

SPECIAL ISSUE

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MAKUENI COUNTY ACTS, 2022

NAIROBI, 27th April, 2022

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**THE MAKUENI COUNTY SAND CONSERVATION AND
UTILIZATION (AMENDMENT) ACT, 2022**

No. 1 of 2022

Date of Assent: 4th April, 2022

Date of Commencement: 27th April, 2022

**AN ACT of the County Assembly of Makueni, to amend the Makueni
County Sand Conservation and Utilization Act, 2015**

ENACTED by the County Assembly of Makueni, as follows—

Short Title

1. This Act may be cited as the Makueni County Sand Conservation and Utilization (Amendment) Act, 2022.

Amendment of Section 2 of No. 1 of 2015

2. The Makueni County Sand Conservation and Utilization Act, 2015 in this Act referred to as “the principal Act” is amended in section 2—

(a) by inserting the following new definitions in their proper alphabetical sequence as follows—

“Authorized officer” means an officer who at the time is formally empowered by the Authority to conduct business on its behalf;

“Board” means the Board of the Authority;

“Designated roads” means roads that may be designated by the Authority from time to time ;

“Transportation” means the movement, loading, unloading and or storage of sand incidental to the movement;

“Vehicle owner” means a registered owner, an agent or a person having the vehicle at the time of arrest;

(b) in the definition of “designated site” by inserting “or otherwise communicated” after the word gazette.

(c) in the definition of “sand” by deleting the words ‘does not include silica sand, this’

Amendment of Section 3 of No. 1 of 2015

3. Section 3 of the principal Act is amended (a) in subsection (a) by deleting the expression “and Sand Conservation Fund” immediately after the words “within the county”.

Amendment of Section 7 of No. 1 of 2015

4. Section 7 of the principal Act is amended—
- (a) in subsection (1) and (3) by capitalizing the “B” in the word “board” to read “Board”;
 - (b) (1) (b)The Chief officer of the department in which the Authority is domiciled;
 - (c) in subsection (1) (c) insert the following sentence ‘considering youth, Persons With Disabilities and women’ after the word “appointed”;
 - (d) in subsection (1) (e) delete the last letter ‘s’ in the word “representatives”;
 - (e) in subsection 1(g) by deleting the whole sentence and replacing therefor with the words ‘a representative of non-state actors operating within the County at that time’;
 - (f) by inserting a new sentence (5) the members referred to in (1) (a) and (c) above shall—
 - (i) serve for a term of three years; and
 - (ii) be eligible for reappointment for one further term of 3 years;
 - (g) in subsection (7), (8), (9), (10), (11), (12), (13) and (14) by substituting the word “Authority” with “Board”; and
 - (h) in subsection (3) by inserting the sentence “the Board of the Authority shall appoint staff or agents of the Authority as necessary for the proper discharge of its functions under this Act upon such terms and conditions of service as the Board may determine” immediately after the words “County Public Service Board”.

Amendment of Section 8 of No. 1 of 2015

5. Section 8 of the principal Act is amended by substituting the word “committee” with the word “Authority”.

Amendment of Section 9 of No. 1 of 2015

6. Section 9 of the principal Act is amended—
- (a) in subsection (1) by substituting the words “the committee” with “the Board” after the word “year” and substituting the word “committee” with “Authority” immediately before the words “for that year”;

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- (b) in subsection (2) by substituting the word “Committee” with “Authority”;
 - (c) in subsection (2) (b) by substituting the word “Authority” with “Board”; and
 - (d) by inserting a new subsection to read.
- (3) The funds of the Authority shall consist of—
- (a) 2.25 % of the County annual budget appropriated by the County Assembly;
 - (b) such moneys as payable to the Authority pursuant to this Act or any other written law; and
 - (c) all moneys from any other source provided, gifted, granted, donated or lent to the Authority.

Amendment of Section 10 of No. 1 of 2015

7. Section 10 of the principal Act is amended—
- (a) in subsection (1) by substituting the word “Committee” with “Board”;
 - (b) in subsection (2) by deleting the expression “within a period of two months from the end of each financial year the Committee shall submit to the audit officer or to an auditor appointed by the county Government the accounts of the Committee together with” and substituting with the following expression “Within a period of three months from the end of each financial year, the Board shall submit to the Auditor General the accounts of the Authority in respect of that year together with; and
 - (c) in subsection (2) (a) and (b) by substituting the word “Committee” with “Authority”.

Amendment of Section 11 of No. 1 of 2015

8. Section 11 of the principal Act is amended by repealing the entire section 11.

Amendment of Section 13, 14, 15 and 16 of No. 1 of 2015

9. Sections 13, 14, 15 and 16 of the principal Act are amended by substituting the expression “Sand Water Resource Users Associations” with “Water Resource Users Associations”.

Amendment of Section 14 of No. 1 of 2015

10. Section 14 of the principal Act is amended by deleting the marginal note and substituting therefore the following marginal note—

Water Resource User Associations**Amendment of Section 15 of No. 1 of 2015**

11. Section 15 of the principal Act is amended by deleting the marginal note and substituting therefor the following marginal note—

Composition of the Water Resource User Associations**Amendment of Section 16 of No. 1 of 2015**

12. Section 16 of the principal Act is amended by deleting the marginal note and substituting therefor the following marginal note—

Functions of the Water Resource User Associations**Amendment of Section 18 of No. 1 of 2015**

13. Section 18 of the principal Act is amended in subsection (2) (b) by deleting the whole subsection (2) (b) which states “The Executive Committee Member shall make regulations for the construction of sand dams, gabions and any other conservation activities.

Amendment of Section 20 of No. 1 of 2015

14. Section 20 of the principal Act is amended—

- (a) in subsection (1) by substituting the words “issued by the government” with “issued by the Authority” and subsequently substituting the word “Executive Committee Member” with “Authority”; and
- (b) in subsection (3) by inserting the following expression “ and is liable to a fine of not less than 100,000 Kenya Shillings or to imprisonment for a term of 6 months or both” after the word “offence”.

Amendment of Section 25 of No. 1 of 2015

15. Section 25 of the principal Act is amended by substituting the words “A licensing officer” with “The Authority”.

Amendment of Section 26 of No. 1 of 2015

16. Section 26 of the principal Act is amended—

- (a) in subsection (1) (b) by deleting the words “or subsequent” immediately before the word “offence”;
- (b) by inserting the following new subsection (1) c;

- (c) for a third and subsequent offence—
- (i) to a fine not less than 60,000 Kenya shillings or to an imprisonment for a term not less than 9 months or to both for the loader;
 - (ii) to a fine not less than 300,000 Kenya shillings or to imprisonment for a term not less than 18 months for the driver;
 - (iii) to a fine not less than 600,000 Kenya Shillings or to imprisonment for a term not less than 36 months for the vehicle owner”; and
- (d) by inserting the following new subsection (2)—
- (2) Any person who is found in possession of illegally harvested sand shall be guilty of an offence and is liable to a fine of not less than 50,000 Kenya Shillings or to imprisonment for a term not less than 6 months in default.
- (e) by inserting the following new subsection (3)—
- (3) Any person who wilfully obstructs, resists, assaults and or prevents an authorized officer in due execution of their duties commits an offence and shall be liable upon conviction to a fine not less than 100,000 Kenya shillings or to imprisonment for a term not less than 1 year.
- (f) by inserting the following new subsection (4)—
- (4) Any person who intentionally or recklessly destroys the property, equipment or tools of the Authority commits an offence and shall be liable upon conviction to a fine not less than 100,000 Kenya Shillings or to imprisonment for a term not less than 1 year.
- (g) by inserting the following new subsection (5)—
- (5) Any person who impersonates an officer of the Authority for any purpose commits an offence and shall be liable upon conviction to a fine not less than 100,000 Kenya Shillings or to an imprisonment not less than 1 year.
- (h) by inserting the following new subsection (6)—
- (6) Any person who fails to stop at a barrier erected by the Authority or interferes with the operations at the barrier commits an offence and shall be liable upon conviction to a fine not less than 100,000 Kenya Shillings or to imprisonment for a term not less than 1 year.

(i) by inserting the following new subsection (7)—

(7) Any person who contravenes any provision of this Act for which no penalty is provided shall, on conviction be liable to a fine not exceeding 500,000 Kenya Shillings or to imprisonment for a term not exceeding 3 years or both.

(j) in subsection (7) by adding the following marginal note—

“General penalty”.

Amendment of Section 27 of No. 1 of 2015

17. Section 27 of the principal Act is amended—

- (a) in subsection (1) by substituting the words “Sand Resource User Association” with the words “Water Resource Users Association” in accordance with Section 29 of the Water Act, 2016 and subsequently substituting the expression “and gazette in the county Gazette” with the word “and gazette or otherwise communicate”;
- (b) in subsection (2) by substituting the word “Committee” with the word “Authority”; and
- (c) in subsection (3) by substituting the expression “will have a management plan” immediately after the word “site” and substituting it with the expression “shall be required to develop a management plan”.

Amendment of Section 30 of No. 1 of 2015

18. Section 30 of the principal Act be amended—

- (a) in Subsection (1) by deleting the words “persons are allowed to harvest, extract, scoop or transport sand” and replacing thereof with the words “Sand harvesting, extraction, scooping and or transportation shall only be allowed”; and
- (b) in subsection (2) by deleting the words “undertakes the activity not within the specified time shall be liable of an offence upon conviction be liable to imprisonment for term of two years or a fine of 200,000 shillings or both immediately after the word undertakes and replace thereon with the words “contravenes the provisions in (1) above commits an offence and is liable to a fine of Kenya Shillings 200,000 or upon conviction to imprisonment for a term not exceeding two years or both.

Amendment of Section 31 of No. 1 of 2015

19. Section 31 of the principal Act is amended in subsection (3) by deleting the word "Committee" and substituting it with the word "Authority" and subsequently deleting the expression "state officer" and substituting it with the expression "any other authorized officer".

Amendment of Section 32 of No. 1 of 2015

20. Section 32 of the principal Act is amended in subsection (2) by deleting the expression "Any person authorized to sell sand will be required to issue receipt to the purchaser and keep records of such receipt of payment for periodic inspection by the county revenue collector or relevant authorities" and substituting it with the expression "Any person authorized to harvest or trade in sand will be required to keep records for periodic inspection by the Authority".

Amendment of Section 33 of No. 1 of 2015

21. Section 33 of the principal Act is amended—

- (a) in subsection (1) by deleting the expression "Payments from the sale of sand shall be made in the form of either banker's cheque or cash deposit to the Authority's bank account and substituting it with the expression " All payments to the Authority shall be made in the forms of either of the following modes—
 - (i) cash payment to the Authority's office subject to the issuance of a receipt; or
 - (ii) electronic cash transfer; or
 - (iii) direct bank deposit to the Authority's bank account.
- (b) by inserting a new subsection (3)—
- (3) "upon payment, Authority shall issue receipts as proof of payment"
- (c) by inserting a new subsection (4)—
- (4) "Any person who attempts, purports to collect or collects fees or charges from sand and is not authorized to do so under this Act is guilty of an offence which upon conviction is liable to a fine not less than 1,000,000 Kenya shillings or to imprisonment for a term of five years or both".

Amendment of Section 34 of No. 1 of 2015

22. Section 34 of the principal Act is amended—

In subsection (3) by deleting the expression “to penalties as provided under this Act” and substituting it therefor with the expression “to a fine not less than 5,000 Kenya shillings and not exceeding 10,000 Kenya Shillings or to imprisonment for a term not exceeding 1 month”.

Amendment of Section 35 of No. 1 of 2015

23. Section 35 of the principal Act is amended—

- (a) in subsection (1) by deleting the expression “the county, the Authority and the sand loaders” immediately after the words “shared”;
- (b) in subsection (1) (a) by deleting the words “the conservation fund” immediately before the words “shall go to” and substituting it with the word “Conservation” and inserting the expression ‘as shall be determined by the Authority’ after the word ‘conservation’;
- (c) in subsection (1) (b) by substituting the expression “25% “with “35%”;
- (d) in subsection (1) (c) by substituting the expression “ 20% shall go to the County Government as revenue with the expression “ 5% shall go to Water Resource Users Associations for conservation and operations”; and
- (e) in subsection (1) (d) by substituting the expression “5% shall go to the local community with the expression “10% shall go to the Community”.

Amendment of Section 36 of No. 1 of 2015

24. Section 36 of the principal Act is amended—

- (a) by deleting the word ‘the’ appearing after the word ‘monitor’ and substituting with the word ‘and’; and
- (b) by deleting the word ‘rehabilitation’ and therefor substituting with the word ‘rehabilitate’.

Amendment of Section 38 of No. 1 of 2015

25. Section 38 of the principal Act is amended—

- (a) in subsection (2) by deleting subsection (h) and substituting it therefor with the following new subsection—

- (i) “construction of sand dams, gabions, de-silting of check dams and any other conservation activities”;
- (b) in subsection (2) by inserting a new paragraph immediately after subsection (2)(h) as follows—
 - (ii) “enforcement of the provisions under this Act”;
- (c) in subsection (2) by inserting a new paragraph immediately after subsection (2)(1) as follows—
- (k) “such other matters as may be necessary for full implementation of this Act”.