

THE COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY



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SECOND ASSEMBLY- SECOND SESSION

COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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REPORT ON CONSIDERATION OF THE PUBLIC FINANCE  
MANAGEMENT (KITUI COUNTY EMPOWERMENT FUND)  
REGULATIONS, 2018.

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Clerks Chambers,

November, 2018

County assembly Buildings,

Kitui Kenya

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## 1.0 PREFACE

Mr. Speaker,

Mr. Speaker, on behalf of the County Assembly Select Committee on Justice and Legal Affairs, it is my pleasant duty and honour to present to this Honourable House the Committee's report on consideration of the Public Finance Management( Kitui County Empowerment Fund) Regulations, 2018.

## 1.1 COMMITTEE MEMBERSHIP

Mr. Speaker

The County Assembly Committee on Justice and Legal Affairs as currently constituted is composed of the following Honourable Members.

1. Hon. Nelson K. Musyoka	Chairperson
2. Hon. Eliud Ndinguri	Vice Chairperson
3. Hon. Geoffrey Mwalimu	Member
4. Hon. Dr. Grace Mutua	Member
5. Hon. Stephene M. Makau	Member
6. Hon. Baridi F. D. Mbevo	Member
7. Hon. Philip Nguli	Member
8. Hon. Peter M. Kilonzo	Member
9. Hon. Josphine Kavivi	Member
10. Hon. Charity Mwangangi	Member
11. Hon. Deiys Mukala	Member

## 1.2 COMMITTEE ESTABLISHMENT

The Committee on Justice and Legal affairs was established vide the County Assembly Resolution. The need for the committee establishment arose from the fact that there was no a Committee to effectively and efficiently oversight over Justice and Legal issues in the County hitherto.

It was thus observed that the Committee be established for the purposes of over-sighting on all legal matters arising from the functions of the County departments / ministries.

In undertaking the subject matter, the Committee was guided by section 12 of the Statutory Instruments Act, 2013 which states *'Every Statutory instrument issued, made or established after the commencement of this Act shall upon tabling before the respective House of the parliament stand referred to the Committee or any other Committee that may be established for that purpose of reviewing and scrutinizing statutory instruments.'*

### **1.3 RELEVANT CONSIDERATIONS**

In carrying out its scrutiny of the Statutory Instrument the Committee was guided by the doctrine of Separation of powers , the principles of good governance, rule of law, and in particular considered whether the statutory instrument:-

- i. Is in accord with the provisions of the Constitution, the Act pursuant to which it is made or any other written law.
- ii. Infringes on fundamental rights and freedoms of the public
- iii. Contains a matter which in the opinion of the committee should be more dealt with by an Act of the Parliament
- iv. Contains Imposition of taxation
- v. Directly or indirectly bars the jurisdiction of courts
- vi. Gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such powers
- vii. Involves expenditure from consolidated Fund or other public revenue
- viii. Is defective in its drafting or for any reason the form of purport of the Statutory Instrument calls for elucidation
- ix. Appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made
- x. Appears to have had unjustifiable delay in its publication or laying before Parliament
- xi. Makes rights, liberties or obligations unduly dependent upon non reviewable decisions
- xii. Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers
- xiii. Inappropriately delegates legislative powers
- xiv. Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation
- xv. Appears to infringe on the rule of law
- xvi. Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- xvii. Accords to any other reason that the Committee considers fit to examine.

Further, in undertaking its mandate, the Committee was greatly guided by the provisions of the Public Finance Management Act, 2012 and article 94(5) of the Constitution of Kenya 2010.

**Mr. Speaker**

A '*Statutory Instrument*' is defined in Section 2 of the Statutory Instruments Act as any rule, order, Regulation, direction, form, tariff of cost or fees, letters patent, commission, warrant, proclamation, by law, resolution, guideline or other Statutory Instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament or County legislation under which that Statutory Instrument or subsidiary legislation is expressly authorised to be issued.

**Mr. Speaker,**

The Public Finance Management (Kitui County Empowerment Fund) Regulations, 2018 were laid on the table of the House on the 20<sup>th</sup> day of September 2018, and pursuant to section 12(1) of the Statutory Instruments Act, 2013 the same were referred to the Committee on Justice and Legal Affairs for scrutiny.

**Mr Speaker,**

Worth noting is that in scrutinizing the said Regulations, the powers vested on the Committee pursuant to the provisions of section 15(1) and (2) of the Statutory Instruments Act are either;

- a. to accede to the regulations or,
- b. to annul the whole or part of the Regulations

Where the Committee resolves to accede to the Statutory Instruments, the Clerk shall convey that resolution to the relevant County department or the authority that published the Statutory Instrument without passing through the House.

Where on the other hand the Committee resolves not to accede to the Regulations the Committee shall make a report to the House containing only resolution that the Regulations that stood referred to the Committee be revoked.

#### **1.4 COMMITTEE MEETINGS**

The Committee retreated to Nairobi at Pride inn Hotel where it held five (5) consecutive meetings from 5<sup>th</sup> to 9<sup>th</sup> November 2018 to consider and review the Public Finance Management (Kitui County Empowerment Fund) Regulations, 2018 and also look at the explanatory memorandum to the said Regulations and eventually compiled the final Committee report.

The Committee also met with the County Executive Committee Member for Finance one Mrs. Mary Nguli on Wednesday 7<sup>th</sup> November, 2018 who shed light about certain clauses as regards the Regulations.

## **1.5 ACKNOWLEDGEMENT.**

**Mr Speaker**

The Committee is grateful to the Offices of the Speaker and the Clerk of the Assembly for the support extended to it in facilitating the production of this report

I also wish to extend my appreciations to the Members of the Committee and the Staff of the County Assembly who worked tirelessly to compile this report.

**Mr. Speaker**

I wish to confirm to that the recommendations and the resolutions of this committee were unanimous. It is therefore my pleasant duty and privilege, on behalf of the Committee on Justice and Legal Affairs to table this report to the House for consideration and consequent approval.

**SIGNED BY** \_\_\_\_\_

HON. NELSON K. MUSYOKA (M.C.A).

CHAIRPERSON, COMMITTEE ON JUSTICE AND LEGAL AFFAIRS.

COUNTY ASSEMBLY OF KITUI.

DATE \_\_\_\_\_

## **2.0 EXECUTIVE SUMMARY**

Article 94(5) of the Constitution of Kenya 2010 precludes all other persons or bodies other than Parliament from making provisions having the force of law in Kenya except under authority conferred by the Constitution or delegated by the legislature through a statute.

The County Assembly may, therefore, delegate to any person or body the power to make Subsidiary legislation, which require approval of the House before having the force of the law. Subsidiary legislation made by persons or bodies other than the parliament are commonly known as Statutory Instruments.

The manner, procedure and criteria for considering Statutory Instruments is detailed in Statutory Instruments Act, NO.23 of 2013 and the Standing Orders

## **2.1 LEGAL FRAMEWORK AND BASIS.**

**Mr Speaker sir.**

The Constitution of Kenya under Article 186 provides for the functions of the respective levels of the Government. Article 187 on the other hand envisages a situation where functions are transferred from one level of the government to another but observes in strict terms that despite the transfer of the Constitutional responsibility for the functions set out under schedule four part two shall remain with the level of government that is assigned that function under that said schedule.

The Kitui County Empowerment Fund Regulations, 2018 seeks to establish a collaborative relationship between the two levels of the government in so far as issues relating to empower youth, women, people with disabilities, and other residents of Kitui County to participate in social and economic development within the County and complement County Government programmes on affirmative action measures in Kitui County are concerned.

### **3.0 OVER VIEW OF THE KITUI COUNTY EMPOWERMENT FUND REGULATIONS 2018**

**Mr. Speaker**

The public Finance Management Act, (Kitui County empowerment Fund (Regulations 2018) seeks to provide empowerment for youth and women, people with disability and other residents of Kitui county to participate in social and economic development within the county and complement county Government programmes on affirmative action measures.

#### **3.0.1 OBJECTS AND THE PURPOSE OF THE FUND**

**Mr. Speaker,**

The object of the Fund shall be to empower youth and Women, people with disability and other residents of Kitui County to participate in social and economic development within the County and complement County Government programmes on affirmative action's measures.

The Fund shall:

- a) Enhance access to capital for enterprise development through establishment of sustainable revolving fund;
- b) Support value addition initiatives in the county;
- c) Support affirmative action groups through a revolving Fund and in particular, out of school youth, women and people with disability for furtherance of economic empowerment initiatives within the county such as but not limited to table banking, savings and credit cooperative organizations, co-operatives, self-help groups and accumulated savings and Credit Associations (ASCA's) by allocating at least thirty (30%) percent of the total annual allocations to the Fund for this purpose;
- d) Support access to government procurement and training opportunities of marginalized groups by allocating at least twenty (20%) percent of the total annual allocations to the Fund for this purpose;
- e) Facilitate self-employment among county residents;
- f) Attract and facilitate investments in micro, small and medium enterprises operating within the county and promote linkages with large enterprises;
- g) Facilitate training, mentorship, coaching and provision of business development services to Kitui County residents by allocating an amount not exceeding eight (8%) percent of the total annual allocations to the Fund for this purpose;

- h) Provide technical assistance in product and market development;
- i) Facilitate technology acquisition , adoption and utilization for faster development of the county;
- j) Facilitate marketing of the products and services of micro and small enterprises owned by county residents;
- k) Attract funding from other sources;
- l) Create a framework of investing in and facilitating growth of the enterprise sector in the county to spur economic growth;
- m) Carry out any other function necessary to give effect to any of the objects afore-mentioned.

### **3.0.2 ESTABLISHMENT OF THE FUND**

Mr. Speaker,

Regulation 4(1) establishes the Kitui County Empowerment Fund.

The Fund shall consist of-

- a) Monies appropriated by the county assembly;
- b) Grants, gifts, loans and donations given to the Fund;
- c) Income generated from the process of the Fund and;
- d) Receipts from any other lawful sources of income.

All monies received by the Fund shall be maintained in a separate bank account in the name of Kitui County Empowerment Fund and the account shall be opened and administered in accordance with the Public Finance Management Act, 2012.

The balance of the Fund at the close of each financial year shall be retained in the Fund for purposes of which the Fund was established.

### **3.0.3 CAPITAL OF THE FUND**

The initial capital of the Fund shall be one hundred and eighty Million shillings appropriated by the County Assembly in the financial year 2018/2019.

### **3.0.4 APPOINTMENT OF THE FUND ADMINISTRATOR**

The County Executive Committee Member for the time being responsible for finance shall designate a person responsible for administering the Fund. The Fund Administrator shall be ex-officio member of the Committee and shall have no right to vote at any meeting of the Committee.

### **3.0.5 FUNCTIONS OF THE FUND ADMINISTRATOR**

**Mr. Speaker,**

Regulation 7 outlines for the functions of the Fund Administrator who shall be responsible of administering the Kitui County empowerment Fund.

These functions are as follows:

- a) Supervise and control the administration of the Fund in consultation with the Committee;
- b) Open and operate a bank account for the Fund in a bank to be approved by the County Treasury;
- c) Consult with the County Executive Committee Member on matters relating to administration of the Fund;
- d) Prepare annual estimates and such other plans in consultation with the Committee and the County Executive Committee Member for better administration of the Fund;
- e) Ensure that the earnings of or accruals to the Fund are retained in the Fund unless the County Executive Committee Member for the time being responsible for Finance directs otherwise;
- f) Ensure that money held in the Fund, including any earnings or accruals referred to in subparagraph (d) is spent only for the purposes for which the fund is established;
- g) Ensure disbursement of monies out of the Fund to the purposes for which the Fund is established;
- h) Cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- i) Receive and submit reports to the Committee on a quarterly basis of the status of the Fund including any challenges faced;
- j) Prepare a financial statement for the Fund each financial year in accordance with the Public Finance Management Act, 2012, and in the form prescribed by the Accounting Standards Board;
- k) Ensure that the accounts for the Fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from the time to time;
- l) Prepare quarterly financial statements for the Fund including its financial and non-financial performance in the form prescribed by the Accounting Standards Board;
- m) Not later than three months after the end of each financial year, submit a financial statements relating to the accounts under (J) above to the Auditor –General;

- n) Not later than fifteen days after the end of each quarter, submit quarterly report to the County Treasury and the controller of Budget and;
- o) Furnish such additional information as the County Executive Committee Member for the time being responsible for finance that she/he may deem fit to be proper and sufficient for the purpose of examination of the Fund.

In the performance of the functions under the Regulations, the County Executive Committee Member, the Committee and the unit shall be guided the following principles-

- a) Public participation and financial inclusiveness,
- b) Protection of the interest of the marginalised, person with disability, women and youth; and
- c) Local ownership and sustainability.

### **3.0.6 FUND EXPENDITURE**

**Mr Speaker,**

There shall be paid out of the Fund any expenditure approved by the Fund Administrator and incurred in connection with the Fund.

The administration cost of the Fund shall be a maximum of 3% of the approved budget of the Fund.

### **3.0.7 ESTABLISHMENT OF THE COMMITTEE**

**Mr. Speaker,**

Regulation 10 (1) establishes a Committee to be known as The Kitui County Empowerment Fund Committee which shall comprise of-

- a) A non-executive chairperson, not being a public officer appointed by the Governor;
- b) The Chief Officer of the Ministry for the time being responsible for matters relating to trade, cooperatives and investments or their representatives;
- c) The Chief Officer for the time being responsible for the matters relating to finance;
- d) The two persons of opposite gender with expertise in business enterprise development or financial management nominated by the County Executive Committee Member and appointed by the Governor;
- e) One person representing the Youth who shall be nominated by National Youth Council and appointed by the Governor;

- f) One person representing Women who shall be nominated by the County Executive Committee member and appointed by the Governor;
- g) One person representing persons with disabilities who shall be nominated by the National Council for persons with Disabilities and appointed by the Governor.

**Mr. Speaker**

The persons appointed under Regulation 10 (1) (d) above shall hold office for a term of 3 years renewable for one further term of 3 years.

A person shall be qualified for this appointment if that person –

- a) Holds a degree from a university recognised in Kenya;
- b) Has at least 3 years professional experience in the relevant field and;
- c) Meets the requirements of leadership and integrity has provided for in Chapter 6 of the Constitution of relevant National legislations.

The Chairperson and members of Committee shall be paid out of the Funds such allowances as provided for by the Salaries and Remuneration Commission.

**3.0.8 VACATION OF THE OFFICE OF A MEMBER**

**Mr. Speaker-**

Regulation 12 of the Kitui County Empowerment Fund Regulations, 2018, states that the office a member of the Committee shall become vacant under the following circumstances:

- a) If a member is adjudged bankrupt;
- b) If a member resigns in writing to the Governor;
- c) If a member is convicted of an offence and sentenced to a term of imprisonment exceeding 6 months;
- d) If a member in convicted of an offence involving fraud or dishonesty
- e) If a member is absent without reasonable cause from three consecutive meetings of the Committee
- f) If a member is removed from an office by Executive Committee Member for-
  - i. Being unable to perform the functions of his office by reason of prolonged mental or physical infirmity: or
  - ii. Failing to declare his or her interest in any matter or to be considered by the committee ; or

- iii. Any other sufficient reason as may be prescribed
- g) Dies

The County Executive Committee Member may in consultations with the Committee appoint one or more duly qualified persons not being members of the Committee, to be alternate members, and every alternate member shall be deemed for all purposes to be a member of the Committee.

### **3.0.9 FUNCTIONS OF THE COMMITTEE**

**Mr. Speaker**

Regulation 13 outline a detailed functions of the Kitui County Empowerment Fund Committee. The functions of the committee under the said regulations are as follows:

- a) Formulate policy guidelines in consultation with the County Executive Committee Member, negotiate and review the terms of any contract on any matter connected with the Fund;
- b) Ensure that all projects funded under these regulations are consistent with the priorities of the County Government as specified in the relevant policy documents
- c) Subject to the approval of the County Executive Committee Member for the time being responsible for finance, invest any of the monies of the Fund not immediately required for the purpose of disbursements, as it may determine;
- d) Formulate or approve standards, guidelines and procedures for funding proposals under the Regulations;
- e) Oversee monitoring and evaluation of projects and programmes funded under the Regulations;
- f) Sensitise the community on the objects and purpose of the Fund;
- g) In consultation with the Fund Administrator or financial institution engaged by the County Executive Committee Member for time being responsible for finance-
- h) Receive and consider all loan applications from eligible persons;
- i) Approve or reject such applications in accordance with the provisions of these Regulations; and
- j) Ensure recovery of matured loans;
- k) Monitor and provide oversight in the utilization of the Fund;
- l) Receive, review and approve statutory and management reports of the Fund;
- m) Spearhead resource mobilization initiatives for the Fund; and
- n) Perform any other function as may be conferred on it by these Regulations or any other written law.

### **3.1.0 DELEGATION BY THE COMMITTEE**

Regulation 14(1) of the Kitui County empowerment Fund Regulation 2018 provides that:

The committee may establish such sub-committees as it may consider necessary for the better performance of its functions under these Regulations.

The Committee may co-opt into the membership of a sub-committee established under sub Regulation (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

The Committee may, by resolution, either generally or in any particular case, delegate to any sub-committee or to any member, officer, employee or agent of the committee, performance of any of the functions of the Committee under the Regulations or under any other written law.

### **3.1.1. CONDUCT AND REGULATION OF THE BUSINESS AND AFFAIRS OF THE COMMITTEE.**

The Committee Meetings shall be conducted as follows:

- a) The Committee shall meet at such place as the chairperson may determine and the meetings shall be convened by the chairperson;
- b) The Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting;
- c) Unless three quarters of the members otherwise agree, at least seven days notice in writing of a meeting shall be given to every member of the committee by the Fund Administrator;
- d) The Chairperson may, at his discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may determine
- e) Meetings shall be presided over by the Chairperson or in his or her absence by the vice- chairperson;
- f) The members of a Committee shall elect a vice – chairperson from among themselves-
  - i. At the first sitting of the Committee; and
  - ii. Whenever it is necessary to fill the vacancy in the office of the vice-chairperson
- g) Where the chairperson or vice- chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.

- h) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matters.

A disclosure of interest made under Regulation 15(2) shall be recorded in the minutes of the meeting at which it is made.

### **3.1.2. QUORUM OF THE COMMITTEE**

**Mr. Speaker,**

- i. Subject Regulation 15 (2), the quorum of the Committee shall not be less than half of the appointed members of the Committee.
- ii. Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under the Regulations or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

A question before the Committee shall be decided by simple majority of the members present through voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

The committee shall:-

- i. determine rules of procedure for the conduct of its business; and
- ii. keep minutes of its proceedings and decisions

### **3.1.3. ESTABLISHMENT OF KITUI COUNTY EMPOWERMENT FUND UNIT**

As regards the Regulations, there is established within the County Ministry responsible for matters relating to trade, cooperatives and Investments, a unit to be known as the Kitui Empowerment Fund Unit which shall consist of:-

- i) The Fund Administrator; and
- ii) Such staff as the Committee may consider necessary for the performance of the functions of the unit under the Regulations

### **3.1.4. ADMINISTRATION OF THE FUND**

An applicant wishing to be considered for the grant of a loan shall make an application to the Fund Administrator in the prescribed form.

An applicant who has been awarded a loan shall be issued a Loan Identification Account Number by the Fund Administrator or financial institution or intermediary, as it may apply.

#### **An applicant who-**

- a. In filling a loan application form, knowingly makes any false statement in regard to any matter affecting his request for a loan ; or
- b. Being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or
- c. Is granted a loan based on false information.

Shall be a guilty of an offence and in the case of paragraphs (a) and (b), shall be liable to a fine of not more than one hundred thousand or to imprisonment for term of not more than six months and in the case of paragraph (c) to a fine of not more than one hundred thousand shillings or to imprisonment of a term of not less than eight months.

The access by eligible groups of the Fund, shall be on a first come first served basis, subject to assessment and approval of the application, provided that the Committee shall ensure equitable distribution of Funds in the wards.

### **3.1.5. LENDING TO FINANCIAL INTERMEDIARIES**

The fund may give funds to a financial intermediary for on lending

The financial intermediary, if any, shall:-

- a) Monitor the programme beneficiaries and provide monthly reports of a loan performance to the Fund Administrator.
- b) Participate in the verification of applicants through, amongst other things, site visits and recommend appropriate risk mitigating strategies for vulnerable enterprises;
- c) Propose suitable loan products for the programme;

A financial intermediary that wishes to be appointed for on-lending of loans shall enter into an agreement with the Fund Administrator in the manner prescribed by the committee.

An application for consideration under Regulation 19(2) above shall be accompanied by-

- a) A copy of the certificate of registration from the relevant regulator;
- b) A copy of valid license from the relevant regulators;
- c) An official search document under the companies Act, where applicable;
- d) A valid tax compliance certificate;
- e) A business permit from county;
- f) The minutes of resolution of the Board of financial intermediary to enter into the partnership with the Fund
- g) The audited accounts of the financial intermediary for the immediate proceeding three years
- h) A clean credit bureau certificate;

### **3.1.6. ELIGIBILITY**

The following shall be eligible for a loan under the Regulations-

- a) a self-help group registered under Department of social services
- b) a co-operative society;
- c) a savings and credit cooperative society;
- d) Special purpose groups such as youth, people with disability; contractors groups for LPO financing;
- e) community based organization;
- f) accumulated savings and credited associations;
- g) a registered partnership;
- h) a limited liability company;
- i) a registered sole proprietor;
- j) an individual operator;

### **3.1.7. ELIGIBILITY CRITERIA FOR APPLICANTS**

Applicants shall qualify for a loan under the regulation

(c) if-

(a) for a group-

- i. Is registered with the department of social service, co-operatives or the registrar of societies.
- ii. Is affirmative action group made up of minimum membership of either ten(10) youth, women or people with disability;

- iii. Each group, Sacco or cooperative wishing to be considered for a loan has established a revolving Fund account to receive Funds and invest or advance loans to eligible members in line with Regulation 3 (2) (c) of the Regulations;
- iv. Is based within the County;
- v. Operates a table banking structure or any other group Fund structure where members make weekly, monthly or quarterly contributions according to the groups` internal guidelines (evidence of contributions shall be a requirement);
- vi. Has a bank account in the name of the group;
- vii. The revolving Fund is to boost the objects of the Sacco, co-operative or table banking group for the benefit of the members.

An applicant for the Funds shall be accompanied by a resolution of a proper constituted meeting and the resolution shall be minuted.

The committee shall on behalf of the county , enter into an agreement with the identified beneficiary groups on the terms of revolving the Fund prior to release of Funds through signing a prescribed form which shall provide for-

- i. Payment of an interest rate of five percent,
- ii. Subject to any other written agreement, any person granted a loan by the group or Sacco or Cooperative or institution shall be allowed a three month grace period before commencement of repayment of the loan but any loan shall be payable within two years from expiry of the grace period;
- iii. Loan recipients shall deposit by a cash or cheque their monthly repayments for loan proceeds into the group or Sacco or Co-operative or institutions repayment account and submit a copy of the deposit slip to group or Sacco or co-operative or institution which shall issue and acknowledge receipt to the loan recipient;
- iv. Upon the verifiable proof of the loan repayment of all loan proceeds, the group or Sacco or cooperative or institution shall issue a discharge certificate to the recipient person with respect to the loan repayment;
- v. Each recipient group or Sacco or cooperative or institution shall submit a quarterly report to the fund administrator on the financial and non- financial activities of the group or Sacco or cooperative or institution.

### **3.1.8. CONDITIONS FOR GRANT OF LOAN**

The Fund Administrator may-

- I. In consultation with the committee, grant a loan to an applicant and in so doing, impose conditions, demand security and require repayment in instalments at such times and within such periods as may be deemed fit.

Provided that and subject to the provisions of the Regulation, the Fund administrator may upon the request by an applicant to whom a loan has been granted at any time vary-

- a) The condition subject to which the loan was made;
  - b) Any security given in relation to the loan ;or
  - c) Any of the terms of repayments of the loan
- II. Where the Fund Administrator has resolved to make a loan to an applicant, he/she shall notify the applicant in writing and require him within a specified period not exceeding six months to comply with any conditions and provide any security which may have been imposed or demanded.
  - III. Where an applicant fails to comply with the requirement the Fund Administrator notified to him under sub regulation (ii) within the prescribed period, the application shall be deemed to have lapsed.
  - IV. Where in granting a loan to an applicant the Fund Administrator considers it prudent to request for a guarantor to guarantee any loan granted to the applicant, in case of any default by the applicant in the repayment of the loan, any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay all or any loan together with interest accrued and outstanding owed to the Fund by the loanee, as shall be notified to the guarantor by the Fund Administrator.
  - V. Where a guarantor who has been notified by the Unit under sub-regulation (IV) fails or refuses to repay such loan together with any interest accrued there on, the guarantor shall be liable to civil proceedings.

### **3.1.9. LIMITS ON THE LOAN FINANCING.**

The committee, financial institution or intermediary shall in consultation with the County Executive Committee Member, set the minimum and maximum amount of loan that an applicant may access depending on the category of the applicant.

In determining the minimum and maximum amount of loan that an applicant may access, the following shall be considered -:

- i. The viability of the business idea or concept;
- ii. The credit worthiness of the applicant;
- iii. The duration the business has been operational in case of an existing business;
- iv. The capacity of the applicant to repay the loan;
- v. The financial risk;
- vi. Capitalization of the existing business;
- vii. The loan obligations that the applicant may be under from other financial institutions;
- viii. Any other matter that the committee or financial institution or intermediary may deem appropriate.

### **3.2.0. LOAN GUARANTEE**

An applicant for a loan under the Regulations shall provide a personal guarantee for the loan applied for.

Notwithstanding Regulation 24(1) of the Regulations,

- i. An applicant who is an individual or registered sole proprietor shall provide at least two co-guarantors or such number of co-guarantors as the committee may require;
- ii. An applicant which is a company shall provide the personal guarantee of all the directors other than the nominee; or
- iii. An applicant which is a group shall provide guarantee from each member

For a self-help group to qualify for providing co-guarantee system, the group constitution must contain provisions that expressly provide for group co-guarantee.

The committee may require an individual applicant to be a member of a group with other applicants for the purpose of providing or receiving co-guarantee for an application for a loan under the Regulations.

The Committee shall in consultation with the County Executive Committee Member prescribe the number of persons who may form a group for the purposes of sub-regulation 4.

### **3.2.1. COLLATERAL**

**Mr. Speaker,**

Regulation 25(1) provides that an applicant may be required to provide such collateral as security for a loan granted under the Regulations where-

- i. The loan applied for is beyond the limit set by the committee for which a loan must be secured through collateral;
- ii. The loan is of an amount, notwithstanding sub-regulation (i), that the committee may require collateral.

Provided that an applicant for a start-up business shall not be required to provide any collateral unless the applicant chooses to provide collateral which in the opinion of the committee is sufficient in lieu of co-guarantors.

An asset under the Regulations may include-

- i. Business stock
- ii. Land
- iii. Fixed assets
- iv. Shares and related securities
- v. Livestock approved by the committee
- vi. Savings in a bank account
- vii. Motor vehicle
- viii. Cash collateral
- ix. Any other asset as the committee may approve

An applicant which is a company shall in addition to providing security for the loan borrowed, provide the personal guarantee of the directors other than the nominee directors

The committee shall value the assets provided as collateral in accordance with principles of assets valuation

Where a loan granted is to be utilized in purchasing an asset, the committee shall facilitate registration of the interest of the County in the asset purchased in accordance with the respective written laws.

The Committee shall facilitate the discharge of the interest of the County upon the final repayment of the loan;

The committee shall, in consultation with the County Executive Committee Member, establish the loan limits beyond which a person must provide collateral as security for a loan granted under the regulations. The Committee shall insure each loan with insurer approved by the County Executive Committee.

A person whose application for loan has been approved shall maintain a bank account for the purposes of disbursement of Funds or managing a business for which the loan is applied for.

### **3.2.2. UTILIZATION OF THE LOAN**

**Mr. Speaker,**

Subject to Regulation 28(1), a person who shall receive a loan will be required to utilize the loan solely for the purposes stated in the loan application form-

The Committee Shall-

- I) ensure that the loan disbursed is utilized for the purposes stated in the loan application form
- II) Shall establish appropriate system for monitoring the utilization of loans; and
- III) May require such information from an applicant in relation to utilization of a loan.

The County Executive Committee Member for finance may, if s/he considers it appropriate to do so, appoint a financial institution or financial intermediary to administer the Fund.

Before the last day of each financial year, the Fund administrator shall send to all loanees an annual returns from which every loanee shall be required to fill and submit to the unit before the end of the month of August of the succeeding year.

### **3.2.3. LOAN REPAYMENT**

**Mr. Speaker,**

Subject to Regulation 31 of the Kitui County Empowerment Fund Regulations, loans advanced shall be paid in full within the prescribed period in the loan agreement at an interest rate of five percent per annum.

### **3.2.4. DEFAULT IN LOAN REPAYMENT**

**Mr Speaker,**

According to Regulation 32(1) of the Regulations, a loan repayment that shall stand unpaid for more than three months from the date it is due for repayment shall be treated as defaulted loan. Sub Regulation 2 provides that the Committee shall in consultation with the Fund administrator take necessary measures to establish the cause for the default on loan repayment.

Further the Committee may recall the loan under sub Regulation 1 and may-

- a. In consultation with the borrower, reschedule or restructure the loan repayment terms, where the

- committee is satisfied that the borrower is in a position to repay the loan upon the rescheduling of the loan
- b. Sell or dispose any collateral provided as a security
  - c. Call upon the co- guarantors to the loan to pay the respective amount co- guaranteed
  - d. Recover the loan from the beneficiary as a civil debt under the debts ( summary Recovery) Act, Chapter 42 of the Laws of Kenya , the amount of the loan or the amount thereof then remaining unpaid together with interest thereon.
  - e. Take any other necessary measure as the committee may deem necessary.

**Mr Speaker,**

The Committee may in exercise of the above powers engage the services of a private legal practitioners with the approval of the person in charge of the legal matters in the County Government.

### **3.2.5. NON –PERFORMING LOANS**

Mr. Speaker,

The Committee shall prepare a list of non-performing loans after every three months and submit the list to the County Executive Committee Member. The County Executive Committee Member may in Consultation with the County Executive Committee member for finance for the time being responsible for finance, advice the committee on necessary measures to be adopted in order to mitigate the occurrence of non-performing loans.

### **3.2.6. OFFENCE AND PENALTY**

**Mr Speaker,**

Regulation 34 of the Kitui County Empowerment Fund Regulations provides that, any person who misappropriates any Funds or assets from the Fund, or assists or causes any person to misappropriate or apply the Funds otherwise than in the manner provided for in the Public Finance Management Act, 2012 and the Regulations, commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million or to both.

### **3.2.7. FINANCIAL REPORTING AND AUDIT.**

**Mr, Speaker**

A person who has benefited from a loan grant under the Regulations shall keep proper books of accounts and record in relation to the Funds and

shall if required to do so, avail the same for scrutiny by the Fund Administrator.

The beneficiary shall submit the financial accounts and any other information as may reasonably be required by the Fund Administrator within one month after the end of each financial.

### **3.2.8. AUDIT OF THE FUND**

**Mr Speaker,**

The Fund shall be audited and reported upon by the auditor General in accordance with the provisions of the Public Audit Act, 2015.

### **3.2.9. WINDING UP OF THE FUND**

**Mr Speaker,**

In the event of winding up of the Fund, the cash balances shall be transferred to the County Revenue Fund while other assets of the Fund shall be transferred to the Ministry for the time being responsible for trade, cooperatives and investments.

### **3.3.0. POWER TO ISSUE GUIDELINES**

**Mr Speaker,**

Regulation 38(1) provides that the County Executive Committee member may issue guidelines generally for the better carrying out the provisions of the Kitui County Empowerment Fund Regulations which shall be approved by the County Executive Committee before taking effect.

## **4.0. COMMITTEE'S OBSERVATIONS FINDINGS.**

**Mr. Speaker,**

As regards the Regulations, the Committee made the following general observations.

### **i. Guiding Principles.**

The Committee observed that in formulating the guiding principles of operating the Fund, regional balance was not considered.

### **ii. Establishment of the Committee**

The Committee also observed that the constitution of the Kitui County Empowerment Fund Committee established under Regulation 10(1) has not considered to regional balance in its composition.

iii. **Alternate Members of the Committee**

The Committee observed that appointing individuals as alternate committee members may prejudice the whole operation of the committee since it was not clear the circumstances in which an individual can serve as an alternate of another individual.

iv. **Administration of Fund**

The Committee observed that in Regulation 18(4), the clause has limited the access to Funds by eligible groups only, and thus failure to use a general word that accommodates all class of person may change the whole meaning of clause 18(4).

v. **Payment of interest rate of Five percent**

The Committee observed that the chargeable interest rate of 5% is too high since the object of the Fund is for empowering the affirmative action groups.

vi. **Loan Repayments**

The Committee observed that the Regulations provided for payment of loans advanced in full within the prescribed period in the loan agreement at a constant interest rate of 5% per annum

## **5.0. RESOLUTIONS AND RECOMMENDATIONS OF THE COMMITTEE**

**Mr. Speaker sir,**

Upon scrutinizing the published Public Finance Management, (Kitui County Empowerment Fund) Regulations 2018, the Committee makes the following recommendations and requests this house to adopt the same.

i. **Guiding Principles of operating the Fund.**

**Regulation 8.**

The Committee recommends an additional sub regulation 'c' that is '***Regional balance***' to be included after the word '***youth***' at the end of sub regulation 8(b).

Thus, save for sub regulation 8(a), Sub regulation 8b and c shall read, protection of the interests of the marginalized, persons with disabilities, women and youth and regional balance.

ii. **Establishment of the Committee**

**Regulation 10**

The Committee recommends that in establishing the Kitui County Empowerment Committee, the establishing body should ensure that the principle of regional balance is observed as stipulated in sub regulation 8b recommended above.

iii. **Vacation of office of a member**

**Regulation 12(2).** *(The County Executive Committee member may, in consultation with the Committee, appoint one or more duly qualified persons, not being members of the Committee to be alternate members, and every alternate member shall be deemed for all purposes to be a member of the Committee).*

From the observations, the committee recommends that the alternate committee members appointed under this clause should be committee members representing institutions and not individuals.

iv. **Administration of the Fund**

**Regulation 18(4).** *(The access by eligible groups of the Fund, shall be on a first come first served bases ,subject to assessment and approval of the application , provided that the committee shall ensure equitable distribution of funds in the wards)*

Under this clause, the Committee recommends that the word *groups* be changed to *beneficiaries* and the word *wards* be changed to read *all wards*.

v. **Eligibility Criteria**

**Regulation 21(4) (1).** *(Payment of an interest rate of five percent)*  
The Committee recommends that the payment of interest rate should be reduced to 3%.

vi. **Loan Repayments**

**Regulation 31.** *(A loan advanced under these regulations shall be paid in full within the prescribed period in the loan agreement at an interest rate of five percent per annum)*

Under this clause, the committee recommends the loans advanced shall be repaid in full within a prescribed period in the loan agreement at an interest rate of 3% on a reducing balance

## **6.0. CONCLUSION**

In conclusion, the Committee is impressed by the initiative that has been taken by the County Government to set up an empowerment fund.

It is therefore a commendable step towards ensuring that Kitui County has planned for programmes that mitigates the effects of non-participation in social and economic development.

We the Members of Justice and Legal Affairs Committee hereby do append our signatures to authenticate and adopt the report on consideration of

the Public Finance Management (Kitui County Empowerment Fund)  
Regulations 2018

<u>NAME</u>	<u>DESIGNATION</u>	<u>SIGNATURE</u>
1. Hon. Nelson K. Musyoka	Chairperson -----	
2. Hon. Eliud Ndinguri	Vice Chairperson-----	
3. Hon. Geoffrey Mwalimu	Member-----	
4. Hon. Dr. Grace Mutua	Member-----	
5. Hon. Stephene M. Makau	Member-----	
6. Hon. Baridi F. D. Mbevo	Member-----	
7. Hon. Philip Nguli	Member-----	
8. Hon. Peter M. Kilonzo	Member-----	
9. Hon. Josphine Kavivi	Member-----	
10.Hon. Charity Mwangangi	Member-----	
11. Hon. Deiys Mukala	Member-----	