

SPECIAL ISSUE

Machakos County Gazette Supplement No.19 (Acts No. 3)



REPUBLIC OF KENYA

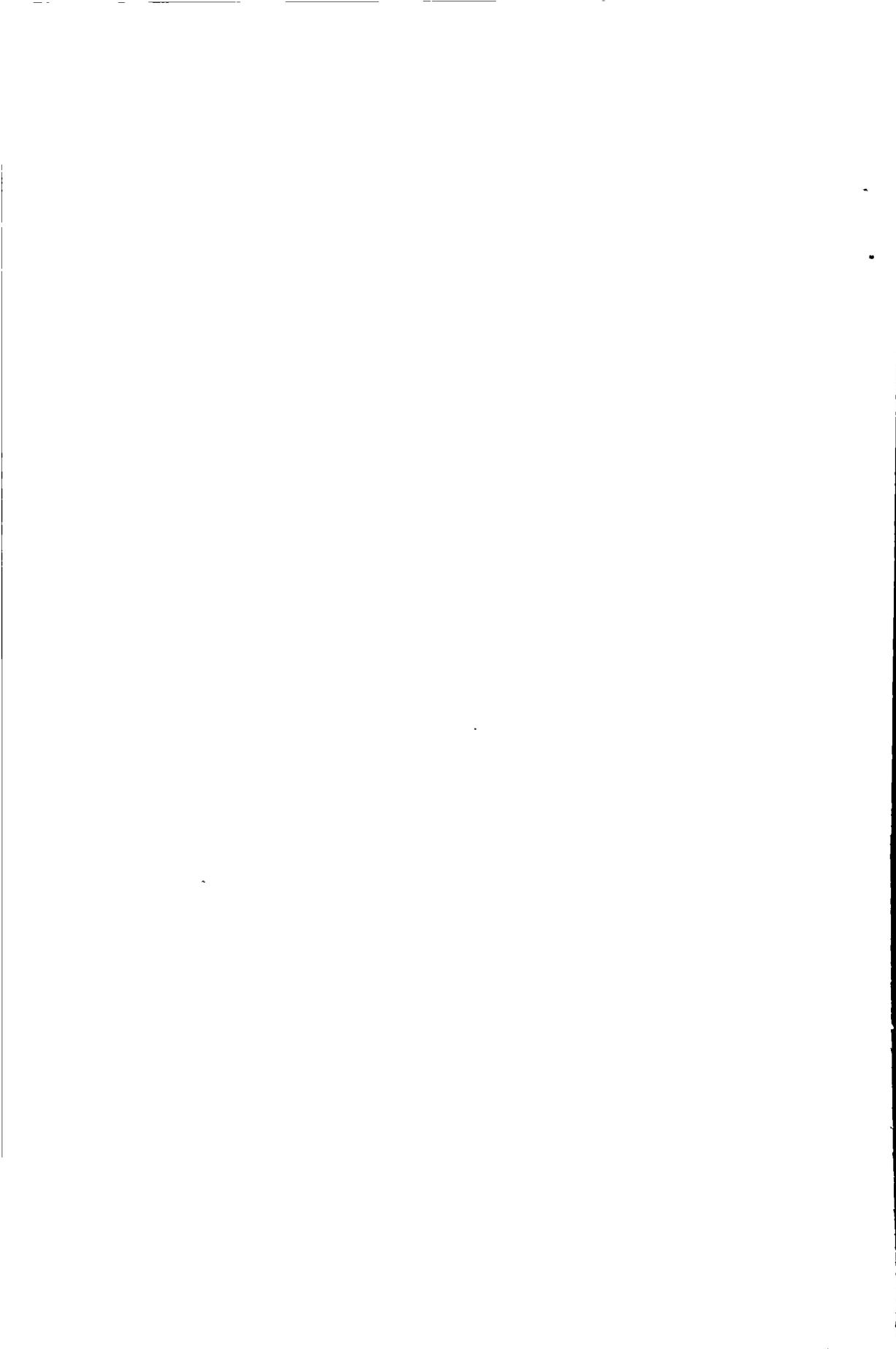
**MACHAKOS COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2014

NAIROBI, 8th December, 2014

CONTENT

Act—	PAGE
The Machakos County Sand Harvesting Act, 2014.....	33



**THE MACHAKOS COUNTY SAND HARVESTING
ACT, 2014**

No. 3 of 2014

Date of Assent: 18th November, 2014

Date of Commencement: 18th November, 2014

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

- 1—Short title and commencement.
- 2—Interpretation.
- 3— Objects and purpose of the Act.

PART II—ADMINISTRATION

- 4—County Sand Harvesting and Management Committee.
- 5—Functions of the Committee.
- 6— Sand Harvesting Associations.
- 7— Considerations by the Committee and Associations.

PART III—SAND HARVESTING REQUIREMENTS

- 8—Sand harvesting sites.
- 9— On-farm and lakeshore sand harvesting.
- 10—Riverbed harvesting.
- 11—Hours of harvesting and transportation.
- 12—Sale of sand.

PART IV—LICENSING PROVISIONS

- 13—Licensing of sand harvesters.
- 14— Licensing of sand dealers.
- 15—Licensing officer.
- 16—Application for licence.

- 17— Discretion of a licensing officer.
- 18—License conditions.
- 19—License fees.
- 20—Form of licence.
- 21—Transfer of licence.
- 22— Alteration of a licence.
- 23— Cancellation of licence.
- 24—Reviews.
- 25—Production of licence.

PART V—GENERAL PROVISIONS

- 26— Collection of revenue by the government.
- 27—Road barriers.
- 28—Power to order closure of site.
- 29—Powers of entry.
- 30—Protection from personal liability.
- 31—Dispute resolution.
- 32—Offences.
- 33—General penalty.
- 34—Regulations.

**THE MACHAKOS COUNTY SAND HARVESTING
ACT, 2014**

AN ACT of Machakos County Assembly to regulate and Harvesting and related activities and to ensure sustainable exploitation and utilization of sand, to provide for equitable sharing of the accruing benefits and for connected purposes.

ENACTED by the Machakos County Assembly as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Machakos County Sand Harvesting Act, 2014. Short title and commencement.

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

“authorized officer” includes any person acting under the authority of the licensing officer;

“Committee” means the Sand Harvesting Management Committee established under section 3 of this Act;

“County” means Machakos County;

“County Assembly” means the County Assembly of Machakos;

“dealer” means the person who buys and sells sand;

“designated area” means any area designated as a sand harvesting area pursuant to section 8;

“Executive Committee Member” means the County Executive Committee Member in charge of natural resources;

“government” means the government of Machakos County;

“harvester” means a person or the person’s agent who gathers or collects sand from any of designated area of for the purpose of sale or own use;

“license” means a permit issued by the county government for a person to engage in sand dealing;

“license holder” means a person to whom a permit is granted under this Act;

“Licensing Officer” means the executive committee member responsible for matters relating to natural resources;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“sand” means sedimentary material finer than gravel and coarser than silt with grains between 0.06mm and 2 mm in diameter and includes stones, coral, earth and turf but does not include silica sand;

“sand harvesting” means the removal, extraction, harvesting or scooping of sand from a designated areas;

“Riparian land owner” means a person who owns or occupies land which is adjacent to a river.

3. The object and purpose of this Act is to provide for a legislative framework for regulating sand harvesting and in particular to—

- (a) require the registration of sand dealers and sand harvesting Associations;

Objects and
purpose of the
Act.

- (b) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (e) provide for benefit-sharing and investing back to the community part of the revenue collected from sand harvesting; and
- (f) enable communities to participate in the management of sand harvesting.

PART II—ADMINISTRATION

4. (1) There is established a County Sand Harvesting and Management Committee consisting of—

County Sand Harvesting and Management Committee.

- (a) the Executive Committee member responsible for matters relating to natural resources who shall be the chairperson;
- (b) the chief officer responsible for matters relating to finance;
- (c) the chief officer responsible for matters relating to natural resources;
- (d) a representative of sand dealers appointed by the executive committee member;
- (e) a representative of special interest groups appointed by the Executive committee member;
- (f) two representatives of the Sand Harvesting Associations being one man and one woman,

appointed by the Executive Committee Member;

(2) The quorum of the Committee for purposes of the meeting shall be four members.

(3) The Secretary of the Committee shall be the Chief Officer responsible for matters relating to natural resources.

(4) The members under subsections 1 (a) and (b) may designate alternate members in writing and who shall be senior public officers.

5. (1) The Committee shall—

Functions of the
Committee.

- (a) maintain a register of all sand dealers;
- (b) advise executive committee member on the structure and operations of sand harvesting and related activities;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;
- (d) ensure sustainable exploitation and utilization of sand resource;
- (e) collaborate with other environmental agencies in management of environment as relates to matters of sand harvesting;
- (f) formulate environmental conservancy programmes in relation to sand harvesting;
- (g) recommend to the executive committee member designated sand harvesting areas for gazettelement;
- (h) recommend designated roads for transportation

of sand and other excavated material in accordance with this Act; and

- (i) perform any other functions assigned by the Executive Committee Member. (2) In the performance of its functions under this Act, the Committee shall, subject to any other law allow the participation of the people who affected by its decisions in making decisions of those decisions.

6. (1) The Committee shall approve the establishment of such number of Sand Harvesting Associations as it may deem fit and in accordance with the law relating to the registration of associations, self-help groups and community based organizations.

Sand harvesting associations.

(2) Upon approval of Sand Harvesting Associations by the Committee under Subsection (1) the County Executive Committee member shall, within seven days of such approval, submit the list of approved Sand Harvesting Associations to the County Assembly for vetting.

(3) The Assembly shall vet and approve the list of Sand Harvesting Associations forwarded under Subsection (2), within fourteen days of receipt of the list and forward it to the Executive Committee Member for gazetement.

(4) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors—

- (a) drainage network of the river and the designated sand harvesting sites;
- (b) the need to ensure full participation of the community including all interest groups; and

(c) viability and sustainability of the association.

(5) An association shall be composed of the following members elected by an interested community—
four representatives of the riparian landowners;

- (a) two women representatives who are not riparian land owners;
- (b) two youth representatives who are not riparian land owners;
- (c) two elders who are not riparian land owners; and
- (d) two persons representing special interest groups.

(6) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—

- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act;
- (b) ensure that annual Environmental Audits are conducted for all sand harvesting sites including closed sites; and
- (c) ensure sustainable management of sand harvesting along riverbeds;
- (d) undertake the rehabilitation of the closed sites; and
- (e) perform any other function assigned to it under this Act.

7. The Committee and the associations shall be guided by the following considerations in discharging their mandate—

Considerations by the committee and associations.

- (a) sand dams and gabions shall be constructed in designated sand harvesting sites and that there shall be at least two hundred metres between one gabion and another;
- (b) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
- (c) upon closure of a designated sand harvesting site, the site shall be rehabilitated appropriately by the Association, county government and approved dealer under the supervision of the Committee;
- (d) sand shall be restricted to the riverbeds and no such harvesting shall be allowed on riverbanks;
- (e) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
- (f) licensed sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage fixed by the executive committee member; and
- (g) sand loaders may organize themselves into organized groups with a chairperson and shall be under the direction and control of the Association.

PART III—SAND HARVESTING REQUIREMENTS

8. (1) The Committee shall from time to time and on the advice of the Associations designate and document sand harvesting sites.

Sand harvesting sites.

(2) In considering an application for the designation of a sand harvesting site under paragraph (1) the Committee shall give notice of that application to the community around the proposed sand harvesting site.

(3) Where there is an objection to the designation of a site as a sand harvesting site the committee shall consider and make a decision on such objection.

(4) In considering and deciding on an objection under paragraph 3 the Committee may convene a meeting of the community around the proposed sand harvesting site to seek their concurrence.

(5) Every sand harvesting area shall be clearly demarcated and documented by the Committee in consultation with Association.

(6) A person shall not harvest sand from any area not designated as a sand harvesting site by Committee.

(7) Each designated sand harvesting site shall have an environmental management plan to guide in the rehabilitation of the sites.

9. On-farm and lakeshore sand harvesting shall be carried out subject to fulfilling the following conditions—

On-farm and
lakeshore sand
harvesting.

- (a) sand harvesting shall not exceed six feet in depth;
- (b) a sand harvesting sites shall be at least fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;
- (c) sand harvesting shall not be undertaken concurrently with rehabilitation of the sites;
- (d) on-farm sand harvesting shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken.

10. (1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention.

Riverbed
harvesting.

- (2) Sand harvesting shall not be undertaken on any

riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one-hundred metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

11. (1) A person shall not—

Hours of sand harvesting and transportation.

(a) Harvest sand between the hours 6 pm and 6 am; or

(b) transport sand between the hours 6 pm and 6 am.

(2) The transport of sand within the county shall only be done through designated roads for such transportation.

(3) A person who contravenes this section commits an offence is liable upon conviction to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

12. (1) The Committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces of the day.

Sale of sand.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

PART IV—LICENSING PROVISIONS

13. (1) No person shall use, cause or permit to remove sand from any river, farm, ranch or other land for the purposes of sale unless valid license issued under this Act for such trade or business.

Licensing of sand harvesters.

(2) The license in Subsection (1) shall be deemed to be 'monthly' unless otherwise authorized by the executive committee member.

(3) A person who contravenes this section commits an offence.

14. (1) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued by the government.

Licensing of
sand dealers.

(2) No person shall carry on or engage in any trade occupation or business of sand harvesting unless the person is licensed to carry on such trade, occupation or business by the government.

(3) A person who contravenes this section commits an offence.

15. (1) The Executive Committee Member shall be the licensing officer responsible for the issuing of licenses under this Act.

Licensing
officer.

(2) The Executive Committee Member may, in writing, delegates any one or all the powers under this Act to any one or more authorized officers.

(3) Every licence shall contain conditions for ensuring sustainable sand harvesting including —

(a) the requirement for sand harvesters to furnish the licensing officer with an environmental impact assessment relating to the site for which a license is sought;

(b) the requirement for rehabilitation of sites upon closure;

(c) any other condition as may be prescribed by the

executive committee member under this Act.

16. An application for licence under this Act shall be in the prescribed form provided that the Executive Committee Member may, in any particular case require an applicant to submit or supply such further information as the Executive Committee Member may deem fit.

Application for licence.

17. (1) The licensing officer shall consider each application made under section 16 and determine whether to issue a licence to the applicant or not within thirty days.

Discretion of a licensing officer.

(2) If a licensing officer refuses to issue a license, they shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the refusal and refer to the relevant provision in this Act on which the refusal is based.

18. A licence shall be issued —

Licence conditions.

- (a) subject to an obligation to rehabilitate the site and surrounding areas upon closure;
- (b) for the category or categories of business activity specified in the licence; and
- (c) subject to the regulations and any other conditions provided in the licence.

19. (1) An applicant for a licence shall pay such application fee as may be prescribed by the Executive committee member under this Act.

Licence fees

20. A licence shall be in such form as the Executive Committee Member may from time to time determine and shall be signed by the Executive Committee Member or a person authorized in that behalf.

Form of licence.

(2) The Executive Committee Member may issue different classes of licences for different purposes.

21. (1) A license issued under this Act shall not be transferred from the holder thereof to another person without the consent of the Executive Committee Member or a person authorized in that behalf.

Transfer of
licence.

(2) An application for the transfer of any licence shall be in such form as may be prescribed by the Executive Committee Member and shall be accompanied by the licence to which it relates:

Provided that the Executive Committee Member may in any case require an applicant for the transfer of a licence to submit or supply such further information as the Executive Committee Member shall deem necessary.

(3) For every transfer there shall be payable to the government such fee as may be prescribed by the Executive Committee Member.

(4) A memorandum of the transfer of any licence shall be endorsed on the license by the Executive Committee Member.

(5) A person who contravenes this section commits an offence.

22. (1) Subject to this Act, a licensing officer may alter a license from one form of dealership to another on written application by the licensee.

Alteration of a
licence.

(2) A licensee shall only engage in the type of sand dealing as authorised under the licence.

(3) A person who contravenes this section commits an offence.

23. A licensing officer may cancel a licence if —

Cancellation of
licence.

(a) the application form contains any material

misrepresentation or false statement;

- (b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;
- (c) the licensee carries on a prohibited activity;
- (d) a condition imposed is breached; or
- (e) the licensee is convicted of an offence under this Act.

24. (1) Any person aggrieved by the decision of a licensing officer may apply for review of the decision before a court.

Reviews.

(2) All applications for review shall be filed within fourteen days of the decision.

(3) Before applying for a review under this section, an aggrieved person has the right to petition the County Executive Committee Member.

25. (1) The licensing officer, any police officer or an authorized officer who has reason to believe that a person is required to hold a business licence may demand the person to produce a licence.

Production of licence.

(2) A person who contravenes subsection (1) commits an offence.

PART V—GENERAL PROVISIONS

26. The Committee shall—

Collection of revenue by the government.

- (a) facilitate the collection of revenue from sand dealers in designated sand harvesting sites or along

access roads;

- (b) ensure that at least ten per cent of the revenue collected is allocated to the Committee and the Associations to facilitate their operations;
- (c) ensure that part of the revenue collected is allocated for community projects; and
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within sand harvesting area.

27. (1) For purposes of section 27, the government may mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap 403 Laws of Kenya.

Road barriers.

(2) The barriers shall be supervised by authorized officers and revenue collectors.

(3) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

(4) A person who contravenes this section commits an offence and the vehicle used to commit the offence may be impounded at a police station.

28. (1) The licensing officer, authorised officer or police officer may order a license holder to stop any sand harvesting activities and close the site if it appears that the site is in a condition dangerous to human life or detrimental to public health or safety.

Power to order closure of site.

(2) The order provided in subsection (1) shall remain in force until the licensing officer is satisfied that the conditions have been satisfactorily improved.

(3) Any person who contravenes an order issued under this section commits an offence.

29. (1) The licensing officer, authorized officer or a police officer may at any reasonable time—

Powers of entry.

- (a) enter upon premise, farm, ranch or vehicle and carry out any inspection for the purpose of enforcement of this Act; or
- (b) undertake any work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a license is issued; and
- (c) recover the expenses incurred in carrying out the work referred to in paragraph (b).

(3) A person obstructing an officer referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

(4) A police officer or authorized officer may detain any vehicle and confiscate any goods where it shown those goods have been obtained in contravention of this Act.

(5) The detained or impounded vehicles referred to in subsections (4) shall not be released to the owner until authorised by a court or until the owner has paid prescribed penalty charges.

(6) Any authorized officer or a police officer shall, before undertaking any inspection activities in this Act, produce to the relevant person proper identification documents.

30. No matter or thing done by a licensing officer or

Protection from personal

officer, employee or agent shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render the officer, employee or agent personally liable for any action, claim or demand whatsoever.

liability.

31. (1) If any dispute is referred to the Committee, the Chairperson of the Committee shall convene a meeting between the complainant and the person complained against to deliberate on the grievances and make appropriate resolution.

Dispute resolution.

(2) Any person, who is aggrieved by the resolution of Committee under subsection (1), may within fourteen days from the date of the resolution apply for judicial review in the High Court.

32. (1) The Committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including access roads, riverbanks, catchment areas among others to ensure environmental sustainability.

Rehabilitation of closed sites.

(2) The Committee shall require every licensee to prepare and submit to it a rehabilitation plan for every designated sand harvesting area.

33. A person who—

Offences.

- (a) carries out sand harvesting or otherwise deals with sand without a valid license;
- (b) carries out sand harvesting outside designated sites;
- (c) overloads sand to a vehicle for transportation contrary

to prescribed requirements;

- (d) collects fees or charges and is not authorized to do so under any law;
- (e) transports sand outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the county government, authorized officer or police officer;
- (g) obstructs any authorized person from conducting their functions under this Act; or
- (h) establishes a separate entity in a designated site without lawful authority under this Act;

commits an offence and shall, on conviction is liable to a fine not exceeding one million shillings or to an imprisonment term not exceeding five or to both.

34. A person who contravenes any provisions of this Act, for which no penalty is provided shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

General penalty.

35. (1) The Executive Committee Member shall make regulations generally for the better carrying out the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) guidelines for sand harvesting and related activities;
- (b) criteria for determining the number of

- Associations approve under this Act;
- (c) the terms and conditions of all classes of licenses issued under this Act;
 - (d) conditions applicable to different types of sand harvesting;
 - (e) loading requirements depending on tonnage;
 - (f) forms required under this Act;
 - (g) rehabilitation of closed sites;
 - (h) designation of sand sale yards;
 - (i) pricing per lorry load based on tonnage;
 - (j) grading, packaging and value addition of sand;
 - (k) disputes resolution mechanisms; and
 - (l) such other matters as the as may be necessary for full implementation of this Act.