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TRADE ACT, 2014**

No. 4 of 2014

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**THE KITUI COUNTY MARKETS AND FARM
PRODUCE TRADE ACT, 2014**

**AN ACT of the Kitui County Assembly to provide for
the establishment of the Directorate of Trade, the
establishment and management of markets and the
regulation of trade and other business activities
and for related purposes**

ENACTED by the County Assembly of Kitui as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kitui County Markets and Farm Produce Trade Act, 2014 and shall come into operation upon gazettelement in the County or *Kenya Gazette* or on such date as the County Executive Committee Member for Trade, ICT and Co-operatives may appoint.

Short title and commencement.

2. In this Act unless the context otherwise requires—

Interpretation.

“appropriate form” means a form approved by the County Executive Committee Member for Trade, ICT and Co-operative for use in applying for any license under this Act to enable a person carry o business;

“busker” means a person who sells his or her wares within a close range of another business premises in accordance with this Act;

“butcher’s meat” include beef, mutton, veal, lamb, pork, kid or the meat of any other animal slaughtered for the purpose of sale;

“casual trader” means a person who attends a particular market with their goods, in the hope that they may be allocated a trading position for that day only, from the vacant positions in the market;

“ county executive committee member” means the County Executive Committee Member responsible for matters relating to trade and commerce;

“defective goods” include goods that—

- (a) are in the particular circumstances, unfit for use or are dangerous; or
- (b) do not comply with a product safety or quality standard;

“directorate” means the County Directorate of Trade and Markets established under section 3;

“hawker” means any person who sells goods that can easily be transported;

“marketable commodities” includes poultry, eggs, fresh meat, fish, ground provisions, vegetables and fruit;

“public market” means a market established under this Act;

“prohibited goods” means goods whose transportation, sale or consumption is illegal under this Act or any other relevant law;”

“prescribed goods” means goods approved for sale under this Act or Regulations made under this Act in particular areas;”

“prescribed areas” means areas set for aside for certain types of trade;”

“regular trader” means a trader who has been permitted to use a particular trading position on a particular day at a particular market site;

“slaughter-house” means any premises used in connection with the slaughtering of animals whose meat is intended for human consumption;

“stall” means any moveable or mobile structure used for the purpose of trading;

“street hawker” means any person who carries out any commercial activity from any street other than open air market irrespective of the means by which such activity is carried out;” and

“trade” means carrying on the business of selling goods or services.

PART II—DIRECTORATE OF TRADE

3. There is established a County Directorate of Trade and Markets.

4. (1) The County Directorate of Trade and Markets shall be headed by a Director of Trade and Markets.

(2) The County Public Service Board shall appoint the director on such terms and conditions as it may determine. The appointment of the director shall be through a competitive process.

Establishment of a
County
Directorate of
Trade and
Markets
Director of Trade
and Markets.

5. The Kitui County Public Service Board may appoint such deputies and other officers and assistants as may be necessary for the effective functioning of the directorate.

Deputy Director
and other officers

6. The functions of the directorate are to—

Functions and
powers of the
directorate.

- (a) advise the County Executive Committee Member on all matters affecting the development of county trading relationships with other counties;
- (b) represent, when appropriate and considered necessary by the County Executive Committee Member, the county at meetings, conferences or similar gatherings where matters of trade affecting the county are discussed or considered;
- (c) negotiate trade agreements on behalf of the County Executive Committee Member;
- (d) encourage and assist in the promotion of the county's produce and products, either on its own or in co-operation with any organization involved in exporting, including exhibiting at trade fairs;
- (e) advice on the commodities pricing and marketing information within the county;
- (f) advise the County Executive Committee through the County Executive Committee Member for finance of funds acquisition and planning for the purpose of trade development and promotion including discussion and negotiation with donors;
- (g) advise the County Executive Committee Member on all matters affecting the growth and development of industry, commerce and trade in the county;
- (h) advise the County Executive Committee, through the County Executive Member, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any legislation which promotes trade, for the time being in force in the county;
- (i) administer laws relating to fair trading and consumer protection;
- (j) promote the development of small businesses, to disseminate knowledge of sound business and commercial practice to the county;
- (k) undertake research into any aspect of county trade, commerce and industry, including the conducting

of surveys, gathering statistics and publishing reports from time to time;

- (m) evaluate investment proposals suitable for funding by the National Government, County Government, foreign governments or donors; and
- (n) to otherwise act in the promotion of investment in the county.

7. (1) An officer may, at any reasonable time, enter any place that they believe on reasonable grounds to be a place where goods are being, or have been manufactured, prepared or supplied or that is a place where services are supplied or arranged, and may—

Inspection powers
of officers.

- (a) inspect any goods or partly manufactured goods and make such other inspections as he considers to be necessary;
- (b) take any goods or partly manufactured goods for which he or she pays the market price;
- (c) take a sample of anything from which goods are manufactured or produced at that place;
- (d) make inquiries of any person employed at that place or who has responsibility over that place; or
- (e) inspect and take copies of records required to be kept under this Act or any other law regulating or applying to the business being conducted at that place.

(4) without derogating from any power conferred by subsection (3), the directorate may require the production of any accounting documents, returns, inventories or other information whether or not relating to the business of any manufacturer or trader if such information is considered necessary for the discharge of any power or function vested in the directorate.

8. (1) An officer who divulges confidential information obtained during the course of an investigation conducted under this Act or any other law commits an offence.

Confidential
Information.

(2) This section does not apply to information that is—

- (a) given as evidence in proceedings taken under this Act or any law relating to consumer protection;

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- (b) given by the officer as part of a report prepared for the purpose of an investigation; or
- (c) a matter of public record or is otherwise in the public domain.

(3) A person who commits an offence under this section is liable upon conviction to a fine not exceeding twenty thousand Kenya shillings or to a term of imprisonment not exceeding six months, or to both.

9. There shall be within the directorate such divisions as may be required for the effective performance of the functions of the directorate.

Divisions of the directorate.

10. (1) The directorate shall, within three months after the end of each financial year, or within such longer period as the County Executive Committee Member may in special circumstances allow, cause to be made and transmitted to the County Executive Committee Member a report dealing generally with the activities of the directorate during the preceding financial year.

Reports.

(2) The director may from time to time furnish to the County Executive Committee Member a report relating to any particular matter or matters investigated, or being investigated.

(3) The County Executive Member shall cause a copy of a report submitted under this section to be laid before the County Executive Committee.

PART III—PUBLIC MARKETS

SECTION A—Establishment of Market Division

11. There shall be within the directorate a division to be known as the market division headed by deputy director or any other officer as the County Executive Member responsible for trade, commerce and industry may appoint.

Establishment of the market division.

12. The division shall have the following powers —

Powers of the market division.

- (a) to purchase out of public funds, all such measures, scales and weights, furnishings and appliances as shall be necessary for the public market or slaughterhouse;
- (b) to make or cause to be made and paid for out of public funds all such repairs, alterations, improvements and additions to the public market as the director considers necessary;

- (c) to grant permits for the sale of fish, poultry, wild fowl, eggs, grain, vegetables, fruit and other products of the county, whether natural or manufactured, in the public market; and
- (d) to revoke any licence or permit for improper conduct; or for infringement of this Act.

SECTION B—Public Markets

13. The directorate shall establish, maintain, manage and regulate public markets for the sale of marketable commodities therein and provide all such things as may be necessary for the convenient use of such markets.

Establishment and control of markets.

14. (1) A person shall not hold any public market for the sale of marketable commodities in any place not being a public market established under this Act, unless licensed by the directorate.

Public markets and private markets to be held only in appointed places.

(2) The directorate may grant to any person a licence to establish and use at any place a market for the sale of marketable commodities and such licence may be granted upon such terms and conditions as may be prescribed in regulations schedule of fees payable.

(3) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand Kenya shillings or to a term of imprisonment of not more than six months, or to both.

15. (1) The directorate may demand payment and take from every person—

Power to make charges for use of stalls.

- (a) occupying or using any stall or place in any public market;
- (b) bringing into any such market any marketable commodities or anything which the County Executive Committee Member may permit to be sold therein; or
- (c) using any weighing or measuring instrument provided and kept in any such market, such stallages and charges as may be prescribed in regulations schedule of fees payable.

(2) Stallages and charges payable in respect of any public market or weighing or measuring instruments shall be paid at such times and in such manner as may be prescribed to the supervisor of the market or their agent to receive the same.

(3) Where any person liable for the payment of any stallage or charge does not pay on demand to a person authorized to receive the payment, the amount due may be—

(a) recovered by distress and sale of a sufficient part of any marketable commodities in the market which belong to the person liable to pay stallage or charge; or

(b) recover as a debt.

(4) For the purpose of recovering any sum due under this section, any action or other proceeding may be brought in the name of the supervisor or their agent.

16 (1) A regular trader, who wants to carry out any commercial activity from an open-air market must obtain a licence or, in the case of a casual trader, pay such fee as may be prescribed in Regulations Schedule of fees payable.

Regular traders.

(2) A licence issued under subsection (1) shall not entitle the regular trader to carry out such activity unless, in relation to a specific open-air market, the regular trader has been given the authorization by the directorate:

(3) A regular trader shall not possess more than one authorization for a post in a market that operates in the same day and time.

(4) (a) A regular trader using a motor vehicle to carry on their commercial activity shall have premises available where to garage the motor vehicle and store their goods.

(b) The address of the premises used for this purpose must be clearly indicated on the application for the issuing of a licence. Any change in the vehicle or garage must be notified to the directorate within ten working days after the change occurs.

(c) No application shall be accepted and processed by the directorate if the address of the garage or any other address for the store where goods are to be stored are not given.

(d) The directorate shall have the right to inspect such premises and to demand any documentation that proves the ownership of the premises when the application indicates the use of such premises by more than one licensee.

- (e) The directorate may refuse to issue a licence if it decides that such premises are not used as a store or garage by the applicant.
- (f) The licence issued by the directorate must indicate the regular trader as a non-food licence trader or as a food related items licence trader.
- (g) In the case that this activity concerns the selling of food items prior approval by the county public health authorities must be obtained;
- (h) With respect to non-food related items, the directorate may issue any legal orders to the licensee to restrict the selling of any item that may be causing an infringement of public order.

Provided that with reference to food related items the directorate, following a recommendation by the health authorities, may order the licensee to sell or not to sell specific items as ordered by the county public health authorities.

17. (1) A street hawker may carry out their commercial activity from any place, on any street, by hawking.

Street hawking.

(2) A street hawker may hawk from a vehicle, may carry out their commercial activity by parking their vehicle according to the traffic Regulations in any street where they stop to sell till they serve their customers and then after serving their customers move to another place.

18. (1) A person who organizes a car boot sale, selling items, in any public or private place must obtain a licence from the directorate.

Car boot sales.

(2) An application for a licence under this section shall contain the following information:

- (a) the name of the applicant;
- (b) the place where the car boot sale will be held;
- (c) the date or dates when the car boot sale will be held.

19. Selling by busking is permitted and subject to the following conditions—

Buskers.

- (a) that an application by any busker who, in any street, produces on site and sells a work of art on site, is filed on the appropriate form with the

directorate;

- (b) that the place where the busker stops to sell their goods is at least five meters of walking distance away from the entrance of any commercial premises: For such purpose, a fixed kiosk is considered to be a commercial premises;
- (c) that no selling by busking can be performed in the precincts of any hotel or any shopping complex if not by written permission from the management;
- (d) that no objects are placed on the pavement; and
- (e) that no nuisance or inconvenience is caused to the neighbours or passersby in the street.

20. A person who assaults or obstructs an officer, whether a public officer or other person duly authorized to receive any stallage or charge payable in respect of a public market or any person employed to superintend such market or to keep order therein, whilst in the execution of their duty, is liable on conviction to a fine of fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

Assaulting or obstructing an officer collecting dues.

21. A person who in a public market behaves in a disorderly or offensive manner or who misconducts themselves, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to a term of imprisonment for not exceeding six months, or to both.

Disorderly behavior in public market.

22. The directorate or other person in charge of any public market or other person authorized may remove from any market any person who behaves in the market in a disorderly or offensive manner or who misconducts himself or herself or may arrest such person without a warrant and take him or her to the nearest police station to be dealt with in due course of law.

Power of removal or arrest.

23. (1) No market operator shall operate a public market to sell or offer for sale prohibited goods.

Prohibited goods.

(2) No trader shall sell or offer for sale prohibited goods at a public market.

(3) This section does not apply where the goods have been acquired directly from the producer, manufacturer,

wholesaler, distributor or retailer of the goods and where the vendor provides to the operator, prior to the sale or offering for sale at a commercial market, proof that the vendor is an authorized sales representative of the producer, manufacturer, wholesaler, distributor or retailer of the goods.

24. (1) No trader shall sell or offer for sale at a public market prescribed goods unless information with respect to the goods is maintained by the vendor in accordance with this section.

Duty to maintain and provide information.

(2) A trader shall maintain with respect to the prescribed goods sold or offered for sale by the vendor the information prescribed by the regulations for the period prescribed by the Regulations.

(3) Before a trader sells or offers for sale prescribed goods at a public market the trader shall provide to the operator of the public market the information required to be maintained pursuant to subsection (2).

(4) No market operator shall operate a public market at which prescribed goods are sold or offered for sale unless the information required to be maintained by a trader pursuant to this section has been provided to the operator.

(5) No trader or market operator shall falsify, obliterate or destroy the information required to be maintained pursuant to this section.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand or imprisonment to a term not exceeding six months.

25. A market operator shall maintain the information provided to the operator pursuant to this Act for the period prescribed by Regulations.

Duty to maintain information.

26. A trader shall, upon request, produce prescribed goods or provide access to prescribed goods to an officer of the directorate.

Access to prescribed goods.

27. Where an officer, finds goods at a public market and the officer is satisfied, on reasonable grounds, that the goods are —

Seizure of prescribed goods.

- (a) prohibited goods; and
- (b) not being sold by an authorized sales representative of the producer, manufacturer,

wholesaler, distributor or retailer of the goods, the officer may, without laying any information or obtaining any warrant, seize and remove those goods.

SECTION C—Sale of Meat

28. (1) No person shall sell any meat except in a public market or in such shops as are licensed by the directorate in that behalf.

Meat to be sold only in market or licensed premises.

(2) Any person who contravenes subsection (1) shall commit an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for not more than six months.

(3) The directorate (business licensing officer) may grant to any person a licence to sell meat at any premises other than in a public market, and any such licence shall be granted in respect of such premises and upon payment of such sums and upon such terms and conditions as may be prescribed.

(4) No fees is payable for a business licence to sell meat where such premises are licensed as a slaughter-house.

29. (1) Any person who sells meat at any stall or place in any public market without having a business licence, commits an offence and is liable on conviction to a fine not exceeding fifty thousand Kenya shillings or to both.

Licence to salesmen of meat.

(2) The business licensing officer may grant a licence to any person to sell meat in a public market upon payment of prescribed fees.

30. (1) A person who in a public market—

(a) sells meat of any animal that is not slaughtered in a public slaughter-house or in a licensed slaughter-house; or

(b) sells meat of any animal that is not examined and passed as fit for human consumption by the directorate or a duly authorized officer, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Kenya shillings or to a term of imprisonment not exceeding six months, or to both.

Selling unexamined meat or meat from an animal not slaughtered in a public or licensed slaughterhouse.

(2) Subsection (1) does not apply to imported meat.

SECTION D—Regulation of Sale of Marketable Commodities and Other Goods

31. (1) Subject to section 32, no person shall sell any marketable commodities in the entrance to any building or on the pavements of any road which is situate within the limits of a prescribed area for the purposes of this section.

Selling marketable commodities and other goods within prescribed areas.

(2) Subject to subsection (1), no person shall sell any marketable commodities in any part of any public place within the limits of a prescribed area.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand Kenya shillings.

32. Section 31 shall not apply to the—

- (a)** carrying of any marketable commodities from place to place for the purpose of sale within a prescribed area;
- (b)** sale in accordance with the provisions of any law relating to hawkers of any marketable commodities at any building situate within any area prescribed for the purposes of that section;
- (c)** sale of any marketable commodities in any shop or in any public market held for public purposes within any area prescribed for the purposes of that section;
- (d)** sale of any marketable commodities in the entrance to any building situate within any area prescribed for the purposes of that section in any case where the vendor first obtains the permission of the owner or occupier of such building to sell and so conducts their business so as not to cause obstruction to any person lawfully using such road;
- (e)** sale of any marketable commodities as defined in section 31, in any part of any public place or within any area prescribed for the purposes of section 31, by any person to whom a permit is issued in accordance with section 32 and who sells at the place and in accordance with the terms and conditions specified in the permit issued.

Certain sales excluded from the operation of section 31.

33. (1) Every person desirous of being issued a permit authorizing him or her to sell in any part of a public

Power to issue permits allowing

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place or within an area prescribed for the purposes of section 31, any permitted marketable commodities shall make an application to the directorate and must produce evidence to the satisfaction of the directorate as to their good character.

the sale of goods within prescribed areas.

(2) Every permit mentioned in subsection (1) shall be issued by the directorate and upon payment of the prescribed fee and shall be valid for such period as may be specified not exceeding one year from the date of issue.

(3) Before issuing any permit mentioned in subsection (1) the directorate shall cause the particular part of the public place to which it is proposed that the permit shall on issue relate to be defined by lines painted on the ground or by studs embedded in the ground or in such other manner as he thinks fit and a number or letter to be marked within such place in such manner as he thinks fit.

(4) Every person to whom a permit is issued under subsection (2) shall produce their permit when required so to do by the directorate or any officer duly authorized by the directorate.

(5) An applicant for a permit mentioned in subsection (1) who is dissatisfied by a refusal of the directorate to grant the same may appeal to the tribunal whose decision shall be final.

SECTION E—Miscellaneous

34. A county public medical officer or other competent officer or officer of the County Health Directorate shall carry out all inspections of animals and articles of food at the public market in accordance with regulations made under this Act.

Officers of Health Directorate to carry out inspection.

35. (1) All stalls or blocks in the portion of a public market used for the sale of meat or farm produce may be leased by the directorate to a person for a period not exceeding five years, at any one time;

Renting of stalls for sale of meat.

(2) Subject to subsection (1)—

- (a) no person shall be permitted to lease more than one stall or block at the same time; or
- (b) no lessee of any stall or block shall assign the lease to any other person or permit the use of any stall or block by any other person without the written permission of the directorate.

(3) The County Executive Member may by notice in writing revoke any lease granted by the directorate under subsection (1).

36. The directorate shall —

Duties of the directorate.

(a) inspect all butcher's meat, fish, vegetables and all other articles of food offered for sale in the public market and, if in their opinion the same are unfit for human consumption, immediately seize the same pending any legal action;

(b) recover all rates and other moneys to be payable under this Act;

(c) keep a detailed cash account book in which entries are made of all moneys received by the directorate under this Act; and

(d) generally to carry out and enforce this Act.

37. A person who —

Offences.

(a) sells in the public market, any butcher's meat without a business licence;

(b) sells any article in the public market, otherwise than in accordance with this Act;

(c) within the county sells, exposes or offers for sale any butcher's meat except in a shop for which a business licence has been so granted;

(d) obstructs or opposes any officer in the execution of their duty under this Act or; or

(e) creates or causes any disturbance in the public market or at or near the same during the hours when the same is open, or disturbs the quiet and good order of the same by offering any article for sale in a loud voice to attract customers or by shouting, singing, smoking or screaming therein, or in any other manner that causes nuisance, commits an offence.

38. (1) All penalties imposed by this Act are recoverable in a summary manner.

General Penalty.

(2) any person who commits an offence under this Act, where no other penalty is provided for commits an offence and is liable upon conviction to a fine not exceeding ten thousand Kenya shillings.

39. All markets established before the coming into operation of this Act are deemed to have been established under this Act, and all rules and by-laws made under the now repealed Local Government Authority Act and in force at the time of the commencement of this Act shall be deemed to have been made under this Act and shall remain in force until other provisions are made in accordance with this Act.

Saving .

Regulations.

40. The County Executive Committee Member may make regulations—

- (a) regulating the use of markets and market buildings;
- (b) prescribing, and regulating the pattern, description and use of, weighing or measuring instruments to be used by persons selling marketable commodities in any market ;
- (c) preventing nuisances and obstructions in markets and for maintaining cleanliness therein, and on the approaches thereto;
- (d) prescribing the goods that may be sold in any market;
- (e) fixing, regulating and collecting stallages or charges and the payment and collection thereof in any public market;
- (f) for the inspection and examination of marketable commodities sold or offered for sale in any market;
- (g) fixing the days and hours during each day on which any market may be opened and for preventing the sale and purchase of marketable commodities in any market on any day or at any times except as fixed;
- (h) prescribing the conditions subject to which the several stalls or places in any public market shall be held, occupied or used by persons having or using the same;
- (i) imposing on any person having or using any stall or place in any market the duty of taking steps and using such means for protecting from contamination any articles of food offered or exposed for sale in any market;

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- (j) for maintaining order and preventing disturbances in a public market; and
- (k) for prescribing any area within which section 31 shall, subject to section 32, apply.