

COUNTY GOVERNMENT OF KITUI



COUNTY ASSEMBLY

SECOND ASSEMBLY – (SECOND SESSION)

COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (KITUI COUNTY CAR LOAN AND MORTGAGE
(MEMBERS) SCHEME REGULATIONS, 2018.

CLERK'S CHAMBERS,
SEPTEMBER, 2018
COUNTY ASSEMBLY BUILDINGS,
KITUI, KENYA

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1.0 PREFACE

Hon. Speaker,

On behalf of the members of the Justice and Legal Affairs Committee, and pursuant to the provisions of Standing Order no.179 (6) and 190(5), I beg to present before the house, the committee's report on consideration of the Public Finance Management (Kitui County Car Loan and Mortgage (Members) Fund) Regulations, 2018.

Hon. Speaker,

The Public Finance Management (Kitui County Car Loan and Mortgage (Members) Fund) Regulations, 2018, were laid on the table of the house on the 25th day of July 2018, and subsequently committed to the committee on Justice and Legal Affairs for consideration and compilation of this report in line with section 12(1) of the Statutory Instruments Act and Standing Order no. 189(2).

The report writing exercise was carried out at Nairobi's Pride Inn Hotel from the 13th to 15th September, 2018.

Hon. Speaker,

The term "statutory instrument" is defined in Section 2 of the Statutory Instruments Act and in our Standing Orders no. 189(5) to mean any rule, order, regulation, direction, form, tariff of costs or fees, letter patent, commission, warrant, proclamation, by-law, resolution, guideline or other instrument issued, made or established in the execution of a power conferred by or under an Act of the County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued".

The Public Finance Management (Kitui County Car Loan and Mortgage (Members) Fund) Regulations therefore fall within the definition of statutory instruments.

Hon. Speaker,

In considering the said regulations, the committee was guided by section 13 of the Statutory Instruments Act as read together with standing order no. 189 (3). Section 13 states that;

The Committee shall, in carrying out its scrutiny of any statutory instrument, be guided by the principles of good governance, rule of law and shall in particular consider whether the statutory instrument-

- i. is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;*
- ii. infringes on fundamental rights and freedoms of the public;*
- iii. contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of the County Assembly;*
- iv. contains imposition of taxation;*
- v. directly or indirectly bars the jurisdiction of the 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 power;*
- vii. involves expenditure from the County Revenue Fund or other public revenues;*
- viii. is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any 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 County Assembly;*
- xi. makes rights , liberties or obligations unduly dependent upon non-reviewable decisions;*
- xii. makes rights , liberties or obligations unduly dependent insufficiently defined administrative powers; (m) inappropriately delegates legislative powers;*
- xiii. imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;*
- xiv. appears for any reason to infringe on the rule of law;*
- xv. inadequately subjects the exercise of legislative power to County Assembly scrutiny; and,*
- xvi. accords to any other reason that the Committee considers fit to examine.*

1.1 COMMITTEE MANDATE

The Committee on Justice and Legal affairs was established vide a resolution of the County Assembly and it borrows its mandate from the National Assembly's Standing orders which is;

All matters related to Constitutional Affairs, administration of law and justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption and human rights'.

The Honourable Speaker of the County Assembly, while exercising his discretion and the express provisions of Section 12 of the Statutory Instruments Act, 2013, directed that the Committee on Justice and Legal affairs should handle all statutory instruments submitted to the County Assembly in order to ensure that they conform to the set requirements specified in standing order no 189 (3).

Section 12 of the Statutory Instruments Act, 2013, provides that;

'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.'

1.2 COMPOSITION OF THE COMMITTEE

Hon. 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 M. Ndinguri | Vice Chairperson |
| 3. Hon. Geoffrey Mwalimu | Member |
| 4. Hon. Dr. Grace Mutua | Member |
| 5. Hon. Stephen M. Musili | Member |
| 6. Hon. Baridi F. D. Mbevo | Member |
| 7. Hon. Philip Nguli | Member |
| 8. Hon. Peter M. Kilonzo | Member |
| 9. Hon. Josephine K. Mutie | Member |
| 10. Hon. Charity S. Mwangangi | Member |
| 11. Hon. Deiyis M. Mukala | Member |

1.3 ACKNOWLEDGEMENT

Hon. Speaker,

The committee wishes to sincerely thank the offices of the Speaker, and the Clerk of the County Assembly for the Support extended during the report writing exercise. I also wish to thank the members of the committee for their utmost co-operation which enabled the successive completion of this exercise. The committee wishes to also thank the committee clerk for her dedication to duty and service to the committee.

On behalf of the Committee, I now have the honour and pleasure to present the report on the consideration of The Public Finance Management (Kitui County Car Loan and Mortgage (Members) Fund) Regulations, 2018.

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

CHAIRPERSON, COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

COUNTY ASSEMBLY OF KITUI

SIGNED.....

DATE:.....

REPORT PREPARED BY,
Esther Mwele - Clerk Assistant

2.0 INTRODUCTION

Hon. Speaker,

Delegated legislation (also referred to as subsidiary legislation or secondary legislation) is law made by an executive authority under powers given to them by primary legislation in order to implement the requirements of that primary legislation.

Delegated legislation, in the form of Statutory Instruments, is governed by the Statutory Instruments Act (No 23 of 2013) which provides for the making, scrutiny, publication and operation of statutory instruments.

Hon. Speaker,

Section 116. (1) Of the Public Finance Management Act (PFMA) authorises the County Executive Committee member for finance to establish other public funds with the approval of the County Executive Committee and the County Assembly. The Fund which seeks to be established in this case is the County Assembly Car Loan and Mortgage (Members) Scheme Fund (herein referred to as ‘the fund’).

Section 116 (9) of the PFMA further stipulates that regulations may provide for the establishment, management, operation or winding-up of county public funds established under sub section 1.

Hon. Speaker,

It is for this reason that the County Executive Committee Member (CECM) responsible for finance, using the powers conferred by section 116(1) of the PFMA, prepared and submitted the Public Finance Management (Kitui County Car Loan and Mortgage (Members) Fund) Regulations, 2018.

The County Assembly, through the Justice and Legal Affairs Committee was subsequently mandated to scrutinise the said regulations in order to ensure that they conform to the laid down requirements stipulated in Section 13 of the Statutory Instruments Act and Standing Order No. 189(3).

Hon. Speaker,

The Committee’s powers are however limited by law in that it can only resolve to accede or not accede to the whole or part of the regulations.

This limitation is stipulated under Standing Order No. 189 (4) which provides that where the committee resolves that the statutory instrument, be acceded to,

the Clerk shall convey that resolution to the relevant county department or the authority that published the statutory instrument, or;

Where the committee does not accede to the statutory instrument, the Committee may recommend to the County Assembly that the County Assembly resolves that all or any part of the statutory instrument be annulled.

2.1 OVERVIEW OF THE PUBLIC FINANCE MANAGEMENT (KITUI COUNTY CAR LOAN AND MORTGAGE (MEMBERS) FUND) REGULATIONS, 2018.

Hon. Speaker,

The Public Finance Management (Kitui County Car Loan and Mortgage (Members) Fund) Regulations, 2018 intend to provide a legal framework for the establishment and running of the County Assembly Car Loan and Mortgage (Members) Scheme Fund.

a) The Purpose of the Fund

The object and purpose of the fund shall be to provide a scheme for the provisions of car loans and mortgages to members.

b) Capital of the Fund

The capital of the fund shall come from money appropriated by the County Assembly together with the interest accruing from the repayment of the loans advanced.

c) The loans Management Committee

Regulation 6 establishes the loan management committee consisting of;

- i. One member of the County Assembly Service Board who shall be the chairperson
- ii. Leader of the majority party
- iii. Leader of the minority party
- iv. Majority whip of the County Assembly
- v. Minority whip of the County Assembly
- vi. Two members of the County Assembly of the opposite gender appointed by the Board

Regulation 7 on the other hand stipulates the functions of the said committee which is mainly to vet and approve the members' loan applications.

d) Overall Management of the Fund

The County Assembly Service Board shall be responsible for the overall management of the loan scheme fund.

e) Loan application and utilisation of loan monies

Regulation 9 lists down the documents that must accompany the loan application forms while regulation 10 stipulates the strict purpose and usage of the loan money once disbursed.

f) Leasehold limits and borrowing limits

Regulation 11 and 12 respectively sets down the lease period limit for the property to be purchased and the borrowing limits which shall not exceed the amount prescribed by the salaries and remuneration commission

g) Conditions for disbursement of funds

Regulation 13 lays down the criteria for the disbursement of funds and the requirements to be met for one to access subsequent disbursements.

h) Loan amount

Regulation 14 states that a member cannot access a loan amount which exceeds two thirds of the members' salary and that the loan amount advanced shall be the value of the car or property to be purchased.

i) Interest rate and administrative costs

The interest rate for every loan advanced under this scheme shall be three (3) percent per annum on a reducing balance while the administrative costs of the funds shall not exceed three (3) per cent of the funds appropriated for the fund.

j) Security

The security for every car loan advanced shall be the joint registration of the log book while that of property purchased or constructed shall be the charge document registered and the loanee is not entitled to transfer or sell the property without the consent of the Board.

k) Payment of the loan

Regulation 18 specifically requires that all loans advanced should be repaid before the last two months to the next general election and where a member defaults on any of the terms set out under the regulations, the Board may sell the property secured so as to recover the loans advanced.

l) Insurance

The loanee must ensure they take out the necessary insurance policies stipulated under regulation 20 for the properties used as collateral.

m) Loan discharge

Upon repayment of the loan amount disbursed, the Board shall issue out a loan discharge certificate to the member releasing them from any further financial obligation in respect of the loan.

n) Life span and winding up of the fund.

The fund shall exist for a maximum of 10 years after which the CEC member may initiate the winding up of the fund six (6) months from the date of the lapse but subject to the approval of the County Assembly.

o) Administration of the fund

The fund shall be administered internally but the Board may, if it deems necessary, appoint a financial institution to administer the fund on its behalf.

3.0 COMMITTEE'S OBSERVATIONS

Hon. Speaker,

The committee went through the regulations and established that indeed they were in accord with the provisions of the Constitution, the Public Finance Management Act, and also that they meet the criteria laid out under section 13 of the Statutory Instruments Act and Standing Order No. 189(3). The committee also agrees that the regulations adhere to the spirit behind the intention of the Salaries and Remuneration commission to facilitate state officers with mortgage and car loans in order to motivate them.

4.0 COMMITTEE'S RECOMMENDATIONS

Hon. Speaker,

The committee upon intensive deliberations, made the following recommendations;

- a) That the committee annuls regulation 6 (1) on the composition of the County Assembly Members Car loan and Mortgage Management Committee.**
 - i. The committee rejects the provision that the Board shall be responsible for appointing the Chairperson of the management committee (clause 6(a)). The committee recommends that the**

members themselves should be given an opportunity to elect a chairperson from amongst its members. The committee feels that the Board has enough responsibilities and work load to deal with and that there is no need to burden one of them with the responsibility of chairing this particular committee. The Board shall nominate one of its members to the committee but that board member shall not be the chairperson unless elected as such by the other committee members.

- ii. The committee rejects the provision that the two additional members of opposite gender (clause 6(f)) shall be appointed by the Board. The committee recommends that the two members should be nominated and appointed by the County Assembly.
 - iii. The committee rejects the provision that the quorum of the committee shall be any three (3) members. The committee recommends that the quorum should be half of the members, which in this case will be four (4) as has been the custom with the quorum of other county assembly committees.
- b) That the committee annuls regulation 13(3) (b) (i) which states that the first instalment shall be forty per cent (40%) of the amount applied for and approved. The committee notes that forty per cent (40%) is insufficient and should therefore be increased to 60%.
 - c) That the committee annuls regulation 13(7) which states that the board shall appoint an advocate to carry out all legal transactions related to the loan applications since it may be construed to mean that it is only one advocate who may carry out all legal transactions in respect of the property to be purchased. The committee recommends that the advocates carrying out these legal transactions should be sourced from a list of advocates prequalified by the Board.
 - d) That the committee annuls regulation 22(d) which states that the fund administrator shall present the financial statements to the County Assembly. The committee feels that this clause is inconclusive since it does not give timelines as to when the fund administrator shall present these financial statements. They recommend that the clause should contain a condition that the statements should be presented to the County Assembly at the end of each financial year.

5.0 CONCLUSION

Hon. Speaker,

The committee is cognisant of the work that went into the compilation of these regulations and commends the County Executive Committee Member in the

County Treasury for the good job. However the committee feels that the regulations could be improved to cater for the recommendations made by the committee. The committee therefore revokes the regulations pursuant to the provisions of Section 15 of the Statutory Instruments Act.

I thus urge members to adopt this report with its recommendations for implementation by the County Executive Committee Member.

Thank you.

ANNEX 1

CONSIDERATION AND ADOPTION OF THE REPORT BY THE COMMITTEE

We, the honourable members of the committee on Justice and Legal Affairs, do hereby affix our signatures to this report to affirm its accuracy, validity and authenticity;-

| NAME | DESIGNATION | SIGNATURE |
|------------------------------|--------------------|------------------|
| 1. Hon. Nelson K. Musyoka | Chairperson | ..... |
| 2. Hon. Eliud M. Ndinguri | Vice Chairperson | ..... |
| 3. Hon. Peter M. Kilonzo | Member | ..... |
| 4. Hon. Charity S. Mwangangi | ” | ..... |
| 5. Hon. Josephine K. Mutie | ” | ..... |
| 6. Hon. Deiys M. Mukala | ” | ..... |
| 7. Hon. Stephen M. Musili | ” | ..... |
| 8. Hon. Phillip Nguli | ” | ..... |
| 9. Hon. Dr. Grace Mutua | ” | ..... |
| 10.Hon. Baridi F.D. Mbevo | ” | ..... |
| 11.Hon. Geoffrey Mwalimu | ” | ..... |

