

THE COUNTY GOVERNMENT OF KITUI



THE COUNTY ASSEMBLY

SECOND ASSEMBLY-FIFTH SESSION

COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (KITUI COUNTY EMPOWERMENT FUND DRAFT
AMENDMENTS) REGULATIONS, 2020.

Clerks Chambers,
County assembly Buildings,
Kitui Kenya

FEBRUARY, 2021

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1.0 PREFACE

Mr. Speaker

Mr. Speaker, on behalf of the County Assembly Select Committee on Justice and Legal Affairs, it is my pleasant duty and honour to present to you the Committee's report on consideration of the Public Finance Management(The Kitui County Empowerment Fund Draft) Regulations 2020.

1.1 COMMITTEE MEMBERSHIP.

Mr. Speaker

The County Assembly Committee on Justice and Legal Affairs as currently constituted is composed of the following Honourable Members.

1. Hon. Peter M. Kilonzo	Chairperson
2. Hon. Eliud M. Ndinguri	Vice Chairman
3. Hon. Geoffrey Mwalimu	Member
4. Hon. Dr. Grace Mutua	Member
5. Hon. Stephene M. Makau	Member
6. Hon. Philip Nguli	Member
7. Hon. Peter M. Kilonzo	Member
8. Hon. Boniface Kilaa	Member
9. Hon. James Munuve	Member
10. Hon. Musee Mati	Member

1.2 COMMITTEE ESTABLISHMENT

The Committee on Justice and Legal affairs was established vide the County Assembly Resolution. The need for the Committee establishment arose from the fact that there was no Committee to effectively and efficiently oversight over Justice and Legal issues in the County.

It was thus observed that the Committee be established for the purposes of overseeing on all legal matters arising from the functions of the County departments / ministries.

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In undertaking the subject matter, the Committee was guided by provision of the Statutory Instruments Act, No. 23 of 2013 which states;

'Every Statutory instrument issued, made or established after the commencement of this Act shall upon tabling before the respective House of the parliament stand referred to the Committee or any other Committee that may be established for that purpose of reviewing and scrutinizing statutory instruments.'

1.3 RELEVANT CONSIDERATIONS

In carrying out her scrutiny of the Statutory Instrument, the Committee was guided by the doctrine of separation of powers, the principles of good governance, rule of law, and in particular considered whether the statutory instrument:-

- i. Is in accord with the provisions of the Constitution, the Act pursuant to which it is made or any other written law;
- ii. Infringes on fundamental rights and freedoms of the public;
- iii. Contains a matter which in the opinion of the committee should be more dealt with by an Act of the Parliament;
- iv. Contains Imposition of taxation;
- v. Directly or indirectly bars the jurisdiction of courts;

Gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such powers;

- i. Involves expenditure from consolidated Fund or other public revenue;
- ii. Is defective in its drafting or for any reason the form of purport of the Statutory Instrument calls for elucidation;
- iii. Appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- iv. Appears to have had unjustifiable delay in its publication or laying before Parliament;



- v. Makes rights, liberties or obligations unduly dependent upon non reviewable decisions;
- vi. Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- vii. Inappropriately delegates legislative powers;
- viii. Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation
- ix. Appears to infringe on the rule of law
- x. Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- xi. Accords to any other reason that the Committee considers fit to examine.

Further, in undertaking its mandate, the Committee was greatly guided by the provisions of the Public Finance Management Act, 2012 and article 94(5) of the Constitution of Kenya 2010.

Mr. Speaker

A '**Statutory Instrument**' is defined in Section 2 of the Statutory Instruments Act, as any rule, order, Regulation, direction, form, tariff of cost or fees, letters patent, commission, warrant, proclamation, by law, resolution, guideline or other Statutory Instrument issued, made or established in the execution of a powers conferred by or under an Act of Parliament or County legislation under which that Statutory Instrument or subsidiary legislation is expressly authorised to be issued.

Mr. Speaker,

The Speaker of the County Assembly in exercise of his discretion committed the Public Finance management, Kitui County Empowerment Fund Amendments (Draft) Regulations (2020) to the Committee on Justice and Legal Affairs vide the Speakers Communication of 30th September 2020 in the Afternoon session.

The Committee was thus expected to undertake the scrutiny and make the necessary recommendations of the same within twenty-Eight sitting days thereof.

Mr Speaker,

Worth noting is that in scrutinizing the said Regulations, the powers vested on the Committee pursuant to the provisions of section 15(1) and (2) of the Statutory Instruments Act are either;

- a. to accede to the regulations or
- b. to annul the whole or part of the Regulations

Where the Committee resolves to accede to the Statutory Instruments, the Clerk shall convey that resolution to the relevant County department or the authority that published the Statutory Instrument without passing through the House.

Where on the other hand the Committee resolves not to accede to the Regulations, the Committee shall make a report to the House containing only resolution that the Regulations that stood referred to the Committee be revoked.

1.4 COMMITTEE MEETINGS

The Committee retreated to Nairobi at Pride inn Hotel, Azure Towers where it held five (5) consecutive meetings from 26th to 30th November 2020 to consider and review the Public Finance Management (The Kitui County Empowerment and Amendments (Draft) Regulations 2020.

During the period above mentioned, the committee invited the Assembly Legal officer from 28th to 30th November 2020 who had an opportunity to take members through the entire draft regulations

1.5 ACKNOWLEDGEMENT

Mr Speaker


The Committee is grateful to the Offices of the Speaker and that of the Clerk of the Assembly for the support extended to it in facilitating the production of this report.

I also wish to extend my appreciations to the Members of the Committee and the Staff of the County Assembly who worked tirelessly to compile this report.

Mr. Speaker,

I wish to confirm that the recommendations and the resolutions of this Committee were unanimous. It is therefore my pleasant duty and privilege, on behalf of the Committee on Justice and Legal Affairs to present to you the Committee Report on Consideration of the Public Finance Management the Kitui County Empowerment Fund Amendments (Draft) Regulations 2020.

SIGNED BY _____



HON. PETER M. KILONZO (M.C.A).

CHAIRPERSON, COMMITTEE ON JUSTICE AND LEGAL AFFAIRS.

COUNTY ASSEMBLY OF KITUI.

DATE 11-02-2021

2.0. EXECUTIVE SUMMARY

Article 94(5) of the Constitution of Kenya 2010 precludes all other persons other than Parliament from making provisions having the force of law in Kenya except under authority conferred by the Constitution or delegated by the legislature through a statute.

The County Assembly may, therefore, delegate to any person or body the power to make Subsidiary legislation, which require approval of the House before having the force of the law. Subsidiary legislation made by persons or bodies other than the parliament are commonly known as Statutory Instruments.

The manner, procedure and criteria for considering Statutory Instruments is detailed in Statutory Instruments Act, NO.23 of 2013.

2.1. LEGAL FRAMEWORK AND BASIS.

Mr Speaker sir,

The Constitution of Kenya under Article 186 provides for the functions of the respective levels of the Government. Article 187 on the other hand envisages a situation where functions are transferred from one level of the government to another but observes in strict terms that despite the transfer of the Constitutional responsibility for the functions set out under schedule four part two shall remain with the level of government that is assigned that function under that said schedule.

3.0. OVERVIEW OF THE PUBLIC FINANCE MANAGEMENT, KITUI COUNTY EMPOWERMENT FUND AMENDMENTS (DRAFT) REGULATIONS 2020.

The Kitui County Empowerment Fund (Amendments) Draft Regulations seeks to establish a collaborative relationship between the two levels of the government as far as issues relating to empowerment in Kitui County are concerned.

Mr. Speaker,

The Public Finance Management Act, the Kitui County Amendments Draft Regulations 2020, were forwarded to the Clerk of Assembly, and the same were drafted in the manner and style shown below;

Clause 1.

These amended Regulations may be cited as The Public Finance Management (Kitui County Empowerment Fund) Regulations and shall come into operation on publication.

Clause 2.

In this Act, unless the context otherwise requires—

"applicant" means any person that meets the eligibility criteria for a loan;

"affirmative action groups" includes youth, women and persons with disabilities

"committee" means the Committee established under regulation 10

"county" means the County Government of Kitui;

"county Executive Committee Member" means the County Executive Committee Member responsible for Trade, Cooperatives and Investments;

"county Revenue Fund" means the revenue fund established

under Article 207 (1) of the Constitution of Kenya 2010;

"county resident" means a person who resides in the County Government of Kitui;

"fund" means Kitui County Empowerment Fund established under regulation 4 of these Regulations

"financial year" means the period of 12 months ending on thirtieth day of June in each year;

"fund Administrator" means an officer designated in writing by the County Executive Committee Member for the time being responsible for finance in accordance to section 116 of the public Finance Management Act, 2012

"Governor" means the Governor of Kitui County;

"large enterprise" means a firm, trade, service, industry or a business activity—

(a) whose annual turnover is above five million Kenya Shillings;

(b) which employs more than a hundred people; and

(c) whose operation is to provide goods and services for profit.

"loanee" means an applicant whose loan request has been approved and granted under this Act;

"micro-enterprise" means a firm, trade, service, industry, or a business activity—

(a) whose annual turnover does not exceed five hundred thousand shillings;

(b) which employs less than ten people; and

(c) whose total assets and financial investment shall be as determined from time to time pursuant to the provisions of the Micro and Small Enterprise Act 2012, and includes:-

(i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;

(i) the service sector and farming enterprises where investment in equipment or registered capital of the enterprise does not exceed five million shillings;

"prescribed" means prescribed by the County Executive Committee Member;

"small enterprise" means—

(a) a firm, trade, service, industry or a business activity whose annual turnover ranges between five hundred thousand shillings and five million shillings;
(b) which employs between ten and fifty people; and
(c) whose total assets and financial investments shall be as determined pursuant to the provision of the Micro and Small Enterprise Act, 2012, and includes—

(i) the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and

(ii) service and farming enterprises, where the investment in equipment as well as the registered capital of the enterprise is between five million and twenty million shillings;

"table banking" means group based financial transactions usually governed by rules set out by the group and where such transactions, including deposits, contributions, payments and loans issuance are done during the meeting of the group with all members present;

"Unit" means the Kitui County Empowerment Fund Unit established under Section 16;

"youth" means a person who has attained the age of eighteen years but is not above thirty-five years of age.

Clause 3.

(1) The object and purpose of the Fund shall be to empower youth, women, people with disability and other residents of Kitui County to participate in social and economic development within the County and complement county government programmes on affirmative action measures.

(2) Without prejudice to the generality of paragraph (1), the object of the Fund shall be to —

(a) enhance access to capital for enterprise development through establishment of a sustainable revolving Fund;

(b) support value addition initiatives in the county;

(c) support affirmative action groups through a revolving Fund and in particular, out of school youth, women and people with disability for furtherance of economic empowerment initiatives within the county such as but not limited to table banking, savings and credit cooperative organizations, co-operatives, self-help groups and Accumulated Saving's and Credit Association's (ASCA's) by allocating at least thirty (30%) percent of the total annual allocations to the Fund for this purpose;

(d) support access to government procurement and training opportunities of marginalized groups.

(e) facilitate self-employment among county residents;

(f) attract and facilitate investments in micro, small and medium enterprises operating within the county and promote linkages with large enterprises;

(g) facilitate training, mentorship, coaching and provision of business development services to Kitui county residents.

(h) provide technical assistance in product and market development;

(i) facilitate technology acquisition, adoption and utilization for faster development of the county;

(j) facilitate marketing of products and services of micro and small enterprises owned by county residents;

(k) attract funding from other sources;

(l) create a framework for investing in and facilitating growth of the enterprise sector in the county to spur economic growth;

(m) carry out any other function necessary to give effect to any of the objects afore mentioned

Clause 4.

(1) There is hereby established a Fund to be known as County Empowerment Fund.

(2) The Fund shall consist of—

(a) monies appropriated by the County Assembly;



- (h) grants, gifts, loans and donations given to the Fund
- (c) income generated from the proceeds of the Fund; and
- (d) receipts from any other lawful sources of income.

(3) All monies received by the Fund shall be maintained in a separate bank account in the name of Kitui County Empowerment Fund and the account shall be opened and administered in accordance with provisions of the Public Finance Management Act, 2012.

(4) The balance of the Fund at the close of each financial year shall be retained in the Fund for purposes of which the Fund was established.

Clause 5.

The initial capital of the Fund shall be one hundred and eighty Million shillings appropriated by the County Assembly in the financial year 2018/19.

Clause 6.

(1) The County Executive Committee Member for the time being responsible for finance shall designate a person responsible for administering the Fund.

(2) The Fund Administrator shall be an ex-officio member of the Committee and shall have no right to vote at any meeting of the Committee.

Clause 7.

(a) Supervise and control the administration of the Fund in consultation with the Committee;

(b) In consultation and approval of the County Executive Member responsible for Finance, open and operate a bank account for the Fund.

(c) consult with the County Executive Committee Member on matters relating to administration of the Fund;

(d) prepare annual estimates and such other plans in consultation with the Committee and the County Executive Committee Member for better administration of the Fund

(e) ensure that the earnings of or accruals to the Fund are retained in the fund unless the County Executive Committee Member for the time being responsible for Finance directs otherwise;

(f) ensure that money held in the fund, including any earnings or accruals referred to in subparagraph (d) is spent only for the purposes for which the fund is established;

(g) ensure disbursement of monies out of the Fund to the loanees;

(h) cause to be kept books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund; receive and submit reports to the Committee on a quarterly basis on the status of the Fund including any challenges faced;

(i) prepare a financial statement for the Fund each financial year in accordance with the Public Finance Management Act, 2012, and in a form prescribed by the Accounting Standards Board;

(k) ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time;

(l) prepare quarterly financial statements for the Fund including its financial and non-financial performance in a form prescribed by the Accounting Standards Board;

(m) not later than three months after the end of each financial year, submit financial statements relating to the accounts under (j) above to the Auditor-General;

(n) not later than fifteen days after the end of each quarter, submit quarterly report to the County Treasury and the Controller of Budget; and

(o) furnish such additional information as the County Executive Committee Member for the time being



responsible for finance that s/he may deem fit to be proper and sufficient for the purpose of examination of the Fund

Clause 8.

In the performance of functions under these Regulations, the County Executive Committee Member, the Committee and the Unit shall be guided by the following principles—

- (a) public participation and financial inclusiveness;
- (b) protection of the interests of the marginalized, persons with disability, women and youth; and
- (c) local ownership and sustainability.

Clause 9.

(1) There shall be paid out of the Fund any expenditure approved by the Fund Administrator and incurred in connection with the administration of the Fund

(2) The administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund

Clause 10.

(1) There is established a Committee to be known as the Kitui County Empowerment Fund Committee which shall of—

(a) a non-executive chairperson, not being a public officer appointed by the Governor;

(b) the Chief Officer of the Ministry for time being responsible for matters relating to Trade, cooperatives and Investment or their representative;

(c) the Chief Officer of the Ministry for the time being responsible for matters relating to finance or their representative

(d) two persons of opposite gender with expertise in business Enterprise development or financial management, nominated by the by the County Executive Committee Member and appointed by the Governor;



(e) One person representing the Youth who shall be nominated by the National Youth Council and appointed by the Governor.

(f) One person representing women who shall be nominated by the County Executive Committee Member and appointed by the Governor.

(g) One person representing persons with disabilities who shall be nominated by the National Council for Persons with Disabilities and appointed by the Governor.

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

(3) A person shall be qualified for appointment under Regulation (d) if that person—

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

Clause 11.

The Chairperson and members of the committee shall be paid out of the funds of the Fund such allowances as are provided for by the Salaries and Remuneration Commission.

Clause 12.

(1) The office of a member of the Committee appointed under Section 8 shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) resigns in writing to the Governor;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (d) is convicted of an offence involving fraud or dishonest
- (e) is absent, without reasonable cause, from three consecutive meetings of the committee.
- (f) is removed from office by the County Executive Committee Member for—

- (i) being unable to perform the functions of his office by reason of prolonged mental or physical infirmity; or
- (ii) failing to declare his or her 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.

(2) The County Executive Committee Member may, in consultation with the Committee, appoint one or more duly qualified persons, not being members of the committee, to be alternate members and every alternate member shall be deemed for all purposes to be a member of the committee.

Clause 13.

The functions of the Committee shall be to—

- (a) formulate policy guidelines in consultation with the County Executive Committee Member, negotiate and review the terms of any contract on any matter connected with the Fund;
- (b) ensure that all projects funded under these regulations are consistent with the priorities of the County Government as specified in the relevant policy documents;
- (c) subject to the approval of the County Executive Committee Member for the time being responsible for finance, invest any of the monies of the Fund not immediately required for the purpose of disbursements, as it may determine;
- d) formulate or approve standards, guidelines and procedures for funding proposals under this Regulations;
- (e) oversee monitoring and evaluation of projects and programmes funded under these Regulations;
- (f) Sensitize the community on the objects and purpose of the Fund;
- (g) in consultation with the Fund Administrator or financial institution engaged by the County Executive Committee Member for time being responsible for finance-

- (h) receive and consider all loan applications from eligible persons;
- (i) approve or reject such applications in accordance with the provisions of these regulations; and
- (j) ensure recovery of matured loans;
- (k) monitor and provide oversight in the utilization of the Fund;
- (l) receive, review and approve statutory and management reports of the Fund;
- (m) spearhead resource mobilization initiatives for the fund; and
- (n) Perform any other function as may be conferred on it by these Regulations or any other written law.

Clause 14.

- (1) The Committee may establish such sub-committees as it may consider necessary for the better performance of its functions under these Regulations.
- (2) The Committee may co-opt into the membership of a sub-committee established under sub-regulation (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.
- (3) The Committee may, by resolution, wither or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the Committee, performance of any of the functions of the Committee under this Regulations or under any other written law

Clause 15.

- (I) The Committee Meetings shall be conducted as follows:-
 - (a) the Committee shall meet at such place as the Chairperson may determine and the meetings shall be convened by the chairperson;
 - (b) the Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting;

(c) unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member of the Committee by the Fund Administrator;

(d) the chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may determine;

(e) meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson;

(f) the members of a Committee shall elect a vice-chairperson from among themselves—

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

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

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

(h) the Committee 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.

(2) 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 Committee 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.

(3) A disclosure of interest made under sub-regulation 2 shall be recorded in the minutes of the meeting at which it is made.



(4) The quorum of the Committee shall be as follows -

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

(ii) where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under these Regulations or whereby reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

(5) A question before the Committee shall be decided by simple majority of the members present through voting and the chairperson shall, in the case of an equality of votes have a casting vote.

(6) The Committee shall—

(i) determine rules of procedure for the conduct of its business; and

(ii) keep minutes of its proceedings and decisions.

Clause 16.

There is established, within the County Ministry responsible for matters relating to Trade, Cooperatives and Investments, a unit to be known as the Kitui County Empowerment Fund Unit.

Clause 17.

The unit shall consist of—

(a) the Fund Administrator; and

(b) such staff as the Committee may consider necessary for the performance of the functions of the unit under this Regulations.

Clause 18.

(1) An applicant wishing to be considered for the grant of Administration of the fund Loan, shall make an application to the Fund Administrator in the prescribed form.

(2) An applicant who has been awarded a loan shall be issued with a Loan Identification Account Number by the Fund Administrator or financial institution or intermediary, as it may apply.

(3) An applicant who—

(a) in filling a loan application form, knowingly makes any false statement in regard to any matter affecting his request for a loan; or

(b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any.

Clause 19.

(1) The fund may give funds to a financial Intermediary for lending.

(2) The financial intermediary, if any, shall –

(a) monitor the programme beneficiaries and provide monthly reports of loan performance to the Fund Administrator;

(b) participate in the verification of applicants through, amongst other things, site visits and recommend appropriate risk mitigating strategies for vulnerable enterprises;

(c) propose suitable loan products for the programme.

(3) A financial intermediary that wishes to be appointed for on lending shall enter into an agreement with the Fund Administrator in the manner prescribed by the Committee.

(4) An application for consideration under sub-regulation 2 shall be accompanied by—

(a) a copy of the certificate of registration from the relevant regulator;

(b) a copy of valid license from the relevant regulation

(c) An official search document under the companies Act, where applicable;

(d) A valid tax compliance certificate;

- (e) a business permit from the county;
- (f) the minutes of a resolution of the Board of the financial intermediary to enter into the partnership with the Fund;
- (g) the audited accounts of the financial intermediary for the immediately preceding three years;
- (h) a clean credit bureau certificate;
- (i) any other document as may be prescribed by the Committee

Clause 20.

Subject to the conditions set out in Regulation 21 of these Regulations, the following shall be eligible for a loan—

- (a) a self-help group registered under the Department for social services;
- (b) a co-operative society;
- (c) a Savings and Credit Cooperative Society (SACCO);
- (d) special purpose groups such youth, people with disability, contractors, groups looking for financing of LPOs
- (e) community-based organizations;
- (f) accumulated Savings and Credit Associations;
- (g) a registered partnership;
- (h) a limited liability company;
- (l) a registered sole proprietor;
- (j) an individual operator.

Clause 21.

(1) Applicants shall qualify for a loan under regulation 3 (2)

(c)if—

(a) for a group—

(i) is registered with the department of social services, Co-operatives or the Registrar of Societies;

(ii) is affirmative action group made up of a minimum membership of either ten (10) youth, women or people with disability;

(iii) each group, SACCO or cooperative wishing to be considered for a loan has established a revolving fund account to

receive funds and invest or advance loans to eligible members in line with Regulation 3 (2) (c) of these Regulations.

(iv) is based within the county;

(v) Operates a table banking structure or any other group fund structure where members make weekly, monthly or quarterly contributions according to the groups' internal guidelines (evidence of contributions shall be a requirement.

(vi) has a bank account in the name of the group;

(vii) the revolving fund is to boost the objects of the Sacco, co-operative or table banking group for the benefit of the members;

(2) An application for the funds shall be accompanied by a resolution of a proper constituted meeting and the resolution shall be recorded.

(3) The Committee shall, on behalf of the County, enter into an agreement with the identified beneficiary groups on the terms of revolving the fund prior to release of funds through signing a prescribed form.

(4) The prescribed form under Regulation 20(3) above shall at minimum provide for—

(i) Payment of an interest rate of five percent;

(ii) Subject to any other written agreement, any person granted a loan by the group or SACCO or cooperative or institution shall be allowed a three months' grace period before commencement of repayment of the loan but any loan shall be payable within two years from expiry of the grace period;

(iii) Loan recipients shall deposit by cash or cheque, their monthly repayments for loan proceeds into the group or SACCO or co-operative or institutions repayment account and submit a copy of the deposit slip to the group or SACCO or Cooperative or institution which shall issue and acknowledge receipt to the loan recipient;

(iv) upon verifiable proof of loan repayment of all loan proceeds, the group or SACCO or cooperative or institution shall issue a

discharge certificate to the recipient person with respect to the loan repayment;

(v) Each recipient group or SACCO or co-operative or institution shall submit a quarterly report to the fund administrator on the financial and non-financial activities of the group or SACCO or co-operative or institution.

Clause 22.

(1) The Fund Administrator may—

(i) With the approval of CEC Finance and in consultation with the Committee, grant a loan to an applicant and in so doing, impose conditions, demand security and require repayment in installments at such times and within such periods as may be deemed fit.

Provided that and subject to the provisions of this Regulation, the Fund Administrator may upon the request by an applicant to whom a loan has been granted at any time vary—

(a) the condition subject to which the loan was made;

(b) any security given in relation to the loan; or

(c) any of the terms of repayment of the loan.

(ii) Where the Fund Administrator has resolved to make a loan to an applicant, s/he shall notify the applicant in writing, and require him within a specified period, not exceeding six months, to comply with any conditions and provide any security which may have been imposed or demanded.

(iii) where an applicant fails to comply with the requirement the Fund Administrator notified to him under sub regulation (ii) within the prescribed period, the application shall be deemed to have lapsed.

(iv) where in granting a loan to an applicant the Fund Administrator considers it prudent to request for a guarantor to guarantee any loan granted to the applicant, in case of any default by the applicant in the repayment of the loan, any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay all or any loan together with interest accrued

and outstanding owed to the Fund by the Loanee as shall be notified to the guarantor by the Fund Administrator.

(v) where a guarantor who has been notified by the Unit under sub-regulation (iv) fails or refuses to repay such loan together with any inters accrued thereon, the guarantor shall be liable to civil proceedings.

Clause 23.

(1) The Committee, financial institution or intermediary shall in consultation with the County Executive Member, set the minimum and maximum amount of loan that an applicant may access depending on the category of the applicant.

(2) In determining the minimum and maximum amount of loan that an applicant may access, the following shall be considered -

- (i) The viability of the business idea or concept;
- (ii) The creditworthiness of the applicant;
- (iii) The duration the business has been operational in case of an existing business;
- (iv) The capacity of the applicant to repay the loan;
- (v) the financial risk;
- (vi) capitalization of the existing business;
- (vii) the loan obligations that the applicant may be under from other financial institutions;
- (viii) any other matter that the Committee or financial institution or intermediary may deem appropriate.

Clause 24.

(1) An applicant for a loan under these Regulations shall provide a personal guarantee for the loan applied for.

(2) Notwithstanding sub-regulation 1—

(i) an applicant who is an individual or registered sole proprietor shall provide at least two co-guarantors or such number of co-guarantors as the committee may require;

(ii) an applicant which is a company shall provide the personal guarantee of all the directors other than the nominee; or

(iii) an applicant which is a group shall provide guarantee from each member

(3) For a self-help group to qualify for providing co-guarantee system, the group constitution must contain provisions that expressly provide for group co-guarantee.

(4) Notwithstanding sub-regulation (1) and (2), the Committee may require an individual applicant to be a member of a group with other applicants for the purposes of providing or receiving co-guarantee for an application for a loan under these Regulations.

(5) The committee shall in consultations with County Executive Member Executive Committee Member prescribe the number of people who may form a group for the purposes of sub-regulation 4.

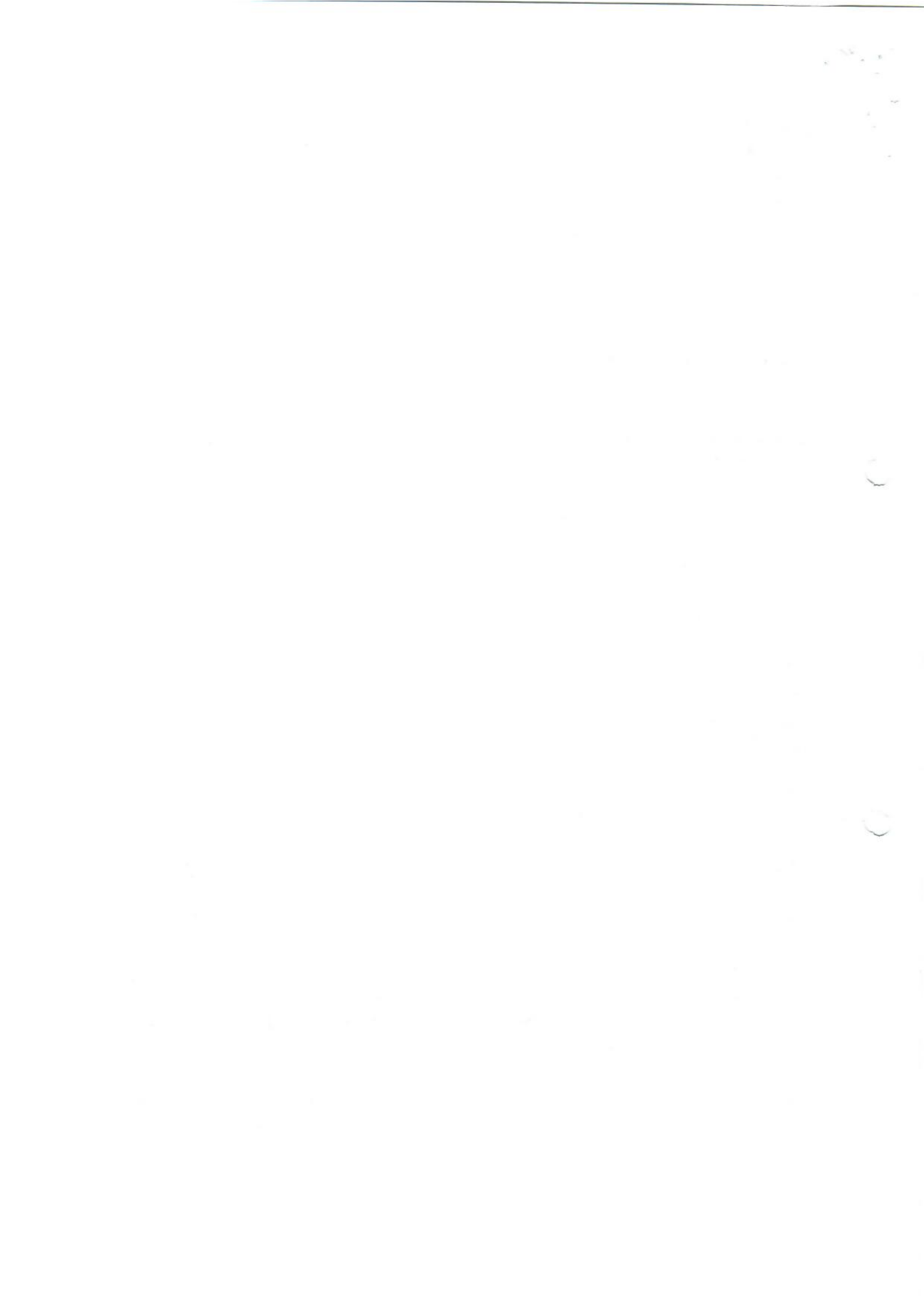
Clause 25.

(1) An applicant may be required to provide such collateral as security for a loan granted under these regulations where

(i) The loan applied for is beyond the limit set by the committee for which a loan must be secured through collateral;

(ii) The loan is of an amount, notwithstanding sub-regulation 1, that the Committee may require collateral.

Provided that an applicant for a Start-up business shall not be required to provide any collateral unless the applicant chooses to provide collateral which in the opinion of the Committee is sufficient in lieu of co-guarantors.



- (2) An asset under sub-regulation I may include—
- (i) Business stock;
 - (ii) Land;
 - (iii) Fixed assets;
 - (iv) Shares and related securities;
 - (v) Livestock approved by the Committee;
 - (vi) Savings in a bank account;
 - (vii) motor vehicle;
 - (viii) cash collateral;
 - (ix) Any other asset as the Committee may approve

(3) An applicant which is company shall in addition to providing security for the loan borrowed, provide the personal guarantee of the directors other than the nominee directors.

(4) The Committee shall value the assets provided as collateral in accordance with principles of asset valuation.

(5) Where a loan granted under these Regulations is to be utilized in purchasing an asset, the Committee shall facilitate registration of the interest of the county in the asset purchased in accordance with the respective written laws.

(6) The Committee shall facilitate the discharge of the interest of the county under sub-regulation 5 upon the final repayment of the loan;

(7) The Committee shall, in consultation with the County Executive Committee Member, establish the loan limits beyond which a person must provide collateral as security for a loan granted under these regulations.

Clause 27.

A person whose application for a loan is approved shall Maintain a bank account for purpose of disbursement of or managing the business for which the loan is applied for.

(I) A person who receives a loan under these Regulations shall utilize the loan solely for the purpose stated in the loan application form-

(2) The Committee —

- (i) Shall ensure that the loan disbursed is utilized for the purposes stated in the loan application form;
- (ii) Shall establish appropriate systems for monitoring the utilization of loans; and
- (iii) May require such information from an applicant in relation to utilization of a loan.

Clause 29.

The County Executive Committee Member for finance may, if s/he considers it appropriate to do so, appoint a financial institution or financial intermediary to administer the Fund.

Clause 30.

Before the last day of each financial year, the Fund Administrator shall send to all loanees an annual return form which every loanee shall be required to fill and submit to the Unit before the end of the month of August of the succeeding year.

Clause 31.

A loan advanced under these regulations shall be repaid in full within the prescribed period in the loan agreement at an interest rate of five percent per annum.

Clause 32.

(1) A loan repayment that shall stand unpaid for more than three months from the date it is due for repayment shall be treated as defaulted loan repayment.

(2) The Committee shall, in consultation with the Fund Administrator, take necessary measures to establish the cause for the default on loan repayment.

(3) The Committee may recall the loan under sub-regulation 1 and may—

- (i) In consultation with the borrower, reschedule or restructure the loan repayment terms where the Committee is satisfied that the borrower is in a position



to repay the loan upon the rescheduling of the loan;

(ii) Sell or dispose any collateral provided as security for the loan;

(iii) Call upon the co-guarantors to the loan to pay the respective amount co-guaranteed;

(iv) recover the loan from the beneficiary as a civil debt under the Debts (Summary Recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;

(v) take any other necessary measure as the committee may deem necessary.

(4) The Committee may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners with the approval of the person in charge of legal matters in the county government.

Clause 33.

(1) The Committee shall prepare a list of all non-performing loans after every three months and submit the list to the County Executive Committee Member.

(2) Without prejudice to Regulation 31, the County Executive Committee Member may, in consultation with the County Executive Committee Member for the time being responsible for finance, advise the Committee on necessary measures to be adopted in order to mitigate the occurrence of non-performing loans.

Clause 34.

Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided for in the Public Finance Management Act, 2012 and these Regulations, commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.



Clause 35.

(1) A person who has benefited from a loan grant under this Regulations shall keep proper books of accounts and records in relation to the funds and shall if required to do so, avail the same for scrutiny by the Fund Administrator.

(2) The beneficiary shall submit the financial accounts and any other information as may reasonably be required by the Fund Administrator within one month after the end of each financial year.

Clause 36.

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

Clause 37.

In the event of winding up of the Fund, the cash balances shall be transferred to the County Revenue Fund while other assets of the Fund shall be transferred to the Ministry for the time being responsible for Trade, Cooperatives and Investments.

Clause 38.

(1) The County Executive Committee Member may issue guidelines generally for the better carrying out the provisions of this Regulations.

(2) The guidelines issued under this Regulations shall be approved by the County Executive Committee before taking effect.



4.0. COMMITTEE OBSERVATION.

After analysing the contents of the draft Regulations, the Committee was able to make the following observations;-

- i. The Draft regulations contravenes the provisions of part II of the statutory instruments Act, particularly section 5(1) which requires the regulation making authority to make appropriate consultations with persons who are likely to be affected by the proposed instrument
- ii. The Draft Regulations contravenes the provisions of section 5A (i) of the Statutory Instruments Act which require that;

Every statutory Instrument shall be accompanied by an explanatory memorandum and; Section 5(2) of the same Act which requires that where no such consultations are undertaken as contemplated in subsection (1) the regulation making authority shall explain why no such consultations was undertaken.

- iii. The Committee further observed that the Draft regulations were submitted to the assembly before gazettment; this violates the provisions of section 22(1) of the statutory Instruments Act which states that;

Every statutory instrument shall be published in the Kenya Gazette and shall be assigned a serial number as of the year in which it is made which shall be printed on the face of the statutory instrument

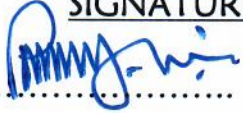



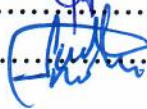
CONCLUSION

In conclusion, the committee finds that the draft regulations have violated very key provisions of the Statutory Instruments Act No. 23 of 2013 and therefore their admissibility in the Assembly and subsequent committal to the Committee is improper.

The Committee therefore recommends that the same be returned to the Regulation making authority for the purposes of redrafting and executing a valid document with a probability of being admitted in the assembly.



We the Members of Justice and Legal Affairs Committee hereby do append our signatures to authenticate and adopt the report on consideration of the Public Finance Management (The Kitui County Empowerment Fund(amendments) Draft Regulations 2020

<u>NAME</u>	<u>DESIGNATION</u>	<u>SIGNATURE</u>
1. Hon. Peter M. Kilonzo	Chairperson	
2. Hon. Eliud M. Ndinguri	Vice Chairperson
3. Hon. Geoffrey Mwalimu	Member	
4. Hon. Dr. Grace Mutua	Member
5. Hon. Stephene M. Makau	Member
6. Hon. Philip Nguli	Member	
7. Hon. Nelson K. Musyoka	Member.
8. Hon. Boniface Kilaa	Member
9. Hon. James Munuve	Member
10.Hon. Musee Mati	Member	
11. Hon. Anthony Ndooh	Member	



COUNTY ASSEMBLY OF KITUI.
MINUTES OF JUSTICE AND LEGAL AFFAIRS COMMITTEE
(PHYSICAL MEETING) HELD ON 11TH FEBRUARY 2021 IN
COMMITTEE ROOM 2 FOR TWO SESSIONS FROM 9:30-10:45
AM & FROM 11:00 -12:45 PM

MEMBERS PRESENT

1. HON. PETER MWIKYA KILONZO – CHAIRPERSON
2. HON. ELIUD NDIINGURI – VICE CHAIRPERSON
3. HON. MUSEE MATI ”
4. HON. STEPHENE MUSILI ”
5. HON. ANTHONY NDOOH ”
6. HON. PHILIP NGULI ”
7. HON. DR. GRACE MUTUA ”
8. HON. JAMES MUNUVE ”
9. NELSON K. MUSYOKA ”
10. GEOFFREY MWALIMU ”

IN ATTENDANCE

1. Mr. JAPHETH KIAMBA – Committee Clerk

MIN.NO/ JLAC/004/2021. PRAYER

The meeting started with a word of prayer said by Hon. Peter M. Kilonzo, the chairperson.

MIN.NO./JLAC/005/2021. COMMUNICATION FROM THE AG. CHAIRPERSON

The chairperson welcomed members for the days meeting, he went ahead and thanked them for showing the commitment and concern of the Committee business of the day and thereafter briefed them about the purposes of the days meeting.

MIN.NO./JLAC/003/2021. CONFIRMATION OF THE PREVIOUS MINUTES.

Minutes of the previous committee meeting held on 10th February 2021 were read and confirmed as the true record of the proceedings, they were proposed by Hon, Eliud Ndinguri and seconded by Hon. Geoffrey Mwalimu.



**MIN, NO. JLAC/004/2021.BUILDING BRIDGES INITIATIVE (BBI)
CONSITUTIONAL AMMEDMENTS BILL 2020**

The Committee acknowledged that the above mentioned constitutional amendment bill was committed to her on 9th February 2021. The committee was cognisant that it is expected to scrutinize the clauses and come up with a report of the same 120(3) of the kitui county Assembly standing Orders.

The Chairperson invited members to come up with the proposals on how to legally execute same.

Upon deliberating this agenda, the committee resolved the following;

- i. There is need for all members of the assembly to be trained on the objectives and purpose of the Bill
- ii. The Members also needs to be trained on the meaning and effects of the proposed amendments to the constitution
- iii. The Committee on Justice and legal affairs to retreat to Nairobi with effect from 18th to 22nd February 2021 for the purposes of report writing and there after table the report on 23rd February 2021.

The Committee clerk was tasked to do a request letter for report writing on the same day.

**MIN.NO/005/2021.REPORT ON CONSIDERATION OF THE
PUBLIC FINANCE MANAGEMENT (KITUI COUNTY
EMPOWERMENT) FUND DRAFT REGULATIONS 2020.**

The Committee acknowledged having considered the aforementioned draft regulations between 26th November to 30th November 2020 before assembly went for recess.

Members recalls having made an observation that the document presented before the committee did not stand a chance to be admitted as "*regulation*" and so the committee could no proceed further with the same since it was only a draft.

That being the case the committee resolved that the same draft be returned to the regulation making authority for the purposes of formalising it before resubmission to the Assembly.

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The Committee clerk was tasked to convey this decision to the office of the Clerk and the Speaker of the Assembly.

There being no the business to transact, the meeting ended at 12:45 PM

JAPHETH KIAMBA

For, THE CLERK OF ASSEMBLY

CONFIRMED BY

HON. PETER M. KILONZO  DATE

11-02-2021

CHAIRPERSON, JUSTICE AND LEGAL AFFAIRS

COUNTY ASSEMBLY OF KITUI

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SPECIAL ISSUE

Kenya Gazette Supplement No.

July, 2020

(Kitui County Legislative Supplement No.)

LEGAL NOTICE NO.

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by Section 116 of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance amends the following Regulations:—

**THE PUBLIC FINANCE MANAGEMENT (KITUI COUNTY EMPOWERMENT
FUND) REGULATIONS, 2020**

ARRANGEMENT OF REGULATIONS

1	Short title and Commencement
2	Interpretation.
3	Objectives of the Fund
4	Establishment of the Fund
5	Capital of the Fund
6	Appointment of Fund Administrator
7	Functions of the Fund Administrator
8	Guiding Principles of Operating the Fund
9	Fund Expenditure
10	Establishment of the Committee
11	Terms and Conditions of service
12	Vacation of office member
13	Functions of the Committee
14	Delegation by the Committee
15	Conduct and regulation of the business and affairs of the Committee
16	Establishment of Kitui County Empowerment Fund Unit
17	Composition of the unit
18	Administration of the Fund.
19	Lending to financial intermediaries
20	Eligibility.
21	Eligibility criteria for applicants
22	Conditions for grant of loan
23	Limits on loan financing
24	Loan guarantee
25	Collateral
26	Loan insurance

28	Utilization of the loan
29	Appointment of a financial institution
30	Annual returns
31	Loan Repayments
32	Default in loan repayments
33	Non-performing loans
34	Offence and Penalty
35	Financial reporting and audit
36	Audit of the Fund
37	Winding <i>up</i> of the Fund
38	Power to make regulations

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by Section 116 of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance makes the following Regulations:—

THE PUBLIC FINANCE MANAGEMENT (KITUI COUNTY EMPOWERMENT FUND) REGULATIONS, 2020

1. These amended Regulations may be cited as The Public Finance Management (Kitui County Empowerment Fund) Regulations and shall come into operation on publication

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

"applicant" means any person that meets the eligibility criteria for a loan;

"affirmative action groups" includes youth, women and persons with disabilities

"committee" means the Committee established under regulation 10;

"county" means the County Government of Kitui;

"county Executive Committee Member" means the County Executive Committee Member responsible for Trade, Cooperatives and Investments;

"county Revenue Fund" means the revenue fund established under Article 207 (1) of the Constitution of Kenya 2010;

"county resident" means a person who resides in the County Government of Kitui;

"fund" means Kitui County Empowerment Fund established under regulation 4 of these Regulations

"financial year" means the period of 12 months ending on thirtieth day of June in each year;

"fund Administrator" means an officer designated in writing by the County Executive Committee Member for the time being responsible for finance in accordance to section 116 of the public Finance Management Act, 2012

"Governor" means the Governor of Kitui County;

"large enterprise" means a firm, trade, service, industry or a business activity—

(a) whose annual turnover is above five million Kenya Shillings;

(b) which employs more than a hundred people; and

(c) whose operation is to provide goods and services for profit.

"loanee" means an applicant whose loan request has been approved and granted under this Act;

Short title and
Commencement

Interpretation

“micro-enterprise” means a firm, trade, service, industry, or a business activity—

- (a) whose annual turnover does not exceed five hundred thousand shillings;
- (b) which employs less than ten people; and
- (c) whose total assets and financial investment shall be as determined from time to time pursuant to the provisions of the Micro and Small Enterprise Act 2012, and includes:-
 - (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;
 - (i) the service sector and farming enterprises where investment in equipment or registered capital of the enterprise does not exceed five million shillings;

"prescribed" means prescribed by the County Executive Committee Member;

"small enterprise" means—

- (a) a firm, trade, service, industry or a business activity whose annual turnover ranges between five hundred thousand shillings and five million shillings;
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investments shall be as determined pursuant to the provision of the Micro and Small Enterprise Act, 2012, and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and
 - (ii) service and farming enterprises, where the investment in equipment as well as the registered capital of the enterprise is between five million and twenty million shillings;

"table banking" means group based financial transactions usually governed by rules set out by the group and where such transactions, including deposits, contributions, payments and loans issuance are done during the meeting of the group with all members present;

"Unit" means the Kitui County Empowerment Fund Unit established under Section 16;

"youth" means a person who has attained the age of eighteen years but is not above thirty-five years of age.

3. (1) The object and purpose of the Fund shall be to empower youth, women, people with disability and other residents of Kitui County to participate in social and economic development within the County and complement county government programmes on affirmative action measures.

(2) Without prejudice to the generality of paragraph (1), the object of the Fund shall be to —

- (a) enhance access to capital for enterprise development through establishment of a sustainable revolving Fund;
- (b) support value addition initiatives in the county;
- (c) support affirmative action groups through a revolving Fund and in particular, out of school youth, women and people with disability for furtherance of economic empowerment initiatives within the county such as but not limited to table banking, savings and credit cooperative organizations, co-operatives, self-help groups and Accumulated Saving's and Credit Association's (ASCA's) by allocating at least thirty (30%) percent of the total annual allocations to the Fund for this purpose;
- (d) support access to government procurement and training opportunities of marginalized groups.
- (e) facilitate self-employment among county residents;
- (f) attract and facilitate investments in micro, small and medium enterprises operating within the county and promote linkages with large enterprises;
- (g) facilitate training, mentorship, coaching and provision of business development services to Kitui county residents.
- (h) provide technical assistance in product and market development;
- (i) facilitate technology acquisition, adoption and utilization for faster development of the county;
- (j) facilitate marketing of products and services of micro and small enterprises owned by county residents;
- (k) attract funding from other sources;
- (l) create a framework for investing in and facilitating growth of the enterprise sector in the county to spur economic growth;
- (m) carry out any other function necessary to give effect to any of the objects afore mentioned

4 (1) There is hereby established a Fund to be known as County Empowerment Fund.

(2) The Fund shall consist of—

- (a) grants, gifts, loans and donations given to the Fund
- (b) income generated from the proceeds of the Fund; and
- (c) receipts from any other lawful sources of income

Establishment of the Fund

(3) All monies received by the Fund shall be maintained in a separate bank account in the name of Kitui County Empowerment Fund and the account shall be opened and administered in accordance with provisions of the Public Finance Management Act, 2012.

(4) The balance of the Fund at the close of each financial year shall be retained in the Fund for purposes of which the Fund was established.

5. The initial capital of the Fund shall be one hundred and eighty Million shillings appropriated by the County Assembly in the financial year 2018/19.

6. (1) The County Executive Committee Member for the time being responsible for finance shall designate a person responsible for administering the Fund.

Capital of the fund

(2) The Fund Administrator shall be an ex-officio member of the Committee and shall have no right to vote at any meeting of the Committee.

Appointment of Fund Administrator

7. (a) Supervise and control the administration of the Fund in consultation with the Committee;

functions of the Fund Administrator

(b) In consultation and approval of the County Executive Member responsible for Finance, open and operate a bank account for the Fund.

(c) consult with the County Executive Committee Member on matters relating to administration of the Fund;

(d) prepare annual estimates and such other plans in consultation with the Committee and the County Executive Committee Member for better administration of the Fund

(e) ensure that the earnings of or accruals to the Fund are retained in the fund unless the County Executive Committee Member for the time being responsible for Finance directs otherwise;

(f) ensure that money held in the fund, including any earnings or accruals referred to in subparagraph (d) is spent only for the purposes for which the fund is established;

(g) ensure disbursement of monies out of the Fund to the loanees;

(h) cause to be kept books of accounts and other books and records in relation to the Fund, of all activities and

undertakings financed from the Fund;

receive and submit reports to the Committee on a quarterly basis on the status of the Fund including any challenges faced;

- (i) prepare a financial statement for the Fund each financial year in accordance with the Public Finance Management Act, 2012, and in a form prescribed by the Accounting Standards Board;
- (j) ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time;
- (k) prepare quarterly financial statements for the Fund including its financial and non-financial performance in a form prescribed by the Accounting Standards Board;
- (l) not later than three months after the end of each financial year, submit financial statements relating to the accounts under (j) above to the Auditor-General;
- (m) not later than fifteen days after the end of each quarter, submit quarterly report to the County Treasury and the Controller of Budget; and
- (n) furnish such additional information as the County Executive Committee Member for the time being responsible for finance that s/he may deem fit to be proper and sufficient for the purpose of examination of the Fund

8. In the performance of functions under these Regulations, the County Executive Committee Member, the Committee and the Unit shall be guided by the following principles—

**Guiding Principles of
Operating the Fund**

- (a) public participation and financial inclusiveness;
- (b) protection of the interests of the marginalized, persons with disability, women and youth; and
- (c) local ownership and sustainability.

9. (1) There shall be paid out of the Fund any expenditure approved by the Fund Administrator and incurred in connection with the administration of the Fund

Fund Expenditure

(2) The administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund

10. (1) There is established a Committee to be known as the Kitui County Empowerment Fund Committee which shall of—

**Establishment of the
Committee**

- (a) a non-executive chairperson, not being a public officer appointed by the Governor;
- (b) the Chief Officer of the Ministry for time being responsible for matters relating to Trade, cooperatives and Investment or their representative;

- (c) the Chief Officer of the Ministry for the time being responsible for matters relating to finance or their representative;
 - (d) two persons of opposite gender with expertise in business enterprise development or financial management, nominated by the County Executive Committee Member and appointed by the Governor;
 - (e) One person representing the Youth who shall be nominated by the National Youth Council and appointed by the Governor.
 - (f) One person representing women who shall be nominated by the County Executive Committee Member and appointed by the Governor.
 - (g) One person representing persons with disabilities who shall be nominated by the National Council for Persons with Disabilities and appointed by the Governor.
- (2) The persons appointed under Regulation (1) (d) shall hold office for a term of three years renewable for one further term of three years.

(3) A person shall be qualified for appointment under Regulation (d) if that person—

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

Terms and
Conditions of service

11. The Chairperson and members of the Committee shall be paid out of the funds of the Fund such allowances as are provided for by the Salaries and Remuneration Commission.

Vacation of office
member

12. (1) The office of a member of the Committee appointed under Section 8 shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) resigns in writing to the Governor;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (d) is convicted of an offence involving fraud or dishonesty;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (f) is removed from office by the County Executive Committee Member for—

- (i) being unable to perform the functions of his office by reason of prolonged mental or physical infirmity; or

(ii) failing to declare his or her 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.

(2) The County Executive Committee Member may, in consultation with the Committee, appoint one or more duly qualified persons, not being members of the committee, to be alternate members and every alternate member shall be deemed for all purposes to be a member of the committee.

13. The functions of the Committee shall be to—

(a) formulate policy guidelines in consultation with the County Executive Committee Member, negotiate and review the terms of any contract on any matter connected with the Fund; **Functions of the Committee**

(b) ensure that all projects funded under these regulations are consistent with the priorities of the County Government as specified in the relevant policy documents;

(c) subject to the approval of the County Executive Committee Member for the time being responsible for finance, invest any of the monies of the Fund not immediately required for the purpose of disbursements, as it may determine;

d) formulate or approve standards, guidelines and procedures for funding proposals under this Regulations;

(e) oversee monitoring and evaluation of projects and programmes funded under these Regulations;

(f) Sensitize the community on the objects and purpose of the Fund;

(g) in consultation with the Fund Administrator or financial institution engaged by the County Executive Committee Member for time being responsible for finance-

(h) receive and consider all loan applications from eligible persons;

(i) approve or reject such applications in accordance with the provisions of these regulations; and

(j) ensure recovery of matured loans;

(k) monitor and provide oversight in the utilization of the Fund;

(l) receive, review and approve statutory and management reports of the Fund;

(m) spearhead resource mobilization initiatives for the fund; and

(n) Perform any other function as may be conferred on it by these Regulations or any other written law.

14.(1) The Committee may establish such sub-committees as it may consider necessary for the better performance of its functions

Delegation by the Committee

under these Regulations.

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

(3) The Committee may, by resolution, wither or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the Committee, performance of any of the functions of the Committee under this Regulations or under any other written law

15. (I) The Committee Meetings shall be conducted as follows:-

Conduct
regulation
business affairs of
the Committee

(a) the Committee shall meet at such place as the chairperson may

determine and the meetings shall be convened by the chairperson;

(b) the Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting;

(c) unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member of the Committee by the Fund Administrator;

(d) the chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may determine;

(e) meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson;

(f) the members of a Committee shall elect a vice- chairperson from among themselves—

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

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

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

(h) the Committee 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.

(2) 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 Committee 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.

(3) A disclosure of interest made under sub-regulation 2 shall be

Recorded in the minutes of the meeting at which it is made.

(4) The quorum of the Committee shall be as follows -

- (i) subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Committee.
- (ii) where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under these Regulations or whereby reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

(5) A question before the Committee shall be decided by simple majority of the members present through voting and the chairperson shall, in the case of an equality of votes have a casting vote.

(6) The Committee shall—

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

16. There is established, within the County Ministry responsible for matters relating to Trade, Cooperatives and Investments, a unit to be known as the Kitui County Empowerment Fund Unit.

**Establishment
of Kitui County
Empowerment
Fund Unit**

17. The unit shall consist of—

- (a) the Fund Administrator; and
- (b) such staff as the Committee may consider necessary for the performance of the functions of the unit under this Regulations

**Composition of the
Unit**

Administration of the Fund

18. (1) An applicant wishing to be considered for the grant of Loan, shall make an application to the Fund Administrator in the prescribed form.

(2) An applicant who has been awarded a loan shall be issued with a Loan Identification Account Number by the Fund Administrator or financial institution or intermediary, as it may apply.

(3) An applicant who—

- (a) in filling a loan application form, knowingly makes any false statement in regard to any matter affecting his request for a loan; or
- (b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any

19. (1) The fund may give funds to a financial Intermediary for lending

(2) The financial intermediary, if any, shall --

- a) monitor the programme beneficiaries and provide monthly reports of loan performance to the Fund Administrator;
- (b) participate in the verification of applicants through, amongst other things, site visits and recommend appropriate risk mitigating strategies for vulnerable enterprises;
- (c) propose suitable loan products for the programme.

(3) A financial intermediary that wishes to be appointed for on lending shall enter into an agreement with the Fund Administrator in the manner prescribed by the Committee.

(4) An application for consideration under sub-regulation 2 shall be accompanied by—

- (a) a copy of the certificate of registration from the relevant regulator;
- (b) a copy of valid license from the relevant regulator
- (c) An official search document under the companies Act, where applicable;
- (d) A valid tax compliance certificate;
- (e) a business permit from the county;
- (f) the minutes of a resolution of the Board of the financial intermediary to enter into the partnership with the Fund;
- (g) the audited accounts of the financial intermediary for the immediately preceding three years;
- (h) a clean credit bureau certificate;
- (i) any other document as may be prescribed by the Committee

20. Subject to the conditions set out in Regulation 21 of these Regulations, the following shall be eligible for a loan—

Eligibility

- (a) a self-help group registered under the Department for social services;
- (b) a co-operative society;

- (c) a Savings and Credit Cooperative Society (SACCO);
- (d) special purpose groups such youth, people with disability, contractors, groups looking for financing of LPOs
- (e) community-based organizations;
- (f) accumulated Savings and Credit Associations;
- (g) a registered partnership;
- (h) a limited liability company;
- (l) a registered sole proprietor;
- (j) an individual operator.

21. (1) Applicants shall qualify for a loan under regulation 3 (2) (c) if—

- (a) for a group—
 - (i) is registered with the department of social services, Co-operatives or the Registrar of Societies;
 - (ii) is affirmative action group made up of a minimum membership of either ten (10) youth, women or people with disability; Eligibility criteria for applicants
 - (iii) each group, SACCO or cooperative wishing to be considered for a loan has established a revolving fund account to receive funds and invest or advance loans to eligible members in line with Regulation 3 (2) (c) of these Regulations.
 - (iv) is based within the county;
 - (v) operates a table banking structure or any other group fund structure where members make weekly, monthly or quarterly contributions according to the groups' internal guidelines (evidence of contributions shall be a requirement);
 - (vi) has a bank account in the name of the group;
 - (vii) the revolving fund is to boost the objects of the Sacco, co-operative or table banking group for the benefit of the members;

(2) An application for the funds shall be accompanied by a resolution of a proper constituted meeting and the resolution shall be recorded.

(3) The Committee shall, on behalf of the County, enter into an agreement with the identified beneficiary groups on the terms of revolving the fund prior to release of funds through signing a prescribed form.

(4) The prescribed form under Regulation 20(3) above shall at minimum provide for—

- (i) Payment of an interest rate of five percent;
- (ii) Subject to any other written agreement, any person granted a loan by the group or SACCO or cooperative or institution shall be allowed a three months' grace period before commencement of repayment of the loan but any loan shall be payable within two years from expiry of the grace period;
- (iii) Loan recipients shall deposit by cash or cheque, their monthly repayments for loan proceeds into the group or SACCO or co-operative or institutions repayment account and submit a copy of the deposit slip to the group or SACCO or Cooperative or institution which shall issue and acknowledge receipt to the loan recipient;
- (iv) upon verifiable proof of loan repayment of all loan proceeds, the group or SACCO or cooperative or institution shall issue a discharge certificate to the recipient person with respect to the loan repayment;
- (v) Each recipient group or SACCO or co-operative or institution shall submit a quarterly report to the fund administrator on the financial and non-financial activities of the group or SACCO or co-operative or institution.

22. (1) The Fund Administrator may—

Conditions for grant
of loan

- (i) With the approval of CEC Finance and in consultation with the Committee, grant a loan to an applicant and in so doing, impose conditions, demand security and require repayment in installments at such times and within such periods as may be deemed fit.

Provided that and subject to the provisions of this Regulation, the Fund Administrator may upon the request by an applicant to whom a loan has been granted at any time vary—

- (a) the condition subject to which the loan was made;
 - (b) any security given in relation to the loan; or
 - (c) any of the terms of repayment of the loan.
- (ii) Where the Fund Administrator has resolved to make a loan to an applicant, s/he shall notify the applicant in writing, and require him within a specified period, not exceeding six months, to comply with any conditions and provide any security which may have been imposed or demanded.
 - (iii) where an applicant fails to comply with the requirement the Fund Administrator notified to him under sub regulation (ii) within the prescribed period, the application shall be deemed to have lapsed.
 - (iv) where in granting a loan to an applicant the Fund Administrator considers it prudent to request for a guarantor to guarantee any loan granted to the applicant, in case of any default by the applicant in the repayment of the loan, any guarantor who has guaranteed any such loan, shall

automatically and fully be liable to pay all or any loan together with interest accrued and outstanding owed to the Fund by the

Loanee, as shall be notified to the guarantor by the Fund Administrator.

(v) where a guarantor who has been notified by the Unit under sub-regulation

(iv) fails or refuses to repay such loan together with any inters accrued thereon, the guarantor shall be liable to civil proceedings.

23. (1) The Committee, financial institution or intermediary shall in consultation with the County Executive Member, set the minimum and maximum amount of loan that an applicant may access depending on the category of the applicant. Limits on loan financing

(2) In determining the minimum and maximum amount of loan that an applicant may access, the following shall be considered -

(i) The viability of the business idea or concept;

(ii) The creditworthiness of the applicant;

(iii) The duration the business has been operational in case of an existing business;

(iv) The capacity of the applicant to repay the loan;

(v) the financial risk;

(vi) capitalization of the existing business;

(vii) the loan obligations that the applicant may be under from other financial institutions;

(viii) any other matter that the Committee or financial institution or intermediary may deem appropriate.

24. (1) An applicant for a loan under these Regulations shall provide a personal guarantee for the loan applied for.

(2) Notwithstanding sub-regulation 1—

(i) an applicant who is an individual or registered sole proprietor shall provide at least two co-guarantors or such number of co-guarantors as the committee may require;

(ii) an applicant which is a company shall provide the personal guarantee of all the directors other than the nominee; or

(iii) an applicant which is a group shall provide guarantee from each member

(3) For a self-help group to qualify for providing co-guarantee system, the group constitution must contain provisions that expressly provide for group co-guarantee.

(4) Notwithstanding sub-regulation (1) and (2), the Committee may require an individual applicant to be a member of a group with other applicants for the purposes of providing or receiving co-guarantee for an application for a loan under these Regulations.

Loan guarantee

(5) The committee shall in consultations with County Executive Member Executive Committee Member prescribe the number of people who may form a group for the purposes of sub-regulation 4.

Collateral

25. (1) An applicant may be required to provide such collateral as security for a loan granted under these regulations where

- (i) The loan applied for is beyond the limit set by the committee for which a loan must be secured through collateral;
- (ii) The loan is of an amount, notwithstanding sub-regulation 1, that the Committee may require collateral.

Provided that an applicant for a Startup business shall not be required to provide any collateral unless the applicant chooses to provide collateral which in the opinion of the Committee is sufficient in lieu of co-guarantors.

(2) An asset under sub-regulation I may include—

- (i) Business stock;
- (ii) Land;
- (iii) Fixed assets;
- (iv) Shares and related securities;
- (v) Livestock approved by the Committee;
- (vi) Savings in a bank account;
- (vii) motor vehicle;
- (viii) cash collateral;
- (ix) Any other asset as the Committee may approve

(3) An applicant which is company shall in addition to providing security for the loan borrowed, provide the personal guarantee of the directors other than the nominee directors.

(4) The Committee shall value the assets provided as collateral in accordance with principles of asset valuation.

(5) Where a loan granted under these Regulations is to be utilized in purchasing an asset, the Committee shall facilitate registration of the Interest of the county in the asset purchased in accordance with the respective written laws.

(6) The Committee shall facilitate the discharge of the interest of the county under sub-regulation 5 upon the final repayment of the loan;

(7) The Committee shall, in consultation with the County Executive Committee Member, establish the loan limits beyond which a person must provide collateral as security for a loan granted under these regulations.

26. The Committee shall insure each loan with an insurance company approved the County Executive Member

Loan Insurance

27. A person whose application for a loan is approved shall maintain a bank account for purpose of disbursement of or managing the business for which the loan is applied for.

Bank account

(1) A person who receives a loan under these Regulations shall utilize the loan solely for the purpose stated in the loan application form—

Utilization of the loan

(2) The Committee —

- (i) Shall ensure that the loan disbursed is utilized for the purposes stated in the loan application form;
- (ii) Shall establish appropriate systems for monitoring the utilization of loans; and
- (iii) May require such information from an applicant in relation to utilization of a loan.

29. The County Executive Committee Member for finance may, if s/he considers it appropriate to do so, appoint a financial institution or financial intermediary to administer the Fund.

Appointment of a financial institution

30. Before the last day of each financial year, the Fund Administrator shall send to all loanees an annual return form which every loanee shall be required to fill and submit to the Unit before the end of the month of August of the succeeding year.

Annual Returns

31. A loan advanced under these regulations shall be repaid in full within the prescribed period in the loan agreement at an interest rate of five percent per annum.

32. (1) A loan repayment that shall stand unpaid for more than three months from the date it is due for repayment shall be treated as defaulted loan repayment.

Loan Repayments

(2) The Committee shall, in consultation with the Fund Administrator, take necessary measures to establish the cause for the default on loan repayment.

Default in loan repayment

(3) The Committee may recall the loan under sub-regulation 1 and may—

- (i) In consultation with the borrower, reschedule or restructure the loan repayment terms where the Committee is satisfied that the borrower is in a position to repay the loan upon the rescheduling of the loan;
- (ii) Sell or dispose any collateral provided as security for the loan;
- (iii) Call upon the co-guarantors to the loan to pay the respective amount co-guaranteed;
- (iv) recover the loan from the beneficiary as a civil debt under the Debts (Summary Recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;
- (v) take any other necessary measure as the committee may deem necessary.

(4) The Committee may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners with the approval of the person in charge of legal matters in the county government.

33. (1) The Committee shall prepare a list of all non-performing loans after every three months and submit the list to the County Executive Committee Member.

Non-performing loans

(2) Without prejudice to Regulation 31, the County Executive Committee Member may, in consultation with the County Executive Committee Member for the time being responsible for finance, advise the Committee on necessary measures to be adopted in order to mitigate the occurrence of non-performing loans.

34. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided for in the Public Finance Management Act, 2012 and these Regulations, commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Offence and Penalty

35. (1) A person who has benefited from a loan grant under this Regulations shall keep proper books of accounts and records in relation to the funds and shall if required to do so, avail the same for scrutiny by the Fund Administrator.

Financial reporting and audit

(2) The beneficiary shall submit the financial accounts and any other information as may reasonably be required by the Fund Administrator within one month after the end of each financial year.

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

Audit of the Fund

37. In the event of winding up of the Fund, the cash balances shall be transferred to the County Revenue Fund while other assets of the Fund shall be transferred to the Ministry for the time being responsible for Trade, Cooperatives and Investments.

Winding up of the Fund

38. (1) The County Executive Committee Member may issue guidelines generally for the better carrying out the provisions of this Regulations.

Power to issue Guidelines

(2) The guidelines issued under this Regulations shall be approved by the County Executive Committee before taking effect.



BEN KATUNGI

County Executive Committee Member for Finance.