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**THE MOMBASA COUNTY DECENTRALISED STRUCTURES
BILL, 2017**

A Bill for

AN ACT of the County Assembly of Mombasa to decentralise the functions and provision of services of the County Government; to provide for the delineation and establishment of decentralised units, the powers, functions and responsibilities of officers of the decentralised units; and for connected purposes.

ENACTED by the County Assembly of Mombasa as follows —

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Mombasa County Decentralised Structures Act, 2017 and shall come into operation upon publication in the *Gazette*.

Interpretation

2. In this act—

“county assembly” means the County Assembly of Mombasa;

“county government” means the County Government of Mombasa;

“constitution” means the constitution of Kenya, 2010;

“decentralized unit” means one of the units into which the county is divided into, which include sub-counties, wards and villages;

“executive member” means the county executive member for the time being responsible for matters relating to decentralised units;

“officer” means a person appointed as such under section 10(1);

“sub-county” means an administrative unit designated as such under the county government act, 2012;

“ward” means an administrative unit designated as such under the County Government Act, 2012.

“village” means an administrative unit designated as such under the County Government Act, 2012.

Object of the Act

3. The object of this Act is to —

(a) provide for the establishment of the county decentralised structure

- (b) facilitate the delivery of devolved functions by the County Government;
- (c) provide for powers, functions and responsibilities of officers in the decentralised units;
- (d) coordinate the provision of County Government services in all parts of the County; and
- (e) provide the mechanism for intergovernmental relations.

Guiding principles

4. Any person performing any function under this Act shall be guided by the constitution and shall observe, promote and respect —

- (a) patriotism, national unity, sharing and devolution of power, rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- (c) good governance, integrity, transparency and accountability; and
- (d) sustainable development

PART II— STRATEGY AND DEVELOPMENT UNIT

Establishment of the unit

5. There is established a unit to be known as the Strategy and Development Unit.

Composition of the unit

6. (1) The unit shall comprise of—

- (a) the Governor as the chairperson of the unit;
- (b) the head of the sub-county administration;
- (c) the chairperson of the County Public Service Board;
- (d) the county secretary;
- (e) the county attorney.

(2) The County Attorney shall be the secretary of the unit.

Functions of the unit

7. The functions and objectives of the unit shall be to—

- (a) review all the administrative and functional policies of the decentralised units

- (b) oversee the implementation of all county government policies and functions by the decentralised units
- (c) administer the coordination of government services to ensure efficiency and effectiveness in service delivery by the decentralised units

PART III— ADMINISTRATION OF DECENTRALISED UNITS AND COORDINATION OF SERVICE DELIVERY

Structure of decentralised units

8. For purposes of coordinating the delivery of services, the county government shall be divided into the following decentralised units—

- (a) the city, to be administered by a city manager;
- (b) sub-counties, to be administered by a sub-county administrators;
- (c) wards, to be administered by the ward administrators;
- (d) villages, to be administered by the village administrators;
- (e) such other devolved units as the county executive committee may approve.

Functions of decentralised units

9. The decentralised units shall be responsible for—

- (a) co-ordinating with national and county security and facilitate maintenance of law and order;
- (b) co-ordinating county government functions and service delivery at the decentralised unit level;
- (c) co-ordinating disaster management and emergency response;
- (d) facilitating public consultation in policy formulation and other county initiatives;
- (e) disseminating and implementing county and national government policies;
- (f) mobilizing county government agencies for county events and programmes;
- (g) undertaking conflict management and peace building; and
- (h) performing any other lawful function which is not inconsistent with the constitution or any other law.

Boundaries of decentralised units

10. (1) The function and provision of services by the county government shall be decentralized to—

- (a) urban areas and cities;
- (b) sub-counties equivalent to the constituencies;
- (c) wards;
- (d) such number of villages units in each county as maybe determined by the County Assembly;
- (e) such other units as the county government may determine.

(2) The county executive committee may review the number, names and boundaries of the decentralised units as circumstances may require and in accordance with any applicable law.

(3) The boundaries of every decentralised unit shall be such that the number of inhabitants is, as nearly as possible, equal to the other decentralised units but the number may vary to take into account—

- (a) geographical features and urban centres;
- (b) population density and demographic trends;
- (c) cost of administration;
- (d) physical and human infrastructure;
- (e) the views of the affected communities;
- (f) community of interest, historical, economic and cultural ties; and
- (g) means of communication.

(4) In reviewing the boundaries of decentralised units, the county executive committee shall ensure that all interested persons are consulted.

(5) Any review of boundaries of the decentralised units under this Act shall accord with and respect the system of devolved government established in the constitution.

City manager

11. (1) There shall be a city manager, who shall implement the decisions and functions of the county government.

(2) A city manager shall be competitively recruited and appointed by the County Public Service Board.

(3) A person shall be qualified for appointment as a city manager, if that person—

- (a) is a citizen of Kenya;
- (b) hold a degree from a university recognized in Kenya or its equivalent;
- (c) has proven experience of at least five years in administration or management either in the public or private sector.

(4) In appointing the city manager under subsection (2) the County Public Service Board shall ensure□

- (a) gender equity;
- (b) the inclusion of minorities and marginalised communities; and
- (c) the person satisfies the requirements of Chapter six of the Constitution.

Sub-county administrator

12. (1) There shall be established at the level of each sub-county the office of the sub-county administrator.

(2) The sub-county administrator shall have qualifications and knowledge in administration or management and shall be competitively appointed by the County Public Service Board in accordance with the provisions of this Act.

(3) The sub-county administrator shall be responsible for the coordination, management and supervision of the general administrative functions in the sub county unit, including—

- (a) the development of policies and plans;
- (b) service delivery;
- (c) developmental activities to empower the community;
- (d) the provision and maintenance of infrastructure and facilities of public services;
- (e) the county public service;
- (f) exercise any functions and powers delegated by the County Public Service Board under section 86 of the County Government Act, 2012; and
- (g) facilitation and coordination of citizen participation in the development of policies and plans and delivery of services.

(4) In carrying out the functions and obligations in subsection (3), the sub county administrator shall be responsible to the relevant county chief officer.

Ward administrator

13. (1) There is established for each ward in the county the office of the ward administrator.

(2) The Ward administrator shall have professional qualifications and technical knowledge in administration and shall be competitively appointed by the County Public Service Board in accordance with the provisions of this Act.

(3) The Ward administrator shall coordinate, manage and supervise the general administrative functions in the Ward unit, including—

- (a) the development of policies and plans;
- (b) service delivery;
- (c) developmental activities to empower the community;
- (d) the provision and maintenance of infrastructure and facilities of public services;
- (e) the county public service;
- (f) exercise any functions and powers delegated by the County Public Service Board under section 86 of the County Government Act, 2012; and
- (g) coordination and facilitation of citizen participation in the development of policies and plans and delivery of services.

(4) In carrying out the functions and obligations in subsection (3), the Ward administrator shall be responsible to the sub-county administrator.

Village administrator

14. (1) There is established the office of village administrator for each village unit established in the county.

(2) A village administrator shall have professional qualifications and technical knowledge in administration and shall be appointed by the County Public Service Board in accordance with the provisions of this Act.

(3) A village administrator shall coordinate, manage and supervise the general administrative functions in the village including—

(a) pursuant to paragraph 14 of Part II of the Fourth Schedule to the Constitution—

(i) ensuring and coordinating the participation of the village unit in governance; and

(ii) assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level; and

(b) the exercise of any functions and powers delegated by the County Public Service Board under section 86 of the County Government Act, 2012.

(4) In carrying out the functions and obligations in subsection (3), a village administrator shall be responsible to the relevant Ward administrator.

Village council

15. (1) There is established, for each village unit, a village council comprising—

(a) the village administrator who shall be the chairperson of the village council; and

(b) not less than three and not more than five village elders competitively appointed by the village administrator with the approval of the county assembly, taking into account gender balance.

(2) A village council shall be responsible for—

(a) ensuring and coordinating the participation of the village unit in governance;

(b) assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level;

(c) monitoring the implementation of policies at the village unit;

(d) advising the ward administrator and sub-county administrator on matters pertaining to the village; and

(e) any other function necessary for the better administration of the village unit.

(3) A person shall be eligible for appointment as a village elder if the person—

- (a) is a citizen of Kenya;
- (b) has been a resident of or has been the owner of property in the respective village unit for a continuous period of not less than five years prior to the appointment date;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is not disqualified for appointment to office by this Act or any other law.

(4) A village elder shall be paid such allowance as shall be determined by the County Assembly.

Deployment of officers

16. (1) The County Public Service Board may in consultation with the County Secretary, deploy public officers to a decentralised unit to assist in service delivery.

(2) A public officer deployed to any decentralised unit shall be answerable to the head of the decentralised unit.

Powers of officers

17. (1) Any officer appointed under this Act shall have all necessary powers for the execution of the functions under this Act and any other applicable law and shall have the power to—

- (a) co-ordinate with any county government agency in providing service delivery;
- (b) co-ordinate measures aimed at assisting the government agencies to achieve their goals at the lowest levels;
- (c) educate the public and create awareness on government policies;
- (d) promote peace and co-existence among the residents;
- (e) conduct mediation, conciliation and negotiations whenever necessary; and
- (f) call for public forums and participation in county government services.

(2) Any person who, without lawful excuse disobeys or fails to comply with any lawful order issued or given by officer under this Act shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand shillings or imprisonment to a term not exceeding six months, or to both.

Co-operation with intergovernmental agencies

18. The officers in the decentralised units shall—

- (a) perform their functions and exercise their powers, in a manner that respects the functional and institutional integrity of the county government;
- (b) respect the constitutional status and institutions of the national government;
- (c) assist, support, consult and where applicable, implement national laws;
- (d) liaise with intergovernmental agencies for purpose of exchanging information, coordinating policies and administration and enhancing capacity.

PART IV— GENERAL PROVISIONS**Conduct of officers**

19. (1) Any officer performing his or her duties under this Act shall not—

- (a) engage in the activities of any political party or act as an agent of any such party;
- (b) publicly show support or opposition to any candidate in an election; or
- (c) in the performance functions or exercise powers of the office under this Act—
 - (i) subject any person to torture or to any other cruel, inhuman or degrading treatment;
 - (ii) enter or search any private premises;
 - (iii) demand or solicit any donations or collections in a manner likely to suggest that such donations or collections are a pre-condition for any services; or
- (d) maintain a cell or other place of confinement of persons.

(2) An officer who contravenes this section shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Support by the Inspectorate

20. The Executive Member may request the Director, Inspectorate to assign such number of inspectorate officers to all the devolved offices as the Director Inspectorate may in consultation with the Executive Member determine.

Indemnity

21. A devolved officer shall not be liable in a civil court for an act done or omitted to be done or ordered to be done by them in discharge of their duties, where they acted bona fide.

Regulations

22. The Executive Member may make regulations for the better carrying into effect of the purposes of this Act.

MEMORANDUM OF OBJECTS AND REASONS

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa County Decentralised Structures Bill, 2017 and its direction that the Bill be published for introduction in the County Assembly.

2. BACKGROUND

Article 6 of the constitution of Kenya, 2010 divides Kenya into forty seven (47) counties and requires state organs to ensure reasonable access to their services in all parts of the Republic. At the same time Article 184 provides for urban areas and cities as units of decentralization under the counties. Moreover Article 176(2) requires county governments to decentralise their functions and the provision of services to the extent that is efficient and practicable.

Furthermore, Part VI of the County Government Act, 2012 requires that the functions and services of the county government should be decentralised along the units specified in the Act. The counties are administratively devolved further into sub-counties, wards and village units. Functional devolved governments are expected to bring services closer to the people and espouse the prerequisites for an economy that attracts and retains local and foreign investments. Efficient and effective devolved units have the potential to spur economic growth, political stability and social advancement in line with the precepts of the Constitution and national and county development plans including the Kenya Vision 2030.

In view of the above, the County Government of Mombasa finds it prudent to enact this proposed legislation that will go a long way in decentralizing services to the lowest possible level in terms of service delivery.

3. OUTLINE OF THE BILL

PART I

This Part is preliminary. It names the proposed Act and defines words and expressions used in the Bill. It also provides for the main object of the Act as well as guiding principles.

PART II

This Part establishes a Strategic and Development unit that will among others be mainly be responsible for reviewing all functional policies of the

decentralised units, overseeing the implementation of all county government policies and functions.

PART III

This Part provides for the administration of the decentralized units and contains provisions on the structure of decentralised units, functions of the decentralised units and boundaries of decentralised units

It also provides for the following offices; City manager, Sub county administrator, Ward administrator, Village administrator and the Village council.

PART IV

This part contains general provisions such as conduct of officers, support by the inspectorate, indemnity and the county executive committee member power to make regulations.

4. RECOMMENDATIONS

- (i) The Assembly is requested to:
 - (a) note the contents of this Memorandum;
 - (b) approve the Mombasa County Decentralised Structures Bill, 2017 annexed to this Memorandum; and
 - (c) authorise the Speaker to publish the Bill and present it to the County Assembly for debate and enactment.

JIMMY ODARI,
Chairperson, Committee on Justice and Legal Affairs.