

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Kenya Gazette Supplement No. 4 (Kwale County Bills No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KWALE COUNTY BILLS, 2019

NAIROBI, 11th April , 2019

CONTENT

Bill for introduction into the County Assembly of Kwale—

PAGE

The Kwale County Cess Bill, 2019..... 1

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Clause

- 1— Short title and commencement.
- 2—Interpretation.
- 3—Objects and purpose of Act.
- 4—Imposition of Cess.
- 5—Cess not payable on essential products.
- 6—Payment to County government.
- 7—Collection of Cess at County Exit Points.
- 8—Offences.
- 9—Offences by an authorized officer.
- 10—Waiver of Cess.
- 11—Regulations.

THE KWALE COUNTY CESS BILL, 2019

A Bill for

AN ACT of Kwale County Assembly to provide for the imposition of Cess on any products originating from the County, and for connected purposes

ENACTED by the County Assembly of Kwale as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kwale County Cess Act, 2019. Short title and commencement.

2. In this Act— Interpretation.

“Agricultural producer” means a producer or processor, of agricultural crop or animal product and includes any marketing organization acting on behalf of producers”

“Authorized Officer” means any person prescribed and/or authorized in writing by County Executive Committee Member for Finance, to act in a certain capacity as envisaged under this Act;

“Cess” means all fees and/or levies imposed under this Act and payable to the County Treasury;

“Company” means the body corporate registered under the Companies Act, Cap. 486, of the Laws of Kenya owning an agricultural produce farm, factory, plant or industrial unit;

“County Executive Committee Member” means the executive committee member for the time being responsible for matters relating to Finance;

“County Treasury” means the County Treasury of Kwale.

“Designated points” means a place identified by the County Receiver of Revenue of Kwale for the purpose of collection of revenue

“Factory” means a building or groups of buildings where products are processed chiefly by machines within the County and owned by a registered company whether or not registered under the Companies Act, Cap. 486, Laws of Kenya;

“Scheduled product” means any crop or product for the time being specified in the First Schedule;

“Payer” means any person or persons, their representative and agents conducting business mentioned in the first Schedule.

3. The object and purpose of this Act is to impose fees and/or levies on products that originate from Kwale County, and on transit to any market pursuant to the provisions of Article 209(3) of the Constitution of Kenya, 2010.

Objects and purpose of the Act.

PART II— FEES CHARGEABLE FOR PRODUCTS

4. (1) The County Executive Member shall with the approval of the County Assembly determine the Cess chargeable on Scheduled Products within the County.

Imposition of Cess

(2) Product Cess shall be levied on the category of products as set out in the first schedule to this Act

(3) The County Executive Member for Finance may extend the application of this Act to such other category of crops or animal product not included in the First Schedule as he/ she deems necessary.

(4) Where the County Executive Committee Member extends the application of this Act to such other agricultural product not included in the First Schedule, the Executive Member shall with the approval of the Assembly determine the Cess payable to that category of Scheduled products.

(5) The County Government shall ensure that sufficient resources generated from Cess collected is dedicated towards the provision of services to sectors contributing Cess.

5. (1) Cess shall not be levied or imposed on any product that is declared to be an essential product under this Act.

Cess not payable on essential crops or product

(2) The County Executive Committee Member may, in every five years, review, declare and publish essential products that in his/ her opinion are necessary for purposes of this Act.

(3) In declaring an essential crop or product under the provisions of this Act, the County Executive Committee

Member shall take into account the best interests of the County, the immediate needs of the people of the County, prevailing food security situation of the County and any other County policy.

(4) In making a declaration under subsection (1) the County Executive Member may declare a particular variety only of a scheduled product to be an essential product.

PART III—PAYMENT

6. (1) All payments to the County Government Payment to the
County Government made under this Act shall be deducted and paid by the company, factory, association or any such entity concerned where the product is supplied to be processed.

(2) All payments not provided for under subsection 1 shall be collected by an authorized officer at County designated points as determined by the County Executive Committee Member.

(3) The company or factory referred to in subsection (1) shall ensure that all the amounts deducted are remitted to the County Treasury within a period of 30 days from the date of deduction.

(4) An authorized officer referred to in subsection (2) shall ensure that all the Cess collected are accounted for and remitted to the County Revenue account on a daily basis.

(5) The company, factory, association or any such entity referred to in Subsection (1) shall keep an up to date record of products supplied to it and cess deductions thereof.

(6) An authorized officer shall be allowed unlimited access to the records kept by the company or factory for purposes of determining Cess payable and collected by the entity.

(7) Any company, factory, association or entity which fails to comply with the requirements of this section shall be guilty of an offence under this Act and will be liable to a fine not exceeding 2,500,000 Kenyan Shillings.

The principal officers of any such company, factory, association or entity shall be liable to imprisonment to a term not exceeding two years or a fine of 2,500,000 or both.

7. (1) An authorized officer shall ensure that Cess on products originating from the County is collected at designated points. Collection of Cess at Designated points

(2) All Cess collected at the County designated points shall be accounted for and remitted to the County Revenue account on a daily basis.

(3) An authorized officer shall maintain and keep records of all Cess collected at his or her County designated points.

(4) This section shall not apply to crops not produced in the County that are on transit through the County on national trunk roads and to which Cess has already been paid in another County in accordance with Article 209 (5).

(5) Notwithstanding subparagraph 4 above, any goods destined for market within the County shall be subjected to offloading fees as prescribed from time to time by the Finance Act.

(6) The County Executive Member shall determine and publish all County designated points from which Cess shall be collected.

PART IV—OFFENCES AND PENALTIES

8. (1) A person who contravenes the provisions of this Act shall be guilty of an offence and is liable to a fine not exceeding two hundred fifty thousand Kenya shillings or imprisonment of two years or both. Offences.

(2) Where the offence is committed by a non natural person including a body corporate, organization or any such entity, the principal officers of such body, organization or entity shall be liable to a fine not exceeding Two Million Five Hundred Thousand Kenya shillings or imprisonment of two years or both.

9. An Authorized Officer of the County Government having a duty to perform under this Act who— Offences by an authorized officer

(a) interferes with any other process or person under this Act, so as to defeat the provisions, requirements or purposes of this Act;

(b) where required under this Act to do anything, or to give effect to the provisions of this Act, fails to do such thing;

- (c) without reasonable cause omits to do something in breach of his or her duty under this Act;
- (d) wilfully contravenes the provisions of this Act to give undue advantage or favor to another person;
- (e) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act

shall be guilty of an offence and is liable on conviction, to a fine not exceeding Two Hundred Thousand Shillings or to imprisonment for a term of one year, or to both.

PART V—MISCELLANEOUS

10. (1) The County Executive Member may waive the Cess payable under this Act to any products, persons or group of persons to whom this Act apply. ^{Waiver of Cess}

(2) A waiver of Cess under this Act shall be for a determinate period not exceeding one year.

(3) Where such waiver is made, the County Executive Member shall give reasons for such waiver and table before the Assembly the list of persons to whom payment of Cess is waived and the reasons thereof

(4) The Assembly may overturn any such waiver if it is of view that no sufficient grounds exist for the waiver of Cess as made by the County Executive Member.

11. The County Executive Committee Member ^{Regulations} may make Regulations for the better carrying out of the purposes and provisions of this Act.

FIRST SCHEDULE

Scheduled Products (Include fees and measurement)

<i>Code</i>	<i>Item description</i>	<i>Unit of measure</i>	<i>Rates (Ksh.)</i>
1.	Industrial Crops		
	(a) Coconut	Per Piece	5
	(b) Cashewnut	Per Kg	5
	(c) Bixa	Per kg	5
	(d) Cotton	Per 50Kg	50
	(e) Sea weed	Per 50kg	50
	(f) Sugarcane	Gross market price	1%

2.	Pulses and legumes		
	(a) Beans	Per Kg	5
	(b) Cowpeas	Per Kg	5
	(c) Green grams	Per Kg	5
3.	Roots and Tubers		
	(a) Cassava	Per tonne	100
	(b) Sweet potatoes	Per tonne	100
	(c) Arrow roots	Per tonne	100
4.	Fruits and Vegetables		
	(a) Citrus	Per tonne	200
	(b) Water melon	Per piece	5
	(c) Mangoes	Per tonne	200
	(d) Banana	Per tonne	200
	(e) Pawpaw	Per piece	5
	(f) Tomatoes	Per tonne	200
	(g) Amaranthus (mchicha)	Per 90 kg bag	50
	(h) Tunguja	Per bag	50
	(i) Okra (Mabenda)	Per bag	50
	(j) Chillies	Per bag	100
	(k) Capsicum	Per bag	100
5.	Cereals		
	(a) Dry Maize	Per 90 kg bag	90
	(b) Green Maize	Per 90 kg bag	90
	(c) Rice	Per 90kg bag	90
	(d) Sorghum	Per 90Kg bag	90
6.	Animal Products		
	(a) Milk	Per litre	5
	(b) Eggs	Per Tray	5
	(c) Fish	Per Kg	5
7.	Other products		
	(a) Charcoal	Per 90 kg bag	100
	(b) Molasses	Per Tonne	100
	(c) Makuti	Per bunch	5
	(d) Manure	Per Tonne	100
	(e) Madafu	Per Piece	5
	(f) Rubber produce	Per Kilo	10
	(g) Timber	Per Tone	300
	(h) Scrap Metal		
	□ Pickup	Per trip	3,000
	□ Canter	Per trip	5,000
	□ Lorry	Per trip	10,000

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to facilitate collection of Cess on agricultural produce in the County. The Bill is meant to provide a legal framework for the collection of Cess on agricultural produce, waiver of Cess collection from specified category of produce, and provide for offences against the collection of Cess.

This Bill is in line with the Article 209 of the Constitution. Imposition of Fees must be supported by a legal framework before such Fees can be levied and collected and as such this Bill seeks to provide the legal basis and framework for the levying and collection of Cess Fees on agricultural produce in the County.

The Bill seeks to among other things—

- (a) contribute to increased revenue streams for the County through the Cess Fees established herein;
- (b) provide a legal framework for determination of category of crops to whom Cess shall be payable;
- (c) promote a disciplined approach in the levying and collection of agricultural Cess Fees within the County.
- (d) establish procedure to oversee law enforcement on issues regarding payment of Cess Fees on agricultural produce.

The Bill proposes that authorized officers under the supervision of the executive committee member shall manage the collection and administration of Cess Fees in the County.

The enactment of the Bill into law shall entail expenditure of public funds to be provided for in the county estimates.

Dated the 10th April, 2019.

CHIREMA KOMBO,
Chairperson, Finance, Budget and Appropriations Committee.