

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**KILIFI COUNTY GAZETTE**  
**SUPPLEMENT**  
**BILLS, 2015**

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**NAIROBI, 26th June, 2015**

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**A BILL for**

**AN ACT of the County Assembly of Kilifi to provide for the provision of water and sanitation services to rural and urban areas, the development, regulation and management of county public works related to water and sanitation, storm water and waste water management systems, water and soil conservation and for connected purposes.**

**ENACTED** by the County Assembly of Kilifi, as follows -

**PART I – PRELIMINARY**

**Short title**

1. This Act may be cited as the Kilifi County Water and Sanitation Services Act, 2015 and shall come into operation on the date of publication in the *Gazette*.

**Interpretation**

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

“authorised officer” means an authorised officer appointed under section 70;

“Board” means the Board of Directors of the Kilifi Water and Sanitation Corporation established under section 6;

“Chief Officer” means the Kilifi County Chief Officer for the time being responsible for water services;

“Corporation” means the Kilifi Water and Sanitation Corporation established under section 4;

“County” means the Kilifi County;

‘County Assembly’ means the Kilifi County Assembly;

“Directorate” means the Directorate of Water and Sanitation Services established under section 28;

“Executive Member” means the Kilifi County Executive Member for the time being responsible for water services;

“Fund” means the Kilifi County Water and Sanitation Services Fund established under section 67;

“Governor” means the Governor of Kilifi County;

“public works” in this context means storage, intakes, transmission, distribution, pipelines, canals, dykes, water treatment works, sewer treatment works, pumping stations and pumps, drilling and distribution lines;

“riparian buffer” means an area around or situated next to bodies of water that act as buffers or cushions to that water body;

"sanitation" means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services;

“Sector Wide Forum” means the water and sanitation services sector wide forum established under section 57;

"sewerage services" means the development and management of infrastructure for transport, storage and treatment of waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

“Sub County” means a sub county within the County;

“users” means a person who is using water as a consumer of water and sewerage services;

“water catchment” means an area of land that water can drain across, over, or under to a common point on a stream, river, lake or wetland; and

“water works” means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, drainage of any swamp or other land.

“water and sanitation companies” include the Malindi Water and Sewerage Company (MAWASCO) and the Kilifi-Mariakani Water and Sewerage Company (KIMAWASCO);

“water users associations” mean the associations or formal groups of water consumers who champion for the conservation of water catchment areas;

“water services” means any services of or incidental to the supply of water and includes the provision of sewerage services;

### **Object and Purpose of the Act**

**3.** The object and purpose of this Act is to provide for a legal framework for implementation of sections 10 (a) and 11 of Part 2 of the Fourth Schedule of the Constitution and Article 43 (1) (b) and (d) in order to

- (a) ensure equitable and continuous access to clean water;
- (b) promote soil and water conservation;
- (c) promote water catchment conservation and protection;
- (d) provide for the development, and management of County water services public works;
- (e) provide for regulation of County water and sanitation public works;
- (f) ensure effective and efficient provision of water and sanitation services;
- (g) promote effective and efficient management of storm water in built up areas;
- (h) enhance sustainable management of water resources; and
- (i) promote inter-agency collaboration and public participation in water resource development and management.

## **PART II –ADMINISTRATION**

### **Establishment of the Corporation.**

4. (1) There is established the Kilifi County Water and Sanitation Corporation.
  - (2) The Corporation shall be the successor to the water and sanitation companies and operating in the County established under the Water Act, 2002.
  - (3) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:-
    - (a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
    - (b) borrowing money or making investments;
    - (c) entering into contracts; and
    - (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

### **Functions of the Corporation**

5. The functions of the Corporation shall be to–
  - (a) provide and manage water and sanitation services;
  - (b) develop and manage county water and sanitation services infrastructure, including waterworks and public works;
  - (c) develop adequate water supply system for domestic, industrial, livestock and agricultural purposes;
  - (d) developing and managing works for water conservation;
  - (e) promote or develop and manage water recycling systems;
  - (f) promote efficient water use and management for sustainable development;
  - (g) identify, initiate and promote water conservation systems, strategies and programs;
  - (h) in collaboration with other agencies, develop and manage public infrastructure for storm water management;
  - (i) maintain database related to water and sanitation services;
  - (j) disseminate information related to water and sanitation services; and
  - (k) maintain collaboration and cooperation with other government agencies, other county governments in carrying out its functions.

**Board of the Corporation**

6. (1). The management of the Corporation shall vest in the Board.
  - (2). The Board of the Corporation shall consist of-
    - (a) a non-executive Chairperson appointed by the Governor with the approval of the County Assembly;
    - (b) the Chief Officer or an alternate director appointed by the Chief Officer in writing;
    - (c) the Kilifi County Chief Officer for the time being responsible for finance or an alternate director appointed by the Chief Officer for Finance in writing;
    - (d) seven persons nominated by water user associations one from each Sub-County and appointed by the Executive Member through a competitive process, thereof whom must be of different gender;
    - (e) three persons recruited by the County Public Service Board through a competitive process by virtue of their knowledge, expertise and experience in water and sanitation management matters one of whom must be of different gender; and
    - (f) the Chief Executive Officer who shall be the Secretary of the Board.
  
3. A person shall be qualified for appointment as Chairperson or a member appointed under subsection (2) (f) if the person-
  - (a) holds a degree from a recognized University;
  - (b) has knowledge and experience of at least 5 years in matters relating to water resources management, water and sanitation services management or any other related field;
  - (c) meets the requirements of Chapter Six of the Constitution; and
  - (d) has had a distinguished career in their respective fields.
  
4. A person shall be qualified for appointment as a Member under subsection (2) (d) 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 water resources management, local development, or any other related field;

- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is a resident of the sub-county.

### **Functions of the Board**

- 7. The functions of the Board shall be to-
  - (a) ensure proper and efficient exercise of the powers and performance of the functions of the Corporation;
  - (b) advise the management of the Corporation generally on the exercise of the powers and the performance of the functions of the Corporation;
  - (c) approve the estimates of the revenue and expenditure of the Corporation; and
  - (d) perform such other functions as are provided for under this Act or any other written law.

### **Conduct of Business**

- 8. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule.  
(2) Except as provided in the Schedule, the Board may regulate its own procedure.

### **Remuneration of the Board**

- 9. The remuneration of the Members of the Board shall be as determined by the County Public Service Board and in consultation with the Kilifi County Executive Member for the time being responsible for finance.

### **Chief Executive Officer**

- 10. 1) There shall be a Chief Executive Officer of the Corporation.
  - 2) The Chief Executive Officer shall be appointed by the Executive Member on recommendation of the Board and recruited through a competitive process.
  - 3) To qualify for appointment as a Chief Executive Officer, a person must-
    - (a) possess a degree from a recognized university; and
    - (b) have had experience in management for a period of not less than five years.
  - 4) The Chief Executive Officer shall hold office for a period of three years, on such terms and conditions of employment as the

Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

5) The Chief Executive Officer shall be an *ex officio* Member of the Board and shall have no right to vote at any meeting of the Board.

6) The Chief Executive Officer shall-

- (a) subject to the direction of the Board, be responsible for day to day management of the affairs of the Corporation;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Corporation, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Corporation;
- (c) carry out any other function as may from time to time be assigned by the Board.

### **Removal from Office**

**11.** The Chief Executive Officer may-

- (1) at any time resign from office by issuing notice in writing to the Chairperson of the Board;
- (2) be removed from office by the Executive Member on recommendation of the Board, for-
  - (a) serious violation of the Constitution or any other written law;
  - (b) gross misconduct, whether in the performance of the functions of the office or otherwise
  - (c) physical or mental incapacity to perform the functions of office;
  - (d) incompetence; or
  - (e) bankruptcy.

### **Staff of the Corporation**

**12.** The Corporation may appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

### **The Common Seal of the Corporation**

**13.** (1)The common seal of the Corporation shall be kept in the custody of the Chief Executive Officer or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

2). The common seal of the Corporation, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

3) The common seal of the Corporation shall be authenticated by the signature of the Chairperson of the Board and the Chief Executive Officer.

4) The Board shall, in the absence of either the Chairperson or the Chief Executive Officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Corporation on behalf of either the Chairperson or the Chief Executive Officer.

### **Protection from personal liability**

**14.** (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Corporation shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done *bona fide* be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution.

### **Liability for damages**

**15.** The provisions of section 13 shall not relieve the Corporation of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

### **Public Awareness**

**16.** The Corporation shall in carrying out its functions-  
(1) provide public education and awareness on efficient and sustainable water use; and

- (2) invest in water source protection and conservation.

### **Public Private Partnership**

17. The Corporation may enter into Public Private Partnership in order to effectively carry out its functions in accordance with the Public Private Partnership Act or any such Act amending the same.

### **Establishment of the Directorate**

18. There is established the Directorate of Water and Sanitation Services which shall be an office in the County Department of Water, Forestry, Environment and Natural Resources.

### **Functions of the Directorate**

19. The Directorate shall be responsible for-
  - (1) regulating development of infrastructure and systems for water and sanitation services in the county in cooperation with other government agencies;
  - (2) issuing authorization to any person intending to carry out any water and sanitation works similar to the public works defined under this Act;
  - (3) regulating use or access to land for the purposes of water conservation;
  - (4) issuing permits and regulate the provision of water or sanitation services;
  - (5) ensuring compliance with the established standards related to water and sanitation services and works;
  - (6) receiving and addressing complaints from water consumers and/or any person affected by a decision of the Corporation;
  - (7) maintaining data and information related to water and sanitation services and disseminate it to the public;
  - (8) maintaining collaboration and cooperation with other government agencies other county governments in carrying out its functions.
  - (9) collaborating with other national or county government(s) departments initiating, developing, coordinating and managing policies, strategies and plans for water resources management and sanitation services;

- (10) facilitating public awareness and participation on sustainable water resources, sanitation and storm water management;
- (11) promoting and facilitating adoption and use of water conservation systems and methods, including water harvesting;
- (12) developing and coordinating implementation of water and sanitation services management information system;
- (13) developing and promoting policies, strategies and mechanisms for climate change mitigation and adaptation in the water sector.
- (14) mobilization of resources for water resources management and development and sanitation services;
- (15) developing performance management system and overseeing its implementation by the agencies established under this Act;
- (16) monitoring and evaluating the implementation of this Act  
and the water sector;
- (17) conducting and facilitating research and appropriate surveys for water resources management and facilitating dissemination and implementation of research findings;
- (18) acting as the repository of information and data on water  
sector; and
- (19) advising the Executive Member on the necessary policy to be adopted for sustainable water resources management.

**Director**

- 20.** (1) The Directorate shall be headed by the Director who shall be appointed by the County Public Service Board.
- 2). To qualify for appointment as a Director, a person shall –
- (a) possess a degree in water engineering, water resource management, environment management or any related field from a recognized university; and
  - (b) have had experience in water resource management for a period of not less than five years.

**Officers**

21. The County Public Service Board shall appoint such number of officers to serve in the Directorate for effective carrying out of its functions under this Act.

**Reporting**

22. (1) The Corporation and Directorate shall prepare respective annual reports within two months after the end of the financial year in such a form as may be prescribed.

(2). The Directorate shall compile the reports into the County Water Sector Report for submission to the Executive Member for onward transmission to the County Executive Committee.

(3) The County Executive Committee shall within thirty days after adoption of the report transmit it to the County Assembly for consideration.

(4) The Report provided under subsection (2) shall contain among

others-

- (a) performance of each institution and Directorate against the established performance targets;
- (b) progress on implementation of specific respective functions assigned under this Act; and
- (c) level of public participation and outcome of such participation.

**PART III- WATER SERVICES**

**Supply of water**

23. The Corporation shall progressively ensure that –

(1) every person has access to safe and clean water for domestic use within reasonable distance;

(2) there is accessible water for agricultural, livestock and industrial use; and

(3) equitable distribution of water between consumers in urban and rural areas.

**Service Agreements**

24. The Corporation may enter into service performance agreements with any entity in carrying out its functions.

**Development of water works**

**25.** (1). The Corporation may for the purposes of carrying out its functions erect or develop water works and public works on a public or private property.

(2). Notwithstanding provisions of subsection (1), the Corporation shall seek consent of the owner of private land or the relevant government agency occupying or in whose custody the land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation.

(3). The Corporation shall in collaboration with the department of roads identify and establish specific areas on any road where public works under this Act may be carried out.

(4). The Corporation shall seek easements from owner or occupier of any land for construction of water works or public works to be undertaken on such land.

#### **County Scheme**

**26.** (1). The Corporation may with the approval of the Executive Member initiate a County Scheme to provide services under this Act for public benefit.

(2). Where the Corporation deems necessary to erect or establish such a scheme or related public works on private property or land, the County Government may purchase the property or in accordance with the laws governing compulsory acquisition seek such compulsory acquisition.

#### **Community Projects**

**27.** A community may initiate a project for water services with the approval of the Directorate.

#### **Water tariffs**

**28.** (1). The Corporation shall levy tariffs and any appropriate user charges for the purposes of supplying efficient water services.

(2). The tariffs and user charges levied under this section shall be established in accordance with the principles set out under the County Governments Act, No. 17 of 2012 and any other written law and in liaison with the national government.

(3). The tariffs and user charges collected under this section shall not form part of the County Revenue Fund but shall be utilized for defraying expenditures of the Corporation and providing efficient and quality services under this Act.

(4). The tariffs and user charges imposed or levied under this section shall be subject to approval by the County Executive Committee.

#### **Prohibited activities**

**29** (1) A person shall not-

- (a) interfere with any meter or equipment installed by the Corporation;
- (b) install illegal or un authorized water connections; or
- (c) install a pipe or connection which does not comply with the approved standards.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

#### **Permit**

**30.** (1) A person intending to carry out or maintain any water works shall apply for a permit to the Directorate.

(2) A person who prior to the commencement of this Act was carrying out water works, managing or maintaining any water works shall within sixty days apply for a permit.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding one year or to both.

#### **Application for permit**

**31.**(1) An application for a permit under section 42 shall, where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Coordination Act, 1999 and shall specify among others-

- (a) the purpose of the works to be undertaken;
- (b) the nature of works to be carried out; and
- (c) the duration within which the works are expected to be completed.

(2) The Directorate shall, where the construction of works will be undertaken on public property or where the works will affect a cross section of the residents, issue a public notice within fourteen days after such an application and invite any person to make comments or object to such an application

(3) A person may lodge an objection to application for a permit.

(4) Every objection to an application shall be made in writing to the Director setting out the grounds for such an objection.

(5) The Directorate shall, upon receiving the application send a notice to the applicant for a permit.

(6) The Directorate may, where appropriate conduct public hearings on the objection.

(7) An objector or an applicant for a permit may appear personally or by an advocate at the hearing of an application.

(8) The Directorate shall consider the application within thirty days of such an application and may where it is satisfied that the applicant has fulfilled all the requirements of this Act or any other written law grant a permit in the prescribed form subject to any such conditions as may be prescribed and upon the applicant paying the prescribed fees.

(9) Where the Directorate is not satisfied with the application, it may-

(a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or

(b) make comments and recommendations thereon and return it to the applicant within thirty days.

(10) An applicant to whom the application is returned under subsection (9) (b) may re-submit the application within sixty days.

(11) On receipt of any revised application under subsection (10), the Directorate shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

### **Waterworks conditions**

**32.**Notwithstanding section 43, the Directorate shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance of waterworks.

### **Non-interference and restoration after construction works**

**33.** A person who carries out any construction works under this Act on any public property shall ensure that –

(1) there is no interference with the normal usage of any part of property or land;

(2) necessary measures are taken to prevent members of the public from being exposed to any danger or harm as a result of such works; and

(3) any parcel of land or property where the works were taking place are restored to its original state.

#### **Register of permits.**

34. (1) The Directorate shall maintain a register of permits issued under this Act, which shall include all details related to the permit.

(2) The register of permits shall be accessible to members of the public upon payment of the prescribed fees.

#### **Water services audit**

35. (1) The Corporation in collaboration with the Directorate shall audit and assess the number of persons providing water services in the county whether the persons are authorized or not.

(2) The Corporation shall submit the data and information collected under this section to the Executive Member who shall issue policy directive on management of water services to such persons in accordance with this Act.

### **PART IV- WATER AND SOIL CONSERVATION**

#### **(i). *Water conservation***

##### **Water conservation areas**

36. (1) The Directorate shall in consultation with the National Land Commission, other institutions and the public declare by notice in the *Gazette* any area to be a water conservation area for the purpose of conserving water.

(2) The Directorate may impose through a notice such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area.

##### **Conservation of water catchments**

37. The Directorate shall –

(1) through the Inter-Governmental Relations Act, County Governments Act and any other written laws collaborate with other county governments in conservation and protection of water sources and catchments of strategic importance which are located outside the county;

(2) support financing of water conservation and catchment protection;

(3) support and enforce reserve flow maintenance at all times;

- (4) in collaboration with other agencies develop policy and strategy on water storage at household and farm level and ensure their implementation; and
- (5) in collaboration with Water Resource Users Associations participate in development and monitor implementation of sub-catchment management plan.

### **Conservation guidelines**

**38.** The Executive Member shall in collaboration with national and county agencies prescribe guidelines and standards to be adopted for water conservation.

#### ***(ii) Soil conservation***

### **Soil conservation**

**39.** The Directorate shall –

- (1) develop and implement policies and strategies controlling cultivation of land situated on slopes;
- (2) develop and implement policies and strategies for sustainable management of wetlands.

### **Silt traps**

**40.** All flood flow storages shall have provisions for silt traps.

### **Demarcation of riparian land**

**41.** The Directorate shall in consultation with national and county agencies and other stakeholders demarcate riparian land.

### **Prohibited activities on riparian land**

**42.** (1) A person shall not carry any of the following activities on riparian land-

- (a) tillage or cultivation;
- (b) clearing of indigenous trees or vegetation;
- (c) building of structures;
- (d) disposal of any form of waste within the riparian land;
- (e) excavation of soil or development of quarries;
- (f) planting of exotic species that may have adverse effect to the water resource; or
- (g) any other activity that in the opinion of the Directorate may degrade the water resource.

- (2) A person who contravenes this section commits an offence and shall –
- (a) if a corporate body be liable to a fine of five hundred thousand shillings; or
  - (b) if an individual, to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both.

## **PART V- STORM WATER MANAGEMENT**

### **Storm water management and land use practices**

**43.** The Directorate shall in collaboration with relevant County and National Government departments and local residents promote sound water and land use practices.

### **Storm water management plan**

- 44.** (1) There shall be for each town or urban area, a watershed storm water management plan in accordance with the prescribed standards.
- (2) The town administrator or an officer responsible for managing an urban area shall ensure that the storm water management plan is developed and implemented through a consultative process.
  - (3) The storm water management plan shall among others-
    - (a) identify, survey and inventory existing conditions that affect storm water runoff; and
    - (b) address issues of peak flows, flooding, groundwater recharge, stream erosion and water quality.
  - (4) A person or entity engaged in land development activity, construction of a building or any physical infrastructure that is exposed to water precipitation or an owner of such constructed infrastructure shall develop and implement a storm water management plan on a sub-catchment basis in accordance with the prescribed standards.
  - (5) Any person constructing a road shall ensure that there is a built in storm water management plan and system for that road.
  - (6) Any construction of a building, physical infrastructure or a road shall not be approved unless the construction has a storm water management plan to be implemented.
  - (7) A person who contravenes this section commits an offence and shall –
    - (a) if a corporate body be liable to a fine of five hundred thousand shillings; or
    - (b) if an individual to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both.

### **Reduction of run off water**

- 45.** (1) The owner of a house, property or building shall –
- (a) install rain barrels with sufficient capacity to store water from the building;
  - (b) where applicable not permit storm water to become runoff;
  - (c) reuse or recycle storm water collected for other purposes in the premises.
- (2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding Kenya Shillings twenty thousand or to imprisonment for a term not exceeding one month.

### **Riparian buffers**

- 46.** (1) The Directorate in collaboration with other government agencies and local residents shall mobilize residents to develop or restore riparian buffers along rivers, waterways or any water body.
- (2) No person will interfere with a restored riparian buffer in a way that exposes it to run off water.
- (3) A person who contravenes subsection (2) commits an offence and shall –
- (a) if a corporate body be liable to a fine not exceeding shillings five hundred thousand shillings; and
  - (b) if an individual be liable to a fine of fifty thousand or to imprisonment for a term not exceeding two months.

## **PART VI- SANITATION SERVICES AND POLLUTION CONTROL**

### **Master plan**

- 47.** (1) The Directorate shall in collaboration with other County and National government departments and local residents prepare a five-year sanitation services master plan.
- (2) The Master Plan may be reviewed from time to time on a needs basis.

### **Provision of sanitation services**

- 48.** (1) The Corporation shall either directly or through public private partnership-
- (a) Provide necessary sanitation facilities and services; and
  - (b) Construct, operate and maintain extensive system of sewers and treatment facilities to meet applicable discharge requirements.

### **Waste water management**

**49.** (1) The Directorate shall-

(a) develop strategies and policies to encourage treated waste water and dried sludge re-use;

and

(b) in cooperation with the Directorate and any other relevant government agencies periodically carry out effluent quality analysis to confirm efficacy of the facilities.

### **Compliance with effluent standards**

**50.** (1) A person or entity shall, when disposing final effluent comply with the guidelines prescribed by the National Environment Management Authority, Kenya Bureau of Standards or any other such entity.

(2) A person who contravenes subsection ( 1) commits an offence and shall –

(a) if a corporate body be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months; and

(b) if an individual be liable to a fine of fifty thousand or to imprisonment for a term not exceeding two months.

### **Discharge of contaminated water or effluent**

**51.** (1) A person shall not discharge or dispose any contaminated water or effluent unless in accordance with the prescribed guidelines and standards.

(2) A person who contravenes subsection (1) commits an offence and shall –

(a) if a corporate body be liable to a fine not exceeding shillings five hundred thousand shillings or to imprisonment for a term not exceeding two months; and

(b) if an individual be liable to a fine of fifty thousand or to imprisonment for a term not exceeding two months.

### **Interference with sewerage system**

**52.** (1) A person shall not interfere with any sewerage facility or system unless with a written consent of the Corporation for the purposes of carrying out works within the area of the facility or system.

- (2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding shillings five hundred thousand or to imprisonment for a term not exceeding three years.

### **Sewerage tariffs**

- 53.(1) Subject to the County Governments Act and any written law, the Corporation may impose tariffs or levy sewerage services levy on water or sanitation services for the purposes of disposal of water or sewage.
- (2) The tariffs imposed or levied under this section shall be subject to approval by the County Executive Committee.

### **County Water Sector Forum**

54. (1) The Directorate shall constitute and convene the County Water Sector Forum.
- (2) The County Water Sector Forum shall consist of all stakeholders in the water and sanitation sector as shall be prescribed.
- (3) The roles of the County Water Sector Forum shall be –
  - (a) review and deliberate on water resources management and sanitation services;
  - (b) propose policy or legislative interventions for effective implementation of this Act; and
  - (c) participate in development of measures, plans and strategies for implementing this Act.
- (4) The County Water Sector Forum shall meet at least once every quarter

## **PART VII- FINANCIAL PROVISIONS**

### **Trust Fund**

- (1) There is established a fund to be known as Kilifi County Water Trust Fund.
- (2) The Fund shall consist of-
  - (a) such monies as may be appropriated by the County Assembly;
  - (b) monies received as grants, donations or grants or bequests.
- (3) The Fund shall be used in carrying out the regulatory functions of the Directorate.

### **Administration of the Fund**

56. The Fund shall be administered in accordance with the Public Finance Management Act, 2012.

### **Funds of the Directorate**

57. The funds of the Directorate shall consist of such monies as may be appropriated by the County Assembly.

## **PART VIII- ENFORCEMENT**

### **Authorized officers**

58. (1) The Executive Member may on recommendation of the Corporation or the Directorate appoint such number of authorized officers for the purposes of enforcing or implementing the respective functions of each institution or department.
- (2) The Executive Member shall issue a Letter of Appointment to every officer appointed under this section.

### **Power of entry**

59. For the purposes of ensuring compliance or implementation of the Act, an authorised officer may, at any reasonable time, enter any place in which any function related to this Act is carried out.

### **Power of officers**

60. (1) An authorized officer may examine or inspect any facility, equipment, information or data related to this Act or gain access to any area for the purposes of implementing this Act.
- (2) Any person who obstructs an authorized officer while enforcing or implementing this Act commits an offence and liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year.

## **PART IX- MISCELLANEOUS**

### **Water conflict resolution**

61. The Directorate shall actively participate in community water conflict resolution and may in so doing liaise with the other institutions created by this Act or any other body authorized by law.

## **Regulations**

- 62.** (1) The Executive 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 regulations may-
- (a) prescribe guidelines for developing watershed storm management plans ;
  - (b) prescribe guidelines for sanitation system and standards;
  - (c) prescribe for the areas declared as water protected areas;
  - (d) prescribe guidelines for administering the Fund
  - (e) prescribe the list of water sector stakeholders

## **Transition and Savings Provisions**

**63.** (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the water and sanitation companies established under or by virtue of the Water Act, 2002 shall upon commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Corporation to the same extent as they were enforceable by or against the Corporation before the commencement of this Act.

(2) Any legal proceedings pending in any court, the Water Appeal Board or other tribunal by or against the water and sanitation companies established under or by virtue of the Water Act, 2002 in respect of any matter shall continue by or against the Corporation.

(3) A person who immediately before the commencement of this Act was an employee of the water and sanitation companies established under the Water Act, 2002 shall, on the commencement of this Act, be deemed to be an employee of either the Corporation or the Directorate as the case may be on terms to be determined by the relevant bodies subject to the advice of the Kilifi County Public Service Board. This provision does not apply to Directors of the Boards of the water and sanitation companies.

## **FIRST SCHEDULE** (s. 8 and 21)

### **PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARDS OF DIRECTORS OF THE CORPORATION**

#### **Tenure of office**

- 1.** Any Member of the Board, other than the Officers shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified

in the instrument of appointment, and shall be eligible for re-appointment for a further and final term of three years.

### **Vacation of office**

2. A Member of the Board may—

- (1) at any time resign from office by notice in writing to the Executive Member;
- (2) be removed from office by the Executive Member if the Member—
  - (1) has been absent from three consecutive meetings of the Board without the permission of the Chairperson;
  - (2) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
  - (3) is convicted of an offence involving dishonesty or fraud;
  - (4) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
  - (5) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a Member of the entity; or
  - (6) fails to comply with the provisions of this Act relating to disclosure and on a resolution and a recommendation of the Board of Directors of the entity.

### **Meetings**

3. (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) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least seven members (for the Corporation Board) and five members (for the Directorate) shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total 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.
- (4) The quorum for the conduct of the business of the Board shall be seven members (for the Corporation Board) and five members (for the Service Board) including the Chairperson or the person presiding.
- (5) The Chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their members to preside, who

shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

### **Conflict of interest**

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

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

- (2) A member of the Board shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board.
- (3) Where the Board becomes aware that a member has a conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.
- (4) If the Chairperson has a conflict of interest he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.
- (5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.
- (6) Where the Board determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the

member shall resign unless the member has eliminated the conflict to the satisfaction of the Board within thirty days.

- (7) The Board shall report to the Executive Member any determination by the Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.
- (8) The annual report of the Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.
- (9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (10) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

## **5. Code of conduct**

- (1) Within twelve months of the commencement of this Act, the Board shall adopt a code of conduct prescribing standards of behavior to be observed by the Members and staff of the entities in the performance of their duties.
- (2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Board shall publish the proposed code or amendments in the Gazette and in a newspaper with wide coverage, inviting public comments.
- (3) The Board shall include in its annual report a report on compliance with the code during the period covered by the annual report.
- (4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Board and its staff.

## **Execution of Interest**

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally.

## **Minutes**

7. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

## MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to provide for the development, regulation and management of county public works related to water and sanitation services, storm water management systems and water conservation and for connected purposes.

**Part I-** of the Bill sets out the preliminary matters including the commencement date and the definition of various terms used in the Bill.

**Part II-** of the Bill establishes the Kilifi County Water and Sanitation Corporation to manage the provision of the water and sanitation services and the Directorate as the Sector regulator.

**Part III-** of the Bill outlines how water services and the works thereof shall be undertaken including setting of tariffs and the granting of permits.

**Part IV-** of the Bill provides for how water and soil shall be conserved so as to optimize on service provision.

**Part V-** of the Bill provides for the management of storm water.

**Part VI-** of the Bill provides for how sanitation services shall be availed and the general control of pollution.

**Part VII-** of the Bill provides for the creation of the Kilifi County Water Trust Fund and its administration being responsible for the sector development funds.

**Part VIII-** of the Bill provides for the enforcement of the Bill by appropriately empowering the authorized and enforcement officers.

**Part IX-** of the Bill provides for miscellaneous issues including the resolution of conflicts in the sector and the power to make Regulations.

**The Schedule-** of the Bill provides for how the Board of Directors of the Corporation shall be managed.

Dated the 14<sup>th</sup> May2014

***HASSAN MOHAMMED SAID***  
***Chairperson, Committee on Water and Sanitation.***