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MOMBASA COUNTY BILLS, 2023

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THE MOMBASA COUNTY EDUCATION FUND BILL, 2023

A Bill for

AN ACT of the County Assembly of Mombasa to establish the Education Fund, to promote and provide for the access and delivery of efficient and quality child care and education services, to provide for collaboration with stakeholders in relation to education development, to provide for bursary, scholarships, loans, capitation and for connected purposes

ENACTED by the County Assembly of Mombasa, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Mombasa County Education Fund Act, 2023 and shall come into effect after publication in the *Gazette*.

Interpretation

2. In these Act, unless the context otherwise requires;

“Beneficiary” means a student who receives money from the County Education Fund to pay for studies at a recognized and accredited educational institution;

“Bursary” means payment of a sum of money from the Fund to maintain a needy student for educational purposes;

“Board” means the board of trustees established in section 8;

“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 finance;

“Fund” means the Mombasa County Education Fund established under section 11 of the Act;

“Loan” means a sum of money lent from the Fund to a student for educational purpose;

“Local resident” means a resident of Mombasa county with a proven long term residences status;

“Low economic status” means families with low-income status and incapable to effectively providing for themselves.

“Needy student” means a student who lacks means and is unable to pay for studies at a recognized and accredited educational institution;

“Scholarship” means a payment of a sum of money from the Fund to maintain a merited student in education and core-curricular activities;

“Student” means students, trainees and apprentice enrolled in educational institutions;

“Vulnerable” means an orphan, person living with disabilities or a person of low economic status;

“marginalized” means the communities in the counties that are disadvantaged by virtue of their numbers.

Object

3. The object of this Act is to—

- (a) mobilize resources to provide quality childcare and education services and;
- (b) administer the disbursement of loans, bursaries and financial aid to eligible students.

Principles for the establishment of the Fund

4. The Principles for the establishment of the Fund are to—

- (a) increase access to quality childcare and education;
- (b) promote transition rates from one level of education to the next;
- (c) promote an integrated strategic approach in addressing education, training and skills development;
- (d) promote the county’s education agenda through funding of education institutions;
- (e) reduce disparities and inequalities in provision of education institutions within the County; and
- (f) model an alternative framework in funding childcare, education and social programs.

PART II—THE FUND

The Fund

5. There shall be a Fund to be known as Mombasa County Education Fund to provide for bursaries, scholarships, loans, capitation grants and subsidised tuition disbursement to students from the County.

Sources of the Fund

6. (1) The sources of the fund shall include—
- (a) monies appropriated by the County Assembly;
 - (b) monies from the repayments of loans granted to students by the County;
 - (c) gifts, donations, grants and endowments from legal sources made to the fund; and
 - (d) such funds as may vest in or accrue to the Fund in the performance of its functions under this Act or any other written law.

(2) The Board shall open and operate an account for the Fund in consultation with the Executive Committee Member.

Administration cost

7. Expenses incurred in the administration of the Fund which amount shall be not more than 3% of the total monies in the Fund as provided for in the Public Finance Management Act.

PART III—ADMINISTRATION OF THE FUND

Board of the Fund

8. (1) There is hereby established a board to be known as the Education 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, 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 Education;
- (d) two 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 section 8(1) (a), 8(1)(d) and 8(1)(e) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

Appointment of the Chief Executive Officer

9. (1) The Board shall competitively recruit a Chief Executive Officer by virtue of his or her knowledge and experience in matters relating to financial management, economics, education or business administration.

(2) The Chief Executive Officer shall have a minimum qualification of a degree and seven years' experience.

(3) The Chief Executive Officer 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.

(4) The Chief Executive Officer shall be appointed by the Executive Committee Member as the Fund Administrator and will be the Accounting Officer of the Fund.

Staff of the Board

10. (1) The Board shall have staff managed by the Chief Executive Officer.

(2) The County Public Service Board may deploy such staff already employed in the County Government as the Board may recommend to be necessary for proper discharge of its functions under this Act.

Powers of Board

11. (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 Act which 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

12. The functions of the Board shall be —

- (a) to formulate policies for the management of the Fund;
- (b) to receive monies meant for bursary, scholarships and loans from the County Treasury;
- (c) to source for funds and other assistance to promote the object for which the fund is established;
- (d) to determine the amount payable for the purposes of the fund and formulate the conditions for disbursement;
- (e) to consider, approve, defer or reject any application for bursary, scholarships or loans;
- (f) 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;
- (g) to keep and maintain audited accounts of the funds and publish the accounts in the manner approved by the County Treasury;
- (h) to enter into contract with financial institutions for the purposes of loans disbursements and recovery;
- (i) to grant loans out of the fund with security as the Board may deem fit to any eligible person;
- (j) to receive any gifts, donations, grants or endowments made to the Fund; and
- (k) to perform any other functions that are ancillary to the objects for which the purpose is established.

PART IV — MANAGEMENT OF THE FUND

Establishment of Sub-County Financial Aid Committee.

13. (1) There is established a Sub-County Financial Aid Committee in every Sub-County of the County which shall be the manager of the Bursary Program.

(2) The Committee shall consist of—

- (a) Chairperson appointed by Executive Committee Member responsible for education with a minimum qualification of a degree and experience of five years;
- (b) a representative of each ward within the respective sub-county with a minimum of form four qualifications appointed by the Executive Committee Member responsible for education in consultation with the area leader;
- (c) a representative of a Parents Association in each ward within the respective sub-county with the relevant skills, knowledge and experience relating to education, with a minimum of form 4 qualifications appointed by the Executive Committee Member responsible for Education; and
- (d) sub-county administrator.

(3) Persons appointed under this section except under subsection 2(d) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(4) The appointing authority shall take into consideration gender, disability status and regional balance within the County.

Functions of Sub-County Financial Aid Committee.

14. The Sub-County Financial Aid Committee shall—

- (a) receive, verify and recommend award bursaries to eligible applicants; (b) vet bursary applicants using the established criteria;
- (c) identify the potential beneficiaries within the ward using the criteria provided;
- (d) avail and issue bursary and scholarship application forms to applicants;
- (e) receive applications for bursary, scholarships and loans and forward to the Board; and
- (f) prepare reports on the management of bursaries and submit to the Fund Administrator as and when required.

Eligibility criteria for bursaries

15. An applicant shall qualify for a bursary if the applicant is—

- (a) a resident of the County;
- (b) a needy student;

- (c) admitted, continuing or a student with an offer letter for admission to a special school, secondary school, tertiary institution or recognized university in Kenya;
- (d) vulnerable; or
- (e) marginalised.

Application and disclosure

16. (1) Every student wishing to be considered for the grant of bursary shall make an application to the Sub-County Financial Aid Committee in a prescribed form.

(2) The Sub-County Financial Aid Committee may accept or reject any application for a bursary with reasons.

(3) If the Sub-County Financial Aid Committee accepts the application, it shall forward the report of the vetting process to the Fund Administrator.

(4) If the Sub-County Financial Aid Committee rejects the application, it may notify the applicant of such rejection in writing stating the reasons.

(5) The applicant shall make full disclosure to the Sub-County Financial Aid Committee as to whether he or she has benefitted from any other bursary.

(6) Where an applicant is granted a bursary on the basis of false, incorrect information or misrepresentation, the applicant shall—

- (a) refund/forfeit the money awarded to the Fund; and
- (b) not be eligible for any further funding from the Fund.

(7) The sub-county Financial Aid Committee during the vetting shall take into consideration geographical balance in its final report.

Establishment of scholarship program

17. (1) There is established a scholarship program to be managed by the Board.

(2) All applications for scholarships shall be made to the Board in the form prescribed in the Second Schedule.

(3) The award of scholarship may be full covering tuition fees and living expenses and other educational benefits or partial covering tuition fees only.

(4) An award of a scholarship shall cover the entire period of study by the applicant.

(5) The award for scholarship shall be discretionary and subject to availability of funds.

(6) The list of successful applicants shall be posted on the County website.

(7) In awarding the scholarships the Board will take into consideration geographical, gender and special needs balance within the County.

Eligibility for award of scholarship

18. (1) An applicant shall qualify for a scholarship if the applicant is—

- (a) a resident of the County;
- (b) highly talented or has exhibited outstanding excellence in his or her area of specialty;
- (c) admitted, continuing or a student with an offer letter for admission to a special school, secondary school, tertiary institution or a recognized university;
- (d) disciplined according to the latest school or college report;
- (e) Meets additional criteria set by the Board.

(2) An applicant for a scholarship shall present a duly filled application form to the Sub-County Financial Aid Committee with relevant attachments which shall be forwarded to the Board.

Discontinuation from a scholarship program.

19. The Board of the Fund shall discontinue a beneficiary from the scholarship program if —

- (a) the award was obtained through fraud, false information, misrepresentation or non-disclosure of a material fact;
- (b) the beneficiary applies or is granted full scholarship support from any other source after the beneficiary has been admitted to the scholarship program;
- (c) the beneficiary ceases being a student; and
- (d) the beneficiary displays unsatisfactory performance.

Education Loan

20. (1) An application for loan shall be made to the Board in the prescribed form.

(2) The Board shall process the applications and award the successful applicants.

Qualification for a Loan

21. An applicant shall qualify for an award of a loan if the applicant is a local resident of the County and meets the criteria set jointly by the Board.

Vocational Training Program.

22. (1) The board shall fund trainees enrolled and taking full time instruction in a vocational training institution.

(2) Beneficiaries of the program shall be public vocational training centres.

(3) The Board shall in consultation with the Executive Committee Member responsible for Education formulate guidelines for better implementation of the program.

Early Childhood Development Capitation Program

23. (1) The board shall fund early childhood development in the county through early childhood development centres.

(2) Beneficiaries of the program shall be public early childhood development education centres.

(3) The Board shall in consultation with the County Executive Committee member responsible for education formulate guidelines for better implementation of the program.

PART V-MISCELLANEOUS

Appeal and Reviews

24. (1) An applicant aggrieved by the decision of the Sub- County Financial Aid Committee on the award of bursary may appeal in writing to the Board of the Fund through the fund administrator within fourteen days from the date when the list of successful applicants is made public.

Allowances of the Board and committee members.

25. (1) Members of the Board and the committee shall be paid such allowances as may be determined by the County Executive Committee consistent with the Salaries and Remuneration Commission guidelines.

Rules and procedure

26. (1) The Board and the Sub-County Financial Aid committee shall regulate and make their own rules and procedure.

(2) The Sub-County Financial Aid committee shall hold not more than four meetings in a financial year.

(3) The Board shall hold not more than four meetings in a financial year.

(4) The quorum to transact any business of the board or a committee shall be two thirds of the members.

(5) 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.

Removal from office

27. A member of the Board or Sub-County Financial Aid Committee 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.

Oversight

28. In the principle of separation of powers, the County Assembly shall have overall oversight over the Fund.

PART X—REPEALS AND TRANSITIONAL PROVISIONS

Repeal

29. Repeal of Act No.11 of 2014 and Act No.7 of 2017.

(1) The Mombasa County Education Development Act, 2014 is repealed.

(2) The Mombasa County Education Development (Amendment) Act, 2017 is repealed.

Saving and transition provisions

30. The following transitional provisions set out in this Part shall apply—

- (a) assets and liabilities -on the appointed day, all the funds, assets and other property, both movable and immovable, which

immediately before such date were vested in the Fund shall, by virtue of this paragraph, vest in the Fund;

- (b) on the appointed day, all rights, powers and liabilities which immediately before such day were vested in, imposed on or enforceable against the Fund shall by virtue of this subsection, be vested in, imposed on or enforceable against the Fund;
- (c) any reference in any written law or in any document or instrument to the Fund shall, on and after the appointed day, be construed to be a reference to the Fund;
- (d) the annual estimates of the Fund for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Fund for the remainder of that financial year: Provided that such estimates may be varied by the Fund in such manner as the County Assembly may approve;
- (e) The administrative directions made by the Fund which are in force immediately before coming into force of this Act shall have effect as if they were directions made by the Fund under this Act;
- (f) members of the Board-a person who is a member of the board immediately before the commencement of this Act shall remain in office for the remainder of their term;
- (g) staff- a person who is an officer of the Fund immediately before the commencement of this Act shall be deemed to be an officer of the Fund under this Act.

PART VI—WINDING UP OF THE FUND

Winding up of the Fund

31. The Executive Committee Member may wind up the Fund with the approval of the County Assembly and upon winding up—

- (a) the administrator of the 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.

MEMORANDUM OF OBJECTS

PART I—This Part is preliminary. It contains provisions on the name of the proposed Act, interpretation of words used in the Bill and the principles of for establishment of the Fund.

PART II—This part establishes the Fund, provides for sources of the Fund and administration costs.

PART III—Part III provides for the administration of the Fund which includes establishment of the Fund, appointment of the chief executive officer, powers and functions of the board.

PART IV—This part provides for establishment of the sub-county financial aid committee, its functions, eligibility criteria for bursaries, establishment of the scholarship program, education loan, vocational training and early childhood development capitation.

PART V—This part provides for a mode of appeal, repeal of the previous two statutes and the saving and transitional provisions.

PART VI—Provides for winding up of the Fund.

ALLEN KATANE,
Chairperson, Committee On Education.