THE PUBLIC FINANCE MANAGEMENT ACT, 2012

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (MOMBASA COUNTY ARDHI FUND) REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

Regulations

PART I - PRELIMINARY

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Short title.	1. These Regulation may be cited as the Public Finance Management (Mombasa County Ardhi Fund) Regulations, 2024 and shall come into effect after publication in the Kenya gazette.
Interpretation	2. In this regulation unless the context otherwise requires;
	“Administrator means person chosen to be the accounting officer of the Fund by the County Executive Committee Member for matters related to Finance
	“Board” means the board of the Fund established in the Regulation
	“County Exchequer Account” means the county revenue fund pursuant to Article 207 of the Constitution of Kenya, 2010;
	“County Assembly” means County Assembly of Mombasa;
	“County" means the County Government of Mombasa;
	“Executive Committee Member” means the County Executive Committee Member responsible for matters relating to Finance
	“Loan” means a sum of money lent from the Fund to a resident for purchasing identified land parcels for settlement purpose;
	“Local resident” means a resident of Mombasa County with a proven long term residences status;
	“Low economic status” means marginalised and vulnerable families with

	low-income status and incapable to effectively realize their constitutional rights to access adequate housing; **“Marginalized”** means the communities in the counties that are disadvantaged by virtue of their numbers” **“Needy resident”** means a resident who lacks means and is unable to pay for the land they have settled in; **“Fund "** means a plan or arrangement by the County to assist needy and merited residents who wish to acquire land settlement purpose.
Establishment of the Fund	3. There is established a fund to be known as the Mombasa County Ardhi Fund which shall be operated under the budgeting, accounting, reporting and auditing framework of this Regulation
Capital of the Fund	4. The initial capital of the Fund shall be such an amount appropriated by the County Assembly.
Object and purpose	5. The object and purpose of the Fund shall be to provide funds to promote the realization of constitution as follows: (a) to give effect to Article 43(b) of the constitution to promote the realization of the constitutional right to accessible and adequate housing;

	(b) to give effects to Article 174 (e) and (f) of the constitution; to protect and promote the interests and rights of minorities and marginalised communities and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; (c) mobilize resources to promote the realization of the right to accessible and owning land ;
Principles for the establishment of the Fund	6. The Principles for the establishment of the Fund are to give effect to Article 60 1(a) and (g) of the constitutional — (a) equitable access to land; (b) encouragement of communities to settle land disputes through recognised local community initiatives consistent with the Constitution. (c) create a framework for mitigation of historical land injustices and amicable resolutions of land disputes for economic development;
Sources of funds	7. The sources of funding of the Fund shall include; (a) Land rates (b) monies appropriated by the County Assembly; (C) repayment of the loan: (d)proceeds from the affordable housing projects: (e) any gifts, donations, grants and endowments from legal sources made to the Fund; and (e) such funds as may vest in or accrue to the Fund in the performance of

	its functions under this Regulations or any other written law. (2) The Fund shall have a separate bank account which shall be opened and maintained in consultation with the Executive Committee Member.
Payment into the Fund.	8. (1) For the purpose of the Ardhi Programme, the County Assembly shall, in each financial year, appropriate an amount which shall be paid into the Fund. (2) Transfers of the funds referred to in paragraph (1) of this regulation into the Fund's account shall be on a monthly basis. (3) The Officer Administering the Fund shall ensure that sufficient funds are available in the bank account, in accordance with the following obligations set out in the project agreements. (4) For the purposes of paragraph (3) of this regulation, the Officer Administering the Fund shall ensure that a maximum of three per centum of the annual Ardhi obligations is maintained in the annuity payment obligations bank account. (5) The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the purpose for which the Fund is established.
Conditions for payment out of the Fund	9(1) Money shall only be paid out of the fund where— (a) Both the vendor and purchaser have presented a duly executed sale agreement with terms and conditions of sale including charging the title as a security to guarantee the repayment of the loan;

	(b) the invoices in respect of an agreement under the Ardhi Programme; and (2) Moneys may additionally be paid out of the Fund where such payments— (a) relate to expenditures under the Ardhi Programme that did not form part of the approved budget for the financial year; or (b) have been recommended by the Officer Administering the Fund and approved by the Committee. (c) relate to the use or investment of surplus funds in the manner directed by the executive committee member.
Responsibilities of purchaser with respect to application for loan out the Fund	10. The Vendor in relation to Ardhi Programme shall only request for payments from the Fund where— (a) the land parcels to be purchased under the Ardhi Programme are done in accordance with the legal framework regulating land disposition; (b) the Ardhi projects to be financed was included in the estimates of revenue and expenditure approved by the County Executive Committee; (c) both the vendor and purchaser to ascertain they have met all obligations for which the payment is to be done for Ardhi Programme

	(d) The application is related to an approved use of purchase of land under Ardhi Programme.
Withholding of payments	11. The Officer Administering the Fund may withhold payments due and owing to an applicant where— (a) a purchaser provides information justifying the proposed withholding; and (b) the board sees there are reasonable supports that the proposed withholding is justifiable.
Applications for payments out of the Fund	12. Applications for payments out of the Fund (1) Application for payment out of the Fund to the vendor shall be made in a format prescribed by the Officer Administering the Fund. (2) Any applications for payments made under paragraph (1) of this regulation shall be supported by documents which shall include— (a) the name and address of the Vendor and the Purchaser (b) the bank account of the Vendor; (c) a sale agreement between the purchaser and vendor (d) ownership document of the sale and (e) any other information as may be prescribed by the Officer Administering the Fund

	(3) Any application under these Regulations shall be signed by both the Vendor and the Purchaser
The Board of Fund	13 (1) There is hereby established a board to be known as the Mombasa County Ardhi Fund Board comprised of — (a) a chairperson appointed by the Governor who shall have a minimum qualification of a degree and ten years' experience and knowledge in matters relating to financial management, land managements and administration economics, education, law, or business administration; (b) Chief Officer in charge of matters relating to Finance; (c) Chief Officer in charge of matters relating to land; (d) Four members appointed by the Executive Committee Member in charge of Finance with minimum qualifications of a degree in law, finance, economics, public financial management, social sciences and experience of not less than five years; (e) the Chief Executive Officer, who shall be the administrator of the Fund and the secretary to the Board (2) The appointing authority shall take into consideration gender, disability status and regional balance within the county. (3) Persons appointed under Regulation 13(1) (a), 13(1)(d) and 13(1)(e) shall hold office for a term of three years and shall be eligible for reappointment for one further term.
Functions of the Board	14. The functions of the Board shall be to —

	(a) inform the County Executive Committee on the funding requirements of the Fund; (b) adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the County Executive for approval; (c) ensure that the annual estimates of revenue and expenditure for the Fund include cumulative Ardhi Programme commitments for the financial year under review; (d) ensure that only the projects included in the Ardhi Programme are prompted for funding under these Regulations; (e) inform the County Executive Committee on the amounts and timing for the fund transfers into the Fund; (f) make recommendations for the use or investment of the surplus funds to the County Executive Committee; (g) advise the County Executive Committee on the sources of funds for the Fund' (h) adopt the financial statements prepared by the Officer Administering the Fund before submission to the Auditor –General; and (i) adopt the non-financial reports of the Fund and submit them to the County Executive Committee.
Removal from Office	15. A member of the Board shall be removed from office— (a) for gross misconduct; (b) violation of the Constitution or any other law; (c) mental or physical infirmity; (d) on being declared bankrupt by a court of law; (e) upon death;

	(f) upon missing three consecutive Committee meetings; and (g) Upon resignation.
Appointment of the Fund Administrator	**16.** (1) The County Executive Committee Member shall appoint the Fund Administrator who shall be the Accounting Officer of the Fund. (3) The Fund Administrator shall exercise the following functions— (a) supervise and control the day-to-day administration of the Fund; (b) be responsible for the day-to-day management of the affairs and staff in the service of the board; (c) consult with Executive Committee Member and the Board on matters relating to the administration of the Fund; (d) be responsible for keeping proper books and records of account of income, expenditure, assets and liabilities of the Fund, and (e) prepare financial statements and any other functions in relation to the administration of the Fund.
	17. (1) The Board shall have staff managed by the Fund Administrator (2) The County Public Service may deploy such staff already employed in the county government as the Board may recommend being necessary for proper discharge of its functions under this Act.
Powers of the Board	18(1) The Board shall be capable of— (a) taking, purchasing and disposing of movable and immovable property; (b) delegating some of its functions to the committees as may be necessary; and

	(c) doing such other things necessary for the proper discharge of the functions under this Regulations that may be lawfully done or performed. (2) The Board may from time to time co-opt members from relevant county departments to assist in effective execution of its functions.
Functions of the board	19. The functions of the Board shall be — a) to formulate policies for the management of the Fund b) to receive monies meant for loans from the county treasury; c) to solicit for funds, donations, scholarships and other financial support for the Fund; d) to determine the amount payable for the purposes of the Fund and formulate the conditions for granting the loan; e) to consider, approve, defer or reject any application for settlement loans; f) partner with other specialized agencies for purposes of performing its functions under this Act g) to invest in any surplus funds not immediately required in securities approved by the County treasury for the purposes of realizing the objects for which the Fund is established; h) to keep and maintain audited accounts of the funds and publish the accounts in the manner approved by the County treasury; i) to receive any gifts, donations, grants or endowments made to the Fund; and j) to perform any other functions that are ancillary to the objects for which the purpose is established.

Miscellaneous	20. An applicant shall qualify for a loan under the Ardhi Fund if the applicant is— (a) a resident of the county; (b) a needy/ squatter resident; (d) vulnerable; marginalised; and (e) meeting such other criterial as approved by the Board in consultation with the County Executive Committee 21 (1) Members of the Board shall be paid such allowances as may be determined by the County Executive Committee consistent with the Salaries and Remuneration Commission guidelines. 2) The Board shall regulate and make their own rules and procedure. (3) The Board shall hold not more than four meetings in a financial year. (3) The quorum to transact any business of the board or a committee shall be two thirds of the members. (4) The Board and the committee may convene special meetings following a request of one third of the total membership whenever an urgent matter arises, such special meetings shall not exceed two in a financial year.
Offences	The provisions of the Act relating to offences by public officers, including financial misconduct, shall apply to these regulations

Oversight.	27. In the principle of separation of powers, the County Assembly shall have overall oversight over the Fund.
Winding up of the Fund.	30. The Executive Committee Member may wind up the Ardhi Fund with the approval of the County Assembly and upon winding up— (a) the administrator of the Ardhi Fund shall pay any amount remaining in the Fund into the County Exchequer Account; (b) the Executive Committee Member shall with approval of County Assembly pay any deficit in the Fund from the County Exchequer Account; and (c) all assets of the Fund will be absorbed into the County.