

SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Murang'a County Bills No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

MURANG'A COUNTY BILLS, 2019

NAIROBI, 13th August, 2019

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THE MURANG'A COUNTY CROP AGRICULTURE BILL, 2019

A Bill for

AN ACT of the County Assembly of Murang'a to establish an efficient legal and institutional framework for development and regulation of Crop Agriculture and for connected and incidental purposes

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

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Murang'a County Crop Agriculture Act, 2019.

Interpretation

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

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

“Member of the Executive Committee” means the Member of the Executive Committee for the time being responsible matters relating to Crops Agriculture;

“crop agriculture” includes all activities relating to or connected with crop farming, husbandry, processing, trade or marketing;

“crops” means any plant that is grown to be harvested as food , as livestock fodder , fuel, or for any other economic purpose;

“Department” means the County Department responsible for Crop Agriculture;

“fertilizer” means any organic or inorganic substance containing one or more recognized plant nutrient(s) that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth;

“financial year” means the period of twelve months ending on the thirtieth June in every calendar year or such other period as may be prescribed;

“licensee” means any person who is issued by a license under the provisions of this Act or regulations;

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

“prescribed” means prescribed under this Act;

“regulations” means regulations made under this Act.

Objectives of the Act

3. (1) The overriding object of this Act is to provide a comprehensive, harmonized, efficient and effective legal and regulatory framework for development and regulation of Crop Agriculture in Murang'a County.

(2) All County Government agencies, public servants and bodies charged with development and regulation of Crop Agriculture shall at all times have due regard to, and observe, the overriding objective of this Act as set out in subsection (1).

(3) Whenever there is a conflict between this Act and any other written law, having a bearing on achievement of the overriding objective of this Act, the provisions of this Act shall prevail.

PART II—ADMINISTRATIVE PROVISIONS

Functions of the County Executive Committee Member

4. In the carrying out of this Act, the County Executive Committee Member for Agriculture shall have the following functions—

- (a) to provide strategic guidance and oversight to the County Department responsible for Crop Agriculture;
- (b) to approve standards, guidelines and procedures formulated by the County Department under this Act;
- (c) to approve the organizational structure of the County Department;
- (d) to supervise and manage the County Department's staff, activities, funds and property and be responsible for the day to day management of the programmes and policies of the County Department;
- (e) to advise the County Government on any of the matters contained in this Act, and
- (f) to perform any other function as may be conferred by this Act or any other written law.

County Department responsible for Agriculture

5. There is established for the County Government, a department responsible for Crop Agriculture.

Functions of the Department

6. Subject to this Act, the functions of the department shall be to—

- (a) develop and establish an efficient institutional framework for development and regulation of Crop Agriculture;
- (b) develop an efficient, effective, harmonized and market-friendly policies and, regulations for Crop Agriculture;
- (c) develop crop-specific regulatory frameworks in respect of such crops as the Member of the Executive may from time to time declare to be strategic to the County's economy;
- (d) review regulations, permits, licenses and other administrative or bureaucratic requirements governing crop agriculture with a view to ensuring achievement of the overriding objective of this Act;
- (e) advise County Government agencies and public officers on any matter having a bearing on regulation of Crop Agriculture or achievement of the overriding objective of this Act; and
- (f) organize, facilitate or undertake such activities or projects as may be necessary and or incidental to the foregoing.

Promotion of scheduled crops

7. The County Executive Committee Member shall—

- (a) implement general and specific policies for the development of scheduled crops;
- (b) facilitate marketing and distribution of scheduled crops through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion activities on scheduled crops;
- (c) promote the establishment of wholesale markets in identified major centres of the County;
- (d) promote the establishment of agricultural produce collection centres in viable areas to serve as buying stations of farm products, packaging houses, pick-up; points and meeting places of farmers" and growers" cooperatives;

- (e) establish linkages with various governments and private research institutions for the conduct of studies and researches designed to promote the production, marketing and processing of scheduled crops;
- (f) advise on the introduction and the use of genetically modified species of plants, insects and organisms (biodiversity) in the country;
- (g) conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
- (h) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops; and
- (i) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of scheduled crops by means of inter-trading or intra-trading among the established wholesale markets.

Identification of agricultural land

8. (1) The Member of the Executive Committee may from time to time identify agricultural land suitable for the production of each of the scheduled crops.

(2) The process of identifying agricultural land under subsection (1) shall be based on valid representations in accordance with constitutional principles of participation of the people, good governance, transparency and accountability.

(3) The Member of the Executive Committee shall publicize any report on identified agricultural land and may prescribe regulations with respect to each scheduled crop.

(4) The classification of land referred to under subsection (1) shall be reviewed at appropriate intervals to ensure consistency with the agrarian reform program and the national land use policy.

Incentives to growers

9. (1) The County Executive Committee Member shall establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.

(2) The County Executive Committee Member may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of scheduled crops—

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (f) fertilizer cost-reduction investment projects;
- (g) pest and disease control; and
- (h) post-harvest facilities and technologies including storage, processing, distribution and transport facilities.

Regulation of scheduled crops

10. (1) The County Executive Committee Member shall regulate all aspects of scheduled crops with a view to—

- (a) promoting productivity;
- (b) facilitating the provision of farm inputs;
- (c) facilitating trade and access to markets;
- (d) facilitating provision of infrastructure;
- (e) providing post-harvest services and technology;
- (f) facilitating the collection of farm products and storage;
- (g) training of farmers and provision of extension services;
- (h) providing of incentives to farmers; and
- (i) availing credit facilities.

(2) For purposes of subsection (1) the County Executive Committee Member shall have the power to issue guidelines requiring registration of any particulars in respect of different categories of scheduled crops.

(3) The Department shall maintain the necessary statistical information with respect to the scheduled crops to enable proper planning.

Freedom to register

11. (1) Every grower, for purposes of accessing economies of scale, may have the freedom to register with the co-operative society, company, association, community based organization or other legal entity to which the person delivers their produce as the Member of the Executive Committee may from time to time determine.

(2) Plantation growers in the County may register with the Department, by supplying such particulars as the Member of the Executive Committee may prescribe.

Power to make regulations on strategic crops

12. The Member of the Executive Committee shall make crop-specific regulations in respect of crops that are strategic to the County's economy.

Power to impose charges for crop development

13. The Member of the Executive Committee may impose charges to be levied on crops for purposes of development and maintenance of infrastructure in crop growing areas.

Registration of growers' associations

14. The Department shall maintain a register of all entities registering growers, in such form as it may determine, and shall enter in the register—

- (a) the full names of the scheduled crop factory;
- (b) the date of submission of annual returns of registered growers by the scheduled crop factory;
- (c) the particulars of numbers of registered growers, area planted with scheduled crop or variations of these particulars; and
- (d) any other particulars the Member of the Executive Committee may deem necessary.

Taxation of scheduled crops

15. Pursuant to the Fourth Schedule of the Constitution, the Department may impose fees for—

- (a) issuance of trade licenses to any person trading in scheduled crops within the county; and

- (b) issuance of licenses for cooperative societies dealing with scheduled crops within the County.

Manufacturing license

16. (1) A person shall not manufacture or process a scheduled crop product for sale without a license issued under this Act.

(2) An application for a license under this section shall be in writing, in the prescribed form and shall be accompanied by the prescribed fee.

Illegal manufacture, possession, etc

17. Any person who—

- (a) manufactures a scheduled crop for sale in contravention of this Act; or
- (b) buys, sells, offers for sale, transports or has possession of scheduled crop which to the person's knowledge or belief—
 - (i) has been grown, manufactured or processed otherwise than in accordance with this Act;
 - (ii) is from a non-registered grower or dealer in such crop;

commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years or both.

(2) If a person is in possession or has control of a scheduled crop for which the person is unable to account to the satisfaction of a person authorized under this Act, such scheduled crop shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.

(3) If a person is convicted of an offence under this section, the court shall order that any scheduled crop and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the County Government unless, in the case of a vehicle, vessel or other conveyance, the court sees good reason, to be recorded by it in writing, not to do so.

Issuance of licenses

18. (1) The Department shall issue licenses to applicants subject to such lawful conditions may be prescribed.

(2) Every license shall specify the premises upon which the licensed business operates.

(3) Licenses issued under this Act shall remain in force until the thirtieth of June next following the date of issue, unless earlier cancelled.

(4) There shall be payable for the issue of licenses under this Act such fees as the Member of the Executive Committee may prescribe.

(5) The Department shall, at least thirty days before granting a license under this Act, give notice of the proposed grant in the *County Gazette* or the *Kenya Gazette*.

(6) The notice referred to in subsection (5) shall—

(a) specify the name or other particulars of the person or class of persons to whom the license is to be granted;

(b) state the purpose for the proposed license and indicate the date such license is proposed to be issued to the successful applicant; and

(c) invite objections to the proposed grant of license and direct that such objections be lodged with the Department within fourteen days next following the date of notice.

(7) The Department may after considering the objections, if any, made under this section, grant the license applied for, subject to such terms and conditions as may be specified therein.

(8) The issuance of a license to an applicant under this Act shall not be withheld without reasonable cause.

(9) A license issued under this Act shall not be transferable.

Application for renewal of a license

19. (1) An application for the renewal of a license under this Act shall be made to the Department not later than the first day of the month of June in which the current license is due to expire.

(2) Notwithstanding the provisions of subsection (1), a late application may be made upon the payment of a late application fee as may be prescribed by the Member of the Executive Committee.

Conditions of a license

20. (1) A license issued under this Act shall be subject to such conditions as the Department may determine and as are specified in the license and to any conditions that may be prescribed.

(2) The Department may require that any class of licenses issued to a dealer will be subject to the condition that the dealer engages in the actual growing of any given crop.

(3) The Department may at any time during the validity of a license—

- (a) vary the conditions of the license; or
- (b) impose conditions or further conditions on the license.

Revocation or alteration of a license

21. The Department may revoke, alter or suspend a license issued under this Act if in its opinion—

- (a) an offence under this Act or in respect of the licensed activity under any other written law, has been committed by the license holder or any employee of the license holder; or
- (b) a condition of the license has been contravened or not complied with.

Surrender of license

22. (1) The holder of a revoked licence shall immediately surrender it to the Department.

(2) A license holder may surrender the license at any time to the Department and the license shall cease to have effect forthwith.

Appeals

23. (1) An applicant for, or holder of a license who is aggrieved by a decision of the Department may appeal to the Governor, on or in respect of—

- (a) the grant, refusal, renewal, variation or revocation; or
- (b) the conditions imposed on the grant, renewal, or variation of a license.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

PART V—APPOINTMENT OF COUNTY OFFICERS AND CROP INSPECTORS

Appointment of County officers

24. (1)The Member of the Executive Committee shall in respect of each sub-county, appoint an officer to be stationed in the sub-county for purposes of this Act.

(2) An officer appointed under subsection(1) shall be deemed to be an inspector for purposes of this Act, and shall exercise such powers and perform such functions as an inspector may exercise or perform under this Act.

Appointment of crop inspectors

25. (1) The Member of the Executive Committee may appoint qualified persons who shall be inspectors for each scheduled crop for the purposes of this Act.

(2) For purposes of subsection (1), the Member of the Executive Committee may prescribe the qualifications for different categories of inspectors through regulations.

Entry and inspection

26. (1) A person duly authorized in writing in that behalf by the Member of the Executive Committee may, at all reasonable times and upon production of such authority to any person so requesting—

- (a) enter any land or buildings occupied by the holder of a manufacturing license issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

(2) A person who hinders or obstructs any person duly exercising or attempting to exercise any of the powers conferred by subsection (1), or who fails to give any information reasonably required commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years or both.

Power of entry

27. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (a) perform the functions or exercise the powers conferred by this Act or any other written law;
- (b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (c) demand the production by a license holder of the license for examination;

(d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or

(e) do any other thing authorized under this Act.

(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with the requirement under subsection (2) commits an offence.

Obstruction of Inspectors

28. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or both.

PART VI—MISCELLANEOUS PROVISIONS

Infected Areas

29. (1) After consultation with the relevant national government agency, the Member of the Executive Committee may by an order published in the *County Gazette* or the *Kenya Gazette*—

- (a) declare an area which is infected with a crop disease or pests to be an infected area;
- (b) prohibit the use of an infected area for planting , growing , collecting , storing or other dealing or for any purpose connected with those activities;
- (c) for the purpose of preventing crop disease or pest or the spread of the disease or pest , either in the crop or otherwise , prohibit the movement of planting seed or other crop material from, to, through or within an infected area or other specified areas;
- (d) extend, diminish, or otherwise alter an infected area; and
- (e) where it is no longer infected with crop disease or pest, revoke the declaration of an infected area.

(2) The Member of the Executive Committee may make regulations containing further provisions for the control of infected areas.

General power to impose levies

30. (1) With the approval of the County Assembly, the Member of the Executive Committee may impose a levy to be effected on a scheduled crop or crop product through a notice in the *County Gazette*.

(2) The Member of the Executive Committee may at any time with notice, alter the rate of such levy and such altered rate shall come into force on such date, not being less than two months from the date of the notice as may be specified in the notice.

(3) Different rates of levy may be imposed for different types or grades of crop products.

(4) Any levy imposed under this section shall be effected and collected in the manner prescribed.

(5) A person who fails to pay the amount due in respect of any levy imposed under this Act commits an offence.

Use of levies

31. The proceeds of any levy imposed under this Act shall be used solely for Crop Agriculture development and shall not be used for any other purpose.

Power to promote crop development

32. The Member of the Executive Committee shall have power to promote aspects of crop agricultural development, in particular—

- (a) food security;
- (b) value addition, marketing and export;
- (c) irrigation farming;
- (d) pest and disease control;
- (e) crop insurance;
- (f) warehousing receipting;
- (g) marketing; and
- (h) any other aspect relating to crop development.

General prohibition and offence

33. (1) A person shall not—

- (a) breach or fail to comply with the provisions of this Act;
- (b) breach or fail to comply with any of, the terms or conditions of a license certificate issued to him under this Act;
- (c) fail to comply with a lawful requirement or demand made or given by the Authority or an inspector;

- (d) obstruct a person in the execution of the powers or duties under this Act;
- (e) knowingly or recklessly make a statement or representation which is false;
- (f) knowingly or recklessly furnish a document or information required under this Act which is false; or
- (g) knowingly or recklessly use or furnish a fake or forged or invalid certificate or a certificate that has been altered without authorization.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence.

Offences relating to body corporate

34. If an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in or acting or purporting to act in the management of that body's affairs, such a body shall be held liable unless it is proved that—

- (a) the act or omission constituting the offence took place without the body's knowledge; or
- (b) the accused body took reasonable steps to prevent the commission of the offence.

General penalty

35. Any person who contravenes any provision of this Act or commits an offence for which there is no penalty prescribed shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a period not exceeding one year, or to both.

Restraint of breaches of this Act

36. Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for—

- (a) a declaration that the provisions of this Act are being , have been , are about to be contravened;
- (b) an injunction restraining any specified person from carrying out the contravention;
- (c) a writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or
- (d) any other lawful remedy.

MEMORANDUM OF OBJECTS OF REASONS

This Bill provides for the legal framework for Agriculture and agricultural related activities by the county government under the Fourth Schedule, Part 2 of the Constitution.

The Bill seeks to promote agriculture in its entirety, with special regards to scheduled crops and the legal issues around the same.

PART I of the Bill deals with preliminary matters. The Part sets out the objects and purpose of the Bill which includes ensuring effective and efficient agriculture and farming practises in the County.

PART II of the Bill provides for administration framework. It provides for the functions of the CEC and a Department which is responsible for agriculture and related matters.

PART III of the Bill provides for scheduled crops, including providing a legislative framework around them as well as incentives to growers of scheduled crops.

PART IV of the Bill provides for licensing and taxation including the registration of scheduled crops.

PART V of the Bill provides general provisions which include the powers of the Executive to make Regulations as well as the transition mechanisms.

Dated 2nd July, 2018.

CHARLES KAHORO RUGA,

Chairperson, Agriculture, Livestock and Fisheries Committee.