

SPECIAL ISSUE

Isiolo County Gazette Supplement No. 3 (Bills No. 2)



REPUBLIC OF KENYA

**ISIOLO COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2016

NAIROBI, 6th June, 2016

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**THE ISIOLO COUNTY SAND HARVESTING AND
QUARRYING BILL, 2016**

A Bill for

**AN ACT of the County Assembly of Isiolo to
regulate sand harvesting and quarrying
activities in the county and to ensure
sustainable exploitation and utilization of land
and to provide for equitable sharing of the
accruing benefits and for connected purposes**

**ENACTED by the County Assembly of Isiolo, as
follows—**

PART I—PRELIMINARY

1. This Act may be cited as the Isiolo County Sand Harvesting and Quarrying Act, 2016 and shall come into operation on such date as the County Executive Committee Member, may by notice in the county gazette appoint.

Short title and
commencement.

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

Interpretation

“authorized officer” includes the Medical Officer or any person acting under the authority of the Licensing Officer;

“Committee” means the Sand Harvesting Management Committee established under section 3 of this Act;

“county medical officer” means the Medical Officer of Health;

“dealer” means the person who buys and sells common minerals;

“executive committee member” means the County Executive Committee Member in charge of environment;

“gazetted area” means any area gazetted as a sand harvesting area pursuant to section ;

“harvester” means a person or his agent who gathers or collects sand from any of gazetted area of for the purpose of sale or own use;

“license” means a permit issued by the county

government of Isiolo or authorized officer to engage in trade, occupation or business of sand harvesting and transportation of sand from its any gazetted area;

“license holder” means a person to whom a permit has been granted under this Act;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“sand” means sedimentary material finer than gravel and coarser than silt with grains between 0.06mm and 2 mm in diameter and includes stones, coral, earth and turf but does not include silica sand;

“sand harvesting” means the removal, extraction, harvesting or scooping of sand from a gazetted areas;

“quarry” means a place from which building demission stone, rock, construction aggregate, murram, riprap, gravel, lime, sand, slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium and potassium compounds and surface stone is excavated from the ground;

3. The object and purpose of this Act is to provide for a legislative framework for regulating sand harvesting and in particular to—

Objects and Purpose
of the Act.

- (a) require the registration of sand dealers;
- (b) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (e) provide for benefit-sharing and ploughing back to the community part of the revenue collected from sand harvesting; and
- (f) enable communities to participate in the management of sand harvesting.

PART II—ADMINISTRATION

4. (1) There is established a County Sand Harvesting and Management Committee consisting of—

County Sand
Harvesting and
Management
Committee.

- (a) the chief officer responsible for matters relating to environment who shall be the Chairperson;**
- (b) the chief officer responsible for matters relating to finance;**
- (c) a representative of sand dealers appointed by the Executive Committee Member;**
- (d) a representative of quarry operators appointed by the Executive Committee Member;**
- (e) two representatives of the riparian resource management associations being one man and one woman, appointed by the Executive Committee member;**

(2) The Committee shall be under the supervision and direction of the Executive Committee member responsible for matters relating to finance.

(3) In the absence of the Chief Officer responsible for matters relating to finance, the Committee, shall elect a chair person from its quorum.

(4) The quorum of the Committee for purposes of the meeting shall be four members.

(5) The members of the Committee shall elect from within their composition the Secretary.

(6) The members under subsection 1 (a) and (b) may designate alternate members in writing and who shall be senior public officers.

5. The Committee shall—

Functions of the
Committee.

- (a) maintain a register of all sand dealers;
- (b) advise Executive Committee Member on the structure and operations of sand harvesting and quarrying;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;
- (d) ensure sustainable exploitation and utilization of sand resource and other excavated material;
- (e) collaborate with other environmental agencies in management of environment;
- (f) formulate environmental conservancy programmes for the residents of the county;
- (g) recommend to the Executive Committee member designated sand harvesting areas for gazettment;
- (h) recommend designated roads for transportation of sand and other excavated material in accordance with this Act; and
- (i) perform any other functions assigned by the Executive Committee Member.

6. (1) The Committee shall approve the establishment of such number of Riparian Resource Management Associations as is necessary which shall be registered pursuant to the law relating to registration of community based organizations.

Riparian Resource
Management
Associations

(2) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors—

- (a) drainage network of the river and the designated sand harvesting sites;
- (b) the need to ensure full inclusion of the community including all interest groups; and
- (c) viability and sustainability of the association.

(3) An association shall be composed of the following members elected by interested community—

- (a) four representatives of the riparian landowners;
- (b) two women representatives who are not riparian land owners;
- (c) two youth representatives who are not riparian land owners;
- (d) two elders who are not riparian land owners; and
- (e) two religious leaders.

(4) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—

- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act;
- (b) ensure that annual Environmental Audits are conducted for closed and active sites; and
- (c) ensure sustainable management of sand harvesting along riverbeds;
- (d) undertake the rehabilitation of the closed sites; and
- (e) perform any other function assigned to it under this Act.

7. The Committee and the Associations shall be guided by the following considerations in discharging their mandate—

*Considerations by
the Committee and
Associations.*

- (a) sand dams and gabions shall be constructed in designated sand harvesting sites and that there shall be at least two hundred metres between each;
- (b) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
- (c) upon closure of every designated sand harvesting area, the site shall be rehabilitated appropriately by the Association, county government and approved

dealer under the supervision of the Committee;

- (d) sand harvesting or scooping shall be restricted to the riverbeds and no such harvesting or scooping shall be allowed on riverbanks;
- (e) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
- (f) approved sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage fixed by the County Executive Committee Member;
- (g) sand loaders shall organize themselves into organized groups with a chairperson and shall be under the direction and control of the Association; and
- (h) every approved sand dealers shall support local community projects in consultation with the Association.

PART III—SAND HARVESTING REQUIREMENTS

8. (1) The Committee shall, on the advice of the Associations, designate and document sand harvesting sites from time to time.

Sand harvesting sites.

(2) Every sand harvesting area shall be clearly demarcated and documented by the Committee in consultation with the Association.

(3) A person shall not harvest sand from any area not designated as a sand harvesting site by Committee.

(4) Each designated sand harvesting site shall have an environmental management plan to guide in the rehabilitation of the sites.

9. On-farm and lakeshore sand shall be carried out subject to fulfilling the following conditions—

On-farm and lakeshore sand harvesting

- (a) sand harvesting or scooping of sand shall not exceed six feet in depth;
- (b) a designated sand harvesting sites shall be at least

fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;

(c) sand harvesting or scooping of sand shall not be undertaken concurrently with rehabilitation of the sites;

(d) sand harvesting on-farm shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken unless some approved extraction technology is applied to safeguard human safety.

10. (1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention. Riverbed harvesting

(2) Sand harvesting shall not be undertaken on any riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one-hundred metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

11. (1) A person shall not—

(a) harvest, extract or scoop sand between the hours of 6pm to 8am; and

(b) transport sand between the hours of 8 pm to 8 am.

(2) The transport of sand or other minerals within the county shall only be done through designated roads for such transportation.

(3) A person who contravenes this section commits an offence shall be liable upon conviction to a fine not exceeding Kenya Shillings five hundred thousand or to an imprisonment term not exceeding three years or to both.

12. (1) The Committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces of the day. Hours of sand harvesting and transportation

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities. Sale of Sand

13. (1) No person shall use, cause or permit to remove sand from any river, farm, co-operative society, ranch or other land for the purposes of sale unless valid license issued under this Act for such trade or business.

Licensing of Sand
Harvesters

(2) A person who contravenes this section commits an offence.

PART IV—LICENSING PROVISIONS

14. (1) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued by the government the license shall be deemed to be 'monthly' unless otherwise authorized by the Executive Committee member or any other authorized officer.

Licensing of Sand
Dealers

(2) No person shall carry on or engage in any trade occupation or business of sand harvesting unless the person is licensed to carry on such trade, occupation or business by the government.

(3) A person who contravenes this section commits an offence.

15. (1) The Executive Committee Member shall be the licensing officer responsible for the issuing of licenses under this Act.

Licensing Officer

(2) The Executive Committee Member may, in writing, delegate any or all of his powers under this Act to any one or more authorized officers.

16. An application for license under this Act shall be in the prescribed form provided that the Executive Committee Member may, in any particular case require an applicant to submit or supply such further information as the Executive Committee Member may deem fit.

Application for
License.

17. (1) The licensing officer shall consider each application made under section 16 and determine whether to issue a licence to the applicant or not within thirty days.

Discretion of a
Licensing Officer

(2) If a licensing officer refuses to issue a license, they shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the refusal and refer to the relevant provision in this Act on which the refusal is based.

18. A licence shall be issued —

License Conditions

- (a) subject to an obligation to rehabilitate the site and surrounding areas upon closure;
- (b) for the category or categories of business activity specified in the licence; and
- (c) subject to the regulations and any other conditions provided in the licence.

19. (1) There shall be payable to the government, for every application for a license, the appropriate prescribed fees.

License Fees

(2) The Executive Committee member may, waive the whole or part of any prescribed fee under subsection (1)

20. A license shall be in such form as the Executive Committee member may from time to time determine and shall be signed by the Executive Committee Member or a person authorized in that behalf.

Form of License.

(2) The Executive Committee Member may issue different classes of licenses for different purposes.

21. (1) A license issued under this Act shall not be transferred from the holder thereof to another person without the consent of the Executive Committee Member or a person authorized in that behalf.

Transfer of license

(2) An application for the transfer of any license shall be in such form as may be prescribed by the Executive Committee member and shall be accompanied by the license to which it relates: Provided that the Executive Committee member may in any particular case require an applicant for the transfer of a license to submit or supply such further information as the Executive Committee member shall deem necessary.

(3) For each such transfer there shall be payable to the government such fee as may be prescribed by the Executive Committee Member.

(4) A memorandum of the transfer of any license shall be endorsed on the license by the Executive Committee Member.

(5) A person who contravenes this section commits an offence.

22. (1) Subject to this Act, a licence may be altered on written application to the licensing officer. Alteration of a licence

(2) The licensee shall inform the licensing officer in writing of any changes within thirty days.

(3) If a licensee fails to inform the licensing officer under subsection (2), the licensing officer may impose a penalty.

23. A licensing officer may cancel a licence if — Cancellation of licence

(a) the application form contains any material misrepresentation or false statement;

(b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;

(c) the licensee carries on a prohibited activity;

(d) a condition imposed is breached; or

(e) the licensee is convicted of an offence under this Act.

24. (1) Any aggrieved by the decision of a licensing officer shall be entitled to appeal against the decision before a magistrates court. Appeals

(2) All appeals shall be filed within fourteen days of the decision.

(3) A person appealing under this section has the right to be heard by the County Executive Committee Member.

25. The Licensing Officer, any Police Officer or an authorized officer who has reason to believe that a business person is required to hold a business licence may demand from the person carrying on the business activity the production of a licence. Production of Licence

26. The provisions of this Act applicable to sand harvesting shall apply with necessary modifications to any form of quarrying. Quarrying

27. The government shall facilitate the Committee shall to — Collection of Revenue by the Government

(a) collect revenue from sand dealers in designated sand harvesting sites or along access roads;

(b) allocate and transmission of at least ten per cent of

the revenue collected to the Committee and the Associations to facilitate their operations;

- (c) allocate of part of the revenue collected for community projects;
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within sand harvesting area;
- (e) collect revenue from sand dealers along riverbeds and other designated sand harvesting sites;

28. (1) For purposes of section 27, the government may **Road barriers** mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap 403 Laws of Kenya.

(2) The barriers shall be manned by authorized officers and revenue collectors.

(3) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

(4) A person who contravenes this section commits an offence and the vehicle used to commit the offence may be impounded at a police station.

PART IV—GENERAL PROVISIONS

29. (1) The licensing officer or county medical officer may order a license holder to stop the quarrying activities or operations and close the quarry where it appears that the quarry is in a condition dangerous to human life or detrimental to public health or safety. **Power to order closure of quarry**

(2) The order provided in subsection (1) shall remain in force until the licensing officer is satisfied that the conditions have been satisfactorily improved.

30. (1) The licensing officer, authorized officer, police officer, or agents may at all reasonable times— **Powers of Entry**

- (a) enter upon premises, farms, ranches or vehicles and carry out any inspection for the purpose of enforcement of this Act; or
- (b) execute work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a license is issued.

(2) Recover the expenses incurred in carrying out the work referred to in paragraph (b) of subsection 1.

(3) A person obstructing the persons referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

(4) Any police officer or authorized officer shall detain vehicles and confiscate goods where it shown those goods have been obtained in contravention of this Act.

(5) The detained or impounded vehicles referred to in subsections 4 shall be released to the owner until where prosecution is preferred, the case is finalized or until the owner has paid prescribed penalty charges.

(6) Any authorized officer, police officer or agents before undertaking any inspection activities in this Act, shall produce to the relevant person proper identification documents.

31. No matter or thing done by a licensing officer or officer, employee or agent shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render the officer, employee or agent personally liable for any action, claim or demand whatsoever.

Protection from personal liability

32. (1) The Committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including access roads, riverbanks, catchment areas among others to ensure environmental sustainability.

Rehabilitation of closed sites

(2) The Committee shall require every licensee to prepare and submit to it a rehabilitation plan for every designated sand harvesting area.

33. A person who—

Offences

- (a) carries out sand harvesting or other quarrying activities or otherwise deals with sand without a valid license;
- (b) carries out sand harvesting outside designated sites;
- (c) overloads sand to a vehicle for transportation contrary to prescribed requirements;

- (d) collects fees or charges and is not authorized to do so under any law;
- (e) transports sand outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the county government, authorized officer or police officer;
- (g) obstructs any authorized person from conducting their functions under this Act; or
- (h) establishes a separate entity or purports to manage quarrying activities in a designated site without lawful authority under this Act;

commits an offence and shall, on conviction is liable to a fine not exceeding one million shillings or to an imprisonment term not exceeding five or to both.

34. A person who contravenes any provisions of this Act, General penalty. for which no penalty is provided shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

35. (1) The County Executive Committee member Regulations. shall make regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) guidelines for sand harvesting and other quarrying activities;
- (b) criteria for determining the number of Associations approve under this Act;
- (c) variation of the terms and conditions of license issued under this Act;
- (d) requirements for different types of sand harvesting or other forms of quarrying;
- (e) forms required under this Act;
- (f) rehabilitation of closed sites;
- (g) other forms of quarrying generally;
- (h) resolution of disputes; and

- (i) such other matters as the as may be necessary for full implementation of this Act.

(3) Without prejudice to subsection (1) the nature and scope of the Regulations shall—

- (a) be for the objects and purpose and set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to regulate sand harvesting and quarrying activities in the county and to ensure sustainable exploitation and utilization of land and to provide for equitable sharing of the accruing benefits. The Act requires that sand dealers be registered and licensed in accordance with the Act. It establishes the institutional framework and provides for the involvement of communities in regulating sand harvesting.

The structure of the Bill is as follows:

Part I (clauses 1-3) of the Bill contains preliminary provisions. These include the title of the Bill, interpretation of terms and a statement of objects of the Act. Among the objects are the requirements to register and license sand dealers including the sand harvesters, sellers and transporters. It also provides for the designation of sand harvesting areas and provides a network of institutions to regulate the industry.

Part II (clauses 4-7) of the Bill establishes the County Sand Harvesting Committee comprised of senior county offices as well as stakeholders in the industry. The mandate of this Committee is to register sand dealers and advise the Executive Committee member on sand harvesting matters. This Part also establishes the Riparian Resource Management Associations comprised of riparian land owners and other community members as well as

Part III (clauses 8-12) the Bill provides for the sand harvesting requirements including designating sand harvesting sites, on-farm sand harvesting and riverbed sand harvesting. This Part also provides for the hours of harvesting and transporting sand.

Part IV (clauses 13-26) sets out the licensing requirements for sand dealers, manner of applying for the license, license fees, form of license, cancellation of license and appeals for persons aggrieved by the decisions of the licensing officers.

PART V (clause 27-35) sets out the general provisions. These include the collection of revenue by the county government, powers of entry, offences, general penalty and the power of the County Executive Committee member to make subsidiary legislation.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

PETER LUSU,

Chairperson committee Environment