



COUNTY GOVERNMENT OF KITUI
THE COUNTY ASSEMBLY
THIRD ASSEMBLY - (THIRD- SESSION)

ORDERS OF THE DAY

WEDNESDAY 28TH FEBRUARY, 2024 AT 9.00 A.M.

PRAYERS

1. Administration of Oath;
2. Communication from the Chair;
3. Messages;
4. Petitions;
5. Papers;
6. Notices of Motions;
7. Statements;

clear
Approval.
[Signature]
27/2/2024.

Hon. Speaker
you may approve
[Signature]
27/02/2024

COMMENCEMENT OF BUSINESS

8.*. MOTION ON RECONSTITUTION OF MEMBERSHIP TO THE COUNTY ASSEMBLY SELECTION COMMITTEE.

(Leader of Majority Party)

THAT, Pursuant to the provisions of Standing Order No. 152 (1), this Assembly hereby approves the reconstitution of Membership to the County Assembly Selection Committee as follows;

1. Hon. Harrison Maluki Mawia - Chairperson
2. Hon. Bonface Mukwate Katula Member
3. Hon. Godfrey Muthengi Ndagara ”
4. Hon. Mathew Ngovi Vuthi ”

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5. Hon. Daniel Kimanzi Muange ”
6. Hon. Benard Mwangangi Munyasya ”
7. Hon. Munyoki Mwinzi ”
8. Hon. Zacchaeus Ivutha Syengo ”
9. Hon. Anthony Musyoka ”
10. Hon. Jacquelyne Cate Kalenga ”
11. Hon. Alex Mutambu Nganga ”
12. Hon. Jeremiah Musee Mutua ”
13. Hon. Sylvester Kitheka Munyalo ”
14. Hon. Munira Mohamed ”
15. Hon. Kalamba Musau ”
16. Hon. David Masaku Munyau ”
17. Hon. Malinga Munyao ”
18. Hon. Deborah Mutuku ”
19. Hon. Judith Wanza ”
20. Hon. Joseph Musyoka Mbite ”
21. Hon. Peter Mwanza ”

(Hon. Harrison Maluki Mawia - **M.C.A.**)

9.*. THE KITUI COUNTY RIVER BASINS SAND UTILIZATION AND CONSERVATION BILL, 2023. (C/ ASSEMBLY BILL NO. 6, 2023)-
SECOND READING

(Chairperson, Committee on Environment, Energy and Minerals Investments Development)

THAT, pursuant to the provisions of Standing Order No. 121 (1), the Kitui County River Basins Sand Utilization and Conservation Bill, 2023. (County Assembly Bill No. 6, 2023) be **now** read a **Second Time**.

(Hon. Daniel Kimanzi Muange - M.C.A.)

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10.*. COMMITTEE OF THE WHOLE COUNTY ASSEMBLY

The Kitui County River Basins Sand Utilization and Conservation Bill, 2023. (C/ Assembly Bill No. 6, 2023)

(Chairperson, Committee on Environment, Energy and Minerals Investments Development)

(To execute the Business as contained in the NOTICE annexed)

Hon. Chairperson, I wish to move

THAT, The Committee do report its consideration of the Kitui County River Basins Sand Utilization and Conservation Bill, 2023. (C/Assembly Bill No. 6, 2023) and its approval thereof **with/ without** amendments.

(Hon. Daniel Kimanzi Muange - M.C.A.)

ASSEMBLY RESUMES

11.*. REPORT OF THE COMMITTEE OF THE WHOLE COUNTY ASSEMBLY

(Chairperson, the Committee of the Whole County Assembly)

Hon. Speaker Sir,

I wish to report,

THAT, the committee of the Whole County Assembly has considered The Kitui County River Basins Sand Utilization and Conservation Bill, 2023. (C/Assembly Bill No. 6, 2023) and its approval thereof **with/without** amendments.

(Chairperson, Committee of the Whole House)

12.*. MOTION ON APPROVAL OF THE REPORT BY THE COMMITTEE OF THE WHOLE COUNTY ASSEMBLY

(Chairperson, Committee on Environment, Energy and Minerals Investments Development)

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Hon. Speaker Sir, I wish to Move

THAT, the House do agree with the Committee in the said report

(Hon. Daniel Kimanzi Muange - **M.C.A**)

13.*.THE KITUI COUNTY RIVER BASINS SAND UTILIZATION AND CONSERVATION BILL, 2023. (C/ ASSEMBLY BILL NO. 6, 2023)-

THIRD READING

(Chairperson, Committee on Environment, Energy and Minerals Investments Development)

THAT, pursuant to the provisions of Standing Order No. 131 (2), the Kitui County River Basins Sand Utilization and Conservation Bill, 2023. (County Assembly Bill No. 6, 2023) be **now** read a **Third Time**.

(Hon. Daniel Kimanzi Muange - **M.C.A.**)

Third Reading

A Bill for

An Act of Kitui County Assembly to regulate sand utilization and conservation in the County while ensuring sustainable exploitation of sand resources, environmental conservation, equitable sharing of accruing benefits and for connected purposes.

****Denotes order of the day****

ANNEX

NOTICES

THE KITUI COUNTY RIVER BASINS SAND UTILIZATION AND CONSERVATION BILL 2023 (C/A BILL NO.6 OF 2023).

Notice is given that the Chairperson of the Committee on Environment, Energy and Minerals Investments Development intends to move for approval by the House on following clauses to the Kitui County River Basins Sand Utilization and Conservation Bill, 2023 (C/A Bill No.6 OF 2023).

CLAUSES WITHOUT AMENDMENTS

CLAUSES 3,8,9,10,11,13,14,17,19,20,21,29,30,31,35,40 and 41

THAT Clause 3,8,9,10,11,13,14,17,19,20,21,29,30,31,35,40 and 41 as printed be part of the Bill.

CLAUSES WITH AMENDMENTS

CLAUSE 2

THAT, clause 2 of the Bill be amended by—

a) Deleting in its entirety the title of the head note ‘definition of terms’ and substituting it therefor with the following new head note ‘Interpretation’.

b) Deleting in its entirety the definition of County Executive committee member and substituting it therefore with the following new definition;

‘County Executive Member’ means — County Executive Committee Member serving in the ministry in charge of Natural and Mineral

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Resources appointed by the County Governor as cited under Article 179(2)(b) of the Constitution of Kenya, 2010'

c)Deleting in its entirety the definition of 'Kitui County River Basins Sand Utilization and Conservation Committee'.

d)Deleting in its entirety the definition of 'RBBCS Committee' and substituting it therefor with the following new definition;

'Cooperative Societies Committee' means— the River Basin-Based Cooperative Society Committee

e) Inserting a new definition;

'River Basin' means - the five river basins within the county consisting of Nziitu-Katse River Basin; comprising rivers; Nziitu, Konyu, Katse and all other rivers and streams draining in the same direction, Enziu River Basin; comprising rivers; Enziu, Mwanja, Mui and all other rivers and streams draining in the same direction, Tyaa River Basin; comprising rivers; Tyaa, Kamuwongo, Nguutani and all other rivers and streams draining in the same direction, Thua River Basin; comprising rivers; Thua, Ikoo, Ngunga and all other rivers and streams draining in the same direction, Tiva River Basin; comprising rivers; Tiva, Nzeeu, Mwitasyano and all other rivers and streams draining in the same direction

f) Arranging the definitions in their proper alphabetical order.

CLAUSE 4

THAT, Clause 4 be amended by deleting all the words in the Clause and Substituting thereof with the following words;

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4. (1) There is established a Committee to be known as the Kitui County River Basins Sand Utilization and Conservation Committee which shall be under a Directorate in the Ministry responsible for Natural and Mineral Resources.

(2) The Committee shall report directly to the County Executive Member through the Directorate.

CLAUSE 5

THAT, clause 5 of the Bill be amended as follows;

a) In sub-clause (1)(d) by deleting the words 'of the special interest groups' appearing between the words 'representative' and 'within' and substituting therefor with the words 'nominated by an association representing Persons Living with Disability'.

b) By inserting a new sub-clause 2 immediately after paragraph 5 (1)(f) as follows;

'A person shall be eligible for appointment as the Non-Executive Chairperson of the Committee if that person;

i. Possesses a university degree in a relevant field from a university recognized in Kenya;

ii. Has knowledge and experience of at least 10 years in a relevant field;

iii. Meets the requirements of Chapter 6 of the Constitution.

c) By inserting a new sub-clause 7 as follows;

(6)(a) 'A vacancy in the positions under sub-clause (1) (a) (d) and (e) may arise where a member;

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- i. Is adjudged bankrupt;
- ii. Resigns in writing to the appointing authority;
- iii. Is convicted of a crime and sentenced to imprisonment
- iv. Is unable to perform the functions of the office by reason of infirmity or prolonged illness;
- v. Is of unsound mind;
- vi. Dies;
- vii. Is absent from at least 5 consecutive meetings without any justifiable reason or without prior permission from the appointing authority.

d)By renumbering the sub-clauses to conform to the legislative drafting guidelines.

CLAUSE 6

THAT, clause 6 be amended as follows;

- a) In paragraph (c) of sub-clause (1) by deleting the word 'coordinate' appearing at the beginning of the sentence and substituting it therefor with the word 'monitor'.
- b) In paragraph (2)(b) by deleting the words 'the committee shall' appearing at the beginning of the sentence.
- c)In paragraph (2) (c) by inserting the word 'intending' between the words 'premises' and 'to'.
- d)In paragraph (2) (i) by deleting the word 'arbitration' and substituting it therefor with the word 'resolution'

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e) In paragraph (2) (m) by deleting the words ‘ the River Basin Based Cooperative Societies Guidelines’ appearing immediately after the word ‘in’ and substituting it therefor with the words ‘ their by-laws’.

f) By inserting the following new sub-clause immediately after sub clause 6(4) as follows;

‘The reports under clause 6(2)(n) shall be submitted to the County Assembly within fourteen (14) days upon submission to the County Executive Member’

g) By renumbering the sub-clauses to conform with the legislative drafting guidelines.

CLAUSE 7

THAT, clause 7 be amended by deleting all the words in the Clause and replacing thereof with the following new clause;

7. (1) In consultation with the relevant lead agencies, the Committee shall;

- a) Promote the sustainable use of sand utilization resource in the County River Basins;
- b) Ensure rehabilitation of degraded river eco-systems through construction of sand dams and gabions, tree growing, cover grass, among other interventions;

CLAUSE 12

THAT, clause 12 be amended in sub-clause (1) by deleting the words in entirety and substituting it thereof with the following words;

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‘There is established a Co-operative Society for each of the 5 River Basins to be known as the River Basin Based Co-operative Society, which shall be constituted, registered and regulated in accordance with the Co-operatives Societies Act as read together with Part 2 (7)(e) of the Fourth Schedule of the Constitution’.

CLAUSE 15

THAT, clause 15 be amended as follows;

a) by inserting a new sub clause (2) immediately after Sub- Clause (15)(1);

‘A person shall qualify to be a member of the site-based community sand groups if;

- i. They have been resident of the respective catchment area for at least 6 years;
- ii. They are above 18 years of age;
- iii. They are not members of any other site-based community sand group.

b)By amending sub clause 5 by deleting the words ‘Social Protection Regulation’ appearing after the word “Act”.

c) By renumbering the sub-clauses to conform to the legislative drafting guidelines.

CLAUSE 16

THAT, clause 16 be amended as follows;

a) By deleting the head note in its entirety and substituting it therefor with the following new head note;

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‘Establishment of the Interim River Basin Based Caretaker Committee’

b) In sub-clause (1) by deleting the words ‘precursor to’ appearing in the second sentence and substituting therefor with the words ‘in force prior to the formation of’.

c) In sub-clause (2) by deleting the first and Second line and substituting it therefor with;

‘(2) The criteria for nomination of Interim River Basin Based Caretaker Committee Members shall be as follows-‘

d) In paragraph (2) (a) by inserting the word ‘committee’ between the words ‘caretaker’ and ‘members’.

e) In paragraph (3)(c) by inserting the word ‘societies’ between the words ‘cooperatives’ and ‘with’.

f) In paragraph (3) (e) by deleting it in its entirety and substituting it therefor with the following new sub-clause;

‘Facilitate election of office bearers of the Site-Based Community Sand Groups, who shall comprise of;

i. Chairperson;

ii. Vice chairperson;

iii. Secretary;

iv. Vice-secretary;

v. Treasurer;

vi. Trustee/ Patron; and

viii. Three committee members elected by the group members observing the two-third gender rule’.

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g) In paragraph (g) of sub-clause 3 by deleting the words “section (iv)” and substituting them with the words “sub-section (3)(d)” appearing in the second line of the paragraph.

h) by inserting a new sub-clause (4) immediately after Sub-Clause (3)(g) as follows;

‘The interim River Basin Based Caretaker Committee shall be in office for a period of not more than six months or until formation of the Co-operative Society, whichever comes first.

i) By renumbering the sub-clauses to conform to the legislative drafting guidelines

CLAUSE 18

THAT, clause 18 be amended;

a) In paragraph (b) of sub-clause (1) by deleting it in its entirety and substituting it therefor with the following new paragraph;

‘Require any person found in possession of sand suspected to have been harvested from any river basin within the County to give an account of the manner in which the sand was obtained, and, where the account given is not satisfactory, arrest and take such person before a Court of Law’.

b) In paragraph (e) by deleting it in its entirety.

c) In paragraph (f) by inserting the words ‘and detain them in any of the authorized premises within the county’ immediately after the word ‘basin’

d) In paragraph (g) by deleting it in its entirety and substituting it with a new sub-section (2) as follows;

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‘(2) The provisions in sub-section (1) above shall comply with the provisions of Article 24 of the Constitution which provides that any limitation of a fundamental freedom or right must be explained as to its extent and be justified

CLAUSE 22

THAT, Clause 22 be amended as follows;

a) In paragraph (a) by inserting the words ‘within Kitui County’ between the words ‘sand’ and ‘between’.

b) By deleting paragraph (b) in its entirety and substituting it therefor with the following new paragraph;

‘Transport sand within Kitui County between the hours of 8 p.m. to 6 a.m.’

c) In sub-clause (3) by deleting all the words appearing immediately after the word ‘fine’ and substituting therefor with the words ‘not exceeding one million Kenya Shillings or to an imprisonment term not exceeding one year or both’.

CLAUSE 23

THAT, clause 23 be amended in sub-clause (4) by deleting all the words appearing immediately after the word ‘contravene’ and substituting it therefor with the words ‘sub section 3 above commits an offense and is liable upon conviction to a fine not exceeding one million Kenya shillings or to an imprisonment term not exceeding one year or to both’.

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CLAUSE 24

THAT, clause 24 be amended in sub clause (d) by deleting all the words appearing immediately after the word 'fine' and substituting it therefor with the words 'not exceeding two million Kenya shillings or to an imprisonment term not exceeding two years or to both'.

CLAUSE 25

THAT, clause 25 be amended in sub-clause 5 by deleting all the words appearing immediately after the word 'fine' and substituting it therefor with the words 'not exceeding two million Kenya shillings or to an imprisonment term not exceeding two years or to both'.

CLAUSE 26

THAT, Clause 26 be amended by deleting the head note 'delegation of powers' in its entirety and substituting it therefor with the following new headnote;

'Form of Application'

CLAUSE 27

THAT, Clause 27 be amended in sub section 1 by deleting the words 'made under section 21 and 22' appearing between the words 'application' and 'recommend' and substituting therefor with the words 'for license under this Act and'

CLAUSE 28

THAT, Clause 28 be amended by deleting the head note in its entirety and substituting it therefor with the following new head note;

'Issuance of Licenses'

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CLAUSE 32

THAT, clause 32 be amended in sub-clause 3 by deleting all the words appearing immediately after the word 'conviction' and substituting it therefor with the words 'to a fine not exceeding two million Kenya shillings or to an imprisonment term not exceeding two years or to both'.

CLAUSE 33

THAT, Clause 33 be amended in paragraph (c) of sub-clause (2) by deleting the words 'in the regulations'.

CLAUSE 34

THAT, Clause 34 be amended;

a) By deleting the head note 'Appeals of License' in its entirety and substituting it therefor with the following new head note;

'Right of Appeal'

b) in sub-clause (3) by deleting it in its entirety and substituting it therefor with the following new sub clause;

'(3) The County Executive Member shall review each application for appeal and make a decision within twenty-one days after receiving the request for the review'.

c) By inserting a new sub clause (4) as follows;

'A person aggrieved by the decision of the County Executive Member on the appeal in sub-section (3) above, may seek judicial review by the high court within 14 days from the date of the decision on the appeal,

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failure to which the decision of the County Executive Member shall be final and binding on both parties. ’

CLAUSE 36

THAT, Clause 36 be amended;

a) in sub-clause (2) by deleting it in its entirety and substituting it therefor with the following new sub-clauses;

(2) ‘The Cooperative societies shall aggregate sand and co-ordinate selling for Local Commercial Use and Non-Local Commercial Use.

(3) The Cooperative societies shall allocate the net income realized from the sale of sand as follows;

a) 50% of the net income for conservation activities;

b) 30% of the net income as dividends to its members; and

c) 20% of the net income for Corporate Social Responsibility activities.

b) By renumbering the sub-clauses to conform to the legislative drafting guidelines.

CLAUSE 37

THAT, Clause 37 be amended;

a) In sub-clause (1) by deleting the words ‘for purposes of section 28’ appearing at the beginning of the sentence before the words ‘the County’.

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b) In sub-clause (3) by deleting the words 'a trader' appearing at the beginning of the sentence before the word 'transporting' and substituting it therefor with the words 'any person'.

c) In sub-clause (4) by deleting it in its entirety and substituting it with the following new sub-clause;

'(4) Any person who contravenes this section commits an offence and shall be accorded 12 hours to produce the sand transportation documents failure to which they shall;

(a) Surrender the vessel and materials therein used in such activity to the authorized officers;

(b) if found guilty of the offence under this section;

(i) be liable to a fine not exceeding one million Kenya Shillings or to an imprisonment term not exceeding two years or to both for the owner of the vessel

(ii) be liable to a fine not exceeding fifty thousand Kenya Shillings or to an imprisonment term not exceeding two months or to both, for the person handling the seized vessel.

CLAUSE 38

THAT, Clause 38 be amended;

a) In sub section (1) by deleting the word 'all' appearing between the words 'at' and 'reasonable' and substituting it therefor with the word 'any'.

b) in sub-clause (2) by deleting all the words appearing immediately after the word 'conviction' and substituting it therefor with the words 'to a fine not exceeding five hundred thousand Kenya

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- c) shillings or to an imprisonment term not exceeding one year or to both’.

CLAUSE 39

THAT, Clause 39 be amended by deleting it in its entirety and substituting it therefore with the following new clause’

“Indemnity from personal liability”

‘39 A person shall not be personally held liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of their duties under this Act’.

CLAUSE 42

THAT, Clause 42 be amended;

- a) by deleting the head note “irregularities” in its entirety and substituting it therefor with the following new head note;

“General Penalty”

- b) by deleting all the words appearing immediately after the word ‘conviction’ and substituting it therefor with the words ‘to a fine not exceeding five hundred thousand Kenya shillings or to an imprisonment term not exceeding six months or to both’.

CLAUSE 43

THAT, Clause 43 be amended in sub-clause (1) by deleting the word ‘committee” appearing in the first line and substituting it therefor with the words’ County Executive Member’.

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NEW CLAUSES

That the Bill be amended by inserting the following new Clause immediately after Clause 14

CLAUSE 15

15. (1) There is established an Ad-hoc Committee on Environment Protection, Conservation and Rehabilitation, for each river basin, set up and appointed by the Cooperative Societies Committees from the general membership of the River Basin Based Cooperative Societies.

(2) The functions of this committee shall be to;

- (a) Develop Site Based Environmental protection, conservation, and rehabilitation work plans.
- (b) Identify degraded riparian sites.
- (c) Identify measures for conservation and individuals/groups responsible for implementing the conservation measures with the group management to identify resources to facilitate rehabilitation.
- (d) Liaise with the group management to identify resources to facilitate rehabilitation.
- (e) Identify sites needing closure/opening to harvesting.
- (f) Implement plans/ work assigned in conjunction with the Basin Based Cooperatives.
- (g) Coordinate rehabilitation of degraded sites in conjunction with the management.
- (h) Generate an annual environmental management report to be shared at the Cooperatives Societies Annual General Meeting and with the Kitui County River Basins Sand Utilization and Conservation Committee.

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LONG TITLE

THAT, the long title of the Bill as printed be the Title to the Bill.

CLAUSE 1 – SHORT TITLE AND COMMENCEMENT

THAT, Clause 1 of the Bill as printed be part of the Bill.