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REPUBLIC OF KENYA

***MACHAKOS COUNTY GAZETTE  
SUPPLEMENT***

**ACTS, 2014**

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SANITATION ACT, 2014  
(No. 1 of 2014)**

*Date of Assent: 18th November, 2014*

*Commencement Date: By Notice*

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**THE MACHAKOS COUNTY WATER AND  
SANITATION ACT, 2014**

**AN ACT of Machakos County Assembly to make provision for water and sanitation services, creation of the Machakos County Water Board and water service providers, water works, storm water management systems, water conservation and for related purposes**

**ENACTED** by the County Assembly of Machakos as follows—

**PART I—PRELIMINARY**

**1.** This Act may be cited as the Machakos County Water and Sanitation Act, 2014 and shall come into operation on such date as the Executive Committee Member may, by notice in the Gazette, appoint and different days may be appointed for the coming into operation of different provisions.

Short title and commencement

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

Interpretation.

“Board” means the Machakos County Water and Sanitation Board established under section 6;

“County” means the County Government of Machakos;

“County Executive Committee Member” means the County Executive Member for Water, Irrigation and Sanitation;

“Government” means the Government of Machakos County;

“inspector” means a person appointed by the County executive committee member under section 9;

“licencee” means any person who has been issued with a licence under this Act;

“limits of supply” in relation to a water services provider means the limits within which a water services provider is for the time being is authorized to supply water;

“pollution” in relation to a water resource, means any direct or indirect alteration of physical, thermal, chemical or biological properties of the water resource so as to make it—

**PART II—OWNERSHIP, USE AND  
MANAGEMENT OF WATER RESOURCES**

- (a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or
- (b) harmful or potentially harmful to—
  - (i) the welfare, health or safety of human beings;
  - (ii) any aquatic or non-aquatic life or property; or
  - (iii) the environment;

“sanitation” means the provision of on-site sanitation services including latrines, septic tanks and conservancies including the associated exhauster services;

“supply of water in bulk” means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

“water resource” means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below ground;

“water service” means any service of or incidental to the supply of water or the provision of sewerage;

“water services provider” means a company, non-governmental organization or other person or body licensed to provide water services under and in accordance with an agreement as stipulated under section 18

“watercourse” means any natural channel or depression in which water flows regularly or intermittently;

“water works” means any construction, excavation, piping, drainage of any land, supply or transportation of water, water abstraction works, management of storm water and floods or storage, impounding of water for supply to the public or for private purposes, drainage of any swamp or other land.

3. Every water resource is vested in and held by the national and county government in trust for the people of Kenya.

Ownership of water resources.

4. (1) Every person has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation as stipulated in Article 43 of the Constitution.

Right to water.

(2) Upon the commencement of this Act, no instrument shall be effectual to convey, transfer or vest in any person any right or interest in respect of any water resource, and no interest in such property shall be acquired otherwise than under this Act and any other written law.

5. (1) The County Executive Committee Member shall—

Responsibility of the County Executive Committee Member

- (a) formulate and publish in the gazette a county water and sanitation policy;
- (b) ensure effective exercise and performance by any person of powers and duties granted or imposed under this Act;
- (c) coordinate all water institutions in the county;
- (d) undertake county water sectoral planning;
- (e) establish a county water data base and information system which shall be provided by the water institutions and any other relevant institution;
- (f) formulate cross-sectoral co-ordination plans with departments in the county and in the national government;
- (g) prepare an annual water sector report on water services provision and sanitation;
- (h) in consultation with the relevant water institutions in the national government put in measures to prevent unlawful abstraction of water resources and watercourses in the county; and
- (i) formulate a comprehensive inter-sectoral program on sewerage and sludge treatment for decentralized sanitation facilities.

(2) The water policy referred under subsection (1) shall outline the government's objectives, strategies and plans for management of water and sanitation services.

**PART III—ESTABLISHMENT, POWERS AND  
FUNCTIONS OF THE MACHAKOS  
COUNTY WATER BOARD**

6. (1) There is established the Machakos County Water and Sanitation Board.

Establishment of the Board

(2) The Board shall be the successor to the water and sanitation companies and other institutions established under the Water Act, 2002 operating in the county immediately before the enactment of this Act.

7. (1) The Board shall consist of—

Composition of the Board

- (a) a non executive chairperson appointed by the Governor with the approval of County Assembly;
- (b) the chief officer in the department responsible for water;
- (c) the chief officer in the department responsible for finance;
- (d) five other persons appointed by the county committee executive member through a competitive process—
  - (i) one being a representative of water users in the county;
  - (ii) one being a representative of water service providers;
  - (iii) three being representatives of sub-counties appointed by virtue of their knowledge, expertise and experience in water and sanitation management matters one of whom must be of either gender; and
- (e) the Chief Executive Officer who shall be the secretary of the Board.

(2) A person shall be qualified for appointment as chairperson under subsection (1) (a) if the person—

- (a) holds a relevant degree from a recognized university;
- (b) has knowledge and experience of at least five

years in matters relating to water and sanitation services management or other related field;

- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

(3) A person shall be qualified for appointment as a member under subsection (2) (d) if the person—

- (a) holds a degree from a recognized university;
- (b) has knowledge and experience of at least three years in matters relating to water resources management, water and sanitation services management or any other related field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has had a distinguished career in their respective fields.

8. The Board shall be responsible for—

Functions of the Board.

- (a) provision and management of water and sanitation services;
- (b) development of county water and sanitation services infrastructure, including water works and public works;
- (c) ensuring adequate water supply system for domestic, industrial, livestock, wildlife and agricultural purposes;
- (d) developing and managing works for water conservation;
- (e) promotion of water harvesting and water recycling systems;
- (f) promotion of efficient water use and management for sustainable development;
- (g) identification, initiation and promotion of water conservation systems, strategies and programs;
- (h) development and management of public infrastructure for storm water control;

- (i) maintenance of database and dissemination of information on water and sanitation services; and
- (j) maintenance of collaboration and cooperation with other government agencies other county governments in carrying out its functions.

**9.** (1) The County Executive Committee member may, in consultation with the County Service Board appoint water inspectors for purposes of enforcing and ensuring compliance of the provisions of this Act and all relevant laws.

Appointment of water inspectors.

(2) Despite subsection (1), County Executive Committee Member may designate any other officer of the department to perform the functions of an inspector.

**10.** (1) An inspector or other authorized person appointed by the Executive Committee Member may enter without a warrant on to any land and inspect any water resource located within or accessible from the land concerned, in order to take any measures authorised under this Act for the purpose of—

Power of entry

- (a) conserving or regulating the water resource, or preventing it from pollution or protecting the bed over which it lies or flows; or
- (b) removing any obstruction from, or clearing and deepening, a river bed; or
- (c) preventing the illegal diversion, pollution of the water resource or interference with any water source.

(2) An inspector or authorized person shall not enter into the land or premises without first giving reasonable notice, whether written or verbal, to the landholder or an employee or agent in charge of the land, and such entry shall be at reasonable hours:

Provided that an inspector may enter without giving notice if—

- (a) there is reason to believe that a provision of this Act or other law has been or is about to be contravened;
- (b) the inspector unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) there are other reasonable grounds for not giving notice.

(3) If so requested by the owner or occupier of the land or premises, the Inspector or other authorised person shall produce evidence of the right or permission, as the case may be, to enter on to the land.

(4) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and diligence.

11. (1) There shall be a Chief Executive Officer of the Board.

Chief Executive Officer  
of the Board

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

(3) To qualify for appointment as a Chief Executive Officer, a person must—

- (a) possess a degree in a relevant field from a recognized university;
- (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 period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

(5) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(6) The Chief Executive Officer shall be responsible for—

- (a) the day to day management of the affairs of the

Board;

- (b) the staff of the Board in the performance of the functions and duties;
- (c) the general administration of the Corporation; and
- (d) carry out any other function as may from time to time be assigned by the Board.

**12. The Chief Executive Officer may—**

Removal of the Chief Executive Officer.

- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
- (b) be removed from office by the executive member on recommendation of the Board, for—
  - (i) serious violation of the Constitution or any other written law;
  - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
  - (iii) physical or mental incapacity to perform the functions of office;
  - (iv) incompetence;
  - (v) bankruptcy.

**13. The Board may, in consultation with the County Service Board, appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, on such terms and conditions of service as the Board may determine.**

Staff of the Board.

**PART IV—WATER AND SANITATION SERVICES**

**14. (1) The Board shall progressively ensure that—**

Supply of water

- (a) every person in the county has access to safe and clean water for domestic use within reasonable distance;
- (b) there is accessible water for agricultural, livestock, wildlife and industrial use;
- (c) equitable distribution of water between

consumers in urban and rural areas.

(2) The Board may enter into service performance agreements with any entity in carrying out its functions.

**15.** (1) The Board may erect or develop waterworks and other public works on a public or private property.

Development of water works

(2) Notwithstanding provisions of subsection (1), the Board shall seek consent of the owner of private land or the relevant government agency occupying or in whose custody the public land falls where it seeks to erect any water works or public works and shall provide the prescribed compensation.

(3) The Board shall in collaboration with the department of roads identify and establish specific areas on any road where public works under this Act may be carried out.

(4) The Board shall seek easements from owner or occupier of any land for construction of water works or public works to be undertaken on such land.

**16.** A community may initiate project for water services with the approval of the Board.

Community projects.

**17.** (1) The Board may levy tariffs and any appropriate user charges for the purposes of supplying efficient water services.

Water tariffs

(2) The tariffs and user charges levied under this section shall be established in accordance with the principles set out under the County Governments Act, 2012 and any other written law.

(3) The tariffs and user charges collected under this section shall not form part of the County Revenue Fund and may be utilized for defraying expenditures of the Board and providing efficient and quality services under this Act.

(4) The tariffs and user charges imposed or levied under this section shall be subject to approval by the county executive committee.

**18.** (1) Water services in the County shall be provided— Water service providers.

- (a) by water services providers licensed in accordance with this Act; and
- (b) on the basis of an agreement between the water services providers and the government pursuant to section 12.

(2) A water service provider licensed under this section shall be a company established under the Companies Act, or other person or agency providing water services as shall be approved by the government. Cap. 486.

(3) Every County water services provider shall comply with standards of commercial viability set by the relevant national regulatory agency.

(4) Any Company wishing to be licensed as a water service provider shall submit its Memorandum and Articles of Associations that conform to the model developed and approved by the relevant national regulatory agency.

**19.** (1) A person shall not— Prohibited activities

- (a) interfere with any meter or equipment installed under the authority of the Board;
- (b) install illegal or un authorized water connections;
- (c) install a pipe or connection which does not comply with the approved standards.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

**20.** (1) A person intending to carry out or maintain any water works shall apply for a permit to the Board.

Permit for water works

(2) A person who prior to the commencement of this Act was carrying out water works, managing or maintaining any water works shall within sixty days apply for a permit.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding one year or to both.

**21.** (1) An application for a permit under section 20 shall, where applicable be accompanied by an environmental impact assessment report in accordance with the Environmental Management and Coordination Act, 1999 and shall specify among others—

Application for a permit.

- (a) the purpose and nature of the works to be undertaken;
- (b) the nature of works to be carried out;
- (c) the duration within which the works are expected to be completed.

(2) The Board shall, where the construction of works are to be undertaken on public property or where the works will affect a cross section of the residents, issue a public notice within fourteen days after such an application and invite any person to make comments or object to such an application.

(3) A person may lodge an objection to application for a permit.

(4) Every objection to an application shall be made in writing to the Secretary of the Board setting out the grounds for such an objection.

(5) The Board shall, upon receiving the application send a notice the objection received to the applicant for a permit.

(6) The Board may, where appropriate conduct public hearings on the objection.

(7) An objector or an applicant for a permit may appear personally or by an advocate at the hearing of an application.

(8) The Board shall consider the application within

thirty days of such an application and may where it is satisfied that the applicant has fulfilled all the requirements of this Act or any other written law grant a permit in the prescribed form subject to any such conditions as may be prescribed and upon the applicant paying the prescribed fees.

(9) Where the Board is not satisfied with the application, 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 thirty days.

(10) An applicant to whom the application is returned under subsection (9) (b) may re-submit the application within sixty days.

(11) On receipt of any revised application under subsection (10), the Board shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a permit.

**22.** Notwithstanding section 21, the Board shall prescribe the appropriate conditions related to equipment and technology, design, construction, operation and maintenance or waterworks.

Conditions for water works

**23.** (1) No person shall provide water services except under the authority of a license issued by the Board.

Requirement for a licence for water services

(2) A person who provides water services in contravention of this section shall be guilty of an offence.

(3) Nothing in this section prohibits the provision of water services—

- (a) by a person to employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or business where the source of supply of the water is lawfully under the control of the institution or is supplied to it in bulk by a licensee;
- (c) to a local community through an arrangement

of members of that community; and

- (d) in circumstances which are prescribed by rules made by the executive committee member to be exempt from the requirement for a licence.

**24.** (1) A water service provider shall enter into a written agreement with the Board for purposes of exercise and performance of its powers and functions under the licence.

Water service provision agreements.

(2) An agreement entered into under subsection (1) shall specify the powers and functions under the licence which shall be performed by the water service provider.

(3) A water provision agreement shall make provisions for—

- (a) the indemnify by the water service provider of any liability to the government arising from performance or non-performance of functions conferred by the licence; and
- (b) the maintenance, rehabilitation and development, by the water service provider of water and sewerage infrastructure and facilities in the County.

**25.** (1) An application for a licence shall be made to the Board in the prescribed form.

Application for a licence.

(2) The applicant shall furnish the following particulars—

- (a) evidence of compliance with the national standards set by the national government regulatory agency;
- (b) the technical and financial capability of the applicant to provide the services and perform functions authorized by the licence;
- (c) evidence that the water services to be provided shall be commercially viable;
- (d) the applicant's business plans for the provision of efficient, affordable and sustainable water services;
- (e) performance targets;

- (f) details of planned financial and infrastructural improvements;
- (g) a proposed tariff structure; and
- (h) any other information required by the relevant national water regulatory agency.

(3) The application shall be made by completing and lodging the prescribed form together with the supporting documentation and the prescribed fee.

(4) The application shall not be granted unless the Board is satisfied that the conditions set out under subsection (2) have been met.

**26.** (1) An application for a licence shall be the subject of public consultation.

Determination of an application

(2) Any person opposed to the grant of licence may object in writing to the Board.

(3) The Board shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons therefore, and an applicant or objector may, if aggrieved by the decision within thirty days after the date of the notification, appeal to the court.

(4) The Board to determine an application for a licence as soon practicable after filing of the application but in any case not later than forty-five days.

**27.** (1) A licence shall authorize and, to the extent provided therein, require, the provision by the licensee of water services specified in the licence.

Nature of water service license.

(2) There is no property in a licence, and except provided by this Act, a licence shall not be capable being sold, leased, mortgaged, transferred, attached otherwise assigned, demised or encumbered.

(3) The Board may require the applicant to deposit a guarantee or other acceptable security for the purpose of securing payment by the applicant of any expenses recoverable from the person, as a licensee, for or towards the costs incurred in discharging the functions of the licensee in cases of default.

(4) Every licensee shall, within twelve months of receipt

of the licence, or such longer period as the Board may determine, formulate and present to the Board, a development plan for extending services to un-served persons within its area, a time frame for the implementation of the plan and a resource mobilization strategy.

**28.** (1) A licensee shall pay to the government, on issue of the licence and at prescribed intervals thereafter, such licence fees as the Executive Committee member may determine.

License fees.

(2) The fee shall be determined by reference to a schedule of fees published in the Gazette from time to time by the Executive Committee member following public consultation.

**29.** (1) A licence shall be subject to—

Conditions of a license

(a) such conditions as may be prescribed by or under this Act in relation to the license; and

(b) such other conditions, not inconsistent with the conditions prescribed, as the national water regulatory agency may impose by endorsement on, or instrument in writing annexed to, the licence;

(2) Rules made under this Act may make provision for imposing conditions on, or with respect to the conditions which are or shall be imposed on licenses generally or any class or description of licenses.

(3) Without prejudice to the generality of subsection (2), such rules may—

(a) require the imposition of prescribed conditions in prescribed circumstances;

(b) require the licensee to maintain, in the prescribed manner, a contingency fund for the purpose of renewal, repair, enlargement or improvement of any plant, equipment, facilities or works used for the purposes of the licence or for meeting any other prescribed contingency.

(c) provide that a contravention of any, or of any specified, conditions prescribed under this Act as conditions of licences shall constitute an offence punishable by a penalty specified in the licence.

(4) The imposition of a penalty by a regulation made in accordance with subsection (3) (c) shall not prejudice any remedy for the recovery of damages for any loss, damage or injury sustained by any person by reason of the contravention in respect of which the penalty is imposed.

**30.** (1) A water services provider shall be responsible for the efficient and economic provision of water services to the extent authorized by the licence.

Duty to provide water services.

(2) For the purpose of the provision of water services, a water services provider, may —

- (a) purchase, lease or otherwise acquire, premises, plant, equipment and facilities;
- (b) purchase or lease land in accordance with the applicable law;

(3) Every water services provider shall establish a mechanism for handling consumer complaints which meets the standard set by the relevant national water regulatory agency.

**31.** (1) The Board may enter into a public private partnership for the exercise and performance by another person of some or all of its functions as a licensee with respect to a part or the whole of its area of water service.

Public private partnerships.

(2) A public private partnership shall be in writing.

(3) Where the person entering into a public private agreement with the Board owns or possesses assets or infrastructure used for the provision of water services, the agreement shall set out the terms and conditions under which the assets may continue to be so used.

(4) A power or function conferred by a licence or otherwise conferred under this Act, may be exercised or performed by another person acting under an agreement with the licensee and shall be deemed, when exercised or performed by that other person.

**32.** (1) The Board shall to put in place measures for the provision of water services to rural and other areas which are unviable for the provision of water services on a commercial basis.

Special provisions with respect unviable rural areas

(2) The measures taken by the government under subsection (1) shall include developing point sources, small

scale piped systems and stand pipes which meet the standards set by the national water regulatory agency and which may be managed by the communities, agencies or private persons based on written contract with the government.

(3) In order to implement its obligation under this section the Board shall formulate an up to date five-year development plan incorporating an investment and financing plan for the provision of water services in unviable rural areas within its area of jurisdiction.

**33.** (1) The area of a water service shall be prescribed by the licence and shall not be less than the area required for a commercially viable water service.

Areas of water service.

(2) The area so prescribed may, subject to the relevant County Governments Act traverse the boundaries of the county.

**34.** (1) The Government may, in consultation with any other County Government—

- (a) permit the joint provision by two or more licencees of water services on such terms as it may approve; or
- (b) permit the transfer of a water service, or part thereof, of one licensee to another licensee.

(2) Where it appears to the Government to be necessary for the purpose of securing a commercially viable water service, the Executive Committee Member may, by notice in the Gazette, order such a joint provision of water services or such a transfer of water service and vary the relevant licenses accordingly.

(3) An order made under this section may make incidental and supplementary provisions as the Executive Committee member deems necessary or expedient for the purpose of carrying out the order.

(4) A licensee aggrieved by the provisions of the order may apply for review to the court.

**35.** (1) The Executive Committee member may vary the areas of water service—

Variation of areas of service.

- (a) on the application of a licensee whose area of water service is to be varied and with the