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TANA RIVER COUNTY ACTS, 2022

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THE TANA RIVER COUNTY MINOR IRRIGATION ACT, 2022

No. 8 of 2022

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**THE TANA RIVER COUNTY MINOR IRRIGATION ACT,
2022**

AN ACT of the County Assembly of Tana River to provide for the for the development, control and improvement of minor irrigation systems, and for purposes incidental thereto and connected therewith

ENACTED by the County Assembly of Tana River, as follows—

PART I — PRELIMINARY**Short title**

1. This Act may be cited as the Tana River County Minor Irrigation Act, 2022.

Interpretation**No. 18 of 2016**

2. In this Act, —

“association” refers to a farmers and water users association established in accordance with the provisions of section 13(1) of this Act;

“County” means Tana River County;

“County Executive Committee” means the Tana River County Executive Committee;

“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture;

“community” has the meaning assigned to it in the Constitution;

“department” means the department responsible for matters related to agriculture;

“managing committee” means a managing committee of a farmers and water users association established under section 13(2) of this Act;

“minor irrigation” means the process of artificial application of controlled amounts of water to land at needed intervals to assist in the production of plants or crops within a culturable command area not exceeding two thousand hectares;

“minor irrigation scheme” means minor irrigation schemes established in accordance with the provisions of section 7 of this Act.

“policy” means the county policy on minor irrigation developed in accordance with the provisions of Section 5 of this Act;

“Tana River County Agriculture Development Authority” means the Authority established under Section 4 of the Tana River County Agriculture Development Act; and;

“Unit” means the Irrigation Unit established under section 9 of this Act.

Scope and application

3. This Act shall apply to all minor irrigation schemes established within the County except as otherwise provided for by legislation.

Conflict of laws

4. Whenever there is a conflict—

- (a) between this Act and the Constitution, Article 2(4) of the Constitution shall prevail;
- (b) between this Act and national legislation, Article 191 of the Constitution shall prevail;
- (c) between this Act and a legislation of another county, the provisions of this Act shall prevail;
- (d) between this Act and another legislation of Tana River County, the provisions of this Act shall prevail.

PART II — GENERAL PROVISIONS

County policy on minor irrigation

5. (1) The County Executive Committee Member responsible for matters of agriculture shall, in consultation with the County Executive Committee, with the advice of the Unit and subject to the approval of the County Assembly, within one year after the effective date, establish a county policy on minor irrigation.

(2) The County Executive Committee Member shall be responsible for the proper execution of the county policy on minor irrigation.

(3) The County Executive Committee Member shall, in coming up with the policy under this section—

- (a) put into consideration the provisions of this Act and any other relevant legislation;
- (b) identify, involve and take views of all relevant stakeholders;

- (c) ensure that the policy does not conflict with the Constitution, the National Laws and the National Policy on Agriculture and Land; and
- (d) carry out public participation in accordance with the provisions of all relevant laws on public participation.

Review of policy on minor irrigation

6. (1) The policy shall be reviewed after every three years.

(2) The procedure in Section 5 shall apply accordingly in the review of the policy.

Designation of minor irrigation schemes and vesting of land

7. (1) The County Executive Committee Member may, by notice in the *Gazette*, designate any area of land within the County to be a minor irrigation scheme.

(2) Despite the generality of subsection (1), the County Executive Committee Member shall—

- (a) in respect of private land forming part of a minor irrigation scheme, take such steps as may be necessary to acquire the right, title or interest in such land in accordance with the law for the time being relating to the compulsory acquisition of land and to vest it in the Tana River County Agriculture Development Authority for the purposes of this Act;
- (b) in the case of community land forming part of a minor irrigation scheme, take the land on lease, on terms to be agreed between the County Executive Committee Member and the concerned community; and
- (c) In default of agreement between the County Executive Committee Member and the respective community as to the terms of a lease under paragraph (b), the provisions of section 118 of the Constitution of Kenya shall have effect.

Use of water

8. Whenever it appears expedient to the County Executive Committee Member that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal or drainage-work, the County Executive Committee Member may, by notification, declare that the said water will be so applied or used after a day to be named in the said notification not being earlier than three months from the date thereof.

**PART III — MANAGEMENT AND ADMINISTRATION OF
MINOR IRRIGATION****General management**

9. (1) The management of minor irrigation schemes shall be vested in the Tana River County Agriculture Development Authority.

(2) The County Executive Committee Member shall establish an Irrigation Unit within the department to handle all matters concerning minor irrigation.

(3) The officers of the unit shall, subject to instructions of a general nature issued by the County Executive Committee Member, be responsible in execution and administration of the matters in the whole field of minor irrigation.

Functions of the Unit

10. (1) The Unit shall be responsible for—

- (a) the development, control and improvement of minor irrigation schemes in the county; and
- (b) revival of the existing minor irrigation schemes that are not in operation.

Composition of staff of the Unit

11. The staff of the Unit shall be seconded from the existing public officers who have knowledge, experience and expertise in the following fields:—

- (a) agriculture;
- (b) land; and
- (c) survey.

Powers of the Unit

12. (1) The Unit shall have and may exercise all such powers as are necessary to enable it to perform its functions under this Act, and without prejudice to the generality of the foregoing, the Unit shall have power to—

- (a) give such directions to farmers organisations, as may be considered necessary, in performing their functions and exercising their powers in accordance with the provisions of this Act;
- (b) conduct research and investigation into the establishment of minor irrigation schemes;

- (c) in conjunction with the Water Resources Authority established under the Water Act (Cap. 372), formulate, and be responsible for the execution of policy in relation to minor irrigation schemes;
- (d) in consultation with the County Executive Committee Member and the County Executive Committee Member for the time being responsible for finance, raise funds for the development of minor irrigation schemes;
- (e) co-ordinate, plan, design, construct, supervise and administer minor irrigation schemes;
- (f) determine the number of users to be accommodated in a minor irrigation scheme;
- (g) provide land in minor irrigation schemes for public purposes;
- (h) promote the marketing of crops and produce grown or produced on minor irrigation schemes and to liaise with organisations responsible for the marketing of agricultural produce; and
- (i) provide, either by itself or by agreement with other persons, for the processing of agricultural produce grown or produced on minor irrigation schemes.

Farmers and Water users association

13. (1) Each minor irrigation scheme shall have a farmers and water users association.

(2) Each association shall have a managing committee whose membership shall be elected by secret ballot.

(3) Members of the managing committee shall hold office for a period of three years from the date they are elected.

(4) A managing committee shall perform the functions and powers of water user association.

Objects of farmers and water user associations

14. The objects of a farmers and water users association shall be to—

- (a) promote and secure—
 - (i) distribution of water among its users;
 - (ii) adequate maintenance of the irrigation system; and
 - (iii) efficient and economical utilisation of water to optimise agricultural production; and

- (b) protect the environment, and ensure ecological balance by involving the farmers and inculcating a sense of ownership of the minor irrigation schemes in accordance with the water budget and operational plan.

Disqualification of candidates or members

15. The following persons shall not be eligible for appointment as members of a managing committee—

- (a) a person who has been convicted for any offence involving moral turpitude under any law for the time being in force;
- (b) a person of unsound mind;
- (c) a person adjudged as insolvent or an undischarged insolvent; and
- (d) a defaulter of land revenue or tax or charges payable either to the government or the farmers association.

Vacation of office

16. (1) A member of a management committee shall be removed from or cease to hold office on the following grounds —

- (a) recall by the other members of the association;
- (b) disqualification on the grounds stipulated in Section 15;
- (c) resignation;
- (d) death; or
- (e) absence from three consecutive meetings without reasonable cause.

(2) Removal from office under Sub Section (1) (e) shall not apply in the case of women who are in advanced stage of pregnancy and for a period of three months after delivery.

Procedure for recall

17. (1) A member of a managing committee may be recalled through a motion for recall by giving a written notice as may be prescribed, signed by not less than one third of the total number of members of the relevant association.

(2) A notice of motion under this Section shall not be made within one year of the date of assumption of office by the person against whom the motion is sought to be moved.

(3) If the motion is carried by support of majority of the members present and voting at a meeting of the general association specially

convened for the purpose, the member in question shall cease to hold office and the resulting vacancy shall be filled in the same manner as provided in this Act.

Resources of farmers organisations

18. (1) The government may provide resources to farmers.

(2) The government shall ensure that the cost of resources provided is subsidised.

Advisory committees

19. (1) The County Executive Committee Member shall appoint an advisory committee in respect of each minor irrigation scheme.

(2) The County Executive Committee Member shall, with the approval of the County Assembly, regulate the membership, powers and duties of the advisory committees appointed under subsection (1).

Protection from liability

20. No liability shall attach to the Unit or its members, officers, agents or servants for any loss or damage sustained by any person as a result of any act or omission done or omitted to be done in good faith and without negligence in the performance or exercise of any duty or power imposed or conferred by or under this Act.

Access to Unit Services

21. The Unit shall ensure reasonable access to its services in all parts of the County, so far as it is appropriate to do so, having regard to the nature of its services.

Decision to be in writing

22. A decision made in the performance of functions and exercise of powers under this Act shall be in writing.

PART IV — FINANCIAL PROVISIONS

Funding

23. The funds for the operationalisation of this Act shall include—

- (a) monies appropriated by the County Assembly;
- (b) grants received from the Government;
- (c) donations and gifts;
- (d) such other funds as may be granted by the State and National Government for the development of the area of operation under the minor irrigation schemes;

- (e) resources raised from any financing agency for undertaking any economic development activities in the area of operation under the minor irrigation schemes;
- (f) income from the properties and assets attached to the minor irrigation system;
- (g) fees collected by the farmers organisation for the services rendered in better management of the minor irrigation system; and
- (h) amounts received from any other lawful source.

Records

24. (1) Every association shall keep at its office the following—

- (a) an up-to-date copy of this Act;
- (b) a map of the area of operation of the association along with map of the structure and distributory networks prepared in consultation with the irrigation department;
- (c) a statement of assets and liabilities;
- (d) minutes book;
- (e) books of account showing receipt and payments;
- (f) books of account of all purchases and sales of goods by the association;
- (g) register of measurement books, level field books, work orders and the like;
- (h) copies of audit reports and enquiry reports; and
- (i) all such other accounts, records and documents as may be prescribed from time to time.

(2) The books of accounts and other records shall be open for information to the members of the relevant association.

Audit

25. Every farmers and water users organisation shall get its accounts audited in the prescribed manner.

PART V — PROVISIONS ON DELEGATED POWERS

Regulations

26. (1) The County Executive Committee Member may, after consultation with the County Executive Committee and the Tana River County Agriculture Development Authority, make regulations generally for

the better carrying out of the purposes and provisions of this Act, and without prejudice to the foregoing generality those regulations may provide for—

- (a) the criteria for identification of areas suitable for establishment of minor irrigation;
- (b) the administration and day to day control of minor irrigation schemes;
- (c) the standards of good husbandry and the control of pests and diseases in minor irrigation schemes;
- (d) the regulation of, and the rates payable for, the use of water on minor irrigation schemes;
- (e) the methods of harvesting, collection, storage, transport, processing, marketing and sale of produce grown on minor irrigation schemes;
- (f) the form and method of keeping records under this Act;
- (g) operations and procedures of associations and management committee established under the Act; and
- (h) the licensing of contractors to perform any function connected with a minor irrigation scheme.

(2) Any regulations made under this section may—

- (a) require acts to be performed to the satisfaction of a prescribed authority, may prohibit their performance without the prior approval of a specified authority, and may empower a specified authority to impose conditions;
- (b) be made to apply generally to all minor irrigation schemes or to any specified minor irrigation scheme or to any specified area or areas thereof;
- (c) provide for such penalty for the breach of any provision thereof, not exceeding a fine of ten thousand shillings and imprisonment for one year, as the County Executive Committee Member may think fit.

PART VI — MISCELLANEOUS

Offences

27. (1) Without prejudice to any other law, no member or officer of the Unit or any other person shall publish or disclose to an unauthorised person, any document, communication or information which has come to the

knowledge of such member or officer in the course of performing their duties under this Act or any regulation made there under.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) Without prejudice to any other law, any person who discloses or publishes any information other than in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(4) Any person who gives false or misleading information to the Unit or to any member of the Unit commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(5) A person who fails to produce a document or information required by the Unit on a matter before it, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.