CONTENT

Bill for Introduction into the County Assembly of Makueni—

The Makueni County Fruit Development and Marketing Authority Bill, 2017 ... 1
THE MAKUENI COUNTY FRUIT DEVELOPMENT AND MARKETING AUTHORITY BILL, 2017

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.
2—Interpretation.
3—Object and purpose of the Act.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

4—Establishment of the Authority.
5—Functions of the Authority
6—Board of the Authority.
7—Powers of the Authority.
8—Conduct of Business and Affairs of the Authority.
9—Delegation by the Authority.
10—Remuneration of Members of the Board.
11—Managing Director.
12—Staff of the Authority.
13—The common seal of the Board.
14—Protection from personal liability.
15—Liability for damages.

PART III—FINANCES

16—Funds of the Authority.
17—Financial Year.
18—Annual Estimates.
19—Accounts and Audits.
20—Investment of the Funds.
21—Guidelines on dividends.
PART IV—POLICY GUIDELINES ON DEVELOPMENT, PRESERVATION AND UTILIZATION OF FRUIT TREES

22—Development of fruit trees
23—Preservation of fruits
24—Fruit collection centers

PART V—MISCELLANEOUS

25—Regulations
THE MAKUENI COUNTY FRUIT DEVELOPMENT AND MARKETING AUTHORITY BILL, 2017

A Bill for

AN ACT of the County Assembly of Makueni to provide for the establishment of an Authority for the management of fruit production, processing and marketing, and for related purposes within the County

ENACTED by the County Assembly of Makueni as follows—

PART 1— PRELIMINARY

1. This Act may be cited as the Makueni County Fruit Development and Marketing Authority Act, 2017 and shall come into operation within 30 days upon gazettement in the Kenya Gazette.

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

“County Executive Committee member” means the County Executive Committee Member for the time being responsible for matters relating to Agriculture;

“County Government” means the Makueni County Government;

“Fruit” means the sweet and fleshy product of a tree or other plant that contains seed and can be eaten as food;

“Fruit Processing” means the preparation of fruit for human consumption;

“Juice” means the liquid obtained from fruit;

“Nectar” means the juice of a fruit when not dilute;

“Fruit Puree” means the smooth thick paste of fruit obtained from processing of the fruit;

“manufacture” means the processing of agricultural products and includes the packaging, labeling, distribution or importation of scheduled agricultural products for sale.

3. (1) The object and purpose of this Act is to—

(a) provide for the formation of the Authority

(b) Provide a framework for the administration of the fruit sub sector and value addition in Makueni County;
(c) Provide for a framework for informed, effective, efficient and sustainable engagement with stakeholders for the development of the fruit sub sector within the County;

(d) Provide for mitigation of fruit farmer losses through processing and marketing of the fruits and fruit products;

(e) Provide for the systemic engagement with fruit farmers through farmer cooperatives to improve and increase fruit productivity in the County.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

4. (1) There is established an authority to be known as the Makueni County Fruit Development and Marketing Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing money or making investments;

(d) entering into contracts; and

(e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate

5. The Authority shall, in consultation with the County Government, perform the following functions—

(a) Administer the management of fruit processing and its infrastructure in the County in accordance with the provisions of this Act;

(b) Promote best practices in, and regulate, the production, processing, marketing, grading, storage, collection, transportation and warehousing of fruit and fruit products

(c) Collect and collate data, maintain a database on
fruit products documents and monitor

(d) Be responsible for determining the research priorities in fruit and fruit products and to advise generally on research thereof;

(e) Advise the County government on fruit and fruit product dealing levies for purposes of planning, enhancing harmony and equity in the sector;

(f) Carry out such other functions as may be assigned to it by this Act;

6. (1) The Authority shall consist of a Board responsible for governance and a secretariat headed by a Managing Director responsible for the day to day execution of the affairs of the authority provided that the board shall consist of—

(a) a non - executive chairperson appointed by the Governor;

(b) three other members appointed by the County Executive Committee Member;

(c) the Chief Officer in the County Department responsible for Agriculture;

(d) the Chief Officer in the County Department responsible for finance;

(e) the Chief Officer in the County Department responsible for Trade & Co-Operatives;

(f) two persons elected by farmer co-operatives representing farmers in the major fruit subsectors in Makueni;

(g) the Managing Director who shall be the secretary to the Board and chief executive officer of the Authority.

(2) The County Executive Committee Member shall give a criteria for selection of the members of the Board under subsection (1)(b) and (f).

(3) The rules made under subsection (2) shall provide for mechanisms to ensure that not more than two thirds of the members of the Board are of the same gender.

(4) The board shall have the power to coopt not more
than three other members for purposes of proper performance of its functions

(5) The quorum at meetings of the Board shall be six members

(6) A person appointed as a member of the Board under subsection (1)(b) shall—

(a) be a holder of at least an undergraduate degree in Production Engineering, Marketing, Finance, Business, Social Sciences, physical Sciences{chemistry}, Chemical Engineering or any other related field from a recognised institution of higher learning;

(b) have relevant management experience of at least five years in public or private sector

(c) Be appointed through a competitive recruitment process;

(d) Serve for a term of five years and shall be eligible for re-appointment once for a further term of five years

(7) A member of the Board, appointed under subsection (1)(b) and (f)—

(a) May at any time resign from office by notice in writing to the Executive Committee Member;

(b) May be removed from office if the member

(i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) otherwise fails to comply with the requirements of Chapter Six of the Constitution;

(v) is convicted of a criminal offence and sentenced to imprisonment for a term
7. The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to——

(a) enter into contracts;

(b) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which the authority is established

(c) determine the provisions to be made for its capital and recurrent expenditure and for the reserves of the authority;

(d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the authority is established;

(f) open such bank accounts for its funds as may be necessary;

(g) invest any funds of the authority not immediately required for its purposes;

(h) undertake any activity necessary for the fulfilment of any of its functions

8. (1) The conduct and regulation of the business and affairs of the Authority shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Authority may regulate its own procedure.

9. The Authority may, either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Authority, the
exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law

10. The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission

11. (1) There shall be a Managing Director who shall be the chief executive officer of the Authority and shall be appointed by the Board of the Authority through a competitive recruitment process.

(2) The appointment of the Managing Director of the Authority under subsection (1) shall be done in consultation with the Executive Committee Member for Agriculture.

(3) The Managing Director shall hold office for a period of not more than five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for one further term.

(4) The Managing Director shall be an ex officio member of the Board but shall have no right to vote at any meeting of the Board.

(5) The Managing Director shall—

(a) subject to the direction of the Board, be responsible for the day to day management of the Fruit Processing Plant;

(b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Authority;

(c) be the secretary of the Board.

12. The Board may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine

13. (1) The common seal of the Authority shall be kept in the custody of the Managing Director or of such other person as the Board may direct, and shall not be used except upon the order of the Board.
(2) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Authority shall be authenticated by the signature of the chairperson of the Board and the Managing Director.

(4) The Board shall, in the absence of either the chairperson or the Managing Director, in any particular matter, nominate one member of the Board to authenticate the seal of the Authority on behalf of either the chairperson or the Managing Director.

14. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any, act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done bona fide be paid out of the funds of the Authority, unless such expenses are recovered by him or her in such suit or prosecution.

15. The provisions of section 13 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any

PART III—FINANCES

16. (1) the funds and assets of the Authority shall consist of—

(a) such moneys as may be appropriated by the Assembly for the purposes of the Authority;
(b) such gifts as may be given to the Authority;
(c) such profits as may be obtained from the sale of fruit and fruit products;
(d) all moneys from any other lawful source provided, donated or lent to the Authority.

(2) The Authority shall apply the money received under this section for the furtherance of the objects and performance of its functions.

17. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June each year.

18. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for the—

(a) Buying of raw materials for fruit processing;

(b) payment of the salaries, allowances and other charges in respect of the staff of the Authority;

(c) payment of allowances and other charges in respect of members of the Board;

(d) payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Authority;

(e) proper maintenance of fruit development infrastructure and offices of the Authority;

(f) maintenance, repair and replacement of the processing equipment and other property of the Authority; and

(g) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Executive Committee Member for Finance for approval.
(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Executive Committee Member for Finance and Social economic planning

19. (1) The Board shall cause to be kept proper books and records of accounts of the income expenditure and assets of the Authority.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the County Auditor the accounts of the Authority together with—

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a balance sheet of the Authority on the last day of that year

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act (Cap. 412B

20. (1) The Board may invest any of the funds of the Authority in securities in which, for the time being, trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Authority

21. (1) The Authority shall, in consultation with the County executive committee establish a shareholding and dividend policy guideline, which shall be reviewed annually.

(2) The dividend policy shall stipulate among others for—

(a) the prevailing business conditions under which dividend may be paid out;

(b) minimum percentage of annual dividend payout to the county government;

(c) the maximum percentages of annual dividend
payout to the fruit farmer cooperatives; and

(d) any other matter as the executive committee member may prescribe.

PART IV – POLICY GUIDELINES ON DEVELOPMENT, PRESERVATION AND UTILIZATION OF FRUIT TREES

22. (1) The County Executive Committee Member shall, on the advice of the Authority, provide general guidelines, in this Act referred to as “Fruit and fruit tree development guidelines”, applicable in respect of any category of fruit and fruit tree.

(2) The fruit and fruit tree guidelines contemplated under subsection (1) shall be implemented by the Authority on behalf of the county governments taking into account the circumstances of the respective areas under their jurisdiction.

(3) The guidelines referred to in this section may require the adoption of such system of management or farming practice or other system in relation to the fruit in question (including the execution of such work and the placing of such things in, on or over the land, from time to time) as may be necessary for the proper development of land for fruit farming purposes

23. (1) The Executive Committee Member shall, on the advice of the Authority, make general rules for the preservation, utilization and development of agricultural land for fruit farming, either in Makueni generally or in any particular part thereof.

(2) Without prejudice to the generality of subsection (1), rules made thereunder may—

(a) prescribe the manner in which owners (whether or not also occupiers) shall manage their land in accordance with rules of good estate management;

(b) prescribe the manner in which occupiers shall farm their land in accordance with the rules of good husbandry, advise on the kinds of fruits which may be grown on the land;

(c) provide for such exemptions or conditional exemptions from the provisions thereof as may be desirable or necessary;
(d) provide for efficient and effective fruit farming methods that are sensitive to the social-economic status of local communities; and

(e) provide for technical and other assistance to fruit farmers to enhance their socio-economic development, especially that of vulnerable groups, including women

24. (1) There shall be fruit collection centers in every ward which shall be managed by agents appointed by the department of Agriculture in consultation with the Authority

(2) Farmers may be allowed to deliver their fruit to the factory directly.

PART VI – MISCELLANEOUS

25. The County Executive Committee Member may, on the advice of the Authority, make regulations generally for the better carrying out of the purposes and provisions of this Act,
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the administration of the fruit sub sector and the establishment of an Authority so as to streamline the management of fruit development including production, processing and marketing.

Part I (clauses 1-3) provides for preliminary matters and includes the short title, commencement, interpretation and objectives.

Part II (clauses 4-15) provides for the establishment, functions, powers of the authority Conduct of Business and Affairs of the Authority. The Part also provides for Delegation of power by the Authority, Remuneration of Members of the Board, The Common Seal of the Authority, Protection from personal liability and Liability for damages for the Authority and its staff.

PART III (clauses 16-21) is on Finances and provides for funds of the Authority, Financial Year, Annual Estimates, Accounts and Audits, Investments of Funds by the Authority and Guidelines on shareholding and Dividends.

PART IV (clauses 22-24) is on Policy Guidelines on Development, Preservation and Utilization of fruit Trees. The part provides for Fruit tree development, Preservation and optimum utilization of land for fruit farming and Fruit collection Centers.

PART V (clause 25) is on Miscellaneous and provides for Regulations that may be made for better carrying out of the purpose and provisions of the Act.

Statement on whether the Bill is a money Bill, within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of the public funds, which shall be provided for in the estimates.

Dated the 21st February, 2017

MARTIN MULI MUTUKU,
Member of the County Assembly.