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MOMBASA COUNTY BILLS, 2017

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CONTENT

Bill for Introduction into the County Assembly of Mombasa —	PAGE
The Mombasa County Office of the County Attorney Bill, 2017	1

**THE MOMBASA COUNTY OFFICE OF THE COUNTY
ATTORNEY ACT, 2017**

ARRANGEMENTS OF CLAUSES

Clause

PART I— PRELIMINARY

- 1—Short title and Commencement.
- 2—Interpretation.
- 3—Application.

**PART II—ESTABLISHMENT OF THE OFFICE OF THE
COUNTY ATTORNEY**

- 4—Establishment of the office of the County Attorney.
- 5—Functions of the County Attorney.
- 6—Powers of the County Attorney.
- 7—Administration of the Office.
- 8—Audience by County Attorney in Matters of Public Interest, etc.
- 9—Protection from Personal Liability.
- 10—Private Practice Prohibited.
- 11—Resignation.
- 12—Removal from Office.
- 13—Delegation by the County Attorney.

**PART III—PERFORMANCE OF THE FUNCTIONS OF THE
COUNTY ATTORNEY**

- 14—Reserve of the matters to the County Attorney.
- 15—Engagement of the Consultant.
- 16—Reference of the Matter for the Opinion of the County Attorney.
- 17—Departments to notify the County Attorney.

**PART IV—APPOINTMENT TERMS AND CONDITIONS OF
THE SERVICE**

- 18—County Legal Counsels.
- 19—Terms and Conditions of the Service.
- 20—Other Staff.

21—Secondment.

PART V—FINANCIAL PROVISIONS

22—Financial Year.

23—Annual estimates.

24—Finances and Expenditure.

25—Accounts, Audit and Books of Accounts.

PART VI—MISCELLENOUS PROVISIONS

26—Prohibition of Unauthorized Disclosure of The Information.

27—Depository of Laws and other Agreements.

28—County Public Seal.

29—Accessibility.

30—Facilities.

31—Reports on Operation of the Office of the County Attorney.

32—Regulations.

**THE MOMBASA COUNTY OFFICE OF THE COUNTY
ATTORNEY ACT, 2017**

AN ACT of the County Assembly of Mombasa to make provisions for the establishment of the office of the County Attorney, its functions and powers; to provide for the appointment, the discharge of the duties and the exercise of powers of the County Attorney; and for the connected Services

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 Office of the County Attorney Act, 2017 and shall come into operation upon assent by the Governor.

Interpretation

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

“County Public Seal” Means the seal as shall be determined by an Act of the County Assembly

“Government” Means the County Government of Mombasa as provided in the First Schedule of the Constitution 2010;

Application

3. This Act shall apply to the County Attorney and Subordinate officers who perform or discharge legal functions and such other duties as may be assigned to them in the office of the County Attorney.

**PART II—ESTABLISHMENT OF THE OFFICE OF THE
COUNTY ATTORNEY, FUNCTIONS AND ADMINISTRATION**

Establishment of the Office of the County Attorney

4. (1) There is established the office of the County Attorney.

(2) The County Attorney shall be nominated by the Governor and with the approval of the County Assembly, appointed by the Governor on such terms as the Governor may, with the advice of the County Public Service Board, determine.

(3) The following are the qualifications for the persons to be appointed in the office of the County Attorney—

- (a) Is a Citizen of Kenya?
- (b) Should be a holder of degree in law from a university recognized in Kenya or its equivalent;

- (c) Is an advocate of High Court of Kenya;
- (d) Has had at least 5 (years) relevant professional experience;
- (e) Has a valid practicing certificate license
- (f) Meets the requirements of the Chapter Six of the Constitution 2010 on Leadership and Integrity set there under,

Functions of the County Attorney

5. (1) The County Attorney—

- (a) is the principal legal adviser to the county government
- (b) shall be responsible for drafting and publication of legislative proposal for the County Executive and advising the County Governments on both Legislatives and Legal matters that are being undertaken by the County Government
- (c) shall be responsible for negotiating, drafting, vetting and interpreting local and international documents , agreements and Memorandums and interpreting international and other treaties for and on behalf of the County Governments and its agencies;
- (d) shall represents the County Governments in court in any legal proceedings arising from county legislation or any other legislation to which the county is a party or has an interest, other than criminal proceedings;
- (e) shall handle public interest litigation and represent any member of the public in a matter that the Governor or the County Attorney deems to be of public interest;
- (f) shall prosecute with the approval of the Director of Public Prosecution offences resulting from the county legislations in the county court, courts and other or any other tribunal as the case may be;
- (g) shall be responsible to advise all the County departments and agencies of the county on legislative and other legal matters;
- (h) shall be responsible for advising the County Government on all matters relating to the Constitution, National Legislations, County Assembly Legislations, International Law, Human Rights, Legal Aid Services and Shall,
- (i) shall be the link between the County Government, Other County Governments, the National Governments on all legal matters and shall do so in liaison with the office of the Council of

Governors and the office Attorney General of the Republic of Kenya;

- (j) shall undertake a legal audit to ensure that all county and national legislation that are applicable in the county are enforced or complied;
- (k) shall be the custodian of the county public seal, contracts and other legal instruments of the County;
- (l) shall Maintain County property register and assets,
- (m) shall advise the County Governments and its agencies on Corporate governance;
- (n) shall be responsible for all registration services at the County;
- (o) shall be responsible for all insurance matters of the County and its agencies; and
- (p) and shall perform any other duty conferred to the office of the County Attorney by the county Assembly Legislation, National Legislation or the Governor as may be necessary for effective discharge of the duties and powers of the County Attorney.

(2) The County Attorney shall promote, protect and uphold the rule of law and defend public interest.

(3) The powers of the County Attorney may be exercised in person or by subordinate offices acting in accordance with the general or special instructions from the County Attorney.

(4) In execution of the powers conferred by this Act, the County Attorney shall provide efficient and professional legal services to the County Governments and the public for the purpose of facilitating, promoting, and monitoring the rule of law, protection of human right, democracy and defending public interest in accordance with the constitution.

Powers of the County Attorney

6. (1) The County Attorney shall, in discharging his/her functions under this Act, have the power to—

- (a) With the leave of the court or tribunal, appear at any stage of the proceedings, appeal, execution or any incidental proceedings before any court or tribunal where the subject matter before the court/tribunal is touching on the County Government or where the county government or tribunal has an interest;

- (b) Require any office in the County Public Service to furnish any information in relation to any matter which is subject to legal inquiry;
 - (c) Require any officer in the County public service to explain any matter which is the subject of litigation by or against the County Government;
 - (d) Require any officer in the County Public Service to submit themselves or swear affidavits or even other members of the public in any matter which is subject of litigation by or against the County Government;
- (2) The County Attorney Shall—
- (a) In consultation with the County Public Service Board will establish the following units/divisions/sections/directores;
 - (i) Litigation Section
 - (ii) County Courts Section
 - (iii) Commercial Transactions and Conveyance Unit
 - (iv) Policy, Legislative Drafting& Liaison Unit
 - (v) County Legal Aid Services section
 - (vi) Human Right& Countering Violent Extremism Unit
 - (b) Supervise the formulation of policies and plans of the office; and
 - (c) Perform any other action necessary in the administrative interest of the office
- (3) The County Attorney may upon a written request appear and advise any committee of the county Assembly,
- (4) In the exercise of the powers and the functions of the officer of the County Attorney, the office bearer/County Attorney shall exercise fidelity to the law,

Administration of the office

7. (1) The administration and the discharge of the duties of the County Attorney shall be governed by this Act,

(2) The County Attorney shall discharge the mandate of the specified office in this Act either directly or through a subordinate officer to whom the function is delegated.

Audience by the County Attorney in matters relating to public interest

8. (1) Despite the provision of any written law to the contrary or in the absence of any other written law, the County Attorney shall with the leave of the court, have the right of audience in the proceedings of any suit or an inquiry of an administrative body which the County Attorney considers to be of public interest or involve an injustice of any resident in the contravention of the constitution or involves a minor or involves a county property, or department or agency of the County Government.

(2) In the exercise of the powers of the County Attorney under sub section (1), the County Attorney Shall—

- (a) Notify the court, tribunal or any other administrative body of the intention to be enjoined in the suit, inquiry proceedings; and
- (b) Satisfy the court, tribunal or any other administrative body of the public interest involved or the county property involved and comply with the directive of the court, tribunal or any other such administrative body on the the nature of the pleadings or measures to be undertaken for the purposes of giving effect to the effective discharge of the duties of the office;

(3) Where a suit, inquiry or any other proceedings is pending are before a court, tribunal or any other administrative body where the court attorney may not a right of audience it shall be sufficient for the County Attorney to file a certificate of the intention to be enjoined in the proceedings,

(4) The Court, tribunal or any other administrative body shall upon receipt of the certificate specified under section (3) the County Attorney upon enjoin the County Attorney,

Protection from personal liability

9. (1) No criminal proceedings or civil suit shall be brought against the County Attorney or any subordinate office in the course of lawfully discharging of the functions and powers of the County Attorney under this Act,

(2) No matter or a thing done by the County Attorney or a subordinate shall, if the matter is done in good faith in exercising the powers or duties and executing the functions of the office of the County Attorney, or other subordinate officer personally liable to any claim, action or demand whatsoever.

Private practice prohibited

10. The County Attorney and other County Legal Counsels under him shall not engage in any other gainful employment.

Resignation

11. The County Attorney may resign from office in writing, addressed to the Governor.

Removal from office

12. (1) The Governor may remove the County Attorney from office under the following grounds;

- (a) serious violation of the constitution or any other law;
- (b) gross misconduct whether in performance of his functions or otherwise;
- (c) physical or mental incapacity to perform the functions of the office;
- (d) incompetence; and
- (e) bankruptcy.

(2) Notwithstanding the provisions of subsection (1) above, the Governor upon an election in accordance with the Constitution may appoint a qualified person as the County Attorney in accordance with the provisions of this Act.

Delegation by County Attorney

13. (1) The County Attorney may either generally or otherwise, as provided by the instruments of delegation, by writing under his hand delegate to any County Legal Counsel all or any of his powers and functions under any written law, except this power of delegation,

(2) A power or a function delegated under this section may be exercised or performed by the County Legal Counsel in accordance with the instruments of delegation.

(3) A delegation under this section may be revoked at will and does not prevent the exercise of power and the functions of the County Attorney.

**PART III—PERFORMANCE OF THE FUNCTIONS OF THE
COUNTY ATTORNEY**

Reserve of Matters to the County Attorney

14. A County Legal Counsel shall not render advice in any of the following matters without the written approval of the County Attorney—

- (a) interpretation of the Constitution;
- (b) any matter that the County Attorney may from time to time designate and;
- (c) any matter which the law reserves for the County Attorney.

Engagements of Consultants

15. (1) A department shall not engage the services of consultants to render any legal services relating to the functions of the County Attorney without the approval of the County Attorney,

(2) For the purpose of observing standards, maintaining quality or capacity building, the County Attorney may-

- (a) direct a County Legal Counsel to participate in the work of the Consultant; and
- (b) prescribe the conditions and terms of the County Legal Counsel who participate in such consultancy;
- (c) the County Attorney shall consider keeping the County Legal Counsel abreast in emerging issues in the legal profession by sponsoring and organizing seminars and forums in order to maintain the standards and the quality

Reference of the Matter for the opinion of the County Attorney

16. (1) All County Governments and their agencies shall seek the opinion of the county attorney on any matter raising substantial legal or constitutional issues,

(2) A person shall not make any decision or enter into any agreement that bind the county to undertake any obligations without the reference to the County Attorney,

(3) Any person or an officer who make any decision that has legal implications or enters into an agreement on behalf of the county without reference to the County Attorney shall take personal responsibility if such decisions or action results in the County Government incurring liabilities.

Departments to notify the County Attorney

17. All the County Governments and agencies shall notify the County Attorney of any material litigation within three (3) days upon the service of any pleadings.

PART V—APPOINTMENTS AND TERMS AND CONDITIONS OF SERVICE**County Legal Counsels**

18. (1) The County Attorney shall in consultation with the County Public Service Board appoint such number of the County Legal Counsels as may be necessary and for the proper and efficient discharge of the duties and functions of the office.

(2) The County Attorney shall be guided by the values and principles of good governance under the Constitution in appointing the County Legal Counsels

(3) The County Attorney shall be caused to be published in the county gazette the names of all the County Legal Counsels,

(4) The County Legal Counsels appointed under subsection 1 shall perform such functions as may be assigned by the County Attorney,

(5) A person shall not act as a County Legal Counsel unless that person has been appointed by the County Attorney in consultation with the County Public Service Board,

(6) For avoidance of doubt, to determine who is qualified to perform legal services and functions in the County Public Service the County Attorney in consultation with County Public Service Board shall consider persons in knowledge in law to discharge the duties and functions of the office of the County Attorney

Terms and Conditions

19. The County Legal Counsels appointed under this Act shall serve on such terms as the County Attorney and County Public Service Board may determine upon seeking the advice of the Salaries and Remuneration Commission.

Other Staff

20. (1) there shall be such other officers and other members of staff in the office of the County Attorney as the County Attorney considers necessary for proper and efficient discharge of the functions of the office of the County Attorney.

(2) The County Attorney may procure the services of such other persons as may be reasonably necessary for the purpose of assisting the County Attorney in the performance of the Function of the County Attorney.

(3) The staff of the office of the County Attorney shall reflect—

- (a) Regional and ethnic diversity of the people of Kenya; and
- (b) Disability and gender equity;
- (c) Pay regard to the marginalized groups;
- (d) Promote the provisions of Values and Principles of governance and chapter six of the Constitution on Leadership and Integrity.

Secondment

21. (1) The office may, upon request second any County Legal Counsel to any department, agency, organization or institution on such terms and conditions as the office may, in consultation with the agency to which the person being seconded, agree upon,

(2) A County Legal Counsel who is seconded under the provisions of subsection (1).

23. (1) Before the commencement of each financial year, the office of the County Attorney shall cause to be prepared estimates of expenditure of the office for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the office for the financial year concerned.

Finances and Expenditure

24. (1) The County Attorney shall submit to the Executive Committee Member in charge of departments of Finance and economic Planning an estimate of its budgets approximations and expenditure as specified in the budget cycle for approval by the County Assembly.

(2) The annual estimates shall make provisions for all the estimates of expenditure of the office of the County Attorney for the financial year and provide for the cost of administration of the office of the County Attorney including payment of salaries, allowances, pensions, gratuities and other charges payable to the staff of the office and programmes related to discharging of County Legal Services.

(3) The office of the County Attorney shall incur expenditure in accordance with the annual estimates approved under subsection (2).

(4) The office may create such reserve funds to meet future or contingent expenditure in respect to an urgent and unforeseen matter that

may impede the discharge of the powers and duties of the County Attorney.

Accounts, Audit and Books of Accounts

25. (1) The office of the County Attorney shall cause to be kept all proper books and records of accounts of the expenditure, assets, audits and liabilities of the office and other statements of accounts as may be necessary to fully disclose the undertaking, assets, liabilities and discharge of the functions of the and the powers of the office of the County Attorney.

(2) The County Attorney shall lay audited report of accounts of the office before the County Assembly not more than four months after the end of each financial year.

PART VI—MISCELLANEOUS PROVISIONS

Prohibition of unauthorized disclosure of information

26. (1) Without prejudice to the provisions of any other written law, a officer or a member of staff of the office shall not disclose or use any information gained by the officer or member of staff of the office otherwise than in the course of official duties of the officer or the member of staff or with the authority of the County Attorney.

(2) A person who contrives subsection (1) commit an offence and shall, on conviction, be liable to a fine of not less than two hundred thousand shillings or to an imprisonment of term not less than one year or both.

Depository of laws and Agreements

27. The office of the County Attorney shall be the depository of all laws, local and international documents and agreements signed for or on behalf of the County Governments and its agencies.

County Public Seal

28. The County Attorney shall have the custody of the county public seal of the county government

Accessibility

29. The County Attorney is entitled to have access to relevant records, documents and property pertaining to a civil or any other case concerning the county for the efficient performance of the functions of the office of the County Attorney.

Facilities

30. (1) The County Governments shall provide adequate facilities and finances for efficient functioning of the office of the County Attorney,

Reports on the operations of the Office of the County Attorney

31. (1) The County Attorney shall, as soon as practicable after thirtieth June in each year, prepare and submit to the Governor report of the operations of the work of the Office of the County Attorney during the year that ended on thirtieth June.

(2) The report prepared under subsection (1) above, shall, in respect of the year to which it relates, contain—

- (a) the financial statement of the office;
- (b) a descriptions of the activities of the office and
- (c) such other information relating to its functions that the County Attorney may consider necessary.

(3) The County Attorney shall cause a copy of the report furnished under sub section(1) to be laid before the County Assembly within fifteen (15) days after the day which the Governor and the Executive Committee Member in charge of the Department of Finance and Economic Planning has adopted it;

Regulations

32. The County Attorney may make regulations prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed or carrying out or giving effect into this Act.

MEMORANDUM OF OBJECTS AND REASONS**PURPOSE**

The principle object of this Bill is to provide for the establishment and administration of the Office of the County Attorney. It provides for the functions and powers of the County Attorney, the performance of the functions of the office of the County Attorney and the appointment of County Legal Counsel. The County Attorney is the principal legal adviser to the County Government and is responsible for representing the County Government in any legal proceedings.

OUTLINE OF THE BILL

Part I deals with preliminary matters including the interpretation of terms used in the Bill and the application of the Bill to persons performing legal functions in the Office of the County Attorney.

Part II establishes the Office of the County Attorney and provides for its administration. This part further contains provisions on functions of the County Attorney as well as powers of the County Attorney in relation to the performance of the duties of the County Attorney under the Bill.

The Bill also contain other provisions which among others include immunity on the County Attorney and County Counsel in relation to any liability that may arise in the discharge of their functions under the Bill, performance of the functions of the County Attorney, appointment of County Legal Counsel, qualifications required for a person to be appointed as County Counsel and the determination of the terms and conditions of service.

RECOMMENDATIONS

The Assembly is requested to—

- (a) note the contents of this Memorandum;
- (b) approve the Mombasa County Office of the County Attorney 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.