithfully,

For NGONI-MATENGO CO-OPERATIVE MARKETING
 UNION LTD.

Sgd: ? ?

ASMH/PHN

Secretary.

D.22(i) - CONTRACT, THE UNITED AFRICA COMPANY (T)
LIMITED AND NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 28th JULY, 1956

Exhibits

D.22(i)

The United Africa Co., (T) Ltd.,
Dar es Salaam.
No.355.
28th July, 1956.

Contract,
U.A.Co., (T)
Ltd., and
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

CONTRACT

10
SELLERS: Ngoni-Matengo Co-operative Marketing
Union Ltd., Songea.

BUYERS: The United Africa Co., (T) Ltd., Dar
es Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 tons (One hundred), each of 1016
kilos nett.

QUALITY: Fair average quality of 1956 season
crop, sound, dry and free from ad-
mixture and without castorseed.

20
PRICE: Shs.-/40 (Forty cents) per kilo includ-
ing bags ex sellers' godown, Songea.

TIME OF DELIVERY: Goods now ready.

PAYMENT: Against Landing & Shipping Co., of E.A.
Ltd., Mtwara, weight notes which are to
be accepted as final.

30
TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb. 'B' twill gunny
bags, sound and fit for export. The
bags to be packed to a standard weight
of 115 lbs. nett, to be doubly and se-
curely sewn with blue thread and marked
in blue with word 'SUNFLOWERSEED' in
block letters of not less than two in-
ches in height, in accordance with Gov-
ernment regulations.

TARE: 1 $\frac{1}{4}$ kilos per bag.

40
SPECIAL CONDITIONS: The goods are to be rebagged
at Sellers' Godown, Songea to a stand-
ard weight of 115 lbs. nett, and cleaned
if necessary, by our Agents The Tangan-
yika Transport Co., Ltd., Sellers to
provide additional new bags as required.
Transport to Mtwara to be arranged by
Buyers.

28th July, 1956.

For THE UNITED AFRICA CO., (T)
LTD.

Sgd: . . . BUYERS.

Exhibits
 D.22(ii)
 Contract,
 United Africa
 Co. (T) Ltd.,
 and
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd.
 10th September,
 1956.

D.22(ii) - CONTRACT, UNITED AFRICA COMPANY (T) LTD.
 AND NGONI-MATENGO CO-OPERATIVE MARKETING UNION
 LTD., 10th SEPTEMBER, 1956

The United Africa Company (T) Ltd.,
 Dar es Salaam
 No.632.
 10th September, 1956.

CONTRACT

SELLERS: Ngoni-Matengo Co-operative Marketing
 Union Ltd., Songea. 10

BUYERS: The United Africa Co. (T) Ltd., Dar es
 Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 tons (One hundred) each of 1016
 kilos nett.

QUALITY: Fair average quality of 1956 season crop,
 sound, dry and free from admixture and
 without castorseed.

PRICE: Shs.--/34 (Cents Thirty-four) per kilo
 including bags ex Sellers' Godown,
 Songea. 20

TIME OF DELIVERY: 31st October, 1956.

PAYMENT: Against Landing & Shipping Co., of E.A.
 Ltd., Mtwara, weight notes which are to
 be accepted as final.

TYPE OF PACKING: In new 2½ lb. 'B' twill gunny
 bags, sound and fit for export. The
 bags to be packed to a standard weight
 of 115 lbs. nett, to be doubly and se-
 curely sewn with blue thread and marked
 in blue with the word 'SUNFLOWERSEED'
 in block letters of not less than two
 inches in height, in accordance with
 Government Regulations. 30

TARE: 1½ kilos per bag.

SPECIAL CONDITIONS: The goods are to be rebagged
 at Sellers' Godown, Songea to a stand-
 ard weight of 115 lbs. nett, and cleaned
 if necessary, by our Agents the Tangan-
 yika Transport Co., Ltd. Sellers to
 provide additional new bags as required. 40
 Transport to Mtwara to be arranged by
 Buyers.

for The United Africa Co.(T) Ltd.
 Sgd: . . . BUYERS
 SELLERS: Sgd: . . .
 Ngoni-Matengo Co-operative Marketing Union Ltd.

D.22(iii) - CONTRACT, UNITED AFRICA CO. (T) LTD.,
AND NGONI-MATENGO CO-OPERATIVE MARKETING UNION
LTD., 18th SEPTEMBER, 1956.

Exhibits

D.22(iii)

The United Africa Company (T) Ltd.,
Dar es Salaam.
No.677.
18th September, 1956.

Contract,
United Africa
Co., (T) Ltd.,
and
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

18th September,
1956.

CONTRACT

10 SELLERS: Ngoni-Matengo Co-operative Marketing
Union Ltd., Songea.

BUYERS: The United Africa Co., (T) Ltd., Dar es
Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 (One hundred) tons, each of 1016
Kilos nett.

QUALITY: Fair average quality of 1956 season crop,
sound, dry and free from admixture and
without castorseed.

20 PRICE: Shs.-/35 (Cents thirty five) per kilo in-
cluding bags ex Sellers' Godown, Songea.

TIME OF DELIVERY: October, 1956.

PAYMENT: Against Landing & Shipping Co., of E.A.
Ltd., Mtwara, weight notes which are to
be accepted as final.

30 TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb 'B' twill gunny bags,
sound and fit for export. The bags to
be packed to a standard weight of 115
lbs. nett, to be doubly and securely
sewn with blue thread and marked in blue
with the word 'SUNFLOWERSEED' in block
letters not less than two inches in
height, in accordance with Government
Regulations.

TARE: 1 $\frac{1}{4}$ kilos per bag.

40 SPECIAL CONDITIONS: The goods are to be rebagged
at Seller's Godown Songea to a standard
weight of 115 lbs. nett, and cleaned if
necessary, by our Agents The Tanganyika
Transport Co., Ltd. Sellers to provide
additional new bags as required. Trans-
port to Mtwara to be arranged by Buyers.
for the United Africa Co. (T) Ltd.,
Sgd: . . . BUYERS.

SELLERS: Sgd: . . .
Ngoni-Matengo Co-operative Marketing Union Ltd.

Exhibits
 D.22(iv)
 Contract,
 United Africa
 Co., (T) Ltd.,
 and
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd.
 15th October,
 1956.

D.22(iv) - CONTRACT, UNITED AFRICA COMPANY (T)
 LTD. AND NGONI-MATENGO CO-OPERATIVE MARKETING
 UNION LTD., 15th OCTOBER, 1956

The United Africa Company (Tanganyika) Limited,
 Dar es Salaam.
 No.800
 15th October, 1956.

CONTRACT

SELLERS: Ngoni-Matengo Co-operative Marketing
 Union Ltd., Songea. 10

BUYERS: The United Africa Co. (Tanganyika) Ltd.,
 Dar es Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 tons (One hundred) each of 1016
 kilos nett.

QUALITY: Fair average quality of 1956 season
 crop, sound, dry and free from admix-
 ture and without castorseed.

PRICE: Shs.0/36 (Thirty six cents) per kilo in-
 cluding bags ex Seller's Godown, Songea 20
 and/or ex main road Godowns between
 Songea/Tunduru.

TIME OF DELIVERY: November 1956.

PAYMENT: Against Land & Shipping Co., of E.A.Ltd.,
 Mtwara, weight notes which are to be
 accepted as final.

TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb. 'B' twill gunny
 bags, sound and fit for export. The
 bags to be packed to a standard weight
 of 115 lbs. nett to be doubly and se- 30
 curely sewn with blue thread and marked
 in blue with the word "SUNFLOWERSEED"
 in block letters of not less than two
 inches in height, in accordance with
 Government Regulations.

TARE: 1 $\frac{1}{2}$ kilos per bag.

SPECIAL CONDITIONS: The goods are to be rebagged
 at Sellers' Godown, Songea to a stand-
 ard weight of 115 lbs nett, and cleaned 40
 if necessary, by our Agents the Tangan-
 yika Transport Co., Ltd. Sellers to
 provide additional new bags as required.
 Transport to Mtwara to be arranged by
 Buyers.

For The United Africa Company
 (Tanganyika) Limited

SELLERS: Sgd: ? Sgd: ? Carpenter
 Seal of the Union. BUYERS.
 26.10.56.

D.22(v) - CONTRACT, UNITED AFRICA COMPANY (T) LTD.
 NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD.
 6th NOVEMBER, 1956

Exhibits
 D.22(v)

The United Africa Company (T) Limited
 Dar es Salaam
 Contract No. 917.
 6th November, 1956.

Contract,
 The United
 Africa Co. (T)
 Ltd., and
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd.

CONTRACT

10 SELLERS: Ngoni-Matengo Co-operative Marketing
 Union Ltd., Songea.
 BUYERS: The United Africa Co. (Tanganyika) Ltd.,
 Dar es Salaam.

6th November,
 1956.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 70 (Seventy) tons each of 1016 kilos nett.

QUALITY: Fair average quality of 1956 season crop,
 sound, dry and free from admixture and
 without Castorseed.

20 PRICE: Sh.-/38 cents (thirty-eight cents) per
 kilo including bags ex seller's godown,
 Songea, and/or ex main road godowns be-
 tween Songea/Tunduru.

TIME OF DELIVERY: November 1956.

PAYMENT: Against Landing & Shipping Co. (EA) Ltd.,
 Mtwara Weight Notes which are to be ac-
 cepted as final.

30 TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb. 'B' twill gunny
 bags, sound and fit for export. The
 bags to be packed to a standard weight
 of 115 lbs. nett to be doubly and se-
 curely sewn with blue thread and marked
 in blue with the word "SUNFLOWERSEED"
 in block letters of not less than 2" in
 height, in accordance with Government
 Regulations.

TARE: 1 $\frac{1}{4}$ kilos per bag.

40 SPECIAL CONDITIONS: The goods are to be rebagged
 at Seller's godown, Songea to a stand-
 ard weight of 115 lbs. nett, and cleaned
 if necessary, by our agents The Tangan-
 yika Transport Co., Ltd., Sellers to
 provide additional new bags as required.
 Transport to Mtwara to be arranged by
 buyers.

For THE UNITED AFRICA COMPANY (T) LIMITED
 Dar es Salaam.

SELLERS: Sgd: ?
 Seal of the Union.
 19.11.56.

Sgd: Waller. BUYERS:

Exhibits

D.2.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T)
Ltd.

D.2. - CONTRACT, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., and UNITED AFRICA
COMPANY (T) LIMITED

(This Exhibit is the Annexure 'A' to the Defence)

The United Africa Company (T) Limited
Dar es Salaam
U.A.C.No.866

Dar es Salaam - 4th July, 1957.

CONTRACT

4th July, 1957. SELLERS: Ngoni-Matengo Co-operative Marketing Union Ltd., Songea. 10

BUYERS: The United Africa Co. (T) Ltd., Dar es Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 (One hundred) tons each of 1016 kilos nett.

QUALITY: Fair average quality of 1957 season crop, sound, dry, free from admixture and without castorseed.

PRICE: -/33 cents (thirty three cents) per kilo including bags ex seller's godown at buying centres. 20

TIME OF DELIVERY: August 1957.

PAYMENT: Against Landing & Shipping Co. (EA) Ltd. Mtwara Weight Notes which are to be accepted as final.

TYPE OF PACKING: In new 2½ lb. 'B' twill gunny bags, sound and fit for export. The bags to be packed to a standard weight of 115 lbs nett to be doubly and securely sewn with blue thread and marked in blue with the word "SUNFLOWERSEED" in block letters of not less than 2" in height, in accordance with Government Regulations. 30

TARE: 1¼ kilos per bag.

SPECIAL CONDITIONS: The goods are to be rebagged at seller's godowns on the main road between Songea/Tunduru to a standard weight of 115 lbs. nett, and cleaned if necessary, by our agents The Tanganyika Transport Co., Ltd. Sellers to provide additional new bags as required. 40

Transport from buying centre to Mtwara
to be arranged by buyers.

for The United Africa Company (T) Limited,

Sgd: Waller, BUYERS:

SELLERS: Sgd:
Seal of Union
dated 24/7/57.

Exhibits

D.2.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T)
Ltd.

4th July, 1957
- continued.

D.2.(Continued) - CONTRACT, NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD., and
10 UNITED AFRICA CO., (TANGANYIKA) LTD.

(This Exhibit is Annexure 'B' to the Defence)
The United Africa Company (Tanganyika) Limited,
Dar es Salaam

6th August, 1957.
U.A.C.No.54.

D.2. (Contd.)

Contract,
(Defence
Annexure 'B'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T)
Ltd.

6th August, 1957.

Contract

SELLERS: Ngoni-Matengo Co-operative Marketing
Union Ltd., at Songea.

20 BUYERS: The United Africa Co., (T) Ltd., Dar es
Salaam.

DESCRIPTION: Tanganyika Sesameseed.

QUANTITY: 50 (Fifty) tons each of 1016 Kilos nett.

QUALITY: Fair average quality of 1957 season
crop, sound, dry and free from admix-
ture.

PRICE: 1/05 (Sh.One and cts five) per kilo in-
cluding bags ex seller's godown at buy-
ing centres.

TIME OF DELIVERY: August 1957.

30 PAYMENT: Against Landing & Shipping Co., (EA) Ltd.
Mtwara Weight Notes which are to be ac-
cepted as final.

TYPE OF PACKING: In new 2¼ lb. 'B' twill gunny
bags, sound and fit for export.

TARE: 1¼ kilos per bag.

SPECIAL CONDITIONS: Sellers to provide additional

Exhibits
D.2.(Contd.)

Contract,
(Defence
Annexure 'B'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T) Ltd.
6th August, 1957
- continued.

new bags if required. Transport from
buying centres to Mtwara to be arranged
by buyers.

For The United Africa Company (Tanganyika)
Limited

Sgd: ? Carpenter,
BUYERS.

SELLERS:

Sgd: ? ? ?

NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD.

10

D.2.(Contd.)

Contract
(Defence
Annexure 'C'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T) Ltd.
19th August,
1957.

D.2. (Continued) - CONTRACT, NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD., and
UNITED AFRICA CO., (TANGANYIKA) LTD.

(This Exhibit is Annexure 'C' to the Defence)

The United Africa Company (T) Limited,
Dar es Salaam

U.A.C.No.140.

Dar es Salaam - 19th August, 1957.

Contract

SELLERS: Ngoni-Matengo Co-operative Marketing
Union, Ltd., Songea.

20

BUYERS: The United Africa Co. (T) Ltd., Dar es
Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 (One hundred) tons each of 1016
kilos nett.

QUALITY: Fair average quality of 1957 season crop,
sound, dry, free from admixture and
without Castorseed.

PRICE: -/33 cents (thirty three cents) per kilo
including bags ex seller's godown at
buying centre

30

TIME OF DELIVERY: August/September 1957.

PAYMENT: Against Landing & Shipping Co. (EA) Ltd.
Mtwara Weight Notes which are to be ac-
cepted as final.

TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb. 'B' twill gunny
bags, sound and fit for export. The

bags to be packed to a standard weight of 115 lbs. nett to be doubly and securely sewn with blue thread and marked in blue with the word "SUNFLOWERSEED" in block letters of not less than 2" in height, in accordance with Government Regulations.

TARE: 1½ kilo per bag.

10 SPECIAL CONDITIONS: The goods are to be rebagged at Seller's godowns on the main road between Songea/Tunduru to a standard weight of 115 lbs. nett, and cleaned if necessary, by our agents The Tanganyika Transport Co., Ltd. Sellers to provide additional new bags as required. Transport from buying centres to Mtwara to be arranged by buyers.

For The United Africa Company (T) Limited

Sgd: ? Carpenter.

20

SELLERS: Sgd: ?
Seal of Union.
17/9/57.

BUYERS:

Exhibits
D.2. (Contd.)
Contract,
(Defence Annexure 'C'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T) Ltd.
19th August,
1957
- continued.

D.2. (Continued) - CONTRACT, NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD., and
UNITED AFRICA COMPANY (TANGANYIKA) LTD.

(This Exhibit is Annexure 'D' to the Defence)

The United Africa Company (T) Limited
Dar es Salaam

30

U.A.C. No.189.

Dar es Salaam - 23rd August, 1957.

Contract

SELLERS: Ngoni-Matengo Co-operative Marketing Union
Ltd., Songea.

BUYERS: The United Africa Co., (T) Ltd., Dar es
Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 50 (Fifty) tons each of 1016 kilos nett.

40

QUALITY: Fair average quality of 1957 season crop,
sound, dry, free from admixture and with-
out Castorseed.

D.2. (Contd.)
Contract
(Defence Annexure 'D'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T) Ltd.
23rd August,
1957.

Exhibits
 D.2. (Contd.)
 Contract
 (Defence
 Annexure 'D'),
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd., and
 United Africa
 Company (T) Ltd.
 23rd August,
 1957
 - continued.

PRICE: Your letter Ref.P/W/2 of 13.9.57.
 -/34½ cts. (Thirty four and half cents)
 per kilo including bags ex seller's go-
 down at buying centre.

TIME OF DELIVERY: September 1957.

PAYMENT: Against Landing & Shipping Co. (EA) Ltd.,
 Mtwara Weight Notes which are to be ac-
 cepted as final.

TYPE OF PACKING: In new 2½ lb. 'B' twill gunny
 bags, sound and fit for export. The
 bags to be packed to a standard weight
 of 115 lbs. nett to be doubly and se-
 curely sewn with blue thread and marked
 in blue with the word "SUNFLOWERSEED"
 in block letters of not less than 2" in
 height in accordance with Government
 Regulations.

10

TARE: 1¼ kilos per bag.

SPECIAL CONDITIONS: The goods are to be rebagged
 at Seller's godowns on the main road
 between Songea/Tunduru to a standard
 weight of 115 lbs. nett and cleaned if
 necessary by our agents the Tanganyika
 Transport Co., Ltd. Sellers to provide
 additional new bags as required. Trans-
 port from buying centres to Mtwara to
 be arranged by buyers.

20

For The United Africa Co., (T) Ltd.,

BUYERS:

SELLERS: Sgd: ? ?
 Ngoni-Matengo Co-operative Marketing Union Ltd.
 Songea District.
 25.9.57.

30

D.2. (Contd.)
 Contract
 (Defence
 Annexure 'E'),
 Ngoni-Matengo
 Co-operative
 Marketing
 Union Ltd., and
 United Africa
 Company (T) Ltd.
 2nd September,
 1957.

D.2. (Continued) - CONTRACT, NGONI-MATENGO
 CO-OPERATIVE MARKETING UNION LTD., and
 UNITED AFRICA COMPANY (TANGANYIKA) LTD.

(This Exhibit is Annexure 'E' to the Defence)

The United Africa Company (T) Ltd.,
 Dar es Salaam.
 U.A.C.No.228.

40

Dar es Salaam - 2nd September, 1957.

Contract

SELLERS: Ngoni-Matengo Co-operative Marketing
 Union, Ltd., Songea.

- BUYERS: The United Africa Co., (T) Ltd., Dar es Salaam.
- DESCRIPTION: Tanganyika Sesameseed.
- QUANTITY: 20 (Twenty) tons.
- QUALITY: Fair average quality of 1957 season crop, sound, dry and free from admixture.
- PRICE: 1/08 (Sh. One and cts. eight) per kilo including bags ex sellers godown at buying centres.
- 10 TIME OF DELIVERY: September 1957.
- PAYMENT: Against Landing & Shipping Co., (EA) Ltd. Mtwara Weight Notes which are to be accepted as final.
- TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb. 'B' twill gunny bags sound and fit for export.
- SPECIAL CONDITIONS: Sellers to provide additional new bags if required. Transport from buying centres to Mtwara to be arranged by buyers.
- 20 For The United Africa Co., (T) Ltd.,
BUYERS: Sgd:
- SELLERS: Sgd:
Ngoni-Matengo Co-operative Marketing Union Ltd.
Songea District.
9.9.57.
-
- D.2. (Continued) - CONTRACT, NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD. and
UNITED AFRICA COMPANY (TANGANYIKA) LTD.
(This Exhibit is Annexure 'F' to the Defence)
- 30 The United Africa Co., (T) Ltd.,
Dar es Salaam.
U.A.C.No.321.
Dar es Salaam - 24.9.57.
- Contract
- SELLERS: Ngoni-Matengo Co-operative Marketing Union Ltd., Songea.
- BUYERS: The United Africa Co., (T) Ltd., Dar es Salaam.
- DESCRIPTION: Tanganyika Sunflowerseed.
- 40 QUANTITY: 50 (Fifty) tons each of 1016 kilos nett.

Exhibits

D.2. (Contd.)
Contract,
(Defence
Annexure 'E'),
Ngoni-Matengo
Co-operative
Marketing
Union Ltd., and
United Africa
Company (T) Ltd.
2nd September,
1957
- continued.

D.2. (Contd.)
Contract,
(Defence
Annexure 'F'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
Company (T) Ltd.
24th September,
1957.

Exhibits
 D.2. (Contd.)
 Contract
 (Defence
 Annexure 'F'),
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd., and
 United Africa
 Company (T) Ltd.
 24th September,
 1957
 - continued.

QUALITY: Fair average quality of 1957 season crop,
 sound, dry and free from admixture and
 without Castorseed.

PRICE: -/33 cents (Thirty three cents) per kilo
 including bags ex seller's godown at
 buying centres.

TIME OF DELIVERY: October 1957.

PAYMENT: Against Landing & Shipping Co. (EA) LTD.
 Mtwara, Weight Notes which are to be
 accepted as final. 10

TYPE OF PACKING: In new 2½ lb. 'B' twill gunny
 bags sound and fit for export. The bags
 to be packed to a standard weight of
 115 lbs. nett to be doubly and securely
 sewn with blue thread and marked in
 blue with the word "SUNFLOWERSEED" in
 block letters of not less than 2" in
 height, in accordance with Government
 Regulations.

TARE: 1½ kilos per bag. 20

SPECIAL CONDITIONS: The goods are to be rebagged
 at Seller's godowns on the main road
 between Songea/Tunduru to a standard
 weight of 115 lbs. nett, and cleaned if
 necessary by our agents The Tanganyika
 Transport Co., Ltd. Sellers to provide
 additional new bags as required. Trans-
 port from buying centres to Mtwara to
 be arranged by buyers.

For The United Africa Co. (T) Ltd.,
 Sgd: BUYERS. 30

SELLERS: Sgd:
 Ngoni-Matengo Co-operative Marketing Union Ltd.
 Songea District,
 3.10.57.

D.2. (Contd.)
 Contract,
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd., and
 United Africa
 (T) Ltd.
 17th October,
 1957.

D.2. (Continued) - CONTRACT, NGONI-MATENGO
 CO-OPERATIVE MARKETING UNION LTD., and
UNITED AFRICA COMPANY (TANGANYIKA) LTD.

The United Africa Company (T) Limited
 Dar es Salaam. 40

U.A.C. Contract No.460.

Dar es Salaam - 17th October, 1957.

Contract

SELLERS: Ngoni-Matengo Co-operative Marketing
 Union, Ltd., Songea.

BUYERS: The United Africa Co. (T) Ltd., Dar es Salaam.

Exhibits

D.2. (Contd.)

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 100 (One hundred) tons each of 1016 kilos nett.

QUALITY: Fair average quality of 1957 season crop, sound, dry, free from admixture and without Castorseed.

Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
(T) Ltd.

10 PRICE: -/33½ (cts thirty three & half) per kilo including bags ex seller's godown at buying centre.

17th October,
1957

- continued.

TIME OF DELIVERY: December 1957.

PAYMENT: Against Landing & Shipping Co. (E.A.) Ltd., Mtwara weight notes which are to be accepted as final.

20 TYPE OF PACKING: In new 2¼ lb. 'B' twill gunny bags, sound and fit for export. The bags to be packed to a standard weight of 115 lbs. nett to be double and securely sewn with blue thread and marked in blue with the word "SUNFLOWERSEED" in block letters of not less than 2" in height, in accordance with Government Regulations.

TARE: 1¼ kilos per bag.

30 SPECIAL CONDITIONS: The goods are to be rebagged at sellers godown on the main road between Songea/Tunduru to a standard weight of 115 lbs. nett, and cleaned if necessary, by our agents the Tanganyika Transport Co., Ltd. Sellers to provide additional new bags as required. Transport from buying centres to Mtwara to be arranged by buyers.

For The United Africa Co., (T) Limited.

Sgd: Carpenter
BUYERS.

40 SELLERS: Sgd: ? ? ?
Ngoni Matengo Co-operative Marketing
Union Ltd.,
29th October, 1957. Vice President.

Exhibits
 D.2. (Contd.)
 Contract,
 Ngoni-Matengo
 Co-operative
 Marketing Union
 Ltd., and
 United Africa
 (T) Ltd.

1st November,
 1957.

D.2. (Continued) - CONTRACT, NGONI-MATENGO
 CO-OPERATIVE MARKETING UNION LTD., and
 UNITED AFRICA COMPANY (TANGANYIKA) LTD.

The United Africa Company (Tanganyika) Limited
 Dar es Salaam.

Contract No.552.

Dar es Salaam - 1st November, 1957.

Contract

SELLERS: Ngoni-Matengo Co-operative Marketing
 Union Ltd., Songea. 10

BUYERS: The United Africa Co., (T) Ltd., Dar es
 Salaam.

DESCRIPTION: Tanganyika Sesameseed.

QUANTITY: 20 (Twenty) tons.

QUALITY: Fair average quality of 1957 season crop,
 sound dry and free from admixture.

PRICE: 1/17 (Sh.One and cts seventeen) per kilo
 including bags ex sellers godown at
 buying centres.

TIME OF DELIVERY: Ready Songea and main road 20
 centres.

PAYMENT: Against Landing & Shipping Co., (E.A.)
 Ltd., Mtwara weight notes which are to
 be accepted as final.

TYPE OF PACKING: In new 2½ lb. 'B' twill gunny
 bags, sound and fit for export.

SPECIAL CONDITIONS: Sellers to provide additional
 new bags if required. Transport from
 buying centres to Mtwara to be arranged
 by buyers. 30

For The United Africa Company (T) Ltd.,

Sgd: Carpenter,
 BUYER.

SELLERS: Sgd: ? ?

Seal of the Union.

D.2. (Continued) - CONTRACT, NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD., and
UNITED AFRICA COMPANY (TANGANYIKA) LTD.

The United Africa Company (Tanganyika) Limited
Dar es Salaam.

Contract No.608.
14th November, 1957.

Contract

Exhibits
D.2. (Contd.)
Contract,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., and
United Africa
(T) Ltd.

10 SELLERS: Ngoni-Matengo Co-operative Marketing
Union Ltd., Songea.

BUYERS: The United Africa Co., (T) Ltd., Dar es
Salaam.

DESCRIPTION: Tanganyika Sunflowerseed.

QUANTITY: 50 (Fifty) tons each of 1016 kilos nett.

QUALITY: F.A.Q. of 1957 season crop, sound, dry,
free from admixture and without Castor-
seed.

20 PRICE: -/33 (cts thirty three) per kilo includ-
ing bags ex seller's godown at buying
centre.

TIME OF DELIVERY: January 1958.

PAYMENT: Against Landing & Shipping Co., (E.A.)
Ltd., Mtwara weight notes which are to
be accepted as final.

30 TYPE OF PACKING: In new 2 $\frac{1}{4}$ lb. 'B' twill gunny bags
sound and fit for export. The bags to
be packed to a standard weight of 115
lbs. nett to be doubly and securely sewn
with blue thread and marked in blue with
the word "SUNFLOWERSEED" in block letters
of not less than 2" in height, in ac-
cordance with Government Regulations.

TARE: 1 $\frac{1}{4}$ kilos per bag.

40 SPECIAL CONDITIONS: The goods are to be rebagged
at sellers godown on the main road be-
tween Songea/Tunduru to a standard weight
of 115 lbs net, and cleaned if necessary
by our agents the Tanganyika Transport
Co. Ltd. Seller to provide additional
new bags as required. Transport from
buying centres to Mtwara to be arranged
by buyers.

14th November,
1957.

For The United Africa Company (T) Limited

SELLER: Sgd: ? ? Sgd: Carpenter, BUYER.
Seal of the Union,
SONGEEA DISTRICT.

Exhibits

P.4. -
(1) to (4)

Various Order
Forms,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., to
Alimahomed Osman.

June 1957.

P.4. - (1) to (4) - VARIOUS ORDER FORMS,
NGONI-MATENGO CO-OPERATIVE MARKETING UNION
LTD., to ALIMAHOMED OSMAN, JUNE 1957

Truck ORDER FORM No.356 P/4-(4)
From Ngomat Union Ltd., Songea P.O. Box No.3
Date: 19th June, 1957.

To:
M/s. Alimahomed Osman, Songea.

Please supply the following :-

One truck to send gunny bags to Ligera C.S.
Ltd., and back with Sunflower Seed.

10

This morning please!

Dr.
Sunflower A/c.

Sgd: ? ? ?

Truck ORDER FORM No. 359 P/4-(1)
From Ngomat Ltd., Songea P.O. Box No. 3.
Date: 21.6.57.

To:
M/s. Alimahomed Osman, Songea.

Please supply the following:-

One Truck to collect sunflower from Lakovera
and Linla and back to Songea; this morning.

20

Dr.
Sunflower A/c.

Sgd: ? ? ?

Truck ORDER FORM No.358 P/4-(2)
From Ngomat Ltd., Songea P.O. Box No. 3.
Date: 20.6.57.

To:
M/s. Alimahomed Osman, Songea.

Please supply the following :-

One truck to collect Magomba from Mkrera C.S.
Ltd., today.

30

Dr.
Sunflower A/c.

Sgd: ? ? ?

137.

Truck ORDER FORM No.357 P/4-(3)

From Ngomat Ltd., Songea P.O. Box No. 3

Date: 20.6.57.

To:

M/s. Alimahomed Osman, Songea.

Please supply the following:-

One truck to collect sunflower from Ligera C.S. Ltd., Cantumbo Godown today.

Dr.

10 Sunflower A/c.

Sgd: ? ? ?

Exhibits

P.4. -
(1) to (4)
(Contd.)

Various Order
Forms,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., to
Alimahomed Osman

June 1957

- continued.

D.14 (b) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., to TANGANYIKA TRANSPORT
COMPANY LIMITED

(This Exhibit is Annexure 'G' to the Defence)

Ngoni-Matengo Co-operative Marketing Union Ltd.,
P.O. Box 3, Songea.

Ref: No.1/CONF/SALES.

31st May, 1957.

CONFIDENTIAL

20 Messrs. Tanganyika Transport Company Ltd.,
Songea.

Dear Sirs,

PADDY 1957 CROP

With reference to discussions re the marketing of paddy 1957 crop, we hereby confirm that your offer of -/60 (Sixty cents) per Kilogram without bag at Mbamba Bay and Lituhi, and -/65 (Sixty-five) cents per Kilogram without bag at Songea (godowns at Songea, Litola and Mantumbo) has been accepted.

Please acknowledge receipt of this letter.

30

Yours faithfully,

NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD.,

Sgd: N.S.Mkangama

Secretary.

D.14 (b).

Letter,
(Defence
Annexure 'G'),
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., to
Tanganyika
Transport Co.,
Ltd.

31st May, 1957.

Exhibits

D.14 (a)

Letter,
(Defence
Annexure 'H'),
Tanganyika
Transport Co.,
to Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

1st June, 1957.

D.14 (a) - LETTER, THE TANGANYIKA TRANSPORT
COMPANY LIMITED TO NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD.

(This Exhibit is Annexure 'H' to the Defence)

The Tanganyika Transport Company Limited
Songea.

Ref: 1/CONF/SALES

1st June, 1957.

CONFIDENTIAL

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

10

Dear Sirs,

PADDY 1957 CROP

We thank you for your letter Ref:1/CONF/SALES dated 31st May 1957 in connection with marketing of PADDY 1957 crop, and we hereby confirm that we agree to buy PADDY @ 60 (SIXTY CENTS) per kg. without bag at M'BAY & Lituhi, and @ -/65 (SIXTY-FIVE CENTS) per kg. without bag at Songea (godowns at Songea, Litola and Mamtumbo).

20

It is understood that ALL Paddy that will be handled by your Union or your associates shall be sold to us exclusively.

Yours faithfully,

Sgd: Y.S.Amin,
DIRECTOR.

D.7.

Letter,
Alimahomed
Osman to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.
15th June, 1957.

D.7. - LETTER, ALIMAHOMED OSMAN TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD., 15th JUNE 1957.

Alimahomed Osman
Merchant & Transport Contractor,
P.O. Box 49, Lindi.
Songea.

30

15th June, 1957.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sir,

I should be glad if you would ask me price

for the produce, when your members wish to sell.

As I am interested to buy every kind of oil seed.

Yours faithfully,

Sgd: Alimahomed Osman.

Ngoni-Matengo Co-op
Marketing Union Ltd.

14.6.1957.

Exhibits

D.7.

Letter,
Alimahomed
Osman to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.

15th June, 1957
- continued.

10 D.9(i) -- LETTER, ALIMAHOMED OSMAN TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD., 22nd JUNE, 1957.

Alimahomed Osman,
Merchant & Transport Contractor,
P.O. Box 49, Lindi.
Songea
22nd June, 1957.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sir,

20 I offer following for the Oil seeds.

| | | |
|-------------|----------|-------------------|
| Simsim. | Shs.90/- | per 100 kilo nett |
| Ground Nuts | Shs.90/- | do. |
| Sunflower | Shs.38/- | do. |

All above prices are included empty gunny bags.

Condition for Sunflower

Sunflower should be supplied cleaned in new gunny bags, weighing 50 kilos nett.

30 All other produce including sunflower should be delivered on Songea-Lindi main road Markets.

I hope you will find my offer very reasonable.

Yours faithfully,

Sgd: Alimahomed Osman.

Exhibits

P.4 - (5)

Letter,
Ngoni-Matengo
Co-operative
Marketing
Union Ltd., to
Alimahomed
Osman.
28th June, 1957.

P.4. - (5) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD. TO ALIMAHOMED OSMAN,
28th JUNE, 1957.

Ngoni-Matengo Co-operative Marketing Union Ltd.,
P.O. Box 3, Songea.

23th June, 1957.

Ref:No.NM/3/12/60

Mr.Alimahomed Osman,
Songea.

Dear Sir,

We beg to inform you that the sunflower seed
has been sold ex buying centres of the societies
and no transport on that produce will be made by
us.

Yours faithfully,

For Ngoni-Matengo Co-operative Marketing
Union Ltd.

Sgd: ? ? ?

Secretary.

NSH/PMW.

10

P.7- (a)

Letter, Dodd &
Co., to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.
8th July, 1957.

P.7(a) - LETTER, DODD & CO. TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD.

Dodd & Co.,
Advocates.

Ref. A/32/5635.

Ngoni-Matengo Co-operative Marketing Union Ltd.,
P.O. Box 3, Songea.

Dear Sirs,

Alimahomed Osman, Transport Contract

We have been consulted by our client, Alima-
homed Osman of Songea, on your action in depriving
him of the exclusive right to transport oil seeds,
being export produce, which he possesses by virtue
of his contract with you.

We understand that this exclusive right has
been transferred to another firm whose price for
the purchase of seeds includes transport.

By the said contract our client has the exclu-
sive right to transport such produce at the agreed
rates from the various markets to Lindi or Mtwara.
The produce in question is clearly required by the

20

30

40

141.

Union to be transported within the meaning of Clause 1(c) of our client's agreement with you and your action constitutes a breach of the said agreement.

10 We are instructed that a suit will be filed against the Union for breach of contract and damages therefor unless we have your assurance by the 13th instant that the breach will cease forthwith and agreed compensation paid for all damage caused to our client up to the date of such cessation.

Yours faithfully,
DODD & CO.,
Sgd: H.G. Dodd.

c.c. Alimahomed Osman, Esq.,
P.O. Box 18, Songea.

P.7- (b) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., to DODD & CO.
11th JULY, 1957.

NM/3/12/62.

11th July, 1957.

20 Messrs. Dodd & Co.,
P.O. Box 1592,
Dar es Salaam.

Dear Sirs,

We acknowledge receipt of your letter dated 8th July, 1957.

Yours faithfully,
For Ngoni-Matengo Co-operative Marketing
Union Ltd.,

Sgd: ? ? ?

SECRETARY.

Exhibits

P.7- (a)

Letter,
Dodd & Co., to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.

8th July, 1957
- continued.

P.7- (b)

Letter,
Ngoni-Matengo
Co-operative
Marketing
Union Ltd., to
Dodd & Co.

11th July, 1957.

Exhibits

D.8.

Letter,
Alimahomed
Osman to
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.
3rd August,
1957.

D.8. - LETTER, ALIMAHOMED OSMAN TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD.,
3rd AUGUST, 1957.

Alimahomed Osman,
Merchant & Transport Contractor,
Songea.

3rd August, 1957.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

10

Dear Sir,

Regarding your today's order No.392 of today's date asking for a truck to work on various centres to Mbambabay.

I would like to point out, that some of the paddy is brought by other transporter to Songea from Mbambabay and even last year.

Therefore I cannot supply any truck to work on Mbambabay Centres.

Yours faithfully,
Sgd: Alimahomed Osman.

20

Ngoni-Matengo Co-op Marketing Union Ltd.
3rd Aug. 1957.

D.16(v)

Letter,
Ngoni-Matengo
Co-operative
Marketing
Union Ltd., to
Tanganyika
Transport
Co., Ltd.
23rd August,
1957.

D.16(v) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD. TO TANGANYIKA TRANSPORT
CO., LTD.

NM/3/2/160

23rd August, 1957.

The Tanganyika Transport Co., Ltd.,
Songea.

Dear Mr. Amin,

30

With further reference to our letter No.NM/3/2/157 of 22nd August, 1957, and to your personal visit at this office today, when you requested us to sell you 25 tons of sunflower seed. We have to inform you that your request can be accepted if you agree to pay us cents -/35 per kilo ex our buying centres i.e. by your own transport from our Societies gullies.

Yours faithfully,
For Ngoni-Matengo Co-operative Marketing Union Ltd. 40
Sgd: ? ? ?
SECRETARY.

D.9(ii) - LETTER, ALIMAHOMED OSMAN TO NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD.,
24th AUGUST, 1957.

Exhibits

D.9(ii)

Songea,
24th August, 1957.

Letter,
Alimahomed
Osman to
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

24th August,
1957.

Your note with order form No.112 of today's,
asking for a truck to transport Sand, I have in-
formed since long time before to your Asst. Secre-
tary Mr. Sefya that any truck you require to carry
sand or bricks, etc., would be supplied only on
day charges, so if you agree please let me know.

10

Yours faithfully,
Sgd: Alimahomed Osman.

Yes daily Baises.

P/A Sgd:
24/8.

D.16(iv) - LETTER, TANGANYIKA TRANSPORT COMPANY
LTD., to NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 24th AUGUST, 1957

D.16(iv)

Letter,
Tanganyika
Transport Co.,
Ltd., to
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

20

The Tanganyika Transport Company Ltd.,
Songea.
24th August, 1957.

Your Ref. NM/3/2/160.

The Secretary,
Ngoni-Matengo C.M.U.Ltd.,
Songea.

Dear Sir,

24th August,
1957.

We thank you for your letter Ref.NM/3/2/160
dated 23rd August and in reply we have pleasure to
confirm that we agree to buy 25 tons Sunflowerseeds
@ Shs.35/- per 100 kgs. nett with bags ex your
collecting centres.

30

We would start to collect these 25 tons as
soon as possible.

Thanking you for the business done,
Yours faithfully,

Sgd: Y.S. Amin,
DIRECTOR.

Exhibits

D.16(iii)

Letter,
Tanganyika
Transport Co.,
Ltd., to
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

30th August,
1957.

D.16(iii) - LETTER, TANGANYIKA TRANSPORT CO., LTD.,
TO NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD.
30th AUGUST, 1957

The Tanganyika Transport Company Limited,
Songea.

Ref. NMCU/12/57

30th August, 1957.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sirs,

10

We hereby offer to buy further 25 tons Sun-
flowerseeds @ Sh. 35/- per 100 kgs. nett with bags
ex your collecting centres.

If you accept this offer, it would make a to-
tal of 50 tons Sunflowerseeds purchased by us from
your Union.

For your information, we would mention that
there are 100 tons Sunflowerseeds at Mantumbo, 60
tons at Mohomolo and 30 tons at Songea. And still
there is considerable quantity to be collected
from upcountry gulies. We have still to start
with Lusewa.

20

We hope you will be able to close bargain for
this second parcel of 25 tons Sunflowerseeds.

Yours faithfully,

For The Tanganyika Transport Co., Ltd.,
Sgd: Y.S. Amin.

D.16(ii)

Letter,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., to
Tanganyika
Transport Co.,
Ltd.

31st August,
1957.

D.16(ii) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., TO TANGANYIKA TRANSPORT
CO., LTD., 31st AUGUST, 1957

30

MN/3/2/157.

31st August, 1957.

The Tanganyika Transport Co., Ltd.,
Songea.

Dear Sirs,

Sunflower Seed

Thank you for your letter No.NMCU/12/57 of
30th August, 1957, regarding the above seed. We
are glad to inform you that your offer for 25 tons
at 35 cents per kilo ex buying gulies is acceptable.
That is to say you have now purchased 50 tons from
us @ 35 cents per kilo.

40

We should be pleased if you would like to purchase more quantity of this commodity which has already been or still being collected from various gullies to main godown centres so that the whole produce is shared between you and the United Africa Company. Meantime the U.A.Co., have purchased the total quantity of 250 tons, and the balance will be bought by you if you would so be willing.

Please let us know.

10

Yours faithfully,

For Ngoni-Matengo Co-Operative Marketing Union Ltd.,

Sgd:
Secretary.

Exhibits

D.16(ii)
(Contd.)

Letter,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., to
Tanganyika
Transport Co.,
Ltd.

31st August,
1957

- continued.

D.16(i) - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., to TANGANYIKA TRANSPORT
COMPANY LIMITED, 23rd NOVEMBER, 1957

The Tanganyika Transport Company Limited,
Songea.

23rd November, 1957.

20

M/s Ngoni-Matengo Co-operative Marketing Union Ltd.,
Songea.

Dear Sirs,

We wish to buy approx. 25 tons Sunflowerseeds January 1958 delivery. We offer 33 cents per kg. with bag, ex your buying centres. It is understood that we have already transported your Sunflowerseeds from the buying centres to main road societies, and as such if you accept our offer, we would collect the Sunflowerseeds from the main road societies.

30

We wish to add that your Union will take into consideration our continued co-operation with your members in several respects, and as such we are confident that our offer will be accepted by your good selves.

Awaiting your early favour.

Yours faithfully,

For The Tanganyika Transport Co., Ltd.,

Sgd: Y.S. Amin.

40

Exhibits

D.15.

Letter,
Ngoni-Matengo
Co-operative
Marketing Union
Ltd., to
Tanganyika
Transport Co.,
Limited.
26th November,
1957.

D.15. - LETTER, NGONI-MATENGO CO-OPERATIVE
MARKETING UNION LTD., TO THE TANGANYIKA
TRANSPORT COMPANY LIMITED, 26th NOVEMBER, 1957

NM/3/2/109. 26th November, 1957.

The Tanganyika Transport Co., Ltd.,
Songea.

Dear Sirs,

We thank you for your letter dated 23rd No-
vember, 1957, requesting us to sell you 25 tons of
Sunflower seeds @ cents -/33 per kilo bagged. We
regret to inform you that the stock we have got is
already sold to the United Africa Company Ltd.,
but we can, however, sell you any balance stock
which may be available after clearing with the
United Africa Co.

10

Meantime your offer of cents -/33 a kilo
bagged has been acceptable.

Yours faithfully,

For Ngoni-Matengo Co-operative Marketing
Union Ltd.

Sgd: ?
SECRETARY.

20

D.12(a)

Letter,
Tanganyika
Transport
Company, Ltd.,
to Ngoni-
Matengo
Co-operative
Marketing Union
Ltd.
27th November,
1957.

D.12(a) - LETTER, TANGANYIKA TRANSPORT COMPANY
LTD., TO NGONI-MATENGO CO-OPERATIVE MARKETING
UNION LTD., 27th NOVEMBER, 1957

The Tanganyika Transport Company Limited,
Songea.

27th November, 1957.

M/s.Ngoni-Matengo Co-operative Marketing Union
Ltd., Songea.

30

Dear Sirs,

GROUNDNUTS

We understand you have approx. 6 tons of
Groundnuts at M'Bay. Also we presume you have
some quantity here at Songea.

We are pleased to offer 95 cts. per kg. and
Sh.1/- per kg. at M'Bay and Songea respectively,
both bagged.

If you kindly accept our offer, then we would
arrange to collect the same.

40

Yours faithfully,

For The Tanganyika Transport Co., Ltd.,

Sgd: ? Amin
Y.S.AMIN.

D.12(b) - LETTER, Ngoni-Matengo Co-operative
Marketing Union Ltd., to Tanganyika Transport
Company Limited, 29th November, 1957

Exhibits
D.12(b).

NM/3/2/113.

29th November, 1957.

The Tanganyika Transport Co., Ltd.,
Songea.

Dear Sirs,

GROUNDNUTS

10 With reference to your letter dated 27th No-
vember, 1957, regarding the above produce. We
should like to inform you that our sale for ground-
nuts is ex buying centres, and you should offer
your price from that place. Your offer for Sh.1/-
Songea buying centres and cents -/95 Mbamba-Bay
buying centres per kilo bagged will be acceptable;
but quantity is unknown.

Yours faithfully,

For Ngoni-Matengo Co-operative Marketing
Union Ltd.

Sgd: ?

SECRETARY.

20

D.13. - LETTER, UNITED AFRICA COMPANY (T) LIMITED
TO Ngoni-Matengo Co-operative Marketing Union Ltd.
28th February, 1958.

D.13.

The United Africa Company (Tanganyika) Limited,
P.O. Box 555, Dar es Salaam.
Tanganyika Territory.

Letter,
United Africa
Company (T)
Ltd., to
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

Ref.No.P/N/2.

25th February, 1958.

Ngoni-Matengo Co-operative Marketing Union Ltd.,
P.O. Box 3,
Songea.

25th February,
1958.

30

Dear Sirs,

10 Tons Sesameseed

We refer to our exchange of telegrams and con-
firm that we have disposed of this parcel at 1/15
per kilo ex buying centre packed in double bags,
inner bag to be 1st grade second-hand and outer to
be new. We regret that we have been unable to ob-
tain a higher price but there is very little buying
interest at present especially for small parcels

Exhibits

D.13.

Letter,
United Africa
Company (T)
Ltd., to
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

25th February,
1958
- continued.

and in the circumstances we feel that the price obtained is a good one.

Arrangements have been made with the Tanganyika Transport Co., Ltd., to take delivery of these goods and transport them to Mtwara.

Yours faithfully,
For The United Africa Company (T) Limited,
Dar es Salaam.

Sgd: R.P. POTTER.

c.c. Tanganyika Transport Co., Ltd.,
Songea.

10

D.16(vi)

Letter,
United Africa
Company (T)
Ltd., to
Ngoni-Matengo
Co-operative
Marketing Union
Ltd.

12th May, 1958.

D.16(vi) - LETTER, UNITED AFRICA COMPANY (T) LTD.
TO NGONI-MATENGO CO-OPERATIVE MARKETING UNION
LTD., 12th MAY, 1958

The United Africa Company (Tanganyika) Limited,
P.O. Box 555, Dar es Salaam.

12th May, 1958.

The Secretary,
Ngoni-Matengo Co-operative Marketing Union Ltd.,
P.O. Box 3, Songea.

20

Dear Sir,

Sunflowerseed

Further to our letter dated 20th March, we are pleased to inform you that we have sold 20 tons of Sunflowerseed that were over delivered to Mtwara at cents -/27 per kilo ex buying centres Songea.

We have already shipped these goods and enclose herewith our credit note less the charges for storage at Mtwara. We regret we were unable to do better on this parcel as the overseas market for old crop Sunflowerseed has been very weak, and as you know we have been endeavouring to sell this parcel for some considerable time without finding buyers.

30

Yours faithfully,
For The United Africa Company (T) Limited
Dar es Salaam.

Sgd: E.V. Karpenter.

D.5(ii) - DELIVERY NOTE 1229, 15th JUNE, 1957

Exhibits

Union Mifuko
Songea Tobacco Factory

D.5(ii).

Sunflower N. M. Wena.
Delivery Note No. 1229.
Date: 15. 6.57.

Delivery Note
1229.
15th June, 1957.

Society: Likuyu fusse C.S. Ltd.,
Buying Station: Likuyu fusse
Lorry No: LD 1923.

10 Produce Receipt Nos. from to Mifuko 79
For Union use only

| Grade | Quantity | Rate | Amount |
|-------|----------|------|--------|
| I | 4065 | | 4319 |
| II | | | |
| III | | | |
| IV | | | |
| V | | | |
| Total | 4065 | | 4319 |

Sign: ?? Sign: ?? Sign: ??
Transporter. Consigning Clerk. Witness.

20 Consignment received at Factory: Sg. ??
Date: 15.6.57. Receiving Clerk.

D.6(i) - DELIVERY NOTE 1385, 20th JUNE, 1957.

D.6(i).

Songea Tobacco Factory

Delivery Note
1385.
20th June, 1957.

Tobacco Delivery Note No.1385 Date: 20.6.57.
Society: L.
Buying Station: Ligera.
Lorry No. L.D. 1924.

30 Produce Receipt Nos. from Majunia 73.
Majunia 73. For Union use only.
Weight Note in No.

| Grade | Quantity | Rate | Amount |
|-----------------|----------|------|--------|
| I 4162 Kgs. | | | 4200 |
| II | | | |
| III | | | |
| IV | | | |
| V | | | |
| Total 4162 Kgs. | | | 4200 |

Sign: ?? Sign: ?? Sign: ??
Transporter Consigning Clerk Witness

40 Consignment received at Factory Sign: ??
Date: 2.7.57. Receiving Clerk.

D.6(iv) - DELIVERY NOTE 1388, 24th JUNE, 1957.ExhibitsMazonba
Songea Tobacco Factory

D.6(iv)

Tobacco Delivery Note: No. 1388. Date: 24.6.57.

Delivery Note,
1388.

Society: L.

Buying Station: Nambunju.

24th June, 1957.

Lorry No. L.D. 1924.

Produce Receipt Nos. from Majunia 70 to
70 Bags. For Union use only.

Weight Note in No.

Quantity Rate Amount

Grade I 3920 Kgs. 4000

II

III

IV

V

Total 3920 Kgs. 4000

Sign: ?? Sign: ?? Sign: Abihu Chokola.

Transporter. Consigning Clerk. Witness.

20 Consignment received at Factory: Sign: ??

Date: 5.7.57. Receiving Clerk.

D.6(v) - DELIVERY NOTE 1389, 25th JUNE, 1957

D.6(v)

Songea Tobacco Factory

Delivery Note,
1389.

Tobacco Delivery Note: No.1389. Date: 25.6.57.

Society: L.

25th June, 1957.

Buying Station: Nambunju Ligera.

Lorry No. L.D. 1924.

Produce Receipt Nos. from Majunia 72 to

For Union use only

Weight Note in No.

Quantity Rate Amount

Grade I 4183 4241

II

III

IV

V

Total: 4183 4241

Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

40 Consignment received at Factory: Sign: ??

Date: 3.7.57. Receiving Clerk.

D.6(viii) - DELIVERY NOTE 1392, 28th JUNE, 1957

Mazumba.

Songea Tobacco Factory

Tobacco Delivery Note: No. 1392. Date: 28.6.57.

Society: L.

Buying Station: Tigera.

Lorry No. L.D. 1924.

Produce Receipt Nos. from Majunia 65 to
Majunia 65.

For Union use only.

Weight Note in No.

Quantity Rate Amount

Grade I 3774 Kgs. 3924

II

III

IV

V

Total: 3774 Kgs. 3924.

Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

20 Consignment received at Factory: Sign: ??

Date: 2nd July, 1957. Receiving Clerk.

D.10(iii) - DELIVERY NOTE 389, 20th AUGUST, 1957

Bags 4.

Songea Tobacco Factory

Mpunga

Tobacco Delivery Note: No. 389. Date: 20.8.57.

Society: Matogoro C.S. Ltd.

Buying Station: Mpitimbi.

Lorry No.

30 Produce Receipt Nos. from 39255-56 to 33242-43.

For Union use only.

Weight Note in No.

Quantity Rate Amount

Grade I 284 Kgs. 282

II

III

IV

V

Total: 284 Kgs. 282

40 Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

Consignment received at Factory: 23.8.57.

Sign: ??

Receiving Clerk.

Exhibits

D.6(viii)

Delivery Note,
1392.

28th June, 1957.

D.10(iii)

Delivery Note,
389.20th August,
1957.

Exhibits

D.10(i)
Delivery Note,
397.
18th September,
1957.

D.10(i) - DELIVERY NOTE 397, 18th SEPTEMBER, 1957.

Songea Tobacco Factory.
Tobacco Delivery Note: No. 397. Date: 18.9.57.
Society Matocoro C.S. Ltd.
Buying Station: Kikunjer.
Lorry No. L.D. 1948.
Produce Receipt Nos. from 33184 to

For Union Use only
Weight Note in No.
Quantity Rate Amount 10

| | | | |
|-------|-----|---------|-----------|
| Grade | I | 80 Kgs. | |
| | II | | |
| | III | | |
| | IV | G.I. | <u>79</u> |
| | V | 80 Kgs. | 79 |

Sign: ? ?[Ⓜ] Sign: ? ? Sign: ? ?
Transporter. Consigning Clerk. Witness.
Consignment received at Factory Sign: ? ?
Date: 1/10/57 Receiving Clerk. 20

D.10(ii)
Delivery Note,
1240.
26th September,
1957.

D.10(ii) - DELIVERY NOTE 1240, 26th SEPTEMBER 1957

Songea Tobacco Factory
Mifuko Junia 10.
Tobacco Delivery Note: No. 1240. Date: 26.9.57.
Society: Kikuyu Farmers.
Buying Station:
Lorry No. L.D. 1948.
Produce Receipt Nos. from
Upunga to

For Union use only
Weight Note in No.
Quantity Rate Amount 30

| | | | |
|-------|-----|----------|-----|
| Grade | I | 290 Kgs. | |
| | II | | |
| | III | | |
| | IV | | |
| | V | | |
| Total | | 290 Kgs. | 694 |

Sign: ? ?[Ⓜ] Sign: ? ? Sign: ? ?
Transporter. Consigning Clerk. Witness.
Consignment received at Factory: Sign: R.Liwenga 40
Date: 27.9.57. Receiving Clerk.

[Ⓜ] Evidence of Alimahomed Osman at p. that this
was the signature of his driver.

D.5(i) - DELIVERY NOTE 165, 11th NOVEMBER, 1957.Exhibits

Songea Tobacco Factory.

D.5(i)

Ngano Delivery Note: No.165. Date: 11.11.57.
 Society: Mbinga. Buying Station: Mangwanaala.
 Lorry No.1947. Produce Receipt Nos.from 1638 to 1651.
 15 Bags.

Delivery Note,
165.11th November,
1957.

For Union use only.

Weight Note in No.

Quantity Rate Amount

Grade I 1474 Kgs. 1691

II

III

IV

V

Total: 1474 Kgs. 1691

Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

Consignment received at Factory: Sign: ??

Date: 12.11.57. Receiving Clerk.

10

D.4(vi) - DELIVERY NOTE 166, 11th NOVEMBER, 1957

D.4(vi)

Songea Tobacco Factory.

Delivery Note,
166.

Ngano Delivery Note: No.166. Date: 11.11.57.
 Society: Mbinga. Buying Station: Nkulanga.
 Lorry No.1947. Produce Receipt Nos.from 1652 to 1667.
 16 Magunia.

11th November,
1957.

For Union use only.

Weight Note in No.

Quantity Rate Amount

Grade I 1798 Kgs. 1690

II

III

IV

V

Total: 1798 Kgs. 1690

Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

Consignment received at Factory: Sign: ??

Date: 12.11.57. Receiving Clerk.

20

30

D.4(iii) - DELIVERY NOTE 167, 13th NOVEMBER, 1957.

D.4(iii)

Songea Tobacco Factory.

Delivery Note,
167.

Ngano Delivery Note: No.167. Date: 13.11.57.
 Society: Mbinga. Buying Station: Liule
 Lorry No.1947. Produce Receipt Nos.from 1676 to 1694.
 Magunia 18.

13th November,
1957.

For Union use only.

Weight Note in No.

Quantity Rate Amount

Grade I 1985 Kgs. 2038

40

| <u>Exhibits</u> | Grade | Quantity | Rate | Amount |
|--|---|----------------------------------|-------------------|------------------|
| D.4(iii) Delivery Note, 167. 13th November, 1957 - continued. | II III IV V | Total: 1985 Kgs. | | 2038 |
| | | Sign: ?? | Sign: ?? | Sign: ?? |
| | | Transporter. | Consigning Clerk. | Witness. |
| | | Consignment received at Factory: | | Sign: ?? |
| | | Date: 14.11.57. | | Receiving Clerk. |
| <hr/> | | | | |
| D.4(ii) Delivery Note, 168. 13th November, 1957. | <u>D.4(ii) - DELIVERY NOTE 168, 13th NOVEMBER, 1957</u> | | | 10 |
| | Songea Tobacco Factory. | | | |
| | Ngano Delivery Note: No.168. Date: 13.11.57. | | | |
| | Society: Mbinga. Buying Station: Zomba. | | | |
| | Lorry No.1947. Produce Receipt Nos.1670 to 1675. | | | |
| | Magunia 6. For Union use only. | | | |
| | | Weight Note in No. | | |
| | | Quantity | Rate | Amount |
| | Grade I | 541 Kgs. | | 411 |
| | II | | | |
| | III | | | 20 |
| | IV | | | |
| | V | | | |
| | Total: | 541 Kgs. | | 411 |
| | Sign: ?? | Sign: ?? | | Sign: ?? |
| | Transporter. | Consigning Clerk. | | Witness. |
| | Consignment received at Factory: | | | Sign: ?? |
| | Date: 14.11.57. | | | Receiving Clerk. |
| <hr/> | | | | |
| D.4(i) Delivery Note, 169. 13th November, 1957. | <u>D.4(i) - DELIVERY NOTE 169, 13th NOVEMBER, 1957</u> | | | 30 |
| | Songea Tobacco Factory. | | | |
| | Ngano Delivery Note: No.169. Date: 13.11.57. | | | |
| | Society: Mbinga. Buying Station: Mbinga. | | | |
| | Lorry No.1947. Produce Receipt Nos.from ...to.... | | | |
| | Magunia 8. For Union use only. | | | |
| | | Weight Note in No. | | |
| | | Quantity | Rate | Amount |
| | Grade I | 644 Kgs. | | 908 |
| | II | | | |
| | III | | | |
| | IV | | | |
| | V | | | 40 |
| | Total: | 644 Kgs. | | 908 |
| | Sign: ?? | Sign: ?? | | Sign: ?? |
| | Transporter. | Consigning Clerk. | | Witness. |
| | Consignment received at Factory: | | | Sign: ?? |
| | Date: 14.11.57. | | | Receiving Clerk. |

D.4(v) - DELIVERY NOTE 170, 15th NOVEMBER 1957Exhibits

Songea Tobacco Factory

D.4(v)

Tobacco Delivery Note No. 170. Date: 15.11.57
 Society: Mbinga. Buying Station: Makunguru.
 Lorry No.1947. Produce Receipt Nos.from 1734 to
 1751

Delivery Note,
170.15th November,
1957.

Magunia 17.

For Union use only

Weight Note in no.

Quantity Rate Amount

10 Grade I 2020 Kgs. 2036

II
III
IV
V

Total: 2020 Kgs. 2036

Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

Consignment received at Factory: Sign: ??

Date: 16.11.57. Receiving Clerk.

20 D.4(iv) - DELIVERY NOTE 171, 15th NOVEMBER 1957

D.4(iv)

Songea Tobacco Factory

Delivery Note,
171.

Tobacco Delivery Note No.171. Date: 15.11.57.
 Society: Mbinga. Buying Station: Wukiro.
 Lorry No.1947. Produce Receipt Nos.from 1705 to
 1733.

15th November,
1957.

Magunia 18.

For Union use only.

Weight Note in No.

Quantity Rate Amount

30 Grade I 2087 Kgs. 1703

II
III
IV
V

Total: 2087 Kgs. 1703

Sign: ?? Sign: ?? Sign: ??

Transporter. Consigning Clerk. Witness.

Consignment received at Factory. Sign: ??

Date Receiving Clerk.

Exhibits
 D.4(vii)
 Delivery Note,
 172.
 5th December,
 1957.

D.4(vii) DELIVERY NOTE 172, 5th DECEMBER, 1957
 Songea Tobacco Factory
 Ngano Delivery Note No. 172. Date: 5.12.57.
 Society: Mbinga. Buying Station: Kibanga.
 Lorry No.1947. Produce Receipt Nos.from 1696 to 1699.
 For Union use only
 Weight Note in No.
 Quantity Rate Amount

| | | | | | |
|--------|-----|----------|--|-----|----|
| Grade | I | 387 Kgs. | | 315 | 10 |
| | II | | | | |
| | III | | | | |
| | IV | | | | |
| | V | | | | |
| Total: | | 387 Kgs. | | 315 | |

Sign: ? ? Sign: ? ? Sign: ? ?
 Transporter. Consigning Clerk. Witness
 Consignment received at Factory: Sign: ? ?
 Date: 6.12.57. Receiving Clerk

D.6(ix)
 Delivery Note,
 335.
 12th December,
 1957.

D.6(ix) - DELIVERY NOTE 335, 12th DECEMBER 1957 20
 Songea Tobacco Factory
 See Order 903.
 Paddy Delivery Note No.335. Date: 12.12.57.
 Society: The Unyanja Farmers Co-Op. Society Ltd.
 Buying Station: Mbamba Bay. Lorry No.L.D. 1947.
 Produce Receipt Nos. from to
 For Union use only.
 Weight Note in No.
 Quantity Rate Amount

| | | | | | |
|--------|-----|------------|------|--|----|
| Grade | I | 4454½ Kgs. | 4442 | | 30 |
| | II | | | | |
| | III | Less | 60 | | |
| | IV | Nett | 4382 | | |
| | V | | | | |
| Total: | | 4454½ kgs. | | | |

Sign: ? ? Sign: ? ? Sign: ? ?
 Transporter. Consigning Clerk. Witness.
 Consignment received at Factory: Sign: ? ?
 Date: 13.12.57. Receiving Clerk.

D.6(x) - DELIVERY NOTE 336, 27th FEBRUARY, 1958.

Exhibits

Songea Tobacco Factory
See Order 917.

D.6(x)

Paddy Delivery Note No.336. Date: 27.2.58.
Society: Unyanja Farmers Co-Op. Society Ltd.
Buying Station: Mbamba Bay. Lorry No.L.D. 1947.
Produce Receipt Nos. from to
17 Bags. For Union use only.

Delivery Note,
336.
27th February,
1958.

Weight Note in No.

| | Quantity | Rate | Amount |
|--|----------|------|--------|
|--|----------|------|--------|

| | | | |
|----|---------|----------------|------|
| 10 | Grade I | 1240 Nett Kgs. | 1250 |
| | II | | |
| | III | | |
| | IV | | |
| | V | | |

Total: 1240 Kgs. 1250

Sign: ?? Sign: ?? Sign: ??
Transporter. Consigning Clerk. Witness.

20 Consignment received at Factory: Sign: ??
Date: 4.3.58. Receiving Clerk.

D.3. - DELIVERY NOTE 337 - 27th FEBRUARY, 1958

D.3.

Songea Tobacco Factory

Delivery Note,
337.
27th February,
1958.

Simsim Delivery Note No. 337. Date: 27.2.58.
Society: Unyanja Farmers Co-Op Society Ltd.
Buying Station: Mbamba-Bay. Lorry No.L.D. 1947.
Produce Receipt Nos. from to
20 Bags. For Union use only.

Weight Note in No.

| | Quantity | Rate | Amount |
|--|----------|------|--------|
|--|----------|------|--------|

| | | | |
|----|---------|---------------|------|
| 30 | Grade I | 1540 Net Kgs. | 1553 |
| | II | | |
| | III | | |
| | IV | | |
| | V | | |

Total: 1540 Kgs. 1553

Sign: ?? Sign: ?? Sign: ??
Transporter. Consigning Clerk. Witness.

Consignment received at Factory: Sign: ??
Date: 4.3.58. Receiving Clerk.

Exhibits

P.3.

List of
Collecting
(or Buying)
Centres in
Southern
Province
covered by
Ngoni-Matengo
Co-operative
Marketing
Union Ltd.

Undated.

P.3. - LIST OF COLLECTING (OR BUYING) CENTRES IN
SOUTHERN PROVINCE COVERED BY NGONI-MATENGO
CO-OPERATIVE MARKETING UNION LTD.

NGONI-MATENGO CO-OPERATIVE MARKETING UNION LTD.MILEAGES TO COLLECTING CENTRES

| | | | | |
|----------------------|----|----------------------|-----|----|
| <u>MATOGORO C.S.</u> | | <u>MOHOMORO C.S.</u> | | |
| Matogoro | 2 | Mohomoro | 62 | |
| Mkurumusi | 18 | Masuguru | 53 | |
| Kituro | 10 | Namawara | 71 | |
| Kikunja | 27 | Mingweha | 70 | 10 |
| Mhukuru | 55 | <u>NAMTUMBO C.S.</u> | | |
| Lipapila | 10 | Namtumbo | 44 | |
| Malete | 6 | Mtonya | 53 | |
| <u>LIULA C.S.</u> | | Likuyu-Sakamaganga | 62 | |
| Liula | 12 | Suluti | 51 | |
| Mkwera | 18 | Nindo | 71 | |
| Mitolonji | 35 | Nahere | 37 | |
| Mhungu | 29 | Libango | 52 | |
| Nandarau | 24 | Ilonga | 74 | 20 |
| <u>LIGERA C.S.</u> | | <u>GUMBIRO C.S.</u> | | |
| Iigera | 57 | Gumbiro | 34 | |
| Wabaki | 59 | Mahanje | 78 | |
| Nambunju | 73 | Mbunga | 55 | |
| Nakawala | 80 | Mtyangimbele | 41 | |
| <u>MSINDO C.S.</u> | | <u>NANGERO C.S.</u> | | |
| Msindo | 18 | Nangero | 73 | |
| Mtulanjiwa | 26 | Nangaro via Likuyu | | |
| Dodoma | 18 | Sake | 82 | 30 |
| Nahehe | 25 | Lungongoro via | | |
| Nambao | 17 | Likuyu Sake | 104 | |
| Namgwina | 22 | Mgombazi via | | |
| Nanga | 24 | Likuyu Sake | 76 | |
| <u>LITOLA C.S.</u> | | Lungongoro | 78 | |
| Litola | 27 | Mgombazi via Hanga | 61 | |
| Njuga | 22 | Msindeni | 84 | |
| Muhuruku | 26 | <u>NDIRIMA C.S.</u> | | |
| Litepaka | 35 | Ndirima | 22 | |
| Mgwindi | 30 | Johanesbrucke | 30 | 40 |
| <u>MKONGO C.S.</u> | | Makolo Ruanda | 44 | |
| Mkongo | 47 | Mgazini | 32 | |
| Likondo | 44 | <u>MLALI C.S.</u> | | |
| Mkondasi | 52 | Mlali | 30 | |
| Mamanima | 52 | Towatowa | 24 | |
| Mtelawaswahi | 62 | Lihali | 38 | |

| | <u>LUSEWA C.A.</u> | | <u>LIPUMBA C.S.</u> | | <u>Exhibits</u> |
|----|----------------------|-----|--------------------------|---------|-----------------|
| | Lusewa | 105 | Lipumba | 55 | P.3. |
| | Marijeni | 95 | Mswika | 57 | List of |
| | Namigvina | 85 | Matiri | 65 | Collecting |
| | Msisima | 114 | Mkongora | 61 | (or Buying) |
| | Ligunga | 111 | Linda | 73 | Centres in |
| | | | Mtandazi | 75 | Southern |
| | <u>LUMETCHA C.S.</u> | | <u>MBINGA C.S.</u> | | Province |
| | Lumetcha | 13 | Mbinga | 64 | covered by |
| 10 | Mpandangindo | 20 | Wallanzi | 73 | Ngoni-Matengo |
| | Luhimba | 18 | Luhunehi | 80 | Co-operative |
| | Lipupuma | 21 | Lihulila | 79 | Marketing |
| | | | Pelikane | 76 | Union Ltd. |
| | <u>TINGI C.S.</u> | | Lingiro | 97 | - continued. |
| | Tingi | 103 | Nhagawa | 80 | Undated. |
| | Tinde | 90 | Ngaka | 75 | |
| | Nalungu | 109 | Lifakara | 71 | |
| | Manjenje | 96 | Mateka | 76 | |
| | | | Nyangayanga | 70 | |
| | <u>LITEMBO C.S.</u> | | Mapilila | 58 | |
| | Litembo | 80 | Mahenge | 82 | |
| 20 | Ilonga | 74 | <u>MBANGAMAWO C.S.</u> | | |
| | Lowaita | 73 | Mbangamawo | 73 | |
| | Ngima | 100 | Ndengo | 76 | |
| | Bukire | 81 | Punga | 80 | |
| | Liuli | 130 | Kihulila | 79 | |
| | Gumbi | 140 | Buruma | 88 | |
| | Mapala | 51 | Nyelele | 82 | |
| | Matungutu | 90 | <u>LIPALAMBA C.S.</u> | | |
| | Ligambo | 32 | Lipalamba | | |
| | Minyoni | 78 | <u>LIKUYU-FUSSE C.S.</u> | | |
| 30 | Upeto | 84 | Likuyu-Fusse | 13 | |
| | Kitulo | 90 | Ruvuma | 11 | |
| | | | <u>LIKENANGEANA C.S.</u> | | |
| | | | Likenangeana | 14 & 15 | |

| | | |
|------------------|--|--------------|
| <u>Exhibits</u> | <u>P.6. - RUNNING COST PER MILE OF AN AUSTIN TRUCK</u> | |
| P.6. | Cost of Chassis | Shs. 17500/- |
| Running cost | Body | 2250/- |
| per mile of | Licence | 900/- |
| an Austin Truck. | Insurance | 100/- |
| | | <hr/> |
| | | Shs. 20750/- |

Undated.

Life of a lorry is 60,000 miles, that cost of a running mile will come to -/35 cents, and cost of Petrol is 3/- per gallon, which gives 10 miles gallon.

10

Now actual running cost per mile

| | |
|---------------------------------|-----------------|
| Wear and tear of lorry per mile | Shs. -/35 cents |
| Petrol and Oil per mile | 32 " |
| Tyre and Tubes | 10 " |
| Spare and Maintenance | 08 " |
| Drivers, etc. | 05 " |
| | <hr/> |
| | 90 cents |

Songea to Mtwara is 450 miles distance

| | | |
|--------------------------------------|------------------|--------|
| Cost of 1 trip on Journey to Mtwara | | |
| 450 miles carrying 5 tons of produce | | 20 |
| as shown 22 cents per mile | Shs.405/- | |
| 5 tons of produce at .22 cents | | |
| per kilo rate fixed | | 1100/- |
| Nett profit per trip | <u>Shs.695/-</u> | |

If transported as figure of 750 tons of Produce that comes to 150 trips of 5 ton load

Shs.104250/-

(As last year they were bought about 600 tons of produce)

30

| | |
|-----------------------------|---------------------|
| Local transport on 750 tons | <u>Shs. 15000/-</u> |
| Loss suffered | <u>Shs.119250/-</u> |

D.23. - RUNNING COST OF A 5-TON TRUCK

The Tanganyika Transport Company Limited.

15th June, 1958.

TO WHOM IT MAY CONCERNWORKING COST OF A 5-TON AUSTIN TRUCKSCHEDULE

| | <u>Shs.</u> |
|---|-------------------------|
| Cost of Austin 5-ton truck Chassis (Scuttle) | 18,810.00 |
| Cost of a Cargo body with cab | <u>2,500.00</u> |
| 10 Shs. | 21,310.00 |
| Third Party Insurance for 2 years | 400.00 |
| Licence for 2 years | 1,800.00 |
| Tools such as Jack, foot-pump etc. | 300.00 |
| Tarpaulins 2 - approximate cost | <u>600.00</u> |
| Shs. | <u><u>24,410.00</u></u> |

Take that a truck's life would be 60,000 miles.
This will take two years.

| | <u>cts.</u> |
|---|-------------|
| Working cost: | |
| Capital cost per mile | 40.7 |
| 20 Cost of 7,500 gallons petrol @ 8 m.p.g. price of petrol taken on Shs.3/- p.g. | 37.5 |
| 130 gallons oil, engine & transmission @ 10/- p.g. | 2.2 |
| Cost of 18 tyres and tubes @ 592/85 nett (per tyre & tube) = 10671/30 | 17.8 |
| Spares and maintenance. Approx. 6000/- for 60,000 miles | 10.0 |
| Driver & T/boy. 250/- p.m. i.e. 6000/- for 2 years | 10.0 |
| 30 Unexpected breakdowns, major overhauls, maintenance, office-staff and managerial supervision | <u>5.0</u> |
| | Shs. 1/23 |

Therefore running cost per mile is Sh.1/23 per
mile.

ABOVE SCHEDULE COMPILED AT REQUEST OF Ms. NGONI-
MATENGO NATIVE CO-OPERATIVE UNION LTD., SONGEA.