

SPECIAL ISSUE

Kenya Gazette Supplement No. 3 (Kericho County Bill No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KERICHO COUNTY BILLS, 2019

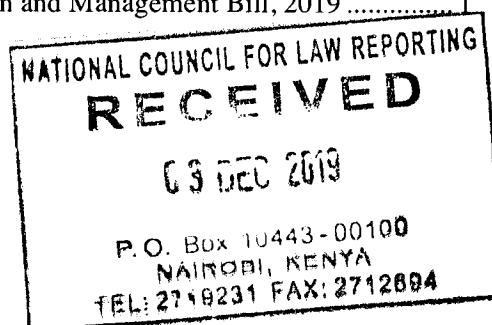
NAIROBI, 22nd March, 2019

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**THE KERICHO COUNTY REVENUE
ADMINISTRATION AND MANAGEMENT BILL, 2019**

A Bill for

AN ACT of the County Assembly of Kericho to provide for effective administration of certain revenue raising and other taxation laws; the collection, receipt and management of County revenues, the responsibilities of certain public officers and entities in relation thereto; and for related and connected purposes

ENACTED by the County Assembly of Kericho as follows—

1. (1) This Act may be cited as the Kericho County Revenue Administration and Management Act, 2019. Short title

(2) The Act shall come into operation on the date that the Executive Member may appoint and publish in the *Gazette*.

2. In this Act, unless the context otherwise requires— Interpretation.

“County” means Kericho County

“County Assembly” means the Kericho County Assembly

“County Government” means the County Government of the County

“County public officer” has the same meaning as in the County Governments Act, 2012

“County Revenue Fund” means the county revenue fund as established under the Public Finance Management Act

“Executive Committee Member” means the County Executive Committee Member responsible for matters relating to finance in the County

“premises” include—

- (a) any part of a building or structure ; and
- (b) any part of a vehicle or vessel; and (c) an area of land.

“prescribed” means prescribed by the rules made this Act;

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“rate” means a rate imposed under the Kericho County Rating Act, 2015

“receiver of revenue” has the meaning given by section 3

“revenue law” means—

- (a) this Act; or
- (b) the Kericho County Rating Act, 2015
- (c) the Kericho County Alcoholic Drinks Control Act, 2013; or
- (d) any other Act imposing an entertainment tax or any other tax that is payable to the County Government; or
- (e) any Act or other law providing for the payment to the County Government of any fees or charges for services provided ; or
- (f) any other prescribed law;

“Relevant person” means—

- (a) revenue payer; or
- (b) an employee or agent of the revenue payer: or
- (c) any other person whom the receiver of revenue believes on reasonable grounds may be able to assist in determining the liability (if any) of the revenue payer to pay a rate, tax, fee or charge payable under a revenue law;

“Revenue payer” means a person liable to pay a rate, fee or charge to the county government under revenue law.

3. The objective and purpose of the Act is to establish a framework and mechanisms in the County to—

- (a) put into effect and implement the provisions of the Public Finance Management Act in relation
 - (i) to the collection and receipt of County revenue by County public officers;
 - (ii) administration and management of the tax and revenue; and
- (b) collect, receive and remit County revenue to the receiver of revenue in the County.

PART II—ADMINISTRATION OF REVENUE

LAWS

4. (1) There is established the office of receiver of revenue for the County

Establishment and the role of the Office of the County Receiver of Revenue.

(2) The Chief Officer shall be the receiver of revenue in the County in respect of both taxation and other revenue under section 157 of the Public Finance Management Act 2012.

5. (1) The receiver of revenue shall—

Functions of the Receiver of Revenue.

- (a) be responsible for the administration and enforcement of revenue laws and for that purpose shall ensure the assessment, collection and accounting for all rates, taxes, fees and charges payable by or under any law;
- (b) receive and account for all county Government revenue in accordance with this Act and the Public Finance Management Act;
- (c) except as may be provided otherwise in this Act or other written law, ensure that all monies raised or received by or on behalf of the County Government is paid into the County Revenue Fund;
- (d) prepare the County Government accounts and those of its entities and report thereon in accordance with the relevant law and procedures;
- (e) advise the County Government on all matters relating to the administration and enforcement of County revenue laws and assessment and collection of rates, taxes, fees and other charges under the laws; and
- (f) perform such other functions as the County Executive Member may direct.

(2) Without limiting the functions and powers of the receiver under the Public Finance Management Act, 2012, the receiver of revenue shall have such other powers and functions as may be provided for by or under the revenue laws of the County.

6. (1) Save for the power to delegate under this Act, the receiver of revenue may, by instrument in writing, delegate

Delegation by the Receiver of Revenue.

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all or any of his or her functions or powers under any revenue law to and authorize a public officer or officers in the county or any of its entities to perform such functions or exercise such powers.

(2) Without prejudice to the generality of the subsection (1), the County Government may enter into an agreement authorizing the Kenya Revenue Authority or any other person to collect rates, taxes, fees and charges payable under revenue laws on such terms and conditions as may be specified in the agreement.

(3) A person to whom a function or power has been delegated or who is otherwise authorized by the receiver of revenue to collect and or receive any County revenue shall remit the revenue collected and or received as soon as practicable but not later than three days.

7. (1) The receiver of revenue shall prepare an annual report on the operation and administration of all revenue laws and further provide to the Executive Committee Member quarterly statements on the County revenue or otherwise ensure that the statements are so provided.

Annual Report of the
Receiver of Revenue

(2) Notwithstanding subsection (1), the receiver of revenue shall, within 90 days after the end of the year of the County, furnish Executive Member with the annual report for that year.

(3) The Executive Member shall table the annual report in the County Assembly as soon as practicable upon receipt thereof under subsection (2).

**PART III—RECORDS AND INFORMATION OF
REVENUE PAYERS**

8. (1) For a period of not less than fourteen years after the completion of a transaction to which rates, taxes, fees or charges under a revenue law relate, a revenue payer of a County tax or revenue in respect thereof shall make and keep such books, accounts and records as may be reasonably necessary to determine the revenue payer's liability to pay such rates, taxes, fees or charges.

Preservation of
Accounts.

(2) By notice in writing given to a revenue payer, the County receiver of revenue may direct the revenue payer as to the books, accounts and records the revenue payer shall be required to make and keep.

(3) A revenue payer who fails to comply with the requirement in subsection (1) or the notice under subsection (2) commits an offence and, on conviction, shall be liable to a fine not exceeding Kenya shillings Five Hundred Thousand or to imprisonment for a term not exceeding three years or to both such fine and term of imprisonment.

9. (1) For the purpose of determining the liability (if any) by a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the receiver of revenue—

Receiver of Revenue to
have free access

- (a) Shall have full and free access to any premises of or in custody or control of a relevant person and may at all reasonable times, exercise all or any of the following—
 - (i) enter and inspect those premises and any goods in or on those premises, including opening any packaging or containers that may contain goods
 - (ii) Obtain, copy and print information or data from any computer system in or those premises and retain all information and data that is obtained, copied or printed
 - (iii) Take extracts from or copies of any books, accounts, records and other documents in or on those premises and retain all extracts or copies taken.
- (b) may give notice in writing to the payer to provide the receiver of revenue with such information as he or she may require or attend and give evidence before the receiver of revenue either on oath or otherwise.

(2) Where the county receiver of revenue considers that it shall be impractical to exercise any of the powers under subsection (1) the receiver of revenue may remove all or any of the things referred to therein to the offices of the County Government for such time as may be reasonably necessary to determine a revenue payers liability.

(3) Every person required to do so shall give to the receiver of revenue all reasonable assistance so as to allow him or her to exercise all or any of his or her powers under this section.

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- (4) Any person who—
- (a) fails or refuses to—
 - (i) comply with the notice under subsection (1)
 - (ii) provide access to premises required by the county receiver of revenue; or
 - (b) obstructs or hinders the county receiver of revenue in the discharge of his or her duties under subsection (1);

commits an offence and is, upon conviction, liable to a fine not exceeding Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding twelve months or to both such fine and term of imprisonment.

(5) If a person fails to comply with or otherwise contravenes any provision of this Act the punishment for which is not expressly provided by this Act that person shall be liable, on conviction, to a fine not exceeding Kenya Shillings Five Hundred Thousand or to a term of imprisonment not exceeding three years or to both such fine and term of imprisonment.

10. (1) The receiver of revenue may take into his or her possession any property, other than land, that may be required as evidence in a court for proceedings that may be brought under this Act or any other revenue law.

Possession of property
for purposes of
proceedings.

(2) Where property taken into the possession of the receiver of revenue is no longer required under subsection (1), it shall be returned to the person entitled as soon as practical.

PART IV—MISCELLANEOUS

11. (1) In performing or exercising any function or power under this Act, whenever required to do so by any person—

Receiver of
Revenue to produce
identification

- (a) the receiver of revenue; or
- (b) a person exercising powers or performing functions delegated by the receiver of revenue shall produce written identification of position as the receiver of revenue or a delegate of the receiver of revenue, as the case may be.

12. (1) The receiver of revenue may approve and prescribe forms for the purposes of this Act or any other

Forms

revenue law.

(2) The receiver of revenue shall open and maintain a revenue register or registers for the different sources of revenue which shall contain such information and be in such a form or forms as may be prescribed.

13. A document or other instrument required to be ^{Service of documents.} published under a revenue law may be published by advertisement in the Gazette and in one or more newspapers with wide circulation in the County.

(2) Any document required or authorized to be sent or served under or for the purposes of this Act or any revenue law in the County may be sent or served by—

- (a) delivering it to the person to or on whom it is to be sent or served; or
- (b) leaving it at the usual or last known place of abode or business of that person or in the case of a company, at its registered office; or
- (c) ordinary or registered post; or
- (d) emailing it to the person; or
- (e) any method which may be prescribed.

(3) Despite subsection (2), where the receiver of revenue has unsuccessfully made attempts to send or serve a document by one of the methods and is satisfied that such notice has not been received by the person to whom it was addressed, the county receiver of revenue may publish an advertisement the general purport of such thereof in the manner provided in subsection (1) upon which the document shall be deemed to have been received by that person.

(4) An advertisement referred to in subsection (3) may refer to one or more documents and to one or more ratable owners.

A document or instrument under a revenue law is required or authorized to be served on the owner or occupier of any premises it may be addressed to such owner or occupier by the description “owner” or “occupier” of the premises (naming the premises), without further name or description.

14. (1) The Executive Member responsible may ^{Regulations and Guidelines.} make rules generally for the better carrying out of the provisions

and purposes of this Act.

(2) The receiver of revenue may issue guidelines for the purposes of a revenue law.

MEMORANDUM OF OBJECTS AND REASONS

A principal object of devolution under Article 174 of the Constitution of Kenya is to promote social and economic development. Sustainable development is a national value under Article 10 of the Constitution which binds all persons in Kenya.

Article 175 of the Constitution of Kenya requires county governments established there-under to reflect the principles of devolved government that include the principle that they shall have reliable sources of revenue to enable them to govern and deliver services effectively. A major and principle source of government revenue is taxation and levying of fees and charges for the services delivered.

Article 209 (2) of the Constitution reserves to county governments the power to impose the taxes stated in Article 209 (3).

Further, Article 209 (4) of the Constitution of Kenya, read together with Part 2 of the Fourth Schedule thereto, gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities.

The taxes, fees and charges imposed and levied ought to be prudently used for service delivery through a transparent and accountable process.

This Bill provides a system for collecting, receiving and accounting for taxes, fees and charges in the County. It confers a general power and responsibility for the administration of county revenue laws on a public official who is to be held accountable for that administration.

To achieve the above purpose, the Bill sets out additional relevant administrative and enforcement provisions relating to revenue legislation.

The enactment of this Bill into law does not occasion additional expenditure of public funds.

ALEX BETT,
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