

SPECIAL ISSUE

Kitui County Gazette Supplement No. 20 (Acts No. 9)



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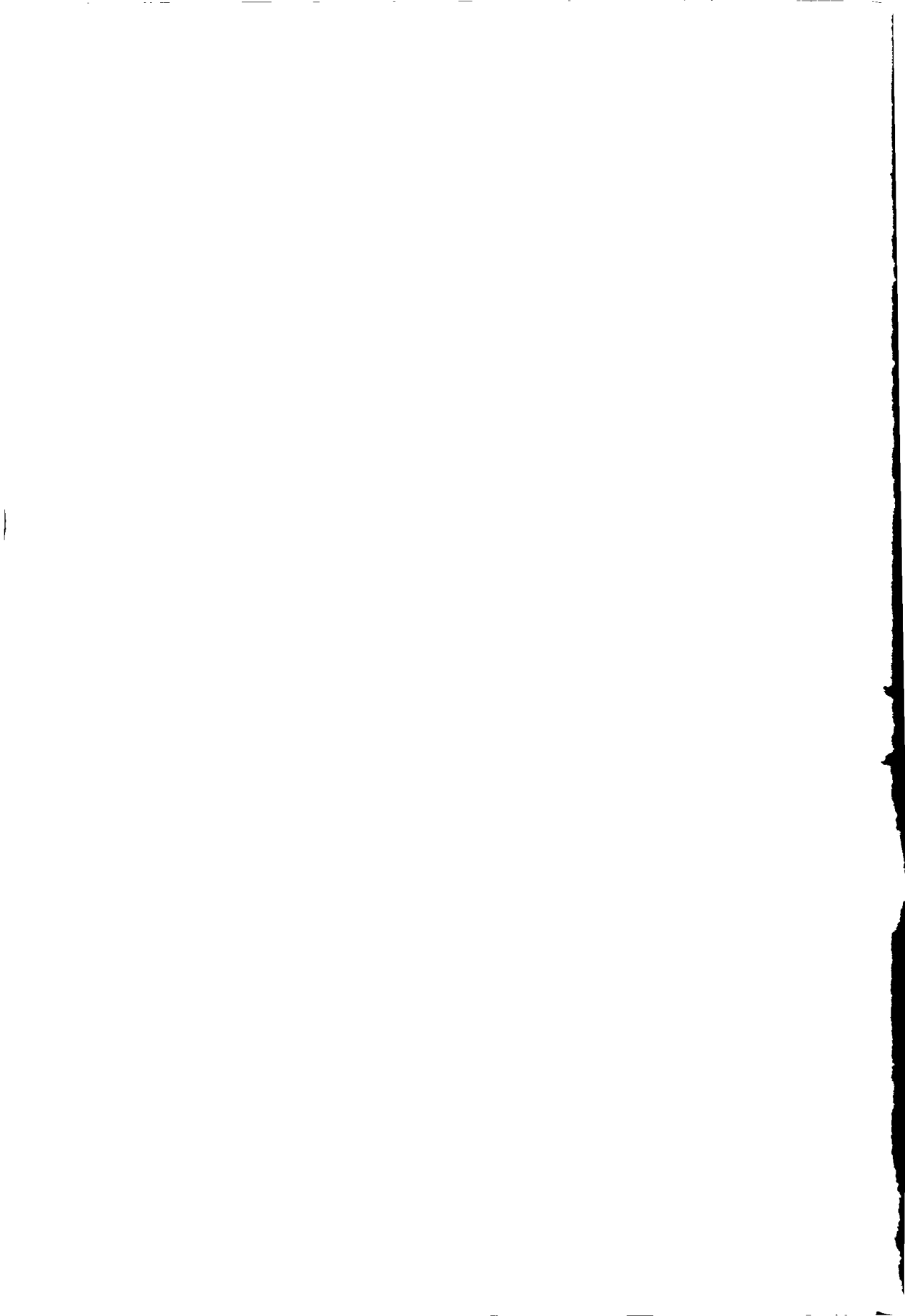
**KITUI COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

NAIROBI, 10th October, 2014

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**THE KITUI COUNTY ALCOHOLIC DRINKS CONTROL ACT,
2014**

No. 9 of 2014

Date of Assent: 6th October, 2014

Date of Commencement: 10th October, 2014

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**THE KITUI COUNTY ALCOHOLIC DRINKS CONTROL ACT,
2014**

AN ACT of the County Assembly of Kitui to provide for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising, of alcoholic drinks, and for connected purposes.

ENACTED by the County Assembly of Kitui as follows—

PART I—PRELIMINARY

Short title and Commencement.

1. This Act may be cited as the Kitui County Alcoholic Drinks Control Act, 2014 and shall come into operation on the date of publication in the County *Gazette* or *Kenya Gazette*.

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

Interpretation.

"alcohol" means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas :

"alcoholic drinks" includes alcohol, spirit, wine, beer, liquor, traditional alcoholic drink, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, modified industrial alcohol blended for human consumption and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being;

"authorized officer" means an authorised officer within the meaning of Section 50 of this Act;

Cap 121B

"Authority" means the National Authority for the Campaign Against Alcohol and Drug Abuse established under the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012.

Cap. 222

"cinema" has the meaning assigned to it in the Films and Stage Plays Act;

"County" means the Kitui County as established under Article 179 of the Constitution of Kenya 2010.

“entity” includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

“Enforcement Committee” means the County Alcoholic Drinks Control Committee;

“Executive Member” means the county executive committee member responsible for administration and coordination of county affairs.;

“Fund” means the Alcoholic Drinks Control Fund established under Section 6;

“health institution” means a hospital, nursing home, convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

“illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity;

“Licensee” means a person who holds a licence granted under this Act;

“locality” means a town, urban area, sub-county, ward or a village as the case may be;

“Manager” in relation to –

- (a) a cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;
- (b) a health institution includes the owner or a person in charge or in control of the health institution;
- (c) a specified building includes the owner, occupier, lessee or the person in charge or in control of the specified building;

“Kenya Bureau of Standards” means the bureau established under the Standards Act Cap 496.

“manufacture” means the brewing, distilling, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging, labelling, distribution or importation of an alcoholic drink for sale in the county or anywhere in Kenya;

“Manufacturer” in respect of an alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“package” means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored;

“Police officer” has the same meaning assigned to it by the National Police Service Act, Act number 11A of 2011.

“retailer” means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers;

“Sub county committee” means the Sub-county Alcoholic Drinks Regulations Committee appointed under section 9.

“Sub-county” refers to a constituency within Kitui county;

Object and purpose of the act

3. Object and purpose of this Act is to provide for licensing of alcoholic drinks by the County Government pursuant to Part II of the Fourth Schedule to the Constitution so as to regulate the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to –

- (a) protect the health of the individual in the county, in the light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect persons under the age of eighteen years from exposure to alcoholic drinks.
- (c) inform and educate the public on the harmful effects of the over-consumption of alcoholic drinks and to protect them from deceptive promotions. adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (d) promote fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks;
- (e) provide a mechanism for offering support and rehabilitation to persons affected by the consumption of alcoholic drinks.

PART II –ADMINISTRATION

Establishment of County Alcoholic Drinks Control Committee

4. (1) There is established in the County a County Alcoholic Drinks Control Committee.

- (2) The functions of this committee shall be to—
- (a) carry out public education on alcoholic drinks control in the County directly in collaboration with other public or private bodies or individuals;
 - (b) facilitate citizen participation in matters related to alcoholic drinks control in accordance with legal framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;
 - (c) laid down statutory frameworks.
 - (d) facilitate and promote in collaboration with all county departments and national government institutions, the establishment of treatment and rehabilitation facilities and programmes;
 - (e) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control
 - (f) develop strategies and plans for implementing this Act and control of alcohol abuse and any other relevant national legislation and coordinate and support their implementation;
 - (g) advise the Executive Member generally on the exercise of his powers and performance of his functions under this Act, and in particular on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
 - (h) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report bi- annually in the prescribed manner to the Executive Member which shall be transmitted to the County Executive Committee and the County Assembly.
 - (i) recommend to the Executive Member and participate in the formulation of laws and regulations related to alcoholic drinks;
 - (j) Monitor and evaluate the implementation of this Act including the operations of the Sub-county Committees and advising the executive member on the necessary measures to be adopted;
 - (k) submit to the Authority on a quarterly basis, an alcohol abuse control status report containing such matters as may be specified by the Authority;

- (l) Carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the executive member.

Establishment of rehabilitation facilities and programs.

5. (1) The County Committee shall—
 - (a) in collaboration with other relevant County and National Government Agencies establish treatment and rehabilitation facilities and programs for persons dependent on alcoholic drinks in each Sub-county or lowest possible administrative unit if need be.
 - (b) ensure treatment and rehabilitation centres have the necessary resources for effective operation and service delivery;
 - (c) ensure that the treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcoholic drinks.

Establishment of the Kitui County Alcoholic Drinks Fund

No. 18 of 2012

6. (1) The County Executive Committee Member for Finance and Planning shall in accordance with the Public Finance Management Act establish a fund to be known as The Kitui County Alcoholic Drinks Control Fund.

- (2) The Fund shall consist of-
 - (a) such funds as may be appropriated by the County Assembly;
 - (b) such licence fees and any other fees as may be payable under this Act;
 - (c) such sums as may be realized from property forfeited to the County Government under this Act;
 - (d) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
 - (e) moneys earned or arising from any investment of the Fund;
 - (f) all other sums which may in any manner become payable to, or vested in, the Fund.
- (3) The Fund shall be used for meeting the capital and recurrent expenditure relating to—
 - (a) carrying out the functions of the Committee stipulated under Section 4 of this Act ;

- (b) assisting in the operations of the Sub-county Committees;
- (c) any other matter incidental to the matters stated in paragraphs (a) and (b).

PART III—LICENSING

Control of alcoholic drinks

7. (1) No person shall manufacture or otherwise produce; sell, distribute or dispose of, or deal with any alcoholic drink in the County except under and in accordance with a licence issued under this Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

(3) Subsection (1) shall not apply to—

- (a) the bona fide administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine, by a medical practitioner, a veterinary surgeon registered under the Veterinary Surgeons and Veterinary Para-professionals Act or a pharmacist registered under the Pharmacy and Poisons Act, of a medicine containing alcoholic drink;
- (b) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996, of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink licence belonging to a wholesale dealer, on the licensed premises of the dealer;
- (c) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (d) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (e) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;
- (f) the sale of alcoholic drinks at County Assembly Buildings, if sold with the permission of the Speaker.
- (g) the sale of alcoholic drinks to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit:

Establishment of the Sub-County Alcoholic Drinks Control Committee

8. (1) there shall be established a Sub-county Alcoholic Drinks Control Committee in every Sub-county which shall—

- (a) issue licences in accordance with this Act; and
- (b) perform such other functions as may; from time to time be assigned to it by the Executive Member.

(2) The Sub-county Committee may, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate.

(3) In carrying out its functions, the Sub-county Committee shall

- (a) ensure that there is effective public participation .
- (b) collaborate with public officers appointed under the County Governments Act;

(4) The sub-county committee shall consist of—

- (a) A Sub-county administrator appointed under the County Governments Act, who shall be the Chairperson;
- (b) A deputy sub-county administrator who shall be the secretary to the committee;

(c) ex-officials members who will include:-

- i. the Sub-county Public Health Officer;
- ii. the Officer Commanding Police Division in the Sub-county;
- iii. the Sub-county Officer responsible for physical planning.

(d) Four residents of the sub county appointed by the Executive Member through a competitive process. One of whom shall be a youth, one person living with disability and at least one woman.

(e) on their first meeting the committee shall elect a vice-chairperson from among the persons appointed in sub-section (4)(d) who shall be of opposite gender to the Chairperson.

(5) the members of the sub county committee referred under sub-section 4 (d) shall, subject to the provisions of this Act shall hold office for a period of two years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re- appointment for one further term.

Ineligibility to committee Membership

9. A person shall not be a member of the Sub- county Committee if such person is–

- (a) the holder of a licence in the county under this Act;
- (b) a partner in a firm or director or shareholder of a company or other body which is the holder of a licence in this county under this Act;
- (c) directly or indirectly employed as an agent of a person, firm or company which is the holder of a licence in the county under this Act;
- (d) un-discharged bankrupt;
- (e) a person who has been convicted of an offence under this Act or a felony

Committee Meetings

10. (a) The Sub-County Committee shall meet not less than four times in every financial year in each administrative units of the Sub-County and not more than four months shall lapse between the date of one meeting and the subsequent one.

- (b) The Chairperson shall, through the Secretary convene the Sub-County Committee meetings.
- (c) Notwithstanding Sub-clause (a), the Chairperson may, and upon a resolution in writing by at least a third of all the members shall, convene a special meeting of the Sub-county Committee at any time for the transaction of the business of the Sub-county Committee
- (d) Unless two thirds of the total members of the Sub-county Committee otherwise agree, at least fourteen days' written notice of every meeting of the Sub-county Committee shall be given to every member of the Sub-county Committee.
- (e) The quorum for the conduct of the business of the Sub County Committee shall be half of the total members.
- (f) The Chairperson or in his or her absence, the Vice-Chairperson, shall preside at every meeting of the Sub County Committee;

Whenever the Chairperson and Vice-Chairperson are absent, the Chairperson shall nominate one of the members to preside over the

meeting and the business transacted in such a meeting shall be as directed by the Chairperson.

- (g) Unless a unanimous decision is reached, a decision on any matter before the Sub-county Committee shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (h) All decisions of the Sub-county Committee shall be in writing and shall be authenticated by the signatures of both the Chairperson and the Secretary.
- (i) Subject to Sub-paragraph (e), no proceedings of the Sub-county Committee shall be invalid by reason only of a vacancy among the members thereof.
- (j) Subject to the provisions of this section, the Sub-county Committee may determine its own procedure and the procedure for any Sub-committee of the Sub-county Committee and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Ad-hoc Sub-Committees

11. (1) The Sub-county Committee established under Section 8 of this Act may establish such sub-committees as it may deem appropriate to perform such functions and responsibilities as it may determine with the approval of the Executive Member;

(2) The executive member shall appoint the chairperson of the ad-hoc Sub-committee established under sub-clause (1) from amongst its members.

(3) The executive member may where it deems appropriate, co-opt any person to attend the deliberations of any of its ad-hoc Sub-committees.

(4) All decisions by the ad-hoc Sub-committees appointed under Sub-paragraph (1) shall be ratified by the Sub-county Committee.

(5) Ad-hoc sub committees.

Application for licence.

12. (1) A person intending to produce, manufacture, import, distribute any alcoholic drink in the County or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Sub-county Committee in the sub-county where the premise is to be situated and shall pay a prescribed fee.

(2) The application shall contain—

- (a) comprehensive information on the nature, location, business proposal and other justification for the establishment of the manufacturing plant or establishment for sale;
- (b) an indication as to whether the manufacture or sale of the alcoholic drink is licensed elsewhere within the county and if so the evidence of such licensing;
- (c) The manufacturer shall be required to produce certification from the Kenya Bureau of Standards;
- (d) such other matters as may be prescribed by the Executive Member.
- (e) An Environmental Impact Assessment Report Approve by the National Environmental Management Authority.

(3) The Sub-county Committee shall, within twenty-one days after the submission of application for a licence, prepare a notice setting forth the names of all applicants, the types of licences applied for, the premises in respect of which the licences are applied for and the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—

- (a) published at the office of the Sub-county Administrator for a period of not less than twenty-one consecutive days;
- (b) posted in some conspicuous place at or near the applicant's premises;
- (c) sent to the Sub-county Public Health Officer in the Sub-county in which the premises in respect of which the licences are applied for are situated; and
- (d) sent to the Sub-county Physical Planning Officer.
- (e) sent Officer Commanding Police Division.

(4) The Officer Commanding Police Division or, as the case may be, the police officer appointed by him for that purpose; the Sub-County Public Health Officer; and the Sub-county physical planning officer shall, before the hearing of any application under this section, report as fully as possible to the Sub-county Committee on all matters which may be relevant to the consideration of the application.

- (5) Any person may lodge objection to an application.
- (6) Every objection to an application shall be made in writing to

the Secretary of the Sub-county Committee, and the objector shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.

(7) A Sub-county Committee may of its own motion take notice of any matter or thing which, in the opinion of the Committee, constitutes an objection to an application, whether or not any objection has been otherwise lodged.

(8) Where in respect of an application a Sub-county Committee acts in pursuance of subsection

(9), the Committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, adjourn the hearing for such period, not being less than seven days, as the Sub-county Committee considers necessary to enable the applicant to reply thereto.

(10) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub-county Committee, and shall satisfy the Sub-county Committee that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.

(11) A Sub-county Committee may require the personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary.

(12) Any objector may appear personally or by an advocate at the hearing of the application.

(13) the Sub-county committee may authorize, in writing, any person to appear before any Sub-county Committee having jurisdiction in any part of the area within the jurisdiction of the County for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.

(14) Where a Sub-county Committee considers it necessary to take evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the chairman shall be empowered to administer oaths.

(15) for the purpose of Chapter XI of the Penal Code, all proceeding before a Sub-County Committee shall be deemed to be judicial proceedings.

(16) Every Sub-county Committee shall maintain records of all its proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced.

Provided that no decision shall be quashed on appeal solely by reason of any omission or error in such record, unless it appears that a substantial miscarriage of justice has thereby been occasioned.

(17) The Sub-county Committee shall, within twenty-one days of receipt of the application under subsection (1), record the application and assess the same on the basis of the objections received if any and the interests of the Sub-county, and shall ensure that-

- (a) the available premises are suitable with regard to the nature of the licence being sought;
- (b) the premises conform to the prescribed requirements of the occupational health and safety regulations;
- (c) the applicant possesses the infrastructure and equipment necessary to carry out the business applied for;
- (d) the applicant for a licence to brew, distil, bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law; and
- (e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

Grant of a licence.

13. (1) The Sub-county Committee shall, after considering the application under section 12, indicate in writing whether it objects to the grant of the licence applied for.

(2) Where the Sub-county Committee has no objection to the application under section 12, it shall grant a licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in such form as may be prescribed and subject to such conditions as the Sub-county Committee may consider fit.

(4) Where the Sub-county Committee is not satisfied with the application under subsection (1), 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 fourteen days.

(5) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within thirty days of the date of notification.

(6) On receipt of any revised application under subsection (5), the Sub-county Committee shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(7) Where the Sub-county Committee grants a licence under this section it shall, publish the grant in the county Gazette.

Provisional licence.

14. (1) Despite the provisions of sections 12 and 13 the Sub-county Committee may issue a provisional license for the manufacture or sale of an alcoholic drink for such period not exceeding six months as may be appropriate where the Sub-county Committee is satisfied that the applicant for the license has demonstrated to the satisfaction of the Committee that the manufacture or sale of the alcoholic drink is licensed in another County but the issuance of the provisional license shall be subject to the applicant complying with the provisions of sections 12 and 13 within the period of the provisional licence.

(2) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being used for the sale of alcoholic drinks for consumption on such premises, any person having an interest in the premises may apply in the prescribed form to the Sub-county committee for an assurance that, on the completion of the construction or reconstruction, a licence of the type to be specified in the application will be granted in respect of such premises.

(3) The provisions of section 12 and 13 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(4) The Sub-county committee may, subject to such reasonable conditions as it may therein include, give to the applicant an assurance in the prescribed form that, on the completion of the premises, a licence of the type specified therein will be granted or it may refuse to give such an assurance.

(5) Where such an assurance has been given under subsection (4), the Sub-county committee may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans

submitted under sub section (3) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of the type specified in the assurance in respect of the premises.

(6) Any assurance given under subsection (4) shall become ineffective and the Sub-county committee shall not issue a licence if, between the date of the giving thereof and the date of completion of the premises, the applicant becomes a person to whom in accordance with section 15(1)(a) a licence may not be granted.

Licence for premises.

15. (1) The Sub-county Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the Sub-county committee is satisfied—

- (a) that it would be in the public interest for a provision to be made for the sale of alcoholic drinks for consumption on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law;

Provided that no licence shall be granted to sell alcoholic drinks in proximity with any institution of basic education including Primary and Secondary Schools or any residential area as have been demarcated by or under the relevant written laws.

- (b) that the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements;
- (c) that the premises in respect of which the application is made are located at least three hundred metres from any Nursery, Primary, Secondary or other learning institutions for persons under the age of eighteen years.

(2) The Sub-county Committee shall not grant a licence for the sale of an alcoholic drink in –

- (a) a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years;