

THE KILIFI COUNTY TRADE AND MARKETS BILL, 2019

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THE KILIFI COUNTY TRADE AND MARKETS BILL, 2019

A Bill for

AN ACT of the County Assembly of Kilifi to provide for the regulation of trade and other business activities, the establishment and management of markets and for related purposes

ENACTED by the County Assembly of Kilifi County as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kilifi County Trade and Markets Act, 2019 and shall come into operation upon publication.

Interpretation

2. In this Act—

“authorized officer” means an officer appointed under this Act;

“butcher’s meat” include beef, mutton, veal, lamb, pork, kid or the meat of any other authorized animal slaughtered for human consumption for the purpose of sale;

“casual trader” means a person who attends a particular market with their goods, in the hope that they may be allocated a trading position for that day only, from the vacant positions in the market;

“defective goods” include goods that—

(a) are in the particular circumstances, unfit for purpose and use; or

(b) do not comply with a product safety or quality standard;

“department” means the department responsible for trade;

“executive committee member” means the Executive Committee Member responsible for trade;

“marketable commodities” includes all goods and services capable of being traded in;

“public market” means a public market established under this Act;

“regular trader” means a trader who has been permitted to use a particular trading position on a particular day at a particular market site;

“section” means the section responsible for trade in the Department of Trade, Industrialization and Tourism;

“slaughter-house” means any premises used in connection with the slaughtering of animals whose meat is intended for human consumption;

“stall” means a stand, booth or compartment in a market erected and leased to traders by the County Government for sale of goods and services;and

“trade” means carrying on the business of exchanging goods or services for a consideration.

Object and Purpose of the Act

3. The Object and Purpose of this bill isto—
- (a) promote trade in thecounty;
 - (b) regulate trade within thecounty;
 - (c) promote local economicdevelopment;
 - (d) enable the County Government to attract and promote public private partnerships and private investments in trade;and
 - (e) enable the County Government to enter into joint trade ventures with otherpartners.

PART II—DIRECTORATE OF TRADE.

Functions and Powers of the Section.

4. In addition to existing functions, the section shall perform the followingfunctions—

- (a) advise the department on all matters relating to trade in the county;
- (b) represent, when appropriate and considered necessary by the Executive Committee Member, the county at meetings, conferences or similar gatherings where matters of trade and investment affecting the county are discussed or considered;
- (c) encourage and assist in the promotion of the county’s produce and products including exhibiting at trade fairs;
- (d) advise on the commodities pricing and marketing information within the county;
- (e) advise the department, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any legislation which promotes trade, for the time being in force in the county;

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- (f) ensure laws relating to fair trading and consumer protection are adhered to;
 - (g) promote the development of small businesses, to disseminate knowledge of sound business and commercial practice in the county;
 - (h) undertake research into any aspect of county trade, commerce and industry, including the conducting of surveys, gathering statistics and publishing reports from time to time;
 - (i) to make or cause to be made and paid for out of public funds all such repairs, alterations, improvements and additions to public markets as the department considers necessary;
 - (j) with the concurrence of the County Government, collaborate with National Government entities responsible for standardization, quality control and counterfeit control;
 - (k) evaluate investment proposals suitable for funding by the Government or donors;
 - (l) facilitate revenue collection from markets and generate regular reports to the County Treasury; and
 - (m) carry out such other functions or acts that will promote trade investment in the county.

Trade Promotion and Development.

5. (1) The section shall promote and facilitate trade development through—

- (a) providing business support and advisory services;
- (b) carrying out regular assessment on business climate;
- (c) reviewing policies and practices that affect business climate and advising the department on appropriate measures to be adopted for promoting trade development;
- (d) facilitating access to markets for goods and services produced in the county;
- (e) facilitating and promoting trade within and outside the county;
- (f) in collaboration with other stakeholders, organizing trade fairs for promoting products;
- (g) create and maintain a database of all traders within the county;
- (h) providing sectoral and inter sectoral linkages in collaboration with private sector players within and outside the county; and

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- (i) performing any other role intended to facilitate and promote trading as may be assigned by the County Executive Member.

Confidential Information.

6. (1) An authorized officer who divulges confidential information obtained during the course of his or her duties under this Act or any other law commits an offence. This section does not apply to information that is—

- (a) given as evidence in proceedings taken under this Act or any law relating to consumer protection;
- (b) given by the authorized officer as part of a report prepared for the purpose of an investigation; or
- (c) a matter of public record or is otherwise in the public domain.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to a term of imprisonment not exceeding three months, or both.

County Public Private Forum

7. (1) There shall be established the County Public-Private Sector Stakeholder Consultative Forum which shall—

- (a) be an avenue for consultation and dialogue between the County Government and the private sector on matters affecting trade;
- (b) provide the platform for the County Executive Committee Member to—
 - (i) articulate the county agenda, policies and programs being planned or implemented in order to promote private sector trade development;
 - (ii) report on the progress of addressing matters raised by the private sector related to trade and private sector development;
- (c) provide a platform for—
 - (i) mobilizing the private sector to participate in county development programs; and
 - (ii) consultation with the private sector on matters relating to compliance with county and national laws.

(2) The Executive Committee Member shall be the convener of the forum while the Chief Officer responsible for Trade will be the Secretary for the forum.

(3) The Executive Committee Member shall ensure the County Public-Private Sector Forum is held at least once every year.

Business parks

8. (1) The County Government shall progressively ensure that there is established in each sub-county such business parks as are necessary to facilitate trade development in the county.

(2) The business parks established under this section may include—

- (a) business incubation parks;
- (b) special economic zones which may target general business processes; and
- (c) Special services zones.

(3) The department may collaborate with other stakeholders to facilitate the development and operationalization of the business parks established under this section.

(4) The department shall in each year prioritize the essential infrastructure to be developed for the financial year.

PART III—MARKETS

Establishment and Control of Public Markets

9. The department shall establish, maintain, manage and regulate public markets for the sale of marketable commodities therein and provide all such things as may be necessary for the convenient use of such markets.

Regulation of Market Places

10. (1) A person shall not hold any market for the sale of marketable commodities in any place not being a public market established under this Act, unless authorized by the department.

(2) The department may authorize any person to establish and use at any place a market for the sale of marketable commodities and such Authority may be granted upon such terms and conditions as may be prescribed.

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

Power to Impose Charges for use of Stalls, etc.

- 11.** (1) The department may demand and take from every person—
- (a) occupying or using any stall or place in any public market;
 - (b) bringing into any such market any marketable commodities or anything which the Executive Committee Member may permit to be sold therein; or
 - (c) using any weighing or measuring instrument provided and kept in any such market, such stallages and charges as may be prescribed.

(2) Stallages and charges payable in respect of any public market or weighing or measuring instruments shall be paid at such times and in such manner as may be prescribed.

(3) Any person who fails to comply with the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding ten thousand Kenya shillings or to a term of imprisonment not exceeding one month or both.

Market days

12. The Executive Committee Member in consultation with the relevant stakeholders may designate certain days to be market days for public markets.

Trading

13. (1) A regular trader, who wants to carry out any commercial activity from a public market must obtain a license or, in the case of a casual trader, pay such fee as may be prescribed.

(2) A license issued under subsection (1) shall not entitle the regular trader to carry out such activity unless it is in relation to a specific market.

(3) A regular trader shall not be issued with more than one license for a post in a market that operates on the same day and time.

(4) A regular trader using a motor vehicle to carry on their commercial activity may be provided a space to operate—

- (i) in the case that the activity being undertaken concerns the selling of food items, prior approval by the county public health authorities or any other lawful Authority must first be sought and obtained: Provided that with reference to food related items the department, following recommendation by the health authorities or any other lawful Authority, may order the license to sell or not to

sell specific items as ordered by the county public health authorities or any other lawful Authority.

- (ii) in the case of non-food related items the department may issue an order to the licensee to restrict the selling of any item that may be offensive to the public.

Street Hawker

14. A street hawker who is authorized may carry out his or her commercial activity from the authorized streets and in the prescribed manner.

Car Boot Sales

15. (1) A person who organizes a car boot sale or who sells goods from a car boot in a market or any public place must be authorized in a prescribed manner.

(2) An application for Authority under this section shall contain the following information—

- (a) the name of the applicant;
- (b) the place where the car boot sale will be held; and
- (c) the date or dates when the car boot sale will be held.

Buskers

16. Selling by busking is subject to the following conditions—

- (a) an application by any busker who produces and sells his or her ware on site, is filed on the prescribed form;
- (b) the place where the busker stops to sell their goods is at least five metres of walking distance from the entrance of any commercial premises; for such purpose, a fixed kiosk is considered to be commercial premises;
- (c) no selling by busking is permitted in the precincts of any public building or establishment, hotel or any shopping complex unless authorized in the prescribed manner;
- (d) no objects are placed on the pavement; and
- (e) no nuisance or inconvenience is caused to the members of public.

Selling Commodities Within Prescribed Areas

17. (1) No person shall sell any marketable commodities in the entrance to any building or on the pavements of any road which is situated within the limits of a prescribed area for the purposes of this section.

(2) Subject to subsection (1), no person shall sell any marketable commodities in any part of any public place within the limits of a prescribed area.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or a term of imprisonment not exceeding one month.

Obstructing an Authorized Officer

18. A person who obstructs an authorized officer from receiving any stallage or charge prescribed under this Act or any other written law or any person employed to superintend a market or to keep order therein, whilst in the execution of his or her duty, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

Disorderly Behaviour in Public Market

19. (1) An authorized officer or any other authorized person may remove from any market any person who behaves in a disorderly or offensive manner or may arrest such person without a warrant.

(2) A person who in a market behaves in a disorderly or offensive manner, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to a term of imprisonment not exceeding three months, or to both.

Duty to Provide Information

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(2) A trader shall provide information in the prescribed manner in respect of the goods he or she sells or offers for sale.

(3) No trader or market operator shall falsify, obliterate or destroy the information required to be maintained pursuant to this section.

(4) A market operator shall maintain the information provided to him or her pursuant to this Act for the period prescribed by Regulations.

(5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding threemonths.

Duty to Produce Prescribed Goods

21. A trader shall upon request, produce prescribed goods or provide access to prescribed goods to an authorized officer.

Seizure of Prohibited Goods

22. Where an authorized officer is satisfied that the goods and services being sold or offered for sale are—

- (a) prohibited; or
- (b) stolen or suspected of being stolen, the authorized officer may, without laying any information or obtaining any warrant, seize and remove those goods.

PART IV—MANAGEMENT OF MARKETS

Market attendant.

23. The department shall appoint or designate officer(s) referred to as market attendant(s) to be responsible for the administration and management of public markets.

Management Committee

24. (1) Traders in every market within the county shall elect a Market Management Committee provided that all members shall be traders in the specific market consisting of—

- (a) chairperson;
- (b) market attendant who shall be the secretary to the committee and appointed by the Directorate of Trade ;
- (c) treasurer; and
- (d) three other members from different sectors within the market.

(2) Persons elected under subsection (1) (a), (c) and (d) shall serve for a period of two years and may be re-elected for one other terms.

(3) An election under subsection (1) shall be presided over by the authorized officer in the presence of the ward administrator.

Removal of Management Committee

25. (1) A Market Management Committee or a Member thereof may be removed from office by the

traders through a written communication to the
authorized officer for—

- (a) incompetence;
- (b) misappropriation of funds;

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- (c) gross misconduct;
 - (d) prolonged mental or physical infirmity;
 - (e) declared bankrupt; or
 - (f) violation of the Constitution or any other law.

(2) A member of a Market Management Committee may cease to hold office if he or she—

- (a) dies;
- (b) resigns; or
- (c) if removed under sub-section (1)

(3) A Market Management Committee or a Member thereof who ceases to be a Member under subsection (2) shall be replaced as provided in section 23.

Functions of the Market Management Committee

26. The functions of the Market Management Committee shall be to—

- (a) regulate the entry of persons and of vehicular traffic into the market;
- (b) assist the department to assign stalls and other facilities within the market to traders;
- (c) assist the department in dispute resolution within the market;
- (d) determine persons eligible to work at the markets;
- (e) provide liaison between the market traders and the department;
- (f) ensure garbage collection and management;
- (g) supervise the conduct of those who enter the market for transacting business;
- (h) regulate the marketing of notified agricultural produce in the market area;
- (i) fixing the time for holding auctions;
- (j) collect, maintain, disseminate and supply information in respect of market activities including market intelligence;
- (k) In consultation with the traders, generate management rules of the market.

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- (l) enforce the provisions of the rules of the market.
 - (m) carry out any other functions as may be assigned by the department.

Management of Markets.

27. (1) The department shall ensure that it reserves enough money in its budgeting cycle to be used for market improvement, provision of amenities and administrative costs in all markets within the county.

Allocation of Trading Spaces or Operating Area

28. (1) The Executive Committee Member shall prescribe guidelines for managing the allocation of trading space or operating area within a market.

- (2) The guidelines shall ensure that—
 - (a) persons who were operating trade in refurbished or reconstructed markets are given priority in allocation of trading space;
 - (b) allocation of trading space is conducted in an open and transparent manner;
 - (c) there is inclusivity in the allocations;
 - (d) the allocation of trading space does not promote monopoly and anti-competition in the market;
 - (e) no trader leases more than one stall, block or space at the same time;
 - (f) that a trader surrenders allocated space, stall shop or any other facility within the market once he or she ceases to be a trader; and
 - (g) no lessee of any stall or block assigns the lease to any other person or permits the use of any stall or block by any other person without the written permission of the authorized officer.
- (3) The department may by notice in writing revoke any lease granted to a trader.

Compliance With Public and Environmental Health Requirements

29. The department shall liaise with public and environmental health officers to ensure that every market complies with public and environmental health requirements.

PART V—MISCELLANEOUS

Inspection Powers.

30. An authorized officer may, at any reasonable time, enter any place that he or she believes on reasonable grounds to be a place where goods are being, or have been manufactured, prepared or supplied or that is a place where services are supplied or arranged, and may—

- (a) inspect any goods or partly manufactured goods and make such other inspections as he or she considers to be necessary;
- (b) inspect all butcher's meat, fish, vegetables and all other articles of food offered for sale in the public market and, if in their opinion the same are unfit for human consumption, immediately seize the same pending any action under the provisions of the County Public Health Law;
- (c) take a sample of anything from which goods are manufactured or produced;
- (d) make inquiries of any person employed at that place or who has responsibility over that place;
- (e) inspect and take copies of records required to be kept under this Act or any other law regulating or applying to the business being conducted at that place; or
- (f) require the production of any accounting documents, returns, inventories or other information whether or not relating to the business of any manufacturer or trader if such information is considered necessary for the discharge of any power or function vested in the department.

Enforcement to Promote Business Environment

31. The enforcement of this Act shall be carried out in a manner that—

- (a) recognizes and respects the right to property and privacy;
- (b) supports and encourages compliance with the Act;
- (c) promotes trade and business operations; and
- (d) respects and observes the rule of law and fundamental rights.

Authorized Officers

32. (1) The Executive Committee Member shall appoint persons to be authorized officers for the purposes of this Act.

(2) Notwithstanding the provisions of subsection (1), all officers working in or seconded to the section, the county public health officers and officers who are for the time being referred to as enforcement officers shall be authorized officers for the purposes of this Act.

(3) An authorized officer shall be responsible for ensuring compliance with this Act.

Regulations

33. The Executive Committee Member may make Regulations—

- (a) regulating the use of markets and market buildings;
- (b) prescribing and describing the use of weighing or measuring instruments to be used by persons selling marketable commodities in any market;
- (c) preventing nuisances and obstructions in markets and for maintaining cleanliness therein and on the approach thereto;
- (d) prescribing the goods that may be sold in any market;
- (e) fixing, regulating and collecting stallages or charges and the payment and collection thereof in any public market;
- (f) for the inspection and examination of marketable commodities sold or offered for sale in any market;
- (g) fixing the days and hours during each day on which any market may be opened and for preventing the sale and purchase of marketable commodities in any market on any day or at any times except as fixed;
- (h) prescribing the conditions subject to which the several stalls or places in any public market shall be held, occupied or used by persons having or using the same;
- (i) imposing on any person having or using any stall or place in any market the duty of taking steps and using such means for protecting from contamination any articles of food offered or exposed for sale in any market; for maintaining order and preventing disturbances in a public market; and
- (j) for excluding or removing from public markets any person suffering from any infectious or contagious disease.

Savings

34. All markets established before the coming into operation of this Act are deemed to have been established under this Act, and all Regulations, rules, orders or bylaws made under any other law in force at the time of the commencement of this Act shall be deemed to have been made under this Act and shall remain in force until other provisions are made in accordance with this Act.

MEMORANDUM OF OBJECTS AND REASON

The Bill seeks provide for to provide for the regulation of trade and other business activities and the establishment and management of markets in Kilifi County in order to promote local economic development and enable the County Government to attract and promote public private partnerships and private investments intrade.

The Bill is divided into five parts as follows—

Part I provides for preliminaries including short title, interpretation, object and purpose of the Bill.

Part II provides for the trade section including functions and powers of the trade section, trade promotion and development, county public private forums as well as business parks.

Part III provides for markets including the establishment and control of public markets, market days, trading, car boot sales, buskers and hawkers. This part further prescribes the conduct at the market places.

Part IV relates to the management of markets making provisions for the market administrators and market committees with their respective functions.

Part V is the miscellaneous part providing for inspection powers, duties of authorised officers, Regulations and saving clauses.

The Bill respects the separation of powers of national and county governments and recognizes the critical role assigned to the county with regard to trade.

The Bill shall occasion additional expense which will be provided for in the estimates.