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THE MACHAKOS COUNTY PERSONS WITH DISABILITIES

ACT, 2016

No. 6 of 2016

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**THE MACHAKOS COUNTY PERSONS WITH DISABILITIES
ACT, 2016**

AN ACT of County Assembly of Machakos to give effect to article 27 and 54 of the Constitution; to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the County Board for Persons with Disabilities; and for connected purposes.

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Machakos County Persons with Disabilities Act, 2016.

Interpretation

2. In this Act unless the context otherwise requires—

“aged person” includes a person with a disability who has been forced into retirement from employment due to his disability;

“assistive devices and services” means implements, tools and specialized services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities;

“board” means the Machakos County Board for Persons with Disabilities established under section 20;

“chief executive officer” means a person appointed under section 24;

“commission” means the Salaries and Remuneration Commission established by article 230 of the Constitution;

“disability” includes any Physical, Sensory, Mental, Psychological or other Impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities;

“discriminate” means to Accord different Treatment to different Persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a Person with a Disability;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act, Cap. 253;

“executive committee member” means the County Executive Committee Member responsible for matters relating to persons with disabilities;

“fund” means the County persons with disabilities Fund established under section 29;

“government” means the County Government of Machakos;

“organizations for persons with disabilities” means associations or societies formed for the purposes of rendering services to persons with disabilities;

“organizations of persons with disabilities” means associations or societies formed by Persons with Disabilities for their welfare and protection;

“usual day-to-day activities” means the activities of daily living which an ordinary person would reasonably be expected to carry out.

Object and purpose of the Act

3. The object and purpose of this Act is to—

- (a) establish a mechanism to facilitate the advancement of rights, fundamental freedoms, progress and wellbeing of persons with disabilities;
- (b) ensure equality and freedom from discrimination of persons with disabilities;
- (c) establish an institutional framework on matters relating to persons with disabilities;
- (d) provide a framework for a coordinated approach by all government departments and institutions in the mainstreaming of disability across all planning, designing budgeting, implementation and monitoring of services and development programmes;
- (e) promote public awareness on matters relating to persons with disabilities;
- (f) provide a framework against which the delivery of services to persons with disabilities can be monitored and evaluated; and
- (g) provide for mobilization of resources for the provisions of services to persons with disabilities.

**PART II—RIGHTS AND PRIVILEGES OF PERSONS WITH
DISABILITIES**

Rights of Persons with Disabilities

Realization of rights of Persons with Disabilities

4. The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities.

Dignity

5. Every person has a duty to uphold, respect and safeguard the dignity of persons with disabilities.

Equality before the Law

6. All persons including persons with disabilities are equal before the law and are entitled without discrimination equal protection and equal benefit on an equal basis as other persons in society.

Prohibition of discrimination

7. A person shall not discriminate against a person with disability on the basis of disability.

Education and Training

8. (1) Persons with disabilities have equal basis with others to the right to education.

(2) The County Government shall put in place measures to ensure that education and training of persons with disabilities is directed to—

- (a) the full development of human potential, sense of dignity and self-worth;
- (b) fostering respect for human diversity, human rights and fundamental freedom with particular reference with those set out in the provisions of various international conventions on the rights of persons with disabilities;
- (c) the development of persons with disabilities of their personalities, talent and creativity as well as the mental and physical abilities to their fullest potential; and
- (d) enabling persons with disability to participate effectively in a free society.

(3) No person or learning institution shall deny admission to a person with disability to any course of study by reason only of such disability.

(4) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(5) Special schools and institutions, especially for the deaf, the blind and persons with mental disabilities shall be established to cater for formal education, skills development and self-reliance.

(6) The Board shall put in place an integrated system of special and non-formal education for persons with all forms of disability and establish braille and recorded libraries for persons with disabilities.

Right not to be Discriminated

9. (1) No person shall deny a person with disability access to opportunities for suitable employment.

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) An employee with a disability shall be entitled to exemption from tax on all income accruing from the employment.

(4) The Board shall promote the reservation of five percent of all positions in employment in the public and private sectors for persons with disabilities.

(5) Persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Discrimination by Employers

10. (1) Subject to Subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;

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- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Notwithstanding Sub-section (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities.

Incentives to Employers

11. A private employer who engages a person with disability may apply for a tax waiver to the relevant government institution.

Right to Accessibility and Mobility

12. (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, assistive devices and other equipment to promote their mobility.

(2) A proprietor of a public building or public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Board.

(3) The Executive Committee Member shall prescribe the period within which proprietors of public amenities shall comply with this section.

Adjustment Orders

13. (1) Where the Board considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the

Board may issue an adjustment order to the owner of the premises or the provider of the services or amenities concerned—

- (a) requiring the owner or provider to make adjustment to the premises to ensure accessibility to persons with disabilities.
- (2) A person who contravenes this section commits an offence.

Denial of Admission

14. (1) A person with disability shall not be denied—

- (a) admission into any premises to which members of the public are ordinarily admitted; or
- (b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

(2) The proprietor of premises referred to in sub section (1) (a) shall not have the right, on the ground of a person's disability alone, reserve the right of admission to his or her premises against such a person.

Health of Persons with Disabilities

15. (1) Every person with disability has on an equal basis with others, the right to enjoy the highest attainable standard of health care services.

(2) The government shall put in place measures for—

- (a) prevention of disability;
- (b) early identification of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) ensuring access to essential health services to persons with disabilities;
- (e) prompt attendance by medical personnel to persons with disabilities;
- (f) prohibiting any form of treatment without consent on the basis of one's disability; and
- (g) providing particular health services required by persons with disability specifically because of their disabilities.

Access to Justice

16. (1) The Government shall ensure access to justice for persons with disabilities including taking measures to ensure—

- (a) the effective access to the systems, procedures, information, and locations used in the administration of justice; and

- (b) the provision of timely and effective legal and administrative remedies for violation of the rights of persons with disabilities.

(2) The Board shall collaborate with national government institution to ensure the implementation of this section.

Right to Participate

17. The Executive Committee Member shall in order to enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, prescribe appropriate measures to—

- (a) encourage and promote the participation , to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (b) ensure that persons with disabilities have an opportunity to organize, develop and participate in disability specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others of appropriate instruction, training and resources;
- (c) ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- (d) ensure that children with disabilities have equal access with other children to participate in play, recreation and leisure and sporting activities, including those activities in the school system; and
- (e) ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Other Rights

18. In addition to the rights contained in this Part, every person with disability has the right to—

- (a) full and effective participation and inclusion in the society;
- (b) respect for difference and acceptance for persons with disability as part of human diversity and humanity;
- (c) protection of mental and physical integrity of the person on an equal basis with others;
- (d) equality of opportunity;

- (e) respect for the rights of children with disabilities to preserve their identity;
- (f) respect for evolving capacity for children with disabilities;
- (g) access to universal safety precautions, practices and procedures; and
- (h) protection against stigmatization.

Special and Non-formal Education

19. (1) The Board shall take appropriate and effective measures to ensure that the goal of inclusive education and training for persons with disabilities is realized.

- (2) For the purposes of Sub-section (1), the Board shall ensure that—
 - (a) persons with disabilities have to access free, quality and compulsory primary and secondary education;
 - (b) persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including ensuring the literacy of persons with disabilities above compulsory school age;
 - (c) reasonable accommodation of the individual's requirement is provided, and that persons with disabilities receive the support required to facilitate their effective education and training;
 - (d) effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion;
 - (e) appropriate schooling choices are availed to persons with disabilities who may prefer to learn in particular environments;
 - (f) persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and training and as members of society; and
 - (g) competent teachers, staff and equipment is made available for learners with disabilities in an inclusive setting.

PART III—ESTABLISHMENT OF THE BOARD

Establishment of the Board

20. (1) There is established the Machakos County Board for Persons with Disabilities.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding charging or disposing of movable and immovable property; and
- (c) doing or performing such acts for the proper discharge of its functions under this Act.

Membership of the Board

21. (1) The Board shall consist of—
- (a) the following members appointed by the Executive Committee Member—
 - (i) four persons with disabilities nominated by organizations representing persons with various categories of disabilities within the County; and
 - (ii) two members with expertise in matters relating to disabilities nominated by organizations working for persons with disabilities;
 - (b) Chief Officer or a representative not below the level of Director representing the following Departments—
 - (i) culture and social services;
 - (ii) education;
 - (iii) labour;
 - (iv) finance; and
 - (v) health.
- (2) The Executive Committee Member shall appoint the chairperson and the vice chairperson from amongst members appointed under sub section (1)(a).
- (3) The Chairperson and the Vice-Chairperson shall be of the opposite gender.
- (4) In nominating or appointing persons as chairperson and members of the Board, the Executive Committee Member shall ensure that the process is carried out in an open and transparent manner and that—
- (a) the Membership of the Board shall equitably represent the types of disabilities occurring in the county;
 - (b) not more than two-thirds of the members are of the same gender; and
 - (c) the composition of the Board shall reflect the regional diversity of the people of the County.

Functions of the Board

22. (1) The functions of the Board shall be to—
- (a) raise awareness regarding persons with disabilities and to foster respect for the rights and dignity of persons with disabilities;
 - (b) promote the provision of services for persons with disability;
 - (c) set and monitor the standards for the establishment and operations of persons with disabilities;
 - (d) formulate and develop measures and policies designed to achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, participate fully in sporting, recreational and cultural activities and are accorded full access to community and social services;
 - (e) advise the Executive Committee Member on matters relating to disabilities;
 - (f) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (g) encourage and secure the rehabilitation of persons with disabilities;
 - (h) promote the establishment of institution for the welfare, rehabilitation and employment of persons with disabilities;
 - (i) manage fund;
 - (j) register—
 - (i) persons with disabilities;
 - (ii) institutions, associations and organizations, that provide services for the rehabilitation and welfare of persons with disabilities;
 - (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;

- (k) provide, to the maximum extent possible—
 - (i) assistive devices, appliances and other equipment to persons with disabilities; and
 - (ii) access to available information and technical assistance to institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities;
- (l) formulate curriculum for vocational rehabilitation centers and other training facilities for persons with disabilities;
- (m) make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;
- (n) to submit quarterly reports to the executive committee member;
- (o) promote public awareness on matters relating to disability;
- (p) conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
- (q) undertake research on matters relating to disabilities;
- (r) promote the advancement of credit on terms that are friendly to persons with disabilities; and
- (s) perform such other function as may be prescribed by this Act or any other written law for the proper function of the Board.

Tenure of Office

23. A member of the Board appointed under section 21(1) (a) and (b) shall be appointed for a term of three years and shall be eligible for reappointment for one further term.

Chief Executive Officer

24. (1) There shall be a chief executive officer of the Board.

(2) The Chief Executive Officer shall be appointed by the Executive Committee Member on recommendation of the Board and recruited through a competitive process.

(3) To qualify for appointment as a chief executive officer, a person shall—

- (a) possess a degree in social sciences 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 term of five years but shall be eligible for re-appointment for one further term.

(5) The chief executive officer shall be an ex officio member of the Board with 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 Board;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Board; and
- (c) carry out any other function as may from time to time be assigned by the Board.

Remuneration

25. The Members of the Board shall be paid such remuneration allowances as the County Public Service Board may, on the advice of the Commission, determine.

Staff of the Board

26. (1) There shall be a secretariat of the Board which shall provide administrative, secretarial and other assistance to the Board.

(2) The Secretariat shall comprise of —

- (a) such professional, technical and administrative officers and support staff as may necessary in the discharge of its functions; and
- (b) such public officers as may be seconded by the county Public Service Board upon the request of the Board.

(3) The members of staff of the Board shall be paid such remuneration or allowances as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

Vacancy

27. (1) Where vacancy occurs in the membership of the Board under section 21(3), the Executive Committee Member shall appoint a new member in accordance with the provisions of this Act.

(2) An appointment to fill a vacancy shall be for the remainder of the term of the member being replaced and the new member shall be eligible for reappointment.

Vacancy during Proceedings

28. The validity of any proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member or by the fact that a person who was not entitled to do so took part in the proceedings of the Board.

PART IV—FINANCIAL PROVISIONS**Fund**

29. There is established a Fund to be known as the Machakos County persons with disabilities Fund.

Source of the Fund

30. The fund shall consist of—

- (a) monies appropriated by the County Assembly for that purpose;
- (b) sums received as contributions, donations, gifts or grants;
- (c) refunds and capitations from any institution duly paid into the Fund;
- (d) monies paid into the Fund as fees or charges;
- (e) monies earned or realised from any investment of the fund; or
- (f) such other monies as may be payable or vested in the fund.

Application of the Fund

31. The Board may use the monies of the Fund to—

- (a) buy assistive devices to persons with disabilities;
- (b) issue grants to associations of persons with disabilities;
- (c) capacity building;
- (d) support education programmes including the grant of bursary to persons with disabilities;
- (e) basic administration expenses;
- (f) establishment of rehabilitation center for persons with disability;
- (g) create awareness;
- (h) support research of disability; and
- (i) do any other things in furtherance of the objectives of this Act.

PART V—MISCELLANEOUS**Failure to obey an Adjustment Order and Discrimination**

32. (1) A person commits an offence if the person—

- (a) fails to comply with an adjustment order issued under this Act;
- (b) discriminates against a person with disability contrary to this Act;
- (c) if they unlawfully deny a person with a disability admission into any public premises;
- (d) being a parent or guardian of persons with disabilities conceals such a person in a such a manner as to deny them the rights set out in this Act; or
- (e) denies the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three year or to both such fine and imprisonment.

General Penalty

33. A person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years, or both such fine and imprisonment.

Regulations

34. (1) The Executive Committee Member shall in consultation with the Board make Regulations generally for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of sub section (1), the Regulations may provide for—

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) prescribe the procedure for—
 - (i) redress to any adjustment orders;
 - (ii) consideration of an objection to adjustment order; and

- (iii) registration of persons with disabilities and organization dealing with persons with disabilities.
- (c) prescribe form for adjustment orders;
- (d) period of compliance with accessibility to buildings;
- (e) period of compliance with adjustment orders;
- (f) guidelines for waiving of taxes, charges revenue and other fees for persons with disabilities;
- (g) prescribed fees;
- (h) prescribe the procedure and forms for persons entitled to subsidized medical care under this Act;
- (i) procedure of meetings of the Board; and
- (j) prescribe any other thing required to be prescribed under this Act.

