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ACT, 2018**

No. 6 of 2018

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THE KIAMBU COUNTY OFFICE OF THE COUNTY ATTORNEY ACT, 2018

AN ACT of the County Assembly of Kiambu to make provision for the establishment of the office of County Attorney, its functions and powers; to provide for appointment, the discharge of duties and the exercise of powers of County Attorney and for connected purposes

ENACTED by the County Assembly of Kiambu, as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Kiambu County Office of the County Attorney Act, 2018.

Interpretation

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

“county attorney” means a person appointed as such under section 4;

“county public seal” means the seal as shall be determined by an Act of the County Assembly;

“county government” means the County Government of Kiambu;

“county solicitor” means a person appointed as such under section 10;

“legal counsel” means a person appointed as such under section 19.

Application

3. This Act shall apply to the County Attorney, the County Solicitor 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 KIAMBU COUNTY OFFICE OF COUNTY ATTORNEY, FUNCTIONS AND ADMINISTRATION

County Attorney

4. (1) There is established the office of County Attorney.

(2) The office of the County Attorney shall consist of—

- (a) the County Attorney; — (3)
- (b) the County Solicitor; and (10)

(c) such other number of Legal Counsel as the County Attorney may, in consultation with the County Public Service Board, consider necessary. }
 (19)

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

(4) A person shall be qualified for appointment as a County Attorney if such 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 the High Court of Kenya;
- (d) has had at least seven years' relevant professional experience; and
- (e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(5) For the avoidance of doubt, the County Attorney shall have the status and rank of a member of the County Executive Committee.

(6) The County Attorney shall upon appointment take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office.

(7) Notwithstanding the provisions of this section, the County Attorney, the County Solicitor, the Legal Counsel and any other officer appointed under this Act, shall subscribe to and observe the Code of Conduct as set out in the Second Schedule.

Functions of the County Attorney

5. (1) The County Attorney shall—
- (a) be the principal legal adviser to the County Government;
 - (b) attend the County Executive Committee meetings as an *ex officio* member;
 - (c) be responsible for drafting and publication of legislative proposals or amendment of laws for the County Government;
 - (d) be responsible for negotiating, drafting, vetting and interpreting legal documents and agreements for and on behalf of the County Government and its agencies;
 - (e) represent the County Government in court in any legal proceedings including those arising from County Legislation or

- any other legislation to which the County Government is a party or has interest, other than criminal proceedings;
- (f) handle public interest litigation or represent any member of the public in matters that the Governor or the County Attorney deems to be of public interest;
 - (g) in consultation with the Director of Public Prosecution, co-ordinate prosecutions of offences resulting from the county legislations in county courts or any other court as the case may be;
 - (h) be the link between the County Government, other county governments and the National Government on legal matters;
 - (i) undertake legal audits and advice the County Government on compliance with the county and national legislations;
 - (j) be the County Government Printer and responsible for publication of the County *Gazette*, Bills and Acts of County Assembly;
 - (k) be the custodian of County Public Seal, contracts and other legal instruments of the county;
 - (l) have access to relevant records, documents and property within the county departments;
 - (m) recommend to the County Public Service Board the establishment of offices and office structure for better implementation of this Act;
 - (n) prepare policies, strategies and plans of the County Attorney's office;
 - (o) prepare the County Attorney's budget;
 - (p) perform any other functions conferred on the office by an Act of County Assembly, national legislations or by the Governor or as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney;
 - (q) be responsible for the revision of county laws; and
 - (r) be responsible for rectification of mistakes in legislation through a rectification order published in the *Kenya Gazette* or *County Gazette* which shall thereafter be tabled in the County Assembly in accordance with the provisions of the law relating to Statutory Instruments.

(2) The powers of the County Attorney may be exercised in person or by Legal Counsels acting in accordance with the general or special instructions of the County Attorney.

(3) The County Attorney may, upon request, appear and advise on any legal matter in any committee of the County Assembly.

(4) In the execution of the functions 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, the protection of human rights and democracy and in accordance with the Constitution.

Powers of the County Attorney

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

- (a) with leave of the court or tribunal, appear at any stage of proceedings, appeal, execution or any incidental proceedings before any court or tribunal where the subject matter before the court is touching on the County Government or where County Government has interest;
- (b) require any officer in the County Public Service Board and Executive to furnish any information in relation to any matter which is the subject of legal inquiry;
- (c) summon any officer of the County Public Service Board and Executive to explain any matter which is the subject of litigation by or against the County Government;
- (d) prepare an annual report and submit it before the County Assembly on the status of legal matters in the county within thirty days from the date of closure of the financial year; and
- (e) perform any other action necessary in the administrative interests of the office;
- (f) issue directions to any officer performing legal functions in the County Government.

Administration of the Office

7. (1) The administration and the discharge of duties of the office of the County Attorney shall be governed by this Act.

(2) The County Attorney shall discharge the mandate of the office specified in this Act either in person or through a Legal Counsel to whom the function is delegated.

Audience by County Attorney in Matters of Public Interest, etc

8. (1) Notwithstanding the provisions of any written law to the contrary or in the absence of any other written law, the County Attorney shall have the right of audience in proceedings of any suit or inquiry of an administrative body which the County Attorney considers to be of public interest or involves an injustice on any resident of the county in contravention of the constitution or involves a minor or involves county property, or a department or agency of the County Government.

(2) In the exercise of the powers of the County Attorney under subsection (1), the County Attorney shall—

- (a) notify any court, tribunal or any other administrative body of the intention to be enjoined to the suit, inquiry or administrative proceedings; and
- (b) satisfy the court, tribunal or any other administrative body of the public interest or county property involved, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the office.

(3) Where a suit, inquiry or any other proceedings is pending before a court, tribunal or any other administrative body to which the County Attorney does not have a right of audience, it shall be sufficient for the County Attorney to file a certificate of the intention of the County Attorney to be enjoined in the proceedings.

(4) The court, tribunal or any such administrative body shall, upon receipt of a certificate under subsection (3), enjoin the County Attorney in the proceedings.

Protection From Personal Liability

9. (1) No criminal proceedings or civil suit shall be brought against the County Attorney, the County Solicitor, a Legal Counsel, a County Prosecutor or any other officer in their personal capacity in the course of discharging of the functions of the County Attorney under this Act.

(2) No matter or thing done by the County Attorney, the County Solicitor, Legal Counsel, County Prosecutor or an officer in the County Attorney's office shall, if the matter or thing is done in good faith for executing the functions, power's or duties of the office of the County Attorney, render such officers liable to any action, claim or demand whatsoever.

(3) The County Attorney, the County Solicitor and the Legal Counsel shall not engage in any gainful employment that may result in a conflict of interest.

County Solicitor

10. (1) There shall be a County Solicitor who shall be competitively recruited by the County Public Service Board and appointed by the Governor subject to the approval of the Assembly.

(2) A person shall be qualified for appointment to the office of the County Solicitor if the 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 the High Court of Kenya;
- (d) has had at least seven years' relevant professional experience; and
- (e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The County Solicitor shall assist the County Attorney in the performance of the duties of the County Attorney under the general directions of the County Attorney.

(4) The County Solicitor shall be the authorised officer in respect of the exercise of delegated powers of the County Attorney's office and as such shall—

- (a) carry out any function, discharge any duty and exercise any power as may be directed by the County Attorney;
- (b) organize, co-ordinate and manage the administrative and the legal functions of the office;
- (c) ensure the implementation of policies, strategies and plans of the County Attorney's office;
- (d) prepare and recommend to the County Attorney the office's annual budget;
- (e) implement the approved Legal Counsel office budget and ensure the office's financial discipline;
- (f) approve procurements and execute contracts relevant to the office; and

(g) supervise the work performance, ethics and discipline of staff in the County Attorney's office.

(5) In the performance of the functions and the exercise of the powers, the County Solicitor shall be responsible for—

- (a) formulating and ensuring implementation of development strategies for County Government legal services;
- (b) preparing annual reports and other required reports and submitting to the County Attorney; and
- (c) performing such other duties as may be conferred by law or otherwise assigned to the County Solicitor by the County Attorney.

Tenure of Office

11. The County Attorney or the County Solicitor shall hold office for a term of five years which term shall be renewable.

Resignation

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

Removal from Office

13. The Governor may remove the County Attorney or the County Solicitor from office only for—

- (a) 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.

Delegation by County Attorney

14. (1) The County Attorney may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand delegate to the County Solicitor or any Legal Counsel all or any of his or her powers and functions under any written law, except this power of delegation.

(2) A power or function delegated under this section may be exercised or performed by the County Solicitor or County Counsel in accordance with the instrument of delegation.

(3) A delegation under this section may be revoked at will and does not prevent the exercise of a power or performance of a function by the County Attorney.

PART III—PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY

Reserve of Matters to the County Attorney

15. A 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 to the County Attorney.

Engagement of Consultant

16. (1) A department 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 Legal Counsel to participate in the work of the consultant; and
- (b) prescribe the terms and conditions for a Legal Counsel who participates in such consultancy.

Reference of Matter for Opinion of the County Attorney

17. (1) All County Government departments and 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 an agreement that binds the county to undertake certain obligations without reference to the County Attorney.

(3) A person or officer who makes any decisions that has legal implications or enters into an agreement on behalf of the county without any reference to the County Attorney shall take personal responsibility if such decision results in County Government incurring liability.

Departments to Notify the County Attorney

18. All County Government departments and agencies shall notify the County Attorney of all material litigation within three days upon the service of any pleadings.

PART IV—APPOINTMENT AND TERMS AND CONDITIONS OF SERVICE**Legal Counsel**

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

(2) A person qualifies for appointment as a Legal Counsel under subsection (1) if such person—

- (a) is an Advocate of the High Court of Kenya of good standing;
- (b) has a current practising certificate; and
- (c) is a fit and proper person with due regard to the discharge of his or her duties under this Act.

(3) The County Attorney shall cause to be published in the *County Gazette*, the names of all persons appointed as Legal Counsel under subsection (1).

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

(5) A person shall not act as a Legal Counsel unless that person has been appointed as such under subsection (1).

(6) For the avoidance of doubt, nothing in this Act shall entitle any officer who is not qualified in law to perform legal services functions in the County Public Service.

Terms and Conditions of Service

20. The Legal Counsel appointed under this Act shall serve on such terms as the County Public Service Board may, on the advice of the Salaries and Remuneration Commission, determine.

Other Staff

21. (1) There shall be such other officers and other members of staff of the office of the County Attorney as shall be necessary for the proper and efficient discharge of the functions of the office.

(2) The County Attorney's office may procure the services of such other persons as may be reasonably necessary for better implementation of this Act.

(3) The composition of the staff of the office shall reflect the—

- (a) regional and ethnic diversity of the people of Kenya;

- (b) disability and gender equity; and
- (c) take into consideration the provisions of the Constitution

Deployment

22. (1) The County Attorney may, upon request, deploy any Legal Counsel to any department, agency, organization or institution as shall be necessary for better execution of the County Attorney's mandate.

PART V—ESTABLISHMENT OF COUNTY ATTORNEY'S FUND

Establishment of the Fund

23. (1) There is established the County Attorney's Fund which shall consist of—

- (a) monies as may be appropriated by the County Assembly;
- (b) courts costs and settlement of judgement;
- (c) sums received including contributions, gifts or grants from any lawful source;
- (d) monies earned arising from investment of the funds; or
- (e) all other monies which in any manner may become payable to or vested in the Fund.

(2) The Fund shall be used for carrying out the functions of the County Attorney's office, including—

- (a) consultancy services fees and charges;
- (b) court related charges;
- (c) settlement of judgements; and
- (d) any other matter related to the implementation of this Act.

(3) Notwithstanding the provisions of subsection (2), not more than three percent of the Fund shall be allocated for administration costs.

(4) The receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the County Revenue Account but shall be retained for the purposes of the Fund.

Administration of the Fund

24. (1) The County Executive Committee Member responsible for Finance shall designate an officer to administer the Fund.

(2) The officer administering the Fund may, with the approval of the County Executive Committee Member responsible for finance, invest

or place in a deposit account any of the monies of the Fund and any interest earned on monies so invested or deposited.

- (3) The officer administering the Fund shall—
- (a) ensure compliance with the provisions of the Public Finance Management Act, 2012;
 - (b) supervise and control the administration of the Fund;
 - (c) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning the use of expenditure;
 - (d) prepare quarterly reports of the operations of the Fund and submit to the County Executive Committee Member responsible for finance;
 - (e) cause to be kept proper books of account and records in relation to the operations of the Fund;
 - (f) prepare, sign and submit to the Auditor-General in respect of each financial year a statement of accounts relating to the Fund within three months after the end thereof; and
 - (g) furnish such additional information as may be required for examination and audit by the Auditor-General.
- (4) The County Executive Committee Member responsible for Finance may designate to the County Attorney's office such staff as may be necessary to assist in the management of the Fund.

PART VI—MISCELLANEOUS PROVISIONS

Prohibition of Unauthorized disclosure of information

25. (1) Without prejudice to the provisions of any other written law, an officer or member of staff of the office shall not disclose or use any information gained by the officer or member of staff otherwise than in the course of the official duties of the officer or member of staff or with the Authority of the County Attorney.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than two hundred thousand shillings, or to imprisonment for a term less than two years, or to both.

Depository of Laws and Agreements

26. The office shall be the depository of all laws and legal documents and agreements signed for or on behalf of the County Government.

County Public Seal

27. The County Attorney shall have custody of the County Government Public Seal and shall be the mandatory witness on any document on which the seal is affixed.

Accessibility

28. 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 for the efficient performance of the duties of the County Attorney.

Facilities

29. The County Government shall provide adequate facilities for the efficient functioning of the office of the County Attorney.

Report on Operations of the Office of the County Attorney

30. (1) The County Attorney shall, as soon as practicable after thirtieth June in each year, prepare and furnish to the Governor a report of the operations of the office during the year that ended on thirtieth June.

(2) The report prepared under subsection (1), shall, in respect of the year to which it relates, contain—

- (a) the financial statements of the office;
- (b) a description of the activities of the office; and
- (c) such other information relating to its functions that the office may consider necessary.

(3) The County Attorney shall cause a copy of the report furnished under subsection (1) to be laid before the County Assembly within fifteen days after the day on which the Governor and the Executive Committee has adopted it.

Regulations

The County Attorney may make Regulations prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed or carrying out or giving effect to this Act.

FIRST SCHEDULE (S.4 (6))**OATH OF OFFICE FOR THE COUNTY ATTORNEY**

I..... do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the Office of the County Attorney of the County Government of Kiambu; that I shall without fear or favour, diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall at all times, when so required, faithfully and truly give my counsel and advice to the County Government of Kiambu; that I shall do justice to all. (So help me God).

**SECOND SCHEDULE (S.4 (7))
CODE OF CONDUCT****Ethical Values and Principles****Application**

1. (1) This Code of Ethics shall apply to all officers appointed under this Act.

(2) This Code of Ethics shall be supplementary to the Leadership and Integrity Act, the Public Officers and Ethics Act and the Rules of Professional Conduct and Etiquette of the Law Society of Kenya.

Loyalty and Dedication

2. An officer appointed under this Act shall perform the functions of the office of the County Attorney with complete loyalty and dedication and shall not indulge in any activity that may affect the interests of the county.

Responsibility

3. An officer appointed under this Act shall ensure that his personal conduct is consistent with the dignity, image and integrity of the Office of the County Attorney.

Honesty

4. An officer appointed under this Act shall act honestly and with propriety in the performance of the officer's duties and functions.

Competence

5. An officer appointed under this Act shall—

- (a) perform the functions and discharge duties of the office in a competent manner;

- (b) handle matters without undue delay, risk or unnecessary expense to the County Government.

Quality of Service

6. An officer appointed under this Act has a duty to serve the County Government and the public in a conscientious, diligent and efficient manner in order to provide quality service.

Fairness and Diligence

7. An officer appointed under this Act shall not make an official decision without first giving due consideration to the matter at hand and the impact it is likely to have on the rights and interests of the people involved.

Confidentiality

8. An officer appointed under this Act has a duty to hold in strict confidence all information concerning the business and affairs of the County Government and the public generally where the information is acquired by virtue of office and except where the disclosure is expressly authorized by the County Attorney, or required by law.

Integrity

9. An officer appointed under this Act shall—

- (a) not be influenced in any manner whatsoever by any individual or body of individuals in the discharge of his official duties;
- (b) perform the functions and discharge the duties of the office with integrity;
- (c) respect and comply with this Act and any other written law and shall conduct himself or herself both in private and official capacities in a manner that promotes public confidence, the integrity of the Public Service, Office of the County Attorney and the legal profession;
- (d) not allow outside interests to compromise or in any way jeopardize the integrity of the legal profession, independence or competence;
- (e) at all times observe a standard of conduct that reflects credit on the legal profession and the public service and administration of justice generally; and
- (f) desist from conduct capable of drawing an impression of being involved in corruption.

Selflessness

10. An officer appointed under this Act shall take decisions solely in the interest of the county and justice and not on any other factor.

Transparency

11. The decisions and actions of an officer appointed under this Act shall be made in a transparent manner and the officer shall provide reasons for such decisions.

Leadership

12. An officer appointed under this Act shall—

- (a) at all times display high moral values and conduct himself or herself in a manner that reflects credibility on the office;
- (b) abide by the spirit and letter of the law; and
- (c) adhere to the ethical standards expressed in this Schedule.

Rule of Law and the Administration of Justice

13. An officer appointed under this Act has—

- (a) a duty to promote respect for the rule of law and administration of justice;
- (b) a duty to treat the court with candour, courtesy and respect and shall not attempt to influence court decisions by use of deceptive or reprehensible methods;
- (c) a duty to deal with other lawyers fairly, courteously and in good faith; and
- (d) a duty to uphold the integrity and reputation of the legal profession and promoting principles of fairness, justice and honesty.

Appropriate Presentation and Attire

14. An officer appointed under this Act shall at all times in and outside the place of work appear in smart, proper and decent dress and behave in a manner befitting both the public service and the legal profession.

Personal Conduct

15. (l) An officer appointed under this Act shall comply with and execute laws, uphold the administration of justice and protect the integrity of public life.

(2) An officer appointed under this Act entrusted with the responsibility to serve the county, shall—

- (a) refrain from indulging in habits and behaviour that infringe upon the performance of official duties or tarnish the image of the office;
- (b) maintain the dignity and decorum of the office;
- (c) not use County Government resources for personal purposes and benefits;
- (d) be liable for unlawful and improper behaviour or the non-performance of his duties;
- (e) not do or direct to be done, in abuse of the office or power, any act prejudicial to the rights of another person knowing that such act is unlawful or contrary to the County Government policy;
- (f) maintain transparency in the policies of the office and in decisions and actions made;
- (g) not knowingly mislead the County Government on any matter of significance arising from his functions;
- (h) not maintain or operate a bank account in any country outside Kenya;
- (i) not provide information which is detrimental to the interest, territorial integrity and sovereignty of Kenya; and
- (j) protect and uphold professionalism, render decisions based on merit, and shall prohibit all forms of discrimination; and not accept any gifts, presents or benefits.

Conflict of Interest

16. (1) An officer appointed under this Act shall ensure that no conflict arises or appears to arise between the officer's official duties and private interests.

- (2) An officer appointed under this Act shall not—
 - (a) appear, advise or represent any party against the County Government; and
 - (b) be a member of, belong to, or take part in any society the membership of which is incompatible with the functions or dignity of the officer's office.