

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
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TANA RIVER ACTS, 2019

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**THE TANA RIVER COUNTY INUKA FUND (AMENDMENT)
ACT, 2019**

No. 7 of 2019

Date of Assent: 29th November, 2019

Date of commencement: See Section 1

AN ACT of the County Assembly of Tana River to amend the Tana River County Inuka Fund Act, 2016 and for connected purposes.

ENACTED by the County Assembly of Tana River as follows—

PART I—PRELIMINARY

ENACTED by the County Assembly of Tana River as follows—

Short title and commencement

1. This Act may be cited as the Tana River County Inuka Fund (Amendment) Act, 2019 and shall come into force upon its publication in the *Kenya Gazette*.

Amendment to Section 1 of Act No. 16 of 2016

2. The Tana River County Inuka Fund Act, 2016 (hereinafter referred to as the “Principal Act”) is amended in section 1 by deleting the words “on such date as the County Executive Committee Member may by notice in the Gazette appoint” and substituting therefor the words “upon its publication in the *Gazette*”

Amendment to Section 2 of Act No. 16 of 2016

3. Section 2 of the Principal Act is amended—

- (a) in the definition of the expression “County Executive Committee Member” by deleting the words “of women and youth” and substituting therefor the words “relating to trade”.

Amendment to Section 6 of Act No. 16 of 2016

4. Section 6 of the Principal Act is amended—

(1) by deleting sub-section 2 and substituting therefor the following new sub-section—

- (a) the chairperson of the Board who shall be nominated by the County Executive Committee Member and appointed by the Governor;
- (b) the Chief Officer for the time being responsible for matters relating to trade;
- (c) the Chief Officer for the time being responsible for matters relating to finance;

- (d) one person from the chamber of commerce appointed by the County Executive Committee Member;
- (e) one person representing women appointed by the County Executive Committee Member; and
- (f) one person representing persons living with disabilities, nominated by the National Council for Persons with Disability and appointed by the County Executive Committee Member.

(2) by deleting sub-section (3) and substituting therefor the following.

The names of the Board members appointed under paragraph (a), (d), (e) and (f) shall be approved by the County Assembly.

(3) In sub-section (6) by inserting the word "at least" immediately after the words "Board shall meet".

Insertion of new section 6A

5. The Principal Act is amended by inserting the following new section immediately after section 6—

6A.(1) The Board shall have all the powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of the provisions of Sub-section (1), the Board shall have power to—

- (a) enter into contracts on matters connected with the Fund;
- (b) manage, control and administer the Fund in such manner and for such purposes as best promotes the purpose for which the Fund is established;
- (c) establish procedures and guidelines for matters relating to registration of enterprises, loan application, loan approval and loan recovery;
- (d) co-ordinate with the Fund Administrator or financial institutions engaged by the Board to—
 - (i) receive and consider all loan applications from eligible persons; and
 - (ii) approve or reject such applications.

Amendment to Section 7 of Act No. 16 of 2016

6. Section 7 of The Principal Act is amended in sub-section (c) by deleting the word "constituency Inuka Fund Management Committees" and substituting therefor the word "recipient".

Insertion of new section 7A

7. The Principal Act is amended by inserting the following new section immediately after section 7—

Qualification for appointment as a member of the Board

(1) The appointment of the Chairperson under Section 6 (1) (a) and members under Section 6 (1)(e) (f), and (g) shall be subject to such persons—

- (a) satisfying the requirements of Chapter Six of the Constitution; and
- (b) holding a minimum of a diploma from an institution recognized in Kenya; or
- (c) on account of their training or experience—
 - (i) having a considerable experience in financial, business or economic matters; or
 - (ii) being knowledgeable about trade, industry, finance or the economy; or
 - (iii) having legal knowledge of the matters pertaining to small business; or
 - (iv) having experience in matters connected with, and of problems experienced by, small business enterprises; or
 - (v) complying with other criteria the Governor may prescribe.

(2) The appointment of the Chairperson under Section 6 (1) (a) and members under Sub-section (1) (e), (f) and (g) shall be by notice in the *Gazette*.

Insertion of new section 7B

8. The Principal Act is amended by inserting the following new section immediately after section 7—

Removal from office

- (1) A member of the Board may be removed from office for—
 - (a) violation of the Constitution or any other law;
 - (b) gross misconduct, whether in the performance of the member's functions or otherwise;
 - (c) physical or mental incapacity to perform the functions of office; or
 - (d) incompetence or neglect of duty.

(2) The County Executive Committee Member may, upon the recommendation of the Board terminate the appointment of a member of the Board on any of the grounds specified under Sub-section (1):

Insertion of new section 7C

9. The Principal Act is amended by inserting the following new section immediately after section 7—

Vacation of office

A person shall cease to be a member of the Board if that person—

- (a) resigns in writing to the County Executive Committee Member;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is incapacitated by prolonged physical or mental illness from performing the duties of the office of a member of the Board;
- (d) is removed from office in accordance to the provisions of this Act;
- or
- (e) dies.

Insertion of new section 7D

10. The Principal Act is amended by inserting the following new section immediately after section 7—

Establishment of the Sub-county Inuka Fund Management Committees

7D (1) there is established a committee for each Sub-County to be known as Sub-County Inuka Fund Management Committees which shall comprise of—

- (a) the Sub-County Trade Officer who shall be the Secretary;
- (b) two youth of either gender to be appointed by the County Executive Committee Member;
- (c) one person with disability to be appointed by the County Executive Committee Member.
- (d) one person representing the Business community nominated by the chamber of commerce and appointed by the County Executive Committee Member;
- (e) the Sub-County Administrator.

(2) Members shall elect the chairperson among themselves in the first meeting.

(3) The qualifications for persons appointed under shall be—

- (a) satisfying the requirements of Chapter six of the constitution;
- (b) be a resident of the Sub-County; and
- (c) have at least a secondary certificate or its equivalent.

(4) In appointing persons as members of the Committee, the appointing authority shall—

- (a) have regard to ethnic and regional diversity of the people of the sub-county;
- (b) ensure that not more than two-thirds of the members of the Committee are of the same gender.

(5) The functions of the Sub-County Inuka Fund Management Committee shall include—

- (a) receiving and processing loan applications;
- (b) preparing reports on the performance of the Inuka fund and forwarding them to the Board.
- (c) causing to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (d) preparing, signing and transmitting to the Board, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submitting a copy to the County Assembly;
- (e) performing all the functions and powers that are necessary for the realization of the objectives of this Act.

Insertion of new section 7E

11. The Principal Act is amended by inserting the following new section immediately after section 7—

Tenure of office

A member of the Sub-County Committee, apart from ex-officio members, shall hold office for a period of three years and shall be eligible for reappointment for one further term of three years.

Insertion of new section 7F

12. The principal Act is amended by inserting the following new section immediately after section 7—

Removal of members of the Sub-County Committees

A member of the Board may be removed from office on any one or more of the following grounds—

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of their functions or otherwise;
- (c) physical or mental incapacity that will render the person incapable of performing his or her duties;
- (d) absence from three consecutive meetings of the Board without a reasonable explanation;
- (e) incompetence or negligence of duty; or
- (f) bankruptcy.

Amendment to Section 13 of Act No. 16 of 2016

13. Section 13 of The Principal Act is amended—

- (a) by deleting the words “responsible for youth and women affairs” immediately after the words “Executive Committee Member”;
- (b) in paragraph (b) by deleting the word “constituencies” and substituting therefor the word “sub counties”;
- (c) in paragraph (c) by Deleting the words “its local offices” and substituting therefor the words “sub county Inuka Management Committees”.

Amendment to Section 14 of Act No. 16 of 2016

14. Section 14 of The Principal Act is amended—

- (a) in paragraph (b) by deleting the word “constituency” and substituting therefor “county”;
- (b) by deleting paragraph (c);
- (c) in paragraph (d) by deleting the word “constituency” and substituting therefor the word “recipient”;
- (d) in paragraph (e) by deleting the word “constituency” appearing immediately after the words “on a particular” and substituting therefor the word “recipient”.

Amendment to Section 15 of Act No. 16 of 2016

15. Section 15 of The Principal Act is amended—

- (a) in sub-section (1) by deleting the word “six” immediately after the words “shall be allowed a” and substituting therefor the word “three”;
- (b) in sub-section (2) by inserting the words “Sub County Inuka Management” immediately after the words “loan proceeds the”.

Amendment to Section 16 of Act No. 16 of 2016

16. Section 16 of The Principal Act is amended in sub-section (1) (a)(iii) by deleting the word “constituency” immediately after the words “operational at the” and substituting therefor the word “sub-county”.

Deletion of section 17

Section 17 of the principal Act is deleted.

Deletion of section 18

Section 18 of the principal act is deleted.

Insertion of new part IIA

19. The Principal Act is amended by inserting the following new part immediately after section 18.

PART IIA—ADMINISTRATION OF THE FUND**Fund administrator**

18A. (1) There shall be a Fund Administrator who shall be appointed by the County Executive Committee Member responsible for Finance through a competitive and transparent process.

(2) The County Executive Committee Member, responsible for Finance shall make regulations for the administration and management of the Fund.

(3) The Fund Administrator shall perform such functions as may be assigned by the Board in consultation with the Chief Officer for Finance and Economic Planning.

(4) The Fund Administrator shall possess the qualifications stipulated in this Act.

Qualifications of the fund administrator

19A. The fund administrator shall—

- (a) satisfy the requirements of Chapter Six of the Constitution; and

- (b) hold a minimum of a degree from an institution recognized in Kenya; and
- (c) on account of their training or experience—
 - (i) having a considerable experience in financial, business or economic matters; or
 - (ii) being knowledgeable about trade, industry, finance or the economy; or
 - (iii) having legal knowledge of the matters pertaining to small business; or
 - (iv) having experience in matters connected with, and of problems experienced by, small business enterprises.

Fund Expenditure

20A. (1) There shall be paid from the Fund—

- (a) loans to qualified applicants;
- (b) operational expenses incurred in the administration of the Fund; and
- (c) monies as are necessary for the Board to carry out its mandate under this Act.

(2) The expenses incurred in paragraphs (b) of Sub-section (1) shall not exceed three percent of the Fund's loan book from time to time.

(3) The provision of any law or regulation relating to the management of public funds shall apply to the management of the Fund.

Disbursements from the Fund

21A.(1) The Board shall lend to the qualifying applicants either directly or through other mechanisms as the Board may recommend. The disbursements shall be effected by the Sub-County Inuka Management Committees at the Sub-County level.

(2) The County Executive Committee Member in charge of Trade may make regulations for efficient realization of this provision.

Accessing the Fund

22A.(1) An Applicant who qualifies for funding under Section 18 may apply for a loan to the Sub-County Management Committee in the prescribed form and in accordance with the prescribed conditions.

(2) The Applicant shall undergo an assessment by the Committee to ascertain viability of the business prior to the consideration of the application by Board.

(3) Beneficiaries shall also undergo business training as per the stipulations of the Committee.

(4) An Applicant who has been awarded a loan will be issued with a Loan Identification Account Number by the Board.

(5) An Applicant who—

(a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing relating to any matter affecting his request for a loan; or

(b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document(s) or paper(s), neglects to do so without reasonable cause; or is granted a loan based on false information, shall be guilty of an offence and in the case of Sub-section (a) and (b) be liable to a fine of not more than one hundred thousand shillings or to imprisonment for a term of not more than six months.

(6) The County Executive Committee Member responsible for Finance shall in consultation with the Board prescribe the limits of amounts that can be disbursed as a loan to an Applicant.

(7) The Board may where an Applicant meets the prescribed conditions approve the loan application or reject it and give reasons to the Applicant.

(8) The Board may—

(a) accept or reject any application for a loan; and

(b) grant a loan to an Applicant and in so granting impose; conditions, demand security and require repayment in installments at such times and within such periods as the Board deems fit.

(9) Provided that and subject to the provisions of this Section the Board may upon the request by an Applicant to whom a loan has been granted at any time vary—

(a) the condition subject to which the loan was made;

(b) any security given in relation to the loan; or

(c) any of the terms of repayment of the loan.

(10) Where the Board has resolved to advance a loan to an applicant, the Board shall notify the Applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or

demanded.

(11) Where an Applicant fails to comply with the requirements of the Board notified to him under Sub-section (2) within the prescribed period, the application shall be deemed to have lapsed.

(12) Where in granting a loan to an Applicant the Board considers it prudent to request for a guarantor to guarantee any loan granted to the Applicant in case of any default by the Applicant in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan amount together with interest accrued and outstanding owed to the Board by the Applicant, as shall be notified to the guarantor by the Board.

(13) Where a guarantor who has been notified by the Board under subsection (12) fails, or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be liable to civil proceedings.

(14) Notwithstanding the provisions of Sub-section (2) a loan shall not be disbursed to an Applicant unless the applicant has undergone the prescribed training.

Borrowing limits

23A. The Board shall advance loans to Applicants as follows –

- (a) individual business persons can borrow a minimum of KSh. 30,000/- up to a maximum of KSh. 1,500,000/-;
- (b) legal persons (companies, cooperatives, societies, associations and micro and small enterprises) can borrow a minimum of KSh. 150,000/- up to a maximum of KSh. 3,000,000/-.

Loan repayment

24A. (1) Upon approval of a loan by the Board, the Beneficiary shall:

- (a) enjoy a grace period of three months from the date of loan disbursement before commencement of monthly repayments;
- (b) pay full amount of loan with interest within 24 months of borrowing of up to KSh. 300,000/- after commencement of repayment;
- (c) pay full amount of loan with interest within 60 months of borrowing of above KSh. 300,000/- after commencement of repayment.

Default on repayment

25A. (1) Non-repayment of loans for a period of 3 consecutive months constitutes a default punishable by a penalty of 5% interest on accumulated arrears.

(2) Non-repayment of loans for a period exceeding 6 months will be referred to a reputable debt collector (s) by the Board for recovery at the defaulter's cost. In addition, the default shall attract 15% interest on accumulated arrears.

Utilization of loan

26A. (1) A loan granted under this Act shall be used for the specific purpose that was approved by the Board at the time of application for loan.

(2) In addition to Sub-section (1), loans advanced to the beneficiaries shall not be used for the following purposes, unless prior consent in writing is obtained from the Board—

- (a) purchase, erection or repair of any building;
- (b) purchase of any motor vehicle; and
- (c) purchase of land.

Administrative cost

27A. (1) A loan granted to a recipient under these Regulations shall carry an administrative cost rate of three percent.

(2) The administrative cost charged under paragraph (1) shall be utilized to defray the administrative expenses of the Fund and any other surplus thereby shall be credited into the account of the Fund.

(3) Any administrative expenses shall be approved by the Board on such terms as the Board may approve.

Winding up of the Fund

28A. In the event of winding up of the Inuka Fund, the cash balances shall be transferred to the account designated by the County Treasury while other assets of the Inuka Fund shall be transferred to the Department for the time being responsible for matters relating to Finance.

Insertion of new part IIB

20. The Principal Act is amended by inserting the following new part immediately after section 18—

PART IIB—REPORTS AND AUDITING OF THE FUND

Annual estimates

29A. (1) At least three months before the commencement of each financial year the Board shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year..

(2) The financial estimates referred to under Sub-section (1) shall—

- (a) differentiate between recurrent and disbursement expenditure; and
- (b) itemize every activity that the Board intends to undertake in respect of the Fund in the coming financial year under a separate vote head.

(3) Upon approval of the estimates by the County Assembly, all monies appropriated for purposes of the Fund shall be paid into the Fund account established under Section 13 (3) of this Act.

Annual Report and Publication

30A. (1) The Board shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the County Executive Committee Member for Finance may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General—

- (a) financial statement of the Fund; and
- (b) such other statements of accounts as the County Executive Committee Member for Finance may approve.

(2) The Board shall, within a period of three months after the end of the financial year or within such longer period as the County Executive Committee Member for finance may approve in writing, submit to the County Executive Committee Member a report of the operations of the Fund and the Board during such year, and the yearly balance sheet and such other statements of account as the County Executive Committee Member shall require, together with the Auditor-General's report.

(3) The Board shall, if the County Executive Committee Member for finance so requires, publish the report, balance sheet and statements submitted under subsection (1) in such manner as the County Executive Committee Member for Finance may specify.

(4) The County Executive Committee Member for finance shall lay before the County Assembly the reports, balance sheet and statements

submitted under Sub-section (1), and such statements of accounts, as may be approved, within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

(5) The County Treasury shall submit to the Auditor-General all books and accounts of the Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Authority such information and explanation as he may consider necessary for the performance of his duties as Auditor-General.

(6) The expenses incurred in and incidental to the auditing of the accounts of the Fund shall be met by the Board.

Insertion of new part IIC

21. The Principal Act is amended by inserting the following new part immediately after section 18—

PART IIC—MISCELLANEOUS PROVISIONS

Offences

31A. (1) An Applicant who—

- (a) is granted a loan on the basis of false statements made in the loan application whether orally or in writing relating to any matter affecting the request of a loan; or
- (b) upon being granted a loan and is subsequently required to answer any questions, furnish any information or particulars or produce any document or paper relating to the loan amount and use thereof, neglects or fails to do so without reasonable cause or furnishes false information or information aimed at misleading the Board;

Commits an offence and is upon conviction liable to a fine not exceeding two hundred and fifty thousand shillings.

(2) In addition to the fine in subsection (1), a director, owner or promoter of a small enterprise shall be liable on conviction to imprisonment for a term not exceeding 18 months.

Regulations

32A. (1) Subject to the provisions of the Public Finance Management Act, 2012, the County Executive Committee Member shall within 60 days after publication of this Act, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of Sub section (1), the regulations may,—

- (a) prescribe the criteria for accessing the Fund;
- (b) prescribe the conditions imposed on accessing and repayment of the loans;
- (c) prescribe the limits of amounts that can be disbursed as loan to an applicant;
- (d) prescribe loan recovery measures;
- (e) prescribe the training to be offered to persons applying for the funding under this Act; or
- (f) prescribe loan application forms.