

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NYAMIRA COUNTY ACTS, 2019**

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FUND ACT, 2019**

**No. 3 of 2019**

*Date of Assent: 30th September, 2019*

*Date of Commencement: see section 1*

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**THE NYAMIRA COUNTY AGRICULTURAL DEVELOPMENT FUND****ACT, 2019**

**AN ACT of the County Assembly of Nyamira to establish the County Agricultural Development Fund to finance the agricultural sector in the County growth by supporting strategic farming interventions with high potential for enhancing productivity, value addition, quality improvements and marketing.**

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

**PART I—PRELIMINARY****Short title and Commencement**

**1.** This Act may be cited as the Nyamira County Agricultural Development Fund Act, 2019 and shall come into operation 21 days after *gazetement*.

**Interpretation**

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

‘Agriculture’ includes—

- (a) fruit, vegetable, flower and seed farming;
- (b) dairy farming, breeding and keeping of livestock;
- (c) conservation and keeping of game animals, game birds, and aquatic animals;
- (d) game ranching and game cropping;
- (e) the use of the land for grazing, market gardening, or for nursery grounds;
- (f) agro-forestry; and
- (g) use of land for the production, transformation and trade of crop and livestock products.

“Agricultural land” means land that is used for agricultural purposes, and includes any land which by any written law is zoned, registered or otherwise designated as agricultural land

“Board of Management” means the Board of the County Agricultural Development Fund Board of Management established under section 5 of this Act

“Crops” means any plant that is grown in significant quantities to be harvested as food , as livestock fodder , fuel, or for any other economic purpose

“Governor” means the Governor of County Government of Nyamira;

“Fund” means the County Agricultural Development Fund established under;

“Financial year” means a period of twelve consecutive months from 1<sup>st</sup> July to 30th June;

“Member of the Executive Committee” means the Member of the Executive Committee responsible for agricultural matters;

“Person” includes a company, corporate body (whether incorporated by or under statute or statutory authority), association, fund, natural person, partnership and a registered scheme;

“Project” means an eligible agricultural development project that meets the objectives of section 4 of this Act;

“Prescribed” means prescribed under this Act;

“Regulations” means regulations made under this Act **Overriding Objectives and guiding principle of the Act;**

**3.** (1) The overriding objective object of this Act is to provide a comprehensive, harmonized, efficient and effective legal and regulatory framework for financing of agriculture in Nyamira County for the following purposes—

- (a) to cascade the use of public funds at the lowest level of governance where the most vulnerable exist;
  - (b) to ensure efficiency and transparency in the disbursement of funds; and
  - (c) to ensure local-level participation in the provision of county government activities.
- (2) All County Government institutions, agencies, public servants and bodies charged with development of agriculture shall at all times have due regard to, and observe, the overriding objective of this Act as set out in subsection (1)
  - (3) Whenever there is a conflict between this Act and any county law, having a bearing on achievement of the overriding objective of this Act, the provisions of this Act shall prevail.

- (4) In the exercise of the powers or the performance of functions under this Act, the Member of the Executive Committee and the Board of Management shall be guided by the following principles—
- (a) Public participation and financial inclusiveness;
  - (b) Donor linkages and participation;
  - © Protection of the interests the marginalized, persons with disability, women and youth; and
    - Local ownership and sustainability.

## **PART II—INSTITUTIONAL ARRANGEMENTS**

### **Establishment and objectives of the Fund**

4. (1) There is established a fund known as the Agricultural Development Fund.
- (2) The objectives of the Fund are to—
- (a) provide funding for eligible intervention to cover the mainstream agricultural sector;
  - (b) promote county agricultural productivity and marketing through strengthening producer organizations, streamlining and facilitating bulk supply of inputs to farmers including fertilizers, seeds, agro-chemicals, animal breeding stock, animal drugs and feeds, AI services and fishing gears among others;
  - (c) gather, package and disseminate agribusiness-related information pertaining to key elements of the value chain across various sector enterprises including but not limited to agronomic and market information;
  - (d) develop core and high impact irrigation infrastructure such as community boreholes, dams, shallow wells and water pans;
  - (e) develop appropriate storage, bulking and other related marketing facilities in strategic areas with potential for increased agricultural production and or marketing;
  - (f) promote core value-addition infrastructural development;
  - (g) provide occasional subsidization of key inputs such as seeds, agro-chemicals, fertilizers, AI services, animal drugs and vaccines whenever high and sudden price hikes are experienced;
  - (h) promote high value agricultural, livestock and fisheries

products such as oil crops, newly emerging high value crops, zero grazing, aquaculture and ornamental fish farming among others,

#### **Establishment of Board of Management of the Fund**

5. There is established the Nyamira County Agricultural Development Fund Board of Management which shall be a body corporate with perpetual succession and common seal, capable of—

- (a) holding and disposing of any kind of property;
- (b) suing and being sued in its corporate name; and
- (c) doing all such other things as may be incidental or conducive to the exercise of performance of its functions under this Act.

#### **Composition of the Board of Management**

6. (1) The Nyamira County Agricultural Development Fund Board of Management shall comprise—

- (a) the County Chief officer in the county department for the time being responsible for agriculture or his representative appointed in writing;
- (b) the County Chief officer in the county department for the time being responsible for finance or his representative appointed in writing;
- (c) the Head of legal services in the county or a legal representative appointed in writing; and
- (d) a Chief Executive Officer appointed under section 13 who shall also be the Secretary of the Board; and
- (e) three persons, one of whom shall be the Chairperson of the Board of Management, not being public officers, who shall be appointed by the Member of the Executive Committee through a competitive and transparent recruitment process representing both the youth, marginalized and other members of society who shall be vetted by the County Assembly.

(2) The persons under subsection (1) (e) shall hold office for a term of three years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1) (e) if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years professional experience in the relevant field; and
- (c) meets the requirements of leadership and integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

#### **Terms and conditions of service**

7. Members of the Board of Management shall be paid such allowances as the Member of the Executive Committee shall determine in consultation with the County Public Service Board with guidelines of Salaries and Remuneration Commission.

#### **Vacation of office of member**

8. (1) The office of a member of the Committee appointed under section 6 (1) (e) shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (e) resigns in writing addressed to the Member of the Executive Committee;
- (f) is removed from office by the Member of the Executive Committee for—
  - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or
  - (ii) failing to declare his interest in any matter being considered or to be considered by the Committee; or
  - (iii) any other sufficient reason as may be prescribed.
- (g) dies.

#### **Functions of the Board of Management**

9. (1) The functions of the Board shall be to—
- (a) provide the strategic guidance and oversight to the Fund;
  - (b) implement the policies of the county government on

agricultural sector funding;

- (c) ensure that all projects funded under this Act are consistent with the counties priorities specified in the relevant policy documents on County agricultural development and financing;
- (d) authorise allocations from the Fund ;
- (e) formulate and approve standards, guidelines and procedures for funding under this Act,
- (f) approve the organizational structure of the Fund;
- (g) provide oversight in the utilization of the Fund; and
- (h) perform any other function as may be conferred on it by this Act or any other written law
- (i) approve annual work-plans and budgets of the Fund;
- (j) advise the county government on any of the matters contained in this Act; and
- (k) perform any other function as may be conferred on it by this Act or any other written law.

#### **Powers of the Board of Management**

**10.** (1) In the discharge of its functions, the Board of Management shall have all powers necessary or incidental to achievement of the overriding objective of this Act.

(2) Without limiting the generality of subsection (1), the Board of Management shall have powers to—

- (a) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;
- (b) employ on such terms and conditions as it considers fit such persons as may from time to time be necessary for discharging its functions and, with the approval of the Member of the Executive Committee, to pay such remuneration, allowances and other benefits to such employees as may be reasonable in the circumstances; and
- (c) establish such committees or departments for the better carrying out of its functions under this Act as it may deem fit.

(3) The Board of Management shall decentralize it's services to all sub-counties in Nyamira County.

#### **Delegation by the Board of Management**

11. (1) The Board of Management may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Board of Management may co-opt into the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

(3) The Board of Management may, by resolution either generally or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Board of Management under this Act or under any other written law.

### **Conduct of affairs of the business of the Board of Management**

12. (1) Subject to subsection (2), the business and affairs of the Board of Management shall be conducted in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board of Management may regulate its own procedure.

### **Chief Executive officer**

13. (1) Subject to this Act, the Board shall appoint the Chief Executive Officer of the Fund through competitive recruitment, on such terms and conditions as the Board may fix.

(2) The Chief Executive Officer shall be an *ex officio* member of the Board with no right to vote at any meeting of the Board and shall be the secretary to the Board of Management.

(3) The Chief Executive Officer shall, subject to the direction of the Board of Management, supervise and manage the Authority's staff, activities, funds and property, and shall be responsible for the day to day management of the programmes and activities of the Board of Management.

## **PART III—FUNDING OF AND DISBURSEMENTS**

### **Fund composition**

14 (1) The Fund shall comprise—

- (a) sums of money which may from time to time be voted by the County Assembly for that purpose;
- (b) income from any investment made by the Fund;

- (c) any sums of money borrowed by the Fund with the approval of the County Assembly; and
- (d) any gifts, donations, grants and endowments made to the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Member of the Executive Committee and incurred in connection with the administration of the Fund after approval by the Board of Management.

#### **Disbursement from the Fund**

**15.** (1) The Board of Management shall approve all disbursements from the Fund.

(2) All disbursements from the Fund shall be for specific projects as approved by the Board of Management.

(3) All disbursements shall be made directly to the bank account opened for this purpose by each beneficiary and in accordance with the agreement/contract between the Fund and the Beneficiary.

(4) The Board of Management shall set out conditions and requirements for release of funds.

#### **Funds to be retained in the Fund**

**16.** All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purposes for which the Fund is established.

#### **Projects to be community based**

**17.** (1) Projects under this Act shall be community-based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(4) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

**Submission of Projects**

18. (1) All project proposals that seek to benefit from the Fund shall be submitted by a potential beneficiary to the Chief Executive Officer in such form and detail as shall be prescribed;

(2) The types of projects submitted for funding under this Act shall comply with the provisions of this Act and in particular, meet the objectives stipulated in Section 4 of this Act.

**Project implementation**

19. (1) Agricultural officers at the Sub-County and Ward level shall ensure the implementation of all projects funded under this Act as shall be prescribed.

(2) Where a particular project covers several sectors, the Chief Executive Officer shall order the formation of an inter-departmental team at the Sub-County, Ward or village level to coordinate the optimal and efficient implementation of the project as may be prescribed.

(3) The Chief Executive Officer shall monitor the implementation of projects under this Act to ensure compliance with the provisions of this Act.

(4) The Chief Executive Officer may delegate the power under subsection 3 to such officers as may be prescribed.

**Project payments and ownership of property**

20. (1) All payments for projects to be funded under this Act shall be made through cheques or otherwise shall be processed and effected in accordance with national government regulations for the time being in force.

(2) All fixed and movable assets, including equipment bought under this Act shall be the property of the Fund to be insured in the name of the Fund.

(3) No asset or equipment acquired under this section shall be disposed of without the prior approval of the Board of Management.

(4) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (3) shall be credited to the account of the Fund.

**Exemption of donor funded projects**

21. (1) This Act does not apply to projects funded wholly by donor institutions.

(2) Board shall apply donor funding requirements and regulations for the implementation of all projects under subsection (1).

### **Annual Report**

**22.** (1) The Board shall, not later than three months after the end of each financial year, prepare an annual report in respect of that financial year, containing:

- (a) the audited financial statements;
- (b) the report on the operations of the Fund; and
- (c) any other information the Member of the Executive Committee may require.

(2) The annual Report shall be presented to the Member of the Executive Committee who shall table it before the County Assembly within one month after receiving the Report.

### **Audit**

**23.** The Fund shall be audited and reported upon by the Auditor-General in accordance with the provisions of the Public Audit Act 2015.

## **PART IV—MISCELLANEOUS**

### **Salaries and allowances**

**24.** Board of Management change to Board of Management shall pay the Chief Executive Officer and staff of the Fund such salaries and allowances as shall be determined by the County Public Service Board with guidelines by Salaries and Remuneration Commission.

### **Power to make regulations**

**25.** (1) The Member of the Executive Committee shall in consultation with the Board of Management make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations in respect of the following—

- (a) the receipt, processing and approval of project proposals and the granting of loans to applicants;
- (b) the preparation and maintenance of records for all projects funded under this Act; and
- (c) public surveillance of projects funded under this Act ; and

(2) The regulations under this Act shall be approved by the County Executive Committee and the County Assembly before they take effect.

**Complementarily**

**26.** (1) The provisions of this Act shall be complimentary to the development efforts by the County Government or a National Government institution or agency.

(2) Nothing in this Act shall be interpreted to mean that a project Funded under this Act may be excluded from other development programmes by the County Government or any other agency.

**SCHEDULE****Section 12 (1)****PROVISIONS AS TO THE CONDUCT OF BUSINESS AND  
AFFAIRS OF THE BOARD OF MANAGEMENT****Meetings**

1. (1) The Board of Management shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the chairperson.

(2) The Board of Management shall have quarterly meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Chief Executive Officer.

(4) The chairperson may, at his discretion or at the written request made by at least half of the members of the Board of Management and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.

(5) Meetings shall be presided over by the chairperson or in his or her absence by the vice- chairperson.

(6) The members of the Board of Management shall elect a vice-chairperson from among themselves-

(a) at the first sitting of the Committee; and

(b) Whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(7) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.

(8) The Board of Management may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

**Conflict of interest**

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Board of Management at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not

take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

### **Quorum**

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee.

(2) Where the persons present at a meeting of the Board of Management do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Board of Management shall postpone the consideration of the matter in question until there is a quorum.

### **Voting**

4. A question before the Board of Management shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

### **Rules of Procedure and minutes**

5. The Board of Management shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

