

# **SPECIAL ISSUE**



# **THE KENYA GAZETTE**

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GAZETTE NOTICE NO. 1609

## **THE CONSTITUTION OF KENYA**

### **THE INTERGOVERNMENTAL RELATIONS ACT**

(No. 2 of 2012)

#### **TRANSFER OF FUNCTIONS**

IT IS notified for the general information of the public that pursuant to Article 187 of the Constitution as read with section 26 of the Intergovernmental Relations Act, 2012, Nairobi City County Government has transferred certain functions to the National Government *vide* the Agreement set out in the Schedule.

#### **SCHEDULE**

#### **THE NATIONAL GOVERNMENT**

(THROUGH)

#### **THE MINISTRY OF DEVOLUTION AND THE ASALs**

AND

#### **THE NAIROBI CITY COUNTY GOVERNMENT**

#### **DEED OF TRANSFER OF FUNCTIONS FROM THE NAIROBI CITY COUNTY GOVERNMENT TO THE NATIONAL GOVERNMENT**

THIS Deed of Transfer is made on this 25th day of February two thousand and twenty.

BY AND BETWEEN

- (a) The National Government of the Republic of Kenya, through the Ministry of Devolution and the ASALs ("the National Government") on the first part; and,
- (b) The Nairobi City County Government, ("the County Government") whose registered office is at City Hall, off City Hall Way, Nairobi on the other part.

(Each a "Party" and together the "Parties")

#### **RECITALS AND DECLARATION OF COMMON INTENT**

WHEREAS, the Constitution of Kenya, 2010 established a devolved structure of Governance with a service-centric approach, in which the sovereign power of the people of Kenya is exercised at two

levels, being the National Level and the County Level (collectively the "Government of the Republic of Kenya");

WHEREAS, the Principles of Executive Authority set out under Article 129 of the Constitution require that Executive Authority at both levels of Government be exercised in a manner that serves the best interest, well-being and aspirations of the People of Kenya;

WHEREAS, the Principal Object of Devolution is set-out under Article 174 of the Constitution as being: "to promote democratic and accountable exercise of power, to foster national unity by recognizing diversity and to give powers of self-governance to the people and enhance the participation of the people in exercise of the powers of the state and in making decisions affecting them";

WHEREAS, Article 189 of the Constitution, sets out the structure for co-operation between the National and County Governments; with Government at either level being required to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of the Government at the other level, and respects the constitutional status and institutions of Government at the other level;

WHEREAS, it is the shared aspiration of all Kenyans for their Government to operate in an effective, transparent and accountable manner with respect to the delivery of public goods and services;

WHEREAS, it is the solemn duty of the Government to guarantee reasonable access to all public goods and services in all counties and in every part of the Republic;

WHEREAS, Article 186 of the Constitution, as read with the Fourth Schedule of the Constitution, sets out functions of County Governments to include: County Health Services, Control of Air Pollution, Control of Noise Population, Prevention of Public Nuisance, Regulation of Public Entertainment, County Transport, Trade Development, County Planning and Development, Pre-primary Education, Village Polytechnics, Firefighting Services, and Disaster Management and Control of Drugs;

WHEREAS, Nairobi City is the seat of the Government of Kenya and the Nation's Capital City;

WHEREAS, Nairobi City is also the largest commercial hub in East and Central Africa, and home to over 4 million persons;

WHEREAS, the Nairobi City County Government seeks to foster its effectiveness in the delivery of the public good; and is considering mechanisms of embedding operational enhancements that would

make the County Government better able to deliver on its constitutional mandate;

WHEREAS, the Nairobi City County Government is conscious of its internal constraints as to the effective discharge of its functions;

WHEREAS, the Nairobi City County Government recognizes that in light of the scope of the devolved functions, some of the functions currently vested in the Nairobi City County Government would be more effectively performed and exercised by the National Government;

WHEREAS, and to enhance delivery of the public good, the Nairobi City County Government is desirous of transferring to the National Government the functions set out in Article 3 of this Deed of Transfer of Functions;

WHEREAS, the National Government is desirous of accepting the transfer to the National Government of the functions set out in Article 3 of this Deed of Transfer of Functions from the Nairobi City County Government; and it has the requisite capacity and competence to perform the transferred functions:-

NOW THEREFORE, having considered the above, the Parties enter into this Deed of Transfer of Functions and solemnly agree as follows:

#### ARTICLE 1: DEFINITIONS

1.1 The following expressions (save where the context requires otherwise) bear the following meanings:-

- 1.1.1 References to an Article are (unless the context otherwise requires) to an Article respectively of this Deed of Transfer of Functions;
- 1.1.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.1.3. The Article and paragraph headings are for reference purposes only and shall not affect the interpretation of this Deed of Transfer of Functions.

#### ARTICLE 2: PRINCIPAL OBJECTS

The principal objects this Deed of Transfer of Functions are:

- 2.1 To give full effect of the benefits of the devolved and decentralized governance to the residents of Nairobi City County; and,
- 2.2 To anchor the framework of the transfer of certain functions from the Nairobi City County Government to the National Government.

#### ARTICLE 3: THE SCOPE OF THE FUNCTIONS TRANSFERRED TO THE NATIONAL GOVERNMENT

The Nairobi City County Government unequivocally transfers the following functions to the National Government:

- 3.1 County Health Services;
- 3.2 County Transport Services;
- 3.3 County Planning and Development Services; and
- 3.4 County Public Works, Utilities and Ancillary services.

#### ARTICLE 4: PERFORMANCE STANDARDS AND REPORTING OBLIGATIONS

In furtherance of the principles of good governance that require accountable and transparent management of public affairs, the performance of the transferred functions shall be undertaken in keeping with the guidelines set out herein after:

- 4.1 The Parties will harmonize the relevant sector performance contracts and service delivery indicators, as adopted by the respective governments herein and relevant departments;
- 4.2 There shall be an annual report tabled before Parliament and the Nairobi City County Assembly on the implementation of this Agreement;
- 4.3 Pursuant to Article 189(2) of the Constitution, the Parties may form joint committees for the better performance of this Agreement; and

- 4.4 The National Government and Nairobi City County Government may enter into sector specific service-level agreements and/or Memoranda of Understanding to guide and achieve better performance of this agreement.

#### ARTICLE 5: FINANCING THE DELIVERY OF THE TRANSFERRED FUNCTIONS

The financing of the delivery of the transferred functions shall be undertaken as follows:

- 5.1 Financing for the functions herein shall be drawn from either or both the Consolidated Fund and the County Revenue Fund;
- 5.2 The Nairobi City County Government shall ensure that the transferred functions are fully funded from the County Revenue Fund;
- 5.3 The level of funding for each transferred function shall be determined by the National Government in consultation with the County Government, but in any case the budgetary allocation shall not be less than the amount last appropriated by the County Assembly in the preceding financial year;
- 5.4 The National Government shall have the responsibility of collecting and remitting all revenue accruing from the transferred functions herein;
- 5.5 For the purposes of general co-ordination of revenue collection, the Nairobi City County Government appoints Kenya Revenue Authority (KRA) as the principal agent for overall revenue collection;
- 5.6 The relevant human resources for the implementation of this agreement shall be seconded from the County Government to the National Government; and
- 5.7 The County Public Service Board shall, in consultation with the Public Service Commission, formulate the necessary instruments to facilitate the secondment and/or deployment of the necessary human resources.

#### ARTICLE 6: CAPACITY BUILDING FRAMEWORK

- 6.1 The National Government shall carry out a comprehensive capacity assessment in line with Article 190 of the Constitution, as read with section 121 of the County Governments Act, 2012; and,
- 6.2 In addition to the capacity building measures identified in the Capacity Assessment Review Report (CARPS), the Parties shall develop a capacity building programme based on 6.1 above.

#### ARTICLE 7: EXECUTION OF THE TRANSFERRED FUNCTIONS

- 7.1 The National Government shall prescribe and establish an institutional framework for the execution of the transferred functions.

#### ARTICLE 8: REVIEW CYCLE

- 8.1 The Parties shall review the performance of the transferred functions annually.

#### ARTICLE 9: DURATION AND TERMINATION

- 9.1 This Deed of Transfer shall become effective 21 (twenty one) days from the date of execution and shall remain in force for an initial renewable period of 24 months from the date of execution.
- 9.2 This Deed of Transfer of Functions may only be terminated by the mutual written consent of both Parties expressed in a common document.

#### ARTICLE 10: GENERAL

- 10.1 This Deed of Transfer of Functions shall be notified to the Nairobi City County Assembly pursuant to Section 26(6) of the Intergovernmental Relations Act and shall in the meantime be subjected to public participation.
- 10.2 This Deed of Transfer of Functions, together with any amendments as may be necessitated by public participation, constitute the entire Agreement between the Parties. Both parties acknowledge that they have not entered into this Agreement in

reliance wholly or partly on any statement or representation made by the other except as contained or referred to herein.

- 10.3 No variation or addition to this Agreement and no waiver of any provision shall be valid unless in writing signed by a duly authorized officer of both of the parties. In the event of a variation or addition, all the terms of this Agreement shall apply to such variation or addition except as may otherwise be expressly provided therein.
- 10.4 No forbearance or indulgence by either Party in enforcing any term or condition of this Agreement shall prejudice or restrict that Party's rights or powers under this Agreement and no waiver of any breach shall operate as a waiver of any subsequent or continuing breach.
- 10.5 Any written notice to be given under the terms of this Agreement may be delivered by hand delivered to:
- 10.5.1 In the case of Ministry  
Cabinet Secretary  
Ministry of Devolution and the ASALS  
The National Treasury  
Nairobi  
(Marked 'URGENT'); and,
- 10.5.2 In case of the County  
County Secretary  
Nairobi City County  
City Hall  
(Marked 'URGENT').
- 10.6 This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party hereto and expressed in a common document.

#### ARTICLE 11: GOVERNING LAW AND DISPUTE RESOLUTION

- 11.1 This Deed of Transfer of Functions shall be governed by and construed in accordance with the Laws of Kenya.
- 11.2 In the event of a dispute between the Parties herein arising from a matter provided for, governed by or arising out of this Agreement, the Parties shall at the first instance endeavour to resolve the dispute amicably through negotiations, but if the dispute is not resolved amicably within 30 days from the date one Party notifies the other of the dispute in writing, the Parties shall refer the dispute to the National and County Governments Co-ordinating Summit.

IN WITNESS whereof this Deed of Transfer has been executed by the duly authorized representatives of the parties the day and year first written above.

Signed By EUGENE WAMALWA  
duly authorized: CABINET SECRETARY,  
MINISTRY OF DEVOLUTION AND THE ASALS

In the presence of: PAUL KIHARA KARIUKI,  
ATTORNEY-GENERAL

SIGNED BY MIKE MBUVI SONKO  
duly authorized Signatories for  
NAIROBI CITY COUNTY GOVERNMENT

JUSTUS KATHENGE,  
AG. COUNTY SECRETARY

In the presence of

SIMON L. MORINTAT

Dated the 25th February, 2020.

EUGENE WAMALWA,  
*Cabinet Secretary for Devolution and the ASALS.*

GAZETTE NOTICE NO. 1610

#### THE CONSTITUTION OF KENYA THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(No. 9 of 2011)

#### THE ELECTIONS ACT

(No. 24 of 2011)

#### THE ELECTIONS (GENERAL) REGULATIONS, 2012

(L.N. 128/2012 and L.N. 72/2017)

#### APPOINTMENT OF COUNTY RETURNING OFFICER FOR CLEARANCE OF THE DEPUTY COUNTY GOVERNOR, KIAMBU COUNTY

PURSUANT to the Supreme Court Advisory Opinion Reference No. 1 of 2015 and in exercise of the powers conferred by Articles 88 (4), 180 (5), (6), section 4 of the Independent Electoral and Boundaries Commission Act, 2011, section 25 of the Elections Act, 2011 and Regulation 4 (1) (a) of the Elections (General) Regulations, 2012, the Independent Electoral and Boundaries Commission appoints the person listed in the Schedule to this notice, as the County Returning Officer for Kiambu County for purposes of clearing the Deputy County Governor, Kiambu County.

#### SCHEDULE

County Code	County Name	Surname	Other Names	ID. No.
022	Kiambu	Mutai	Irene	9870206

Dated the 21st February, 2020.

W. W. CHEBUKATI,  
*Chairperson, Independent Electoral and Boundaries Commission.*

GAZETTE NOTICE NO. 1611

#### THE CONSTITUTION OF KENYA

#### THE ELECTIONS ACT

(No. 24 of 2011)

#### THE ELECTIONS (GENERAL) REGULATIONS, 2012

(L.N. 128/2012 and L.N. 72/2017)

#### THE ELECTIONS (PARTY PRIMARIES AND PARTY LISTS) REGULATIONS, 2017

(L.N. 69/2017)

#### ASPIRANTS SCHEDULED TO PARTICIPATE IN THE ORANGE DEMOCRATIC MOVEMENT PARTY PRIMARY FOR MEMBER OF THE COUNTY ASSEMBLY, DABASO WARD, KILIFI NORTH CONSTITUENCY

IN EXERCISE of the powers conferred by Articles 88 (4) (d) and (e) of the Constitution of Kenya, sections 13 (3), 19, 31 2 (C) and 74 of the Elections Act, 2011 and Regulation 13B of the Elections General Regulations, 2012, Regulations 15, 16, 17 and 18 of the Elections (Party Primaries and Party Lists) Regulations, 2017, the Independent Electoral and Boundaries Commission gives notice to the public that the persons listed in the seventh and eighth columns of the Schedule stand to contest in the Orange Democratic Movement primary for Member of the County Assembly, Dabaso Ward, Kilifi North Constituency.

## SCHEDULE

<i>County Code</i>	<i>County Name</i>	<i>Const. Code</i>	<i>Const. Name</i>	<i>County Assembly Code</i>	<i>County Assembly Name</i>	<i>Surname</i>	<i>Other Names</i>	<i>ID/PP No.</i>	<i>Gender</i>	<i>Year of Birth</i>	<i>Type of Disability (if Any)</i>	<i>Political Party Name</i>
003	Kilifi	011	Kilifi North	0054	Dabaso	Hussein	Hamza Hamisi	21591485	Male	1979	Physical Impairment	Orange Democratic Movement
003	Kilifi	011	Kilifi North	0054	Dabaso	Yaa	Dickson Karam	20813411	Male	1978	Non	Orange Democratic Movement
003	Kilifi	011	Kilifi North	0054	Dabaso	Kombe	Emmanuel Changawa	23165888	Male	1984	None	Orange Democratic Movement

Dated the 14th February, 2020.

W. W. CHEBUKATI,  
Chairperson, Independent Electoral and Boundaries Commission.