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No. 4 of 2017

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THE MOMBASA COUNTY LOCAL TOURISM ACT, 2017

AN ACT of the County Assembly of Mombasa to promote local tourism as an engine of socio-economic growth and cultural affirmation; to provide for the development, management, marketing and regulation of sustainable tourism and tourism related activities and services within the County; and for connected purposes

ENACTED by the County Assembly of Mombasa, as follows—

PART 1 — PRELIMINARY

1. This Act may be cited as the Mombasa County Local Tourism Act, 2017 and shall come into operation upon publication in the *Gazette*.

Short Title
Commencement

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

Interpretation.

“County Assembly” means the County Assembly of Mombasa;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to tourism;

“Council” means the Council Local Tourism Council established under section 11 of this Act;

“Local tourism” means any form of tourism activity that takes place within Mombasa County, notwithstanding the provisions of existing national laws and policies;

“Reserve” means the Tourism Reserve as defined under Section 17 of this Act;

“sustainable tourism” means tourism development that meets the needs of present visitors and hosts while protecting and enhancing opportunity for the future;

“Taxes, fees and charges” means the tourism taxes, fees and charges as provided for under Section 31 of this Act

“tourist” means a person travelling to Mombasa and staying in a place outside his or her usual abode for more than twenty four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a

work- related activity remunerated from within the place visited;

3. (1). This Act shall be applied for the administration of local tourism related activities and services in Mombasa County.

Objects of the Act

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

- (a) Maximize the economic and social benefits for Mombasa by fostering a sustainable tourism industry by maximizing the number of tourists in Mombasa, maximizing the expenditure of tourists in Mombasa and contributing to the creation of employment opportunities within the Mombasa local tourism industry;
- (b) Give effect to the Constitution and national law as regards local tourism related activities and services;
- (c) Establish and maintain a financially sustainable mechanism for development, management, marketing and promotion of local tourism;
- (d) Scale-up and maintain investments for the growth and development of local tourism in Mombasa;
- (e) Provide an equitable financing mechanism for development, management, promotion and marketing of local tourism;
- (f) Secure public participation in decision making regarding local tourism related activities and services;
- (g) Provide incentives for private sector contribution in service provision, and in investments for infrastructure development in relation to promoting the growth and development of tourism within Mombasa County.

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

4. The County Executive Committee member and any person applying this Act shall be guided by the principles and values set out in Articles 10 and 232 of the Constitution.

Guiding Principles
and Values

**PART I—POLICY, COORDINATION AND
OVERSIGHT OF LOCAL TOURISM**

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

Powers and Duties
of County Executive
Committee member

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

- (i) formulate and periodically review County local tourism policies;
- (ii) develop strategies for implementation of this Act, and related National and County policies;
- (iii) coordinating with the National government on enhancement of investments in infrastructure, and service delivery in relation to the development, management and marketing of local tourism;
- (iv) coordinating with other County governments on enhancement of investments in infrastructure, and service delivery in relation to developing, managing and promoting local tourism, especially in a cross-county context.
- (v) ensure alignment of the tourism sector with social economic development goals of the County.
- (vi) make regulations as provided for under, or as necessary for the better implementation of, this Act;
- (vii) prepare a report to be submitted to the County Assembly annually, and from time to time as may be necessary, on the state of tourism in the County.

(3). For purposes of securing broad support for tourism related activities and services, the County Executive Committee member, in performance of functions and duties under this Act;

- (i) may consult with other executive departments, public agencies and departments or agencies of Mombasa County whose functions affect or touch on tourism;
- (ii) may consult with relevant non-governmental entities, including private sector and research institutions; and
- (iii) 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 Tourism Council established under this Act.

6. (1) The County Executive Committee Member shall, in accordance with article 10 of the Constitution, section 5 of this Act, and through public participation formulate a County Tourism Development Strategy.

County Tourism
Development
Strategy

(2) The County Tourism Development Strategy must at least make provision for strategies, objectives, indicators, targets, plans, guidelines, procedures and institutional arrangements relating to the promotion, development and transformation of local tourism.

(3) The County Tourism Development Strategy may be published in the Gazette after approval by the County Executive Committee

(4) The County Tourism Development Strategy shall prescribe measures and mechanisms to—

- a) Design a program for the progressive expansion of the tourism sector in Mombasa County.
- b) Identify outputs, overall budget estimates and timeframe to realize expected results.
- c) Accelerate the development of local tourism

related infrastructure.

- d) Guide the roles and actions of stakeholders in management and delivery of local tourism related services
- e) Facilitate the participation of all categories of stakeholders in decision making on matters affecting tourism within the county.
- f) Identify and facilitate the role of the private sector in investments for development of infrastructure and delivery of local tourism related services.

(5) The County Executive Committee Member shall, in every five-year period, or sooner, review and update the County Tourism Development Strategy, and may by notice in the Gazette, publish a new strategy.

(6) The approved Tourism Development Strategy shall guide the County Government, County Executive Committee member, the Council, and all other agencies in performance of their functions on local tourism related activities and services.

7. The County Executive Committee member shall establish a County tourism information and monitoring system for—

County local tourism
information system

- (a) collecting, recording, managing, analysing and disseminating information and data on local tourism; and
- (b) monitoring developments and trends in local tourism.

8.(1) The County Executive Committee Member may for purposes of planning, and with a view to the development and growth in the local tourism sector, establish and maintain a database of information on local tourism businesses.

Information on local
tourism businesses

(2) The County Executive Committee Member may for the purposes of subsection (1), by notice in the Gazette, determine the categories of local tourism businesses that may provide information, and may in this regard determine—

- (a) the period within which information is to be

provided;

- (b) the form and manner for providing information;
- (c) the information which must be provided, which must, in relation to each local tourism business, at least include—
 - (i) the name and form of the local tourism business;
 - (ii) the geographical area of operation;
 - (iii) the nature of services, facilities or products it provides;
 - (iv) particulars relating to the classification and grading of the tourism business;
 - (v) statistics and information of the services, facilities or products it offers; and
 - (vi) information as to the extent it provides facilities which are accessible to people with disabilities, children and the aged;
- (d) the place and manner for the submission of information, which may include submitting the information to the County Government;
- (e) any other information which may be required for the purpose of the database; and
- (f) the type of recognition and incentives that may accrue to local tourism businesses which may provide information in terms of this section.

(3) The County Executive Committee Member may make different determinations under subsection (2) in respect of different categories of local tourism services, facilities and products.

(4) For purposes of a comprehensive database of information, nothing in this section prevents the County Executive Committee Member from collecting information about local tourism businesses from any other source.

9. The County Executive Committee Member may, by notice in the Gazette, issue codes of good practice to—

- (a) guide conduct relating to local tourism services,

Code of conduct for
local tourism

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facilities and products;

- (b) guide conduct of stakeholders responsible for developing and managing local tourism; and
- (c) promote the achievement of the objects of this Act.

PART III—ESTABLISHMENT OF THE COUNCIL OF TOURISM AND SERVICE DELIVERY

10. (1). There is established the Council County Local Tourism Council.

County Local
Tourism Council

- a) The Council shall comprise of—
 - (i) representatives of existing tourism and trade associations operating within Mombasa County;
 - (ii) a representative of allied businesses related to tourism operating within Mombasa County;
 - (iii) a representative from relevant national government agencies;
 - (iv) a representative from local communities; and
 - (v) representation from relevant county government departments.

(2) The Council shall be the primary planning, programming, coordinating, implementing and regulatory County Government agency in the development and promotion of the local tourism industry.

(3) The Council shall be headed by a Director of Tourism, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(4) 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 degree from a university recognized in Kenya in the field of tourism or any tourism related discipline

- (c) Has at least five(5) years experience at senior management level in a relevant field
- (d) Meets the requirements of Chapter 6 of the constitution

(5) The Director, appointed under subsection (2), shall be responsible for performance of the specific duties and functions of the Council set out in subsection (7) below

(6) The Council shall operate under the direction of the County Executive Committee member, and provide advice on matters of legislation, policy, coordination, and the performance of the tourism sector

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

- (a) Co-ordination, linkages and oversight over the tourism sector between public and private entities and agencies.
- (b) Market Mombasa at national, regional and international levels as a premier tourism destination;
- (c) Identify market needs and advise tourism stakeholders on the tourism market trends;
- (d) Organize and host meetings and provide incentives for conferences and exhibitions at Tourism Conventions and Exhibition Centres;
- (e) Develop and implement, incentives for conferences and exhibitions strategy, upon consultation with the relevant stakeholders;
- (f) Develop and implement County Integrated Beach Management Plans;
- (g) Promote water sports and big game fishing activities
- (h) Development of tourism services master plan, investment and strategic plans for resource mobilization and financing.
- (i) Collection and dissemination to the public, from time to time, of information on tourism related activities and services, including challenges and

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opportunities for improvement.

- (j) Monitoring, evaluation and assessment of the tourism sector performance.
- (k) Perform any other functions that are ancillary to the object and purpose for which the Tourism Council is established.

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

(9) Tenure and Vacancy of Office

The Director shall hold office for a term of three (3) years but shall be eligible for re-appointment for one further term of three (3) years.

11.(1) All reserves of the Council, and all revenues arising from provision of tourism related services by the Directorate Council, shall be used solely for the purposes of development, marketing and management of tourism.

Financial
sustainability of
the Council

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

- (i) Investment planning on infrastructure and asset development
- (ii) Options for Public-Private Partnerships where necessary
- (iii) Strategies for full Operations and Maintenance Cost Coverage
- (vi) Human resource management plan, including grievance mechanisms

12. (1) The Council shall annually make proposals to the County Executive Committee member on areas of tourism development required.

County reserves
for tourism
development

(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 reserves for agreed tourism development activities and services to the County Assembly

13. The Council may pursue public private partnership options for development, management and marketing of tourism, subject to the provisions of national law

Public Private
Partnerships
(No. 15 of 2013)

14. The County Executive Committee member shall undertake Monitoring and Evaluation of the Council in the performance of its mandate

Monitoring and
Evaluation

15. The County Executive Committee Member shall promote sustainable and responsible local tourism development and the Council shall, in that respect, do the following—

Sustainable
tourism

- (a) encourage quality local tourism experiences that include meaningful interactions between tourists and host communities with a greater understanding and appreciation of cultural tourism;
- (b) develop plans for local tourism management and promotion that address environmental sustainability and nature tourism and ensure that all sector strategies include tangible concern for the environment, nature tourism and eco-tourism ethics;
- (c) ensure that local tourism does not deprive local communities and wildlife of access to land resources;
- (d) promote local tourism development and management where it can offer a competitive form of land use for local communities and be integrated into land use plans;
- (e) facilitate the increased use of sustainable waste disposal and bio-degradable packaging;
- (f) facilitate incentives to local tourism projects that utilise green designs or technologies which contribute to creating sustainable livelihoods and poverty reduction;

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- (g) engage local communities in planning and decision making, empower women, children and youth, and embrace the wisdom, knowledge and values of local communities in the development of local tourism;
- (h) design and implement broad public awareness campaigns, focusing on the linkages of local tourism, environment, sustainable development and broader society issues;
- (i) approve projects that adhere to globally recognised sustainable tourism certification standards; and
- (j) research and monitoring of emerging trends related to tourism.

PART IV—LOCAL TOURISM RESERVE

16. (1) There is hereby established a reserve, to be known as the Mombasa County Local Tourism Reserve.

(2) Subject to this Act, the object of the Reserve shall be the development of the local tourism industry in Mombasa County.

17. The Reserve shall consist of—

- (a) levies, fees and other moneys paid under this Act; and Levies, fees and other charges as established in the Mombasa County Finance Act.
- (b) any moneys that may be payable to the Reserve from moneys appropriated for the purpose by the County Assembly; and
- (c) any moneys that the Reserve may obtain, with the approval of the County Executive Committee Member and the County Executive Committee Member responsible for finance, by way of donations, loans or other financial assistance; and any other moneys that may vest in or accrue to the Reserve, whether in terms of this Act or otherwise.

18.(1) The County Executive Committee Member for finance and economic planning shall designate the

Establishment of
the Mombasa
County Local
Tourism Reserve

Sources of
reserves for the
Reserve

Chief Officer for the time being in charge of tourism as the person responsible for administering the reserve and who shall:

- (a) supervise and control the administration of the Reserve;
- (b) be the accounting officer of the reserve;
- (c) prepare a budget and such plans for the administration of the reserve to be approved by the County Executive Committee;
- (d) impose conditions and restrictions on the use of any expenditure arising from the reserve;
- (e) ensure that the earnings of, or accruals to the reserve are retained in the reserve, unless the County Executive Committee member for finance directs otherwise;
- (f) ensure that money held in the reserve, including any earnings or accruals referred to in paragraph (e) is spent only for the purposes for which the reserve is established;
- (g) prepare accounts for the reserve for each financial year;
- (h) ensure that the accounts for the reserve and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time;
- (i) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General;
- (j) furnish such additional information as may be required for examination and audit by the Auditor General or under any applicable law;
- (k) present the financial statements to the County Assembly;

Administration
of the Reserve

(2) All monies of the reserve shall be maintained in a separate bank account in the name of the reserve opened and administered in accordance with the

Application of
the Reserve

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provisions of the Public Finance Management Act, 2012.

(3) The balance of the reserve at the close of each financial year shall be retained in the reserve for the purpose for which the reserve is established.

19. Moneys in the Reserve shall be applied to the following purposes-

Financial year of
the Reserve

- (a) meeting the expenses of the Council provided that no moneys shall be applied towards any expense that is not provided for in a budget approved by the County Assembly; and
- (b) any other purpose which the County Executive Committee Member, after consultation with the Council, considers will promote the orderly development of the local tourism industry.

20. The financial year of the Reserve shall be the period of twelve months ending on the 30th June each year.

Books of
account

21.(1) The County Executive Committee Member shall ensure that—

Accounts and
audit

- (a) proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Reserve and Council; and
- (b) in respect of each financial year—
 - (i) a balance-sheet; and
 - (ii) a statement of the transactions referred to in paragraph (a); are prepared without undue delay.

22.(1) The County Executive Committee Member shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Reserve and Council.

Beach
management
program

(2) The annual accounts of the must be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

PART V—MANAGEMENT OF PUBLIC BEACHES

23. (1) The County Government shall prepare a

Purpose of beach
management
program

beach management program in accordance with this Part.

(2) A beach management program shall be made in relation to all the public beaches in the County.

24. The purpose of a beach management program is to set the long-term strategy for the co-ordinated management of public beaches within the County with a focus on protecting and preserving all public beaches.

Matters to be dealt with in the beach management program

25. (1) The beach management program shall—

Public participation

- (a) identify any issues affecting the beaches within the County
- (b) identify the actions required to address those issues in an integrated and strategic manner, and
- (c) identify how and when those actions are to be implemented, including those to be implemented by the County Government, those to be implemented under environmental planning instruments and development control plans under other applicable laws such as the Environmental Management and Coordination Act, and those to be implemented by other parties, and
- (d) identify the costs of those actions and proposed cost-sharing arrangements and other viable reserving mechanisms for those actions to ensure the delivery of those actions is consistent with the timing for their implementation under the beach management program, and

(2) A beach management program may also include other matters as may be related to protection of beaches.

26. Before adopting a beach management program, the County Government shall conduct public participation on the draft program.

Approval and publication of beach management plan

27. (1) The County Executive Committee Member may approve a draft beach management program and submit it to the County Executive Committee for adoption.

Review, amendment and repeal of beach management plan

(2) The County Executive Committee Member, after

the beach management program has been adopted, shall publish it in the Gazette.

(3) The beach management program shall take effect on the date on which it is published in the Gazette or, if a later date is specified in the program for its commencement, on the later date so specified.

28. (1) The County Government shall ensure that the beach management program is reviewed at least once every five years.

Availability of
beach
management
program

(2) A beach management program may, at any time, be amended in whole or in part by another beach management program.

(3) A beach management program may, at any time, be replaced by another beach management program.

(4) Following a review, the County Government may, by notice published in the Gazette, repeal a beach management program.

29. (1) A copy of the beach management program shall be available for inspection by the public without charge at the office of the County Executive Committee Member during ordinary office hours.

Taxes, fees and
charges

(2) A copy of a beach management program shall be available for public inspection on the website of the County Government within fourteen days of its publication in the Gazette.

PART VI—TAXES, FEES AND CHARGES

30. (1) Subject to the provisions of national law, the County Executive Committee Member responsible for finance may, on the recommendation of the County Executive Committee Member, provide fees to promote the development of sustainable tourism including—

- (a) local tourism licence and permits fees;
- (b) incentives to deter bad tourism activities and services;
- (c) user fees for the local tourism products and services rendered.

**Levies, fees and other charges as established in the
Mombasa County Finance Act.**

**PART VII—OFFENCES, PENALTIES AND
ENFORCEMENT**

31. Prohibition and offences relating to pollution (1) A person shall not—

- (a) discharge any dangerous materials, substances or oil into a designated tourism development area contrary to the provisions of this Act or any other law; or
- (b) pollute wildlife habitats and ecosystems, or discharge any pollutant detrimental to the environment contrary to the provisions of this Act or any other law

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or imprisonment, to a term of not exceeding thirty six months, or to both.

(3) In addition to the fine imposed under subsection (2), the court may direct the convicted person to-

- (a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and mitigating effects of pollution; and
- (b) clean up the polluted habitats and ecosystems and mitigating effects of pollution to a third party through adequate compensation, restoration and restitution.

32. General prohibition and offences

(1) A person shall not—

- (a) Breach or fail to comply with the provisions of this Act;
- (b) Breach or fail to comply with any of the terms or conditions of a license issued to him under this Act;
- (c) Fail to comply with a lawful requirement or demand made or given by an authorized officer
- (d) Obstruct a person in the execution of his powers or duties under this Act;

- (e) Knowingly or recklessly make a statement or representation which is false;
- (f) Knowingly or recklessly furnish a document or information required under this Act which is false; or
- (g) Knowingly or recklessly use or furnish a fake or forged or invalid license or a license that has been altered without authorization.

A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding eighteen months or both.

PART VIII—GENERAL PROVISIONS

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

Conduct of
Employees of the
Council

(2) Notwithstanding (1) above, any actions of employees of the Council 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 Council to willfully fail to perform their duties, when lawfully assigned to them.

Cap 63

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

Cap 65

(5) For purposes of this section, an Employee of the Council 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) and (3).

Cap 183

34. Any person impersonating an employee of the Council for purposes of misrepresenting themselves as being able to perform a function on behalf of the Council, shall be guilty of an offence, and upon conviction, liable to

Impersonation of
Council Staff

a sentence of not more than one year, or a fine not exceeding fifty thousand shillings, or both

35. (1) Any operator of a tourism enterprise, shall take measures to ensure—

Safety of tourists

- (a) the safety and security of tourists and other patrons within the tourism enterprise;
- (b) the safety and welfare of its employees; and
- (c) public liability insurance cover for its clients.

(2) A proprietor, hotel keeper or hotel administration shall have adaptable emergency evacuation plans on the premises for emergencies caused by, inter alia, fire, floods, attacks by wild animals, thunderstorms and every other conceivable thing, act or activity that may require emergency action to be taken.

(3) 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 one hundred thousand shillings, or both.

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

Obstruction/
misrepresentation

(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.

37. (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 tourism services in, and to Mombasa County, to the Council.

Agreement with
National government
on assets

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

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

Regulations

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

COUNTY ASSEMBLIES FORUM (CAF)
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