

**THE KILIFI COUNTY FOREST CONSERVATION AND MANAGEMENT BILL,
2019**

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THE KILIFI COUNTY FOREST CONSERVATION AND MANAGEMENT BILL, 2019

A Bill for

AN ACT of the Kilifi County Assembly to provide for the sustainable, utilization, management and conservation of the forests and forest resources for the socio-economic prosperity of the County and for connected purposes.

ENACTED by Kilifi County Assembly as follows--

PART 1: PRELIMINARIES

Citation and commencement. **1.** This Act may be cited as the Kilifi County Forest Conservation and Management Act, 2018 and shall come into force upon publication in the Kenya Gazette.

Interpretation. **2.** In this Act unless the context otherwise requires-
“Biodiversity” means plants, animals and micro-organisms, the genes they contain and the ecosystems of which they are part. Biodiversity includes diversity between species and variability among ecosystems.

“Committee” means the Kilifi County Forest Conservation Committee established under section 7 of this Act;

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

‘Chain of custody’ means the channel through which products are distributed, tracked and monitored from their origin in the forest to their end-use;

“Commercial use” means any use of forest products or forest Land, other than direct use for personal purposes or infrastructure development and it includes uses involving Trade or any other disposition of Forest Products, services or Forest Land for direct or indirect financial benefits;

“Community” means a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interests as provided under Article 63 of the Constitution;

“Community forest” includes-

- (a) Forestland lawfully registered in the name of group representatives under the provisions of any law;
- (b) Forestland lawfully transferred to a specific community by any process of law;
- (c) Forestland that is—
 - (i) Lawfully held, managed or used by specific communities as forest area, grazing areas or shrines;
 - (ii) Such other forest that may be set aside as community forest by the County Government.

“Concession Agreement” means authorization which is a long term agreement issued by the County Department responsible for forestry for the management of a specified forest area at a price determined after forest valuation and bidding;

“Contract” means authorization entered into with a third part for performance of specified activities on behalf of the County Department responsible for forestry in a forest area for a specified fee;

“County forest” includes-

(a) Forestland within public land as defined by the Land Act 2012 and the Land Registration Act 2012; Forest act 2016 (31(3))

(b) Forestland transferred to the County by way of sale, reversion or surrender;

(c) Forestland in respect of which no individual or community ownership can be established by any legal process;

“Directorate of Forestry ” means the Directorate of Forestry established under Section 6 of this Act;

“County Forest Reserve” means a County Forest Under Schedule I of this Act or a forest gazetted by the Executive Committee Member in charge of Forest in line with the Provisions of this Act.

“Customary rights” mean the rights which result from a long series of habitual or traditional actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit;

“Ecosystem” means a dynamic complex of plant, animal micro-organism communities and their non-living environment interacting as a functional unit;

“Forest’ means a land area of more than 0.5 hectares and has a width of at least 20 meters, with a tree canopy cover of more than 10%, and **trees higher than 5 meters**, which is not primarily under agricultural or other specific non-forest land use;

“Forest community” means a group of persons who have a traditional association with a forest for the purposes of livelihood, culture or religion;

“Forest concession” means the right of use granted to an individual or organization in respect to a specific forest area on public land by means of a long-term contract for the purpose of commercial forest management and utilization;

“Forestland” means a tract of land, including its flora and fauna that is devoted to growing of trees for the production of timber, wood and other forest products.

“Forest management guidelines”

(a) means a written document establishing direction and goals for the management, conservation and utilization of a specific forest land area; specifying-

- (i) all silvicultural practices and activities necessary to accomplish the merchantable production of a forest product,
- (ii) all practices that will minimize adverse environmental effects and optimize livelihood objectives

“Forest resources” means anything of practical, commercial, social, religious, spiritual, recreational, educational, scientific, subsistence, or other potential use to humans that exists in the forest environment, including but not limited to flora, fauna, and microorganisms; as well as ecosystem services.

“Fund” Means the Kilifi County Forest Conservation and Management Fund established under section 71 of this Act;

“Indigenous forest” means a forest which has come about by natural regeneration of trees primarily native to Kilifi County;

“License” means a permit or other written authorization issued under the provisions of this Act;

“Licensing authority” means the person responsible for the issuance of licenses under his charge being the County Government of Kilifi or its appointed authority;

“Person” means a natural person or a corporate , including community associations;

“Protected tree” means any tree or tree species which has been declared under this Act or any other national or international law; to be protected;

“Private forest” includes-

- (a) Forestland held by any person under freehold tenure;
- (b) Forestland held by any person under leasehold tenure; and
- (c) Forest on individually owned farmland
- (d) Any other forestland registered or designated as private under this Act

“Property mark” means a mark placed on a log, timber or other forest produce with a prescribed instrument to denote ownership by the County Government, a community

or any other authorities;

“Provisional forest” means any forest which has been declared a provisional forest by the Executive Committee Member;

“Timber” means any tree that has been felled or which has fallen, and cut into planks, wood or logs;

“Wildlife” means all forms of fauna and flora other than domesticated plants and animals;

“Woodfuel” means fuel such as charcoal or firewood obtained from a forest.

Purpose of the Act.

3. (1) The purpose of this Act is to ensure the sustainable management of forest resources in Kilifi County.

(2) Forest management is sustainable if it ensures biological diversity, enhanced productivity, regeneration and resilience capacities; vitality and posterity of forests. Sustainable management allows for the possibility of multiple uses of forest in a way that satisfies ecological, economic, social, and cultural needs for today and future.

Application of the Act.

4. This Act shall apply to County Forests, Community Forests and Private forests in Kilifi County.

Guiding principles and values in decision-making.

5.(1) The principles set out in subsection (3) must be considered and applied in a balanced way-

(i) In the exercise of any power or the performance of any duty in terms of this Act;

(ii) In the development and implementation of County Government policies affecting forests:

(iii) In the exercise of any power or the performance of any duty in terms of any other legislation where the exercise of that power or the performance of that duty will impact on a forest;

(iv) In the issuing of a license or other authorization relating to the use of a resource that will affect forestry; and

(v) By any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity, which may have an effect on forests.

(2) An organ of County Government applying these principles shall—

(i) Take into account the differences between natural forests, woodlands and plantations;

(ii) Recognize that conservation of biological diversity within plantations should be

promoted in a way which is consistent with the primary economic purpose for which the plantation was established;

(3) The principles and values are;

- (i) Forest resources are an important County asset of common concern and shall be managed in a manner that does not compromise the value of the resource according to the principle of sustainable development.
- (ii) The “precautionary principle” and the “polluter and user pays principle” shall be applied in the conservation and management of forests;
- (iii) To ensure that efforts to increase forest and tree cover are undertaken within broad County land use and development plans, and an ‘ecosystem’ approach’ shall be adopted wherever possible;
- (iv) The management of forests and forest resources shall where applicable be devolved to the lowest level possible;
- (v) The principles of good governance and full access to public information, and a participatory approach to forest conservation and management will be enshrined to ensure the effective involvement of communities, the private sector and civil societies in planning, implementation and decision making processes;
- (vi) The rights and responsibilities of communities and private land owners to manage and utilize forest and forest resources shall be recognized(respected) so long as these do not contravene the provisions of any law.;
- (vii) Forest conservation and management shall be recognized and supported as a form of land use on public, community and private land;
- (viii) The benefits accruing from County and Community forests’ conservation, their management and sustainable utilization shall be enjoyed and equitably shared among the people of Kilifi County.
- (ix) Scientific knowledge and expertise, professionalism and international best practice, including the provisions of multilateral environmental agreements, shall form the cornerstone of policy and forest conservation and management,
- (x) Forest research, training and education shall be promoted; and,
- (xi) Indigenous knowledge and intellectual property rights embodied in forest biodiversity and genetic resources shall be protected.

PART II ADMINISTRATION

Establishment,
role and
functions of
Forestry Director
ate

6 (1) There is established the Directorate of Forestry which shall be an office in the County Department of Water, Forestry, Environment and Natural Resources.

(2) The functions of the Directorate shall be -

- (a) to implement all the County forest functions according to this Act;
- (b) support and facilitate the Committee in carrying out its functions;

(3) The Directorate shall be headed by a Director who shall be recruited by the County Public Service Board and appointed by the Executive Committee Member responsible for Forestry.

(4) To qualify for appointment as a Director, a person shall –

- (a) possess a degree in natural resources, forestry, or environmental management or any related field from a recognized university; and
- (b) have had experience in natural resources, forestry, or environmental management for a period of not less than five years.

(4) The Executive Committee Member and the County Public Service Board shall ensure that the Directorate has adequate human, financial and any other appropriate resources to enable it carry out the functions assigned under this Act.

Establishment
and Composition
of the County
Forest
Conservation
Committee.

7. (1) There is established the County Forest Conservation Committee which shall consist of-

- (a) a non-executive chairperson, recruited competitively by the County Public Service Board and appointed by the Governor;
- (b) The County Director of forestry who will be the secretary to the committee;
- (c) The Chief Officer, responsible for Lands or a designated representative appointed in writing;
- (d) Head of Kenya Forest Service or his/her designated representative in Kilifi County appointed in writing;
- (e) Head of Kenya Wildlife Service or his/her designated representative in Kilifi County appointed in writing;
- (f) The Chief Officer responsible for agriculture or his/her designated representative appointed in writing

(g) Three other persons who shall be appointed by the Executive Committee Member fulfilling such criteria and drawn from such membership as provided in subsection (3) and (4). (2) A person shall be qualified for appointment as Chairperson under subsection (1) (a) if the person-

- i) Meets the requirements of Chapter Six of the Constitution;
- ii) Holds at least a Bachelors Degree from a recognized institution ;
- iii) Has knowledge and experience of not less than five years in the field of natural resources, forestry, or environmental management.

(3) A person shall be qualified for appointment as a Member under sub-section (1) (g) if the person:

- (a) holds at least a diploma from a recognized institution of higher learning;
- (b) has knowledge and experience of at least 2 years in matters relating to natural resources, forestry, or environmental management, or any other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is a resident of the sub-county.

(4) The members of the Committee to be appointed under section 7 (1)(g) shall be drawn from wood fuel groups, groups representing private forest owners, groups representing the community owning forests, non-governmental organizations operating within the County and whose activities are focused on natural resource conservation and body representing the businesses related to forestry taking into account gender, disability and youth.

(5) The members of the Committee under subsection (1) (g) shall hold office for a period of three years which may be renewed for a single further term of three years.

(4) The appointment of the chairperson and the members under subsection (1) (g) shall be in writing and by notice in the County Gazette.

i)

Termination of Membership

8. A member shall vacate his/her position as a member of the Committee if he/she;
- a) is absent from three (3) consecutive meetings of the committee without written apology;
 - b) violates Chapter 6 of the Constitution;
 - c) ceases to be a resident of Kilifi County;
 - d) voluntarily resigns from the committee;
 - (e) dies; or
 - (f) is so incapacitated by prolonged physical or mental illness as to be unable to attend and discharge his/her duties.

Functions of the Committee.

9. The functions of the Committee shall be to:-
- (i) Advise the Executive Committee Member on policy issues
 - (ii) Consider and recommend to the Executive Committee Member the establishment of County forests
 - (iii) Consider and approve all management agreements
 - (iv) Advise the Executive Committee Member on establishment, review of policies, approve licenses and rules for marketing of and trade in forest produce within the County
 - (v) Advise the Executive Committee Member on all matters pertaining to the establishment, development, conservation and utilization of forests in Kilifi County;

- (vi) Consider and approve proposals for County forest concessions, timber harvesting contracts and special use permits as defined under the provisions of this Act.
- (vii) Mobilize and manage resources for county forestry development
- (viii) Carry out any other functions as may be prescribed by the provisions of this Act
- (ix) Recommend the chair of the committee for appointment by CEC

Conduct of business and affairs of the Committee.

10. (1) The business and affairs of the Committee shall be conducted in accordance with the provisions of the Second Schedule.
 (2) Except as provided in the Schedule, the Committee may regulate its own procedure.

Remuneration and allowances of Committee members.

11. A member of the Committee shall be paid such allowances and reimbursable expenditures for meetings as recommended by salaries and remuneration commission

Public access to information.

12. (1) Any person may make a written request to the Directorate of Forestry and the committee for any information held, and such information shall be made available as per Public information Access Act

PART III: CONSERVATION AND MANAGEMENT OF FORESTS

Classification of forests.

13. (1) For the purposes of this Act, forests are classified into County, community and private forests.

(2) County forest includes-

- (i) Forest land lawfully held, used or occupied by the County Government or a department of the County Government
- (ii) Forest land transferred to the County Government by way of sale, reversion or surrender
- (iii) Forest land within the County for which no individual or community ownership can be established by any legal process
- (iv) The County Forest reserves as gazetted by the County Executive Committee Member

(3) Community forest' includes;

- (i) Forestland lawfully registered in the name of group representatives under the provisions of any law; or
- (ii) Forestland lawfully transferred to a specific community by any process of law; or
- (iii) Forestland that is lawfully held, managed or used by specific communities as

forest area, grazing areas or shrines; or

(iv) Such other forest that may be set aside as a community forest by the County Government according to any written law.

(3) Private forests include-

(i) Forestland held by any person under any freehold tenure;

(ii) Forestland held by any person under leasehold tenure; and

(iii) Any other forestland that may be declared private under the provisions of this Act.

Forests Management Guidelines.

14.(1) Within six months after enactment of this Act, the Executive Committee Member shall in consultation with relevant stakeholders promulgate regulations for the development and periodic revision of the Kilifi County Forests Management Guidelines and standards prescribed by this subsection.

(2) The purpose of the Guidelines is to establish the standards for the management of all forests in accordance with accepted principles and practices to which the County Government requires all forest managers under this Act to adhere

(3) Adherence to the County Forest Management Guidelines shall form part of the requirements necessary for the approval of licenses under the provisions of this Act

Woodfuel Rules and Regulations

15. The Executive Committee Member shall within six months after the commencement of this Act and in consultation with relevant stakeholders enact the Woodfuel Rules and Regulations for the purposes of ensuring sustainable woodfuel production and fair trade practices

Ecosystem approach to management of Forests within Kilifi County.

16. (1) All forests shall be managed in accordance with the integrated ecosystem approach that takes into consideration the wood and non-wood resources, the environmental services and the socio-economic benefits provided by the forests.

2) The CEC may declare a county forest or a part of it as a biodiversity hotspot among the county forest with restricted management.

PART IV MANAGEMENT AND USE OF COUNTY FORESTS

Management and use of County Forests

17. (1) The Management of every County Forest shall vest in the Executive Committee Member responsible for Forests.

(2) Every County Forest shall be managed in accordance with the Forest Management Guidelines and Code of Forest Practice that complies with the requirements prescribed by this Act and Regulations or Rules made under this Act

(3) The Directorate of Forestry with the recommendation of the Committee shall be responsible for the preparation of the Forest Management Guidelines and the Woodfuel Rules and Regulations with respect to each County Forest.

(4) In the preparation of County Forest Management Guidelines and the Woodfuel Rules and Regulations, the Directorate of Forestry and the Committee shall ensure public participation.

Purpose of managing County forests. **18.** The Executive Committee Member in charge of forestry shall be responsible for the conservation, utilization, protection and sustainable management of forests and forest resources belonging to the county for the purposes of-

- (i) Conservation of water, soil and biodiversity;
- (ii) County cultural and religious heritage
- (iii) Riverine and riverbank protection;
- (iv) Income to the county through licensing and leases to ensure sustainable utilization of wood and non-wood products. and carbon trading
- (v) Carbon sequestration and other environmental services;
- (vi) Recreation and tourism; and
- (vii) Education and research.

Utilization of County Forests **19.** (1) County Forest Management Guidelines shall allow, within the limitations of the available forest and land resources, for user and commercial rights, including:

- (i) Leases for both consumptive and non consumptive uses including plantation establishment
- (ii) Collection of non-wood forest produce for community-based enterprises;
- (iii) Grass harvesting and grazing;
- (iv) Ecotourism and recreational activities.

(2) The management of the county forests will be done with participation of the community through signing of management agreements with CFAs

Powers to Degazette a Forest **20.** (1). The Executive Committee Member responsible for Forests shall have powers to Gazette or Degazette a County Forest

- (i) with the recommendation of the Committee
- (ii) Approval of the County Assembly.
- (2) A gazetted County Forest shall be Known as a County Forest Reserve.

(3). The Executive Committee Member responsible for Forests shall have powers to degazette a County Forest subject to;

- (i) Recommendation by the Committee
- (ii) Public participation through an advertisement of a statement to degazette in a newspaper with a nationwide circulation and valid for 30days, by the Executive Committee Member .
- (iii) Approval by County Assembly

PART V-MANAGEMENT OF COMMUNITY FORESTS

- Management of community forests
- 21.** (1). The management of all forests and forest resources on community land shall vest in the community.
- (2) The proceeds from the sale of trees or other forest produce and environmental services derived from a community forest shall belong to the community.
- Purpose of managing community forests
- 22.** The community shall be responsible for the conservation, utilization, protection and sustainable management of forests and forest resources on community land for the purposes of-
- (i) Conservation of water, soil and biodiversity;
 - (ii) Riverine and riverbank protection;
 - (iii) Sustainable production of wood and non-wood products;
 - (iv) Carbon sequestration, trade and other environmental services
 - (v) Protection of forest resources from fire, insect and disease, and unlawful harvesting, damage or removal;
 - (vi) Protection of areas prone to fire, flooding, and of areas of important genetic and biodiversity;
 - (vii) Recreation and tourism; and
 - (viii) Cultural and religious purposes
 - (ix) Education and research.
- Utilization of Community Forests
- 23.** Forest Management Guidelines for forests on community land shall allow, within the limitations of the available forest and land resources, for user and commercial rights, including:
- (i) Collection of forest produce for community-based industries;
 - (ii) Sustainable woodfuel production; guided by recommendations of the committee.
 - (iii) Grass harvesting and grazing;
 - (iv) Ecotourism and recreational activities;
 - (v) Sustainable harvesting on nonwood forest products
 - (vi) Establishment of apiaries and other forest compatible enterprises as shall be recommended by the committee
- Declaration of provisional forest.
- 24.** (1) The Executive Committee Member may, upon consultation with the Executive Committee Member responsible for land matters, advise KFS to declare forest on community land that is mismanaged, degraded, neglected or under threat of permanent loss to be a provisional forest.

(2) A declaration under sub-section (1) shall be made when the Executive committee member has issued a notice to the community to undertake specific remedial activities to manage and conserve the forest, but such notice has not been complied with.

Establishment of urban parks, arboreta, amenity belts and green zones

25. (1) The Directorate of Forestry with advice from the committee shall, as far as it is reasonably practical, establish and maintain urban parks, arboreta, and amenity belts on road reserves, for recreational, aesthetic and pollution mitigation purposes.

(2) The Directorate of Forestry shall cause residential and commercial estate development to include the provision of tree planting and other green zones to cover at least ten percent of the land area to be developed.

PART VI — COMMUNITY PARTICIPATION

Management plans.

26. (1) A member of a forest community may, together with other members or persons resident in the same area neighbouring a county forest, register a County community forest organization (CCFO) in accordance with the provisions of the social services as a community based organization.

(2) A County Community Forest Organization (CCFO) registered in accordance with section (1) may apply to the committee for permission to participate in the conservation and management of a County forest:

Provided no such application shall be made where there is an existing prior agreement or license in relation to that forest.

(3) An application made in accordance with this section shall be in the prescribed form and shall provide —

(a) a list of the members of the CCFO and its address;

(b) the Constitution of the organization;

(c) the association's financial regulations;

(d) the name and location of the county forest for which the organization proposes to undertake conservation and management;

(e) the Organization's proposals concerning —

(i) use of forest resources;

(ii) methods of conservation of biodiversity;

(iii) methods of monitoring and protecting wildlife and plant populations and enforcing such protection; and

(f) Such other information as the Executive Committee Member may require.

(4) After considering an application made according to section (3) the committee may approve or disapprove the application.

(5) Where the committee grants permission in accordance with section (4), it may impose such conditions as it may deem fit including the development of a forest management plan in accordance with this Act.

(5) The Directorate shall maintain an up to date record of all CCFOs that have been granted permissions in accordance to section (2).

27. (1) Where a County community forest organization has been granted permission to participate in the management or conservation of a forest in accordance with the

Application
community
participation.

- provisions of this Act, that organization shall —
- (a) protect, conserve and manage the forest or part of the forest in accordance with an approved management agreement entered into with the County and the provisions of the management plan for the forest;
 - (b) formulate and implement sustainable forest programmes that shall be consistent with the traditional forest user rights of the relevant forest community;
 - (c) protect sacred groves and protected trees;
 - (d) assist the County or any other relevant authority in enforcing the provisions of this Act including in relation to illegal harvesting of forest products;
 - (e) with the approval of the County enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable conservation and management of the forest;
 - (f) inform the County of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity;
 - (g) help in firefighting; and
 - (h) do any other act that is necessary for the efficient conservation and management of the forest.

(2) The management agreement between the County and the County community forest organization shall confer on the organization all or any of the following forest user rights —

- (a) collection of medicinal herbs;
- (b) harvesting of honey;
- (c) harvesting of wood and non-wood products;
- (d) grass harvesting and grazing;
- (e) collection of forest produce for community based industries;
- (f) ecotourism and recreational activities;
- (g) scientific and education activities;
- (h) plantation establishment through non-resident cultivation;
- (i) contracts to assist in carrying out specified forestry operations;
- (j) development of community wood and non-wood forest based industries; and
- (k) other benefits which may from time to time be agreed upon between CCFO and the County.

(3) Subject to sub section (1) –

- (a) none of the activities specified in this section shall be carried out so as to conflict with the conservation of biodiversity; and
- (b) the Executive Committee Member may, in consultation with the organization, prescribe rules for the conduct of the activities specified in this section.

28. (1) A CCFO that has been granted permission to participate in the management or conservation of a forest may, with the approval of the county executive, assign any or all its rights under a management agreement to a suitably qualified agent on mutually agreed terms.

Assignment of forest
user rights.

(2) The Executive Committee Member shall not approve any assignment under this section that is inconsistent with the main objectives and purposes set out in the management agreement between the County and the community forest organization.

(3) The CCFO shall be responsible for the acts of the agent that contravene the provisions of this Act or the terms and conditions of the management agreement between the CCFO and the County.

Termination or variation of a management agreement.

29. (1) The Executive Committee Member may terminate a management agreement with a County community forest organization that has been granted permission to participate in the management or conservation of a forest or withdraw a particular user right where—

- (a) the CCFO breaches the terms and conditions thereof;
- (b) it is necessary for the purpose of protecting or conserving biodiversity; or
- (c) the CCFO asks the Executive Committee Member to terminate the agreement or withdraw the user right.

(2) Where the Executive Committee Member intends to terminate a management agreement or withdraw a particular user right the Executive Committee Member shall notify the CCFO at least thirty days before the management agreement is terminated or the user right(s) withdrawn.

(3) The Executive Committee Member shall give the CCFO an opportunity to challenge the decision to terminate the management agreement or withdraw the user right and where the CCFO is aggrieved by the decision of the Executive Committee Member the CCFO may appeal against the decision to the committee within thirty days of being notified of the decision of the county executive. .

(4) Nothing in this section shall be construed to limit the grounds on which, in accordance with the terms of a management agreement, the agreement or any user right may be terminated.

Obligations of a county community forest organization.

30. Nothing in this Act shall be deemed to prevent any member of a forest community from using, subject to such conditions as may be prescribed by this Act or any other written law, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.

PART VII - MANAGEMENT OF PRIVATE FORESTS

Management of forests on private land

31. (1) Private forest land owners shall apply for registration as private forest with the Committee.

(2) The management of forests on private land shall be undertaken in accordance with the County Forest Management Guidelines.

(3) The Committee shall recognize and support private forest associations and cooperatives in Kilifi County

Purpose of managing private forests

32. The owners of forests on private land shall be responsible for the conservation, utilization, protection and sustainable management of forests and forest resources on their land for the purposes of-

- (i) Conservation of water, soil and biodiversity;
- (ii) Sustainable production of wood and non-wood products;

- (iii) Carbon sequestration, trade and other environmental services
- (iv) Protection of forest resources from fire, insect and disease, and unlawful harvesting, damage or removal;
- (v) Recreation and tourism;
- (vi) Cultural and religious purposes and
- (vii) Education and research.

Utilization of forests on private land **33.** (1) Private forest land owners shall be bound by the County Forest Management Guidelines

Proceeds from the sale of private forest produce and services. **34.** The proceeds from the sale of trees or other forest produce and environmental services from a private forest shall belong to the owner of the private forest; provided that the owner shall obtain necessary licenses as provided for in this act

Donations and bequests **35.** (1) A registered land holder may donate or bequeath land to the County Government for the development of forestry in accordance with the provisions of this Act.

(2) A forest or forest resources established on the land donated or bequeathed under subsection (1) above shall be gazetted in accordance with the provisions of this Act.

PART VIII – LICENCES, CONCESSIONS AND PERMITS

General provisions **36.** (1) No Person shall undertake any commercial use of forests and forest resources on public land or community land without a licence from the County Government.

(2) Notwithstanding subsection (1), no person shall produce wood fuel in or from indigenous forests.

(3) A licence may be granted through Concessions, Timber Sale Contracts, or Forest Permits for commercial and non-commercial forest uses, in accordance with this Act.

(4) A licence shall only be granted when the use of forest resources is in accordance with the forest management guidelines and approved by the county forest committee.

(5) A person granted a licence for commercial use shall post a bond in the manner prescribed to assure performance of work, payment of forest fees and charges, redress of injuries or return of property.

Types of licences **37.** (1) Licences issued under this Act may be for commercial, consumptive or non-consumptive use.

(2) Commercial use licences include –

- i) Forest Concessions;
- ii) Timber harvesting
- iii) Woodfuel production;

(3) Non-Consumption use licences include Permits for purposes other than the harvesting or utilization of forest products and resources. These include but not limited to

- (i) Ecotourism
- (ii) Carbon trading
- (iii) Bee keeping

Environmental and social safeguard systems

38. (1) The approval of licences under this Act shall be subject to environmental and social safeguard systems.

(2) No licence shall be issued without a forest compliance audit

Standard qualifications to apply for license

39. (1) The Executive Committee Member in consultation with the Committee shall establish standard qualifications for persons wishing to apply for permission to undertake commercial use of forests.

(2) For all commercial use licences the Executive Committee Member shall by Regulation, specify the standard qualifications in the form of pre-qualification requirements in accordance with the laws governing public procurement.

(3) Commercial use licences shall be issued through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

(4) The Executive Committee Member shall specify the standard qualifications by Regulation for issuance of Community use permits

Approval of concessions

40. (1) Concessions in respect of County Forest on land exceeding 500 hectares shall be subject to approval by the County Assembly.

(2) Proposals for concessions on County Forest on land not exceeding 500 hectares shall be approved by Committee prior to tendering.

(3) No Person or entity shall hold a total of more than 1,000 hectares in forest concessions.

Issuance of Forest Concessions

41. (1) A forest concession for County forests shall be issued in accordance with the provisions of the Act and the provisions of the Public Procurement and Disposal Act or its successor legislation governing public concessions.

(2) The land involved shall be identified as a potential concession area in the approved Forest Management Guidelines for the specific County forest in effect at the time the concession is offered.

(3) The concession shall require the licence holder to prepare a concession area forest management plan, including inventories, reforestation or replanting programmes and

annual operations plans.

(4) The concession shall require the Holder to prepare environmental and social impact assessments as required under the provisions of the Environmental Management and Coordination (amendment Act, 2015) and any other laws governing environmental protection.

(5) The licence holder shall pay to the County Government –

- (i) The annual fee that the Holder bid in the concession process; and
- (ii) Any other applicable taxes and fees, for the harvesting or use of forest resources.

(6) The basic term of the concession shall be for ten (10) years on renewable basis.

(7) The concession shall define community user rights and benefits.

Timber harvesting
Contract

42. (1) A Timber harvesting Contract shall be issued through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

(2) Timber harvesting contract–

- (i) Shall be for a term not exceeding two years;
- (i) Shall describe one or more areas of land within which the holder may harvest timber, or the location of logs that are being sold;
- (ii) Shall specify an estimate of the volume of timber that may be harvested from an area of land described in the timber sale license, or the volume of harvested logs;
- (iii) Shall require the license holder to pay to the County Government prescribed fees;
- (iv) May include other terms and conditions, consistent with this Act and as determined by the County executive.

3) Proposals for timber harvesting contracts shall be approved by the committee prior to being tendered.

Special Use Permits.

43. (1) Special Use Permits shall be issued for the following uses but not limited to:

- (i) Eco-tourism and recreational development;
- (ii) Conservation-based activities; and
- (iii) Construction of public infrastructure, including dams, communication masts, solar and wind farm stations

(2) Special Use Permits shall be issued through a competitive bidding process and the provisions of the Public Procurement and Disposal Act shall apply.

(3) The land area involved must be in the approved Forest Management Guidelines for the specific public forest in effect at the time the permit is offered

(4) The Special Use Licence shall provide for conditions to ensure the conservation of forest resources.

(5) The validity of the licence shall be defined in the licence.

(6) The licence holder shall pay –

- (i) The annual fee that the Holder bid in the concession process; and
- (ii) Any other prescribed fees.

(7) No Special Use Permit is effective until it is approved by the County executive.

Forest permits for use by communities

44.(1) The licensing authority may issue permits for the following commercial uses by forest communities on County forests and community forests respectively -

- (i) Grazing, firewood collection, herbs, honey harvesting, cutting of grass;
- (ii) Harvest or use of non-wood forest products.

Permits for non-consumption uses

45. The licensing authority may issue permits for the following non-consumption uses of forests on community land respectively:

- (a) Ecotourism
- (b) Research and education purposes.

Annual returns on Operations.

46. (1) The Holder of a Concession, Timber harvesting Contract, or a Special Use Permit shall provide annual returns on the operations in a prescribed format to the licensing authority.

(2) A person who contravenes sub section (1) commits an offence.

Suspension, cancellation or termination of licence.

47. (1) Where there are reasonable grounds to believe that there has been a contravention of the condition of a licence, or any provision of this Act, the licensing authority shall, in writing, order the suspension of a license and require the license holder to take necessary measures to remedy or prevent the contravention within a period not exceeding seven days..

(2) Where a license has been suspended under subsection (1), no person shall continue any activity that was permitted under the terms of that suspended license.

(3) If a license holder fails to comply with subsection (1) and (2), the licensing authority shall cancel the license in question.

Assignment and

48. (1) No person shall assign or transfer a licence or any rights to any other person

transfer of licence. without the prior written approval of the licensing authority.

(2) The licensing authority shall not approve an assignment or transfer of a licence to any person who does not meet the basic qualification established in this Act and regulations.

(3) A Person who contravenes subsection (1) commits an offence.

Appeal **49.** A licensee may, within thirty days of being notified of the cancellation of the licence, appeal to the Committee subject to payment of the required charges/fees.

PART IX TRADE IN FOREST PRODUCTS

Chain-of-Custody **50.** (1) The Committee shall establish and maintain a Chain-of-Custody system, to verify the origin of forests products and the compliance of licence holders in accordance with this Act.

(2) A person in possession or trading in forest products shall comply with the requirements of the chain-of-custody system established under this section.

(3) Any person who contravenes subsection (2) commits an offence.

Prohibition in restricted forest produce. **51.** The Executive Committee Member with approval of the county assembly may declare by Notice in the County Gazette any forest produce that may not be exported, imported or re-exported within the county boundaries except for charcoal.

PART X - FOREST PROTECTION

Forest pests and disease control. **52.** The Committee may on community or private land respectively advise the Executive Committee Member to;

(a) Order the spraying or clearing of a compartment of a plantation or of a whole plantation for the purpose of controlling the spreading of pests and diseases;

(b) Control movement of timber and any other forest produce through the issue of permits; and

(c) Provide for control of vermin causing excessive damage beyond economic thresholds in forests.

Protected species. **53.** (1) The Committee shall on annual basis prescribe species of trees and plants as protected species for the purposes of this Act.

(2) No person shall fell or remove protected species

(3) A person who contravenes subsection (2) commits an offence.

Control of Invasive Species **54.** The Executive Committee Member shall notify the relevant National government agencies within 12 months after enactment of this Act to Gazette Regulations on the introduction, prevention, control and management of invasive species and thereafter every two years.

PART XI- INCENTIVES FOR FOREST CONSERVATION

Purpose **55.** The purpose is to provide incentives for increasing forest and tree cover through the establishment of —

- (a) A County Community Forestry Programme;
- (b) A County Reforestation Programme;
- (c) A County Programme for Craft Apprenticeships and Vocation Training for school-leavers in forest resource-based enterprises; and
- (d) A Permanent Carbon Sink Initiative.
- (e) Alternative energy initiatives including energy efficient fuel wood cooking devices
- (f) Waiver for land rates for individual farmers with more than ten percent tree cover

Establishment of forest support programmes. **56** (1) The Executive Committee Member shall, by regulation, establish a County facility to administer the allocation of funds and provision of technical assistance to the recipients of County forestry incentive programmes.

County community forestry programme. (2)The Executive Committee Member shall, by regulation, establish a County community forestry programme that shall provide -

- (a) Grants to community forest organization to support the preparation of management plans for forests on community land.
- (b) Qualified service providers to provide technical assistance to the community forest organizations.

County reforestation programme. **57.** (1) The Executive Committee Member shall by regulation, establish a County reforestation programme that shall provide -

- (a) Grants and technical assistance to community forest organization to support afforestation and reforestation on community land; and
- (b) Grants and technical assistance to smallholder farmers to support afforestation on private land.

County forestry awards and prizes.	<p>58. (1) The Executive Committee Member shall, on an annual basis, grant research awards and scholarships to further knowledge on forest resource management and conservation.</p> <p>(2) In recognition of meritorious achievements and service in the forestry sector, the County Executive shall, on an annual basis, award prizes to both individuals and organizations.</p>
Alternative Energy Initiatives	<p>59. The Executive Committee Member shall develop guidelines in consultation with relevant stakeholders that promote alternative energy initiatives.</p>
Benefit Sharing Mechanism	<p>60. (1) The Executive Committee Member in-consultation with the county forest committee and relevant stakeholders shall set the criteria for clear benefit sharing mechanism with local communities in respect of revenue generated from forest utilization activities within one year of enactment of this law.</p> <p>(2) The benefit sharing mechanism shall define the types of forest utilization activities from which revenue would be shared with local communities.</p>
County tree planting week.	<p>62. The Executive Committee Member and the Committee shall plan and execute participatory programs necessary for observing the County tree-planting week on County, community and private forestland.</p>
County Assembly to appropriate funds.	<p>63. County Assembly shall appropriate funds for the effective implementation of this Part.</p>

**PART XI
MONITORING AND INSPECTION**

Appointment of Forest inspectors	<p>64. The Directorateshall, by notice in the County Gazette, have duly qualified persons whether by name or by title of office, to serve as forest inspectors.</p>
Duties of the inspector.	<p>65. A Forest inspector shall–</p> <ul style="list-style-type: none"> (i) Monitor compliance with this Act and regulations made there under; (ii) Undertake inspections and submit reports in the manner prescribed;
Powers of the inspector	<p>66. (1) A forest inspector may, at any reasonable time –</p> <ul style="list-style-type: none"> (i) Enter any premises within a community or private forest for the purpose of ensuring compliance with this Act; (ii) Enter any premises on which the inspector has reasonable cause to believe that any unlawful forest produce is stored or generated;

(iii) Request the production of a licence used for the conveying or processing of timber or other forest produce, and upon failure to produce a licence or to account satisfactorily for its absence, the authorised officer shall arrest the person and take him and such timber or other forest produce before a Magistrate according to the law.

(2) Any person who assaults or obstructs an inspector acting in the execution commits an offence.

PART XII

FORESTRY RESEARCH, EDUCATION AND TRAINING

Research, Technology
Development and
Transfer

67. (1) The Directorate shall collaborate with relevant institutions to enhance and prepare a forestry research and development strategy for Kilifi County

Public Information,
Education and
awareness

68. The Directorate of Forestry in consultation with the relevant government agencies shall formulate and implement a county program on public information, awareness creation and advocacy to promote sustainable forest development and management.

Integration platform

69. The Executive Committee Member shall establish a platform that will consist of the representatives of the County Government, private sector and civil society whose function will be to support the mainstreaming of forestry in County development.

PART XIII

FINANCIAL PROVISIONS FOR THE DIRECTORATE OF FORESTRY AND THE COMMITTEE

Funds of the
Directorate of Forestry
and the Committee.

70. The funds and assets of the Directorate and Committee shall consist of—

(i) Such moneys as may be appropriated by County Assembly for the purposes of the

- Directorate and the Committee;
- (ii) All moneys from any other source provided or donated to the Directorate and the Committee.

PART XIV OFFENCES AND PENALTIES

Offences

71. (1) A person who contravenes a provision in this Act or any regulation implementing these provisions, is guilty of an offence, and is liable upon conviction to fines, imprisonment and other penalties.

(2) Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable to a fine of not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or both. (3) Offences under this Act and the Regulations shall be reported to County law enforcement officers.

Referral.

72. (1) The Directorate of Forestry shall promptly refer violations of the Act and its Regulations to the Department responsible for justice.

(2) In lieu of making a referral, the Directorate may resolve a minor violation committed on public land, community and private land, through the assessment of an administrative penalty as established by Regulation, when the offense:

- (a) Did not result in physical injury to any person;
- (b) Did not significantly harm the interests of a local community; and
- (c) Did not result in significant damage to forest resources or the environment; and
- (d) When the violator consents to imposition of an administrative penalty

Continuing Offences and Repeat Offenders

73. (1) Any offense that is repeated shall be deemed a continuing offense subject to a separate penalty for each occurrence of the offense.

(2) A court shall, in determining the nature and extent of any penalty imposed pursuant to this section, take into account any past violations of the Act or its Regulations by the offender.

Liability of licence holders and community

74. (1) A holder of a forest resource licence is liable for acts committed in contravention to this Act by themselves, their operators, employees, agents, and

forest groups

contractors.

(2) A community forest organization is liable for acts committed in contravention to this Act by themselves, and their members, and their operators, employees, agents, and contractors.

Prohibited activities in forests on community land

75. (1) Except under a forest resource licence granted under this Act, or with the permission of the community on community land, no person shall, in a forest –

- (a) Fell, cut, take, burn, injure or remove any forest produce;
- (b) Clear, cultivate, graze or break up land for cultivation or for any other purpose;
- (c) Erect any building or livestock enclosure, or construct any road or path;
- (d) Set fire to, or assist any person to set fire to, any grass or undergrowth or any forest produce;
- (e) Possess, bring or introduce any chain saw or logging tools or equipment; and
- (f) Damage, alter, shift, remove or interfere in any way whatsoever with any beacon, or boundary mark

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding than Fifty Thousand Kenya Shillings or to imprisonment for a term not exceeding six months, or to both

(3) All timber or any forest products cut, gathered, collected, removed, or possessed and all the conveyances, machinery, equipment, implements, work animals, and tools used in connection with this violation may be seized and confiscated in favour of the County Government.

(4) Except under a forest resource licence granted under this Act, no person shall, in a community forest –

- (a) Enter or remain between the hours of 7 p.m. and 6 a.m. unless using a recognized road or footpath or taking part in cultural, scientific or recreational activities;
- (b) Enter any part which is by notice prohibited
- (c) Smoke, where smoking is by notice prohibited

(5) A person who contravenes the provisions of subsection (4) of this section commits an offence and is liable on conviction to a fine not exceeding than Fifty Thousand Kenya Shillings or to imprisonment for a term not exceeding than Six months, or to both such fine and imprisonment.

Grazing livestock on forest land without a license.

76. (1) A person who grazes livestock in forests on community land without the permission of the community, commits an offence and is liable upon conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term of not exceeding six months or to both, and in addition, to confiscation of the livestock, and all equipment, implements, and tools used in connection with this violation may be

seized and confiscated in favour of the County Government.

(2) The livestock detained in subsection (1) above may be auctioned at the expiry of seven days if not reclaimed by the owner in case of death or damage of animals, liability belongs to the owner..

Setting fires

77. A person who willfully or maliciously sets fire to a forest on community or private land commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding Twelve months, or to both such fine and imprisonment.

Woodfuel

78. (1) Any person who, not being a holder of a licence under this Act, produces woodfuel or offers for sale, sells or removes woodfuel in or from any county or community forest commits an offence.

(2) A person who produces wood fuel in or from an indigenous forest, and an officer who purports to issue a licence for wood fuel production in or from a indigenous forest, commits an offence and are jointly or individually liable.

(2) A person who contravenes either subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Unlawful affixing or defacing of marks

79. (1) No person shall without lawful authority-

(a) Mark any forest produce

(b) Alter or removes an official mark, or stamp

(c) Cover, remove or destroy any part of a tree or forest produce bearing a an official stamp or mark

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings Two Hundred Thousand or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Unlawful operation of wood processing plants or forest-based enterprises.

80. A person operating a wood processing plant or downstream forest-based industry without a valid licence commits an offence and is liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment, and all the conveyances, machinery, equipment, implements, and tools used in connection with this violation may be seized and confiscated in favour of the County Government.

Counterfeiting

81. (1) Any person who, without lawful authority —

(a) marks any forest produce, or affixes upon any forest produce, a mark ordinarily used

by a forest officer to indicate that the forest produce is the property of the Unit, or that it may or has been lawfully cut or removed;

(b) alters, obliterates, removes or defaces any stamp, mark, sign, licence, permit or other document lawfully issued under the authority of this Act, or removes or destroys any part or a tree bearing the stamp or other mark used by any forest officer;

(c) covers any tree stump in any national or county forest with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;

(d) wears any uniform or part of a uniform, or any badge or other mark issued by the Directorate to be worn by forest officers or other employees of the Unit, or who in any other way holds himself out to be an employee of the Unit; or

(e) counterfeits or issues without lawful authority any licence or other document purporting it to be a licence or document issued under this Act or any rules made thereunder,

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings Ten Thousand or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Misuse of forests

82. (1) No person shall introduce any exotic genetic material or invasive plants in a forest without authority of the Executive Committee Member dump any solid, liquid, toxic or other wastes in a forest without authority of the Unit or grow any plant from which narcotic drugs can be extracted

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings Five Million or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment.

Other offences and penalties

83. A person who –

- (a) Commits a breach of this Act, or fails to comply with its provisions;
- (b) Commits a breach of, or fails to comply with any of the terms or conditions of a licence issued to the holder under this Act;
- (c) Fails to comply with a lawful requirement or demand made or given by a forest officer of the unit, obstructs a person in the execution of their powers or duties under this Act; commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

PART XV - MISCELLANEOUS

Power to make regulations.

84. (1) The Executive Committee Member may make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Executive Committee Member shall make regulations providing for—

- (a) The preparation of County Forest Management Guidelines;
- (b) The preparation of the Forest Code of Practice
- (c) The production of and trade in woodfuel
- (d) The establishment of forest fees payable under this Act, and the distribution of public revenues arising from such forest fees; and
- (e) the establishment of a County facility to administer forest support programmes, including-
 - (i) the County community forestry programme; and
 - (ii) the County reforestation programme.

**FIRST SCHEDULE
LIST OF COUNTY FORESTS**

1. Dakatcha Woodland
2. Mwangea Hills
3. Kizungo Hills
4. Nzovuni Forest
5. Kachororoni Gorge
6. Kaya Forest

**SECOND SCHEDULE-
CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

Tenure of office and conduct of business of the Committee

1. (1) The Chairperson of the Committee shall hold office for a term of three years and shall be eligible for re-appointment for a further term of three years
- (2) Other than ex-officio members, a member of the Committee shall, subject to the provisions of this section, hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term of three years.
- (3) The members of the Committee shall be appointed at different times so that the respective expiry dates of their term of office shall fall at different times
- (4) A member other than the chairperson or an ex-officio member may-
 - (a) at any time resign from office by notice in writing to the Executive Committee Member
 - (b) be removed from office by the County Executive Committee Member if the member-
 - (i) has been absent from three consecutive meetings of the Committee without permission of the chairperson, or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors, or
 - (iii) is convicted of a criminal offence and sentenced to an imprisonment term exceeding six months or to a fine exceeding ten thousand shillings, or
 - (iv) is convicted of an offence involving fraud or dishonesty
 - (v) Is incapacitated by prolonged physical and mental illness or
 - (vi) Is found to have acted in a manner prejudicial to the aims and objectives of this Act; or
 - (vii) Fails to comply with the provision of this Act relating to disclosure; or
 - (viii) Is otherwise unable or unfit to discharge his / her functions as a member of the Committee.

Meetings of the committee

- 2 (1) The committee shall meet quarterly provided that the chairperson may call a special meeting of the Committee at any time where he deems it expedient for the transactions of the business of the committee.
- (2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the committee shall be given to every member of the Committee by the secretary.
- (3). The quorum for the conduct of the business of the committee shall be half the members and unless a unanimous decision is reached, decisions shall be by majority vote of the members present, and in the case of equality of votes, the chairperson or the person presiding shall have a casting vote.
- (4). The chairperson shall preside over all meetings of the Committee in which he is present, but in his/ her absence, members present shall elect one

3(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Committee and is present at the meeting of the Committee at which the contract, proposed contract or matter is the subject of consideration, he/she shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

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

Disclosure of
Interest

MEMORANDUM OF OBJECTS AN REASONS

The purpose of this Bill is to ensure the sustainable management of forest resources in Kilifi County. Forest management is sustainable if it ensures biological diversity, enhanced productivity, regeneration and resilience capacities, vitality and posterity of forests. Sustainable management allows for the possibility of multiple uses of forest in a way that satisfies ecological, economic, social, and cultural needs for today and future.

The Bill contains Fifteen Parts bearing the provisions on Establishment and Role of Directorate of Forestry and Kilifi County Forest Conservation Committee, Classification of Forests, Management and use of County and Community Forests, Establishment of Urban Parks, Arboreta, Amenity Belts and Green Zones, Issuance of Licenses, Concessions and Permits, Forest Protection, Monitoring and Inspection of Forests and Establishment of the Forest Conservation and Management Fund among others.

The Enactment of this Bill may occasion additional expenditure of public funds to be provided for in the estimates.

Dated the day of 2019

Hon. Adamson KadengeMwathethe,
Leader of Majority,
County Assembly of Kilifi.