

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**MIGORI COUNTY GAZETTE  
SUPPLEMENT**

**ACTS, 2016**

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**NAIROBI, 21st April, 2016**

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**THE MIGORI TRADE AND MARKETS ACT, 2016**  
**No. 3 of 2016**

*Date of Assent: 14th April, 2016*

*Date of Commencement: 5th May, 2016*

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**THE MIGORI COUNTY TRADE AND MARKETS  
ACT, 2016**

**AN ACT of the Migori County Assembly to provide for the regulation of trade, markets and other business activities in Migori County; the establishment of the Directorate of Trade; the establishment and management of markets; and for related purposes.**

**ENACTED** by the County Assembly of Migori as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Migori County Trade and Markets Act, 2016. Short Title

2. In this Act— Interpretation

“butcher’s meat” include beef, mutton, veal, lamb, pork, kid or the meat of any other animal slaughtered for commercial purposes;

“casual trader” means a person who attends a market with their goods, to be allocated a trading position for the day only, from vacant positions in the market;

“defective goods” include goods that—

- (a) are in the particular circumstances, unfit for use or are dangerous; or
- (b) do not comply with a product safety or quality standard.

“directorate” means the directorate of Trade established in section 3;

“market administrator” The officer in charge of the market.

“ marketable commodities ” includes poultry, eggs, fresh meat, fish, ground provisions, consumables, vegetables and fruit;

“ county executive committee member” means the County Executive Committee Member responsible for matters relating to trade and commerce;

“public market” means a Public Market established under this Act;

“regular trader” means a trader who has been permitted to use a particular trading position on a particular day at a particular market site;

“slaughter-house ” means any premises used in connection with the slaughtering of animals whose meat is intended for human consumption;

“Stall” means any moveable or mobile structure or apparatus used for the purpose of trading; and

“trade” means carrying on the business of selling goods or services.

“Revenue officer” an officer in charge of a ward.

“Ward administrator” The officer in charge of a ward.

## **PART II—DIRECTORATE OF TRADE**

3. There is established a Migori County Directorate of trade and markets. Directorate of Trade.

4. (1) The Directorate shall be headed by a Director of trade and markets. Director of Trade

(2) The Director shall be appointed by the county public service board on such terms and conditions of service as the County Service Board may determine.

(3) The directorate shall establish a market committee for each public market consisting of—

- (a) the Market Administrator, who shall be the Chairperson of the Market Committee; and
- (b) two persons to be elected by the market traders;

(4) The Market Committee shall—

- (a) provide assistance in market management;
- (b) supervise sanitation work in the market;
- (c) ensure maintenance of markets;
- (d) provide for strategic approach to develop trade in the County;
- (e) advice the Directorate on all matters pertaining to trade in the market; and
- (f) perform such other functions as may be assigned to it in writing by the Director

5. There shall be established a directorate of trade by the county public service board and appointment of members to such directorate conducted under provision of section 62 and 63 of County Government Act

Establishment of  
directorate

6. The functions of the directorate are to—

Functions and  
powers of the  
Directorate

- (a) advise the County Executive Committee Member on all matters affecting the development of county trading relationships with other counties;
- (b) represent, where appropriate and necessary as approved by the county executive committee member, the county at meetings, conferences or gatherings where matters of trade affecting the county are discussed or considered;
- (c) negotiate trade agreements on behalf of the County Executive Committee Member;
- (d) encourage and assist in the promotion of the county's produce and products, either on its own or in cooperation with any organisation involved in exporting, including exhibiting at trade fairs;
- (e) advice on Commodities Pricing and Marketing Information within the County;
- (f) facilitate the obtaining of funds for the purpose of trade development and promotion, including discussion and negotiation with donors;
- (g) advise the County executive committee member on all matters affecting the growth and development of industry, commerce and trade in the county;
- (h) advise the County Executive Committee, through the County Executive Committee Member, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any legislation which promotes trade, for the time being in force in the county;
- (i) administer laws relating to fair trading and consumer protection;
- (j) promote the development of small businesses, to disseminate knowledge of sound business and commercial practice to the county;

- (k) undertake research into any aspect of county trade, commerce and industry, including the conducting of surveys, gathering statistics and publishing reports from time to time;
- (l) evaluate investment proposals suitable for funding by the Government or donors; and
- (m) to otherwise act in the promotion of investment in the county;
- (n) perform any other function as may be assigned by the County Executive Committee Member;
- (o) to control hoarding and standard packaging of commodities while protecting consumers against any form of trade exploitation.

7. (1) An officer appointed and authorised under this Act shall have the power to inspect any premises or place in which that officer reasonably believes to be maintained in contravention of the provisions of this Act.

Inspection Powers  
of Officer.

(2) Before starting to inspect or search the premises an inspector shall identify himself or herself to the occupier of the premises by producing their identity card for inspection by the occupier.

(3) An officer may, at any reasonable time, enter any place that he or she believe on reasonable grounds to be a place where goods are being, or have been manufactured, prepared or supplied or that is a place where services are supplied or arranged, and may—

- (a) inspect any goods or partly manufactured goods and make such other inspections as he considers to be necessary;
- (b) take a sample of anything from which goods are manufactured or produced at that place;
- (c) make inquiries of any person employed at that place or who has responsibility over that place; or
- (d) inspect and take copies of records required to be kept under this Act or any other law regulating or applying to the business being conducted at that place.

(4) without derogating from any power conferred by sub-section (3), the directorate may require the production

of any accounting documents, returns, inventories or other information whether or not relating to the business of any manufacturer or trader if such information is considered necessary for the discharge of any power or function vested in the directorate.

8. (1) An Officer shall not divulge to any third party confidential information obtained in the course of investigations under this Act.

Confidential Information

(2) An officer who divulges confidential information obtained during the course of an investigation conducted under this Act or any other law commits an offence.

This section does not apply to information that is –

- (a) given as evidence in proceedings taken under this Act or any law relating to consumer protection;
- (b) given by the officer as part of a report prepared for the purpose of an investigation; or
- (c) a matter of public record or is otherwise in the public domain.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or to both.

9. The Directorate shall be divided in such divisions as may be appropriate for the effective performance of its functions under the Act

Divisions of the Directorate

10. (1) The directorate shall, within three months after the end of each financial year, cause to be made and transmitted to the County Executive Committee Member a report dealing generally with the activities of the Directorate during the preceding financial year.

Reports.

(2) The Director may from time to time furnish to the County Executive Committee Member a report relating to any particular matter or matters investigated, or being investigated which, in the opinion of the Director, require the special attention of the Governor.

(3) The County Executive Committee Member shall cause a copy of a report submitted under this section to be laid before the Committee of Executives.

(4) The County Executive Committee Member shall

cause to be tabled before the County Assembly the Directorate's report within fourteen days from the date of receipt from the Directorate.

### **PART III—PUBLIC MARKETS**

**11.** There shall be within the Directorate a division to be known as the Market Division. Establishment of  
Market Division

**12.** The Division may do all or any of the following matters or things — Functions of  
Division.

- (a) to purchase and maintain out of public funds, all such measures, scales and weights, furnishings and appliances as shall be necessary for the public market or slaughterhouse;
- (b) to make or cause to be made and paid for out of public funds all such repairs, alterations, improvements and additions to the public market as the director considers necessary;
- (c) to grant permits for the sale of fish, poultry, wild fowl, eggs, grain, vegetables, fruit and other products, whether natural or manufactured, in the public market; and
- (d) to recommend revocation any licence or permit for improper conduct, or for infringement of this Act.
- (e) to provide and maintain sanitary facilities at county markets;
- (f) to provide periodic routine maintenance and cleaning of all public markets in the County.

**13.** The directorate shall establish, maintain, manage and regulate public markets for the sale of marketable commodities therein and provide all such things as may be necessary for the convenient and safe use of such markets. Establishment and  
control of markets.

**14. (1)** A person shall not hold any public market for the sale of marketable commodities in any place not being a public market established under this Act, unless licensed by the directorate. Public markets and  
private markets to  
be held only in  
appointed places.

**(2)** The directorate may grant to any person a licence to establish and use at any place a market for the sale of marketable commodities and such licence may be granted upon such terms and conditions as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment for not more than six months, or to both.

15. (1) The directorate may demand and take from every person—

Power to demand charges for use of stalls, etc.

- (a) occupying or using any stall or place in any public market;
- (b) bringing into any such market any marketable commodities or anything which the County executive committee member may permit to be sold therein; or
- (c) using any weighing or measuring instrument provided and kept in any such market;
- (d) such stallages and charges as may be prescribed.

(2) Stallages and charges payable in respect of any public market or weighing or measuring instruments shall be paid at such times and in such manner as may be prescribed to the person authorized to receive the payment.

(3) Where any person liable for the payment of any stallage or charge does not pay on demand to a person authorised to receive the payment, the amount due may be—

- (a) recovered by distress and sale of a sufficient part of any marketable commodities in the market which belong to the person liable to pay stallage or charge; or
- (b) recovered as a debt.

(4) For the purpose of recovering any sum due under this section, any action or other proceeding may be brought in the name of the Supervisor or their agent.

16. (1) A regular trader, who desires to carry out any commercial activity from an open-air market shall obtain a licence or, in the case of a casual trader, pay such fee as may be prescribed.

Regular Trader.

(2) A licence issued under subsection (1) shall not entitle the regular trader to carry out such activity unless, in relation to a specific open-air market, the regular trader has been given the authorization by the Directorate:

(3) A regular trader shall not possess more than one authorization for a post in a market that operates in the same day and time.

(4) (1) A regular trader using a motor vehicle, to carry out his or her commercial activity shall have premises available where to garage the motor vehicle and store his or her goods.

(2) The address of the premises used for this purpose must be clearly indicated on the application for the issuing of a licence.

(3) Any change in the vehicle or garage must be notified to the Directorate within ten working days after the change occurs.

(4) No application shall be accepted and processed by the Directorate if the address of the garage or any other address for the store where goods are to be stored are not given.

(5) The Directorate shall have the right to inspect such premises and to demand any documentation that proves the ownership of the premises when the application indicates the use of such premises by more than one licensee.

(6) The Directorate may refuse to recommend issuance of a licence if it considers that such premises are not used as a store or garage by the applicant.

(7) The licence recommended by the Directorate must indicate the regular trader as a non-food licence trader or as a food related items licence trader.

(8) In the case that the activity concerns the selling of food items prior approval by the county public health authorities shall be obtained in consultation with the directorate.

Provided that with reference to food related items the Directorate, following a recommendation by the Health Authorities, may order the licensee to sell or not to sell specific items as ordered by the county public health authorities.

Likewise with reference to non-food related items the Directorate may issue an order to the licensee to restrict the selling of any item that may be causing an infringement of public order.

**17. (1)** A street hawker may carry out his or her commercial activity from a designated street or space, by moving from one place to another.

Definition of street hawker.

(2) A street hawker may hawk from a vehicle; may carry out his or her commercial activity by parking his or her vehicle according to traffic regulations in any street where they stop to hawk their goods or services.

**18.** Any person who desires to organize a car boot sale, selling items, in any public or private place from a car boot shall obtain a licence from the Directorate.

Car boot sales.

(2) An application for a licence under this section shall contain the following information—

- (a) the name of the applicant;
- (b) the place where the car boot sale will be held;
- (c) the date or dates when the car boot sale will be held.

**19.** Any person who wishes to sell by busking shall comply with the following conditions—

Buskers.

- (a) Make an application in the prescribed Form to the Directorate;
- (b) Ensure that the place where the busker stops to sell their goods or services is at least six metres of walking distance away from the entrance of any commercial premises:
- (c) no selling by busking can be performed in the precincts of any hotel or any shopping complex unless by written permission from the management;
- (d) no objects used for the activity shall be placed on a street pavement in a manner that obstructs free and easy movement of pedestrians; and
- (e) no nuisance or inconvenience shall be caused to the neighbours or passers by in the street. Any person found to be in contravention of this clause shall be liable for a fine not exceeding Kenya Shillings fifty thousand or three months imprisonment or both.

A fixed kiosk shall be considered as a commercial premise for the purposes of this Section.

**20.** A person who assaults or obstructs an officer, duly authorised to receive any stallage or charge payable in respect of a public market or any person employed to superintend a market or to keep order therein, whilst in the execution of their duty, is liable on conviction to a fine of fifty thousand Kenya Shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Assaulting or obstructing an officer collecting dues

The directorate or other person in charge of any public market or other person authorised may remove from any market any person who behaves in the market in a disorderly or offensive manner or who misconducts himself or herself or may arrest such person without a warrant and take him or her to the nearest police station.

Power of removal or arrest.

**21.** (1) A market operator shall not operate a public market to sell or offer for sale prohibited goods.

Prohibited goods.

(2) No trader shall sell or offer for sale prohibited goods at a public market.

(3) This Section does not apply where the goods have been acquired directly from the producer, manufacturer, wholesaler, distributor or retailer of the goods and where the vendor provides to the operator, prior to the sale or offering for sale at a commercial market, proof that the vendor is an authorized sales representative of the producer, manufacturer, wholesaler, distributor or retailer of the goods.

**22.** (1) No trader shall sell or offer for sale at a public market prescribed goods unless information with respect to the goods is maintained by the vendor in accordance with this Section.

Duty to maintain and provide information

(2) A trader shall maintain with respect to prescribed goods sold or offered for sale by the vendor the information prescribed by the regulations for the period prescribed by the regulations.

(3) Before a trader sells or offers for sale prescribed goods at a public market the trader shall provide to the operator of the public market the information required to be maintained pursuant to subsection (2).

(4) No market operator shall operate a public market at which prescribed goods are sold or offered for sale unless the information required to be maintained by a trader pursuant to this Section has been provided to the operator.

(5) No trader or market operator shall falsify, obliterate or destroy the information required to be maintained pursuant to this Section.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings fifty thousand or imprisonment to a term not exceeding six months.

**23.** A market operator shall maintain information provided to the operator pursuant to this Act for the period prescribed by regulations.

Duty to maintain information.

**24.** A trader shall, upon request, produce prescribed goods or provide access to prescribed goods to an officer of the directorate.

Access to prescribed goods.

**25.** Where an officer, finds goods at a public market and the officer is satisfied, on reasonable grounds, that the goods are —

Seizure of prescribed goods.

(a) prohibited goods; and

(b) not being sold by an authorized sales representative of the producer, manufacturer, wholesaler, distributor or retailer of the goods, the officer may, without laying any information or obtaining any warrant, seize and remove those goods and surrender them to the law enforcement office.

**26.** No person shall sell any meat except in a public market or in such shops as are duly licensed.

Fresh meat to be sold only in market or licensed premises.

(2) Any person who contravenes subsection (1) shall commit an offence and shall be liable on conviction to a fine of Kenya Shillings one hundred thousand or to imprisonment for not more than six months or both.

(3) The licensing authority may grant to any person a licence to sell meat at any premises other than in a public market, and any such licence shall be granted in respect of such premises and upon payment of such sums and upon such terms and conditions as may be prescribed:

(4) No fees is payable for a licence to sell meat where such premises are licensed as a slaughter-house.

**27.** (1) Any person who sells meat at any stall or place in any public market without having a licence, commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings one hundred thousand or six months imprisonment or both.

Licence to  
salesmen of meat.

(2) The licensing authority may grant a licence to any person to sell meat in a public market upon payment of prescribed fees.

**28.** (1) A person who in a public market—

- (a) sells meat of any animal that is not slaughtered in a public slaughter-house or in a licensed slaughter-house; or
- (b) sells meat of any animal that is not examined and passed as fit for human consumption by the directorate or a duly authorized officer,

Selling in the  
public market meat  
not slaughtered in a  
public or licensed  
slaughterhouse or  
not examined.

commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings one hundred thousand shillings or to a term of imprisonment not exceeding six months, or to both.

(2) Subsection (1) does not apply to imported meat that meets the safety requirements under the Public Health Act.

**29.** (1) Subject to section 32, no person shall sell any marketable commodities at the entrance to any building or on the pavements of any road which is situated within the limits of a prescribed area for the purposes of this section.

Selling marketable  
commodities and  
other goods within  
prescribed areas.

(2) Subject to sub-section (1), no person shall sell any marketable commodities in any part of any public place within the limits of a prescribed area.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings one hundred thousand or both.

**30.** (1) Section 30 does not apply to the carrying of any marketable commodities from place to place for the purpose of sale within a prescribed area.

Certain sales  
excluded  
from the operation  
of section 30

(2) Section 30 does not apply to the sale in accordance with the provisions of any law relating to hawkers of any marketable commodities at any building situate within any area prescribed for the purposes of that section.

(3) Section 31 shall not apply to the sale of any marketable commodities in any shop or in any public market held for public purposes within any area prescribed for the purposes of that section.

(4) Section 31 shall not apply to the sale of any marketable commodities in the entrance to any building situate within any area prescribed for the purposes of that section in any case where the vendor first obtains the permission of the owner or occupier of such building to sell and so conducts their business so as not to cause obstruction to any person lawfully using such road.

(5) Section 30 shall not apply to the sale of any marketable commodities as defined in section 32, in any part of any public place or within any area prescribed for the purposes of section 31, by any person to whom a permit is issued in accordance with section 32 and who sells at the place and in accordance with the terms and conditions specified in the permit issued.

**31. (1)** A person desirous of being issued a permit authorising him to sell in any part of a public place or within an area prescribed for the purposes of section 30, any permitted marketable commodities shall make an application to the directorate and must produce evidence to the satisfaction of the directorate as to their good character.

Power to issue permits allowing the sale of goods within prescribed areas.

(2) A permit shall be issued under subsection (1) by the licensing authority upon payment of the prescribed fee and shall be valid for such period as may be specified not exceeding one year from the date of issue:

(3) Before issuing a permit under subsection (1) the directorate shall cause the particular part of the public place to which it is proposed that the permit shall on issue relate, to be defined by lines painted on the ground or by studs embedded in the ground or in such other manner as he thinks fit and a number or letter to be marked within such place in such manner as he thinks fit.

(4) A person to whom a permit is issued under subsection (2) shall produce their permit when required to do so by the directorate or any officer duly authorised by the directorate.

(5) A person to whom a permit is issued under subsection (2) shall display the permit in a conspicuous

place and produce their permit when required so to do by the directorate or any officer authorized by the directorate.

(6) An applicant for a permit mentioned in subsection (1) who is dissatisfied by a decision of the directorate may appeal to the Magistrate's Court.

(7) A person who contravenes parts of these clauses commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings, six months imprisonment or both.

#### **PART IV – MISCELLANEOUS PROVISIONS**

**32.** A county public medical officer or other competent officer or officer of the County Health Directorate shall carry out all inspections of animals and articles of food at the public market in accordance with regulations made under this Act.

Officers of Health Directorate to carry out inspection.

**33.** (1) The Directorate may lease to a person any several stalls or blocks in the portion of a public market used for the sale of meat for a period not exceeding five years at any one time;

Renting of stalls for sale of meat

(2) Subject to subsection (1)—

- (a) no person shall be permitted to lease more than one stall or block at the same time; or
- (b) no lessee of any stall or block shall assign the lease to any other person or permit the use of any stall or block by any other person without the written permission of the Directorate.

(3) The County Executive Member may by notice in writing revoke any lease granted by the Directorate subsection (1) if—

- (a) the lease extends part of the stall or block beyond prescribed distance from the access roads.
- (b) the lease is proven beyond doubt to be engaging in business that threatens life of the neighborhood.
- (c) by any other reason found to be unable to make use of the said stall or block.

**34.** The directorate shall—

Duties of directorate.

- (a) inspect all butcher's meat, fish, vegetables and all

other articles of food offered for sale in the public market and, if in their opinion the same are unfit for human consumption, immediately report the fact to the director and seize the same pending any action under the provisions of the County Public Health law;

- (b) recover all rates and other charges payable under this Act;
- (c) keep detailed cash account book in which entries are made of all moneys received by the County Revenue Officer.

generally to carry out and enforce this Act.

**35.** A person who—

Offences.

- (a) sells in the public market, any butcher's meat without a licence;
- (b) sells any article in the public market, otherwise than in accordance with this Act;
- (c) within the county sells, exposes or offers for sale any butcher's meat except in a shop for which a licence has been so granted;
- (d) obstructs or opposes any office in the execution of their duty under this Act or; or
- (e) creates or causes any disturbance in the public market or at or near the same during the hours when the same is open, or disturbs the quiet and good order of the same by offering any article for sale in a loud voice to attract customers or by shouting, singing, smoking or screaming therein, or form disturbances such as animals, cyclists, motorists, rearing of pets in any other manners commits an offence.

**36.** All penalties imposed by this Act are recoverable in a summary manner and any person committing an offence against this Act, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to six months imprisonment or to both such fine and imprisonment

General Penalty.

**37.** All markets established or in existence before the coming into operation of this Act shall be deemed to have

Saving.

been established under this Act, and all rules and by laws made under the Local Government Authority Act and in force at the time of the commencement of this Act shall be deemed to have been made under this Act and shall remain in force until further provisions are made in accordance with this Act.

**38.** The County Executive Committee Member in charge of trade may make regulations— Regulations

- (a) regulating the use of markets and market buildings;
- (b) prescribing, and regulating the pattern, description and use of, weighing or measuring instruments to be used by persons selling marketable commodities in any market ;
- (c) preventing nuisances and obstructions in markets and for maintaining cleanliness therein and on the approaches thereto;
- (d) prescribing the goods that may be sold in any market;
- (e) fixing, regulating and collecting stallages or charges and the payment and collection thereof in any public market;
- (f) for the inspection and examination of marketable commodities sold or offered for sale in any market;
- (g) fixing the days and hours during each day on which any market may be opened and for preventing the sale and purchase of marketable commodities in any market on any day or at any times except as fixed;
- (h) prescribing the conditions subject to which the several stalls or places in any public market shall be held, occupied or used by persons having or using the same;
- (i) imposing on any person having or using any stall or place in any market the duty of taking steps and using such means for protecting from contamination any articles of food offered or exposed for sale in any market;

- (j) for maintaining order and preventing disturbances in a public market;
- (k) for excluding or removing from public markets any person suffering from any infectious or contagious disease; and
- (l) for prescribing any area within which section 31 shall, subject to section 32, apply.