

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**KWALE COUNTY ACTS, 2016**

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**THE KWALE COUNTY QUARRYING ACT, 2016****No. 11 of 2016***Date of Assent: 16th May, 2016**Date of Commencement: 30th May, 2017*

**AN ACT of Kwale County Assembly to regulate quarrying activities in the county and to ensure the safe and sustainable utilization of Land and Environment and for connected purposes**

**ENACTED** by the Kwale County Assembly as follows—

**PART I—PRELIMINARY****Short title**

1. This Act may be cited as the Quarrying Act, 2016.

**Interpretation**

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

“authorized officer” includes the environmental officer or any person acting under the authority of the Licensing Officer;

“committee” means the Technical Minerals Harvesting Committee established under section 3 of this Act;

“common minerals” means clay, country rock, ravel, lime, sand, slade, shingle, murrum, brine, diatomite, kaoline, building demission stone, ornamental stone, sodium and potassium compounds, slate and surface stone;

“county environmental officer” means the Environmental Officer within the jurisdiction of the County Government;

“dealer” means the person who buys and sells common minerals;

“executive committee member” means the County Executive Committee Member in charge of Environment;

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

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

“quarrying” means to make a hole or excavation for the purpose of removing common mineral for sale and includes the breaking or crushing of common minerals so removed.

**Technical Minerals Harvesting Committee**

3. (1) There is established a Technical Minerals Harvesting Committee consisting of—

- (a) the chief officer responsible for matters relating to finance;
- (b) the chief officer responsible for matters relating to environment;
- (c) four representatives one from each sub-county coming from communities in active quarrying areas nominated by the chief officer responsible for matters relating to environment;
- (d) county NEMA representative;
- (e) chief officer community development;
- (f) chief officer in charge of infrastructure; and
- (g) county public health officer.

(2) The committee will be under the supervision of the County Executive Committee Member responsible for matters relating to Environment.

(3) The chief officer responsible for matters relating to environment shall be the chair of the committee, in their absence the members of the committee will elect a chair from its quorum.

(4) The quorum of the committee for purposes of the meeting shall be two thirds of the members.

(5) The members of the committee shall elect from within their composition the Secretary.

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

(7) The one third gender rule must be observed in the composition of the committee.

(8) The members elected in section 3 (c) shall serve for a term of three years after which they will be eligible for renewal for one more final term.

**Functions of the Committee**

4. The Technical Minerals Harvesting Committee shall—

- (a) advise the County Executive Committee member on the structure and operations of harvesting of common minerals;
- (b) ensure compliance of operations of mineral harvesting activities are guided by national norms and standards;

- (c) ensure sustainable utilization of common mineral resource and other minerals and proper management of the environment thereof;
- (d) collaborate and partner with other environmental agencies in management of environment;
- (e) formulate environmental conservancy capacity building programs for its residents;
- (f) designate common mineral harvesting sites on river beds subject to the provisions of relevant legislations;
- (g) define extent of each Mineral Resource Management Association area of jurisdiction; and
- (h) perform any other functions assigned by the County Executive Committee Member.

## **PART II—COMMON MINERAL HARVESTING PROVISIONS**

### **Environmental and Social considerations**

5. The Technical Minerals Harvesting Committee as regards Common mineral harvesting shall be guided by the following considerations—

- (a) environmental considerations—
  - (i) common mineral dam(s) or gabion(s) are constructed in designated common mineral harvesting sites;
  - (ii) where more than one common mineral dam/ gabion is to be constructed, they shall be at most 200 meters apart;
  - (iii) lorries will use designated access roads only to common mineral harvesting sites;
  - (iv) designated common mineral harvesting sites are rehabilitated appropriately by the Common Mineral Resource Management Association as described in this Act , the county government and approved dealer under close monitoring and supervision by the Technical Minerals Harvesting Committee in compliance with Environmental Management and Co-ordination Act, 1999;
  - (v) common mineral harvesting or scooping is restricted to the riverbeds with no harvesting allowed on riverbanks to avoid widening of rivers;
  - (vi) it specifies the area of common mineral harvesting and the depth to which the harvesting will be done; and

- (vii) The requirements of an environmental impact assessment/environmental audit pursuant to the Environmental Management and Co-ordination Act No. 8 of 1999 have been fulfilled.
- (b) social considerations—
- (i) common mineral loaders are over 18 years of age residing within the local community;
  - (ii) approved common mineral dealers will pay a negotiated and agreed wage to common mineral loaders subject to the prescribed minimum wage as prescribed in the regulations under this Act;
  - (iii) the loaders will organize themselves into recognized groups with clear operational structures for their self-regulation;
  - (iv) the Common Mineral Resource Management Association will oversee the operations of the loaders; and
  - (v) approved common mineral dealers must support local community projects in consultation with the Mineral Resource Management Association.

### **Common Mineral Resource Management Association**

6. (1) The committee shall establish such number of local Common Mineral Resource Management Associations as is necessary which shall be registered by the County Social Services Office.

(2) Each Common Mineral Resource Management Association so established and registered shall be responsible for sustainable management of Common mineral harvesting activities in its area of operation.

(3) The factors to be considered in the establishment of Common Mineral Resource Management Association shall include—

- (a) drainage network of the river designated sites along which common mineral harvesting activities are carried out;
- (b) inclusion of interest groups; and
- (c) viability and sustainability of the Association(s).

(4) Each Common Mineral Resource Management Association will be composed of the following members elected by interested community and supervised by Ward administrators—

- (a) landowners;
- (b) two women representatives who are not riparian land owners;

- (c) two youth representatives who are not land owners;
  - (d) two elders who are not land owners; and
  - (e) two religious leaders.
- (5) Each Common Mineral Resource Management Association shall—
- (a) ensure that before common mineral harvesting activities are commenced, Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act, 1999;
  - (b) ensure that annual Environmental Audits are conducted for closed and active sites; and
  - (c) ensure sustainable management of common mineral harvesting along riverbeds and other designated common mineral harvesting sites.

#### **Common mineral harvesting sites**

7. (1) The committee shall designate and document common mineral harvesting sites from time to time.

(2) The common mineral-harvesting sites shall be clearly demarcated by the committee in consultation with Common Mineral Resource Management Associations.

(3) A person shall not harvest common mineral from any area not designated as a common mineral harvesting site by the committee.

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

#### **Riverbed harvesting**

8. (1) Common mineral harvesting from any riverbed shall be undertaken in a way that ensures adequate reserve of the common mineral is retained to ensure water retention.

(2) Common mineral harvesting shall not be allowed on any riverbanks.

(3) Loading of common mineral will be done in the designated harvesting sites through controlled access points.

(4) No common mineral harvesting shall take place within 100 metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

(5) No harvesting of common mineral shall take place during heavy rains.

### **Hours of harvesting and Transportation**

9. (1) A person shall not—

- (a) harvest, extract or scoop common mineral between the hours of 6pm to 6am depending on the type of mineral harvested; and
- (b) transport common mineral between the hours of 8pm to 6am.

(2) The transport of common mineral or other minerals within the county shall only be through designated roads for such transportation.

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

### **Sale of Common mineral**

10. (1) The County Executive Committee Member shall in consultation with the committee provide minimum pricing guidelines for sale of common mineral 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.

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

## **PART III—LICENSING PROVISIONS FOR QUARRYING OF MINERALS**

### **Licensing Officer**

11. (1) The Chief officer in charge of environment shall be responsible for the issuing of licenses under this Act.

(2) The County chief officer may delegate, in writing, any of the powers under this Act to one or more authorized officers in the County.

### **Quarrying without a license prohibited**

12. A person shall not carry out or cause quarrying operations to be carried out on land within the county except under, and in accordance with a license issued by the Licensing officer.

### **Permission to transport Common mineral**

13. (1) A person or agent shall not transport common mineral from any part of the jurisdiction of the county, unless a valid permit for such business has been issued by the Licensing officer.

(2) The permit referred to in 13 (1) shall be considered to be issued for a year unless the Licensing officer otherwise authorizes.

### **Cess payment**

14. Common mineral transporters from outside the county shall attract cess payment as per relevant county cess Act for goods coming and temporary permits for goods going out.

### **Application for grant of permission**

15. (1) A person who wishes to carry out quarrying operations on land within the County and any common mineral dealer shall apply in writing to the Licensing officer.

(2) The Licensing officer may require an applicant for a permit—

- (a) to submit a plan of the site showing that area of the land on which that applicant proposes to quarry and a plan for the surrounding land; and
- (b) to furnish such other information as requested.

(3) Where the application for a license is made by the owner of the land on which the quarrying operations are to be carried out, the owner shall state in the application form whether the quarrying shall be conducted by himself or another person and provide the name and address of that person.

(4) Where the application for a license is made by a contractor or lessee, that contractor or lessee shall attach to their application the written permission which has been certified, stating that the owner of the land where the quarrying is to take place has agreed to their quarrying on that land.

### **Form**

16. (1) A business person who applies for a license shall do so in the prescribed form and the Licensing officer may in any particular case require an applicant to furnish further information.

(2) Every application under this section shall be accompanied by the non-refundable fee prescribed in the Regulations.

### **Issue or Refusal of license**

17. (1) The Licensing officer shall consider each application made under section 14 and issue a license to the applicant as soon as practicable.

(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.

(3) The Licensing officer shall issue the license to the applicant within 30 days from the date of the payment for the license.

### **License conditions**

**18.** (1) A license shall be issued—

- (a) for the category or categories of quarrying or business activity specified in the license;
- (b) subject to the regulations and any conditions provided in the license.

### **Cancellation of License**

**19.** (1) A Licensing officer may cancel a licence if—

- (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.

### **Appeal**

**20.** (1) Any holder of a cancelled license is entitled to appeal the decision under section 18, to the Executive Committee Member.

(2) All appeals must be filed within twenty one days of the decision.

(3) A person appealing under this section has the right to be heard by the County common mineral committee.

### **Transferability**

**21.** (1) A business license is not transferable.

(2) Subject to this Act, a license may be altered on written application to the Licensing officer.

(3) The licensee shall inform the Licensing officer in writing of any changes within thirty days.

(4) If a licensee fails to inform the Licensing officer under subsection (2), the Licensing officer may impose a penalty.

**Production of License**

22. The Licensing officer, any Police officer or Enforcement officer or an authorized officer who has reason to believe that a business person is required to hold a business license may demand from the person carrying on the business activity the production of a license.

**PART IV – GENERAL PROVISIONS****Barriers**

23. (1) The County Government shall mount barriers on all access roads that lead to common mineral harvesting sites in accordance with the Traffic Act, Cap.403 Laws of Kenya.

(2) The barriers shall be manned by Authorized Officers and Cess collectors.

(3) A trader transporting common mineral shall stop at such barrier and pay the prescribed fees and charges to the Collector or Authorized Officer.

(4) A person who fails to stop at the barrier when required to do so commits an offence and the vehicle used to commit the offence shall be impounded at a police station.

**Power to order closure of quarry**

24. (1) The Licensing officer or County environment officer may order a license holder to stop the quarrying activities or operations and close the quarry where it appears that the quarry is in a condition dangerous to human life or detrimental to public health or safety.

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

**Powers of Entry**

25. (1) The Licensing officer, authorized officer, police officer, enforcement officers, or authorized agents may at all reasonable times—

- (a) enter upon premises, farms, ranches or vehicles and carry out any inspection for the purpose of enforcement of this Act; or
- (b) execute 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.

(2) The officers may recover the expenses incurred in carrying out the work referred to in paragraph (b) of subsection 1.

(3) A person obstructing the persons 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 both.

(4) Any police officer or authorized officer shall detain vehicles and confiscate common minerals where it shown those common minerals have been obtained in contravention of this Act.

(5) (a) The detained or impounded vehicles referred to in subsections 4 shall not be released to the owner until where prosecution is preferred, the case is finalized or until the owner has paid prescribed penalty charges;

(b) The prosecution and penalty referred to in sub-section (a) above shall take place within 30 days.

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

#### **License fee**

26. (1) Every license holder shall pay fees as per the approved regulations.

(2) Every common mineral dealer shall pay charges as per approved regulations under this Act.

#### **Protection from personal liability**

27. No matter or thing done by a member of the office or any officer, employee or agent of the office shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

#### **Transition**

28. All Common Mineral Resource Management Associations formed before the commencement of this Act are dissolved.

#### **Offences**

29. A person who—

(a) carries out quarrying activities or transport common minerals without a license;

(b) carries out quarrying activities of common minerals outside designated sites;

- (c) overloads common minerals to a vehicle for transportation contrary to prescribed requirements;
- (d) collects fees or charges and is not authorized to do so by the Licensing Officer;
- (e) transport common minerals 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 officers from conducting their functions under this Act; or
- (h) establishes a separate entity or purports to manage quarrying activities in a designated site without lawful authority under this Act;

commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding five years or to both.

#### **General penalty**

**30.** 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 both.

#### **Regulations**

**31.** The Executive Committee member may make regulations for the better carrying into effect the provisions of this Act.