

THE KILIFI COUNTY AGRICULTURAL DEVELOPMENT FUND BILL, 2016

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A Bill for

AN ACT of the County Assembly of Kilifi to provide for the growth and development of the agricultural sector, enhance production, improve quality value addition, and marketing; to establish the County Agricultural Development Fund to finance the agricultural sector and for connected purposes

ENACTED by the County Assembly of Kilifi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Kilifi County Agricultural Development Fund Act, 2016 and shall come into operation on such a date as the County Executive Member may, by notice in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires— “agriculture” includes—

- (a) fruit, vegetable, flower and seed farming;
- (b) dairy farming, bee keeping, breeding and keeping of livestock;
- (c) conservation and keeping of game animals, game birds, and aquatic animals;
- (d) game ranching and game cropping;
- (e) the use of the land for grazing, market gardening, or for nursery grounds;
- (f) agro-forestry;
- (g) use of land for the production, transformation and trade of crop and livestock products; or
- (h) such other use of land for purposes of crop and animal production.

“Agricultural land” means land that is used for agricultural purposes, and includes any land which by any written law is zoned, registered or otherwise designated as agricultural land;

“Board of Trustees” means the Board of the County Agricultural Development Fund Board of Trustees established under section 7 of this Act.

“County Executive Committee Member” means the Member of the Executive Committee responsible for matters relating to agriculture;

“crop” means any plant that is grown in significant quantities to be harvested as food , as livestock fodder , fuel, or for any other economic purpose

"eligible borrower" means an individual or enterprise in agricultural sector to which credit facility may be provided by the Fund or an lending institution and includes—

- (a) micro, small or medium enterprise;
- (b) cooperative society;
- (c) a youth entrepreneur; and
- (d) a woman entrepreneur;

“Fund” means the Kilifi County Agricultural Development Fund established under section 4 of this Act;

“financial year” means a period of twelve consecutive months from 1st July to 30th June.

3. (1) The object and purpose of this Act is to provide a legal framework to facilitate the growth and development of agriculture in the county and in particular to—

- (i) establish the Kilifi County Agricultural Development Fund to finance the agricultural development initiatives;
- (ii) promote of the production, processing, marketing, and distribution of agricultural products in suitable areas of the county;
- (iii) reduce duplication and overlap of functions among institutions involved in the regulation of agriculture;
- (iv) promote competitiveness in the agricultural sector and to develop diversified crop and animal products and market outlets; and
- (v) attract and promote private investment in agriculture.

Object and
purpose of the
Act

PART II —ESTABLISHMENT AND ADMINISTRATION OF THE KILIFI COUNTY AGRICULTURAL DEVELOPMENT FUND

Establishment of the Fund

4. (1) There shall be established a Fund to be known as the Kilifi County Agricultural Development Fund

(2) The Fund shall consist of—

(a) funds appropriated by County Assembly for purposes for which the Fund is established.

(b) monies paid as license fees, commission, export or import agency fees and fees that may accrue to or vest in the Fund in the course of exercise of its functions assigned under this Act;

(c) gifts, donations, grants and endowments made to the Fund from any lawful source;

(d) income from any investment made by the Fund and

(e) monies from any other lawful source approved by the Trustees.

(3) There shall be paid out of the Fund any expenditure approved by the Board pursuant to this Act.

(4) The Fund shall be managed by a Board of Trustees established under section 7 of this Act.

Objective of the Fund

5. The objective of the fund is to support growth and development in Agriculture and enhance productivity in the agricultural sector by-

(a) providing funding for eligible projects in the agricultural sector;

(b) facilitating the provision of farm inputs to farmers including fertilizers, seeds, agro-chemicals, animal breeding, animal drugs and feeds, AI services and fishing equipment and supplies;

- (c) facilitating market research, dissemination of market information and strengthening producer organizations;
- (d) funding irrigation infrastructure such as community boreholes, dams, shallow wells and water pans
- (e) facilitating the development of appropriate storage, bulking and processing facilities in strategic areas with potential for increased agricultural production
- (f) promote development of value-addition infrastructural facilities including provision of electricity and water in rural areas;
- (g) improve investment climate and efficiency of agribusiness and to promote the development of agricultural products for export.

Application of
the Fund

6. Subject to this Act, the Fund shall be used to support eligible projects aimed at—

- (a) increasing productivity of crops grown within the County;
- (b) plant and animal disease control;
- (c) creation and expansion of agricultural products markets;
- (d) promotion of cooperative societies within the County;
- (e) soil and water conservation; and
- (f) supporting other agricultural development initiatives.

Establishment
of the Board of
Trustees of the
Fund

7.(1) There is established the Kilifi County Agricultural Development Fund Board of Trustees which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) talking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contract;

- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

Composition of the
Board of Trustees

8. (1) The Board of Trustees shall comprise—

- (a) a non-executive Chairperson, not being a public officer, nominated by the County Executive Committee Member and appointed by the Governor
- (b) the County Chief officer in the department for the time being responsible for agriculture;
- (c) the County Chief officer in the department for the time being responsible for finance;
- (d) the Head of Legal services in the County; and
- (e) four other persons not being public officers, nominated by the Executive Committee Member and appointed by the Governor as follows—
 - (i) one person being a woman farmer;
 - (ii) one person being a man farmer; and
 - (iii) two persons, a man and a woman, representing persons with disabilities in the county.
- (f) the Chief Executive Officer appointed under section 18; who shall also be the secretary of the Board; and

(2) The persons appointed under subsection (1)(e) shall hold office for a term of five years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1)(e) if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least three years professional experience in the relevant field; and
- (c) meets the requirements of leadership and integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

Removal
from Office

9. (1) A member of the Board may be removed from office only 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 member may, upon the recommendation of the Board terminate the appointment of a member of the Board on any of the grounds specified under subsection (1).

Vacation of
Office

10. A person shall cease to be a member of the Board if such person—

(a) resigns in writing, to the County Executive member;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is declared bankrupt;

(d) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or

(e) dies.

Filling of
vacancy

11. Where a vacancy occurs in the membership of the Board under section 9 or 10, the County Executive member shall, if the vacancy relates to any of the positions specified under section 8 (e), appoint a new member in accordance with the provisions of this Act.

Meetings of
the Board

12. (1) The business and affairs of the Board shall be conducted in accordance with the First schedule of this Act.

(2) Without prejudice to subsection (1), the Board may regulate its own procedure.

(3) The Board may invite any persons to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

Functions of
the Board of
Trustees

13. (1) The functions of the Board shall be to—

(a) provide strategic guidance and oversight of the Fund;

- (b) implement the policies of the county government on agricultural sector funding;
- (c) ensure that all projects funded under the Fund are consistent with the counties priorities specified in the relevant policy documents on County agricultural development and financing;
- (d) authorize allocations from the Fund ;
- (e) formulate and approve standards, guidelines and procedures for funding under this Act,
- (f) perform any other function as may be conferred on it by this Act or any other law

(2) Without prejudice to subsection (1), the Board—

- (a) may receive and consider applications for funding from eligible applicants and determine eligible projects;
- (b) may establish linkages with financial and other institutions for purposes of providing credit guarantee for loans issued to eligible borrowers by such institutions;
- (c) may conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
- (d) may establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;
- (e) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of agricultural products by means of inter-trading or intra-trading among the established wholesale markets;

- (f) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;
- (g) shall ensure secure domestic food supply for the county;
- (h) shall formulate policies and guidelines on dealing with other crops;
- (i) promote and advise on strategies for value addition prior to the export of crops from Kenya;
- (j) recommend general industry agreements between farmers and processors of scheduled crops;
- (k) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and
- (l) perform any other relevant function.

Incentives to
Farmers

14. (1) The County Executive Committee member shall, on the advice of the Board, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.

(2) The Board may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programs for ensuring the provision of the following incentives and facilities to growers and dealers of agricultural products—

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (g) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local

fertilizer blending and initiating establishment of national or county fertilizer manufacturing plants;

- (h) pest and disease control; and
- (i) post-harvest facilities and technologies including storage, processing, distribution and transport facilities.

Powers of the Board of Trustees

15. (1) In the discharge of its functions, the Board of Trustees shall have all powers necessary or incidental to achievement of the objects and purpose of this Act.

(2) Without limiting the generality of subsection (1), the Board of Trustee shall have powers to—

- (a) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;
- (b) employ such persons as may from time to time be necessary for discharging its functions, with the approval of the County Executive Committee Member and the County Public Service Board;
- (c) enter into partnerships with financial and other institutions; and
- (d) establish such committees or departments for the better carrying out of its functions under this Act as it may deem fit.

(3) The Board of Trustees may establish offices in every sub-county in the County.

Delegation by the Board of Trustees

16. (1) The Board of Trustees may establish such sub-committees and delegate such functions as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Board of Trustees may co-opt into the membership of a sub- committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

(3) The Board of Trustees may, by resolution either generally or in any particular case, delegate to any officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Board of Trustees under this Act or under any other written law.

Conduct business and affairs of the Board

17.(1) Subject to subsection (2), the business and affairs of the Board of Trustees shall be conducted in accordance with the First Schedule of this Act.

Chief
Executive
Officer

(2) Except as provided in the Schedule, the Board of Trustees may regulate its own procedure.

18. (1) There shall be a Chief Executive Officer of the Fund who shall be appointed by the County Executive Committee Member, on the recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) Despite subsection (1), the appointment of the Chief Executive Officer shall be through a competitive recruitment process.

(3) A person is qualified for appointment as the Chief Executive Officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least three years' experience in—

(i) senior management; or

(ii) a profession directly relevant to the functions of the Board;

(d) has experience in finance; and

(e) meets the requirements of leadership and integrity set out in chapter six of the Constitution of Kenya 2010.

(4) The Chief Executive Officer shall, subject to the direction of the Board, be responsible for the—

(a) administration of the fund;

(b) implementation of the decisions of the Board;

(c) day to day management of the affairs of the Board;

(d) organization and management of the employees; and

(e) any other function that may be assigned by the Fund Board.

(5) The Chief Executive Officer holds office for a term of three years and is eligible for re-appointment for one further term.

(6) The Chief Executive Officer may be removed from office on the recommendation of the Fund Board on the grounds set out under section 9 of this Act.

PART III—MISCELLANEOUS

Funds to be retained in the Fund

19. All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purposes for which the Fund is established.

Community based projects to be given priority.

20. (1) Subject to this Act, the Board shall give priority to community-based projects in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

Submission of Projects

21. (1) all project proposals that seek to benefit from the Fund shall be submitted by a potential beneficiary to the Chief Executive Officer in such form and detail as shall be prescribed;

(2) The types of projects submitted for funding under this Act shall comply with the provisions of this Act and in particular, meet the objectives stipulated in Section 5 of this Act.

Project implementation

22. (1) Agricultural officers at the Sub-County and Ward level shall ensure the implementation of all projects funded under this Act as shall be prescribed.

(2) Where a particular project covers several sectors, the Chief Executive Officer shall order the formation of an inter-departmental team at the Sub-County, Ward or village level to coordinate the optimal and efficient implementation of the project as may be prescribed.

(3) The Chief Executive Officer shall monitor the implementation of projects under this Act to ensure compliance with the provisions of this Act.

Project payments and ownership of property

23. (1) All payments for projects to be funded under this Act shall be made, processed and effected in accordance with the relevant national government regulations for the time being in force.

(2) All fixed and movable assets, including equipment bought under this Act shall be the property of the Fund to be insured in the name of the Fund.

(3) No asset or equipment acquired under this section shall be disposed of without the prior approval of the Board of Trustees.

(4) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (3) shall be credited to the account of the Fund.

Annual Report

24. (1) The Board shall, not later than six months after the end of each financial year, prepare an annual report in respect of that financial year, containing:

- (a) the audited financial statements;
- (b) the report on the operations of the Fund; and
- (c) any other information the County Executive Committee Member may require.

(2) The annual Report shall be presented to the Member of the Executive Committee who shall table it before the County Assembly within three months after receiving the Report.

Audit

25. The Fund shall be audited and reported upon by the Auditor-General in accordance with the provisions of the Public Audit Act 2012

Salaries and allowances

26. The Chief Executive Officer and staff of the Fund shall be entitled to such salaries and allowances as shall be determined by the County Public Service Board in accordance with the Salaries and Remunerations Commission of Kenya guidelines.

Power to make regulations

27. (1) The Member of the Executive Committee shall in consultation make regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) guidelines for operating the Fund;
- (b) maximum credit facility to be issued or guaranteed under the Fund;

- (c) criteria for categorization of micro, small and medium enterprises for purposes of this Act;
- (d) extent of the liability of the Fund to a lender in circumstances where the lender fails to comply with this Act;
- (e) variation of the terms and conditions of an agreement where a borrower fails or refuses to comply with this Act;
- (f) credit insurance and reinsurance;
- (g) manner of giving of information to the Fund for the purposes of the making of an agreement;
- (h) audit and examination of accounts of qualifying borrowers;
- (i) circumstances under which a given class of loans may be written off and the remedies to the lenders thereof; and
- (j) such other matters as the Fund considers necessary.

(3) Without prejudice to subsection (1) the nature and scope of the Regulations shall—

- (a) be for the objects and purpose and set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.

Offenses

8. (1) A person who—

- (a) willfully applies the proceeds of a loan to any purpose other than the purpose for which the loan was approved; or
- (b) having obtained a loan, willfully destroys or misappropriates any security given in relation to the guaranteed loan; or
- (c) knowingly gives false information; or
- (d) destroys any asset used as a collateral by a financial intermediary,

commits an offence and is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

(a) a director, general manager, secretary of the Fund or other similar officer of the body corporate; or

(b) purporting to act in any such capacity as provided in paragraph (a), commits that offence.

(3) Despite subsection (2), it is a defense if a person proves that the offence was committed without their consent or involvement and that they exercised due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of their functions in that capacity and to all the circumstances.

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings of the Board

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The Chairperson shall convene the ordinary meetings of the Board at the premises of the offices of the county government.

(3) Despite the provisions of sub-paragraph (1), the Chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Board.

(4) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the chief executive officer.

(5) The quorum for the conduct of the business of the Board shall be two-thirds of the total number of members including the Chairperson or the person presiding.

(6) The Chairperson shall preside at every meeting of the Board at which he is present and in his absence, the members of the Board present shall elect one person from their number to preside over the meeting of the Board and he shall have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

Disclosure of
Interest

(9) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or any other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or any other matter is the subject of consideration, the member shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his or her interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

(2) A disclosure of interest made under paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF REASONS AND OBJECTS

The principal object of this Bill is to provide for the growth and development of the agricultural sector, enhance production, and improve quality, value addition, and marketing and to establish the County Agricultural Development Fund to finance the agricultural sector. This will enhance agricultural productivity in the county and improve the economic status of farmers in the county.

The structure of the Bill is as follows:

Part I (clause 1-3) of the Bill contains preliminary provisions. These include the title of the proposed Bill, interpretation of terms and the objects. The object of the Bill is to provide a legal framework to facilitate the growth and development of agriculture in the County and in particular to—

- (i) establish the Kilifi County Agricultural Development Fund to finance the agricultural development initiatives;
- (ii) promote of the production, processing, marketing, and distribution of agricultural products in suitable areas of the county;

(iii) reduce duplication and overlap of functions among institutions involved in the regulation of agriculture;

(iv) promote competitiveness in the agricultural sector and to develop diversified crop and animal products and market outlets; and

(v) attract and promote private investment in agriculture.

Part II (clause 4-18) of the Bill establishes the County Agricultural Development Fund, provides for its administrative framework and prescribes the composition, terms of office, functions and the powers of the Board of Trustees. The Fund shall be funded from monies apportioned by the assembly, license fees, gifts donations and grants from any lawful source. The purpose of the Fund shall be to fund the agricultural sector, facilitate the provision of farm inputs, irrigation infrastructure and promotion of value addition. The Fund shall be applied in control of plant and animal diseases, soil and water conservation, market research and generally agricultural development initiatives. The Fund shall be administered by a Board of Trustees comprised of the Chief Officers in the relevant departments, non-public officer representatives and the Chief Executive Officer of the Fund.

Part III (clauses 20-28) of the Bill contains provisions of a general nature. Among these are provisions requiring that balances in the Fund at the end of the financial year shall be retained for purposes for which the Fund is established. It is also provided that community based projects shall be given priority in funding. This part also gives the Executive Committee member the powers to make subordinate legislation for purposes of giving effect to the Act.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the annual estimate of the Kilifi County Government.

Dated the, 2016

ONESMUS KARISA GAMBO

Chairperson,

Agriculture, Livestock and Fisheries Committee