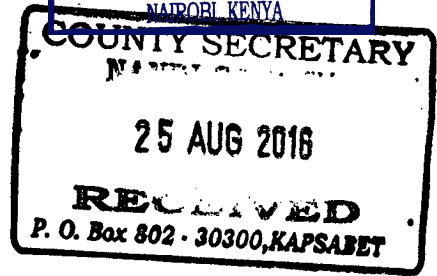


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SPECIAL ISSUE

Nandi County Gazette Supplement No. 6 (Bills No. 4)



REPUBLIC OF KENYA

***NANDI COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2016

NAIROBI, 12th August, 2016

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THE NANDI COUNTY CESS BILL, 2016

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THE NANDI COUNTY CESS BILL, 2016

A Bill for

AN ACT of the County Assembly of Nandi to provide for the imposition of Cess tax on any kind of product within the County; to establish the Nandi County Cess Committee; and for connected purposes.

ENACTED by the County Assembly of Nandi as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Nandi County Cess Act, 2016. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.
“Agricultural producer” means a producer of agricultural crop product and includes any marketing organization acting on behalf of producers;

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

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

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

“Committee” means the Cess Committee established under section 13 of this Act;

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

“County Government” means the County Government of Nandi County;

“County Treasury” means the entity in Nandi County Government established under Section 103 of the Public Finance Management Act;

“Essential products” means produce declared as such under Section 5;

“Factory” means a building or groups of buildings where agricultural produce is processed chiefly by machines within the County and owned by a registered company whether or not registered under the Companies Act, Laws of Kenya;

“Foreign Limited Partnership” means a partnership— [Chapter 486]

- (a) Constituted under the law of a country other than Kenya; and
- (b) In which one or more of the partners has limited liability in respect of a partnership obligation;

“Limited Partnership” means a partnership with one or more limited partners, each of whom has limited liability;

“Local Agricultural Producer” means an inhabitant of the County who cultivates or operates land for the purposes of growing and generating agricultural produce, whether in small scale or large scale;

“Multinational Agricultural Producer” means an international juristic person that owns land within the County and cultivates it for the purpose of growing and generating agricultural produce;

“Partnerships” means the relationship which exists between persons who carry on business in common with a view to making a profit;

“Scheduled products” means any produce for the time being specified in the First Schedule; and

“Special products” means a produce declared as such under section 5 of this Act.

3. The object and purpose of this Act is to impose tax and/or levies on any kind of agricultural produce, quarry produce, sand and/or mineral produce within the County, mined, produced and/or grown; or on transit within the County, pursuant to the provisions of Article 209 (3) of the Constitution of Kenya, 2010.

Object and purpose
of the Act.

PART II — CESS TAX CHARGEABLE

4. (1) Subject to subsection (2), the County Government shall collect Cess revenue on Agricultural produce, sand, minerals and quarry produce within the County in accordance with the Second Schedule of this Act.

Cess tax
chargeable.

(2) The County Government shall collect Cess revenue with the consent of the County Executive Committee Member for finance and economic planning, upon the approval of the County Executive Committee.

(3) The County Executive Committee Member for finance and economic planning, may impose a Cess on any kind of product not already provided for under the Second Schedule of this Act, or by Regulations, and may make such incidental provisions as are necessary or expedient for the collection of the Cess revenue.

5. (1) The County Executive Committee member for finance and economic planning in consultation with the relevant County Executive Committee members may, in every five years, review, declare and publish scheduled produce that in his opinion are necessary to be essential products for the purposes of this Act.

Declaration of
essential produce
and development
of certain produce.

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

PART III – PAYMENT

6. (1) The County Executive Committee Member in charge of finance and economic planning may impose a cess on any kind of product and make any such incidental provision as is necessary or expedient; and the Cess shall form part of the County Government's revenues.

Cesses.

(2) Notwithstanding the provisions of subsection (1), eighty per centum of the Cess revenue collected under section 4 of this Act shall be used in maintaining roads and other related services, related to the sectors in respect of which such monies are levied, and the remaining twenty per centum shall be credited to the County Revenue Fund.

(3) The incidental provisions which may be made in the regulations to this Act, under subsection (1) may include provisions requiring any person (whether within or

outside the area of jurisdiction of the County Government) who buys or markets on behalf of a person a product on which the cess is payable, and on which no cess has then been paid, to deduct from the money payable to the seller an amount equal to the cess payable on the produce, and to remit the amount to the authority to whom the cess is payable:

Provided that in any proceedings it shall be presumed that where product on which a cess is payable is brought, no cess has been paid on that produce, until the contrary is proved.

7. (1) The County Executive Committee member may, by notice in the Gazette, constitute or appoint an agent or agents for the purposes of collecting Cess revenue, and the County Executive Committee member in charge of finance and economic planning may in the same manner revoke or vary a constitution or appointment.

Constitution or appointment of agents by the County Executive Committee member.

(2) An agent may be constituted or appointed to act for the purposes specified in subsection (1), and different agents may be constituted or appointed for different areas of Nandi County, for different products, for different quantities, grades, qualities or varieties of any product, for different classes or kinds of transactions and for different times of the year.

8. (1) The County Executive Committee Member in charge of finance and economic planning may, issue to any agent constituted or appointed under section 7 orders, not being contrary to any law in force in Kenya, respecting the agency in relation to—

County Executive Committee Member's orders to agents.

- (a) the expenses which may be incurred and the charges which may be made by the agent; and
- (b) the deductions which may be made or allowed by the agent from the proceeds of sale of any product.

(2) Any such order may be made applicable generally to all agents or specially to any particular agent or class of agents.

9. (1) All payments to the County Government made under this Act shall be deducted and paid by the agent where the product is supplied to be processed.

Payment to the County Government.

(2) All payments not provided for under subsection (1) shall be collected by an authorized officer as per Regulations made by the County Executive Committee Member.

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

(4) The authorized officer referred to in subsection (2) shall ensure that all the amounts collected are accounted for and remitted to the County Revenue Fund account daily.

(5) The company or factory shall make and keep such up to date books, accounts and records as are reasonably necessary to determine the mass of product supplied to it and Cess deductions made thereof for a period of at least 7 years after the completion of the transactions to which they relate.

(6) The Receiver of Revenue may by notice in writing given to the company or factory, direct the revenue payer as to the books, accounts and records the company or factory is required to make and keep.

(7) An authorized officer shall be allowed unlimited access, within the legal bounds, to the records kept by the agent.

(8) Any agent who fails to comply with the requirements of this section shall be guilty of an offence under this Act and will be liable to a fine not exceeding five hundred thousand shillings.

10. (1) The authorized officer shall ensure that cess on products on transit is collected at barriers set up at the points of entry as per Regulations made by the County Executive Committee Member and shall ensure that all the amounts collected are accounted for and remitted to the County Revenue account daily.

Payment to the
County
Government on
product on transit.

(2) Cess payable under subsection (1) above shall be paid from the county of origin unless the Cess payer does not furnish the authorized officer with evidence of payment.

(3) In the absence of evidence of payment of Cess

revenue at county of origin, the Cess payer shall make payment to Nandi County.

PART IV — ADMINISTRATION OF THE CESS REVENUE

11. (1) At the end of each financial year, or in case of quarterly reports, at the end of every three months, the receiver of revenue shall prepare an account in respect of the Cess revenue collected, received and recovered by the receiver during that financial term.

Quarterly and
annual reports

(2) The accounts under subsection (1) shall include —

(a) a statement of receipts and disbursement in a form prescribed by the Accounting Standards Board from time to time; and

(b) a statement of arrears of cess revenue.

(3) Not later than three months after the end of the financial year, the receiver of revenue for the county government shall —

(a) submit the accounts to the Auditor-General; and

(b) deliver a copy to the National Treasury, the Controller of Budget, County Treasury, County Assembly and the Commission on Revenue Allocation.

(4) Not later than three months after the end of each financial year, the Receiver of Revenue shall submit to the county assembly a report with respect to all waivers and variations of cess revenue granted by the Receiver during that year.

(5) The Receiver shall include in the report the following details in respect of each waiver or variation —

(a) the full name of each person benefiting from the waiver or variation;

(b) the amount of Cess revenue affected by the waiver or variation;

(c) the year to which the waiver or variation relates;

(d) the reasons for the waiver or variation; and

(e) the legislation in terms of which the waiver was authorized.

12. The County Government may enter into an agreement authorizing a person or entity to collect Cess revenue payable to the county government on such terms and conditions as are specified in the agreement.

Agreement in
relation to revenue
collection

PART V — CESS COMMITTEE

13. (1) There is established a Nandi County Cess Committee.

Establishment and
composition of the
Cess Committee

(2) The Cess Committee shall be composed of—

- (a) the chief officer responsible for finance and economic planning;
- (b) the chief officer responsible for roads and infrastructure;
- (c) the chief officer responsible for agriculture, livestock and fisheries;
- (d) the Receiver of Revenue who shall act as the secretary of the Committee;
- (e) a representative of miners;
- (f) a representative of multinationals; and
- (g) a representative of farmers.

(3) The term of office of the Cess Committee shall be five years, which shall be non – renewable.

14. The Cess Committee shall—

Functions of the
Cess Committee

- (a) propose budgetary allocations that reflect on road infrastructure to be maintained within areas in which Cessable products are ordinarily transported;
- (b) propose priority projects for road infrastructure to be maintained within areas in which Cessable products are ordinarily transported; and
- (c) oversee the fruition of road infrastructural projects that relate to areas in which Cessable products are ordinarily transported.

15. The allowances of the Cess Committee shall be set by the County Treasury.

Allowances of the
Cess Committee

16. The meetings of the Committees shall be done as provided for in the Third Schedule.

Conduct of meetings.

PART VI —OFFENCES AND PENALTIES

17. Except as provided for in this Act, any person who contravenes the provisions of this Act shall be guilty of an offence and is liable to a fine not exceeding three hundred thousand shillings or imprisonment not exceeding one year, or both

General penalty.

18. (1) An Authorized Officer of the County Government having a duty to perform under this Act who—

Offences by an Authorized Officer.

- (a) Interferes with any other process or person under this Act, so as to defeat the provisions, requirements or purposes of this Act;
- (b) Where required under this Act to do anything, or to give effect to the provisions of this Act, fails to do such thing;
- (c) without reasonable cause omits to do something in breach of his or her duty under this Act;
- (d) willfully contravenes the provisions of this Act to give undue advantage or favor to another person;
- (e) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act;

Shall be guilty of an offence and is liable on conviction, to a fine not exceeding Kenya Shillings two hundred thousand or to imprisonment for a term not exceeding one year, or to both.

(2) Notwithstanding the provisions of subsection (1), offences committed by authorized officers whose penalty has not been specifically set by this Act, shall be punishable, on conviction as envisioned under Part VII of the Public Finance Management Act, 2012 of the Laws of Kenya.

19. For the purposes of this Act, an agent collecting cess revenue for and on behalf of the County Government as set out under section 7 of this Act shall be responsible

Acts of agent or servant.

for the acts and/or omissions of any partner, agent or servant of his in so far as they concern collection of the cess revenue, and if such partner, agent or servant commits any act or makes any omission which is an offence under this Act, or which would be an offence if committed by the person collecting the cess revenue, such person and his partner, his agent or his servant, as the case may be, shall each be guilty of the offence and liable to the penalty prescribed under this Act:

Provided that—

- (a) where a person collecting cess revenue is, by virtue of this section, charged with an offence under this Act, it shall be a defence to the charge to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this Act were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed willfully.

PART VII — MISCELLANEOUS PROVISIONS

20. (1) The County Executive Committee Member may from time to time vary tax payable under this Act. Variation of tax.

(2) The said variation of tax shall be in writing and published in the County *Gazette* or Kenya *Gazette*.

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

22. Neither the County Executive Members nor any other public officer or body of public officers shall be personally liable to any action or proceedings for or in respect of any act or thing done or omitted to be done in good faith in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act. No action maintainable against Executive Member, etc.

23. Nothing in this Act or any rules or regulations made pursuant thereto shall prejudice or affect collection of Cess revenue under the previous by-laws of the defunct Saving Clause.

local authority, and where anything in this Act or any rule is inconsistent with any such provision of the by-law, the provisions of this Act shall prevail.

24. Notwithstanding the repeal of the by-laws of the defunct local authorities—

Saving of rules and orders under the by-laws.

- (a) all rules made under the by-laws in relation to collection of Cess revenue and in force before the commencement of county governments, except only in so far as they conflict with this Act, shall remain in force until revoked as if they were rules made under this Act; and
- (b) all orders made under the by-laws and subsisting at the commencement of this section shall remain in force as if they were orders made pursuant to this Act.

25. (1) The county government shall liaise with the Office of the Director of Public Prosecution to have its authorized officers gazetted in order to prosecute matters for and on behalf of the county government under this Act.

Prosecution of matters under this Act.

(2) Offences created pursuant to this Act shall be cognizable offences.

26. (1) Fines imposed by this Act shall be payable to the County Revenue Fund.

Fines imposed by this Act.

(2) The County Government shall make an arrangement with the National Treasury on the remittance of fines paid to it to the County Treasury in relation to this Act.

SCHEDULES

FIRST SCHEDULE (Section 2)

SCHEDULED PRODUCE

- 1—Banana
- 2—Beans
- 3—Carrots
- 4—Cassava
- 5—Cereals
- 6—Coffee
- 7—Cucumber
- 8—Eggs
- 9—Fruits
- 10—Ground nuts
- 11—Log
- 12—Maize
- 13—Mangoes
- 14—Milk
- 15—Onions
- 16—Pawpaw
- 17—Peas
- 18—Potatoes
- 19—Processed fresh milk
- 20—Sugar cane
- 21—Sweet potatoes
- 22—Tea leaves
- 23—Timber
- 24—Tobacco
- 25—Tomatoes
- 26—Vegetables

SECOND SCHEDULE**(S. 4 (1))****SCHEDULED PRODUCTS' CESSES**

ITEMS	WITHIN KAPSABET TOWN	NANDI HILLS	SUB- COUNTIES
Coffee Cess in percentage of market price	1%	1%	1%
Tea Cess in percentage of market price	1%	1%	1%
Maize Cess in percentage	1%	1%	1%
Water Cess in percentage of market price	1%	1%	1%
Milk Cess in percentage of market	1%	1%	1%
Produce in Cess percentage of market price	1%	1%	1%
Timber Cess per ton	500	500	300
Log Cess in percentage of market price	1%	1%	1%
Log Cess in percentage of market price	1%	1%	1%

THIRD SCHEDULE

(S. 16)

**CONDUCT OF BUSINESS AND AFFAIRS OF THE
COMMITTEE**

1. The Chairperson or a member of the Committee other than ex officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for not more than two terms. Tenure of office.

2. (1) A member other than an ex officio member may— Vacation of office.

(a) at any time resign from office by notice in writing to the County Executive Committee member; or

(b) be removed from office by the County Executive Committee member on recommendation of the Committee if the member—

(i) has been absent from three consecutive meetings of the Committee without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

(2) The Chairperson shall not be removed from office unless such removal is in accordance with subparagraph (1).

3. (1) The Committee shall meet quarterly in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting. Meetings.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five (5) members, convene a special meeting of the Committee at any time for the transaction of the business of the Committee.

(3) Unless three quarters of the total members of the Committee otherwise agree, at least fourteen days' written notice of every meeting of the Committee shall be given to each Committee member.

(4) The quorum for the conduct of the business of the Committee shall be half the total number of members plus one.

(5) The Chairperson shall when present, preside at every meeting of the Committee.

(6) The members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (4), no proceedings of the Committee shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Committee may determine its own procedure and the procedure for any sub-committee of the Committee and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. (1) A member who has an interest in any matter presented at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of
interest.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Committee who contravenes subparagraph (1) shall cease to be a member of the Committee subject to the direction of the County Executive Committee member.

5. The provisions of this Schedule shall apply to the conduct of the business of the Ward Education Fund Committee but only where no specific provisions have been made in this Act, and only in so far as they do not constitute a contradiction or negation of the provisions of the Act.

Application of this
Schedule.

MEMORANDUM OF REASONS AND OBJECTS

The purpose of this Bill is to provide for the imposition of Cess tax on any kind of product within the County Government of Nandi.

Part I of the Bill provides the object of the Bill is to impose tax on agricultural produce, quarry produce, sand and/or mineral produce, grown, produced or mined; or on transit within the County pursuant to the provisions of Article 209 (3) of the Constitution of Kenya, 2010.

Part II of the Bill provides for Cess tax chargeable. That Part provides that Cess levy shall be collected on agricultural produce, sand, minerals and quarry produce in accordance with the Second Schedule of the Bill. The County Executive Committee Member for finance is given powers to make regulations adding to the list provided in the Second Schedule of taxable products. The Part also gives the County Executive Committee Member for finance power to declare any kind of produce as essential produce for purposes of levying Cess tax.

Part III of the Bill provides for payment measures. That Part provides that eighty per cent of the Cess revenue collected shall be used in maintaining roads, whereas twenty percent shall be credited to the County Revenue Fund. That part also gives the County Executive Committee Member for finance power to appoint agents to collect Cess revenue for and on behalf of the County Government; for different products, quantities, grades, qualities or varieties of products within a given period of time. The County Executive Committee Member for finance shall issue the appointed agents orders relating to expenses which may be incurred and charges which may be made by the agent.

The agent shall deduct and make payment to the County Treasury with 30 days following date of deduction. Payment to authorized officers shall be remitted to the County Revenue Account daily. The agent is as per the Bill expected to keep proper books of accounts and to allow access to authorized officers seeking to scrutinize the said records/accounts.

Clause 10 of the Bill provides that Cess on products on transit shall be collected at barriers set up at the points of entry as per Regulations made by County Executive Committee Member for finance and such collections shall be accounted for and remitted daily. The Cess payable on cessable products on transit shall be paid to the County of origin unless the cess payer cannot furnish the cess collector evidence of such payment.

Part IV of the Bill relates to administration of the Cess Revenue and provides that the Receiver of Revenue shall prepare annual and quarterly reports as per the Public Finance Management Act, 2012.

Part V of the Bill provides for the establishment of the County Cess

The Nandi County Cess Bill, 2016

Committee. The committees shall be composed of–

- (a) Chief Officers responsible for finance, roads and infrastructure, and agriculture;
- (b) the Receiver of Revenue; and
- (c) representatives of miners, multinationals and farmers.

The term of the Committee shall be a non-renewable five year term. ,

The functions of the County Cess Committee shall be to propose budgetary allocations on road infrastructure to be maintained in the areas cessable products are ferried to; propose priority projects for road infrastructure to be maintained; and to oversee completion of road infrastructural projects.

Part VI of the Bill provides for enforcement provisions wherein offences by authorized officers are outlined and a penalty thereof given. Acts of agents and their servants that could amount to offences are also outlined as well as their respective penalties.

Part VII of the Bill provides for miscellaneous provisions such as power of the County Executive Committee Member for finance to vary Cess tax. It also gives County Executive Committee Member for finance power to make regulations for better carrying out of the functions of the Bill. That part also saves the collection of Cess revenue before the coming into force of the Act.

JOHN KETER,
Chairperson, Budget and Appropriation Committee