SPECIAL ISSUE

Tana River County Gazette Supplement No. 4 (Bills No. 4)

NATIONAL COUNCIL FOR LAW REPORTING LIBRARY

REPUBLIC OF KENYA

TANA RIVER COUNTY GAZETTE SUPPLEMENT

BILLS, 2016

NAIROBI, 1st march, 2016

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI
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THE TANA RIVER COUNTY REVENUE ADMINISTRATION BILL, 2016

A Bill for

AN ACT of the County Assembly of Tana River to provide for the general administration of certain taxation laws and other revenue raising laws, and for related purposes

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

PART I—PRELIMINARY

1. This Act may be cited as the Tana River County Revenue Administration Act, 2016.

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

"County Executive Committee Member" means the County executive committee member responsible for finance;

"County public officer" has the same meaning as in the County Governments Act, 2012;

"Receiver of Revenue" means a person designated to be a receiver of revenue under section 157 of the Public Finance Management Act, 2012 and includes the person holding or acting in the office of the County Receiver of Revenue established by section 4 of this Act;

"premises" includes—
(a) any part of a building or structure; and
(b) any part of a vehicle or vessel; and
(c) an area of land;

"prescribed" means prescribed by the rules made under this Act;

"rate" means a rate imposed under the Tana River County Rating Act, 2013;

"revenue law" means—
(a) this Act; or
(b) the Tana River County Rating Transition Act, 2013;
(c) the Tana River County Trade Licence Transition Act, 2013;
(d) the Act providing for annual County finances;

(e) any other Act imposing an entertainment tax or any other tax that is payable to the county government;

(f) any Act or other law providing for the payment to the county government of fees or charges for services provided; or

(g) any other written law;

“relevant person” means—

(a) a revenue payer;

(b) an employee or agent of the revenue payer; or

(c) any other person whom the County Receiver of Revenue believes on reasonable grounds may be able to assist in determining the liability (if any) of the revenue payer to pay a rate, tax, fee or charge payable under a revenue law;

“revenue payer” means a person liable to pay a rate, tax, fee or charge to the County government under a revenue law.

3. Any person charged with an obligation under this Act shall—

(a) observe the values and principles of public finance management and other values on transparency, accountability and prudent use of public funds under the Constitution;

(b) comply with relevant national and county laws that regulate public funds.

PART II—ADMINISTRATION OF REVENUE LAWS

4. (1) There is established, in the County Public Service, an office of the Receiver of Revenue.

(2) The county government may appoint a county public officer or any other person as the County Receiver of Revenue, or to act as the County Receiver of Revenue.

5. (1) The County Receiver of Revenue shall—

(a) be responsible for the administration and enforcement of revenue laws;
(b) collection of County revenue;
(c) account for all rates, taxes, fees and charges payable by or under any of revenue laws;
(d) advise the county government on all matters relating to the administration and enforcement of county revenue laws, and the assessment and collection of rates, taxes, fees and charges under those laws; and
(e) perform such other functions as the county government may directs.

(2) The County Receiver of Revenue shall have such powers as are provided for under the revenue laws.

(3) Unless expressly provided for in an Act, the County Receiver of Revenue shall be responsible for the assessment of revenue in the County.

6. (1) The County Executive Committee Member or County Receiver of Revenue may, either generally or as otherwise provided by the instrument of delegation, in writing, delegate to—
(a) any a person; or
(b) an officer,
all or any of the powers and functions of the County Executive Committee Member or County Receiver of Revenue under this Act other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the County Executive Committee Member or County Receiver of Revenue.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the County Executive Committee Member or County Receiver of Revenue.

(4) The Executive Committee Member may make regulations in relation to the exercise of powers, and the performance of functions, of the Director under this Act by an officer of the County.
(5) The County Executive Committee Member or County Receiver of Revenue may revoke or amend a delegation under this Act.

(6) An arrangement, or the variation or revocation of an arrangement, shall be in writing and a copy of each instrument by which an arrangement has been made, varied or revoked shall be published in the County Gazette.

7. (1) The county government may enter into an agreement authorising a person to collect rates, taxes, fees and charges payable under revenue laws on such terms and conditions as are specified in the agreement.

(2) The County Executive Committee Member may make regulations to give full effect to subsection (1).

8. (1) The County Receiver of Revenue shall prepare an annual report on the operation and administration of all revenue laws.

(2) The County Receiver of Revenue shall give the annual report to the County Executive Member within ninety days after the end of each financial year to which the report relates.

(3) The County Executive Committee Member shall table the annual report in the County Assembly as soon as practicable.

9. Pursuant to section 159 of the Public Finance Management Act, 2012, the County Executive Committee Member may waive a county tax, fee or charge imposed by the county government and its entities in accordance with criteria prescribed in regulations provided that—

(a) the County Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 164 of the Public Finance Management Act;

(b) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and

(c) such waiver or variation has been authorized by an Act of Parliament or county legislation.
PART III—RECORDS AND INFORMATION OF REVENUE PAYERS

10. (1) A revenue payer shall make and keep such books, accounts and records as are reasonably necessary to determine the revenue payer's liability to pay rates, taxes, fees or charges under a revenue law for a period of at least ten years after the completion of the transactions to which they relate.

(2) The County Receiver of Revenue may, by notice in writing, given to a revenue payer direct the revenue payer as to the books, accounts and records the revenue payer is required to make and keep.

(3) If a revenue payer fails to comply with subsection (1) or a notice under subsection (2), the revenue payer commits an offence and shall on conviction be liable to a fine not exceeding in the case of an individual, one hundred thousand shillings or in any other cases, five hundred thousand shillings.

11. (1) For the purposes of determining the liability of a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the County Receiver of Revenue may, by notice in writing, given to a relevant person require the relevant person to—

(a) provide the County Receiver of Revenue with such information as the County Receiver of Revenue may require; or

(b) attend and give evidence before the County Receiver of Revenue.

(2) A person who fails to comply with a notice issued by the County Receiver of Revenue under subsection (1), commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months.

12. (1) For the purpose of determining the liability of a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the County Receiver of Revenue shall have access to any premises of, or in the custody or control of, a relevant person and may, at all reasonable times—

(a) enter and inspect those premises and any goods in or on those premises, including opening any packaging or containers that may contain goods;
(b) obtain, copy and print information or data from any computer system in or on those premises and retain all information and data that is obtained, copied or printed;

c) take extracts from or copies of any books, accounts, records and other documents in or on those premises and retain all extracts or copies taken.

(2) If the County Receiver of Revenue is of the view that it is impractical to exercise any of the powers under subsection (1) (a), (b) or (c), the County Receiver of Revenue may remove all or any of the things referred to in that subsection to offices of the County government for such time as is reasonably necessary to determine a revenue payer’s liability to pay.

(3) A relevant person must give all reasonable assistance to the County Receiver of Revenue so as to allow him or her to exercise all or any of his or her powers under this section.

(4) If a person—

(a) fails or refuses to provide access to premises required by the County Receiver of Revenue; or

(b) obstructs or hinders the County Receiver of Revenue in the discharge of his or her duties under paragraph (1) (a), (b) or (c);

that person commits an offence and shall be liable on conviction, to a fine not exceeding one hundred thousand shillings.

13. (1) The County Receiver of Revenue may take into his or her possession any property, other than land, that may be required as evidence in a court for proceedings to be brought under this Act or any other revenue law.

(2) When property is no longer required under subsection (1), the property must be returned as soon as practical to the person entitled to it.

PART IV—MISCELLANEOUS

14. (1) In performing any function or exercising any power under this Act, the County Receiver of Revenue must produce written identification establishing his or her position if requested by any person.
(2) In performing any function or exercising any power under this Part, a delegate of the County Receiver of Revenue must produce written identification establishing his or her position as the County Receiver of Revenue's delegate if requested by any person.

15. (1) The County Receiver of Revenue must establish a revenue register and keep it up to date.

(2) The register must contain the prescribed information and may be kept in such form as the County Receiver of Revenue decides.

16. The County Receiver of Revenue may approve forms for the purposes of a revenue law.

17. Any person who contravenes any provision of this Act, commits an offence and, unless another penalty is expressly provided by this Act, shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings.

18. (1) Any document required to be published under a revenue law may be published by advertisement in the Gazette and in one or more newspapers circulating in the county.

(2) Any document required or authorized to be sent or served under or for the purposes of a revenue law may be sent or served by—

(a) delivering it to the person to or on whom it is to be sent or served;

(b) leaving it at the usual or last known place of abode or business of that person, or, in the case of a company, at its registered office;

(c) ordinary or registered post;

(d) emailing it to the person; or

(e) any method which may be prescribed.

(3) However, if the County Receiver of Revenue having attempted to send or serve a document by one of the methods provided under subsection (2) and is satisfied that such notice has not been received by the person to whom it was addressed, the County Receiver of Revenue may advertise, in the manner provided in subsection (1), the
general purport of such documents and upon such advertising the document is be deemed to have been received by the that person.

(4) An advertisement referred to in subsection (3) may refer to one or more documents and to one or more rateable owners.

(5) Any document under a revenue law required or authorized to be served on the owner or occupier of any premises may be addressed by the description “owner” or “occupier” of the premises (naming them), without further name or description.

19. The County Receiver of Revenue may issue guidelines for the purposes of a revenue law.

20. The County executive member responsible for finance may make rules or regulations generally for the better carrying out of the provisions and purposes of this Act.
MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to establish a centralized revenue collection office for the county. The Bill establishes the office of the County Receiver of Revenue who is largely responsible for the assessment and collection of revenue of the County.

The Bill also assigns functions to the County Executive Committee Member responsible for Finance who is responsible for policy directions and oversight with regard to exercise of the functions under this Act.

The Bill recognizes that the County Receiver of Revenue may be assigned additional functions by any other Act.

The Bill provides for reporting, transparency and accountability mechanism. This is in line with the values and principles of public finance in the Constitution.

This Bill does not limit any fundamental rights and freedoms

This Bill concerns the county government.

The operationalization of certain provisions of the proposed law shall entail an additional expenditure of public funds. The funds will be provided for in the estimates.

Dated the 4th November, 2015.

MASHA BORU DELA,
Leader of Majority Party, County Assembly of Tana River.
(b) the preparation and maintenance of records for all projects funded under this Act; and

c) public surveillance of projects funded under this Act.

(2) The regulations under this Act shall be approved by the County Executive Committee and the County Assembly before they take effect.
CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. The Board shall meet not less than four times in every financial year.

2. Notwithstanding subparagraph 1, the chairperson may, and upon requisition by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

3. The quorum for the conduct of the business of the Board shall be at least half of the members including the chairperson or the person presiding.

4. The chairperson shall preside at every meeting of the Board at which the Chairperson is present, but where absent, the vice-chairperson shall preside, but in the absence of both the chairperson and the vice-chairperson the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the chairperson or the person presiding shall have a casting vote.

6. Subject to the provisions of paragraph 3, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

7. The affixing of the common seal of the Authority shall be authenticated by the signature of the chairperson and the Director, and any document not required by law to be under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Director.

8. Subject to the provisions of the Act and this Schedule, the Board may determine its own procedure.