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NAIROBI, KENYA

SPECIAL ISSUE

Kenya Gazette Supplement No 11 (Homa Bay County Acts No 8)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

HOMA BAY COUNTY ACTS, 2020

NAIROBI, 21st August, 2020

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ACT, 2020**

No 8 of 2020

Date of Assent 2nd March, 2020

Date of Commencement 21st August, 2020

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Homa Bay County Persons with Disabilities

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**THE HOMA BAY COUNTY PERSONS WITH DISABILITIES
ACT, 2020**

AN ACT of the Homa Bay County Assembly to provide for the rights and rehabilitation of persons with disabilities, to achieve equalization of opportunities for persons with disabilities, to establish a Board for Persons with Disabilities, and for connected purposes

ENACTED by the Homa Bay County Assembly as follows—

PART I—PRELIMINARY

Short title

1 This Act may be cited as the Homa Bay County Persons with Disabilities Act, 2020

Interpretation

2 In this Act unless the context otherwise requires—

“Aged person” includes a person with a disability who has been forced into retirement from employment due to his disability,

“Assistive devices and services” means implements, tools and specialized services (including the services of qualified interpreters for the deaf and

Qualified teachers for the blind) provided to persons with disabilities to assist them in, information education, employment or other activities,

“Board” means the Homa Bay County Board for Persons with Disabilities established under section 3,

“County Executive Board Member” means County Executive Board member responsible for Tourism, Culture, Sports and Social Services

“Disability” includes any physical, sensory, mental, physiological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities

“Discriminate” means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a person with a disability,

“Doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act,

“Fund” means the County Development Fund for Persons with

Disabilities established under this Act,

“Organizations for persons with disabilities” means associations or societies formed for the purposes of rendering services to persons with disabilities, and

“Organizations of persons with disabilities” means associations or societies formed by persons with disabilities for their welfare and protection

Purpose of the Act

3 The purpose of this Act is to ensure the realization of the rights of persons with disabilities in the county through

- (a) setting out the rights and privileges of persons with disabilities, and
- (b) generally protect persons with disabilities from any form of discrimination and promote their welfare

PART II—ADMINISTRATION

Establishment of the Board

4 There is established the Homa Bay County Board for Persons with Disabilities

Membership of the Board

5 (1) The Board shall consist of the following members—

- (a) The Chief Officer in the meantime in charge of matters relating to social services who shall be the secretary,
- (b) Five persons nominated by the Homa Bay branch for the National Council for Person with Disabilities, appointed by the County Executive Board Member upon the approval of the County Assembly

(2) A person shall be qualified for appointment as a member under subsection 2 (c), if the person

(a) holds at least a diploma or its equivalent from a recognized university in Kenya,

(b) meets the requirements of chapter six of the Constitution of Kenya 2010, and

(c) is experienced in matters relating to the welfare of persons with disabilities

(3) The Board membership shall comprise of no more than two thirds of the same gender

Tenure of office

6 The term of office for members appointed under section 5 shall be three years which may be renewed for one further term only

6A (1) There shall be a chief executive officer of the board

(2) The chief executive officer shall be appointed by the County Executive Board Member on recommendation of the Board and recruited through a competitive process

(3) To qualify for appointment as a chief executive officer, a person shall—

(i) possess a degree in a relevant field from a recognized university,

(ii) have had experience in management for a period of not less than five years

(4) The chief executive officer shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years

(5) The chief executive officer shall be an *ex officio* member of the Board

(6) The chief executive officer shall—

(i) be the secretary to the Board

(ii) subject to the direction of the Board, be responsible for day to day management of the affairs of the Board,

(iii) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Board,

(iv) carry out any other function as may from time to time be assigned by the Board

Functions of the Board

7 (1) The functions of the Board shall be—

(a) to issue adjustment orders under the provisions of this Act,

(b) to formulate and develop measures and policies designed to—

(i) achieve equal opportunities for persons with disabilities by

ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services,

- (ii) co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning,
 - (iii) advise the County Executive Board on the provisions of any National Legislation or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the country,
 - (iv) recommend measures to prevent discrimination against persons with disabilities,
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities,
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment,
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities, and
 - (viii) co-ordinate services provided in County for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling,
- (c) to register on a continuous basis—
- (i) persons with disabilities,
 - (ii) institutions, associations and organizations, including those controlled and managed by the County Government, that provide services for the rehabilitation and welfare of persons with disabilities,
 - (iii) places at which services for the rehabilitation of persons with disabilities are provided, and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services,

- (d) to provide, to the maximum extent possible—
 - (i) assistive devices, appliances and other equipment to persons with disabilities,
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the County Government, and
 - (iii) equipment and trade tools
 - (e) to consult with the County Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities,
 - (f) to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions,
 - (g) to assess and report to the County Executive Board Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures,
 - (h) to consult with the County Government in the provision of suitable and affordable housing for persons with disabilities,
 - (i) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act,
 - (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Board may deem necessary, and
 - (k) to perform such other functions as may be assigned to the Board under this or any other Act
- (2) Without prejudice to the provisions of subsection (1), the Board shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—
- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities,
 - (b) to constitute Boards consisting of its members, and where necessary to co-opt experts to serve on such Boards with the

approval of the County Executive Committee Member,

- (c) to vest in or delegate to any Board constituted under paragraph (b) such of the functions of the Board as the Board may with the approval of the County Executive Committee Member determine, and
- (d) with the approval of the County Executive Committee Member, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities

(3) Prepare quarterly reports for submission to the county assembly on the execution of the functions of the Board

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Realization of rights of persons with disabilities

8 The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities

Non-discrimination in employment

9 (1) No person shall deny a person with a disability access to opportunities for suitable employment

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees

(3) An employee with a disability shall be entitled to exemption from tax on all income accruing from the employment

(4) The Board shall endeavour to secure the reservation of at least five percent employment in the public and private sectors for persons with disabilities

(5) Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired

Prohibition of Discrimination by employers

10 (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment,
- (b) the recruitment for employment,
- (c) the creation, classification or abolition of posts,
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits,
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment,
- (f) the provision of facilities related to or connected with employment, or
- (g) any other matter related to employment

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person,
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned, or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the workplace to accommodate the person with a disability, which the employer cannot reasonably be expected to provide

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court, the County Assembly and the Board

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void insofar as it purports to deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities

(6) The minimum retirement age for persons with a disability shall be sixty-five years

Records for job placement

11 The Board shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and training and shall update such records regularly for the purposes of job placement

Non-Discrimination in an educational institution

12 (1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations

(3) Special schools and institutions, especially for the deaf, dumb, the blind and the mentally challenged and physically handicapped, shall be established to cater for formal education, skills development and self reliance

Special and non-formal education

13 The Board shall work in consultation with the relevant department of County Government to make provisions in all sub-counties for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment of braille, non-visual aid computers and recorded libraries for persons with visual disabilities

Health of persons with disabilities

14 The Board shall ensure that the implementation of the County health programme puts measures in place for—

- (a) prevention of disability,
- (b) early identification of disability,
- (c) early rehabilitation of persons with disabilities,
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public health institutions,
- (e) availing essential health services to persons with disabilities at an affordable cost,

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- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities,
- (g) prompt attendance by medical personnel to persons with disabilities,
- (h) sensitization matters relating to disabilities, and
- (i) public health facilities to provide for sign language interpreters

Right to Accessibility of persons with disabilities

15 (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility

(2) A proprietor of a public building or public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Board

(3) All proprietors of public buildings shall comply with subsection (2) within five years after this section comes into operation while operators of public service vehicles shall comply with subsection (2) within two years after this section comes into operation

Adjustment orders

16 (1) This section shall apply to—

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise, and
- (b) any services or amenities ordinarily provided to members of the public

(2) Without prejudice to the provisions of section 19, if the Board considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Board may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities concerned an adjustment order—

(a) setting out—

- (i) a full description of the premises, services or amenities concerned, and
- (ii) the grounds upon which the Board considers that the premises, services or amenities are inaccessible to persons with disabilities,

- (b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned, and
 - (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed
- (3) Before serving an order under subsection (2) the Board shall serve notice upon the person concerned—
- (a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order,
 - (b) stipulating the maximum period that the Board considers reasonable for the implementation of the action it proposes to order, and
 - (c) calling upon the person concerned, if he wishes to do so, to make representations to the Board within thirty days from the date of the service of the notice
- (4) After considering any representations described in subsection (3)
- (c) the Board may issue, or refrain from or defer the issuing of, an adjustment order
- (5) Within thirty days after an adjustment order is confirmed or issued under subsection (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—
- (a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order,
 - (b) the period stipulated for implementing the adjustment order is unreasonable,
 - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable, or
 - (d) adequate access to the premises ,services or amenities concerned may be secured without recourse to the action required by the adjustment order
- (6) Upon hearing an appeal under subsection (5) the Court may—
- (a) confirm, vary or set aside the adjustment order appealed against,

and

- (b) make such order as to the costs of the appeal as it thinks fit

Denial of admission into premises, etc

17 (1) No person shall, on the ground of disability alone, deny a person with a disability—

- (a) admission into any premises to which members of the public are ordinarily admitted, or
- (b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person

(2) The proprietor of premises referred to in subsection (1) (a) shall not have the right, on the ground of a person's disability alone, to reserve the right of admission to his or her premises against such a person

(3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction

(4) Without prejudice to subsection (3), damages awarded under this section shall be recoverable summarily as a civil debt

Prohibition of adjustment orders against government institutions

18 (1) The Board shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Act except with the consent of the County Executive Board Member responsible for Health or
- (b) any school or educational or training institution controlled or managed by the County Government or registered under the Education Act except with the consent of the County Executive Board Member responsible for the administration of the institution or Act concerned

(2) Within sixty days after being requested to consent under subsection(1) the County Executive Board Member shall either give or refuse his consent and if he fails to do so within that period the Board may proceed to serve the adjustment order as though the County Executive Board Member had consented

Right to sports and recreation

19 (1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the County Government during social, sporting or recreational activities

(2) Persons with disabilities shall be entitled to participate in all national and international sports events

(3) For the purpose of subsection (2) the Department responsible for sports shall, in consultation with the Board, provide the necessary suitable environment including—

- (a) architectural infrastructure,
- (b) apparatus and equipment,
- (c) training and medical personnel, and
- (d) transportation facilities for the participants

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities

Non-derogation

21 The rights set out under this Part are in addition to, and do not derogate in any way with the rights set out under Article 54 of the Constitution

Tax exemptions

22 (1) All persons with disabilities may apply to the County Executive Committee Member responsible for finance for exemption from taxes and other levies

(2) The County Executive Committee Member responsible for finance shall, in consultation with the Board, assess all applications received under subsection (1) and make such order thereon, if any, as he deems fit, exempting the applicant wholly, or to the extent provided by the order, from taxes and other levies specified therein, and any such order shall, notwithstanding the provisions of any other Act, have effect according to its terms

Promotion of access to credit

23 The County Executive Committee Member may liaise with the department responsible for matters relating to credit unions, cooperatives and other lending institutions to put in place measures to encourage the extension by such institutions of credit to persons with disabilities

PART VI—MISCELLANEOUS

Failure to obey an adjustment order and discrimination

25 (1) A person is guilty of an offence if the person—

- (a) fails to comply with an adjustment order issued under this Act,
- (b) discriminates against a person with disability contrary to this Act, or
- (c) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person injured by the offence such sums of money in compensation as the court may deem appropriate

Concealment of persons with disabilities

26 (1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the rights set out under this Act or any other law

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding One hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment

Negligence by doctor

27 (1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment

(2) The court may order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate

Giving false information to get registered

28 A person is guilty of an offence if the person knowingly gives

false information to the Board for the purpose of being registered or for the purpose of acquiring any privilege or right due to persons so registered

General penalty

29 A person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment

Enforcement

30 (1) The Board may cause to be taken appropriate legal action if the Board believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act, and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest

Regulations

31 The County Executive Board Member may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, with the approval of the County Assembly—

- (a) prescribing the procedures, forms and fees applicable under this Act
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities, and
- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act

FIRST SCHEDULE

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD**

1 The Board shall elect from amongst its members in section 5(1)(b) as its Chairperson and vice Chairperson at its first meeting

2 A member of the Board may —

(a) resign his office by notice in writing to the County Executive Committee Member, or

(b) be removed by the County Executive Committee Member by notice in writing if he—

(i) is subject to a vote calling for his removal by a two thirds majority of all members of the Board,

(ii) has been absent from five consecutive meetings of the Board without permission of the chairperson,

(iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties,

(iv) is an undischarged bankrupt,

(v) is convicted by a Court of an offence punishable by a term of imprisonment, or

(vi) is otherwise unable or unfit to discharge his functions

3 Where the office of a member becomes vacant the vacancy may with the approval of the County Executive Committee Member be filled through the majority vote of the members for the remainder of the term

4 The Board shall pay to its members such remuneration as the County Executive Committee Member may approve

5 The Board shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting

6 A meeting of the Board shall be held on such date and at such time as the Board shall decide, or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson

7 Unless otherwise decided by a two-thirds majority of the members of the Board, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board The quorum of a meeting of the Board shall be four members

8 (1) The chairperson, or in his absence, the vice-chairperson, shall preside at every meeting of the Board

(2) in the absence of both the chairperson and vice-chairperson, the members present may choose one of their number to preside at the meeting

9 A decision of the majority of members of the Board present at any meeting of the Board shall be deemed to be the decision of the Board and if upon any question the voting shall be equal, the chairperson, vice-chairperson or other person presiding shall have a second and casting vote

10 No act, decision or proceedings of the Board shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Board being defective