

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***MOMBASA COUNTY GAZETTE  
SUPPLEMENT***

**ACTS, 2016**

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**NAIROBI, 27th May, 2016**

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2016**

**No. 6 of 2016**

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*Date of Commencement: See Section I*

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*Mombasa County Corporations*

## **THE MOMBASA COUNTY CORPORATIONS ACT, 2016**

**AN ACT of the County Assembly of Mombasa to make provision for the establishment of County Corporations and Entities; their control and regulation; and for connected purposes**

**ENACTED** by the County Assembly of Mombasa, as follows—

### **PART I—PRELIMINARY**

#### **Short title and commencement**

1. This Act may be cited as the Mombasa County Corporations Act, 2016 and shall come into operation upon publication in the *Gazette*.

#### **Interpretation**

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

“Auditor-General” means the Auditor-General County Corporations established under section 19 of this Act;

“Board” means the Board constituted in accordance with section 6(1) or the body or person, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and management of a County Corporation;

“Chief Executive” means the person appointed and employed as such under section 5 (3) or the person for the time being exercising the executive powers of a County Corporation;

“Committee” means the County Corporations Advisory Committee established by section 27;

“County Corporation” means any company, firm, entity or other body established by the County Government of Mombasa for the delivery of a particular service or carrying on of a particular function;

“Executive Committee Member” means the County Executive Committee Member for the time being assigned departmental responsibility for a county Corporation and matters relating thereto by the Governor under section 4;

“Public Officer” means any officer, employee or member, including an unpaid, part time or temporary officer employee or member of the County Government of Mombasa;

“Tribunal” means the County Corporations Appeal Tribunal established by section 22.

## **PART II—ESTABLISHMENT AND POWERS OF COUNTY CORPORATIONS**

### **Establishment of Mombasa County Corporations**

**3.** (1) The County Government may establish a County Corporation for the delivery of a particular service or carrying on of a particular function.

(2) A County Corporation established under this section shall—

- (a) have perpetual succession;
- (b) in its corporate name be capable of suing and being sued;
- (c) subject to this Act, be capable of holding and alienating movable and immovable property.

### **Departmental responsibility for County Corporations**

**4.** The Governor shall assign departmental responsibility for any County Corporation and matters relating thereto to the Deputy Governor and County Executives as the Governor may by directions in writing determine.

### **Powers of County Corporations**

**5.** (1) Subject to this Act, every County Corporation shall have all the powers necessary or expedient for the performance of its functions.

(2) After the commencement of this Act and notwithstanding subsection (1), the power of a County Corporation to borrow money in the County or the Republic or elsewhere shall be exercised only with the consent of the Executive Member and subject to such limitations and conditions as may be imposed by the County Treasury with respect to County Corporations generally or specifically with respect to a particular County Corporation.

(3) A County Corporation may engage and employ such number of staff, including the chief executive, on such terms and conditions of service as the Executive Member may, in consultation with the Committee, approve.

(4) A County Corporation may, with the approval of the Executive Member in consultation with the County Treasury and the Committee, establish pension, gratuity, superannuation, provident or other funds for the County Corporation's employees and their dependants.

### **PART III—BOARDS AND MANAGEMENT OF COUNTY CORPORATIONS**

#### **Composition of Boards**

6. (1) Unless the written law by or under which a County Corporation is established or the articles of association of a County Corporation otherwise require, a Board shall, subject to subsection (4), consist of—

- (a) a Chairperson appointed by the Governor who shall be non-executive unless the Governor otherwise directs;
- (b) the Chief Executive;
- (c) the Chief Officer of the parent Department ;
- (d) the Chief Officer, Finance;
- (e) not more than three other members not being employees of the County Corporation, appointed by the Governor in consultation with the Executive Member in consultation with the Governor.

(2) A person shall be qualified for appointment as Chief Executive or Board member if that person—

- (a) holds a degree from a University recognized in Kenya;
- (b) meets the requirements of Chapter Six of the constitution of Kenya, 2010;
- (c) has knowledge and experience of not less than five years in the relevant field.

(3) Subsection (2) above shall not apply to the Chairperson

(4) Every appointment under subsection (1) (a) and (e) shall be by name and by notice in the *Gazette* and shall be for a renewable period of three years or for such shorter period as may be specified in the notice, but shall cease if the appointee—

- (a) serves the Executive Member with written notice of resignation; or
- (b) is absent, without the permission of the Executive Member notified to the Board, from three consecutive meetings; or
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding one hundred thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or

- (e) conducts himself in a manner deemed by the Executive Member , in consultation with the Committee, to be inconsistent with membership of the Board.

(5) No person whose membership of a Board has ceased in accordance with paragraphs (b), (c) or (e) of subsection (2) shall be eligible for appointment to any County Board thereafter.

(6) Unless the written law under which a County Corporation is established or the articles of association of a County Corporation otherwise require, the Executive Member may, in consultation with the Committee, appoint one or more duly qualified persons, not being members of the Board, to be alternate members, and any one alternate member may attend a meeting of a Board in place of a substantive member who is unable to attend; and every alternate member shall, when attending a meeting, be deemed for all purposes to be a member of the Board.

#### **Power to issue directions and to remove Board**

7. (1) The Governor may give directions of a general or specific nature to a Board with regard to the better exercise and performance of the functions of the County Corporation and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that the memorandum and articles or any other documents establishing a County Corporation, be amended to conform with any requirement of this Act where the same is inconsistent therewith.

(3) Notwithstanding the provisions of any other written law or the articles of association establishing and governing a Board, the Governor may, if at any time it appears to him that a Board has failed to carry out its functions in the County interest, revoke the appointment of any member of the Board and may himself nominate a new member for the remainder of the period of office of that member or he may constitute a new Board for such period as he shall, in consultation with the Committee, determine.

#### **Meetings and procedure of Boards**

8. (1) After the commencement of this Act—

- (a) the Board of every County Corporation shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting;
- (b) a meeting of a Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision or on any occasion on which the Chairperson in consultation with the chief

executive shall decide that a meeting is necessary, on a date and at a time determined by the Chairperson;

- (c) no meeting of a Board shall be held at any place other than the registered or principal office of the County Corporation except with the prior written approval of the Committee;
- (d) unless three-quarters of the total membership of a Board otherwise agree, at least fourteen days' written notice of every meeting of a Board shall be given to every member of the Board;
- (e) the quorum for the conduct of business at a meeting of a Board shall be two-thirds of the total number of members of a Board or the number nearest to but not less than two-thirds;

Provided that where within half an hour after the time appointed for the meeting a quorum is not present, the meeting shall be adjourned to the same day in the next week, at the same time and place, or at such time as the members may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be deemed to be a quorum—

- (f) the Chairperson of a Board shall preside at all meetings of the Board but in the absence of the Chairperson the members present shall appoint one of their number to preside at the meeting;
- (g) unless a unanimous decision is reached, a decision on any matter before a Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote;
- (h) every member of a Board who is likely to be interested, otherwise than as a member of that Board or who participates or is or may become entitled to participate directly or indirectly, in the profits from any contract or proposed contract or work done or proposed to be done for the County Corporation, shall, on the matter coming before a meeting of the Board for consideration, immediately declare his interest therein and shall, unless the meeting otherwise agrees, retire from the meeting and shall in any case not be entitled to vote on the matter.

(2) The chief executive of a County Corporation or an officer instructed by the chief executive in that behalf, present at a meeting of a Board or a committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the chief executive's or officer's opinion, is contrary to his advice or contrary to law.

**Committees**

9. A County Corporation may establish committees consisting of members of the Board to deal with such matters as the Board may specify and notice of establishment of any committee in accordance with this section whether established before or after the commencement of this Act shall be served on the County Corporations Advisory Committee.

**Remuneration and expenses of Chairperson and members**

10. (1) The Chairperson and members of a Board, other than the chief executive and public officers in receipt of salary, shall be paid out of the funds of the County Corporation such sitting allowances or other remuneration as the Board may, within the scales of remuneration specified from time to time by the Committee, approve.

(2) A Board may, within the scales specified by the Committee, refund travelling and other expenses incurred by the Chairperson or members of the Board in the performance of their duties.

**Financial year**

11. Notwithstanding anything to the contrary in any written law, the financial year of every County Corporation shall be from the 1st of July in a year to the 30th of June in the next year.

**Annual estimates**

12. (1) Every County Corporation shall cause to be prepared and shall, not later than the end of February in every year, submit to the Executive Member of its department and to the County Treasury for approval, estimates of the County Corporation's revenue and expenditure for the following financial year accompanied by proposals for funding all projects to be undertaken by the County Corporation, or the implementation of which will continue during the financial year to which those estimates relate.

(2) No annual estimates and proposals for funding projects shall be implemented until they have been approved by the Executive Member with the concurrence of the County Treasury.

**Expenditure not included in annual estimates**

13. (1) No County Corporation shall, without the prior approval in writing of the Executive Member and the County Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with section 12.

### **Assets of County Corporation**

**14.** (1) The assets of a County Corporation may be disposed of—

- (a) if they are current assets in the normal course of business carried on by that County Corporation;
- (b) where the disposal and the utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with section 12;
- (c) by way of sale or otherwise with the approval of the Executive Member and the County Treasury where such disposal has not been taken into account in the estimates.

(2) Subject to subsection (1), the Executive Member for the time being responsible for finance may, in consultation with the Committee, make rules for the acquisition and disposal of assets by County Corporations and different rules may be made with respect to different County Corporations; and such rules shall be brought to the notice of the County Corporations and other persons affected thereby, but it shall not be necessary to publish the rules in the *Gazette*.

(3) This section does not apply with respect to procurements or disposals to which the national procurement laws as may be from time to time apply .

### **Books of accounts, records and audits**

**15.** (1) Every County Corporation shall keep or cause to be kept proper books recording all the property, undertakings, funds, activities, contracts, transactions and other business of the County Corporation.

(2) The Executive Member for the time being responsible for finance may prescribe the form of any book required to be kept under subsection (1) and unless a form has been prescribed, a form suitable for the purpose shall be used.

(3) The accounts of every County Corporation shall be audited and reported on annually in accordance with County and national audit legislation.

### **Accountability**

**16.** (1) A Board shall be responsible for the proper management of the affairs of a County Corporation and shall be accountable for the moneys, the financial business and the management of a County Corporation.

(2) The chief executive of a County Corporation may be summoned by the County Assembly Committee from time to time in charge of

investments to answer on behalf of the Board any question arising from a report, including a special report, of the Auditor-General concerning the County Corporation.

**Renewal of depreciating assets and disposal of surplus funds**

17. (1) Every County Corporation shall make provision for the renewal of depreciating assets by the establishment of sinking funds and for contributions to such reserve and stabilization funds as may be required.

(2) Where there are any surplus moneys after making the provision required by subsection (1) the surplus moneys shall be disposed of in such manner as the Executive Member, in consultation with the Board, may, in writing, direct.

(3) Notwithstanding subsection (2), the Executive Member for the time being responsible for Finance may require the whole or any part of the surplus moneys to be paid into a County Consolidated Fund where the exigencies of the financial situation so require.

**Restriction on loans to Board members and staff**

18. Notwithstanding any other written law establishing a County Corporation or its memorandum and articles of association, no County Corporation shall grant to a member of the Board or staff any loan or advance or arrange any credit facility for him except in accordance with regulations made by the County Corporation under this section and approved by the County Treasury, but in the absence of those regulations such loan, advance or credit facility may be granted in accordance with terms and conditions approved by the Committee.

**Auditor-General County Corporations**

19. (1) There shall be an Auditor -General of County Corporations whose office shall be an office in the County public service under the County Secretary and whose duties shall be—

- (a) to advise the County Government on all matters affecting the effective running of County Corporations;
- (b) to report periodically to the Executive Member on management practices within any County Corporation;
- (c) to report to the Governor any cases where moneys appropriated by the County Assembly are not being applied by County Corporations for the purposes for which they were appropriated.

(2) For the purposes of carrying out his duties under subsection (1) the Auditor-General County Corporations shall have the following powers—

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- (a) to call for and inspect all books, records, returns and documents which in his opinion relate to the accounts of, or to execution of the functions of, any County Corporation;
- (b) to enter and inspect the premises, including any plant and installation thereon, of any County Corporation;
- (c) to attend meetings of any County Corporation or of a Board or committee thereof if in his opinion it is necessary to do so for the effective carrying out of his duties under this section;
- (d) to audit the County Corporations

(3) A person shall be qualified for appointment as Auditor-General County Corporations if that person—

- (a) holds a degree from a University recognized in Kenya;
- (b) meets the requirements of Chapter Six of the Constitution of Kenya, 2010
- (c) has knowledge and experience of not less than five years in the relevant field.

(4) The Governor may, if he considers it desirable, require the Auditor-General County Corporations to conduct special investigations of any County Corporation on his behalf and to report the findings to them.

(5) There may be appointed such staff whose offices shall be offices in the public service as are necessary to assist the Auditor-General County Corporations in the performance of his duties under this Act.

**Powers of Auditor -General County Corporations**

**20.** (1) In any investigation conducted under this Act, the Auditor -General County Corporations shall have power—

- (a) to disallow any item of account which is contrary to the law or to any direction lawfully given to a County Corporation;
- (b) to surcharge the amount of any expenditure so disallowed upon the person responsible for incurring or authorizing the expenditure;
- (c) to surcharge any sum which has not been duly brought to account upon the person by whom that sum ought to have been brought into account;
- (d) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred;

(e) to certify the amount due from any person upon whom he has made a surcharge.

(2) The Auditor-General County Corporations shall, as soon as practicable after certifying the amount of surcharge; furnish the person surcharged with a certificate of surcharge in the prescribed form.

(3) For the purposes of this section, a member of the Board shall be deemed to be responsible for incurring or authorizing an expenditure if, being present when the resolution of the Board or committee thereof incurring or authorizing the expenditure was passed—

(a) he voted in favour of it; or

(b) he did not cause his vote against the resolution to be recorded in the minutes.

(4) A person shall not be freed from liability to surcharge under this section by reason only of the fact that, in the matter giving rise to the liability, he acted in pursuance of any resolution of a Board, or of any committee thereof, if that resolution was contrary to law.

#### **Application for written reasons for Auditor-General County Corporations decision**

**21.** The Auditor-General County Corporations shall, on the application of any person aggrieved by a disallowance or surcharge made under section 20, within fourteen days of the application furnish the person with reasons in writing for the decision.

#### **Appeals against decision of Auditor-General**

**22.** (1) Any person who is aggrieved by a disallowance or surcharge may, within thirty days of the date of the certificate of surcharge, appeal by written memorandum to the Tribunal.

(2) The Tribunal shall, on appeal, have power to confirm, vary or quash the decision of the Auditor-General County Corporations, and to remit the case to the Auditor-General County Corporations with such directions as the Tribunal thinks fit for giving effect to the decision on appeal.

#### **The County Corporations Appeal tribunal**

**23.** (1) There shall be a Tribunal, to be known as the County Corporations Appeal Tribunal, which shall consider and determine appeals under section 22.

(2) The Executive Member for the time being responsible for Finance shall provide the Tribunal with such facilities, material and funds as are necessary for the proper conduct of its functions.

(3) The Tribunal shall consist of—

- (a) a Chairperson who shall be a person qualified by law to be appointed a judge, appointed by the Governor;
- (b) two other members appointed by the Executive Member for the time being responsible for matters relating to Finance each nominated by—
  - (i) the Mombasa Chapter of the Law Society of Kenya from amongst advocates of not less than seven years' standing; and
  - (ii) the Council of the Institute of Certified Public Accountants of Kenya from amongst accountants of not less than seven years' standing.

(4) The County Legal Director shall appoint a public officer to be secretary to the Tribunal.

(5) There may be appointed such staff of the Tribunal whose offices shall be offices in the public service, as may be necessary.

(6) For the purposes of the hearing and determination of any appeal by the Tribunal the secretary may, under the direction of the Tribunal, administer oaths.

(7) The Chairperson, may by notice under his hand, summon any person to attend and give evidence and to produce any relevant book or document; and a person who fails to attend when so summoned shall be guilty of an offence and liable to a fine of Fifty thousand shillings.

(8) The Tribunal shall have power to make such order as to costs, including—

- (a) an order for the deposit by an appellant of money as security for costs before proceeding upon an appeal; and
- (b) an order that the expenses incurred by an appellant or any other party to the proceedings shall be paid by the County Corporation concerned in the proceedings; and
- (c) orders as to taxation of costs in accordance with any scale prescribed for suits in the High Court, as appears to it just.

(9) Any costs not recovered from security ordered under paragraph (i) of subsection (8) shall be recoverable as a civil debt.

(10) A person shall not be qualified to be appointed the Chairperson, or a member of the Tribunal if he is an employee of, or a member of the Board of a County Corporation.

(11) Every appointment under this section other than an appointment under subsection (5) shall be by name and by notice in the *Gazette* and shall be for a renewable term of not less than three years.

(12) The sessions of the Tribunal shall, unless the special circumstances of an appeal require, be in Mombasa, convened by the Chairperson as occasion requires.

(13) The record of the proceedings and of every decision of the Tribunal shall be authenticated by the signature of the Chairperson and shall be kept by the secretary.

(14) The Chairperson and members of the Tribunal, other than public officers in receipt of a salary, shall be paid out of public funds such sitting allowances or other remuneration as the Committee may, in consultation with the Treasury approve.

### **Appeals to the High Court**

**24.** (1) The Auditor-General County Corporations or the person surcharged may, if aggrieved by the decision of the Tribunal, within thirty days appeal to the High Court which shall have power to confirm, vary or annul the decision of the Tribunal.

(2) The procedure in and relating to appeals in civil matters from subordinate courts to the High Court and the powers of the High Court in such appeals shall govern appeals from the Tribunal to the High Court under this Act.

(3) The decision of the High Court under this section shall be final and shall not be subject to further appeal.

### **Payment and recovery of sums certified to be true**

**25.** (1) Every sum certified by the Auditor-General County Corporations to be due from a person shall be paid by that person to the County Corporation within thirty days after it has been so certified or, if an appeal with respect to the sum has been made, within fourteen days after the appeal has been disallowed, abandoned or has failed by reason of the non-prosecution thereof.

(2) The Auditor -General County Corporations shall take all necessary steps in any competent court to recover from the persons surcharged any sum which is not paid in accordance with subsection (1).

(3) In any proceedings for the recovery of any sum which is not paid in accordance with subsection (1) the certificate of the Auditor -General County Corporations shall be conclusive evidence that the sum is due and payable by the person surcharged.

(4) On the production of the certificate of the Auditor -General County Corporations the Court shall give a decree for the sum sued for and the decree shall have the effect of a decree under the Civil Procedure Act (Cap. 21) and any rules made thereunder.

#### **Expenses of the Auditor-General County Corporations**

**26.** (1) Any expenses incurred by the Auditor in the defence of any allowance, disallowance or surcharge shall, so far as not recovered from any other party and except as may otherwise be ordered by the High Court or the Tribunal, be reimbursed to him by the County Corporation the subject of investigation.

(2) The costs and expenses incurred by the Auditor in any legal proceedings taken under section 25 (2) shall, if not recovered from any other source, be borne by the County Corporation the subject of investigation.

### **PART IV—THE COUNTY CORPORATIONS ADVISORY COMMITTEE**

#### **Establishment of the Committee**

**27.** (1) There shall be a Committee to be known as the County Corporations Advisory Committee which shall consist of—

- (a) the County Secretary who shall be the Chairperson;
- (b) the Chief Officer to the Finance department;
- (c) the Chief Executive Officer;
- (d) the Auditor-General County Corporations;
- (e) the County Attorney;
- (f) two other members appointed by the Governor.

(2) The Committee may co-opt any person for such purpose and for such period as it may determine.

(3) The Governor shall appoint a public officer to be secretary to the Committee.

(4) Subject to directions by the Governor, the Committee shall determine its own procedure.

(5) The members and the secretary of the Committee shall be paid out of public funds such remuneration and in such manner as the Governor may approve.

### **Functions of the Committee**

**28.** The Committee shall advise on the matters and perform any functions it is required by this Act to perform and in addition shall —

- (a) with the assistance of experts where necessary, review and investigate the affairs of County Corporations and make such recommendations to the Governor as it may deem necessary;
- (b) in consultation with the County Legal Director and the County Treasury, advise the Governor on the establishment, reorganization or dissolution of County Corporations;
- (c) where necessary, advise on the appointment, removal or transfer of officers and staff of County Corporations, the secondment of public officers to County Corporations and the terms and conditions of any appointment, removal, transfer or secondment;
- (d) examine any management or consultancy agreement made or proposed to be made by a County Corporation with any other party or person and advise thereon;
- (e) examine proposals by County Corporations to acquire interests in any business or to enter into joint ventures with other bodies or persons or to undertake new business or otherwise expand the scope of the activities and advise thereon.

## **PART V—MISCELLANEOUS PROVISIONS**

### **Dissolution of County Corporations**

**29.** Where the Committee advises that a County Corporation shall be dissolved then nothing in this Act shall be construed as derogating from the procedure by which the County Corporation would be dissolved under the law by or under which it was established.

### **Offences and penalty**

**30.** A County Corporation which, or an officer thereof who, fails to render or submit or make available for inspection any record, book, account or information required by or pursuant to this Act, or which or who restricts the Auditor-General County Corporations in the performance of his duties shall be guilty of an offence cognizable to the police and punishable by a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three years or both.

### **Regulations**

**31.** The Executive Committee Member responsible for the department under which a County Corporation falls may make regulations generally for the better carrying into effect of the provisions of this Act and the powers conferred by this section may be assigned in accordance with the Constitution of Kenya 2010 and other enabling law.