SPECIAL ISSUE

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ACTS, 2016

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No. 2 of 2016

Date of Assent: 14th April, 2016
Date of Commencement: See Section 1

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FIRST SCHEDULE

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THE HOMA BAY COUNTY FLAG, EMBLEMS AND NAMES ACT, 2016

AN ACT of the Homa Bay County to provide for the county flag and other symbols and to prevent the improper use of the county flag and of certain symbols, names, words and likenesses for professional or commercial purposes, and for matters incidental thereto

ENACTED by the County Assembly of Homa Bay as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the County Flag, Emblems and Names Act, 2016 and shall come into force on the fourteenth day after its publication in the Kenya Gazette and County Gazette.

2. In this Bill unless the context otherwise requires—

   “Specified Emblem” means any emblem, seal, flag, pennant, insignia, ensign or coat-of-arms of a kind specified in Part I of the First Schedule;

   “Specified Likeness” means any photograph, drawing or other pictorial representation of the person for the time being holding any of the offices or dignities specified in Part III of the First Schedule;

   “Specified Name” means any of the names and words specified in Part II of the First Schedule and includes any abbreviation of any such name;

PART II—COUNTY FLAG, EMBLEMS AND NAMES

3. (1) The flag of which the design and description are set out in Part I of the Schedule to this Act is hereby declared to be the Homa Bay County Flag (in this Act referred to as the County Flag).

   (2) The coat of arms device of which the blazon and description are set out in Part II of the Schedule to this Act is hereby declared to be the Coat of Arms of the Homa Bay County (in this Act referred to as the Homa Bay County Coat of Arms).

   (3) The seal of which the design is set out in Part III of the Schedule to this Act is hereby declared to be the Public Seal of the Homa Bay County (in this Act referred to as the Homa Bay County Public Seal).
4. A person who shows disrespect, in speech, manner or writing, to or with reference to the Homa Bay County Flag, or to any symbol or any representation thereof, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

5. (1) Notwithstanding anything contained in any law for the time being in force, no person shall, except with the written permission of the Governor—

(a) use the flag, any specified symbol or any imitation thereof, in furtherance of, or display the same as an advertisement for, any trade, business, calling or profession; or

(b) use any county symbol, specified name or specified likeness, or any colourable imitation thereof, in the title of any patent, or in any trade mark or design; or

(c) manufacture or import any article or goods bearing the flag or any specified emblem or any article or goods on which any title, trade mark or design is used in contravention of paragraph (b) of this subsection.

(2) Subsection (1) (a) shall not apply to the publication of a bona fide news item (whether in a newspaper, website or by any other medium) or to the publication in a newspaper of any article connected with any bona fide news item other than a news item in the furtherance of, or as advertisement for, any trade, business, calling or profession.

(3) Any permission given under subsection (1) of this section may be given subject to such conditions as the Governor may deem fit.

(4) Any person who contravenes the provisions of this shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

6. Notwithstanding anything contained in any law for the time being in force, no authority empowered or required by law to register any company, firm or other body of persons, or any trade mark or design, or to grant a patent,
shall—

(a) register any company, firm or other body of persons under any name; or

(b) register a trade mark or design which bears any emblem, name word or likeness; or

(c) grant a patent in respect of an invention which bears a title containing emblem, name or word.

If the use of such name, emblem, word or likeness would be in contravention of section 7 of this Act, and any purported registration or grant made contrary to this section shall be absolutely void and ineffective for all purposes.

7. (1) No person shall display at any place or on any premises any flag or banner or permit any flag or banner to be so displayed, being in either case a flag or banner (other than a specified emblem) which is reputed to belong, or is held out by any authority as belonging to Homa Bay County or of any particular part thereof (other than the area the county).

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

(3) This section shall bind the Government.

8. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction in writing from the Office of Director of Public Prosecutions.

9. (1) If a police officer has reasonable cause to believe that something which has been used, displayed, manufactured or imported contrary to this Act is to be found on any premises, he/she may require the person in charge or appearing to be in charge of the premises to allow him/her to enter the premises and to afford him/her all reasonable facilities for a search thereof, and if entry cannot within a reasonable period be so obtained the officer may without warrant enter the premises (using force if necessary) and search therein.

(2) If a police officer finds on any premises anything in respect of which he/she has reasonable cause to believe that an offence under this Act has been committed by any
person, he/she may seize that thing, and where he/she does
so shall bring it before a magistrate, who shall order it to be
forfeited if he is satisfied that it has been used, displayed,
manufactured or imported contrary to this Act, or else shall
order it to be restored to the person from whom it was
seized.

10. (1) The following persons shall fly the County
flag on their official vehicles during official duty—

(a) the Governor;
(b) the Deputy Governor;
(c) the Speaker of the County Assembly; and
(d) the County Executive Committee Member

11. (1) The County Flag shall be hoisted on the
following occasions and places—

(a) at all official functions attended by the Governor,
   the Deputy Governor or a member of the County
   Executive Committee;
(b) at the headquarters of the County Government;
   Sub-County Administrators headquarters; Ward
   Administrators headquarters; and Village
   Administrators headquarters;
(c) at the County Assembly; and
(d) in all devolved public institutions.

12. The County Secretary shall be the custodian of
the County Seal and shall ensure its proper use.

PART III—MISCELLANEOUS PROVISIONS

13. The County Secretary may, by notice in the
Gazette, amend the first schedule to this Act.

14. The County Secretary may make regulations with
the approval of the County Assembly—

(a) prescribing the occasions upon which, the
   persons by whom and the manner in which the
   County Flag may be flown or displayed, as the
   case may be;
(b) prohibiting, controlling or restricting the use of
   any specified emblem, specified likeness or
   specified name;
(c) generally for carrying this Act into effect.
FIRST SCHEDULE
PART I—EMBLEMS
1. The County Flag
2. The County Coat of Arms
3. The County Public Seal

PART II—NAMES AND WORDS
1. The name of the Governor

PART III—OFFICES AND DIGNITIES
1. The Governor
2. The Speaker

SECOND SCHEDULE
PART I—THE COUNTY FLAG

DESCRIPTION
The three major strips of equal width coloured from top to bottom, Orange, Blue and Green and a narrow white strip running vertically on the extreme left edge. The flag bears a symmetrical shield bearing a cotton bud, the pineapple fruit, a fish in the silhouette of a lake, the supporters of the shield bearing two roan antelopes bordered by two strands of millet on either side.
PART II—THE COUNTY COAT OF ARMS

DESCRIPTION

The County Court of Arms is the official insignia of Homa Bay County. It contains a shield bearing a cotton bud, the pineapple fruit, a fish in the silhouette of a lake, the supporters of the shield bearing two roan antelopes bordered by two strands of millet on either side. These elements come together to create a symbol of the natural resources the County is endowed with thereby being a source of economic stability and pride to its people.

PART III—THE COUNTY PUBLIC SEAL

DESCRIPTION

The Homa Bay County Seal is a simplified line art representation of the Homa Bay County Court of Arms to be applied as an embossing on official County documents.