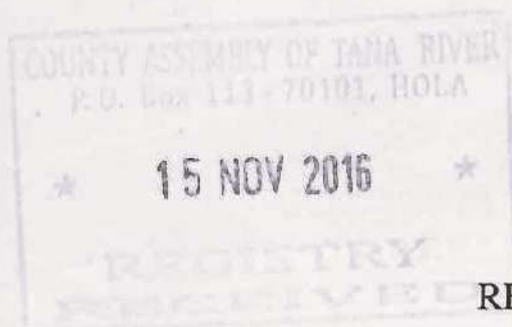


SPECIAL ISSUE

Tana River County Gazette Supplement No. 29 (Acts, No. 18)



REPUBLIC OF KENYA

***TANA RIVER COUNTY GAZETTE
SUPPLEMENT***

ACTS, 2016

NAIROBI, 13th October, 2016

CONTENT

Act—

PAGE

The Tana River County Agriculture Development Act, 2016 1

THE TANA RIVER COUNTY AGRICULTURE DEVELOPMENT ACT, 2016

No. 18 of 2016

Date of Assent: 27th September, 2016

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

Sections

PART I—PRELIMINARY

- 1—Short Title and Commencement.
- 2—Interpretation.
- 3—Object of the Act.

PART II—ESTABLISHMENT OF THE TANA RIVER AGRICULTURE DEVELOPMENT AUTHORITY

- 4—Establishment of the Authority.
- 5—Functions of the Authority.
- 6—Powers of the Authority.
- 7—Board of the Authority.
- 8—Membership of the Board.
- 9—Qualification and disqualification.
- 10—Appointment.
- 11—Filing of vacancy.
- 12—Terms of office.
- 13—Removal of a member of the Board.
- 14—Conduct of affairs of the Board.
- 15—Remuneration of Board members.
- 16—Committees of the Board.
- 17—Delegation.
- 18—Director of the Authority.
- 19—Filling of Vacancy in the office of Director.
- 20—Removal of the Director.
- 21—Appointment of staff.

22—Secondment.

PART III—AGRICULTURE DEVELOPMENT FUND

23—Establishment and objectives of the fund.

24—Establishment of board of trustees of the fund.

25—Composition of board of trustees.

26—Terms and conditions of service .

27—Vacation of office of a member.

28—Functions of the board of trustees.

29—Powers of the board of trustees.

30—Committee of the Board of trustee.

31—Conduct of affairs of the business of Board of trustees.

32—Obligations of the director of the Authority.

PART IV—FUNDING AND DISBURSEMENT OF FUNDS

33—Fund composition.

34—Disbursement from the fund .

35—Funds to be retained in the fund.

PART V—PROJECTS TO BE FUNDED

36—Projects.

37—Projects to be community based.

38—Submission of projects.

39—Project implementation.

40—Project payment and ownership of property.

41—Exemption of donor funded projects.

42—Annual report.

43—Audit.

44—Public finance management.

PART VI—MISCELLANEOUS

45—General penalty.

46—Regulations.

THE TANA RIVER COUNTY AGRICULTURE DEVELOPMENT ACT, 2016

AN ACT of the Tana River County Assembly to establish the Tana River County Agriculture Development Authority, to provide for a framework to facilitate growth and the development of the Agriculture and for related purposes

ENACTED BY the County Assembly of Tana River as follows—

PART 1—PRELIMINARY

Short title and Commencement

1. (1) This Act may be cited as the Tana River County Agriculture Development Act, 2016 and shall come into force on such date, as the County Executive Committee Member shall by notice in the Gazette, appoint, but not later than three months after publication of the Act.

Interpretation

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

“agriculture” includes—

- (a) fruit, vegetable, flower and seed farming;
- (b) dairy farming, poultry farming, bee keeping, breeding and keeping of livestock;
- (c) conservation and keeping of game animals, game birds, and aquatic animals;
- (d) game ranching and game cropping;
- (e) the use of the land for grazing, market gardening, or for nursery grounds;
- (f) agro-forestry; and
- (g) use of land for the production, transformation and trade of crop and livestock products;

“agricultural land” means land that is used for agricultural purposes, and includes any land which by any written law is zoned, registered or otherwise designated as agricultural land;

“Authority” means the Tana River Agriculture Development Authority established by section 4;

“Board” means the Agriculture and Livestock Development Authority Board appointed under section 7;

“Board of Trustees” means the Board of the County Agricultural Development Fund Board of Trustees established under section 22;

“crops” means any plant that is grown in significant quantities to be harvested as food, as livestock fodder, fuel, or for any other economic purpose;

“County Executive Committee Member” means the County Executive Committee Member responsible for agriculture;

“Director” means the Director of the Authority appointed under section 18;

“Fund” means the County Agricultural Development Fund established under section 21;

“financial year” means a period of twelve consecutive months from 1st July to 30th June;

“project” means an eligible agricultural development project that meets the objectives of section 34;

“prescribed” means prescribed under this Act;

“Regulations” means regulations made under this Act.

Object of the Act

3. The object and purpose of this Act is to facilitate the growth and development of agriculture and veterinary services in the county, and in particular to—

- (a) establish the Authority;
- (b) promote of the production, processing, marketing, and distribution of agricultural products in the county;
- (c) promote competitiveness in the agricultural sector and to develop diversified crop and animal products and market outlets; and
- (d) attract and promote private investment in agriculture

PARTII—ESTABLISHMENT OF THE TANA RIVER AGRICULTURE DEVELOPMENT AUTHORITY

Establishment of the Authority

4. (1) There is established an Authority to be known as the Tana River Agriculture Development Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may lawfully be done or performed by a body corporate.

Functions the Authority.

5. The Authority shall—

- (a) promote agricultural activities in the County;
- (b) advise the County Executive Committee member on all matters relating to its functions under this Act;
- (c) facilitate growth in the agricultural field;
- (d) promote production, processing, marketing and distribution of agricultural products;
- (e) undertake study to assist in the discharge of the functions under this Act in relation to agriculture;
- (f) promote competitiveness in the agriculture sector;
- (g) promote the development of diversified crops and animal products;
- (h) attract and promote private investment in the agriculture sector;
- (i) promote county agricultural productivity and marketing through strengthening producer organizations, streamlining and facilitating bulk supply of inputs to farmers, pastoralists and fisher folks including fertilizers, seeds, agro-chemicals, animal breeding, animal drugs and feeds, artificial insemination services and fishing gears among others;
- (j) gather, package and disseminate agribusiness-related information pertaining to key elements of the value chain across various sector enterprises including but not limited to agronomic and market information;
- (k) promote development of core and high impact irrigation infrastructure such as community boreholes, dams, shallow wells and water pans;
- (l) promote development of appropriate storage, bulking and market facilities in strategic areas with potential for increased agricultural production and or marketing;
- (m) promote core value-addition infrastructural development;

- (f) exercise any other power provided for in this Act or any other applicable legislation.

Membership of the Board.

8. (1) The Board shall consist of—

- (a) a chairperson;
- (b) four other persons appointed by virtue of their knowledge and at least five years' experience in the fields of—
 - (i) agriculture;
 - (ii) veterinary;
 - (iii) law;
 - (iv) business administration; or
 - (v) Finance.
- (c) The Chief Officer responsible for Agriculture who shall be an ex-officio member of the Board.

(2) The members shall at the first meeting of the Board elect a vice-chairperson from among the members appointed under subsection (1) (b).

(3) The chairperson and the vice chairperson shall be of the opposite gender.

(4) The Director shall be the secretary to the Board and shall not be entitled to vote.

Qualification and disqualification.

9. (1) A person shall be eligible to be appointed as chairperson or a member of the board as provided under section 8(1) (a), (b) if that person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a recognized university in Kenya;
- (c) meets the requirements of Chapter Six of the Constitution;
- (d) is not disqualified from serving in accordance with the provisions of subsection (2)

(2) No person may be appointed or serve as a member of the Board if that person—

- (a) holds office in a political party;

- (b) is a member of Parliament or a member of a county assembly or a
- (c) Governor or Deputy Governor;
- (d) has been convicted, whether in Kenya or elsewhere, of an offence involving dishonesty or of any other offence for which such person
- (e) has been sentenced to imprisonment without the option of a fine; or
- (f) is unable to perform the functions of office due to mental incapacity; or
- (g) is an undischarged bankrupt.

(3) A member of the Board, including the chairperson, who at any time during his or her term of office becomes disqualified to hold office as a member of the Board under subsection (2) shall —

- (a) immediately and in writing inform the County Executive Committee Member and the Chairperson of the Board of that disqualification, and the County Executive Committee Member shall forthwith remove that member from the Board; and
- (b) not attend any meeting of the Board from the time the member has so become disqualified.

(4) A member of the Board who contravenes subsection (3) commits an offence.

Appointment.

10. (1) The County Executive Committee Member shall, through the County Public Service Board, advertise for the positions of the chairperson and members of the Board.

(2) The County Executive Committee Member shall ensure that the process of appointing the chairperson and members of the Board is competitive, open and transparent.

(3) In the recruitment and appointment of chairperson and members of the Board, the County Public Service Board shall ensure that not more than two third of the membership is of the same gender.

(4) In the recruitment of chairperson and members of the Board, the values and principles of public service in the Constitution shall be respected and upheld.

Filling of vacancy.

11. Whenever there is a vacancy in the Board, the procedure provided for under section 10 shall apply.

Term of office.

12. The appointed members of the Board shall hold office for one term of four years.

Removal of a member of the Board.

13. (1) The chairperson or a member of the Board may be removed from office for—

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

(2) A person desiring the removal of the chairperson or a member on any ground specified in subsection (1) may present a petition to the County Public Service Board setting out the alleged facts constituting that ground.

(3) The County Public Service Board shall consider the petition and, if it discloses a ground for removal under subsection (1), the Board shall recommend the removal from office of the chairperson or member to the County Executive Committee Member who shall within fourteen days remove such person from office.

(4) Before a member is removed from office under subsection (3), the member shall be given an opportunity to provide a defence of the allegations against him or her.

Conduct of business and affairs of the Board.

14. The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule and subject thereto, the Board may regulate its own procedure.

Remuneration of Board members.

15. There shall be paid to the appointed members of the Board such remuneration, fees, allowances and disbursements for expenses as may be

approved by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

Committees of the Board.

16. (1) The Board may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Board may, by resolution generally or in any particular case, in writing conditionally or unconditionally delegate to any Committee of the Board or any member, officer or agent of the Authority, the exercise of any of its powers or the performance of any of its functions under section 6 of this Act, but the Board may despite such delegation continue to perform the functions or exercise the powers referred to in that delegation.

(3) The Board shall remain accountable for anything done under a delegation contemplated in subsection (1).

Delegation.

17. (1) The Board may, either generally or as otherwise provided by the instrument of delegation, in writing, delegate to—

- (a) any a person; or
- (b) an officer,
- (c) all or any of the powers and functions of the Authority under this Act other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the County Executive Committee Member or county revenue collector.

(4) The County Executive Committee Member may make regulations in relation to the exercise of powers and the performance of functions, of the Authority under this Act by an officer of the County.

(5) The Board may revoke or amend a delegation under this Act.

(6) An arrangement or the variation or revocation of an arrangement, shall be in writing and a copy of each instrument by which an arrangement has been made, varied or revoked shall be published in the County Gazette.

Director of the Authority.

18. (1) The Board shall appoint a suitably qualified person to be the Director of the Authority.

(2) The Director shall be appointed through an open, transparent and competitive recruitment process, and shall serve on such terms and conditions as the Board may determine.

(3) A person shall be qualified for appointment as the Director of the Authority if the person —

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has had at least ten years experience at management level;
- (d) has proven relevant experience in any of the following fields—
 - (i) government;
 - (ii) law;
 - (iii) management;
 - (iv) finance;
 - (v) security; or
 - (vi) public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(4) The Director shall be the chief executive officer of the Authority and responsible to the Board for the day-to-day management of the affairs of the Authority.

Filling of Vacancy in office of Director.

19. Whenever there is a vacancy in the office of the Director, a new Director shall be appointed in accordance with section 18.

Removal of the Director.

20. (1) The Director may be removed from office only for—

- (a) serious violation of the constitution, this act or any other law;
- (b) gross misconduct;
- (c) physical or mental incapacity which renders the director unable to perform the functions of office;
- (d) incompetence; or

(e) bankruptcy.

(2) A person desiring the removal of the Director on any of the grounds specified in subsection (1) may present a petition to the Board setting out the alleged facts constituting that ground.

Appointment of Staff.

21. The Board shall appoint such staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the County Public Service Board may determine.

Secondment.

22. (1) The Board may request for a public officer, whether from the National Government or County Public Service, to be seconded to assist in the discharge of the functions of the Authority.

(2) Where any public officer has been seconded pursuant to subsection (1), that officer shall be under the direct control and command of the Board.

PART III—AGRICULTURE DEVELOPMENT FUND

Overriding objectives and guiding principles of the Fund.

23. (1) The overriding objective of this Part is to provide a comprehensive, harmonized, efficient and effective legal and regulatory framework for financing of agriculture in Tana River County for the purposes of—

- (a) promoting agriculture in the county;
- (b) providing access to agricultural services in the county;
- (c) marketing and creation of awareness on agricultural services and products;
- (d) cascading the use of public funds at the lowest level of governance where the most vulnerable exist;
- (e) ensuring efficiency and transparency in the disbursement of funds; and
- (f) ensuring local level participation in the provision of county government activities.

(2) All County Government institutions, agencies, public servants and bodies charged with development of crop agriculture shall at all times have due regard to, and observe, the overriding objective of this Act as set out in subsection (1)

(3) Whenever there is a conflict between this Act and any county law, having a bearing on achievement of the overriding objective of this Act, the provisions of this Act shall prevail.

(4) In the exercise of the powers or the performance of functions under this Act, the County Executive Committee Member and the Board of Trustees shall be guided by the following principles—

- (a) public participation and financial inclusiveness;
- (b) protection of the interests of the marginalized, persons with disability, women and youth; and
- (c) local ownership and sustainability.

Establishment and objectives of the Fund.

24. (1) There is established a fund known as the Agricultural Development Fund.

(2) The objectives of the Fund are to—

- (a) provide funding for eligible intervention to cover the mainstream agricultural sector; and
- (b) to facilitate the execution of the functions of the Authority under this Act.

Establishment of Board of Trustees of the Fund.

25. There is established the County Agricultural Development Fund Board of Trustees which shall be a body corporate with perpetual succession and common seal, capable of—

- (c) holding and disposing of any kind of property;
- (d) suing and being sued in its corporate name; and
- (e) doing all such other things as may be incidental or conducive to the exercise of performance of its functions under this Act.

Composition of the Board of Trustees.

26 (1) The County Agricultural Development Fund Board of Trustees shall comprise—

- (a) the county chief officer in the county department for the time being responsible for agriculture or his or her representative appointed in writing;
- (b) the county chief officer in the county department for the time being responsible for finance or his representative appointed in writing;

- (c) the head of legal services in the county or a representative appointed in writing; and
- (d) The Director, who shall also be the Secretary of the Board; and
- (e) three persons, one of whom shall be the chairperson of the Board of Trustees, not being public officers, who shall be appointed by the County Public Service Board in consultation with the County Executive Committee Member.

(2) The persons appointed under subsection (1) (e) shall hold office for a term of five years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1) (e) if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years professional experience in the relevant field; and
- (c) meets the requirements of leadership and integrity as provided for in Chapter Six of the Constitution and relevant national legislation.

Terms and conditions of service.

27. Members of the Board of Trustees shall be paid such allowances and disbursements for expenses as may be approved by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

Vacation of office of member.

28. (1) The office of a member of the Board of Trustees appointed under section 24 (1) (e) shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Board of Trustees;
- (e) resigns in writing addressed to the County Executive Committee Member;
- (f) dies;

is removed from office by the County Executive Committee Member for—

- (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or
- (ii) failing to declare his interest in any matter being considered or to be considered by the Board of Trustees; or
- (iii) any other sufficient reason as may be prescribed.

Functions of the Board of Trustees.

29. (1) The functions of the Board of Trustees shall be to—

- (a) provide the strategic guidance and oversight to the Fund;
- (b) ensure that all projects funded under this Act are consistent with the counties priorities specified in the relevant policy documents on County agricultural development and financing;
- (c) authorize allocations from the Fund ;
- (d) formulate and approve standards, guidelines and procedures for funding under this Act,
- (e) approve the organizational structure of the Fund;
- (f) provide oversight in the utilization of the Fund; and
- (g) perform any other function as may be conferred on it by this Act or any other written law
- (h) approve annual work-plans and budgets of the Fund;
- (i) advice the county government on any of the matters contained in this Act; and
- (j) perform any other function as may be conferred on it by this Act or any other written law.

Powers of the Board of Trustees.

30. (1) In the discharge of its functions, the Board of Trustees shall have all powers necessary or incidental to achievement of the overriding objective of this Act.

(2) Without limiting the generality of subsection (1), the Board of Trustees shall have powers to—

- (a) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;

- (b) employ on such terms and conditions as it considers fit such persons as may from time to time be necessary for discharging its functions and, with the approval of the County Public Service Board in consultation with the Salaries and Remuneration Commission, to pay such remuneration, allowances and other benefits to such employees as may be approved in the circumstances; and
- (c) establish such committees or departments for the better carrying out of its functions under this Act as it may deem fit.

Committees of the Board of Trustees.

31. (1) The Board of Trustees may establish such committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Board of Trustees may co-opt into the membership of a committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the committees.

(3) The Board of Trustees may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Board of Trustees under this Act or under any other written law.

Conduct of affairs of the business of the Board of Trustees.

32. (1) Subject to subsection (2), the business and affairs of the Board of Trustees shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Board of Trustees may regulate its own procedure.

Obligations of the director of the Authority.

33. The Director shall subject to the direction of the Board of Trustees, supervise and manage the Authority's staff, activities, funds and property, and shall be responsible for the day to day management of the programmes and activities of the Board of Trustees.

PART IV—FUNDING AND DISBURSEMENT OF FUNDS

Fund composition.

34. (1) The Fund shall comprise—

(3) Unless three quarters of the members otherwise agree, at least seven days notice in writing of a meeting shall be given to every member by the Director.

(4) The chairperson may, at his discretion or at the written request made by at least half of the members of the Board of Trustees and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.

(5) Meetings shall be presided over by the chairperson or in his or her absence by the vice- chairperson.

(6) The members of the Board of Trustees shall elect a vice- chairperson from among themselves—

(a) at the first sitting of the Board of trustees; and

(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(7) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Board of Trustees.

(8) The Board of Trustees may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board of Trustees.

Meetings.

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Board of Trustees, and is present at a meeting of the Board of Trustees at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Conflict of interest.

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Board of trustees.

(2) Where the persons present at a meeting of the Board of Trustees do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of

members present falls below the quorum necessary to hold a meeting, the Board of Trustees shall postpone the consideration of the matter in question until there is a quorum.

Quorum.

4. A question before the Board of Trustees shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

Voting.

5. The Board of Trustees shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

Rules of Procedure and minutes.