

**THE OFFICE OF THE COUNTY ATTORNEY BILL, 2016**

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**A BILL FOR**

**AN ACT of the County Assembly to make provision for the establishment of the office of County Attorney, its functions and powers; to provide for appointment, the discharge of duties and the exercise of powers of County Attorney and for connected purposes**

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

**PART I: PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Office of the County Attorney Act, and shall come into operation upon assent by the Governor.

Interpretation.

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

<sup>3</sup>county seal’ means the seal as shall be determined by an Act of the County Assembly;

<sup>3</sup>Government’ means the County Government of Nakuru;

Application.

**3.** This Act shall apply to the County Attorney, the County Solicitor and subordinate officers who perform or discharge legal functions and such other duties as may be assigned to them in the Office of the County Attorney.

**PART II: ESTABLISHMENT OF THE OFFICE OF COUNTY ATTORNEY, FUNCTIONS AND ADMINISTRATION**

County Attorney.

**4.** (1) There is established the office of County Attorney.

(2) The County Attorney shall be appointed by the Governor subject to the approval of the County Assembly through a competitive recruitment process.

(3) A person shall be qualified for appointment as a County Attorney if such person—

(a) is a citizen of Kenya;

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The County Attorney shall hold office for a non-renewable term of Seven (7) years

Functions  
of the  
County  
Attorney.

5. (1) The County Attorney—

- (a) is the principal legal adviser to the County Government and as such shall be a member of the County Executive Committee;
- (b) Shall be responsible for drafting and publication of legislative proposals for the County Government and advising the County Government and its agencies on legislative and other legal matters;
- (c) Shall be responsible for negotiating, drafting, vetting and interpreting local and international documents, agreements and interpreting international treaties for and on behalf of the County Government and its agencies;
- (d) Shall represent the County Government in court in any legal proceedings arising from county legislation or any other legislation to which the County Government is a party or has interest, other than criminal proceedings;
- (e) Shall, in consultation with the director of public prosecutions, coordinate prosecution of offences resulting from the county legislations.
- (f) Shall be responsible for advising departments and agencies of the county on legislative and other legal matters;
- (g) Shall be responsible for advising the County Government on all matters relating to the Constitution, national legislations and county legislations;
- (h) Shall be the link between the County Government, other County Governments and the National Government on legal matters and shall do so in liaison with the office of the Council of Governors and the Attorney-General of the Republic of Kenya.
- (i) Shall undertake legal audits to ensure that all County and National legislations that are applicable in the county are complied with or enforced;
- (j) Shall be the custodian of county public seal, contracts and other legal instruments of the county;

(k ) shall perform any other functions conferred on the office by an Act of County Assembly , National legislations or by the Governor or as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.

(6) The County Attorney shall promote, protect and uphold the rule of law and defend the public interest.

(7) The powers of the County Attorney may be exercised in person or by subordinate officers acting in accordance with the general or special instructions of the County Attorney.

(8) In the execution of the functions conferred by this Act, the County Attorney shall provide efficient and professional legal services to the County Government and the public for the purpose of facilitating, promoting and monitoring the rule of law, the protection of human rights and democracy and in accordance with the Constitution.

Powers of  
the County  
Attorney.

6. (1) The County Attorney shall, in discharging his functions under this Act have the power to —

- (a) with leave of the court or tribunal, appear at any stage of proceedings, appeal, execution or any incidental proceedings before any court or tribunal where the subject matter before the court is touching on the County Government or where County Government has interest.
- (b) require any officer in the County Public Service to furnish any information in relation to any matter which is the subject of legal inquiry;
- (c) summon any officer in the public service to explain any matter which is the subject of litigation by or against the County Government.

(2) The County Attorney shall—

- (a) establish such directorates, divisions, sections or units, in the office as may be necessary;
- (b) establish such other offices as may be necessary in order to discharge the duties of the office of the County Attorney;
- (c) supervise the formulation of policies and plans of the office; and
- (d) perform any other action necessary in the administrative interests of the office.

(3) The County Attorney may, upon request, appear and advise on any legal matter in any committee of the County Assembly.

(4) In the exercise of the powers and performance of functions of the office, the County Attorney shall not be under the direction or control of any person or authority.

Administra  
tion of the  
office.

**7.** (1) The administration and the discharge of duties of the office of the County Attorney shall be governed by this Act.

(2) The County Attorney shall discharge the mandate of the office specified in this Act either in person or through a subordinate officer to whom the function is delegated.

**8** (1) taking into account the provisions of any other written law or in the absence of any other written law, the county attorney shall have the right of audience in proceedings of any suit or inquiry of an administrative body which the county attorney considers to be of public interest or involves an injustice on any public resident of the county in contravention of the constitution or involves a minor, county property or a department or agency of the county government.

(2) In the exercise of the powers of the County Attorney under subsection (1), the County Attorney shall—

(a) notify any court, tribunal or any other administrative body of the intention to be enjoined to the suit, inquiry or administrative proceedings; and

(b) satisfy the court, tribunal or any other administrative body of the public interest or County property involved, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the office.

(3) Where a suit, inquiry or any other proceedings is pending before a court, tribunal or any other administrative body to which the County Attorney does not have a right of audience, it shall be sufficient for the County Attorney to file a certificate of the intention of the County Attorney to be enjoined in the proceedings.

(4) The court, tribunal or any such administrative body shall, upon receipt of a certificate under subsection (3), enjoin the County Attorney in the proceedings.

Protection  
from  
personal  
liability.

**9.** (1) No criminal proceedings or civil suit shall be brought against the County Attorney, the County Solicitor or a subordinate officer in the course of discharging of the functions of the County Attorney under this Act.

(2) No matter or thing done by the County Attorney, the County Solicitor or a subordinate office shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the office of the County Attorney, render the County Attorney, County Solicitor or other subordinate officer personally liable to any action, claim or demand whatsoever.

County  
Solicitor.

**10.** (1) There shall be a County Solicitor who shall be appointed by the Governor on recommendation of the County Public Service Board.

(2) The Governor shall appoint a person as a County Solicitor from among persons recommended by the County Public Service Board, in consultation with the County Attorney.

(3) A person shall be qualified for appointment to the office of the County Solicitor if the person —

(a) is a citizen of Kenya;

(b) holds a degree in law from a university recognized in Kenya or its equivalent;

(c) is an Advocate of the High Court of Kenya;

(d) has had at least six years' relevant professional experience; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The County Solicitor shall assist the County Attorney in the performance of the duties of the County Attorney under the general directions of the County Attorney.

(5) The County Solicitor shall carry out any function, discharge any duty and exercise any power as may be directed by the County Attorney and shall, —

(a) Organise, co-ordinate and manage the administrative and the legal functions of the office;

(b) Assist the County Attorney in the performance of his duties as the principal legal advisor to the County Government;

(c) Conduct, or assign and supervise all court cases, including appeals or petitions on behalf of the County Attorney; and

(d) In consultation with the County Public Service Board, be responsible for the discipline of County Counsel and other members of staff of the office.

(6) In the performance of the functions and the exercise of the powers of the County Solicitor, the County Solicitor shall be responsible for—

(a) formulating and ensuring implementation of development strategies for County Government legal services; and

(b) performing such other duties as may be conferred by law or otherwise assigned to the County Solicitor by the County Attorney.

Private  
practice  
prohibited.

**11.** The County Attorney, the County Solicitor and County Counsel shall not engage in any other gainful employment.

Resignatio  
n.

**12.** The County Attorney or the County Solicitor may resign from office in writing, addressed to the Governor.

Removal from office. **13.** (1) The Governor may remove subject to sub section (2) the County Attorney or the County Solicitor from office only for—

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of their functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) A Member of County Assembly, supported by at least one third of all the members of the county assembly may propose a motion requiring the governor to dismiss the County Attorney or the County Solicitor on any of the grounds set out in subsection (1)

Delegation by County Attorney.

**14.** (1) The County Attorney may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand delegate to the County Solicitor or any County Counsel all or any of his powers and functions under any written law, except this power of delegation.

(2) A power or function delegated under this section may be exercised or performed by the County Solicitor or County Counsel in accordance with the instrument of delegation.

(3) A delegation under this section may be revoked at will and does not prevent the exercise of a power or performance of a function by the County Attorney.

### **PART III - PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY**

Reserve of matters to the County Attorney.

**15.** No County Counsel shall render advice in any of the following matters without the written approval of the County Attorney—

- (a) interpretation of the Constitution;
- (b) any matter that the County Attorney may from time to time designate; and
- (c) any matter which the law reserves to the County Attorney.

Engagement of

**16.** (1) A ministry or department shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney



consultant. without the approval of the County Attorney.

(2) For the purpose of observing standards, maintaining quality or capacity building, the County Attorney may—

- (a) direct a County Counsel to participate in the work of the consultant; and
- (b) prescribe the terms and conditions for a County Counsel who participates in such consultancy.

Reference of matter for opinion of the County Attorney.

**17.** (1) All Government ministries and agencies shall seek the opinion of the County Attorney on any matter raising substantial legal or constitutional issues.

(2) A person shall not make any decision or enter into an agreement that binds the County to undertake certain obligations without reference to the County Attorney.

(3) A person or officer who makes any decisions that has legal implications or enters into an agreement on behalf of the County without any reference to the County Attorney shall take personal responsibility if such decision results in County Government incurring liability.

Ministries to notify the County Attorney.

**18.** All County Government ministries and agencies shall notify the County Attorney of all material litigation within three days upon the service of any pleadings.

#### **PART IV — APPOINTMENT AND TERMS AND CONDITIONS OF SERVICE**

County Counsel.

**19.** (1) The County Attorney may, in consultation with, and on the recommendation of the County Public Service Board appoint such number of County Counsel as may be necessary for the proper and efficient discharge of the functions of the office.

(2) A person qualifies for appointment as a County Counsel under subsection (1) if such person —

- (a) is an Advocate of the High Court of Kenya of good standing;
- (b) has a current practicing certificate; and
- (b) is a fit and proper person with due regard to the discharge of his or her duties under this Act.

(3) The County Attorney shall comply with the values and principles under the Constitution in the appointment of County Counsel.

(4) The County Attorney shall cause to be published in the county *Gazette*, the names of all persons appointed as County Counsel under subsection (1).

(5) The County Counsel appointed under subsection (1) shall perform such functions as may be assigned by the County Attorney.

(6) A person shall not act as a County Counsel unless that person has been appointed as such under subsection (1).

(7) For the avoidance of doubt, nothing in this Act shall entitle any officer who is not qualified in law to perform legal services functions in the county public service.

Terms and conditions of service.

20. The County Counsel appointed under this Act shall serve on such terms as the County Attorney and County Public Service Board may, on the advice of the Salaries and Remuneration Commission, determine.

Other staff.

21. (1) There shall be such other officers and other members of staff of the office of the County Attorney as the County Attorney considers necessary for the proper and efficient discharge of the functions of the office.

(2) The County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the County Attorney.

(3) The composition of the staff of the office shall reflect the—

(a) regional and ethnic diversity of the people of Kenya; and

(b) disability and gender equity.

(c) provisions of the Constitution.

(4) The County Attorney shall ensure that in the appointment of staff, persons with disabilities are taken into account.

#### **PART V – MISCELLANEOUS PROVISIONS**

Prohibition of unauthorized disclosure of information.

22. (1) Without prejudice to the provisions of any other written law, an officer or member of staff of the office shall not disclose or use any information gained by the officer or member of staff otherwise than in the course of the official duties of the officer or member of staff or with the authority of the County Attorney.

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

Depository of laws and agreements

23. The office shall be the depository of all laws and local and international documents and agreements signed for or on behalf of the County Government.

County Public Seal.                   **24.** The County Attorney shall have custody of the public seal of the County Government.

Accessibility.                   **25.** The County Attorney is entitled to have access to relevant records, documents and property pertaining to a civil or any other case concerning the County for the efficient performance of the duties of the County Attorney.

Facilities.                   **26.** The County Government shall provide adequate facilities for the efficient functioning of the office of the County Attorney.

Report on operations in each year, prepare and furnish to the Governor a report of the operations of the office of the County Attorney.                   **27.** (1) The County Attorney shall, as soon as practicable after thirtieth June office during the year that ended on thirtieth June.

(2)                   The report prepared under subsection (1), shall, in respect of the year to which it relates, contain—

- (a) the financial statements of the office;
- (b) a description of the activities of the office; and
- (c) such other information relating to its functions that the office may consider necessary.

(3) The County Attorney shall cause a copy of the report furnished under subsection (1) to be laid before the County Assembly within fifteen days after the day on which the Governor and the Executive Committee has adopted it.

Regulations.                   **28.** The County Attorney may make regulations prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed or carrying out or giving effect to this Act.

**MEMORANDUM .OF OBJECTS AND REASONS**

The principle object of this Bill is to provide for the establishment and administration of the Office of the County Attorney. It provides for the functions and powers of the County Attorney, the performance of the functions of the office of the County Attorney and the appointment of County Counsel. The County Attorney is the principal legal adviser to the County Government and is responsible for representing the County Government in any legal proceedings.

Part I deals with preliminary matters including the interpretation of terms used in the B ill and the application of the Bill to persons performing legal functions in the Office of the County Attorney.

Part II provides for the administration of the Office of the County Attorney. Clause 5 provides for functions of the County Attorney while Clause 6 provides for the powers of the County Attorney in relation to the performance of the duties of the County Attorney under the Bill. This Part also confers immunity on the County Attorney and County Counsel in relation to any liability that may arise in the discharge of their functions under the Bill. It also provides for the competitive recruitment and appointment of the County Solicitor and the removal from office of the County Attorney and the County Solicitor.

Part III deals with the performance of the functions of the County Attorney. Clause 16 provides for the matters that can only be dealt with by a County Counsel with the approval of the County Attorney. This Part confers on the County Attorney the power to issue directives and imposes an obligation on County Government departments and agencies to seek the opinion of the County Attorney on matters raising substantial legal or constitutional issues.

Part IV deals with the appointment of County Counsel by the County Attorney in consultation with the County Public Service Board. It outlines the qualifications, required for a person to be appointed as County Counsel and the determination of the terms and conditions of service. Clause 25 empowers the County Attorney to procure the services of other persons for the purpose of assisting in the performance of the functions of the County Attorney.

Part V deals with miscellaneous matters. Clause 26 prohibits the unauthorized disclosure of information by members of staff of the Office other than in the course of their duties without the Authority of the County Attorney. Clause 27 assigns the office of the County Attorney as the depository of all agreements and other legal documents executed on behalf of the County Government while Clause 29 confers a right on the County Attorney to have access to all records and documents relating to civil cases in the performance of the duties under the Bill. This Part also provides for the funds of the Office and confers an obligation on the County Attorney to prepare and furnish to the Governor, a report on the operations of the Office in each financial year. It also confers powers on the County Attorney to make regulations.

The enactment of this Bill will not occasion additional expenditure of public funds.

**HARI GAKINYA,  
COUNTY LEGAL ADVISOR**

Dated the .....day of.....2015

