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**THE KILIFI COUNTY VETTING AND APPOINTMENT OF
PUBLIC OFFICERS (COUNTY ASSEMBLY APPROVAL) BILL,
2016**

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**THE KILIFI COUNTY VETTING AND
APPOINTMENT OF PUBLIC OFFICERS (COUNTY
ASSEMBLY APPROVAL) BILL, 2016**

A Bill for

AN ACT of the County Assembly of Kilifi to provide for the vetting of public officers as envisaged under Chapter Six of the Constitution of Kenya 2010; to require the submission of nominations for specified public appointments to the County Assembly of Kilifi for approval; and to provide for matters connected therewith and incidental thereto.

ENACTED by the County Assembly Kilifi of as follows—

PART I — PRELIMINARY PROVISIONS

1. This Act may be cited as the Kilifi County Vetting and Appointment of Public Officers (County Assembly Approval) Act, 2016 and shall come into operation upon assent.

Citation and
Commencement

2. For the avoidance of doubt, the provisions of this Act shall apply to persons whose appointment is subject to the approval of the County Assembly as provided by the Constitution or any other relevant law.

Application

3. The purpose of vetting is to determine the suitability of all Public Officers before appointment.

Purpose of vetting

4. (1) In this Act, except where the context otherwise requires:

Interpretation.

“appointment” includes any re-appointment to the same body, whether or not in the same capacity;

“appointing authority” means any person who, under the Constitution or any other law, is required to make an appointment for which the approval of the County Assembly is required;

“candidate” means a person who has been proposed or nominated for appointment to a public office;

“Clerk” means the Clerk of the County Assembly of Kilifi;

“Committee” means the relevant committee of the County Assembly of Kilifi.

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“County assembly” means the County Assembly of Kilifi;

“County government” means the County Government of Kilifi;

“Effective date” means 5th March, 2013;

“Vetting” means the process of establishing the suitability of a person to serve in the County Government;

5. An appointment under the Constitution or any other law for which the approval of the County Assembly is required shall not be made unless the appointment is approved or deemed to have been approved by the County Assembly in accordance with this Act.

Exercise of
Powers of
Appointment.

6. Any advertisement inviting applications for nomination for appointment to an office to which this Act applies shall indicate that candidates so nominated shall be required to appear before a committee of the County assembly for vetting.

Notification of
Vetting
Requirements.

7. (1) An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the County Assembly accordingly;

Notification of
Nomination.

(2) A notification under subsection (1) shall be —

(a) in writing;

(b) be lodged with the Clerk of the County Assembly.

(3) A notification of appointment shall be accompanied by information concerning the nominee, having regard to the issues mentioned in section 9.

(4) For purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (2) and (3).

8. (1) Upon receipt of a notification of appointment, the Clerk shall invite the Committee to hold an approval hearing.

Approval
Hearing.

(2) The Committee shall determine the time and place for the holding of the approval hearing and shall inform the Clerk.

(3) The Clerk shall notify a candidate and the public of the time and place when and where an approval hearing shall be held.

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(4) Subject to this Act, all Committee proceedings on public appointments shall be open and transparent.

(5) Despite subsection (5), a Committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera.

(6) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.

(7) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate.

(8) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.

(9) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.

9. The issues for consideration by the County Assembly in relation to any nomination shall be—

Issues for consideration.

- (a) the procedure used to arrive at the nominee;
- (b) any constitutional or statutory requirements relating to the office in question; and
- (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.

10. (1) Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the County Assembly for debate and decision within fourteen days from the date on which the notification of nomination was given in accordance with section 7.

Period for consideration and report.

(2) At the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary.

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11. If, after expiry of the period for consideration specified in section 10, the County assembly has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.

Failure of
County
Assembly to
act on
Nomination.

12. Where the nomination of a candidate is rejected by the County Assembly, the appointing authority may submit to the Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.

Rejection of
Nomination.

13. (1) The Clerk shall notify the appointing authority of the decision of the County Assembly within seven days of the decision.

Notification of
Decision.

(2) The committee may—

- (a) review its decision approving the nomination and appointment of a candidate, whether such candidate has been appointed to the relevant office or not, where new evidence emerges challenging the suitability of a candidate who has been approved for appointment to a public office.
- (b) make a finding that a candidate who has been approved for appointment to a public office, whether appointed or not, is suitable or not suitable to hold public office.

Review of the
decision
approving
nomination and
appointment of
a candidate

(3) Where the committee makes a finding that a candidate who has already been appointed to a public office is unsuitable to hold office, it shall make a recommendation to the relevant county organ to take the necessary steps for the removal of the officer from office.

14. (1) The committee shall have power to summon any person to appear before it for the purpose of giving evidence or providing information during approval hearing.

Powers of the
Committee.

(2) For purposes of subsection (1), the committee shall have the same powers as the High Court to—

- (a) enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;
- (b) compel the production of documents; and
- (c) issue a commission or request to examine witnesses abroad.

(3) Any person who—

- (a) disobeys any order made by a committee for

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attendance or for production of papers, books,
documents or records; or

- (b) refuses to be examined before, or to answer any
lawful and relevant question put by, a committee,
commits an offence and shall be liable, on
conviction, to a fine not exceeding two hundred
thousand shillings or to imprisonment for a term
not exceeding one year, or to both.

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SCHEDULE

(s. 8 (8))

**CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR
APPOINTMENT TO PUBLIC OFFICE BY THE COUNTY
ASSEMBLY
QUESTIONNAIRE**

Notes:

(a) This questionnaire applies to appointments to public office arising by or under the Constitution or any other law where County Assembly approval is required.

(b) The questionnaire shall be used by the relevant County Assembly committee to vet a nominee appearing before the committee in the process of approval by the County Assembly.

(c) The questionnaire shall be filled and submitted by the nominee to the relevant County Assembly committee through the Clerk of the County Assembly on or before a date set by the committee.

(d) The submission of false information in the questionnaire is an offence and may result in prosecution.

(e) Any form of canvassing by a nominee shall lead to disqualification.

(f) The nominee must answer all the questions.

1. **Name:** (State full name).

2. **Position:** (State office to which you have been nominated).

3. **Sex:**

4. **Date of Birth:** (State year and place of birth).

5. **Marital Status:**

6. **Daytime phone number:**

7. **Mobile phone number:**

8. **Email Address:**

9. **ID Number:**

10. **PIN Number:**

11. **Nationality:**

12. **Postal Address:**

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13. Town/City:

14. Knowledge of Languages: (Specify Languages).

15. Education: (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).

Employment Record: (List in reverse chronological order all government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee or consultant).

16. Honors and Awards: (List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).

17. Professional Association (where applicable): (List all professional associations of which you are or have a member and give any positions held and the respective dates when each such position was held).

18. Memberships: (List all professional, business, fraternal, scholarly, civic, charitable or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).

19. Published Writings:

(a) List the titles, publishers and dates of books, articles, reports letters to the editor, editorial pieces or other published materials you have authored or edited.

(b) Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.

20. Public Office, Political Activities and Affiliations:

(a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed.

(b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign,

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identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.

(c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution?

(d) Have you ever been adversely associated with practices that depict bias, favouritism or nepotism in the discharge of public duties?

21. Deferred Income/Future Benefits: (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, etc).

22. Outside commitment during service in office: (Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office? If so explain).

23. Sources of Income: (List sources and mounts of all income received during the calendar year preceding your nomination and in the current calendar year).

24. Tax Status: (State whether you have fully complied with your tax obligations to the State to-date).

25. Statement of Net Worth: (State you financial net worth).

26. Potential Conflicts of Interest:

(a) Identify the family members or other persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to rise.

(b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

27. Pro-Bono/Charity Work: (Describe what you have done by way of pro bono or charity work, listing specific instances and the amount of time devoted to each).

28. Have you ever been charged in a court of law? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.

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29. Have you ever been adversely mentioned in an investigatory report of the County Assembly or any other Commission of inquiry?

30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?

31. **References:** (List three persons who are not your relatives who are familiar with your character, qualification and work).

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MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legislative framework through which nominees for appointment to public offices, for which County Assembly approval is required under the Constitution or any other law, are vetted and approved for appointment by the County Assembly.

Clause 5 requires that no appointment to a public office for which County Assembly approval is required shall be made unless the person nominated for appointment to the office is approved by the County Assembly in accordance with the provisions set out in the Bill. The appointing authority is required to notify the County Assembly in writing, through the Clerk, about a proposed appointment, and is required to provide sufficient information regarding the nominee to enable the Assembly conduct an approval hearing.

Clause 8 provides for the approval hearing. Among other things, it obligates the Clerk to notify a candidate of the time and place of holding an approval hearing. Similar notification is to be given to the public generally by the relevant Committee of the County Assembly.

Clause 8 also provides that members of public may contest the suitability of a person to be appointed to the office for which the person has been nominated by furnishing the Clerk with the requisite written evidence on oath. It also provides that a candidate for whom an approval hearing is to be conducted may opt out of the approval process, and the candidate's nomination to the office concerned shall lapse accordingly. Clause 9 sets out the issues to be considered during hearing.

Clause 10 requires the relevant committee of the County Assembly to hold an approval hearing and submit its report, together with its recommendations, to the County Assembly within fourteen days from the date of notification of nomination. If there is failure by the committee to hold an approval hearing as required, the candidate nominated for appointment shall be deemed to have been approved, as provided for in clause 11. Clause 13 obligates the Clerk of the County Assembly to notify the appointing authority of the decision of the House.

If a candidate for appointment is rejected by the committee, the appointing authority may submit another name to the committee with respect to the same position for fresh consideration.

Clause 14 vests a committee of the County Assembly with similar powers as those of the High Court for calling witnesses to appear before it to give evidence or provide information as may be necessary. The

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Schedule outlines the criteria to be used in vetting candidates during approval hearings.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 7th March, 2016.

VALENTINE MATSAKI MWAMANGA,
Chairperson, Justice and Legal Affairs Committee.