

SPECIAL ISSUE

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KAJIADO COUNTY BILLS, 2023

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**THE KAJIADO COUNTY TAX WAIVERS, VARIATION
AND ADMINISTRATION BILL, 2023**

A Bill for

AN ACT of the County Assembly of Kajiado to provide for the regulation and administration of tax waivers; to give further effect to Article 210 of the Constitution and for connected purposes.

ENACTED by the County Assembly of Kajiado, as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Kajiado County Tax Waivers, Variation and Administration Act, 2023 and shall come into force on the date of publication in the *Gazette*.

Interpretation

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

“County Assembly” means the County Assembly of Kajiado;

“County Executive Committee Member” means the County Executive Committee Member responsible for Finance in the County;

“County Government” means the County Government of Kajiado;

“Public interest” means “Tax” includes any revenue, or licensing fee payable by any person to the County Government, whether it has become due or not, and includes any rate, fee or charge payable to the County Government; and

“Tax Waiver” includes the forbearance of tax collection, partial or full remission, spreading out a payment in respect of tax already accrued and any variation of the amount due or interest or penalty due on any amount owing to the county government.

Objects of the Act

3. The Object of this Act is to—

- (a) give further effect to Article 210 of the Constitution as regards tax waivers and the administration thereof;
- (b) give further effect to section 159 of the Public Finance Management Act, 2012;

- (c) ensure transparency in the administration of taxes and other revenue, in particular in the waivers thereof; and
- (d) to provide for the procedure applicable to and requirements for tax waivers.

PART II—AUTHORITY TO WAIVE TAX AND ADMINISTRATION OF TAX WAIVERS

No tax waiver except in the manner provided by law

4. No tax may be waived except in the manner provided for in this Act, any applicable national legislation or any other Act of the County Assembly of Kajiado.

Authority of the county Executive Committee Member to waive or vary tax

5. (1) Subject to the approval by the County Executive Committee, the County Executive Committee Member may waive or vary a rate, tax, fee or charge that is imposed or payable to the County Government under the relevant written law.

(2) The power of the County Executive Committee Member to waive tax shall be exercisable, only in the following circumstances—

- (a) where the waiver is for purposes of encouraging defaulting tax payers to pay such amount as may enable the county government recover part of the amount owing from the defaulting payer;
- (b) an order of a court is in force that specifies the imposition or payment of a rate, tax, fee or charge at a lower rate or amount than is provided for in the revenue law under which the rate, tax, fee or charge is imposed or payable;
- (c) it is not cost effective to take action to recover the rate, tax, fee or charge;
- (d) where, in the opinion of the county executive committee member, there exist such compelling circumstances that make it equitable, expedient and in the interest of the financial advantage to the county that the waiver be made; and
- (e) for any other compelling public interest reason.

(3) A person may apply to the County Executive Committee Member for a waiver or variation of a tax, rate, fee or charge payable to the County Government.

(4) An application made under subsection (3) shall be in the prescribed form.

(5) An application made under subsection (3) shall be in writing and addressed through the County Executive Committee Member responsible for the respective law under which a waiver or variation the tax, rate, fee or charge is sought.

(6) Notwithstanding subsection (3), the County Executive Committee may, on its own motion grant a waiver or variation of a tax, rate, fee or charge payable to the County Government.

(7) The County Executive Committee may approve or reject an application made under subsection (3).

(8) Where the County Executive Committee rejects an application made under subsection (3), it shall give reasons for rejecting the application.

(9) The County Executive Committee Member shall, within fourteen days after making a decision under subsection (1) inform the applicant of the outcome of the decision related to the application.

(10) A person or body granted a waiver or variation of a rate, tax, fee or charge is not subject to any collection or enforcement procedure in respect of the rate, tax, fee or charge that is waived or the part of the rate, tax, fee or charge that is varied.

Waivers of Penalties and Interest

6. (1) A person liable to a penalty or interest may apply in writing to the County Executive Committee Member for the remission of the penalty or the interest payable and such application shall include the reasons for the application.

(2) The County Executive Committee Member may, upon an application under sub-section (1) or on his/her own motion and with the approval of the County Executive Committee, remit, in whole or in part, any penalty or interest payable by a person for any of the reasons listed under section 5 (2).

(3) The County Executive Committee Member shall maintain a public record of each remission granted under this section together with the reasons for the remission, and the record of remissions shall be reported to the County Assembly and the Auditor-General in line with the provisions of section 9.

Waivers to be published

7. (1) Where the County Executive Committee Member intends to waive any tax, he or she shall publish such intention in the *Gazette* not less than fourteen days before the intended date of the waiver.

(2) The notice referred to in subsection (1) shall indicate the reasons for the intended waiver and shall invite comments from the public on the intended waiver.

Record of Waivers

8. (1) The County Executive Committee Member shall maintain a public record of each waiver or variation of rate, tax, fee or charge granted under this Act and the reasons for the waiver or variation.

(2) A person desirous of accessing the record of waivers under sub-section (1) shall make a written application to the County Executive Committee Member to be availed with a copy of such record.

Report of Waivers

9. (1) Every waiver shall be reported to the County Assembly and the Auditor General, and the Report of the waivers published in the *Gazette* not more than fourteen days after it is granted.

No Waiver for Public Officers

10. The County Executive Committee Member shall not waive tax or fees, or authorize the exclusion of a State officer or public officer from payment of tax or fees by reason of the office held by that state officer or public officer, or the nature of the work of the State officer or public officer.

PART III—MISCELLANEOUS PROVISIONS

Regulations

11. (1) The County Executive Committee Member may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to provide for the procedures in accordance with subsection (1), the regulations may provide for—

- (a) the procedure of application for tax waivers;
- (b) prescribed forms for the implementation of this Act;
- (c) where any payment of tax is due, the time within which waivers may be applied for; and
- (d) the requirements with respect to documentation that may be required with the applications for tax waivers.

MEMORANDUM OF OBJECTS AND REASONS

This Bill proposes to give further effect to the principles set out in the constitution by providing for the conditions of the administration of tax waivers. The Bill delegates legislative authority to the Executive Committee Member responsible for Finance on the procedures and timelines for application of waivers.

This Bill is not a money bill within the meaning of Article 114 of the Constitution.

Dated the 14th March, 2023.

JACKSON ANGAINE,
Chairperson, Finance and Economic Planning Committee.