

SPECIAL ISSUE

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REPUBLIC OF KENYA

**TRANS NZOIA COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2015

NAIROBI, 5th May, 2015

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THE TRANS NZOIA COUNTY NAWIRI FUND ACT, 2015
No. 4 of 2015

Date of Assent: 28th April, 2015

Date of Commencement: 19th May, 2015

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**THE TRANS NZOIA COUNTY NAWIRI FUND ACT,
2015**

AN ACT of County Assembly of Trans Nzoia to provide for the establishment of the Trans Nzoia County Nawiri Fund, and for matters incidental to and connected therewith

ENACTED by the County Assembly of Trans Nzoia as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Trans Nzoia County Nawiri Fund Act, 2015. Short Title.

2. (1) In this Act, unless the context otherwise requires— Interpretation

“County ” means the Trans Nzoia County

“Board” means the Fund Management Board of the Fund constituted under section 8

“Committee’ means the Trans Nzoia County Nawiri fund Ward Committee established under Section 12.

“Financial year” means the financial year of the Fund as provided for under section 18

“Fund” means the Trans Nzoia County Nawiri Fund established under section 5

“Jua Kali trader” means a small scale trader or entrepreneur and includes artisans, open air traders, vegetable and fruit vendors among others;

“Member of the Board” means a person or group of persons nominated under section 8

“Executive Committee Member” means the executive member of the department in charge of trade affairs in the County

“Chief Officer” means the chief officer of the department in charge of trade affairs in the County

“Loanee” means any person or group of persons or group of person or group of persons granted a trade loan under the Trans Nzoia County Nawiri Fund Act by the department in charge of Trade in the County .

“Successful applicant or group of applicants” means any person or group of persons, who being a Kenyan citizen, has attained minimum entry requirements for the advancement of the loan

3. The objects and purpose of this County Act are to provide for—

Object and purpose of this County Act

- (a) The establishment, functions, powers and responsibilities of the Trans Nzoia County Nawiri Fund

4. In the performance of the functions and exercise of powers under this Act, the Fund shall be guided by the values and principles set out in Articles 10 and 232 of the Constitution.

Guiding principles

PART II—ESTABLISHMENT AND FUNCTIONS OF THE TRANS NZOIA COUNTY NAWIRI FUND

5. (1) There is hereby established a Fund to be known as the Trans Nzoia County Nawiri Fund, which shall be a body corporate with perpetual succession and a common seal.

Establishment of the Fund

(2) The Fund shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and/or disposing of movable and immovable property;
- (c) entering into contract;
- (d) borrowing and lending money;
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

6. (1) provide affordable and competitive credit to both formal and informal traders involved production and trade in goods and services within Trans Nzoia County

Functions of the Fund

(2) Without prejudice to the generality of the provisions of sub-section (1), the Fund shall—

- (a) provide an opportunity to small scale entrepreneurs to gain commercial experience to enable them play their part in industrial and commercial development of the County

- (b) provide enterprise development services;
- (c) enhance the small and medium enterprises' competitiveness as they graduate into bigger vibrant enterprises; and
- (d) Perform any other lawful function for purposes of promoting enterprise and entrepreneurship development in the County

7. (1) The headquarters of the Fund shall be in the office of the County Executive Committee Member responsible for matters relating to Trade and Commerce, in Trans Nzoia County.

The Fund Official
Headquarters

(2) Subject to subsection (1) above, the County Executive Committee member may, as may be deemed appropriate, direct where the official headquarters of the fund shall be, other than this office.

8. (1) There is established Trans Nzoia County Nawiri Fund Management Board.

Appointment of
the Board

(2) The management of the Fund shall be vested in the Board established in (1) above

(3) The Board shall consist of—

- (a) the Chief Officer or his representative
- (b) two other officers from the department in charge of trade affairs in the County nominated by the Executive Member
- (c) a representative from the department in charge of gender affairs in the County
- (d) a representative from the department in charge of co-operatives development in the County
- (e) two representatives, one each from a business membership organization operating within the County and one of whom shall be of either gender;
- (f) a representative of a SACCO body legally constituted and actively operating within the County
- (g) a representative of the youth
- (h) there shall be a Chairperson to the board, appointed by the executive member from among the members referred to in paragraphs 8(3) (a) to (g), but who shall not be an employee of the County Government.

(4) The members of the Board referred to in paragraphs 8(3)(a) to (h) shall be appointed by the Executive Committee Member.

(5) The members of the Board, other than those who are employees of the County Government, shall hold office for a period of three consecutive years and may be eligible for re-appointment only once.

(6) The office of a member of the Board shall fall vacant—

- (a) if not being an ex officio member, he/she submits his/her resignation in writing under his/her hand to the appointing authority through the Secretary;
- (b) if the Board is satisfied that such a member, by reason of his/her physical or mental infirmity, is unable to execute the functions of his/her office;
- (c) if he/she has been adjudged bankrupt by a competent court of law, or has committed a criminal offence which directly or otherwise reflects adversely on his/her suitability to be a member of the Board;
- (d) Non-attendance of five consecutive meetings without written cause; or
- (e) Upon his/her death.

(7) Where the office of a member becomes vacant under subsection (6), the Secretary shall forthwith notify the appointing authority of the vacancy for appropriate to action.

9. (1) There shall be a Secretary to the Board, who –

Secretary to the Board

- (a) shall be the Chief Officer
- (b) shall be responsible for the supervision of the management of the day-to-day activities of the Fund.

(2) The Secretary shall be the one taking minutes and shall be responsible to the management Board.

(3) The Secretary of the Board shall have no right to vote at the meetings of the Board.

10. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act.

Functions and Powers of the Board

(2) Without prejudice to the generality of the provisions of sub-section (1), the Board shall have authority to—

- (a) to solicit for funds and other assistance to promote the functions of the Fund;
- (b) to set, in due regard to the prevailing National and County economic status, the criteria and conditions governing the granting of loans, including the rate of interest and recovery of loans;
- (c) to receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements therefrom;
- (d) to establish and maintain links with other persons or group of persons, bodies or organizations within or outside Kenya, as the Board may consider appropriate for the furtherance of the purposes for which the Fund is established;
- (e) to grant loans out of the Fund, to any eligible person or group of persons to enable them, or assist any trader, to expand their businesses;
- (f) to invest any surplus funds not immediately required for the purpose of the Fund in any investment authorized by law;
- (g) to receive and consider all loan applications from eligible persons or group of persons wishing to be considered for the award of loans, and to approve, withhold or reject such requests in accordance with the provisions of this Act;
- (h) to take out insurance cover for risky loans such as death, incapacity or inability to pay, as the Board deems fit;
- (i) to perform any other functions relating to the granting of Traders' loans in accordance with the provisions of this Act; and
- (j) to perform and exercise all other functions and powers conferred on the Board by this Act

11. (1) (a) The Secretary, in consultation with the Chairperson shall call all the meetings of the Board.

Meetings of the Board

- (b) The chairman shall preside over all meetings of the board
- (c) In the event of absence of the Chairperson from a

particular meeting, the members present shall elect from one of themselves to preside at that particular meeting or part thereof.

(2) The Board shall meet at least two times in each year, but the Chairman shall, upon requisition in writing by at least five members, convene a special meeting of the Board at any time.

(3) The quorum necessary for transaction of the business of the Board shall be fifty percent of the members, provided that—

- (a) the quorum at any requisitioned meeting shall be any number of the members of the Board entitled to attend such meeting; and
- (b) the meeting shall be free to adopt any procedure thereat suitable in the circumstances.

(4) Any query, question, or a decision, and in absence of consensus, at any one meeting of the Board, shall be determined by a simple majority of the votes of the members present and voting.

(5) The Chairman shall, in case of equality of votes, have an original and a casting vote.

(6) The Secretary shall cause minutes and proceedings of all the Board's meetings to be entered into the Minute-Book kept for that purpose.

(7) Subject to this Act, the Board shall regulate its own proceedings.

PART III — ADMINISTRATION OF THE FUND

12.(1) There shall be credited to the Fund—

- (a) sums of money which may from time to time be voted by County Assembly for that purpose;
- (b) sums which represent the repayment of the capital and interest of any loan granted by the Board.
- (c) income from any investment made by the Board;
- (d) Any gifts, donations, grants and endowments made to the Fund.

Revenue and
expenditure of the
Fund

(2) There shall be paid out of the Fund any expenditure approved by the Board and incurred in connection with the

administration of the Fund.

13.(1) Every Trader wishing to be considered for the grant of a loan shall make an application to the Board in the prescribed form.

Administration of
the Fund

(2) Every Trader who has been awarded such loan shall be issued with a Loanee Identification File Number by the Board.

(3) Any Applicant or group of applicants who—

- (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his request for a loan; or
- (b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or
- (c) is granted a loan based on false information, Shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to prosecution, and rejection of the application.

14.(1)The Board may—

Conditions for
grant of loan

- (a) accept or reject any application for a loan;
- (b) grant a loan to any such person or group of persons and in so granting impose conditions, demand security and require repayment in instalments at such times and within such periods as the Board deems fit:

(2) Where the Board has resolved to make a loan to any eligible applicant or group of applicants, the Board shall notify the applicant or group of applicants in writing and by phone and require them within a specified period to comply with any conditions and provide any security which the Board may have imposed or demanded.

(3) Where any applicant or group of applicants fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.

(4) (a) Where in granting a trader's loan to any successful applicant or group of applicants and the Board considers it prudent to request for a guarantor to

guarantee any loan granted to a trader, the loanee shall still bear the responsibility for the entire amount and interest thereon.

- (b) In case of any default by the loanee in the repayment of the said loan, any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.

(5) Where a loanee and a guarantor who has been notified by the Board under subsection (4) (a) and (b) fails or refuses to repay such loan together with any interest accrued thereon, the loanee and guarantor shall be guilty of an offence and liable to civil proceedings in accordance with the provisions of this Act.

15. (1) A loanee shall be required, subject to and in accordance with this Act, or any other regulations made thereunder—

Obligations of the
loanees

- (a) to inform the Board of his/her current contact details
- (b) to commence repayment of his/her loan together with any interest accrued thereon as indicated in the loan agreement signed between the loanee and the board.
- (c) To provide any security or guarantee as may be provided for under this Act or supporting policy

16. (1) If in the opinion of the Board there has been or is likely to be any breach of or failure to comply with any condition or term of repayment in respect to a particular loan, the Board may forthwith—

General
provisions

- (a) recover from the person or group of persons to whom the loan was made or his/her representative as a civil debt under the Debts (Summary Recovery) Act (Cap. 42 Laws of Kenya) the amount of the loan, or the amount thereof then remaining unpaid, together with interest thereon;
- (b) Enforce or realize any security relating thereto.

(2) The Board may, in exercise of the powers conferred by subsection (1), engage the services of a private debt collector.

PART V – FINANCIAL PROVISIONS

17. The financial year of the Board shall be the period of twelve months commencing on the 1st of July and ending on the 30th day of June of the following year.

Financial year of
the Fund

18. (1) The Board shall submit to the Executive Committee Member an estimate of its income and expenditure during the succeeding financial year one month before the commencement of the financial year.

Annual estimates

(2) The Executive Committee Member shall communicate to the Fund his approval of the annual estimates at least one calendar month after the commencement of the financial year.

(3) The annual estimates shall make provisions for all the estimates of expenditure of the Fund for the financial year and shall provide for—

- (a) the cost of administration of the Fund including payment of allowances, and other charges whatsoever payable to the staff and members of the Board;
- (b) the payment or reimbursement to the members of the Board of monies in respect of expenses incurred during the attendance of the meetings of the Fund;
- (c) The development and maintenance of any property vested in the Fund.

(4) Except with the approval of the Executive Committee Member, no expenditure shall be incurred for the purposes of the Fund except in accordance with the annual estimates approved under sub-section (2).

19. (1) The Fund shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the County Executive Committee member responsible for Economic Planning, Commerce and Industry may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the County Executive Committee responsible for Finance—

Annual Accounts,
Audit and report

- (a) a balance sheet showing in detail the assets and liabilities of the Fund
- (b) such other statements of accounts as the County Executive Committee Member may approve.

(2) The Fund shall submit to the County Executive Committee responsible for Finance all books and accounts of the Loans Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto.

(3) The accounts of the Fund shall be examined, audited and reported upon annually by the County Executive Committee responsible for Finance in accordance with the Public Audit Act, and shall cause it to be presented to the County Assembly

PART VI – MISCELLANEOUS PROVISIONS

20. (1) The common seal of the Fund shall be kept in the custody of the Executive Committee Member responsible for trade and may only be used upon the order of Executive Committee Member

Common Seal of
the Fund

(2) The common seal shall, when affixed to a document and authenticated, be judicially and officially noticed, and unless the contrary is proved, any order or authorization by the Fund under this section shall be presumed to have been duly given.

(3) The affixing of the common seal shall be authenticated by the signatures of the Chairperson or the Board Secretary

(4) In the absence of the Chairperson or the Board Secretary, the Executive Committee Member shall nominate a member of the Board to authenticate the common seal of the Fund on behalf of either the Chairperson or the Secretary

21. (1) All letters and instruments written or made by or on behalf of the Fund, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the Chairperson or the Board Secretary

Signing on behalf
of the Loans
Board

(2) In the absence of the Chairperson or the Chief Officer, a member of the Loans Board, authorized as such, may sign any letter or instrument.

22.(1) Any person or group of persons having an official duty or being employed in, or in connection with, the administration of this Act shall regard and deal with all documents, information, returns and forms relating to applications for loans or to the granting of loans under this Act as secret and confidential.

Secrecy, offences
and penalties

(2) Any person or group of persons having possession of, or control over, or access to, any documents, information, returns

or forms relating to a matter referred to in sub-section (1) who communicates anything contrary or prejudicial to the information contained therein—

- (a) to any person or group of persons other than a person or group of persons to whom he is authorized by the Board to communicate it; or
- (b) otherwise than for the purposes of this Act, Shall be guilty of an offence and liable to civil proceedings or disciplinary action by the board.

23. No matter or thing done by the Chairman or any member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done bona fide for the purpose of executing any provision of this Act, render the Chairman, member, officer, employee or agent or any person or group of persons acting on their directions, personally liable to any action, claim or demand whatsoever.

Protection from personal liability

24. The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person or group of persons for any injury to them, their property or any of their interest caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially of the exercise of such powers.

Liability of the Board for damages

25. The Executive Committee Member may make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, the Executive Committee Member may make regulations in respect of the following—

Regulations

- (a) the receipt, processing and approval of applications for loans and the granting of loans to Traders;
- (b) the preparation and maintenance of loanees' records;
- (c) the withdrawal, recovery and cancellation of loans already granted;
- (d) the terms and conditions of service for the staff;
- (e) the setting-up of procedures for dealing with loan defaulters.
- (f) any other regulation that may be deemed necessary for the management of the fund.

