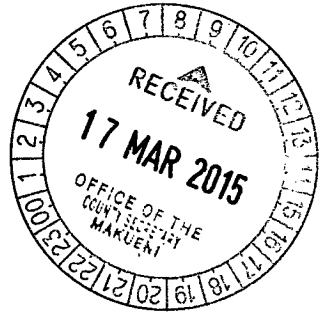


SPECIAL ISSUE

Makueni County Gazette Supplement No. 1 (Acts No. 1)



REPUBLIC OF KENYA



**MAKUENI COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2015

NAIROBI, 18th February, 2015

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MAKUENI COUNTY SAND CONSERVATION AND UTILIZATION ACT, 2015

AN ACT of County Assembly of Makueni to regulate and to ensure sustainable conservation and utilization of sand and to provide for protection of the environment and equitable sharing of the accruing benefits and for connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

1. (1) This Act may be cited as the Makueni County Sand Conservation and Utilization Act, 2015 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) The Executive Committee Member may by way of notice in the County Gazette operationalize some parts of this Act before others in order to ensure that conservation is effected before any utilization.

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

Interpretation

“Authority” means the Makueni County Sand Conservation and Utilization Authority established under section 4 of this Act;

“conservation site” an area that has been gazetted under this Act for conservation purposes;

“County Executive Committee Member” means a member of the County Executive Committee for the time being in charge of environmental matters in the county;

“designated site” an area that has been gazetted under this Act as a sand utilization site for the time being;

“EMCA” means the Environmental Management and Co-ordination Act, 1999;

“environmental audit” means the systematic, documented, periodic and objective evaluation of environmental organization and management in order to ensure effective conservation and management of the environment;

“environmental impact assessment” means a systematic examination conducted to determine whether or

not a programme, activity or project will have any adverse impacts on the environment and the measures necessary to ameliorate any adverse effects;

“licence” means a permit issued by the Government of Makueni County under this Act;

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

“licenced vehicle” means a vehicle that has been licenced under this Act to engage in the transportation of sand;

“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 2mm in diameter and includes stones, coral, earth and turf but does not include silica sand, this does not include sand that has been made through the crushing of rocks;

“Sand harvesting”, means the removal, extraction, harvesting or scooping of sand from sites;

“Sand dealer” means any person(s) authorized to harvest, remove, extract, scoop, transport or sell sand in quantities above 2 tonnes in accordance with the provisions of this Act;

“Sand loader” means any person who is over 18 years old and has been registered under this Act and is authorized to scoop and load sand on to licenced vehicles;

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

Objects and
purpose of the Act

- (a) Provide for the sustainable conservation and utilization of sand within Makueni County, through providing for establishment of the Sand Conservation and Utilization Authority tasked with the oversight of all sand and related activities within the county and the Sand Conservation Fund.
- (b) Conserve and provide for periodic assessment of sites designated for purposes of protecting our natural resources and environment;

- (c) Mitigate the risks associated with unregulated sand utilization which include environmental degradation.
- (d) Educate the public on the process and importance of protecting the environment and proper utilization of our natural resources;
- (e) Cater for the rights of all the parties involved in the process of sand conservation and utilization and ensures the community benefits from the resource.
- (f) Reduce and mitigate the negative social impact associated with sand utilization.

PART II—ADMINISTRATION

4. (1) There is established an authority to be known as County Sand Conservation and Utilization Authority

Establishment of the County Sand Conservation and Utilization Authority

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing, charging and disposing of movable and immovable property;
- (c) borrowing money
- (d) entering into contracts; and
- (e) Doing or performing all such other things or acts for the proper administration of this Act, which may lawfully be performed by a body corporate.

5. The headquarters of the Authority shall be in Wote Town, Makueni County.

Object and functions of the Authority

6. (1) The object and purpose for which the Authority is established is to exercise general supervision and co-ordination over all matters relating to sand conservation and utilization and to be the principal instrument of the County Government in the implementation of all policies relating to sand as a natural resource.

Headquarters of the Authority

(2) Without prejudice to the generality of the foregoing, the Authority shall-

- (a) co-ordinate the various sand management activities being undertaken by agencies and promote the integration of sand related environmental

consideration into development policies, plans, programmes and projects with a view to ensuring the conservation and rational utilization of the resource on a sustainable yield basis for the improvement of the quality of human life in the County;

- (b) establish and review in consultation with the relevant agencies, sand conservation and utilization guidelines;
- (c) undertake and co-ordinate research, investigation and surveys in the field of Sand Conservation and utilization, and collect, collate and disseminate information about the findings of such research, investigation or survey;
- (d) monitor and assess activities, including activities being carried out by relevant agencies, in order to ensure that the environment is not degraded by such activities, Sand conservation objectives are adhered to and adequate early warning on impending sand related environmental emergencies is given;
- (e) Mobilize and monitor the use of financial and human resources for sand conservation and utilization management;
- (f) oversee and supervise the Sub-County Committee and WRUAs to ensure that the activities they undertake and or allow to be undertaken in sand utilization conforms to the conservation objectives of the Authority and this Act;
- (g) Provide technical assistance to the Sub-County Committees and WRUAs as and when is necessary to ensure effective management of Sand utilization and conservation of sites;
- (h) ensure that before sand utilization activities are commenced, Environmental Impact Assessment is undertaken in accordance with the provisions of EMCA, 1999;
- (i) recommend to the Executive Committee Member sites that need conservation, those that harvesting sand therefrom should be prohibited and the

designated sites for sand utilization for the time being for gazettelement in the County Gazette;

- (j) formulate regulations for gazettelement by the Executive Committee Member on sand utilization and conservation taking into consideration the policies and legislations of both the County Government and National Government;
- (k) ensure rehabilitation of the sand harvested sites and other environmental damage associated with harvesting and transportation of sand within the County;
- (l) licencing and registration of all persons who wish to engage in any sand utilization activities and maintaining such registers as may be necessary;
- (j) perform any other functions necessary for the carrying out of their mandate under this Act.

7. (1) The Authority shall consist of a board responsible for governance and a secretariat headed by a Managing Director responsible for the day today execution of the affairs of the authority provided that the board shall consist of-

Composition of
the authority

- (a) A Chairperson appointed by the Governor
- (b) The Chief Officer of the department for the time being responsible for matters relating to the Environment or an officer of that department designated in writing by the Chief Officer;
- (c) Four members, not being public officers competitively appointed;
- (d) One member of the County Environment Committee;
- (e) One representatives of WRUAs;
- (f) One representative from the department of trade appointed by the Executive Committee Member in charge of trade;
- (g) One representative from the department of youth, gender and social services appointed by the Executive Committee Member in charge of youth, gender and social services;

(h) the County Commissioner or his representative;

(i) The Managing Director appointed competitively

(2) The Board of the Authority shall have powers to co-opt such members as it may deem fit from time to time.

(3) The secretariat shall be headed by a Managing Director responsible to the board provided that such a person shall be appointed competitively by the board of the Authority from among three persons shortlisted by the County Public Service Board

(4) The County Executive Committee Member responsible for matters of environment shall prescribe the terms of reference and rules of procedure for the Board of the Authority.

(5) The Board of the Authority shall serve for a term of three years renewable once provided that by the end of the first term one third of the members shall retire and new ones appointed in order to ensure continuity at the end of the second term

(6) No person shall be appointed under subsections (1) (c) unless such person holds at least an under-graduate degree from a recognized University in the fields of environmental law, environmental science, natural resource management or a relevant social science

(7) The Authority shall elect a Vice-Chairman from among the members

(8) The Authority shall meet at least four times in every financial year.

(9) The Chairman shall preside at every meeting of the Authority at which he is present, but in his absence the Vice-Chairman shall preside, and in his absence, the members present shall elect one of them who shall, in respect to that meeting and the business transacted thereat have all the powers of the Chairman.

(10) Unless a unanimous decision is reached, a decision on any matter before the Authority shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.

(11) The quorum for the transaction of the business of the Authority shall be seven members including the person

presiding; and all acts, matters or things authorized or required to be done by the Authority, shall be effected by a resolution passed by a majority of the members present and voting.

(12) The appointment of a member of the Authority may be terminated by the appointing authority where the member —

- (a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (c) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Authority; or
- (d) becomes, for any reason, incapable or incompetent of properly performing the functions of office.

(13) Where a member of the Authority dies or resigns or otherwise vacates office before the expiry of his term of office, the appointing authority shall appoint another person in the place of such member

(14) The members of the Authority shall be paid such salaries and allowances as may, from time to time, be determined by the Executive Committee Member on the recommendation of the Salaries and Remuneration Commission.

8. The financial year of the Committee shall be the period of twelve months ending on the thirtieth June in each year.

Financial year

9. (1) At least three months before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of the Committee for that year.

Annual estimates

(2) The annual estimates shall make provisions for the estimated expenditure of the Committee for the financial year and in particular, the estimates shall provide for:

- (a) the payment of the salaries, allowances and other charges in respect of the Authority;

- (b) the creation of such reserve funds to meet future contingent liabilities or in respect of such other matter as the Authority may deem appropriate

10. (1) The Committee shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.

Accounts and
audit

(2) Within a period of two months from the end of each financial year the Committee shall submit to the Audit officer or to an auditor appointed by the County Government, the accounts of the Committee together with—

- (a) a statement of the income and expenditure of the Committee during that year; and
- (b) a statement of the assets and liabilities of the Committee on the last day of that year.

11. (1) There is hereby established a fund to be known as the County Sand Conservation Fund, (hereinafter referred to as "The Conservation Fund").

County sand
Conservation
Fund

(2) The Conservation Fund shall consist of—

- (a) such proportion of fees or deposit bonds as may be determined by the Authority from time to time;
- (b) such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Conservation Fund.

(3) The object of the Conservation Fund shall be as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.

12. (1) The Authority shall establish Sub-County Sand Management Committees in every Sub County

Sub county sand
management
committee

(2) The membership of the Sub-County Sand Management Committees will be constituted in accordance to regulations to be formulated by the Executive Committee Member

(3) The County Department in-charge of Environmental matters shall provide a secretariat to the Sub County Committees

(4) The Sub-County Committee shall serve for a term of three years renewable once

13. (1) The Sub-County Sand Management Committee shall be responsible for the proper and sustainable conservation and utilization of all sand related activities within the sub county in respect of which it is constituted.

Functions of the
sub county
committee

(2) without prejudice to the generality of subsection one, the committees shall:

- (a) coordinate and supervise the construction of Sand dams and gabions in designated conservation and utilization sites
- (b) ensure that lorries use designated access roads only to sand utilization sites;
- (c) ensure that sand utilization sites are rehabilitated appropriately by the Sand Resource Utilization Associations, County Government and approved dealer under its close monitoring and supervision
- (d) ensure that the requirements of an environmental impact assessment and environmental audit pursuant to the Environmental Management and Co-ordination Act No. 8 of 1999 have been fulfilled before sand utilization is allowed
- (e) coordinate and supervise the Sand Resource Utilization Associations within the particular Sub-County in the process of conservation and utilization of sand resources
- (f) recommend to the Authority sites for conservation and utilization
- (g) perform any other functions as the Authority may assign from time to time

14. (1) The Sub County Sand Management Committee shall constitute such number of local Sand Resource Users Associations as is necessary which will be registered by the County Social Services office

Sand resource
users associations

(2) Each Sand Resource User Association so established and registered will be responsible for sustainable management of sand conservation and utilization activities in its area of operation.

(3) In establishing the Sand Resource User Associations the Committee shall have due regard to;

- (a) Viability and sustainability of the Association
- (b) Inclusion of interested groups
- (c) Drainage network of the river, lakeshore or other designated sites along which sand conservation and utilization activities are carried out.

15. (1) Each Sand Resource User Association shall be composed of

Composition of
the Sand Resource
User Associations

- (a) Three riparian land owners
- (b) Two women representatives who are not riparian land owners
- (c) Two youth representatives who are not riparian land owners
- (d) One elders who is not riparian land owners
- (e) One religious leader

16. (1) Sand Resource User Associations shall be charged with the following responsibilities among others

Functions of sand
resources user
association

- (a) Ensuring sustainable management of sand utilization along riverbeds and other designated sites.
- (b) Educating the public and or sand users on conservation and utilization of sand
- (c) Utilization of allocated revenue for community projects.
- (d) Co-coordinating the rehabilitation of the sand utilization sites and other environmental damage associated with utilization and transportation within its area of operation.
- (e) Perform any other functions as may be given by the Sub County Committees

PART III—CONSERVATION

17. The Authority shall, in consultation with the relevant lead agencies, promote the sustainable use of sand resource by —

Sustainable
utilization

- (a) promoting research in appropriate sand utilization;
- (b) creating incentives for the rehabilitation of sand utilization sites;
- (c) promoting measures for the conservation of access roads; and taking measures to encourage the planting of trees, building of gabions and sand dams by individual land users, institutions and by community groups.
- (d) undertaking measures intended to integrate the conservation and sustainable utilization ethic in relation to sand dealings in existing government activities and activities by private persons.
- (e) measuring the value of unexploited sand and other related resources in terms of watershed protection, influences on climate, cultural and aesthetic value, as well as actual and potential genetic value thereof.
- (f) identifying of potential threats to sustainability of sand conservation and utilization in the county and devise measures to mitigate their effects
- (g) engaging of experts in conservation to ensure that the environment is protected at all times
- (h) ensuring proper utilization of the Conservation Fund

18. (1) The Authority shall ensure that in all designated sand utilization sites, sand dams and gabions are constructed.

Construction of
Sand dams and
gabions

(2) The Executive Committee Member shall make regulations for the construction of sand dams, gabions and any other conservation activities

PART IV—LICENCING

19. (1) No person shall use, cause or permit to remove sand from any river, farm or other land whether public or private for the purposes of sale unless valid license issued under this Act for such trade or business.

Licencing of Sand
harvesters

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

(3) Subsection (1) shall not apply to the utilization of sand for domestic purposes

20. (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 annual unless otherwise authorized by the Executive Committee member

Licensing of sand
dealers

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

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

21. A person intending to harvest, transport, sell and or distribute sand for commercial purposes shall make an application in the prescribed form to the Authority and shall pay the prescribed fee.

Application for
licence

22 (1) The Authority shall consider each application made under section 23 and determine whether to issue a licence to the applicant or not within thirty days.

Grant of licence

(2) Where the Authority has no objection to the application under section 23, it shall grant the licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in such form as may be prescribed and subject to such conditions as the Authority may consider fit.

(4) Where the Authority is not satisfied with the application under subsection (1), it may—

(a) reject the application giving reasons and notify the applicant accordingly within fourteen days of the decision to reject; or

(b) make comments and recommendations thereon and return it to the applicant within fourteen days.

(5) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within thirty days of the date of notification.

(6) On receipt of any revised application under subsection (5), the Authority shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(7) Where the Authority grants a licence under this section it shall, publish the grant in the County Gazette.

(8) Every licence application shall be accompanied by a non-refundable fee to be determined by the Authority in their guidelines.

23. (1) The Authority shall grant a licence to any person who—

Eligibility for
grant of licence

- (a) Proves through relevant authentic documents that he or she is of good conduct and;
- (b) Is a law abiding citizen with no criminal record resulting from a conviction under this Act;
- (c) Gives an undertaking that he will take full responsibility for contravention of the provisions of this Act by himself, his assignees and or his employees and;
- (d) Conforms to any other condition stipulated in the licence application form or set out by the Authority in their guidelines.

24. (1) Except as otherwise provided in this Act, the Authority may, subject to this Part, grant, renew, transfer or remove a licence, and may embody therein such conditions as it may deem appropriate, or it may refuse to grant, renew, transfer, withdraw or cancel a licence.

Validity and
renewal of
licences

(2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Authority.

(3) Every grant of a licence or its every renewal or transfer shall-

- (a) Be subject to the payment of such fee or fees as may be prescribed;
- (b) Expire on the thirty first day of December each year;
- (c) Specify in the licence the hours of operation stipulated under this Act

(4) Where an application for a licence has been refused, or a licence has been cancelled, no subsequent application by the former applicant or licensee for a licence of the same description shall be considered by the Authority during the period of six months from the date of

such refusal or cancellation, except at the discretion of the Authority and;

(5) the Authority in refusing to grant such licence or renewal thereof shall furnish reasons for refusal to the applicant

25. 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 not fulfilled; or
- (e) the licensee is convicted of an offence under this Act.

26. (1) Any person who harvests, sells and or distributes sand except under and in accordance with, this Act commits an offence and is liable—

Breach

(a) For a first offence-

- (i) to a fine not less than 5,000 Kenya shillings and not exceeding 10,000 shillings or to imprisonment for a term not exceeding 1 month in default if he is a loader and the offence is a loading offence;
- (ii) to a fine not less than 10,000 Kenya shillings and not exceeding 20,000 Kenya shillings or to imprisonment for a term not exceeding 3 months in default for the driver;
- (iii) to a fine not less than 50,000 Kenya shillings and not exceeding 100,000 Kenya Shillings or to imprisonment for a term not exceeding 6 months in default for the vehicle owner;

(b) For a second or subsequent offence-

- (i) to a fine not less than 10,000 Kenya shillings and not exceeding 20,000 Kenya shillings or to imprisonment for a term not exceeding 3 months or to both for the loader;

- (ii) to a fine not less than 50,000 Kenya shillings and not exceeding 100,000 Kenya shillings or to imprisonment for a term not exceeding 6 months, for the driver;
- (iii) to a fine not less than 100,000 Kenya shillings and not exceeding 200,000 Kenya Shillings or to imprisonment for a term not exceeding 12 months for the vehicle owner;

PART V—UTILIZATION

27. (1) The Authority will in coordination with the Sub County Committees and Sand Resource User Associations designate and gazette in the County Gazette sand utilization and conservation sites from time to time.

Sand utilization sites and conservation sites

(2) No person shall harvest sand from any area not designated as a sand utilization site by the Committee.

(3) Each designated sand-utilization site will have a management plan to guide in the rehabilitation of the sites.

28. (1) On-farm sand utilization shall be carried out as follows-

On-farm sand utilization

- (a) Scooping or harvesting of sand should not exceed six (6) feet in depth.
- (b) Designated sand collection sites should be at least 50 metres from the riverbanks or dykes for on-farm sand harvesting.
- (c) Scooping or harvesting should be done concurrently with restoration of areas previously harvested. Such restoration will be undertaken with guidance from the Committee.
- (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.

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

Riverbed sand utilization

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

(3) Loading of sand shall be done in the designated utilization 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.

30. (1) Persons are allowed to harvest, extract, scoop or transport sand between the hours of 6am to 6pm.

Hours for
harvesting and
transportation of
sand

(2) Any person who undertakes the activity not within the specified time shall be liable of an offence, and shall, upon conviction, be liable to imprisonment for a term of two years or a fine of 200,000 shillings or both.

31. (1) The Authority shall register all sand loaders, drivers and conductors working within the County as per regulations.

Registration

(2) The Authority shall devise and provide identification tags which shall be given to each and every driver, conductor and loader which they are required to have with them throughout the time when they shall be undertaking such activities, performing or undertaking such tasks as licensed and or assigned to them.

(2) The display tags and or license document shall be produced upon demand by the Committee or its staff or any state officer.

32. (1) The Authority 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.

Cess

(2) Any person authorized to sell sand will be required to issue a receipt to the purchaser and keep records of such receipt of payment for periodic inspection by the county revenue collector or relevant authorities.

33. (1) Payments from the sale of sand shall be made in the form of either bankers cheque or cash deposit to the Authority's bank account

Mode of payment

(2) Any person willing to purchase Sand shall make payment upon which they shall present such instrument as prove of such payment, to be allowed, approved and authorized to carry it.

34. (1) The Authority shall ensure all Sand is transported through designated roads to gain access to the designated sites.

Designated roads

(2) The persons who wish to scoop/harvest and or, transport sand shall use designated roads to gain access to the sand selling point or designated sites.

(3) Any person who contravenes the provision of subsection 2 above, shall be guilty of an offence and shall upon conviction, be liable to penalties as provided under this Act.

35. (1) Revenue raised from the sale of sand shall be shared among the county, the Authority and the sand loaders in the following proportion:-

Sharing of revenue from sale of sand

- (a) 50% of all revenue collected shall go to the Conservation fund;
- (b) 25% shall be given to the Authority for the day to day running of its activities;
- (c) 20% shall go to the County Government as revenue;
- (d) 5% shall go to the local community.

36. The Authority will monitor the rehabilitation of all designated Sand harvesting sites and their adjacent environment (access roads, riverbanks, catchment areas among others) to ensure environmental sustainability

Monitoring and restoration of sand harvesting sites

37. (1) In the event of any disagreement regarding access, ownership, benefit sharing, management approaches in Sand harvesting the Authority shall be convened to deliberate on the grievances and make appropriate resolution.

Dispute resolution

38. (1) The County Executive Committee member responsible for environmental matters shall make regulations generally for the better carrying out the provisions of this Act.

regulations

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

- (a) guidelines for sand harvesting and other related activities;

- (b) criteria for determining the number of Ward Committees 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;
 - (e) forms required under this Act;
 - (f) rehabilitation of closed sites;
 - (g) registration of sand loaders and formation of unions; and
 - (h) 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.

