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REPUBLIC OF KENYA

**MOMBASA COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

NAIROBI, 13th May, 2016

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**THE MOMBASA COUNTY WATER AND SEWERAGE SERVICES
ACT, 2016**

No. 2 of 2016

Date of Assent: 18th February, 2016.

Date of Commencement: 31st May, 2016.

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**THE MOMBASA COUNTY WATER AND
SEWERAGE SERVICES ACT, 2016**

AN ACT of the County Assembly of Mombasa to provide for a legal and institutional framework for provision of water and sewerage services; for mechanisms of ensuring high quality services to citizens, and commercial viability of the water service provider, and for connected purposes

ENACTED by the County Assembly of Mombasa, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Mombasa Water and Sewerage Services Act, 2016. Short title.

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

“company” means the Mombasa Water and Sanitation Company;

“community water projects” means water services provided by community members on a self-help basis;

“corporation” means the Mombasa Water and Sewerage Services Corporation established under this Act;

“county executive committee” means the County Executive Committee provided for under Article 179 of the Constitution of 2010;

“county Executive Committee Member” means the County Executive Committee Member for the time being responsible for Water, Environment and Natural Resources;

“gazette” means the *Kenya Gazette* published by the Government Printer;

“governor” means the County Governor of Mombasa in terms of Article 179 (4) of the Constitution of Kenya, 2010.

“inspector” means an employee of the corporation employed for performance of inspectorate functions contemplated under this Act;

“private water service providers” means persons lawfully providing water services privately within the area of supply of the Corporation;

“pro-poor” means in favour of the poor;

“public officer” means a person serving as a public officer in the County Government of Mombasa or any of its agencies;

“public Participation” means the process by which the County Government of Mombasa engages with the public in the collection of information;

“regulator” means the Water Services Regulatory Board established by the Water Act, 2002, or its legal successors;

“sewerage services” means the development and management of infrastructure for transport, storage, treatment of waste water and does not include household sanitation facilities;

“water and Sewerage Services Directorate” means the Directorate established under section 7 of this Act;

“water services” means any services of or incidental to the supply of water and includes the provision of sewerage services.

3. (1) This Act shall be applied for the administration and delivery of water and sewerage services in County Government of Mombasa. Object and purposes of the Act.

(2) Without prejudice to the generality of subsection 1 above, this Act shall be applied to—

- (a) give effect to the Constitution and national law as regards the provision of water and sewerage services by the County Government of Mombasa;
- (b) establish and maintain a financially sustainable mechanism for delivery of water and sewerage services;
- (c) ensure the provision and delivery of potable water to consumers;
- (d) enhance and expand the provision of water and sewerage services;
- (e) secure and sustain progressive realization of the human right to water;

- (f) scale-up and maintain investments for the development of water and sewerage services;
- (g) develop and expand water sources available for water service provision in the County Government of Mombasa;
- (h) secure and increase availability of bulk water for service provision in Mombasa;
- (i) provide an equitable financing mechanism for development, expansion and sustenance of pro-poor water and sewerage services;
- (j) secure public participation in decision making regarding the provision of water and sewerage services, including consumer rights mechanisms;
- (k) provide incentives for private sector contribution in service provision, and in investments for infrastructure development.

(3) The rights and duties conferred by this Act are in addition to those conferred by any other relevant law.

4. The County Executive Committee member, the Corporation and any person administering or applying this Act shall be guided by the principles and values set out in Articles 10, 43 (1) (d), and 232 of the Constitution.

Guiding Principles and Values.

PART II—POLICY, CO-ORDINATION AND OVERSIGHT OF WATER AND SEWERAGE SERVICES

5. (1) Subject to the provisions of this Act, the County Executive Committee member shall exercise control and provide guidance over water and sewerage services provision and development, and the implementation of this Act.

Powers and Duties of County Executive Committee member.

(2) Without prejudice to the generality of the foregoing, the County Executive Committee member shall have responsibility to—

- (a) formulate and periodically review County water and sewerage services policies;
- (b) develop strategies for implementation of this Act, and related National and County policies, including on pro-poor and equitable water and sewerage services;

- (c) co-ordinating with the National government on enhancement of investments in infrastructure, and service delivery;
- (d) co-ordinating with other County governments on enhancement of investments in infrastructure, and service delivery, especially in a cross-county context;
- (e) developing of water sources to secure availability of adequate water service provision;
- (f) secure and sustain availability of bulk water resources for provision of water services to consumers;
- (g) enhance the development, expansion and financing of sewerage infrastructure;
- (h) oversee water and sewerage services coordination, monitoring and evaluation;
- (i) ensure alignment of the water and sewerage sector with social-economic development goals of the County;
- (j) make regulations as provided for under, or as necessary for the better implementation of this Act;
- (k) prepare a report to be submitted to the County Assembly annually, and from time to time as may be necessary, on the state of, and needs for, water and sewerage services delivery, development and investments in the County.

(3) For purposes of securing broad support for water and sewerage services development and provision, the County Executive Committee member, in performance of functions and duties under this Act—

- (a) may consult with other County Government of Mombasa departments, public agencies and other government entities whose functions relate or affect water and sewerage services;
- (b) may consult with relevant non-governmental entities, including private sector and research institutions; and
- (c) shall secure public participation, including setting up, through regulations, of specific mechanism for regular engagement of stakeholders on policy matters

(4) In the discharge of the duties and functions under this Act, the County Executive Committee member shall be

assisted by the Water and Sewerage Services Directorate established under this Act.

6. (1) The County Executive Committee Member shall, in accordance with article 10 of the Constitution, section 4 of this Act, and through public participation formulate a County Water and Sewerage Services Strategy.

County Water
and Sewerage
Services
Strategy.

(2) The County Water and Sewerage Services Strategy shall be published in the *Gazette* after approval by the County Assembly.

(3) The County Water and Sewerage Services Strategy shall prescribe measures and mechanisms to—

- (a) design a program for the progressive expansion of the water and sewerage services coverage in County Government of Mombasa;
- (b) identify outputs, overall budget estimates and timeframe to realize expected results;
- (c) accelerate the development of water and sewerage infrastructure;
- (d) reduce and manage levels of non-revenue water;
- (e) manage and maintain optimal levels of service provision to consumers; manage and maintain optimal water quality levels, as set by the regulator;
- (f) increase and sustain available storage for bulk water resources;
- (g) guide the roles and actions of stakeholders in management and delivery of water and sewerage services;
- (h) improve water services management, efficiency and sustainability;
- (i) facilitate the participation of all categories of stakeholders in decision making on matters affecting the provision of water services within the county;
- (j) identify and facilitate the role of the private sector in investments for development of infrastructure and delivery of water and sewerage services;

- (k) increase and improve access to investment capital and credit for development of water and sewerage services;
- (l) identify strategies and measures for the uptake of low-cost water services efficiency technologies by consumers;
- (m) determine the water service penetration targets for the County, including for each of the sub-counties, and propose specific measures through which to enhance realization of the targets.

(4) In addition to requirements set out in (3) above, the Water and Sewerage Services Strategy shall—

- (a) provide details of the number and location of persons who are not being provided with a basic water supply and basic sewerage, including details of the plan for intervention to rectify this;
- (b) identify a program for development of water sources, including cross-county bulk water sources to secure availability for adequate water service provision, including an investment program; and
- (c) identify needs, and set out an investment program for the development and expansion of sewerage infrastructure.

(5) The County Executive Committee Member shall, in every five-year period, or sooner, review and update the County Water and Sewerage Services Strategy, and by notice in the *Gazette*, publish a new strategy.

(6) The approved Water and Sewerage Services Strategy shall guide the County Government, County Executive Committee member, the Directorate, the Corporation and all other agencies in performance of their functions on water and sewerage services.

7. (1) There is established the Water and Sewerage Services Directorate.

Water and
Sewerage
Services
Directorate.

(2) The Directorate shall be headed by a Director of Water and Sewerage Services, who shall be competitively recruited and vetted by the County Public Service Board, in accordance with its guidelines and regulations.

(3) A person shall not qualify for appointment as Director, under this Act, unless such a person—

- (a) is a citizen of Kenya;
- (b) holds a post-graduate degree in any of the following fields or specializations, with relevance to development of water services in Kenya—
 - (i) water Engineering;
 - (ii) public administration;
 - (iii) law;
 - (iv) business administration;
 - (v) environmental Science;
 - (vi) economics; or
 - (vii) any other relevant field.
- (c) has had at least ten (10) years experience at senior management level in a relevant field;
- (d) meets the requirements of Chapter 6 of the Constitution.

(4) The Director, appointed under subsection (2), shall be responsible for performance of the specific duties and functions of the Directorate set out in subsection (6) below.

(5) The Directorate shall operate under the direction of the County Executive Committee member, and provide advice on matters of legislation, policy, co-ordination, and the performance of the water and sewerage services sector.

(6) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—

- (a) co-ordination, linkages and oversight over water and sewerage services sector public and private entities and agencies;
- (b) development of water and sewerage services master plan, investment and strategic plans for resource mobilization and financing;
- (c) development of County water and sewerage services sector standards and guidelines including principles, code of practice, quality assurance and procedures;

- (d) collection and dissemination to the public, from time to time, of information on water and sewerage services development, including challenges and opportunities for improvement;
- (e) monitoring, evaluation and assessment of the water and sewerage services sector performance;
- (f) development of county infrastructure for harvesting and storage of bulk water for service provision to consumers;
- (g) identification and implementation of strategies and measures for the uptake of low- cost water efficiency technologies, including water harvesting;
- (h) facilitate the formation of Water Consumer Action Groups to facilitate engagement with consumers on service provision issues.

(7) The County Executive Committee member shall, in consultation with the County Public Service Board, determine the staff establishment required for the Directorate to effectively perform its functions under this Act.

PART III—ESTABLISHMENT OF COUNTY WATER SERVICES PROVIDER

8. (1) There is hereby established the Mombasa Water and Sewerage Services Corporation.

Establishment of Mombasa Water and Sewerage Services Corporation.

- (2) (a) The Corporation shall acquire, take over and assume all responsibility for water service provision in the County of Mombasa as determined under the Constitution of Kenya.
- (b) In so far as it is possible to give effect to the requirements of the Constitution of Kenya as relates to the provision of water services the Corporation shall take over and replace in purpose and assume all responsibilities and functions of the Mombasa Water and Sanitation Company Limited established to provide water and sewerage services in the County, prior to commencement of this Act.

(3) The Corporation is 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 moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The Corporation shall establish offices for service delivery, operations, and customer service at sub-county level, and may further decentralize as necessary to ensure optimal service delivery.

9. (1) On the commencement of this Act, all rights, assets and liabilities of the Company shall be automatically and fully transferred to the Corporation, and any reference to the Company in any contract or document shall, for all purposes, be deemed to be a reference to the Corporation established under this Act.

Transfer of assets, liabilities, rights and obligations.

(2) Any act, matter or thing lawfully done by the company before the commencement of this Act or any contract, arrangement, agreement made by or on behalf of the Company which at the commencement of this Act falls to be performed shall, whether or not in writing and whether or not otherwise assignable in law by either party, have effect on and after the commencement of this Act as if made by or on behalf of the Corporation.

(3) Any legal right accrued, cause of action commenced in any court of law or tribunal established under any written law in force, or any defence, appeal, or reference howsoever filed by or against the company shall continue to be sustained by or against the Corporation.

10. (1) The Corporation shall be responsible for the provision of water and sewerage services, and for development and management of the related infrastructure in County Government of Mombasa.

Functions of the Corporation.

(2) The Corporation shall perform the following functions—

- (a) provide and manage water and sewerage services;
- (b) develop and maintain County water and sewerage services infrastructure including water works;
- (c) develop and maintain adequate water supply systems for domestic, commercial and other purposes;
- (d) develop and maintain county infrastructure for sewerage services including primary, secondary and tertiary systems;
- (e) develop and manage works for water conservation;
- (f) promote and manage water re-use and recycling systems;
- (g) develop and implement systems and mechanisms for water efficiency and management in its operations and by its consumers;
- (h) design and implement mechanisms for reduction and management of non-revenue water;
- (i) co-ordinate with the Water and Sewerage Services Directorate in the implementation of policy and strategy;
- (j) collection of charges for the provision of water and sewerage services;
- (k) perform such other functions as may be required under this Act or any other written law.

(3) Within three months after the end of each financial year, the Corporation shall prepare and submit to the County Executive Committee member, through the Director, an annual report concerning the performance of its mandates and functions.

(4) The County Executive Committee Member shall submit the report to the County Executive Committee for consideration within three months of receiving the report from the Corporation.

(5) The performance by the Corporation of the functions set out in this Act shall be subject to the regulatory procedures for water service providers set out by the national and county law on water services.

11. (1). There shall be a Board of the Corporation, which shall consist of— The Board of Directors.

- (a) a Chairperson, appointed by the Governor; and
- (b) ten other members, appointed by the County Executive Committee member, as follows:
 - (i) The Chief Officer for Finance, or a designated representative.
 - (ii) The Chief Officer for the time being responsible for Water and Sewerage Services, or a designated representative.
 - (iii) Eight members, each appointed on account professional competence in areas with relevance to water and sewerage services, as follows:
 - (i) Human resource management.
 - (ii) Information and technology.
 - (iii) Business administration.
 - (iv) Environmental Science.
 - (v) Engineering.
 - (vi) Planning.
 - (vii) Law.
 - (viii) Water Engineering.
 - (ix) Health Compliance and Enforcement.

(2) Provided that in appointment of members under section 11(1) (b) (iii) above, the County Executive Committee Member shall—

- (a) ensure compliance with the principle that not more than two-thirds of members shall belong to the same gender.
- (b) have regard to equitable representation of special interest groups including but not limited to gender, persons living with disabilities, youth, and ethnic minorities.

(3) Upon their appointment and assumption of office, the members of the Board shall elect a vice-chairperson from among their members.

(4) The Chairperson and the Vice-Chairperson shall not be of the same gender.

(5) A person shall be qualified for appointment as chairperson or member of the of the Board only if such person—

- (a) is a citizen of Kenya;
- (b) fulfils the requirements of Chapter 6 of the Constitution;
- (c) in the case of members appointed under 11(1) (b) (iii) above, each member must have at least five years relevant experience and hold a higher diploma in the field of competence on which basis they are appointed, provided that where professional certification is required for a competence, such certification shall be deemed a mandatory aspect of the qualification.

(6) The term of the Board shall be three years, renewable, provided that where a member of the Board has served for six years consecutively, that member shall not be eligible for reappointment until three years have lapsed.

(7) The Directors may be removed from office by the County Executive Committee member, following due process, in the following circumstances—

- (a) failure to attend three consecutive meetings without sufficient cause;
- (b) conviction of a criminal offence punishable by imprisonment for a period exceeding six months;
- (c) breach of the provisions of the Public Officers Ethics Act, and the Leadership and Integrity Act, or any replacement thereof;
- (d) if adjudged bankrupt.

(8) Section 11 (7) above shall be applied by the Governor in the removal of the Chairperson from office.

(9) In accordance with the First Schedule, the Board may from time to time establish Committees for the better carrying out of its functions.

(10) The Board shall guide and direct the exercise of the powers, and performance of the functions of the Corporation, and shall give effect to the policies of the County Government on water and sanitation services.

12. The First Schedule shall apply in relation to the meetings and procedures of the Board.

Meetings and Procedure of the Board.

13. (1) There shall be a Chief Executive Officer of the Corporation.

Chief Executive of the Corporation.

(2) The Chief Executive Officer shall be competitively recruited and vetted by the Board; and shall be appointed on a performance based contract, on such terms and conditions, as may be agreed upon with the Board and specified in an instrument of appointment for a term not exceeding four years, renewable based on performance.

(3) A person shall be qualified to be appointed as Chief Executive Officer of the service only if that person—

- (a) is a citizen of Kenya;
- (b) fulfills the requirements of Chapter 6 of the Constitution;
- (c) holds a post-graduate degree and professional qualifications in any of the following fields related to, and relevant to water services:
 - (i) Engineering.
 - (ii) Water management.
 - (iii) Public administration.
 - (iv) Law.
 - (v) Business administration and management.
 - (vi) Finance.
 - (vii) Environmental Science.
- (d) has, in addition to the academic and professional qualifications, at least five years relevant experience in senior management levels.

(4) The Chief Executive Office shall, in accordance with this Act, and under the general direction of the Board, be responsible for the daily management and performance of the functions and duties of the Corporation.

14. (1) The Corporation may engage such other employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions as the Board may approve. Employees of the Corporation.

(2) Any person who is an employee of the Company, on the commencement date, shall be transferred to the Corporation, subject to the power of the Board of the Corporation to evaluate the performance of such an employee, based on an evaluation criteria to be determined by the Board as a basis to offer employment on such terms and conditions as the Board may determine.

15. The funds and assets of the Corporation shall consist of— Finances of the Corporation.

- (a) such monies as may be appropriated by the County Assembly for the purposes of the Corporation;
- (b) any monies or property which may in any manner accrue or vest in the Corporation in the course of the exercise of its functions under this Act;
- (c) such monies as may become payable to the Corporation by way of fees in respect of services rendered by or through the Corporation; and
- (d) all monies from any other legitimate sources donated, lent or granted to the Corporation.

16. (1) At least five months before commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Corporation for that year. Annual Estimates of the Corporation.

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of the Corporation, in accordance with its functions and powers under this Act.

(3) The Board shall submit the estimates to the County Executive Committee member, who shall present the estimates for consideration and approval by the County Assembly.

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under this section.

17. (1) The Board shall keep proper books of account of the income, expenditure, assets and liabilities of the Corporation. Accounts and Audit.

(2) Within three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Corporation in respect of that year, together with—

- (a) a statement of the income and expenditure of the Corporation during that year; and
- (b) a statement of the assets and liabilities of the Corporation on the last day of that financial year.

(3) The annual accounts of the Corporation shall be prepared, audited and reported upon in accordance with any applicable law.

PART IV—SERVICE DELIVERY AND COMMERCIAL VIABILITY

18. (1) All funds of the Corporation, and all revenues arising from provision of water and sewerage services by the Corporation, through water bills and other sources whatsoever, shall be used for the purposes of administration, management and operationalization of the functions provided under this Act. Financial sustainability of the Corporation.

(2) In order to ensure commercial viability and financial sustainability of the Corporation, the County Executive Committee member and the Board shall annually agree on performance indicators for fulfilment by the Corporation in execution of its mandate, including but not limited to—

- (a) revenue collection mechanisms;
- (b) investment planning on infrastructure and asset development;
- (c) options for Public-Private Partnerships where necessary;
- (d) levels and strategies of non-revenue Water management;
- (e) debt amortization strategy;
- (f) strategies for full operations and maintenance cost coverage;

(g) human resource management plan, including grievance mechanisms.

19. (1) The Board shall annually make proposals to the County Executive Committee member on areas of infrastructure development required, including projected capital investments costs. County funds for asset development.

(2) The County Executive Committee member shall consider the proposals, in line with County development needs, priorities, and planning, and may recommend utilization of County funds for agreed infrastructure development to the County Assembly.

20. The Board may pursue public private partnership options for development of water services infrastructure. Public Private Partnerships (No. 15 of 2013).

21. (1) The Corporation shall at all times maintain a customer relations mechanism, including a feedback and grievance system. Customer relations.

(2) The Board shall approve, and publicize the customer relations mechanism, including the system and timelines within which feedback and grievances are addressed, and the outcome communicated to the customer in question.

(3) The Corporation may within 6 months of this Act coming into force develop and regularly review, through public participation, a service delivery charter, including mechanisms through which subsections (1) and (2) above shall be implemented.

(4) The Corporation shall annually report to customers on the state of provision of water services in terms of parameters agreed between the Board and the County Executive Committee member, as well as those required under national law.

22. The County Executive Committee member shall, through the Directorate, undertake Monitoring and Evaluation of the Corporation in the performance of its mandate. Monitoring and Evaluation.

PART V—INSPECTION AND MONITORING

23. (1) The Corporation, through its Inspectors, shall have authority to enter any premises where the Corporation provides water and sewerage services, in order to inspect and monitor— Power of Entry.

- (a) the distribution system;
- (b) the meter(s);
- (c) water storage systems;
- (d) the sewerage system;
- (e) such other elements of the water and sewerage services as the County Executive Committee member, may, through regulations, authorize.

(2) The inspection contemplated in (1) above shall only be undertaken between the hours of 8 a.m. and 6 p.m.

(3) The Corporation shall, in a public manner, communicate to its customers the acceptable method and procedures of verifying the identification of Inspectors seeking entry into premises under (1) above.

(4) Where the Corporation has knowledge of, or suspects the illegal or unauthorized access to, and use of its water and sewerage services in any premises, the Corporation shall apply to a Magistrates Court for a warrant to enter and search the premises.

(5) Nothing under (4) above shall prevent the Corporation from disconnecting and terminating the water services from points outside the premises in question.

(6) For purposes of monitoring the quality of water services provided to customers, the Corporation may from time to time undertake surveys on customer services based on parameters set by the Board, and shall publicly disclose the outcome of the surveys, including actions taken on the feedback received from customers.

24. (1) The Corporation shall maintain an Inspectorate Service consisting of members of the County Inspectorate Unit.

Inspectorate
Service.

(2) The Inspectorate Service shall have powers to implement the inspection functions of the Corporation.

(3) The County Executive member shall, within Six months of commencement of this Act, make regulations to provide the structure, and define the operations of the Inspectorate Service of the Corporation.

**PART VI—OFFENCES RELATING TO
CONDUCT OF EMPLOYEES OF THE
CORPORATION**

25. (1) Employees of the Corporation shall have immunity from liability and prosecution for any losses to the Corporation, arising from actions taken in good faith, in execution of lawful duties. Conduct of
Employees of
the Corporation.

(2) Notwithstanding (1) above, any actions of employees of the Corporation involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act. Cap 63
Cap 65
Cap 183

(3) It is an offence for an employee of the Corporation to willfully fail to perform the following duties, when lawfully assigned to them—

- (a) failure to read of meters, or to provide the accurate billing data from the meters to the corporation within stipulated time;
- (b) willfully failing to disconnect water services for customers in default, in accordance with rules established by the Board.

(4) It is an offence for an Employee to collude with other persons for the purposes of enabling such persons to illegally access and utilize water services of the Corporation.

(5) It is an offence for an Employee who has knowledge of the illegal access and utilization of the water services of the Corporation to willfully fail to notify the Corporation of such illegal actions.

(6) A person shall, upon conviction for any of the offences specified in (3), (4) and (5) above, be liable to a sentence not less than three months, or a fine not exceeding Fifty Thousands shillings, or both.

(7) For purposes of this section, an Employee of the Corporation includes those persons engaged on casual terms of service, as well as contractors, when such contractors are performing duties falling within scope of offences defined in section 25 (2), (3), (4) and (5).

PART VII—GENERAL OFFENCES

26. Any person impersonating an employee of the Corporation for purposes of misrepresenting themselves as being able to perform a function on behalf of the Corporation, shall be guilty of an offence, and upon conviction, liable to a sentence of not more than three years, or a fine not exceeding one hundred thousand shillings, or both.

Impersonation
of Corporation
Staff.

27. Any person who willfully vandalizes, damages or destroys any water and sewerage services infrastructure belonging to the Corporation commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding two years, or a fine of not more than five hundred thousand shillings.

Vandalism of
water and
sewerage
services
infrastructure.

28. Any person who illegally connects and utilizes water and sewerage services that are otherwise lawfully provided by the Corporation, shall be guilty of an offence—

Illegal
connection to
water services.

- (a) whereupon conviction, a sentence not exceeding two years, or a fine not more than two hundred thousands shillings shall be imposed; and
- (b) a surcharge of the full value of the water services illegally utilized, with cumulative interest computed at commercial bank debt rates, shall be levied and paid as a lawful debt to the Corporation; and
- (c) in case of a repeat offender, the Court shall prescribe a special inspection and monitoring mechanism for water services supplied to the premises in question; and
- (d) the Corporation, in circumstances defined in (c) above, shall be entitled to require and impose a special security bond to be provided before resumption of water services.

29. (1) A person shall not knowingly obstruct or make a false or misleading statement to any authorised officer who is carrying out duties under this Act.

Obstruction/mis
representation.

(2) Any person who contravenes the provisions of this section commits an offence and upon conviction is liable to imprisonment for a term not exceeding one year, or a fine not exceeding fifty thousand shillings, or both.

30. (1) The Corporation shall, in advance, communicate the acting cycle to its customers either submit an Act or

Customer
compliance
mechanisms.

provide the Customers with mechanisms for checking the Act on the appointed date.

(2) The Corporation shall notify customers, not less than five days in advance, of any planned interruptions in water services, and shall set out a program of the full resumption of water services.

(3) Where unplanned interruptions occur to water services, the Corporation shall notify its customers at the earliest, and in any event not later than 12 hours after discovery of the interruption, and keep customers fully apprised on the progress of the full resumption of water services.

(4) The Corporation shall provide to its customers, upon request, and within reasonable hours, current and reasonable historical information, and billing details relating to water services provided to the specific customer, premises or water services account number.

PART VIII—ADMINISTRATION OF CERTAIN WATER SUPPLY AND INFRASTRUCTURE SERVICES

31. (1) The County Executive Committee member shall ensure the development, availability and progressive expansion of bulk water sources required for delivery of optimal water services in the County, and to enable the Corporation to perform its mandate.

Bulk water
sources.

(2) The County Executive Committee member may, in undertaking (1) above, enter into agreements with other counties, and the national government, for the supply of bulk water, including through formation of the joint committees and joint authorities contemplated in article 189 (2) of the Constitution.

32. The County Executive Committee member shall, within six months of this law coming into effect, make regulations governing the sustainable management of septic tank sludge, including licensing of exhauster service providers and disposal of sludge after collection from septic tanks by exhauster service providers.

Septic Tank
Sludge
Management.

33. The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in national law.

Easements.

34. (1) Nothing in this Act shall prevent the development and operation of community water projects for service provision, which shall only be approved by the Regulator, after issuance of a no-objection provided by the County Government.

Operation of community water projects.

(2) Unless there are exceptional circumstances, certified as such by the County Executive committee member, a community water project shall operate and function under a Service Provision Agreement entered into with the Corporation.

35. (1) The Directorate shall develop and regularly review a program for the development of boreholes, including identification of criteria and the suitable areas for such operations.

Administration on boreholes and private water service providers.

(2) In all cases where licensing for drilling of boreholes is required under national law, in considering a request for a no objection the Directorate shall take into account the program in (1) above.

36. The County Executive Committee member shall, within six months of this law coming into effect, make regulations governing the operations and licensing of water kiosks, including the sources of water, optimal location of kiosks, rules on kiosk ownership by employees of the Corporation, and offences specific to the ownership, management and operation of water vending kiosks.

Regulation of Water Vending Kiosks.

PART IX—APPROVALS OF CONSTRUCTION WORKS AFFECTING INFRASTRUCTURE

37. In all cases where a person is undertaking construction works which affect water and sewerage infrastructure operated by the Corporation —

Permits for contractors.

- (a) a permit shall be obtained from the Corporation, in the format and at a fee prescribed by the Board;
- (b) the Corporation shall make a determination on the permit application within 14 days of receipt of the application, and either issue the permit, or where the application is declined, communicate to the applicant with reasons explaining such decline;
- (c) in making a decision on the application in (b) above, the Corporation shall make reference to maps, relevant documents, and actual inspection to verify

how the proposed works interact with water and sewerage infrastructure;

- (d) it is an offence for any person to undertake the works contemplated in this section without a permit, and upon conviction, such person will be liable to a fine of not less than One Hundred Thousands shillings;
- (e) where damage occurs to infrastructure in circumstances contemplated in (b) above, the responsible person shall, whether or not prosecuted, be liable to a surcharge of the full cost of repairs or replacement incurred by the Corporation, which shall be recoverable by the Corporation as a civil debt;
- (f) where damage occurs to infrastructure when the person has obtained a permit, the Corporation shall undertake the necessary repairs to the infrastructure;
- (g) all costs arising directly or indirectly from any damages caused by a contractor shall be recoverable by the corporation from the contractor.

38. (1) In every case within County Government of Mombasa where any developer of any property is undertaking plumbing, sewerage and related works for connection of the property to the water mains operated by the Corporation—

Certification of property development works connecting to water mains.

- (a) the developer shall present the plans for such plumbing and sewerage works to the Corporation for inspection and approval, prior to commencement of construction; and
- (b) upon completion of the works, the Corporation shall undertake inspection and if the works comply with the approved plans, certify the works as approved for connection to the mains.

(2) In every case where a developer fails to follow the procedure set out in this section, the Corporation shall not approve connection of the property to the mains, until remedial measures prescribed by the Corporation are satisfied.

(3) The Board shall prescribe procedures in forms, and fees to be levied by the Corporation in performance of the functions under this section.

PART X—TRANSITIONAL PROVISIONS

39. (1) Upon the coming into effect of this Act, the County Executive Committee member shall enter into discussions with the National Government on the transfer of assets and liabilities relating to water services in, and to County Government of Mombasa, to the Corporation, including hand over to operate through lease agreements where such assets were developed using loans.

Agreement with National government on assets.

(2) In so doing, the County Executive Committee shall be guided by among others, the requirement for treatment of the assets held by the Company, in clause 99 of the Articles of Association, in the event of winding up of the Company.

40. (1) Upon coming into effect of this Act, the County Executive Committee member shall convene a Meeting of Shareholders for the voluntary winding up of the Company.

Winding up.

(2) Upon such winding up, section 8 (5) of this Act shall be applicable, subject to lawful directives by the Regulator.

41. (1) Any person serving as a Director of the Mombasa Water and Sanitation Company, at the commencement of this Act, shall continue to serve as a Director of the Corporation for the remainder of their term and in any event for not more than three (3) years from the date of their current appointment.

Extending the term of current Mowasco Board of Directors.

(2) The membership to the Board shall further be adjusted to include persons contemplated for appointment under section 11 (1) (b) (i and ii), and for the election of a Vice-chairperson as contemplated under this Act.

(3) Upon expiry of the term of the Board referred to in (1) above, the provisions for appointment of the Board, set out in section 11, shall be complied with.

42. (1) The County Executive Committee member may make regulations for the better carrying out of the provisions of this Act.

Regulations.

(2) Regulations made under this Act shall be subjected to public consultations, and be approved by the County Assembly.