

**SPECIAL ISSUE**

**COUNTY ASSEMBLIES FORUM (CAF)**  
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NAIROBI, KENYA

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**REPUBLIC OF KENYA**

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# ***MOMBASA COUNTY GAZETTE SUPPLEMENT***

**BILLS, 2015**

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**NAIROBI, 20th July, 2015**

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

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**THE MOMBASA COUNTY WATER AND SEWERAGE  
SERVICES BILL, 2015**

**A Bill for**

**AN ACT of the County Assembly of Mombasa to provide for a legal and institutional framework for provision of water and sewerage services; for mechanisms of ensuring high quality services to citizens, and commercial viability of the water service provider, and for connected purposes**

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

**PART I – PRELIMINARY**

**Short Title**

1. This Act may be cited as the Mombasa Water and Sewerage Services Act, 2015.

**Interpretation.**

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

“Company” means the Mombasa Water and Sanitation Company

“Community water projects” means water services provided by community members on a self-help basis.

“Corporation” means the Mombasa Water and Sewerage Services Corporation established under this Act.

“County Executive Committee” means the county executive committee provided for under Article 179 of the Constitution of 2010;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for Water, Environment and Natural Resources.

“Gazette” means the Kenya Gazette published by the Government Printer

“Governor” means the County Governor of Mombasa in terms of Article 179(4) of the Constitution of Kenya 2010.

“Inspector” means an employee of the corporation employed for performance of inspectorate functions contemplated under this Act;

“Private Water Service providers” means persons lawfully providing water services privately within the area of supply of the Corporation;

“Public officer” means a person serving as a public officer in the County Government of Mombasa or any of its agencies.

“Public Participation” means the process by which the County Government of Mombasa engages with the public in the collection of information.

“Regulator” means the Water Services Regulatory Board established by the Water Act 2002, or its legal successors.

### **Objects and Purposes of the Act**

**3.** (1) This Act shall be applied for the administration and delivery of water and sewerage services in Mombasa County.

(2). Without prejudice to the generality of sub-section 1 above, this Act shall be applied to —

- (a) Give effect to the Constitution and national law as regards the provision of water and sewerage services by the County Government of Mombasa;
- (b) Establish and maintain a financially sustainable mechanism for delivery of water and sewerage services;
- (c) Ensure the provision and delivery of potable water to consumers;
- (d) Enhance and expand the provision of water and sewerage services;
- (e) Secure and sustain progressive realization of the human right to water;
- (f) Scale-up and maintain investments for the development of water and sewerage services;
- (g) Develop and expand water sources available for water service provision in Mombasa County;
- (h) Secure and increase availability of bulk water for service provision in Mombasa;
- (i) Provide an equitable financing mechanism for development, expansion and sustenance of pro-poor water and sewerage services;
- (j) Secure public participation indecision making regarding the provision of water and sewerage services, including consumer rights mechanisms;
- (k) Provide incentives for private sector contribution in service provision, and in investments for infrastructure development

(3). The rights and duties conferred by this Act are in addition to those conferred by any other relevant law.

### **Guiding Principles and Values**

4. The County Executive Committee member, the Corporation and any person administering or applying this Act shall be guided by the principles and values set out in Articles 10, 43(1)(d), and 232 of the Constitution.

## **PART II—POLICY, CO-ORDINATION AND OVERSIGHT OF WATER AND SEWERAGE SERVICES**

### **Powers and Duties of County Executive Committee member**

5. (1). Subject to the provisions of this Act, the County Executive Committee member shall exercise control and provide guidance over water and sewerage services provision and development, and the implementation of this Act.

(2). Without prejudice to the generality of the foregoing, the County Executive Committee member shall have responsibility to—

- (a) formulate and periodically review County water and sewerage services policies;
- (b) develop strategies for implementation of this Act, and related National and County policies, including on pro-poor and equitable water and sewerage services;
- (c) coordinating with the National Government on enhancement of investments in infrastructure, and service delivery
- (d) coordinating with other County Governments on enhancement of investments in infrastructure, and service delivery, especially in a cross-county context.
- (e) developing of water sources to secure availability of adequate water service provision
- (f) secure and sustain availability of bulk water resources for provision of water services to consumers;
- (g) enhance the development, expansion and financing of sewerage infrastructure;
- (h) oversee water and sewerage services co-ordination, monitoring and evaluation;
- (i) ensure alignment of the water and sewerage sector with social-economic development goals of the County;

- (j) make regulations as provided for under, or as necessary for the better implementation of, this Act;
- (k) prepare a report to be submitted to the County Assembly annually, and from time to time as may be necessary, on the state of, and needs for, water and sewerage services delivery, development and investments in the County.
- (3). For purposes of securing broad support for water and sewerage services development and provision, the County Executive Committee member, in performance of functions and duties under this Act;
- (a) may consult with other executive departments, public agencies and departments or agencies of Mombasa County whose functions affect or touch on water and sewerage services;
- (b) may consult with relevant non-governmental entities, including private sector and research institutions; and
- (c) shall secure public participation, including setting up, through regulations, of specific mechanism for regular engagement of stakeholders on policy matters;
- (4). In the discharge of the duties and functions under this Act, the County Executive Committee member shall be assisted by the Water and Sewerage Services Directorate established under this Act.

### **County Water and Sewerage Services Strategy**

6. (1) The County Executive Committee Member shall, in accordance with article 10 of the Constitution, section 4 of this Act, and through public participation formulate a County Water and Sewerage Services Strategy.

(2) The County Water and Sewerage Services Strategy shall be published in the Gazette after approval by the County Executive Committee

(3) The County Water and Sewerage Services Strategy shall prescribe measures and mechanisms to—

- (a) Design a program for the progressive expansion of the water and sewerage services coverage in Mombasa County;
- (b) Identify outputs, overall budget estimates and timeframe to realize expected results;
- (c) Accelerate the development of water and sewerage infrastructure;
- (d) Reduce and manage levels of non-revenue water.

- (e) Manage and maintain optimal levels of service provision to consumers;
- (f) manage and maintain optimal water quality levels, as set by the regulator;
- (g) Increase and sustain available storage for bulk water resources;
- (h) Guide the roles and actions of stakeholders in management and delivery of water and sewerage services;
- (i) Improve water services management, efficiency and sustainability;
- (j) Facilitate the participation of all categories of stakeholders in decision making on matters affecting the provision of water services within the county;
- (k) Identify and facilitate the role of the private sector in investments for development of infrastructure and delivery of water and sewerage services;
- (l) Increase and improve access to investment capital and credit for development of water and sewerage services;
- (m) Identify strategies and measures for the uptake of low-cost water services efficiency technologies by consumers;
- (n) Determine the water service penetration targets for the County, including for each of the sub-counties, and propose specific measures through which to enhance realization of the targets.

(4) In addition to requirements set out in (3) above, the Water and Sewerage Services Strategy shall—

- (a) Provide details of the number and location of persons who are not being provided with a basic water supply and basic sewerage, including details of the plan for intervention to rectify this, and;
- (b) Identify a program for development of water sources, including cross-county bulk water sources to secure availability for adequate water service provision, including an investment program, and;
- (c) Identify needs, and set out an investment program for the development and expansion of sewerage infrastructure, and;
- (d) The County Executive Committee Member shall, in every five-year period, or sooner, review and update the County Water and Sewerage Services Strategy, and by notice in the Gazette, publish a new strategy.

(6) The approved Water and Sewerage Services Strategy shall guide the County Government, County Executive Committee member, the Directorate, the Corporation and all other agencies in performance of their functions on water and sewerage services.

### **Water and Sewerage Services Directorate**

7. (1) There is established the Water and Sewerage Services Directorate.

(2) The Directorate shall be headed by a Director of Water and Sewerage Services, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(3) A person shall not qualify for appointment as Director, under this Act, unless such a person—

- (a) Is a citizen of Kenya;
- (b) Holds a post-graduate degree in any of the following fields or specializations, with relevance to development of water services in Kenya—
  - (i) Engineering
  - (ii) Public administration
  - (iii) Law
  - (iv) Business administration
  - (v) Management
  - (vi) Economics; or
  - (vii) Any other relevant field
- (c) Has had at least ten (10) years experience at senior management level in a relevant field
- (d) Meets the requirements of Chapter 6 of the constitution

(4) The Director, appointed under sub-section (2), shall be responsible for performance of the specific duties and functions of the Directorate set out in sub-section (6) below

(5) The Directorate shall operate under the direction of the County Executive Committee member, and provide advice on matters of legislation, policy, co-ordination, and the performance of the water and sewerage services sector

(6) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—

- (a) Co-ordination, linkages and oversight over water and sewerage services sector public and private entities and agencies.
- (b) Development of water and sewerage services master plan, investment and strategic plans for resource mobilization and financing.
- (c) Development of County water and sewerage services sector standards and guidelines including principles, code of practice, quality assurance, and procedures.
- (d) Collection and dissemination to the public, from time to time, of information on water and sewerage services development, including challenges and opportunities for improvement.
- (e) Monitoring, evaluation and assessment of the water and sewerage services sector performance.
- (f) Development of county infrastructure for harvesting and storage of bulk water for service provision to consumers
- (g) Identification and implementation of strategies and measures for the uptake of low- cost water efficiency technologies, including water harvesting
- (h) Facilitate the formation of Water Consumer Action Groups to facilitate engagement with consumers on service provision issues.

(7) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required for the Directorate to effectively perform its functions under this Act.

### **PART III—ESTABLISHMENT OF COUNTY WATER SERVICES PROVIDER**

#### **Establishment of Mombasa Water and Sewerage Services Corporation**

8. (1) There is established the Mombasa Water and Sewerage Services Corporation.

(2) (i) The Corporation shall acquire, take over and assume all responsibility for water service provision in the County of Mombasa as determined under the Constitution of Kenya.

(ii) In so far as it is possible to give effect to the requirements of the Constitution of Kenya as relates to the provision of water services the Corporation shall take over and replace in purpose and assume all responsibilities and functions of the Mombasa Water and Sanitation

Company Limited established to provide water and sewerage services in the County, prior to commencement of this Act.

(3) The Corporation is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The Corporation shall establish offices for service delivery, operations, and customer service at sub-county level, and may further decentralize as necessary to ensure optimal service delivery.

### **Transfer of Assets, Liabilities, Rights and Obligations**

9. (1) On the commencement of this Act, all rights, assets and liabilities of the Company shall be automatically and fully transferred to the Corporation, and any reference to the Company in any contract or document shall, for all purposes, be deemed to be a reference to the Corporation established under this Act.

(2) Any act, matter or thing lawfully done by the company before the commencement of this Act or any contract, arrangement, agreement made by or on behalf of the Company which at the commencement of this Act falls to be performed shall, whether or not in writing and whether or not otherwise assignable in law by either party, have effect on and after the commencement of this Act as if made by or on behalf of the Corporation

(3) Any legal right accrued, cause of action commenced in any court of law or tribunal established under any written law in force, or any defense, appeal, or reference howsoever filed by or against the company shall continue to be sustained by or against the Corporation.

### **Functions of the Corporation**

10. (1) The Corporation shall be responsible for the provision of water and sewerage services, and for development and management of the related infrastructure in Mombasa County.

(2) The Corporation shall perform the following functions—

- (a) Provide and manage water and sewerage services;
- (b) Develop and maintain County water and sewerage services infrastructure including water works;
- (c) Develop and maintain adequate water supply systems for domestic, commercial and other purposes;
- (d) Develop and maintain county infrastructure for sewerage services including primary, secondary and tertiary systems;
- (e) Develop and manage works for water conservation;
- (f) Promote and manage water re-use and recycling systems;
- (g) Develop and implement systems and mechanisms for water efficiency and management in its operations and by its consumers;
- (h) Design and implement mechanisms for reduction and management of non-revenue water;
- (i) Coordinate with the Water and Sewerage Services Directorate in the implementation of policy and strategy;
- (j) Perform such other functions as may be required under this Act or any other written law.

(3) Within three months after the end of each financial year, the Corporation shall prepare and submit to the County Executive Committee member, through the Director, an annual report concerning the performance of its mandates and functions; and

(4) The County Executive Committee Member shall submit the report to the County Executive Committee for consideration within three months of receiving the report from the Corporation.

(5) The performance by the Corporation of the functions set out in this Act shall be subject to the regulatory procedures for water service providers set out by the national law on water services enacted by Parliament.

### **The Board of Directors**

**11.** (1) There shall be a Board of the Corporation, which shall consist of—

- (a) a Chairperson, appointed by the Governor; and
- (b) ten other members, appointed by the County Executive Committee member, as follows—
  - (i) The Chief Officer for Finance, or a designated representative

- (ii) The Chief Officer for the time being responsible for Water and Sewerage Services, or a designated representative
  - (iii) Eight members, each appointed on account of professional competence in areas with relevance to water and sewerage services, as follows—
    - (a) Human resource management
    - (b) Information and technology
    - (c) Business administration
    - (d) Customer service
    - (e) Engineering
    - (f) Institutional development
    - (g) Law
    - (h) Water services
    - (i) Compliance and enforcement
- (2) Provided that in appointment of members under section 11(1)(b)(iii) above, the County Executive Committee Member shall—
- (a) ensure compliance with the principle that not more than two-thirds of members shall belong to the same gender.
  - (b) have regard to equitable representation of special interest groups including but not limited to gender, persons living with disabilities, youth, and ethnic minorities.
- (3) Upon their appointment and assumption of office, the members of the Board shall elect a vice-chairperson from among their members.
- (4) The Chairperson and the Vice-Chairperson shall not be of the same gender.
- (5) A person shall be qualified for appointment as chairperson or member of the Board only if such person—
- (a) is a citizen of Kenya;
  - (b) fulfills the requirements of Chapter 6 of the Constitution;
  - (c) In the case of members appointed under 11(1)(b)(iii) above, each member must have at least five years relevant experience and hold relevant post-secondary qualifications in the field of competence on which basis they are appointed, provided that where professional certification is required for a competence,

such certification shall be deemed a mandatory aspect of the qualification

(6) The term of the Board shall be three years, renewable, provided that where a member of the Board has served for six years consecutively, that member shall not be eligible for reappointment until three years have lapsed

(7) The Directors may be removed from office by the County Executive Committee member, following due process, in the following circumstances—

- (a) failure to attend four consecutive meetings without sufficient cause;
- (b) conviction of a criminal offence punishable by imprisonment for a period exceeding six months;
- (c) Breach of the provisions of the Public Officers Ethics Act, and the Leadership and Integrity Act, or any replacement thereof;

(8) Section 11 (7) above shall be applied by the Governor in the removal of the Chairperson from office.

(9) In accordance with the First Schedule, the Board may from time to time establish Committees for the better carrying out of its functions

(10) The Board shall guide and direct the exercise of the powers, and performance of the functions of the Corporation, and shall give effect to the policies of the County Government on water and sanitation services.

### **Meetings and Procedure of the Board**

**12.** The First Schedule shall apply in relation to the meetings and procedures of the Board.

### **Chief Executive of the Corporation**

**13.** (1) There shall be a Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer shall be competitively recruited and vetted by the Board; and shall be appointed on a performance based contract, on such terms and conditions, as may be agreed upon with the Board and specified in an instrument of appointment for a term not exceeding four years, renewable based on performance.

(3) A person shall be qualified to be appointed as Chief Executive Officer of the service only if that person—

- (a) is a citizen of Kenya;
- (b) fulfills the requirements of Chapter 6 of the Constitution,
- (c) holds a post-graduate degree and professional qualifications in any of the following fields related to, and relevant to water services—
  - (i) Engineering
  - (ii) Water management
  - (iii) Public administration
  - (iv) Law
  - (v) Business administration and management
  - (vi) Finance
- (d) has in addition to the academic and professional qualifications, at least five years relevant experience in senior management levels

(4) The Chief Executive Office shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance of the functions and duties of the Corporation.

### **Employees of the Corporation**

**14.** (1) The Corporation may engage such other employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions as the Board may approve.

(2) Any person who is an employee of the Company, on the commencement date, shall be transferred to the Corporation, subject to the power of the Board of the Corporation to evaluate the performance of such an employee, based on an evaluation criteria to be determined by the Board as a basis to offer employment on such terms and conditions as the Board may determine.

### **Finances of the Corporation**

**15.** The funds and assets of the Corporation shall consist of—

- (a) such monies as may be appropriated by the County Assembly for the purposes of the Corporation;
- (b) any monies or property which may in any manner accrue or vest in the Corporation in the course of the exercise of its functions under this Act;

- (c) such monies as may become payable to the Corporation of fees in respect of services rendered by or through the Corporation; and
- (d) all monies from any other sources provided whatsoever donated, lent or granted to the Corporation.

### **Annual Estimates of the Corporation**

**16.** (1) At least five months before commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Corporation for that year.

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of the Corporation, in accordance with its functions and powers under this Act, for the financial year concerned.

(3) The Board shall submit the estimates to the County Executive Committee member, who shall present the estimates for consideration and approval by the County Assembly.

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under this section.

### **Accounts and Audit**

**17.** (1) The Board shall keep proper books of account of the income, expenditure, assets and liabilities of the Corporation.

(2) Within three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Corporation in respect of that year, together with\_

- (a) a statement of the income and expenditure of the Corporation during that year; and
- (b) a statement of the assets and liabilities of the Corporation on the last day of that financial year

(3) The annual accounts of the Corporation shall be prepared, audited and reported upon in accordance with the provisions of article 226 and 229 of the Constitution and the Public Audit Act, 2003 or any amendment or replacement thereof.

## **PART IV– SERVICE DELIVERY AND COMMERCIAL VIABILITY**

### **Financial sustainability of the Corporation**

**18.** (1) All funds of the Corporation, and all revenues arising from provision of water and sewerage services by the Corporation, through

water bills and other sources whatsoever, shall be used solely for the purposes of water and sewerage costs coverage; provision of water services; and water and sewerage infrastructure development, by the Corporation.

(2) In order to ensure commercial viability and financial sustainability of the Corporation, the County Executive Committee member and the Board shall annually agree on performance indicators for fulfillment by the Corporation in execution of its mandate, including but not limited to—

- (a) Investment planning on infrastructure and asset development;
- (b) Options for Public-Private Partnerships where necessary;
- (c) Levels and strategies of Non-Revenue Water management;
- (d) Debt amortization strategy;
- (e) Strategies for full Operations and Maintenance Cost Coverage;
- (f) Human resource management plan, including grievance mechanisms.

(3) The agreement on performance indicators set out in subsection (2) above shall be subject to further provisions made in terms of national legislation on water services.

### **County Funds for Asset Development**

**19.** (1) The Board shall annually make proposals to the County Executive Committee member on areas of infrastructure development required, including projected capital investments costs.

(2) The County Executive Committee member shall consider the proposals, in line with County development needs, priorities, and planning, and may recommend utilization of County funds for agreed infrastructure development to the County Assembly

### **Public Private Partnerships**

**20.** The Board may pursue public private partnership options for development of water services infrastructure, subject to the provisions of national law.

### **Customer relations**

**21.** (1) The Corporation shall at all times maintain a customer relations mechanism, including a feedback and grievance system.

(2) The Board shall approve, and publicize the customer relations mechanism, including the system and timelines within which feedback

and grievances are addressed, and the outcome communicated to the customer in question.

(3) The Corporation shall within 6 months of this Act coming into force develop and regularly review, through public participation, a service delivery charter, including mechanisms through which subsections (1) and (2) above shall be implemented

(4) The Corporation shall annually report to customers on the state of provision of water services in terms of parameters agreed between the Board and the County Executive Committee member, as well as those required under national law.

### **Monitoring and Evaluation**

22. The County Executive Committee member shall, through the Directorate, undertake Monitoring and Evaluation of the Corporation in the performance of its mandate

## **PART V—INSPECTION AND MONITORING**

### **Power of Entry**

23. (1) The Corporation, through its Inspectors, shall have authority to enter any premises where the Corporation provides water and sewerage services, in order to inspect and monitor:

- (a) the distribution system
- (b) the meter(s)
- (c) water storage systems
- (d) the sewerage system
- (e) such other elements of the water and sewerage services as the County Executive Committee member, may, through regulations, authorize

(2) The inspection contemplated in (1) above shall only be undertaken between the hours of 8am and 6pm.

(3) The Corporation shall, in a public manner, communicate to its customers the acceptable method and procedures of verifying the identification of Inspectors seeking entry into premises under (1) above.

(4) Where the Corporation has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and sewerage services in any premises, the Corporation shall apply to a Magistrates Court for a warrant to enter and search the premises.

(5) Nothing under (4) above shall prevent the Corporation from disconnecting and terminating the water services from points outside the premises in question

(6) For purposes of monitoring the quality of water services provided to customers, the Corporation may from time to time undertake surveys on customer services based on parameters set by the Board, and shall publicly disclose the outcome of the surveys, including actions taken on the feedback received from customers.

### **Inspectorate Service**

**24.** (1) The Corporation shall establish, and maintain, with adequate resources and staff, an Inspectorate Service

(2) The Inspectorate Service shall comprise of Inspectors, who shall have powers to implement the inspection functions of the Corporation

(3) The County Executive member shall, within Six months of commencement of this Act, make regulations to provide the structure, and define the operations of the Inspectorate Service of the Corporation

(4) Subsequent to (4) above, the Board shall provide adequate resources for setting up of the Inspectorate Service within the Establishment Structure of the Corporation

## **PART VI—OFFENCES RELATING TO CONDUCT OF EMPLOYEES OF THE CORPORATION**

### **Conduct of Employees of the Corporation**

**25.** (1) Employees of the Corporation shall have immunity from liability and prosecution for any losses to the Corporation, arising from actions taken in good faith, in execution of lawful duties.

### **Cap 63, Cap 65, Cap 183**

(2) Notwithstanding (1) above, any actions of employees of the Corporation involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act.

(3) It is an offence for an employee of the Corporation to willfully fail to perform the following duties, when lawfully assigned to them—

- (a) failure to read of meters, or to provide the accurate billing data from the meters to the corporation within stipulated time,

- (b) willfully failing to disconnect water services for customers in default, in accordance with rules established by the Board.

(4) It is an offence for an Employee to collude with other persons for the purposes of enabling such persons to illegally access and utilize water services of the Corporation;

(5) It is an offence for an Employee who has knowledge of the illegal access and utilization of the water services of the Corporation to willfully fail to notify the Corporation of such illegal actions;

(6) A person shall, upon conviction for any of the offences specified in (3), (4) and (5) above, be liable to a sentence not less than three months, or a fine not exceeding Fifty Thousands shillings, or both.

(7) For purposes of this section, an Employee of the Corporation includes those persons engaged on casual terms of service, as well as contractors, when such contractors are performing duties falling within scope of offences defined in section 25 (2),(3),(4) and (5).

## **PART VII—GENERAL OFFENCES**

### **Impersonation of Corporation Staff**

**26.** Any person impersonating an employee of the Corporation for purposes of misrepresenting themselves as being able to perform a function on behalf of the Corporation, shall be guilty of an offence, and upon conviction, liable to a sentence of not more than one year, or a fine not exceeding fifty thousand shillings, or both

### **Vandalism of water and sewerage services infrastructure**

**27.** (1) Any person who willfully vandalizes, damages or destroys any water and sewerage services infrastructure belonging to the Corporation commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding two years, or a fine of not more than one hundred thousands shillings, or both

### **Illegal connection to water services**

**28.** Any person who illegally connects and utilizes water and sewerage services that are otherwise lawfully provided by the Corporation shall be guilty of an offence.

(1) whereupon conviction, a sentence not exceeding two years, or a fine not more than two hundred thousands shillings shall be imposed, and

(2) a surcharge of the full value of the water services illegally utilized, with cumulative interest computed at commercial bank debt rates, shall be levied and paid as a lawful debt to the Corporation, and

(3) in case of a repeat offender, the Court shall prescribe a special inspection and monitoring mechanism for water services supplied to the premises in question, and

(4) the Corporation, in circumstances defined in (3) above, shall be entitled to require and impose a special security bond to be provided before resumption of water services

### **Obstruction/ Misrepresentation**

**29.** (1) A person shall not knowingly obstruct or make a false or misleading statement to any authorised officer who is carrying out duties under this Act.

(2) Any person who contravenes the provisions of this section commits an offence and upon conviction is liable to imprisonment for a term not exceeding one year, or a fine not exceeding fifty thousand shillings, or both.

### **Customer compliance mechanisms**

**30.** (1) The Corporation shall, in advance, communicate the billing cycle to its customers either submit a Bill or provide the Customers with mechanisms for checking the Bill on the appointed date

(2) The Corporation shall notify customers, not less than five days in advance, of any planned interruptions in water services, and shall set out a program of the full resumption of water services

(3) Where unplanned interruptions occur to water services, the Corporation shall notify its customers at the earliest, and in any event not later than 12 hours after discovery of the interruption, and keep customers fully apprised on the progress of the full resumption of water services

(4) The Corporation shall provide to its customers, upon request, and within reasonable hours, current and reasonable historical information, and billing details relating to water services provided to the specific customer, premises or water services account number

## **PART VIII—ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES**

### **Bulk Water Sources**

**31.** (1) The County Executive Committee member shall ensure the development, availability and progressive expansion of bulk water sources required for delivery of optimal water services in the County, and to enable the Corporation to perform its mandate;

(2) The County Executive Committee member may, in addition to the (1) above, enter into agreements with other counties, and the national government, for the supply of bulk water, including through formation of the joint committees and joint authorities contemplated in article 189(2) of the Constitution.

### **Septic Tank Sludge Management**

**32.** The County Executive Committee member shall, within six months of this law coming into effect, make regulations governing the sustainable management of septic tank sludge, including licensing of exhauster service providers and disposal of sludge after collection from septic tanks by exhauster service providers.

### **Easements**

**33.** The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in national law

### **Operation of Community Water Projects**

**34.** (1) Nothing in this Act shall prevent the development and operation of community water projects for service provision, which shall only be approved by the Regulator, after issuance of a no-objection provided by the County Government.

(2) Unless there are exceptional circumstances, certified as such by the County Executive committee member, a community water project shall operate and function under a Service Provision Agreement entered into with the Corporation.

### **Administration on Boreholes and Private Water Service Providers**

**35.** (1) The Directorate shall develop and regularly review a program for the development of boreholes, including identification of criteria and the suitable areas for such operations;

(2) In all cases where licensing for drilling of boreholes is required under national law, in considering a request for a no objection the Directorate shall take into account the program in (1) above.

(3) The Directorate shall develop and regularly review a program on the supply of water in the County, including criteria and areas of service provision by private water service providers;

(4) The County shall in appropriate cases, on the basis of the program in (3) above, provide a no-objection to every licensing application submitted by a private water service provider to the national water services regulator.

**Regulation of Water Vending Kiosks**

**36.** The County Executive Committee member shall, within six months of this law coming into effect, make regulations governing the operations and licensing of water kiosks, including the sources of water, optimal location of kiosks, rules on kiosk ownership by employees of the Corporation, and offences specific to the ownership, management and operation of water vending kiosks.

**PART IX—APPROVALS OF CONSTRUCTION WORKS  
AFFECTING INFRASTRUCTURE****Permits for Contractors**

**37.** In all cases where a person is undertaking construction works which affect water and sewerage infrastructure operated by the Corporation—

- (a) a permit shall be obtained from the Corporation, in the format and at a fee prescribed by the Board
- (b) the Corporation shall make a determination on the permit application within 14 days of receipt of the application, and either issue the permit, or where the application is declined, communicate to the applicant with reasons explaining such decline
- (c) In making a decision on the application in (b) above, the Corporation shall make reference to maps, relevant documents, and actual inspection to verify how the proposed works interact with water and sewerage infrastructure
- (d) It is an offence for any person to undertake the works contemplated in this section without a permit, and upon conviction, such person will be liable to a fine of not less than One Hundred Thousands shillings;
- (e) Where damage occurs to infrastructure in circumstances contemplated in above, the responsible person shall, whether or not prosecuted, be liable to a surcharge of the full cost of repairs or replacement incurred by the Corporation, which shall be recoverable by the Corporation as a civil debt;
- (f) Where damage occurs to infrastructure when the person has obtained a permit, the Corporation shall undertake the necessary repairs to the infrastructure
- (g) All costs arising directly or indirectly from any damages caused by a contractor shall be recoverable by the corporation from the contractor.

### **Certification of property development works connecting to water mains**

**38.** (1) In every case within Mombasa County where any developer of any property is undertaking plumbing, sewerage and related works for connection of the property to the water mains operated by the Corporation—

- (a) The developer shall present the plans for such plumbing and sewerage works to the Corporation for inspection and approval, prior to commencement of construction, and
- (b) Upon completion of the works, the Corporation shall undertake inspection and if the works comply with the approved plans, certify the works as approved for connection to the mains

(2) In every case where a developer fails to follow the procedure set out in this section, the Corporation shall not approve connection of the property to the mains, until remedial measures prescribed by the Corporation are satisfied

(3) The Board shall prescribe procedures in forms, and fees to be levied by the Corporation in performance of the functions under this section

### **PART X—TRANSITIONAL PROVISIONS**

#### **Agreement with National Government on Assets**

**39.** (1) Upon the coming into effect of this Act, the County Executive Committee member shall enter into discussions with the National Government on the transfer of assets and liabilities relating to water services in, and to Mombasa County, to the Corporation, including hand over to operate through lease agreements where such assets were developed using loans.

(2) In so doing, the County Executive Committee shall be guided by among others, the requirement for treatment of the assets held by the Company, in clause 99 of the Articles of Association, in the event of winding up of the Company.

(3) The relevant provisions of the Transition to Devolved Governments Act, 2012, and national water law shall be applicable as necessary

#### **Winding up**

**40.** (1) Upon coming into effect of this Act, the County Executive Committee member shall convene a Meeting of Shareholders for the voluntary winding up of the Company.

(2) Upon such winding up, section 8(5) of this Act shall be applicable, subject to lawful directives by the Regulator.

**Extending the term of current Mowasco Board of Directors**

**41.** (1) Any person serving as a Director of the Mombasa Water and Sanitation Company, at the commencement of this Act, shall continue to serve as a Director of the Corporation for the remainder of the term of appointment.

(2) The membership to the Board shall further be adjusted to include persons contemplated for appointment under section 11(1) ii)&(b)(I, and for the election of a Vice Chairperson as contemplated under this Act.

(3) Upon expiry of the term of the Board referred to in (1) above, the provisions for appointment of the Board, set out in section 11, shall be complied with.

**Regulations**

**42.** (1) The County Executive Committee member may make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under this Act shall be subjected to public consultations, and be approved by the County Assembly.

## **MEMORANDUM OF OBJECTS AND REASONS**

The main object of this bill is to provide for the development, regulation and management of County public works related to water and sanitation services, storm water management systems and water conservation and for connected purposes pursuant to paragraph 11 of part 2 of the Fourth Schedule to the Constitution.

**PART I** Deals with preliminary.

**PART II** contains provisions on policy, co-ordination and oversight of water and sewerage services.

It among others establishes a county water and sewerage services directorate, elaborate on the powers and duties of county executive committee member, require the county executive committee member to formulate a county water and sewerage services strategy

**PART III** dwells on the water services provider. It establishes the Mombasa Water and Sewerage Services Corporation to succeed the Mombasa Water and Sanitation Company Limited, which had been established to provide water and sewerage services in the County, prior to the commencement of this Act.

**PART IV** expounds on service delivery and commercial viability.

It inter alia includes provisions on financial sustainability of the corporation, public private partnerships and customer relations.

**PART V** is on inspection and monitoring. Among other powers, the Corporation, through its Inspectors, shall have authority to enter any premises where the Corporation provides water and sewerage services, in order to inspect and monitor: the distribution system; the metre(s); water storage systems; the sewerage system; and such other elements of the water and sewerage services as the County Executive Committee member, may, through regulations, authorize.

**PART VI** entrenches provisions on offences relating to conduct of employees of the corporation such as solicitation and receiving of bribes, failure to read of metres, or to provide the accurate billing data from the metres to the corporation within stipulated time, willfully failing to disconnect water services for customers in default, in accordance with rules established by the board and colluding with other persons for the purposes of enabling such persons to illegally access and utilize water services of the corporation.

**PART VII** incorporates general offences. Such offences include impersonation of corporation staff, vandalism and illegal connections.

It also elaborates on customer compliance mechanisms.

**PART VIII** deals with administration of certain water supply and infrastructure services that include bulk water sources, septic tank sludge management, administration of boreholes and private water service providers and regulation of water vending kiosks.

**PART IX** regulates all construction works affecting water and sewerage services infrastructure. There shall be certification of property development works connecting to water mains operated by the corporation as well as issuance of permits to contractors whose works affect water infrastructure operated by the corporation.

**PART X** contains guidelines on transition and clauses on transfer of assets to the corporation to be established, winding up of the company to be succeeded and gives the county executive committee member power to draft regulations.

The enactment of this Bill will occasion additional expenditure of public funds that shall be provided in the estimates.

Dated the 16th July, 2015

**ZAINAB MUMBA,**

*Chairperson,*

*Committee on Water, Environment and Natural Resources.*