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***KENYA GAZETTE SUPPLEMENT***

**MURANG'A COUNTY BILLS, 2018**

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**THE MURANG'A COUNTY WATER AND SANITATION SERVICES BILL, 2018****A Bill for**

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

**ENACTED** by the County Assembly of Murang'a, as follows—

**PART I—PRELIMINARY****Short title**

1. This Act may be cited as the Murang'a County Water and Sanitation Services Act, 2018.

**Interpretation**

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

“board” means the Murang'a county public service Board;

“chief officer” means the County Chief Officer for time being responsible for Water, Environment and Natural Resources;

“committee” means the Murang'a County water and sanitation services committee established under section 7;

“county” means Murang'a County;

“county government” means the County Government of Murang'a;

“companies” means Water and Sewerage Companies incorporated for and on behalf of the County Government under the Companies Act, 2015;

“corporation” means the Murang'a County Water and Sewerage Corporation established under section 10;

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

“county executive committee” means the Murang'a County Executive Committee;

“director” means the Directorate of water and sanitation services established under section 9;

“director” means the director of water and sanitation services appointed under section 9;



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

“inspector” means a county public officer responsible for the performance of inspectorate functions contemplated under this Act;

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

“public participation” means the process by which the County engages with the public in the collection of information; and

“water service provider” means any person including a company engaging in distribution or supply of water in the County under a permit issued under this Act.

### **Object of the Act**

3. (1). The object of this Act is to provide for a legal framework for the implementation of Article 43(1)(b) & (d) of the Constitution, Sections 10 & 11 of part 2 of the Fourth Schedule to the Constitution, Section 6(5) of the County Governments Act and further to provide and for an institutional framework for effective and efficient management of water and sewerage services within the County.

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

- (a) provide for the administration and commercial interest of the service providers;
- (b) give effect to the Constitution and national law regarding the provision of water and sewerage services by the County;
- (c) establish and maintain a financially sustainable mechanism for delivery of water and sewerage services;
- (d) ensure the provision and delivery of portable water to consumers;
- (e) enhance and expand the provision of water and sewerage services;
- (f) secure and sustain progressive realization of the human right to water;
- (g) scale-up and maintain investments for the development of water and sewerage services;
- (h) develop and expand water sources available for water service provision in the County;



- (i) secure and increase availability of bulk water for service provision within the County;
- (j) provide an equitable financing mechanism for development, expansion and sustenance of pro-poor water and sewerage services;
- (k) secure public participation in decision making regarding the provision of water and sewerage services, including consumer rights mechanisms; and
- (l) provide incentives for private sector contribution in service provision, and in investments for infrastructure development.

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

#### **Guiding Principles**

4. The guiding principles for the administration of this Act, shall be—

- (a) the principles and values set out under Articles 10 and 232 of Constitution; and
- (b) the right to clean and safe water in adequate quantities as set out under Article 43(1)(d) of the Constitution.

### **PART II—MANAGEMENT AND CONTROL OF WATER RESOURCES**

#### **Management of water resources**

5. (1) The County government shall be responsible for the control, coordination and management of water resources and sanitation services within the County.

(2) Pursuant to Section 30(2)(a) of the County Governments Act, the Governor shall have the overall responsibility and authority over management of water resources, delivery of water and sanitation services within the County, to offer guidance and make necessary appointments to the Corporation and its entities.

(3) The Governor shall ensure adequate funding for the Corporation in order to realize its mandate to have full connectivity to water and sanitation services to all residents of the County.



### **Water policy and cross-sectoral co-ordination plans**

6. (1) The Executive Committee Member shall be responsible for the—

- (a) formulation and publication of a county water and sanitation policy;
- (b) co-ordination of water institutions in the county;
- (c) formulation of cross-sectoral co-ordination plans with County and National government departments and institutions to avoid and resolve conflicting mandates;
- (d) preparation of an annual water sector report on the provision of water services and sanitation;
- (e) establishment of a county water database and information system;
- (f) formulation of a comprehensive inter-sectoral program on sewerage and sludge treatment for decentralized sanitation facilities;
- (g) co-ordination, monitoring and evaluation of water and sewerage services in the County;
- (h) alignment of the water and sewerage sector with social-economic development goals of the County; and
- (i) preparation of an annual report and other reports from time to time as may be necessary, to be submitted to the County Assembly, on the state of, and needs for water and sewerage services delivery, development and investments in the County.

(2) The County water policy referred to under paragraph (1)(a), shall include details of the county government's strategies and plans for the mobilization, enhancement and deployment of financial, administrative and technical resources for the management and provision of water supply and sanitation services.

### **PART III—ADMINISTRATION OF WATER AND SANITATION SERVICES**

#### **Water and sanitation services Committee**

7. (1) There is established the Murang'a County water and Sanitation Services Committee consisting of the following persons appointed by the Executive Committee Member—

- (a) the Chief Officer, who shall be the chairperson;



- (b) the Director, who shall be the Secretary;
- (c) water officers in-charge of water and sanitation services in each sub-county; and
- (d) two other members, not being officers of the County Public Service, one of whom shall be a youth.

(2) The Committee shall be responsible to the Executive Committee Member and shall regularly keep the Executive Committee Member updated on the status of Water and Sanitation Services in the County.

### **Functions of the Committee**

8. The Committee shall in consultation with the Executive Committee Member be responsible for the—

- (a) regulation and the development of waterworks in the County including—
  - (i) storm water harvesting systems;
  - (ii) drainage systems;
  - (iii) water supply systems; and
  - (iv) sewage systems.
- (b) development of a performance management plan for water and sanitation services in line with the County integrated development plan;
- (c) offering of guidance on water and sewerage services planning in County Planning framework including—
  - (i) the County integrated development plan;
  - (ii) the County water and sewerage sectoral plan;
  - (iii) the County annual plan;
  - (iv) the County fiscal strategy paper;
- (d) co-ordination of public private partnerships for waterworks development in the County;
- (e) co-ordination of water and sanitation institutional stakeholders in the County;
- (f) regulation and co-ordination of water user associations in the County;



- (g) development of priority projects list for the County water and sewerage sector every financial year; and
- (h) carry out any other function or duty as may be assigned by the Executive Committee Member or other County legislation.

### **Directorate of water and sanitation services**

9. (1) There is established the County Directorate of water and sanitation services.

(2) The Directorate shall be headed by a Director competitively recruited and appointed by the County Public Service Board, in accordance with the relevant guidelines and regulations.

(3) A person is qualified for appointment as a Director if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in any of the following fields or specializations, from a university recognized in Kenya—
  - (i) engineering;
  - (ii) public administration;
  - (iii) law;
  - (iv) business administration;
  - (v) management;
  - (vi) economics; or
  - (vii) any other relevant field;
- (c) has had at least ten years' experience at senior management level in a relevant field; and
- (d) meets the requirements of Chapter 6 of the Constitution.

(4) The Director shall in consultation with the Committee, be responsible for the—

- (a) co-ordination, linkages and oversight over water and sewerage services by public and private entities and agencies;
- (b) resource mobilization and financing of the development of water and sewerage services master plan and investment;
- (c) collection and dissemination to the public, from time to time, of information on water and sewerage services development, including challenges and opportunities for improvement;



- (d) monitoring, evaluation and assessment of the water and sewerage services sector performance;
- (e) development of county infrastructure for harvesting and storage of bulk water for service provision to consumers;
- (f) identification and implementation of strategies and measures for the uptake of low-cost water efficiency technologies, including water harvesting; and
- (g) facilitation of formation of water consumer action groups to facilitate engagement with consumers on service provision.

(5) The Chief Officer shall, in consultation with the Board, determine the staff establishments for the Directorate to enable it effectively perform its functions under this Act.

#### **PART IV—ESTABLISHMENT OF WATER AND SEWERAGE CORPORATION**

##### **Establishment of Water and Sewerage Services Corporation**

##### **No. 43 of 2016**

**10.** (1) There is established, pursuant to section 77 of the Water Act and Section 6(5)(a) of the County Governments Act, the Murang'a County Water and Sewerage Corporation as a body corporate with perpetual succession capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(2) The Corporation shall be wholly owned by the County Government of Murang'a with the sole shareholder being the Executive Committee Member for Finance in trust for the County Government.

(3) The Corporation shall be the County water and sanitation services provider and shall acquire, take over and assume such responsibilities for the provision of water and sanitation services in the County in accordance with the Constitution, the Water Act and any other written law.



(4) The Corporation may establish offices at the sub county and village level for effective delivery of its services and operations.

### **Functions of the Corporation**

11. (1) The Corporation shall be responsible for the provision of water and sewerage services, and for development and management of the infrastructure for water service provision within the County.

(2) Without prejudice to the generality of sub-section (1) the Corporation shall be responsible for the—

- (a) provision water and sewerage services within the County;
- (b) development and maintenance of the county water and sewerage service infrastructure including water works;
- (c) development and maintenance of adequate water supply systems for domestic, commercial and other purposes;
- (d) promotion and management of water re-use and recycling systems;
- (e) development and implementation of systems and mechanisms for water efficiency and management in its operations and by its consumers;
- (f) co-ordination in collaboration with the Directorate, in the implementation of policy and strategy; and
- (g) performance of such other functions as may be required under this Act or any other written law.

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

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

(5) The performance of the functions set out in this Act by the Corporation shall be subject only to the Constitution and the County Government Act. to the regulatory procedures for water service providers set out in the National law on water services enacted by Parliament.

(6) The regulatory procedures for water service providers set out under the Water Act 2016 shall apply to the Corporation only to the extent that they are consistent with this Act.



(7) The Corporation shall not require a license from anyone to execute its functions under this Act and shall only be subject to general guidance, directions and control by the County Government of Murang'a.

### **Sewerage levy and water charges**

12. (1) The Executive Committee Member may impose a sewerage services levy on all water sewerage services provided within the area of water service of a licensee by the Corporation, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

(2) A portion of the levy may, with the approval of the Executive Committee Member, be set aside by the licensee Corporation for use in the expansion of the sewerage system within the area of service of the licensee Corporation.

(3) The Corporation shall levy such water tariffs for the supply of water services as may from time to time be set pursuant to Section 120 of the County Governments Act and approved by the County Executive.

### **Monitoring and Evaluation**

13. The Executive Committee Member shall, through the Directorate, undertake monitoring and evaluation of the Corporation in the performance of its mandate.

### **Board of Directors**

14. (1). The Corporation shall be managed by a Board of Directors consisting of—

- (a) a Chairperson, appointed by the Governor;
- (b) the Chief Officer for Finance or a representative nominated in writing;
- (c) the Chief Officer for the time being responsible for Water and Sewerage Services or a representative nominated in writing;
- (d) eight other members, competitively recruited and appointed by the Executive Committee Member from any of the following fields—
  - (i) human resource management,
  - (ii) information and technology,
  - (iii) business administration,
  - (iv) customer service,
  - (v) engineering,



- (vi) institutional development
- (vii) law
- (viii) water services, and
- (ix) compliance and enforcement.

(2) In the appointment of members under paragraph (1)(d), the Executive Committee Member shall—

- (a) ensure that not more than two-thirds of the members of the Board are of the same gender; and
- (b) have regard to equitable representation of special interest groups including persons living with disabilities, youth and people from the ethnic minorities.

(3) A person is qualified for appointment as a chairperson under paragraph 1(a), if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of Chapter 6 of the Constitution; and
- (c) holds a relevant post-graduate qualifications from a university recognized in Kenya.

(4) A member of the Corporation including the Chairperson shall hold office for a term of three years, renewable once.

(5) A member of the Corporation appointed under paragraph 1(d) may be removed from office by the Executive Committee Member, pursuant to the provisions of the Constitution and any other written law, on the following grounds—

- (a) failure to attend four consecutive meetings without sufficient cause;
- (b) on conviction of a criminal offence punishable by imprisonment for a period exceeding six months; or
- (c) for breach of the provisions of the Public Officers Ethics Act, and the Leadership and Integrity Act, or any other law.

(5) The provisions of sub-section (4) may be applied by the Governor in the removal of the Chairperson and members appointed under paragraph (1)(b) and (c) from office.



**Meetings of the Corporation**

15. (1) The meetings of the Corporation shall be as prescribed in the First Schedule.

(2) The Corporation may from time to time establish Committees for the better carrying out of its functions under this Act.

**Chief Executive officer of the Corporation**

16. (1) There shall be a Chief Executive Officer of the Corporation who shall be competitively recruited and appointed on such terms as the Board of the Corporation may determine.

(2) A person is qualified for appointment as the Chief Executive Officer only if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of Chapter 6 of the Constitution;
- (c) holds a post-graduate degree from a university recognized in Kenya and professional qualifications in any of the following fields—
  - (i) engineering,
  - (ii) water management,
  - (iii) public administration,
  - (iv) law,
  - (v) business administration and management,
  - (vi) finance ; and
- (d) has at least five years relevant experience in senior management levels.

(3) The Chief Executive Officer shall be responsible for the daily administration, management and performance of the functions and duties of the Corporation.

(4) Upon commencement of this Act and pending the competitive recruitment of the Chief Executive Officer of the Corporation and during any period when the position is temporarily vacant, the Governor shall have power to appointment an interim Chief Executive Officer.



### **Removal of Chief Executive officer**

17. The Chief Executive Officer may—
- (a) at any time resign from office by notice in writing to the Chairperson of the Corporation;
  - (b) be removed from office by the Board of the Corporation on any of the following grounds—
    - (i) serious violation of the Constitution or any other written law;
    - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
    - (iii) physical or mental incapacity to perform the functions of office;
    - (iv) incompetence; or
    - (v) bankruptcy.

### **Staff of the Corporation**

18. The Corporation may in consultation with the Board recruit its own staff for the better discharge of its functions under this Act.

### **Remuneration of the members of the Board**

19. The staff, members and chairperson of the Corporation shall be paid such allowances or salaries as the Executive Committee Member may, in consultation with the Board and the Salaries and Remuneration Commission, determine.

### **Funds and assets of the Corporation**

20. (1) The funds and assets of the Corporation shall consist of—
- (a) any monies or property which may in any manner accrue or vest in the Corporation in the course of the exercise of its functions under this Act;
  - (b) monies that may become payable to the Corporation by way of fees in respect of services rendered by or through the Corporation; and
  - (c) donations or grants to the Corporation.
  - (d) the assets of the entities listed under the second schedule devolved to the County Government and transferred to the County Water Service Providers under section 153 of the Water



Act 2016, including cash held in the bank by those entities and debts owed to them as at the commencement date of this Act.

- (2) The funds of the Corporation shall be for purposes of—
  - (a) financing its activities;
  - (b) development of water infrastructure; and
  - (c) payment of compensation and liability arising from duties performed under this Act.
- (3) The balance of revenues collected by the Corporation, after defraying the operational costs, shall be applied as follows—
  - (a) fifty percent shall be paid into the County Revenue Fund; and
  - (b) fifty percent shall be paid into a reserve account maintained by the Corporation for purposes of the maintenance of water supply assets.

#### **Annual estimates of the Corporation**

21. (1) At least five months before the commencement of each financial year, the Chief Executive Officer shall cause to prepare estimates of the revenue and expenditure of the Corporation for that financial year.
- (2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of the Corporation, in accordance with its functions and powers under this Act, for the financial year concerned.
- (3) The Chief Executive Officer shall present the estimates to the Corporation for consideration and approval.
- (4) The approved estimates shall be submitted to the Executive Committee Member for tabling before the County Assembly.
- (5) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under this section.

#### **Accounts and Audit**

22. (1) The Corporation shall cause to be kept proper books of account of its income, expenditure, assets and liabilities.
- (2) Within three months after the end of each financial year, the Corporation shall submit to the Auditor-General, a proper books of its accounts in respect of that year, together with—
  - (a) a statement of the income and expenditure of the Corporation during that year; and



(b) a statement of the assets and liabilities of the Corporation on the last day of that financial year.

(3) The annual accounts of the Corporation shall be prepared, audited and reported upon in accordance with the provisions of Article 226 of the Constitution and any other law that regulates Public Finance.

(4) The finances of the Corporation are public finances to be managed and over sighted in accordance with the Public Finance Management Act.

(5) Any proposed borrowing or financing arrangement between the Corporation and any other entity is subject to approval of the County Executive and the Assembly.

## **PART V – WATER AND SANITATION SERVICES**

### **Water supply by the Corporation**

**23.** (1) The Corporation shall maintain the existing water supplies entities listed in the second schedule as regional branches of the Corporation without a separate legal personality and may establish new water supply entities in the County to ensure that the residents have access to clean and safe water in adequate quantities.

(2) The Corporation shall ensure that each water supply entity –

(a) is appropriately staffed;

(b) has access to equipment for emergency water trucking;

(c) has adequate waterworks for continuous water and sanitation supply; and

(d) has appropriate water works for pastoral livelihoods.

(3) The establishment of a water supply under sub section (1), shall be determined by the appropriate rangeland management for the County or respective area to allow –

(a) the preservation of pastureland;

(b) the provision of water to large clusters of populations;

(c) walking distances to water points; and

(d) any other consideration relevant to the establishment of sustainable water supply in the County.

### **Private water service providers**

**24.** (1) A person may apply to the Committee in the prescribed manner to be a private water services provider.



(2) A person permitted by the Committee to be a private water service provider shall not—

- (a) provide water services to more than twenty households; or
- (b) supply more than—
  - (i) twenty-five thousand litres of water a day for domestic purposes; or
  - (ii) one hundred thousand litres of water a day for any other purpose in the County, except under the authority of a permit issued under this Act.

(3) A person who provides water services in contravention of this section commits an offence and shall on conviction be liable to a fine of shillings 100,000 or imprisonment for a term of 6 months or both.

(4) Nothing in this section prohibits the provision of water services—

- (a) by a person to his or her employees; or
- (b) on the premises of any hospital, factory, school, hotel, brewery, research station or institution and the occupants thereof, where the source of supply of the water is lawfully under control of that body or where the water is supplied to it in bulk by a permit holder.

#### **Water service provider permits**

25. (1) The Committee shall be responsible for the issuance a permit to the private water service providers.

(2) The Executive Committee Member may issue guidelines guiding the operations of a private water service provider.

(3) Without prejudice to the generalities of sub section (2), the guidelines may provide for—

- (a) the right of access to private water supply for public utility in nearby schools or health facilities;
- (b) the acceptable quality and quantity of water; and
- (c) tariff ceilings for water service provision.

#### **Water service provision agreements**

26. (1) A water service provider may enter into a written agreement with the Committee for purposes of the exercise and performance of all its powers and functions under the permit.



- (2) The agreement shall specify—
  - (a) the indemnity, by the water service provider, of any liability to the government arising from the performance or non-performance of the functions conferred by the permit;
  - (b) the powers and functions to be performed by the water service provider under the permit; and
  - (c) the maintenance, rehabilitation and development, by the water service provider, of water and sewerage infrastructure and facilities in the area of operation.

#### **License fees**

27. A water service provider shall pay such prescribed fee to the Committee as the Executive Committee member may determine.

#### **Bulk water sources**

28. (1) The Executive Committee Member shall ensure the development, availability and progressive expansion of bulk water sources required for delivery of optimal water services in the County to enable the Corporation to effectively perform its functions under this Act.

(2) The Executive Committee Member may, in undertaking the function under subsection (1), enter into agreements with other counties and the National Government, for the supply of bulk water, including through the formation of joint committees and joint authorities contemplated under Article 189(2) of the Constitution.

#### **Septic tank sludge management**

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

#### **Operation of community water projects**

30. (1). Nothing in this Act shall prevent the development and operation of community water projects for service provision, as may be approved by the Corporation upon issuance of a no-objection certificate by the Committee.

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



**Regulation of water vending kiosks**

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

**Water quality control**

**32.** (1) The Committee shall establish mechanisms for water quality control in the County, including but not limited to—

- (a) establishment of a water quality control laboratory;
- (b) liaison with National Government agencies with relevant expertise on consumer quality control; and
- (c) publishing information on water quality in the County and taking necessary steps to ensure that such information is readily available.

(2) Water service providers shall conform to the water quality standards established by the Committee.

**PART VI—WATER WORKS AND STORM WATER MANAGEMENT****Development and standards of waterworks**

**33.** (1) The Corporation in collaboration with the Committee, shall develop waterworks in the County including—

- (a) water and sanitation supply systems;
- (b) storm water management systems;
- (c) surface runoff control systems;
- (d) water harvesting and storage facilities;
- (e) water pans; and
- (f) any other waterworks in the County.

(2) The Committee may issue permits to private developers seeking to develop water works in the County.

(3) The Committee shall develop a water works priority schedule for the County every financial year detailing the waterworks that are of strategic importance.



(4) The Committee shall monitor the standards for waterworks developed in the County by any person.

### **Compulsory acquisition of land**

#### **No. 6 of 2012**

**34.** The County may pursuant to the provisions of the Land Act, compulsorily acquire land within its jurisdiction to develop water works for public purposes.

### **Permits to contractors**

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

- (a) a permit shall be obtained from the Corporation, in the format and at a fee prescribed by the Corporation;
- (b) the Corporation shall make a determination on the permit application within fourteen days of receipt of the application, and either issue the permit, or where the application is declined, communicate to the applicant with reasons explaining such a decision;
- (c) in making a decision on the application under paragraph (b), the Corporation shall make reference to maps, relevant documents, and actual inspection to verify how the proposed works affect the water and sewerage infrastructure.

(2) A person who undertakes the works referred to under sub section (1) without a permit commits an offence and is liable, upon conviction, to a fine of not exceeding one hundred thousand shillings.

(3) Where damage occurs to the infrastructure in circumstances where—

- (a) the constructor has no permit, the responsible person shall, whether or not prosecuted, be liable to a surcharge of the full cost of repairs or replacement incurred by the Corporation, which shall be recoverable by the Corporation as a civil debt; and
- (b) the constructor has obtained a permit, the Corporation shall undertake the necessary repairs to the infrastructure.



**Approval of development works and connection to water mains**

**36.** (1) Where a developer of any property in the County is undertaking plumbing, sewerage and related works for connection of the property to the water main operated by the Corporation—

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

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

**PART VII—WATER CONSERVATION****Borehole site identification and drilling**

**37.** (1) The Executive Committee Member shall in consultation with any relevant National Government agency undertake borehole site identification in the County.

(2) The Executive Committee Member shall be responsible for the monitoring of all borehole drilling activities in the County to ensure compliance with relevant permits and applicable laws.

(3) A person shall not undertake any borehole drilling activity without a permit issued by the Committee in accordance with this Act.

(4) The Executive Committee Member may publish regular borehole site identification and drilling reports and undertake necessary steps to make such reports available to the public.

(5) The borehole site identification report developed under subsection (4) shall guide borehole drilling activities in the County.

**Water pollution control**

**38.** (1) No person shall throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or be likely to cause, pollution of the water resource.



(2) A person who contravenes subsection (1) commits an offence and is liable to the general punishment under this Act and any other relevant National legislation.

(3) The Executive Committee Member, through the compliance offices appointed under this Act, may cause the prosecution of any person who commits an offence under this part or either at the County level or by National Government agencies.

### **Water catchment conservation**

39. The Committee shall identify water catchment areas in the County and undertake appropriate measures, including land use policies, to protect water catchment areas in the County.

## **PART VIII—PUBLIC PRIVATE PARTNERSHIP**

### **Public private partnership for water service provider**

#### **No. 15 of 2013**

40. (1) The Corporation may pursuant to the provisions of the Public-Private Partnership Act, enter into a public private partnership agreement for the provision of water services or the exercise and performance of any of its functions.

(2) The Corporation shall serve as the Contracting Authority when instituting a public private partnership.

### **Public private partnership for development of waterworks**

41. (1) The Executive Committee Member may enter into a public private partnership agreement with any person for the development and maintenance of waterworks in the County.

(2) The Committee shall serve as the Contracting Authority when instituting a public private partnership.

### **Public private partnership policy**

42. (1) The Executive Committee Member may develop a public private partnership policy for the County water sector.

(2) The public private partnership policy may provide for the following—

- (a) projects identified for public private partnerships;
- (b) citizen participation and community involvement in public private partnerships;
- (c) engagement of the youth and women;



- (d) reporting on public private partnerships in the County; and
- (e) any other issue that is relevant to public private participation.

## **PART IX—INSPECTION AND MONITORING**

### **Power of entry**

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

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

(2) The inspection referred to under subsection (1) above shall only be undertaken between the hours of 8.00 am and 6.00 pm.

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

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

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

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

### **Inspectorate service section**

**44.** (1) The Corporation shall establish, and maintain, with adequate resources and staff, an Inspectorate Service Section.



(2) The Inspectorate Service Section shall comprise of inspectors, who shall have powers to implement the inspection functions of the Corporation.

(3) The Executive Committee Member shall, within six months of the commencement of this Act, make regulations to provide for the structure and operations of the Inspectorate Service Section of the Corporation.

(4) Pursuant to subsection (3), the Corporation shall provide adequate resources for setting up the Inspectorate Service Section within the establishment structure of the Corporation.

## **PART X—MISCELLANEOUS PROVISIONS**

### **Offences by employees**

**45.** (1) A County public officer, commits an offence if such officer—

- (a) willfully fail to read water meters, or to provide the accurate billing data from the meters to the Corporation within stipulated time when lawfully assigned the duty to do so;
- (b) willfully fail to disconnect water services from customers in default, in accordance with the rules established by the Corporation;
- (c) collude with other persons for the purposes of enabling such persons to illegally access and utilize water services of the Corporation;
- (d) has knowledge of illegal access and utilization of the water services of the Corporation, but willfully fail to notify the Corporation of such illegal actions.

(2) An employee who commits an offence under subsection (1) shall be liable, upon conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding fifty thousand shillings, or to both.

### **Impersonation of Corporation staff**

**46.** Any person who impersonates an employee of the Corporation for purposes of misrepresenting oneself as a person performing a function on behalf of the Corporation, commits an offence and is liable, upon conviction, to imprisonment for term not exceeding one year, or to a fine not exceeding fifty thousand shillings, or to both.



**Vandalism of water and sewerage services infrastructure**

47. (1) Any person who willfully vandalizes, damages or destroys any water and sewerage services infrastructure belonging to the Corporation commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding two years, or to a fine of not exceeding one hundred thousand shillings, or both.

**Illegal connection to water services**

48. (1) Any person who illegally connects and utilizes water and sewerage services that are otherwise lawfully provided by the Corporation, commits an offence and is liable, upon conviction, to—

- (a) a term of imprisonment not exceeding two years, or to a fine not exceeding two hundred thousand shillings; and
- (b) a surcharge of the full value of the water services illegally utilized, with cumulative interest computed at commercial bank debt rates, to be paid as a lawful debt to the Corporation.

(2) In case of a second or subsequent offence being committed under subsection (1), the Court shall prescribe a special inspection and monitoring mechanism for water services supplied to the premises in question, and in such circumstances the Corporation may require and impose a special security bond to be provided before resumption of water services.

**Regulations**

49. The Executive Committee Member may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generalities of subsection (1), the Executive Committee Member may make regulations in regard to—

- (a) water pollution control;
- (b) water catchment conservation;
- (c) borehole cite identification;
- (d) water quality control;
- (e) issuance of water service provider permits;
- (f) waterworks development;
- (g) adoption of a pricing and tariff policy for water and sanitation services;
- (h) rules for conflict resolution;



- (i) fees applicable for permits;
- (j) prescribing the procedure for nominating persons for appointment under section 14(1)(d) of the Act;
- (k) establishment of Water Supplies; and
- (l) any other relevant matter as the Committee Member may deem necessary.

## **PART XI—TRANSITIONAL PROVISIONS**

### **County entities**

**50.** (1) Upon the commencement of this Act, the entities listed under the Second schedule shall be deemed to be county entities under the direct management and control of the Corporation established under section 10 of the Act.

(2) The entities listed in the second schedule shall upon commencement of this Act cease to have corporate legal personality and their Boards of Directors or management committees shall stand dissolved and the members may subject to formal re-appointment by the County Governor only continue to serve on an interim basis pending substantive appointments under this Act.

(3) The entities listed in the second schedule shall upon commencement of this Act continue in existence only as regional branches of the Corporation and under its management and control.

(4) Any interim appointments and changes made to the management and operations of the entities listed under the second schedule prior to the commencement of this Act for the purpose of enabling the County discharge its Constitutional function to provide water and sanitation services, shall be deemed as having been lawfully made or done under the enabling provisions of this Act and to have taken effect on the date of the appointment or action.

### **Transfer of assets, liabilities, rights and obligations**

**51.** (1) On the commencement of this Act, all rights, assets and liabilities of the Water and Sewerage Companies shall be deemed to the rights, assets and liabilities of Murang'a County Water and Sewerage Corporation, and any reference to the Companies in any contract or document shall, for all purposes, be deemed to be a reference to the Murang'a County Water and Sewerage Corporation established under this Act.

(2) Any act, matter or thing lawfully done by the Companies before the commencement of this Act or any contract, arrangement, agreement



made by or on behalf of the Companies which at the commencement of this Act fails to be performed shall, whether or not in writing and whether or not otherwise assignable in law by either party, have effect on and after the commencement of this Act as if made by or on behalf of the Corporation.

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

(4) The staff of the entities listed under the second schedule shall upon commencement of this Act become staff of the Corporation on the terms of employment obtaining on the date of commencement.

(5) The Executive Committees or officer in the service of the entities listed in the second schedule and responsible for the day to day management and operations of the entities shall continue in service subject to vetting and review of their terms of service by the Board of the Corporation.

#### **Exemption from personal liability**

**52.** (1) Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in a personal capacity to any action, suit, claim or demand whatsoever.

(2) Any actions or activities undertaken by the County and its employees geared towards the objects of this Act with regard to especially delivery of water and sanitation services including water supply connections and re-connections to the residents prior to the commencement of this Act, shall be deemed as having been lawfully undertaken or done under the enabling provisions of this Act and shall not expose the County or its employees to any action, suit, claim or demand whatsoever.

#### **Act to take precedence**

**53.** (1) This Act is enacted pursuant to Article 185(2) of the Constitution to facilitate effective performance by the County of its water and sanitation services function.

(2) In the event of any conflict between the provisions of this Act and any other Act, regulation, guideline or instrument, this Act shall prevail and take precedence over the inconsistent Act, regulation or instrument.



**FIRST SCHEDULE**

**(S.15)**

**Conduct of the Business and Affairs of the Corporation**

**1. Meetings of the Corporation**

(1) The meetings of the Corporation shall be convened at least six times every year by the Chairperson, but not more than eighteen times in a financial year.

(2) The Chairperson may, at any time, convene a special meeting of the Corporation and shall do so within one month of the receipt of a written request signed by at least two members.

(3) The Chairperson shall preside at all meetings of the Corporation and in the absence of the Chairperson the members present shall elect one of their number to preside, and such member shall, as concerns that meeting, have all the powers and attributes of the Chairperson under this Act.

(4) At every meeting of the Corporation the member presiding shall have a casting as well as a deliberative vote.

(5) The quorum for the meetings of the Corporation shall be two thirds of the membership,

**2. Committees of the Corporation**

(1) The Corporation may establish such number of committees, as it may deem appropriate to perform its functions and responsibilities.

(2) The Corporation shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Corporation may, where it deems appropriate, invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

**3. Disclosure of interest**

(1) A member who has an interest in any contract, or other matter present at a meeting shall at that meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

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



(3) A member of the Corporation who contravenes subparagraph (1) shall cease to be a member of the Corporation upon direction of the Executive Committee Member.

(4) The Executive Committee Member shall make arrangements for the appropriate departmental representation with regard to subsection (4).

#### **4. Common seal**

(1) The common seal of the Corporation shall be kept in such custody as the Corporation may direct and shall not be used except on the order of the Corporation.

(2) The affixing of the common seal of the Corporation shall be authenticated by the signature of the Chairperson, the Chief Executive Officer and one member nominated by the Corporation and any document not required by law to be made under seal and all decisions of the Corporation may be authenticated by the signatures of the Chairperson, the Chief Executive Officer and that member nominated by the Corporation.

(3) The common seal of the Corporation when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Corporation under this section shall be presumed to have been duly given.

#### **5. Contract or instrument on behalf of the Corporation**

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Corporation by any person generally or specially authorized by the Corporation for that purpose.

### **SECOND SCHEDULE**

(S. 50)

#### **COUNTY ENTITIES**

1. Murang'a Water and Sanitation Co Ltd.
2. Gatanga Water and Sanitation Co Ltd.
3. Murang'a South Water and Sanitation Co Ltd.
4. Kahuti Water and Sanitation Co Ltd.
5. Gatamathi Water and Sanitation Co Ltd.
6. Fort Aqua Industries Ltd.



## **MEMORANDUM OF REASONS AND OBJECTS**

The principal purpose and objectives of this Bill is to make provision for storm water management and county water services and sanitation and for related matters.

Part I of the Bill provides for preliminary matters including the short title to the Bill and the interpretation of words and expressions used in the Bill.

Part II of the Bill provides for ownership and control of water and the management of water resources as the role of the Executive Committee Member in the formulation of a water and sanitation county policy and cross sectoral coordination plans.

Part III of the Bill provides for administration of water and sanitation services including water and sanitation services Committee appointed by the Executive Committee Member and the Directorate of Water and Sanitation Services, .

Part IV of the Bill establishes the Water and Sewerage Corporation and its Board of Directors, provides for the imposition of sewerage levy and water charges and the general management and running of the Corporation.

Part V of the Bill provides for water supply by the corporation, private water service providers, water service providers permits, water service provision agreements, licence fees, bulk water sources, septic tank management, operation of community water projects and regulation of water vending kiosks and water quality control.

Part VI of the Bill provides Bill provides for water works and storm water management and specifically provision of storm water infrastructure by the county, protection of storm water system, compulsory acquisition of land, and approval of development works and connection to water mains.

Part VII of the Bill provides Bill provides for water conversation, borehole site and identification and drilling, water pollution control and water catchment conservation.

Part VIII of the Bill provides for public private partnership agreements for the provision of water and development of waterworks and for the Executive Committee Member to develop the public private partnership pursuant to Public Private Partnership Act.

Part IX of the Bill provides inspection and monitoring of all entities that provide water and sewerage services in the County including among others the power of entry and an inspectorate section of the Corporation.



Part X of the Bill provides for the Miscellaneous Provisions including offences under the Act and the power of the Executive Committee Member to make Regulations.

The First Schedule of the Bill provides for the conduct of Business and Affairs of the Board of Corporation.

The Second Schedule of the Bill provides for County Entities.

The enactment of this Bill will not occasion significant additional expenditure of public funds which will be provided for through estimates in the county budget.

**JANE WANJIRU MUGAI,**  
*Chairperson, Water, Energy, Forestry,  
Environment and Natural Resources committee.*