

SPECIAL ISSUE

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REPUBLIC OF KENYA

**TAITA TAVETA COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2016

NAIROBI, 15th April, 2016

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**THE TAITA TAVETA COUNTY SAND
HARVESTING BILL, 2015**

A Bill for

AN ACT of County Assembly of Taita Taveta to regulate sand harvesting and related activities in the county and to ensure sustainable exploitation and utilization of land and to provide for equitable sharing of the accruing benefits and for connected purposes

ENACTED by the County Assembly of Taita Taveta, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Taita Taveta County Sand Harvesting Act, 2016.

Short title.

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

Interpretation.

“association” means the sand harvesting associations established under section 6;

“authorized officer” includes any person acting under the authority of the licensing officer;

“Committee” means the County Sand Harvesting and Management Committee established under section 4;

“county executive committee member” means the County Executive committee Member in charge of natural resources;

“dealer” means the person who buys and sells common minerals;

“designated area” means any area designated as a sand harvesting area pursuant to section;

“harvester” means a person or the person’s agent who gathers or collects sand from any of designated area of for the purpose of sale or own use;

“license” means a permit issued by the county government to engage in sand dealing;

“license holder” means a person to whom a permit has been granted under this Act;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“quarry” means a place from which building demission stone, rock, construction aggregate, murrum, riprap, gravel, lime, sand, slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium and potassium compounds and surface stone is excavated from the ground;

“sand” means sedimentary material finer than gravel and coarser than silt with grains between 0.06mm and 2mm in diameter and includes stones, coral, earth and turf but does not include silica sand;

“sand harvesting”, means the removal, extraction, harvesting or scooping of sand from designated areas;

“sand dealer” means any person(s) approved to harvest, remove, extract, scoop, transport or sell sand as provided for under Clause 6 of these Bill so long as such quantity of sand exceeds 2 tonnes;

3. The object and purpose of this Act is to provide for a legislative framework for regulating sand harvesting and in particular to—

Objects and purpose
of the Act.

- (a) require the registration of sand dealers;
- (b) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (e) provide for benefit-sharing and investing back to the community part of the revenue collected from sand harvesting; and
- (f) enable communities to participate in the management of sand harvesting.

PART II— ADMINISTRATION

4. There is established a County Sand Harvesting and Management Committee consisting of—

- (a) the chief officer responsible for matters relating to finance who shall be the chairperson;
- (b) the chief officer responsible for matters relating to

Establishment of the
County Sand
Harvesting and
Management
Committee.

natural resources;

- (c) two representatives of sand dealers appointed by the county executive committee member;
- (d) a representative of special interest groups appointed by the county executive committee member; and
- (e) two representatives of the sand harvesting associations being one man and one woman, appointed by the county executive committee member.

(2) The Committee shall be under the supervision and direction of the county executive committee member responsible for matters relating to natural resources.

(3) The quorum of the Committee for purposes of the meeting shall be five members.

(4) The members of the Committee shall elect from within their composition the Secretary.

(5) The members under subsections 1 (a) and (b) may designate alternate members in writing and who shall be senior public officers.

5. (1) The Committee shall —

Functions of the
Committee.

- (a) maintain a register of all sand dealers;
- (b) advise the county executive committee member on the structure and operations of sand harvesting and related activities;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;
- (d) ensure sustainable exploitation and utilization of sand resource and other excavated material;
- (e) collaborate with other environmental agencies in management of environment;
- (f) formulate environmental conservancy programmes in relation to sand harvesting;
- (g) recommend to the county executive committee member designated sand harvesting areas for gazettment;

- (h) recommend designated roads for transportation of sand and other excavated material in accordance with this Act; and
- (i) perform any other functions assigned by the county executive committee member.

(2) In the performance of its functions under this Act, the Committee shall, subject to any other law allow the participation of the people who may be affected by its decisions in making decisions of those decisions.

6. (1) The Committee shall approve the establishment of such number of sand harvesting associations as is necessary which shall be registered by the pursuant the law relating to registration of community based organizations.

Sand harvesting
associations.

(2) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors—

- (a) drainage network of the river and the designated sand harvesting sites;
- (b) the need to ensure full participation of the community including all interest groups; and
- (c) viability and sustainability of the association.

(3) An association shall be composed of the following members elected by the interested community—

- (a) four representatives of the riparian landowners;
- (b) two women representatives who are not riparian land owners;
- (c) two youth representatives who are not riparian land owners;
- (d) two elders who are not riparian land owners; and
- (e) two persons representing religious groups.

(4) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—

- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of

Environment Management Coordination Act;

- (b) ensure that annual Environmental Audits are conducted for all sand harvesting sites including closed sites; and
- (c) ensure sustainable management of sand harvesting along riverbeds;
- (d) undertake the rehabilitation of the closed sites; and
- (e) perform any other function assigned to it under this Act.

Cap. 387.

7. The Committee and the associations shall be guided by the following considerations in discharging their mandate—

Considerations by the Committee and associations.

- (a) sand dams and gabions shall be constructed in designated sand harvesting sites and there shall be at least two hundred meters between one gabion and another;
- (b) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
- (c) upon closure of a designated sand harvesting site, the site shall be rehabilitated appropriately by the Association, county government and approved dealer under the supervision of the Committee;
- (d) sand harvesting or scooping shall be restricted to the riverbeds and no such harvesting or scooping shall be allowed on riverbanks;
- (e) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
- (f) licensed sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage fixed by the executive committee member; and
- (g) sand loaders may organize themselves into organized groups with a chairperson and shall be under the direction and control of the Association.

PART III—SAND HARVESTING REQUIREMENTS

8. (1) The Committee shall, on the advice of the Associations, designate and document sand harvesting sites

Sand harvesting sites.

from time to time.

(2) Every sand harvesting area shall be clearly demarcated and documented by the Committee in consultation with the Association.

(3) A person shall not harvest sand from any area not designated as a sand harvesting site by Committee.

(4) Each designated sand harvesting site shall have an environmental management plan to guide in the rehabilitation of the sites.

9. On-farm and lakeshore sand harvesting shall be carried out subject to fulfilling the following conditions—

On-farm and
lakeshore sand
harvesting.

- (a) sand harvesting or scooping of sand shall not exceed six feet in depth;
- (b) a sand harvesting sites shall be at least fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;
- (c) sand harvesting or scooping of sand shall not be undertaken concurrently with rehabilitation of the sites; and
- (d) on-farm sand harvesting shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken.

10.(1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention.

Riverbed harvesting.

(2) Sand harvesting shall not be undertaken on any riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one hundred metres of either side of any physical infrastructure including but not limited to bridges, roads, railway lines and dykes.

11.(1) A person shall not harvest, extract or scoop sand, or transport sand between the hours of six o'clock in the evening and six o'clock in the morning.

Hours of sand
harvesting and
transportation.

(2) The transport of sand within the county shall only be done through roads designated for such transportation.

(3) A person who contravenes the provisions of this section commits an offence is liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

12. (1) The Committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Trade Descriptions Act and the market forces of the day.

Sale of sand.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

Cap. 505.

PART IV – LICENSING PROVISIONS

13. (1) No person shall use, cause or permit to remove sand from any river, farm, ranch or other land for the purposes of sale unless with a valid license issued under this Act for such trade or business.

Licensing of sand harvesters.

(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

14. (1) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued by the county government.

Licensing of sand dealers.

(2) No person shall carry on or engage in any trade occupation or business of sand harvesting unless the person is licensed to carry on such trade, occupation or business by the county government.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

15. (1) The county executive committee member shall be the licensing officer responsible for the issuing of licenses under this Act.

Licensing officer.

(2) The county executive committee member may, in writing, delegate any one or all the powers under this Act to

any one or more authorized officers.

(3) Every license shall contain conditions for ensuring sustainable sand harvesting including —

- (a) the requirement for sand harvesters to furnish the licensing officer with an environmental impact assessment relating to the site for which a license is sought;
- (b) the requirement for rehabilitation of sites upon closure; and
- (c) any other condition as may be prescribed by the county executive committee member under this Act.

16. (1) An application for license under this Act shall be in the prescribed form provided that the Executive committee member may, in any particular case require an applicant to submit or supply such further information as the Executive committee member may deem fit.

Application for license.

(2) A license issued under this Act shall be valid for a period of twelve months unless otherwise authorized by the county executive committee member.

17. (1) The licensing officer shall consider each application made under section 16 and determine whether or not to issue a license to the applicant within thirty days of the application.

Discretion of a licensing officer.

(2) If a licensing officer refuses to issue a license, he or she shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons for the refusal and refer to the relevant provision in this Act on which the refusal is based.

18. A license shall be issued subject to the following conditions—

Conditions for the issue of a license.

- (a) an obligation to rehabilitate the site and surrounding areas upon closure;
- (b) for the category or categories of business activity specified in the license; and
- (c) compliance with the regulations and any other conditions provided in the license.

19. (1) An applicant for a license shall pay such

License fees.

application fees as may be prescribed by the county executive committee member under this Act.

(2) The county executive committee member may waive the whole or part of any fee prescribed under subsection (1).

20.(1) A license shall be in such form as the county executive committee member may from time to time determine and shall be signed by the county executive committee member or a person authorized in that behalf.

Form of license.

(2) The county executive committee member may issue different classes of licenses for different purposes.

21.(1) A license issued under this Act shall not be transferred from the holder to another person without the consent of the county executive committee member or a person authorized in that behalf.

Transfer of license.

(2) An application for the transfer of any license shall be in such form as may be prescribed by the county executive committee member and shall be accompanied by the license to which it relates:

Provided that the county executive committee member may in any case require an applicant for the transfer of a license to submit or supply such further information as the county executive committee member may deem necessary.

(3) Every application for the transfer of a license shall be accompanied by the payment of such fees as may be prescribed by the county executive committee member.

(4) A memorandum of the transfer of any license shall be endorsed on the license by the county executive committee member.

(5) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

22.(1) Subject to this Act, a licensing officer may alter a license from one form of dealership to another on the written application of the licensee.

Alteration of a license.

(2) A licensee shall only engage in the type of sand dealing as authorised under the license.

(3) A person who contravenes this section commits an

offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

23. A licensing officer may cancel a license if in his or her opinion —

Cancellation of
license.

- (a) the application form contains any material misrepresentation or false statement;
- (b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;
- (c) the license holder carries on a prohibited activity;
- (d) a condition imposed is breached; or
- (e) the license holder is convicted of an offence under this Act.

24.(1) Any person aggrieved by the decision of a licensing officer may apply for review of the decision before a court.

Reviews.

(2) All applications for review shall be filed within fourteen days of the decision.

(3) Before applying for a review under this section, an aggrieved person has the right to petition the county executive committee member.

25.(1) The licensing officer, any police officer or an authorized officer who has reason to believe that a person is required to hold a business license for any of the purposes of sand harvesting may demand such person to produce a license.

Production of
license.

(2) A person who fails to produce a license when required to do so under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

26. The provisions of this Act relating to sand harvesting shall be applicable with the necessary modifications to any form of quarrying.

Quarrying.

PART V – GENERAL PROVISIONS

27. The Committee shall—

- (a) facilitate the collection of revenue from sand dealers in designated sand harvesting sites or along access roads;
- (b) ensure that at least ten per cent of the revenue collected is allocated to the Committee and the Associations to facilitate their operations;
- (c) ensure that part of the revenue collected is allocated for community projects; and
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within the sand harvesting area.

Collection of
revenue by the
county government.

28. (1) For purposes of section 27, the county government may mount barriers on access roads leading to sand harvesting sites in accordance with the provisions of the Traffic Act.

Road barriers.

(2) The barriers shall be supervised by authorized officers and revenue collectors.

(3) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

Cap. 403.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.

(5) In addition to the penalty imposed under subsection (4), any vehicle that does not stop at the barriers for purposes of payment of revenue may be impounded.

29. (1) A licensing officer, authorised officer or police officer may order a license holder to stop any sand harvesting or quarrying activities and close the site if it appears that the site is in a condition dangerous to human life or detrimental to public health or safety.

Power to order
closure of site.

(2) The order issued under subsection (1) shall remain in force until the licensing officer is satisfied that the conditions warranting the closure have been satisfactorily improved.

(3) Any person who contravenes an order issued under

this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

30. (1) A licensing officer, authorized officer or a police officer may at any reasonable time—

Power of entry.

- (a) enter upon premise, farm, ranch or vehicle and carry out any inspection for the purposes of enforcement of this Act; or
- (b) undertake any work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a license is issued, and recover the expenses incurred in carrying out such work.

(2) A person who obstructs an officer referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) A police officer or authorized officer may detain any vehicle and confiscate any goods where it is proven that the goods were obtained in contravention of this Act.

(4) The detained or impounded vehicles referred to in subsection (3) shall not be released to the owner until authorised by a court or until the owner pays the prescribed penalty charges.

(5) Any authorized officer or a police officer shall, before undertaking any inspection activities under this Act, produce to the relevant person proper identification documents.

31. No matter or thing done by a licensing officer or officer, employee or agent shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render such officer, employee or agent personally liable for any action, claim or demand.

Protection from
personal liability.

32. (1) If any dispute is referred to the Committee, the chairperson of the Committee shall convene a meeting between the complainant and the person against whom the complaint is made to deliberate on the grievances and make

Dispute resolution.

an appropriate resolution.

(2) Any person aggrieved by the resolution of the Committee under subsection (1), may within fourteen days from the date of the resolution appeal to the court.

33. (1) The Committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including access roads, riverbanks and catchment areas to ensure environmental sustainability.

Rehabilitation of
closed sites.

(2) The Committee shall require every license holder to prepare and submit to it a rehabilitation plan for every designated sand harvesting area.

34. A person who—

Offences and
penalty.

- (a) carries out sand harvesting outside designated sites;
 - (b) overloads sand to a vehicle for transportation contrary to prescribed requirements;
 - (c) collects fees or charges and is not authorized to do so under any law;
 - (d) transports sand outside the designated roads for such transportation;
 - (e) obstructs any authorized person from conducting their functions under this Act; or
 - (f) establishes a separate entity in a designated site without lawful authority under this Act;
- commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

35. A person who contravenes any provisions of this Act for which no penalty is provided commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

General penalty.

36. (1) The county executive committee member may make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection

(1), such regulations may provide for—

- (a) guidelines for sand harvesting and related activities;
- (b) criteria for determining the number of associations approved under this Act;
- (c) the terms and conditions of all classes of licenses issued under this Act;
- (d) conditions applicable to different types of sand harvesting;
- (e) loading requirements depending on tonnage;
- (f) forms required under this Act;
- (g) rehabilitation of closed sites;
- (h) designation of sand sale yards;
- (i) pricing per lorry load based on tonnage;
- (j) grading, packaging and value addition of sand;
- (k) disputes resolution mechanisms; and
- (l) such other matters as may be necessary for full implementation of this Act.

**STATEMENTS OF THE OBJECTS AND REASONS FOR THE
BILL**

The principal object of this Bill is to regulate sand harvesting and sand related activities in the county. The Bill also provides for the sustainable exploitation and utilization of land and provides for equitable sharing of the accruing benefits related to sand harvesting within Taita Taveta County.

Part I (clauses 1-3) of the Bill contains the preliminary provisions, the short title, the interpretation of terms as well as the objects and purpose of the Bill.

PART II (clauses 4-7) of the Bill provides for administration under the Bill. It provides for the establishment of the County Sand Harvesting and Management Committee, as well as the establishment of the sand harvesting associations. This Part also provides the functions of the Committee and the associations.

PART III (clauses 8-12) of the Bill provides for the sand harvesting requirements. It contains provisions dealing with sand harvesting sites, hours of sand harvesting and transportation as well as provisions relating to the sale of sand.

PART IV (clauses 13-26) of the Bill deals with licensing provisions. It provides for the procedures for the licensing of sand harvesters and sand dealers, application for licenses, license fees and the conditions for the issue of a license. This Part also contains provisions on the transfer, alteration, cancellation and review of licenses.

PART V (clauses 27-36) of the Bill provides for general provisions. This part contains provisions relating to the collection of revenue by the county government, the powers of licensing officers to order closure of sand harvesting sites as well as the power of entry. It also contains provisions dealing with dispute resolution and indemnity of licensing officers for all acts done in good faith. The Part also provides for offences and penalties, as well as the power of the county executive committee member to prescribe regulations for various matters for the carrying out of the provisions of the Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative powers to the County Executive Committee member but it does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(3) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 4th April, 2016.

RAYMOND MWANGOLA,
Member of County Assembly.