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**MOMBASA COUNTY ACTS, 2017**

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ATTORNEY ACT, 2017**

**No. 3 of 2017**

*Date of Assent: 10th July, 2017*

*Date of Commencement: 10th July, 2017*

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

**AN ACT of the County Assembly of Mombasa to provide 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 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 Office of the County Attorney Act, 2017 and shall come into operation upon assent.

**Interpretation**

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

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

“Office” means Office of the County Attorney established under section 4 of this Act.

**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 Office of the County Attorney shall consist of—

- (a) The County Attorney;
- (b) The Deputy County Attorney; and
- (c) such other number of County Legal Counsel as the County Attorney may, in consultation with the County Public Service Board, consider necessary.

(3) The County Attorney shall be appointed by the Governor with the approval of the County Assembly.



**Qualifications**

5. (1) A person shall qualify for appointment as County Attorney if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in law from a university recognized in Kenya or its equivalent;
- (c) is an Advocate of High Court of Kenya;
- (d) has at least five years experience as a legal practitioner, judicial officer or in any other legal field;
- (e) has a valid practicing certificate;
- (f) meets the requirements of leadership and integrity set out in chapter six of the constitution.

(2) The County Public Service Board shall appoint a person to the Office of the Deputy County Attorney through a competitive recruitment process.

(3) A person shall qualify for appointment as Deputy County Attorney if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in law from a university recognized in Kenya or its equivalent;
- (c) is an Advocate of High Court of Kenya;
- (d) has at least four years experience as a legal practitioner, judicial officer or in any other legal field;
- (e) has a valid practicing certificate;

(4) The Deputy County Attorney shall be the principal assistant of the County Attorney and shall deputise the County Attorney in the execution of the County Attorney's functions under this Act.

**Functions of the County Attorney**

6. (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 Government on both legislative 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 Government and its agencies;
  - (d) shall represent the County Government 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 in, 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 legislation in the county court or any other tribunal as the case may be;
  - (g) shall be responsible for advising all the County Government departments and agencies on legislative and other legal matters;
  - (h) shall be responsible for advising the County Government on all matters relating to the Constitution, national legislation, County Assembly legislation, international law, human rights and legal aid services;
  - (i) shall be the link between the County Government, other County Governments, the National Government on all legal matters and shall do so in liaison with the office of the Council of Governors and the office of the 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 Government;
  - (l) shall maintain County Government property register and assets;
  - (m) shall be responsible for all insurance matters of the County Government and its agencies; and
  - (n) shall perform any other duty conferred to the office of the County Attorney by any Act of Parliament, County 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 Government and the public for the purpose of facilitating, promoting, and monitoring the rule of law, protection of human rights, democracy and defending public interest in accordance with the constitution;

#### **Powers of the County Attorney**

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

- (a) appear at any stage of the proceedings, appeal, execution or any incidental proceedings before any court or tribunal where the subject matter before a court or tribunal regards the County Government or where by law, the County Attorney's right of audience is not excluded;
- (b) require any officer in the county public service to furnish any information in relation to any matter which is subject to legal inquiry;
- (c) summon any officer in the county public service to explain any matter which is the subject of litigation by or against the County Government;
- (d) issue directions to any officer performing legal functions in County Government department;

(2) The County Attorney shall—

- (a) in consultation with the County Public Service Board establish the following units, divisions, sections or directorates under the Office of the County Attorney;
  - (i) Litigation unit
  - (ii) County courts unit
  - (iii) Commercial transactions and conveyance unit
  - (iv) Policy, legislative drafting and liaison unit
  - (v) County legal aid services unit
  - (vi) Human rights and countering violent extremism unit
- (b) supervise the formulation of policies and plans of the office; and

- (c) perform any other functions 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 office of the County Attorney, the office bearer shall exercise fidelity to the law.

#### **Administration of the office**

8. The administration and the discharge of the duties of the County Attorney shall be governed by this Act.

#### **Audience by the County Attorney in matters relating to public interest**

9. (1) Despite the provision of any other written law 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;

- (a) to be of public interest or involves public property; or
- (b) to involve the legislative or independent 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 administrative body on measures to be undertaken for the purposes of giving effect to the effective discharge of the duties of the office;

#### **Protection from personal liability**

10. No criminal proceedings or civil suit shall be brought against the County Attorney, the Deputy County Attorney, County Legal Counsel or any other officer in the Office of the County Attorney in respect of any proceedings in a court of law or in the course discharging the functions of the County Attorney under this Act.

#### **Prohibition of private practice**

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



**Resignation**

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

**Removal from Office**

13. (1) The Governor may with the approval of the County Assembly, remove the County Attorney from office only for—

- (a) gross 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; or
- (e) bankruptcy

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

**Delegation by County Attorney**

14. (1) The County Attorney may either generally or otherwise, in writing, delegate to the Deputy County Attorney or any County Legal Counsel all or any of his powers and functions under any written law, except this power of delegation.

(2) 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**

15. 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**

16. (1) The County Government shall not engage the services of a consultant 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;

(3) The County Attorney shall consider keeping the County Legal Counsel abreast in emerging issues in the legal profession by facilitating and organizing seminars and forums in order to maintain the standards and the quality of the office of the County Attorney.

**Reference of legal matters for the opinion of the County Attorney**

17. (1) A County Government department and its 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 binds the County Government to undertake any obligation without consulting the County Attorney.

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

**Departments to notify the County Attorney**

18. A County Government department and shall notify the County Attorney of any litigation matter within three days of receiving any court pleadings.

**PART IV— APPOINTMENTS, TERMS AND CONDITIONS OF SERVICE OF COUNTY LEGAL COUNSEL****County Legal Counsel**

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



(2) The County Public Service Board shall be guided by the values and principles of good governance under the Constitution in appointing the County Legal Counsel.

(3) The County Attorney shall cause to be published in the county gazette the names of all the County Legal Counsel.

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

(5) For avoidance of doubt, a person shall qualify for appointment as a County Legal Counsel under the office if that person possesses the relevant knowledge and experience in matters relating to law as may be prescribed by the County Public Service Board in consultation with the County Attorney.

#### **Terms and Conditions**

20. The County Legal Counsel appointed under this Act shall serve on such terms as the County Attorney and County Public Service Board may determine.

#### **Other Staff**

21. (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 the proper and efficient discharge of the functions of the office.

(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 functions of the County Attorney.

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

- (a) reflect regional and ethnic diversity of the people of Kenya; and
- (b) promote the values and principles set out in the Constitution.

#### **Secondment**

22. (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) shall be deemed to be an employee of the department, agency, institution or department, shall enjoy the same benefits and shall be required to comply with such orders and directions of the department,



agency, organization or institution in the same manner as an employee who is directly recruited by that department, agency, institution or organization.

## **PART V – FINANCIAL PROVISIONS**

### **Financial Year**

23. The financial year of the office of the County Attorney shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

### **Annual Estimates**

24. (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**

25. (1) The County Attorney shall submit to the Executive Committee Member in charge of Finance 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 shall 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 the discharge of legal services by the office.

(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 Account**

26. (1) The office of the County Attorney shall cause to be kept proper books and records of accounts of the expenditure, assets, audit 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 and 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 – MISCELLENEOUS PROVISIONS**

### **Prohibition of unauthorized disclosure of information**

27. (1) Without prejudice to the provisions of any other written law, an 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 duty 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**

28. 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 Government and its agencies.

### **County Public Seal**

29. The County Attorney shall be the custodian of the public seal of the County Government.

### **Accessibility**

30. 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 Government for the efficient performance of the functions of the office of the County Attorney.

### **Facilities and Resources**

31. The County Government shall provide adequate facilities and resources for efficient functioning of the office of the County Attorney.

### **Reports on the operations of the Office of the County Attorney**

32. (1) The County Attorney shall, as soon as practicable after thirtieth (30th) June in each year, prepare and submit to the Governor, a 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 days after the day which the Governor and the Executive Committee Member in charge of the Department of Finance has adopted it.

### **Regulations**

**33.** The County Executive Committee Member in charge of Finance may make regulations prescribing all matters required or permitted to be prescribed, or necessary for the better performance of the functions under this Act or giving effect to this Act.