

SPECIAL ISSUE

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THE MANDERA COUNTY PLANT HEALTH ACT, 2015

No. 13 of 2015

Date of Assent: 20th November, 2014

Date of Commencement: 10th December, 2014

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**THE MANDERA COUNTY PLANT HEALTH ACT,
2014**

**AN ACT of the County Assembly of Mandera to
provide for the prevention and control of pests
affecting plants and for connected purposes**

ENACTED by the county Assembly of Mandera as follows —

PART I — PRELIMINARY

1. This Act may be cited as the Mandera County Plant Health Act, 2014 Short title

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

“causal pathogen” means any virus, fungus, bacteria or other organism, in whatever stage of existence such organism may be;

“plant” includes food crops, cash crops, fruit crops, horticultural crops, animal feeds etc;

“county executive” means the county executive member responsible for matters relating to agriculture;

“disease” means any abnormal condition of plants communicable or believed to be communicable by the transfer of causative agent or by the propagation of the affected plant which the county executive member may, by order, declare to be a disease for the purposes of this Act;

“farm unit” means a single tract of land, or a number of separate tracts held under the same or different tenures, operated as a single unit utilizing, in whole or in part, common facilities, equipments and storage for agricultural purposes;

“grower” means any person who operates a farm unit by planting, managing, maintaining and harvesting of plants and includes any servant or agent of such a person;

“inspector” means a plant health inspector appointed under section (3);

“KEPHIS” means Kenya Plant Health inspectorate service.

“pest” means any of the following descriptions of pests which the county executive committee agriculture

may, by order, declare to be a pest for the purposes of this Act, that is to say —

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(a) any animal or vegetable organism inimical to the growth or existence of living plants or injurious to plant products; and

(b) any other agent capable of producing a communicable disease of plants;

“plant” means any member of the kingdom, whether living or dead, and includes any part of a plant whether severed from the plant or not;

“vegetable organism” means any vegetable organism, in whatever stage of existence;

“vehicle” includes any motor vehicle, railway vehicle, aircraft or carriage; and

“Vessel” includes any ship, a boat any every other kind of vessel used in navigation either on the sea or inland waters.

“Weed” any plan that grows in area where it is not desired

**PART II—ESTABLISHMENT OF COUNTY
GOVERNMENT PLANT HEALTH**

3. (1) Mandera County Plant Health Board comprises of—

- (a) County Executive Committee (CEC) for agriculture—Chairperson
- (b) Chief Officer for agriculture—Vice-Chairperson;
- (c) Director for agriculture—Member;
- (d) Deputy director for agriculture—Member;
- (e) Sub-county agriculture officer—Member;
- (f) Plant health inspector—Member;
- (g) Technical advisors—Member;

(2) Appointment procedures.

The plant health inspectors shall be competitively recruited and appointed by the county public service board with the approval of the county assembly.

4. (1) A person shall qualify to be appointed as the plant health inspector if the person—

- a) is a Kenyan citizen, holds a diploma in plant health and has an experience of not less than three (3)

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years.

(2) in appointing a plant health inspector, the body responsible for the county public service shall Insure—

- (a) Compliance with the national value and principles of governance under article 10 and 232 of the constitution of Kenya.
- (b) gender equity
- (c) The inclusion of minorities and marginalized communities.
- (d) A person satisfies the requirement of chapter six (6) of the constitution of Kenya.

5. The plant health inspector shall be removed from the office on the following grounds;

- (a) Unable to perform the functions of the office by reason of mental, physical, infirmity or death.
- (b) Is convicted of an offence and sentenced to a term of imprisonment of six (6) months or more.
- (c) Resigns in writing to the chief officer.
- (d) Disqualified from holding offices under the constitution of Kenya.
- (e) Engaged in any gross misconduct or Abuse of office.

6. In cases where the vacancy arises in the office of the plant health inspector the institution responsible for recruiting public servants in the county shall within appropriate time fill the position in accordance with sections 3 and 4 of this Act.

PART III—ADMINISTRATION

7.(1) The County Service Board may designate a qualified person to be a plant health inspector.

Powers of the inspector.

(2) An inspector or officer may at any reasonable time—

- (a) Enter any place or premises where he/she believes on reasonable grounds that plants are growing or are being stored.
- (b) Stop and enter any vehicle or conveyance that

he/she believes on reasonable grounds may contain plants or plant produce, for the purpose of inspecting the place, premises, vehicle or conveyance and any plant growing, stored or contained inside.

- (c) Open any container, bag, store, bus, lorry, car, donkey cart or package found therein or examine anything found inside that he/she believes on reasonable grounds contains any vegetable matter;
- (d) Take a sample of any vegetable matter situated in the place, premises, vehicle, farm, plot or conveyance for the purpose of ascertaining the existence of any regulated disease or causal pathogen; and
- (e) Require any person to produce for inspection or for the purpose of obtaining copies or extracts any books, shipping Acts, Acts of lading, proof of disinfection, invoices or other documents or papers concerning any matter relevant to the administration of this Act or other law.

(3) The owner or person in charge of a place entered by an inspector under this section, and any person found in that place, shall—

- (a) Give the inspector all reasonable assistance to enable the inspector to carry out any action authorized under this Act;
- (b) Furnish the inspector with any record or information he or she may reasonably require to carry out any action authorized under this Act; and

(4) Where the inspector has reason to believe, based on the report of an inspector, that any plant or other matter constitutes a hazard for reason that it is or could be infected with a regulated disease or causal pathogen or was planted in contravention of this Act or the regulations, the inspector may, in writing and subject to such terms and conditions as may be specified in the order—

- (a) issue an order to confiscate the plant or plant produce;
- (b) order its destruction in accordance with the regulations; or

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- (c) Order the clean-up and disinfection of any farm unit or premises in accordance with the regulations.

8. (1) The inspector may recommend compensation to be paid out of public funds to any person whose plants or plant produce are destroyed pursuant to this Act.

Power to order compensation

(2) For the purpose of ascertaining the compensation payable under subsection (1), the value of the plant, seed or part of a seed or plant in each case be taken to be its estimated value if harvested and marketed under normal conditions in an average year after deducting the estimated cost of such harvesting and marketing to the owner, and the inspector, may if the inspector deems fit, require such value to be ascertained by its officers or by arbitration.

(3) The inspector may, if the inspector deems fit, withhold compensation if, in relation to the plant or the seed, plant or any part of a seed, the owner or the person having charge of it has, in the opinion of the inspector, done anything in contravention of, or failed to do anything in compliance with, any order under this Act.

9. A person who obstructs or hinders or knowingly make any false or misleading statements either orally or in writing to an inspector or County Officer engaged in carrying out his duties or functions under this Act or the regulations, commits an offence

Obstruction of inspector

10. Except as provided by this Act, a person who removes from quarantine anything seized and detained pursuant to this Act or the regulations, commits an offence

Removal from quarantine

11. The County Agricultural Officer, on the report of an inspector or officer setting out a reasonable belief of the existence of any disease in any area defined in a report to the inspector, may by order prohibit or restrict the transportation or importation either by road, air, water, or animal back into or from or the movement in that area of any plant or plant produce or other matter that in the officer's opinion is likely to result in the spread of that disease.

Transport restrictions

12. (1) Where evidence is produced that a seed has been planted on the farm unit operated by a grower, the grower shall be deemed to have planted the plant or permitted it to be planted.

Responsibility of grower for seed planted

(2) Where plants are identified by seed certification number tags, the person identified by the seed certification number tags shall be deemed to be the grower of the plants.

(3) If the grower or the person responsible for the planting, management, maintenance or harvest of a plant cannot be identified by an inspector, the inspector shall quarantine that plant for a period of up to two weeks.

(4) If, after every reasonable attempt, the inspector is unable, within the quarantine period, to find the grower or person responsible for the plant, the plant shall be deemed to constitute a hazard and the inspector may issue an order accordingly.

13. A person who knowingly introduces any pest or disease into any cultivated land or land commits an offence and liable upon conviction to a fine not exceeding two million shillings or to an imprisonment term not exceeding six years or both.

Penalty for willful
introduction of
pest or disease

14. The County Executive Member may make rules for the purpose of preventing and controlling attacks by or the spread of pests or diseases, and, in particular and without prejudice to the generality of the foregoing power, as to all or any of the following matters—

Rules for
prevention or
spread of pests,
etc.

- (a) Control and restrict or inspect any imported plants or seeds materials before its allowed into the County in accordance this Act or any other written law be investigated for safety at the National Laboratories
- (b) the disinfection, treatment, destruction and disposal of any unhealthy plant, or of any plant appearing to be infected with any pest or disease, or of anything whatever, whether of a nature similar to a plant or not, likely to infect any plant with any pest or disease;
- (c) The payment and recovery of fees for any disinfection or treatment carried out by any inspector, or for any services rendered by any inspector in connection with any such disinfection or treatment;
- (d) the prohibition, restriction and regulation of the removal or transport of any such plant, seed or seed material or thing as aforesaid;
- (e) The control and destruction of any plant which has been declared to be a pest or weed under this Act;
- (f) The prohibition, restriction or regulation of the cultivation and harvesting, either in the whole of the county or in any specified area, of any plant

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or weeds, where, in the opinion of the executive member, any pest or disease cannot otherwise be readily or adequately controlled or eradicated;

- (g) The reporting of the occurrence of any pest or disease specified in the rules, and the collection and transmission of specimens of any pest or diseased plant;
- (h) The methods of planting, cleaning, cultivating and harvesting to be adopted, and the precautions and measures to be taken by any person for the purpose of preventing or controlling attacks by, or the spread of, any pest or disease, or for the purpose of giving effect to any rules made under this Act;
- (i) The issue and revocation of licenses for and the inspection of nurseries and supplier, stockiest, Retailer of farm inputs stores in which plants or seeds materials are sold or grown for the purposes of sale and the imposition of fees for such licenses, and the regulation of the sale or removal of plant or seedlings or seed material, whether grown in nurseries or not;
- (j) The disinfection, fumigation and treatment of any building, vehicle, aircraft or vessel suspected of being or having been used for the storage or conveyance of anything likely to infect any plant with any pest or disease.
- (k) The measures to be taken, including provision for the requisitioning on payment of chemicals, appliances, labour and other means, to secure the eradication of diseases and pests; the quarantine of infected areas;
- (l) The prohibition, restriction and regulation of the tapping of plants of any description.
- (m) The imposition and provision of fines for any inspection, disinfection or treatment carried out in compliance with, or under any power conferred by, any order made under this Act.
- (n) Importation of chemicals not allowed by KEPHIS in accordance with the relevant laws.
- (o) Importation of chemicals not inspected by the Inspector in accordance with this Act or any other law.

15. (1) A person who contravenes any provision of this Act commits an offence and is liable to a fine not exceeding two hundred thousand shillings or to an imprisonment term of two years or both, and on subsequent conviction to a fine not exceeding two hundred thousand shillings or to an imprisonment term of two years or both.

General penalty
and offences

(2) Where the contravention of this Act or rules under this Act, is a continuous offence, the offender is guilty of a separate offence for each day the contravention or violation continues.

(3) Proceedings with respect to an offence under this Act or the regulations may be instituted at any time within one year after the time when the subject matter of the proceedings arose.

16. No action or proceeding may be commenced against the county executive member, the inspector, inspector or an agent of the officer county agricultural officer, for any act done in good faith in the performance or intended performance of a responsibility or in the exercise or intended exercise of an authorized action under this Act, or for any neglect or default in the performance of a responsibility or the exercise of an authorized action in good faith

Protection from
personal liability

17. The county executive may make regulations for the better functioning of this Act.

Regulations

PART IV—MISCELLANEOUS PROVISIONS

18. The annual estimates of the Directorate of Agriculture in the county government shall, in accordance with the Public Finance management Act, 2012, make provision for the administrative and technical costs of the Department.

Administrative
and technical
costs

No. 18 of 2012

19. (1) A person may make a complaint in writing to the Department if that person has reason to believe that-

- (a) The grower is operating illegally or is contravening any provision of this Act; or
- (b) The plant has suffered or is harmed as a result of disinfection, fumigation and treatment.

(2) Upon receiving a complaint under sub-section the Department shall refer the complaint to Member and notify the County plant health Board of the complaint.

(3) The Executive Member shall, subject to sub-

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section (4), make such inquiries as may be appropriate and may conduct discussions with the complaining party, the grower or employee involved in the complaint.

(4) The Executive Member shall submit to the department a report containing the following information—

- (a) The grounds of the complaint, noting any facts in dispute between the relevant parties;
- (b) whether, in the opinion of the Executive Member, the matter can be remedied;
- (c) If the Executive Member is of the opinion that the matter can be remedied, the measures recommended by the Executive Member to effect the remedy; and
- (d) The time period that the Executive Member considers to be reasonably sufficient to affect the remedy.

(5) Upon receiving a report under sub-section (4), the Department shall constitute a committee to consider the report and shall—

- (a) Give notice in writing to the grower, the complaining party and any other party referred to in the report, of the constitution of a committee to consider the report;
- (b) Specify the date, being not less than seven days from the date on which the parties receive the notice, when the parties may attend before the committee to make representations on the complaint.

(6) After consideration of the report, the committee shall submit its recommendation to the head of the Department who, taking the recommendation into consideration, may—

- (a) dismiss the complaint; or
- (b) direct the implementation of the recommendations in the report, subject to such variations as he or she may deem appropriate;
- (c) Inform the County plant health Board of the decision made.

(7) Any person aggrieved by the decision of the Head of Department under this section may, within thirty days of being notified of the decision, appeal against the decision

(8) This section is without prejudice to any other proceedings that may be lawfully instituted against the grower, employee or other relevant party.

FIRST SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNTY PLANT HEALTH BOARD.

1. *Filling of Vacancy:* Vacancy in the office of a member under Section 3 (1) shall be filled by a person appointed by the CEC in accordance with the provisions of this Schedule.

2. *Vice-Chairperson:* The Board shall, at its first meeting, elect a Deputy Chairperson from amongst the persons appointed under Section 3(1) of this Act.

3. *Meetings of the Board:* The Board shall meet at least three times in each year.

4. *Special meetings:* The Chairperson may at any time convene a special meeting of the Board and shall do so within fifteen days of a written requisition for the meeting signed by at least three members.

5. *Chairperson to preside:* (1) The Chairperson shall preside at all meetings of the Board, in which the Chairperson is present and in the case of his or her absence, the Deputy Chairperson shall preside;

(2) At a meeting of the Board at which neither the Chairperson or Deputy Chairperson is present, the members of the Board present shall elect one of their numbers to preside, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

6. *Quorum:* The quorum for the conduct of the business of the Board shall be three members.

7. *Voting Procedure:* The decisions of the Board shall be by a majority of voting procedure Votes, and the Chairperson of the meeting shall have an Original and a casting vote.

8. *Validity of Proceedings:* The validity of any proceedings of the Board shall validity of proceedings not be affected by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

9. *Minutes of the Meeting:* Minutes of the proceedings at meetings of the Board minutes of the meeting shall be kept in such a manner as the

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Board directs, and, on the written request of the CEC, shall be made available to him or her or any person nominated by him or her.

10. Committees of the Board: The Board may establish such committee as may Board be necessary for the performance of the functions of the Board and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

11. Power of the Board to Regulate own Procedure: Subject to the provisions of this Schedule, the Regulate own procedure Board shall regulate its own procedure.

12. Disclosure of interest: (1) If a member of the Board is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

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

PART V— GENERAL PROVISIONS

13. No action or proceeding may be commenced against the county executive member, the chief officer, an agent of the chief officer, for any act done in good faith in the performance or intended performance of a responsibility or in the exercise or intended exercise of an authorized action under this Act, or for any neglect or default in the performance of a responsibility or the exercise of an authorized action in good faith.

Protection from
personal liability

14. A person who contravenes a provision of this Act where no other penalties are provided commits an offence and is liable to a fine not exceeding two hundred thousand shillings or to an imprisonment term of two years or both.

General penalty
and offences