

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**KISUMU COUNTY ACTS, 2018**

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**NAIROBI, 28th December, 2018**

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ACT, 2018**

**No. 9 of 2018**

*Date of Assent: 20th December, 2018*

*Date of Commencement: 28th December, 2018*

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*Kisumu County Office of the County Attorney*

No. 9

**THE KISUMU COUNTY OFFICE OF THE COUNTY ATTORNEY ACT, 2018**

**AN ACT of the County Assembly of Kisumu to provide for the establishment of the Office of the County Attorney, and the functions and powers, the discharge of duties, and the exercise of powers of, the Office of the County Attorney, and for connected purposes**

**ENACTED** by the County Assembly of Kisumu as below—

**PART I—PRELIMINARY**

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

Short title.

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

Interpretation.

“County Attorney” means the County Attorney appointed under section 5;

“County Government” means the County Executive Committee, all the County Government entities and departments including Boards of City, Urban Areas and Towns but does not include the County Assembly of Kisumu;

“County Solicitor” means a person appointed as such under section 10; and

“County Legal Counsel” means a person appointed as such under section 11.

3. This Act shall apply to the County Attorney and other officers in the Office of the County Attorney who perform or discharge legal functions and such other duties as may be lawfully assigned to them.

Application.

**PART II—ESTABLISHMENT OF THE OFFICE OF THE COUNTY ATTORNEY**

4. (1) There is established the Office of the County Attorney, which is an office in the public service.

Establishment of the office of County Attorney.

(2) The Office of the County Attorney consists of —

- (a) the County Attorney;
- (b) the County Legal Solicitor; and
- (c) such number of County Legal Counsel, and such number of other officers as may be necessary for the proper and efficient discharge of the functions of the office.

5. (1) The County Attorney is nominated and appointed by the Governor with the approval of the County Assembly.

Appointment and qualifications of the County Attorney.

(2) A person qualifies for appointment as County Attorney if she or he is a citizen of Kenya and—

- (a) holds a degree in law from a university recognized in Kenya or its equivalent;
- (b) is an Advocate of the High Court of Kenya;
- (c) has at least five years relevant professional experience, and
- (d) meets the requirements of Chapter Six of the Constitution of Kenya

(3) 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.

(4) The County Attorney shall hold the office;

- (a) for a renewable term of 5 years.
- (b) for not more than two terms

6. The County Attorney —

Functions of the County Attorney.

- (a) is the principal legal adviser to the Governor and the County Government;
- (b) shall attend the County Executive Committee meetings as an *ex officio* member of the executive committee;
- (c) may represent the Governor and or County Executive Member in Court or in any other legal proceedings to which the Governor is a party, other than criminal proceedings;
- (d) advise county executive and county government departments on legislative and other legal matters;
- (e) shall negotiate, draft, vet and interpret documents and agreements for and on behalf of the County Government and its agencies;
- (f) shall be responsible for the revision and proposal of amendments to the County Assembly.
- (g) shall be responsible for drafting of legislation emanating from the County Executive Committee;

- (h) may liaise with the Office of the Attorney General when need arises;
- (i) shall 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 in place for management of Statutory Instruments;
- (j) shall perform any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney;
- (k) may perform prosecutorial functions in cases involving violation of Acts of the County Assembly;
- (l) may upon request, appear and advise on any legal matter in any committee of the County Assembly.
- (m) shall publish all legislation passed by the County Assembly.
- (n) shall perform any other function as may be necessary for effective discharge of the duties and exercise of powers of the County Attorney.

7. (1) The County Attorney shall, in discharging the functions under this Act, either directly or through an authorized officer, have powers to —

Powers of the  
County attorney.

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

(2) The County Attorney shall exercise powers, issue directives or practice notes to any officer to whom this Act applies for the purpose of maintaining standards and uniformity.

(3) The County Attorney shall upon written request have access to any relevant records and documents in any county government department, as may be necessary in the performance of the duties of the County Attorney.

(4) The County Attorney may, either generally or otherwise as provided by the instrument of delegation, in writing under the County Attorney's hand:

- (a) delegate to the County Solicitor or any County Legal Counsel all or any of the powers and functions under any written law, except the power of delegation, which delegation does not prevent the exercise of a power or performance of a function by the County Attorney, and
- (b) revoke such delegation.

**8.** (1) The County Attorney shall serve on such terms and conditions as the County Public Service Board in consultation with the salaries and Remuneration Commission shall determine.

Remuneration and Status of the County Attorney

(2) The County Attorney shall have the status and rank of the County Executive Committee Member.

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

Resignation of County Attorney.

**10.** (1) The Governor may, subject to subsection (2) remove the County Attorney from office on the following grounds —

Removal from office.

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

(2) (a) A member of the County Assembly supported by at least a third of all the members of the County

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Assembly may propose a motion requiring the Governor to dismiss the County Attorney.

(b) notwithstanding (a) above the process of dismissal shall be similar to that of the removal of the County Executive Committee Member.

**PART III—ORGANISATION OF THE OFFICE OF THE COUNTY ATTORNEY**

**11.** (1) There shall be a County Solicitor who shall be competitively recruited and appointed by the County Public Service Board.

County Legal  
Solicitor.

(2) A person is qualified for appointment to the office of County Solicitor if the person—

- (a) Is a Kenyan citizen;
- (b) Is an advocate of the High Court of Kenya
- (c) Has at least five years' relevant professional experience;
- (d) meets the requirements of Chapter Six of the constitution.

(3) The County Solicitor shall be the accounting officer of the Office of the County Attorney and shall work under the general directions of the County Attorney.

**12.** (1) The County Public Service Board shall on request by the County Attorney establish and appoint such number of County Legal Counsel for the proper and efficient discharge of the functions of the office.

Appointment and  
Qualification of  
County Legal  
Solicitor.

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

- (a) Is a Kenyan citizen;
- (b) Is an Advocate of the High Court of Kenya;
- (c) Meets the requirements of Chapter Six of the Constitution.

**13.** The County Legal Counsel appointed under this Act shall serve on such terms as the County Public Service Board shall, in consultation with the Salaries and Remuneration Commission, determine.

Service Terms for  
County Legal  
Counsel

**14.** (1) The County Attorney may, upon request, second any County Legal Counsel to any agency, organization or institution on such terms and conditions as

Secondment of  
County Legal  
Counsel



the Office may, in consultation with the agency to which the person is being seconded, agree upon.

(2) A County Legal Counsel who is seconded under subsection (1) shall—

- (a) Be deemed to be an employee of the County Public Service Board;
- (b) Enjoy the same benefits as an employee who is directly recruited by the agency, organization or institution; and
- (c) Be required to comply with such orders and directions of the agency, organization or institution in the same manner as an employee who is directly recruited by that agency, organization or institution.

15. (1) All County Legal Counsel in any county department shall be officers of the Office of the County Attorney and shall be answerable to the County Attorney.

County Legal Counsel in the county departments to be answerable to County Attorney.

(2) The County Attorney shall have the power to issue directions to the County Legal Counsel with regard to the manner of performing the legal functions within their respective departments.

16. (1) There shall be such other officers and other members of staff of the Office of the County Attorney as the County Public Service Board considers necessary for the proper and efficient discharge of the functions of the Office.

Other officers of the Office of the County Attorney.

(2) Such officers are appointed by the County Public Service Board.

(3) The County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the Office of the County Attorney.

#### **PART IV — PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY**

17. (1) 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—

County Attorney to have right of audience.

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- (a) to be of public interest or to involve public property within or outside the county; or
  - (b) to involve the legislative or an independent 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 such other administrative body of the intention and seek leave of the Court to be enjoined in the suit, inquiry or administrative proceedings;
  - (b) satisfy the court, tribunal or such other administrative body of the public interest or public property involved; and
  - (c) 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.

**18.** The County Attorney may offer Legal advice to any public entity within the county government.

Legal advise

**19.** No criminal proceeding or civil suit shall be brought against the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office of the County Attorney in their personal capacity, for acts done or omissions made in their official capacity and in good faith in respect of any proceedings in a court of law or in the course of discharging the functions of the Office of the County Attorney under this Act.

Protection from personal liability.

**20.** (1) A County Legal Solicitor and a County Legal Counsel shall subscribe to and observe the Code of Conduct as set out in the Second Schedule.

Code of conduct of County Legal Solicitor and County Legal Counsel.

(2) A County Legal Solicitor or County Legal Counsel who breaches the Code of Ethics shall be liable to disciplinary action subject to the guarantees of Article 47 of the Constitution of Kenya.

**21.** (1) The funds of the Office of the County Attorney consist of—

Funds of the Office of the County Attorney.

- (a) monies that shall be allocated by the County Assembly for the purposes of the Office;
- (b) such monies or assets as may accrue to the Office

in the course of the exercise of its powers or the performance of its functions under the Act; and

- (c) all monies from any other source donated to the Office.

(2) The funds of the Office shall be used for administrative expenses of the Office and such other purposes as may be necessary for the discharge of the functions of the Office.

(3) There shall be an account to ring-fence the funds of the Office of the County Attorney.

#### **PART V — MISCELLANEOUS PROVISIONS**

**22.** Without prejudice to the provisions of any other written law, an officer or member of staff of the County Attorney Office shall not disclose to third parties or use any information gained in the course of their official duties without written authority of the County Attorney.

Non-disclosure of information

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

Depository of legal documents and agreements.

**24.** Notwithstanding any other County law to the contrary the County Attorney shall have custody of the county seal of the County Government.

Attorney to have custody of county seal.

**25.** The County Government shall provide adequate budget and facilities for the efficient functioning of the County Attorney's Office.

County government to provide adequate budget.

**26.** (1) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—

Non—money Bill status.

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal or any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

(2) Any expenses that may be occasioned in the implementation of this Act shall be provided from—

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- (a) such gifts, grants or donations as may be given;
- (b) such monies as may, in the future, be provided by the County Assembly for defraying the expenses incurred in the implementation of this Act; and
- (c) such other monies that may lawfully accrue in the discharge of the functions under this Act, not being monies accruing pursuant to Article 114 of the Constitution.

27. The County Attorney shall, on or before the 15th day of July in each year, prepare and furnish to the County Assembly, through the Governor, a report of the operations of the Office of the County Attorney during the year that ended on thirtieth June.

Annual Report

28. The County Attorney may make Regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed, or necessary to be prescribed for the carrying out or giving effect to this Act.

Regulations

29. (1) The Governor shall within ninety days (90) days of the coming into force of this Act, appoint the County Attorney in accordance with the provisions of this Act.

Transitional provision

(2) The person lawfully exercising the powers of and functions of the County Attorney or its equivalent immediately before this Act shall unless appointed under this Act cease exercising such powers or functions on the appointment of the County Attorney under this Act.

30. A person assuming the Office of the County Attorney shall ascribe to the Oath of Office of the County Attorney.

Oath of Office

**FIRST SCHEDULE (S.10)**

**OATH OF OFFICE FOR THE COUNTY ATTORNEY**

I ....., do swear/solemnly affirm that I shall always truly and diligently serve the people and the County of Kisumu in the Office of the County Attorney of Kisumu County; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgement; that I shall at all times, when so required, faithfully and truly give my counsel and advice to the Governor of the Kisumu County; that I shall do justice to all (So help me God).

**SECOND SCHEDULE (S. 24(1))****CODE OF CONDUCT****Ethical Values and Principles**

1. (1) This Code of Ethics shall apply to all County Legal Counsel and County Legal Officers.

(2) This Code of Ethics shall be supplementary to the Public Service Code of Conduct and the Rules of the Processional Conduct and Etiquette of the Law Society of Kenya.

2. A County Legal Solicitor and County Legal Counsel 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.

3. A County Legal Solicitor and County Legal Counsel shall ensure that his personal conduct is consistent with the dignity, image and integrity of the Office of the County Attorney.

4. A County Legal Solicitor and County Legal Counsel shall act honestly and with propriety in the performance of the County Legal Solicitor's or and County Legal Counsel's duties and functions.

5. A County Legal Solicitor and County Legal Counsel 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.

6. A County Legal Solicitor and County Legal Counsel has a duty to serve the County Government and the public in a conscientious, diligent and efficient manner in order to provide quality service.

7. A County Legal Solicitor and County Legal Counsel 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.

8. A County Legal Solicitor and County Legal Counsel has a duty to hold in strict confidence all information concerning the business and affairs of the County Government and the public generally where information is acquired by virtue of office and except where the disclosure is expressly authorized by the County Attorney, or required by law.

9. A County Legal Solicitor and County Legal Counsel 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 interest 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.

10. A County Legal Solicitor and County Legal Counsel shall take decisions solely in the interest of the nation and justice and not on any other factor.

11. The decisions and actions of a County Legal Solicitor and County Legal Counsel shall be made in a transparent manner and the County Legal Solicitor and County Legal Counsel shall provide reasons for such decisions.

12. A County Legal Solicitor and County Legal Counsel 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.

13. A County Legal Solicitor and County Legal Counsel has—

- (a) a duty to promote respect of 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.

14. A County Legal Solicitor and County Legal Counsel shall at all times while on duty appear in smart, proper and decent dress and behave in a manner befitting both the public service and the legal profession.

15. (1) A County Legal Solicitor and County Legal Counsel shall comply with and execute laws, uphold the administration of justice and protect the integrity of public life.

(2) A County Legal Solicitor and County Legal Counsel entrusted with the responsibility to serve the county, shall—

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

16. (1) A County Legal Solicitor and County Legal Counsel shall ensure that no conflict arises or appears to arise between the County Legal Solicitor's official duties and private interests.

(2) A County Legal Solicitor and County Legal Counsel 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 County Legal Solicitor's and County Legal Counsel's office.