SPECIAL ISSUE

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KWALE COUNTY BILLS, 2019

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CONTENT

Bill for introduction into the County Assembly of Kwale—

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COUNTY ASSEMBLIES FORUM (CAF)
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THE KWALE COUNTY REVENUE ADMINISTRATION BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

THE KWALE COUNTY REVENUE ADMINISTRATION BILL, 2019

A Bill for

AN ACT of the County Assembly of Kwale to provide for the general administration of certain taxation laws and other revenue raising laws, and for related purposes

ENACTED by the County Assembly of Kwale, as follows—

PART I— PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Kwale County Revenue Administration Act, 2019 and shall come into operation on the day of publication in the *Kenya Gazette* or *County Gazette*.

Interpretation.

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

"county" means Kwale County;

"county Assembly" means the Kwale County Assembly;

"county Government" means the County Government of Kwale County;

"county public officer" has the same meaning as provided in the County Governments Act, 2012;

"County Revenue Fund" means the county revenue fund as established under Section 109 of the Public Finance Management Act;

"Executive Member" means the County Executive Member responsible for matters relating to finance in the County;

"Receiver of Revenue" means the person holding or acting in the office of the Receiver of Revenue established by section 3;

"premises" includes—

(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 under this Act;

"rate" means a rate imposed under Kwale County Rating Act 2014;

"revenue law" means—

(a) this Act; or

(b) the County Rating Act; or

(c) the County Trade Licence Act; or

(d) the Act providing for annual county finances;

(e) any other Act imposing an entertainment tax or any other tax that is payable to the county government;

(f) any Act or other law providing for the payment to the county government of fees or charges for services provided; or

(g) any other prescribed law.

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

"relevant person" means—

(a) a revenue payer; or

(b) an employee or agent of the revenue payer or

(c) any other person whom the County revenue collector 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;

PART II— ADMINISTRATION OF REVENUE LAWS

3. (1) There is established an office of the Receiver of Revenue. Reciever of Revenue

(2) The receiver of revenue is—

(a) in the case of taxation, the person who is the receiver of revenue for the county designated in respect of taxation under section 157 of the Public Finance Management Act, 2012; or

(b) in the case of any other kind of revenue, the person who is the receiver of revenue for the county designated in respect of that other kind of revenue under section 157 of that Act.

Functions and Powers of the Receiver of Revenue

4. (1) The receiver of revenue—

(a) is responsible for the administration and enforcement of revenue laws and for that purpose must ensure that the assessment, collection and accounting of rates, taxes, fees and charges is undertaken in accordance with the requirements of those laws;

(b) is to advise the county government on all matters relating to the administration and enforcement of revenue laws, and the assessment and collection of rates, taxes, fees and charges under those laws;

(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 are paid into the County Revenue Fund;

(d) receive and account for all County Government revenues in accordance with this Act and the Public Finance Management Act;

(e) prepare the County Government revenue accounts and those of its entities and report thereon in accordance with the relevant laws and procedures; and

(f) shall perform such other functions as the county government directs.

(2) The receiver of revenue has such powers as are necessary to enable him or her to perform the functions under subsection (1).

(3) Without limiting the functions and powers of the receiver of revenue 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.

(4) In performing any function or exercising any power under a revenue law, the receiver of revenue must

produce written identification establishing his or her position if requested by any person.

Delegation of functions and powers

5. (1) The Receiver of Revenue may, by instrument in writing, delegate all or any of their functions or powers under any revenue law to a county public officer, except this power of delegation.

- Kwale county government to form a board to oversee revenue collection, and be giving a report on the same.

(2) In performing any function or exercising any power, a delegate of the receiver of revenue must produce written identification establishing his or her position as the county receiver of revenue's delegate if requested by any person.

Agreement in relation to revenue collection.

6. (1) The County government may enter into an agreement authorizing a person to collect rates, fees and charges payable under revenue laws on such terms and conditions as are specified in the agreement.

(2) Where the person authorized under sub-section (1) is a natural person, such person shall be a person qualified for appointment as the County receiver of revenue.

(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 to the receiver of revenue all the revenue collected and or received as soon as practicable but not later than three days after such collection or receipt.

Annual Report

7. (1) The Receiver of Revenue must prepare an annual report on the operation and administration of all revenue laws.

(2) The Receiver of Revenue must give the annual report to the county executive committee member responsible for finance within 90 days after the end of the year to which the report relates.

(3) The county executive member responsible for finance must table the annual report in the County Assembly as soon as practicable.

PART III—RECORDS AND ADMINISTRATION OF REVENUE PAYERS

Books, accounts and records to be made and kept.

8. (1) A revenue payer must make and keep such books, accounts and records as are reasonably necessary to determine the revenue payer's liability to pay rates, taxes, fees or charges under a revenue law for a period of at least 7 years after the completion of the transactions to which they relate.

(2) The receiver of revenue may, by notice in writing, given to a revenue payer direct the revenue payer as to the books, accounts and records the revenue payer is required to make and keep.

(3) If a revenue payer fails to comply with subsection (1) or a notice under subsection (2), the revenue payer is guilty of an offence punishable on conviction by a fine not exceeding:

(a) in the case of an individual –500,000 shillings; or

(b) in any other case – 2,500,000 shillings.

Providing information and evidence

9. (1) For the purposes of determining the liability (if any) of a revenue payer to pay a rate, tax, fee or charge under a revenue law, the receiver of revenue may, by notice in writing, given to a relevant person require the relevant person to do either or both of the following:

(a) provide the receiver of revenue with such information as the receiver of revenue requires;

(b) attend and give evidence before the receiver of revenue, including on oath administered by an Advocate of the High Court or any other person qualified to administer oath.

(2) If a person fails to comply with a notice under subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding Kenya Shillings Five Hundred Thousand or Imprisonment for a term not exceeding six months or both.

Access, inspection and powers

10. (1) For the purpose of determining the liability (if any) of a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the receiver of revenue has full and free access to any premises of, or in the custody or control of, a relevant person and may, at all reasonable times, with an authority letter from the revenue director's office specifying the reason for the inspection, exercise all or any of the following powers—

(a) enter and inspect those premises and any goods in or on those premises, including opening any packaging or containers that may contain goods;

(b) obtain, copy and print information or data from any computer system in or on those premises and retain all information and data that is obtained, copied or printed;

(c) 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.

(2) If the receiver of revenue is of the view that it is impractical to exercise any of the powers under paragraph (1) (a), (b) or (c), the receiver of revenue may remove all or any of the things referred to in that paragraph to offices of the county government for such time as is reasonably necessary to determine a revenue payer's liability to pay.

(3) A relevant person must give all reasonable assistance to the receiver of revenue so as to allow him or her to exercise all or any of his or her powers under this section.

(4) If a person—

(a) fails or refuses to provide access to premises required by the receiver of revenue; or

(b) obstructs or hinders the receiver of revenue in the discharge of his or her duties under paragraph (1) (a), (b) or (c);

the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings or to imprisonment for a term not exceeding two years.

Seizure of property required as evidence.

11. (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 to be brought under this Act or any other written law.

(2) When property is no longer required under subsection (1), the property must be returned as soon as practical to the person entitled to it.

PART IV— GENERAL PROVISIONS

Waiver or reduction of taxes, fees and charges

12. (1) The county executive committee member responsible for finance may on a recommendation made under subsection (3) waive or reduce a rate, tax, fee or charge that is imposed or payable under a revenue law.

(2) An application to waive or reduce a rate, tax, fee or charge that is imposed or payable under a revenue law must be made in writing to the county executive committee member responsible for that revenue law.

3. The county executive committee member referred to in subsection (2) may recommend that the rate, tax, fee or charge the subject of the application be waived or reduced if he or she is satisfied that—

(a) the applicant is conducting a charitable organization or its for development purpose; or

(b) it is not cost effective to take action to recover the rate, tax, fee or charge; or

(c) the waiver or reduction is for the purpose of encouraging the applicant to pay amounts outstanding to the county government; or

(d) grounds of equity, persons with special needs, widows, orphans or other good cause exist that make it expedient to waive or reduce the rate, tax, fee or charge; or

(e) an order of a court is in force that specifies the imposition or payment of a rate, tax, fee or charge at a lower rate or amount than is provided for in the revenue law under which the rate, tax, fee or charge is imposed or payable; or

(f) other compelling circumstances exist which make it expedient to waive or reduce the rate, tax, fee or charge.

(4) A recommendation under subsection (3) must be in writing and must—

(a) specify the rate, tax, fee or charge that is waived or the amount of the reduction of the rate, tax, fee or charge; and

(b) specify the person or body to whom the waiver or reduction applies; and

(c) set out the reasons for the recommendation.

(5) On monthly basis after making a decision under subsection (1), the county executive committee member responsible for finance must cause a copy of the decision to be provided to the Governor and the applicant together with a statement of the reasons for the decision

(6) A person or body granted a waiver or reduction of a rate, tax, fee or charge is not subject to any collection or enforcement procedure in respect of the rate, tax, fee or charge that is waived or the part of the rate, tax, fee or charge that is reduced.

(7) The county executive committee member responsible for finance shall cause:

(a) a public record of each waiver or reduction to be maintained together with the reason for the waiver or reduction; and

(b) within 90 days or such other prescribed period after the end of each year, the Auditor-General to be notified of any waiver or reduction made for that year.

(8) A county public officer within the meaning of the County Governments Act, 2012 or any other prescribed office holder may not be excluded from the payment of a rate, tax, fee or charge by reason of his or her office or the nature of his or her work.

Revenue register

13. (1) The county receiver of revenue must establish and maintain a revenue register which is to be available for inspection by the public during government office hours.

(2) The register must contain the prescribed information and may be kept in such form as the receiver of revenue decides in both soft and hard copy.

Approved forms

14. The Receiver of Revenue may approve forms for the purposes of a revenue law.

General Penalty

15. If a person contravenes or fails to comply with any provision of this Act, the person commits an offence against this Act and, unless another penalty is expressly provided by this Act for that offence, the person is liable on conviction to a fine not exceeding 50,000 shillings.

Publication and service of documents

16. (1) Any document required to be published under a revenue law may be published by advertisement by a notice in the gazette by the *County Gazette* and in one or more newspapers circulating in the county.

(2) Any document required or authorized to be sent or served under or for the purposes of a revenue law may be sent or served—

(a) by delivering it to the person to or on whom it is to be sent or served; or

(b) by leaving it at the usual or last known place of residence or business of that person, or, in the case of a company, at its registered office; or

(c) by ordinary or registered post; or

(d) by emailing it to the person; or

(e) any other prescribed method.

(3) However, if the receiver of revenue has attempted to send or serve a document by one of the methods mentioned in subsection (2) and is satisfied that such document has not been received by the person to whom it was addressed, the receiver of revenue may advertise, in the manner provided in subsection (1), the general purport of such document, and upon such advertising the document is 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 revenue payers.

(5) Any document under a revenue law required or authorized to be served on the owner or occupier of any premises may be addressed by the description "owner" or "occupier" of the premises (naming them), without further name or description.

Guidelines

17. The Receiver of Revenue may issue guidelines for the purposes of a revenue law.

Regulations

18. The county executive committee member responsible for finance may make regulation generally for the better carrying out of the provisions and purposes of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objectives of this Bill is to provide for the general administration of certain taxation laws and other revenue raising laws of the county government of Kwale, and for related purposes.

Part I of the Bill provides for preliminary matters including the short title to the Bill and the interpretation of words and expressions used in the Bill.

Part II of the Bill contains administrative provisions of the Act, functions and powers of the revenue collector, delegation of powers and functions of revenue collector, agreements for revenue collection and annual report by revenue collector.

Part III of the Bill provides for maintenance of records and books of accounts of revenue payers, access, inspection and seizure of properly of revenue payers.

Part IV of the Bill contains general provisions such as identification of revenue officers, Revenue registers, publication and service of notices and other documents, general penalty and power to make regulations.

This bill will not occasion additional expenditure of public funds which will be provided for through estimates in the county budget.

Dated the 10th April, 2019.

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