

SPECIAL ISSUE

Kenya Gazette Supplement No. 8 (Kisumu County Bills No. 4)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KISUMU COUNTY BILLS, 2024

NAIROBI, 27th November, 2024

CONTENT

Bill for Introduction into the County Assembly of Kisumu—	PAGE
The Kisumu County Cess Bill, 2024	1

THE KISUMU COUNTY CESS BILL, 2024

ARRANGEMENT OF CLAUSES

Clause

PART I – PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and Purpose of the Act.

PART II — ADMINISTRATION AND MANAGEMENT OF CESS

- 4—Power to impose Cess.
- 5—Payment of Cess
- 6—Designated Points.
- 7—Utilization of Cess.
- 8—Establishment of Cess Management Committee.
- 9—Functions of the Committee.

**PART III — ESTABLISHMENT OF THE KISUMU COUNTY CESS
FUND**

- 10—Establishment of the Fund.
- 11—Regulations for the Fund.

PART IV — MISCELLANEOUS

- 12—Regulations.
- 13—Waiver of Cess.
- 14—Obligations to Keep Records.
- 15— General Penalty.
- 16—Restraint of Breaches to this Act.
- 17—Offences.
- 18—Indemnity from Personal Liability.
- 19—Supersession.
- 20—Dispute Resolution.
- 21—Consequential Amendments.

SCHEDULE

THE KISUMU COUNTY CESS BILL, 2024**A Bill for**

AN ACT of the County Assembly of Kisumu to give effect to Section 161 of the Public Finance Management Act, 2012 to provide for the imposition of Cess on agricultural produce within the County and for connected purposes

ENACTED by the County Assembly of Kisumu, as follows—

PART I — PRELIMINARY**Short title**

1. This Act may be cited as the Kisumu County Cess Act, 2024.

Interpretation

2. In this Act, unless the context otherwise requires: -

“CEC Member” means the County Executive Committee Member for the time being responsible for Agriculture;

“Agricultural producer” means a producer or processor, of agricultural animal product and includes any marketing organization acting on crop or behalf of producers;

“Authorized Officer” means any person prescribed and/or authorized in writing by County Executive Committee Member for Finance, to act certain capacity as envisaged under this Act;

Cess” means all fees and/or levies imposed under this Act and payable into the County Cess Fund Account;

“Company” means the body corporate registered under the Companies Act, Cap. 486, of the Laws of Kenya owning an agricultural produce farm, factory, plant or industrial unit.

Objects and Purpose of the Act

3. The object and purpose of this Act shall be to—
 - (a) levy and collect as a Cess for purposes of this Act, on every agricultural produce specified in the First Schedule of this Act provided that such Cess shall be collected in accordance with the Public Finance Management Act; and
 - (b) provide procedures for the management and administration of Cess collection for the development and maintenance of infrastructure in crop growing areas.

**PART II —ADMINISTRATION AND MANAGEMENT OF
CESS**

Power to impose Cess

4. (1) The CEC Member for Finance and Economic Planning shall in consultation with the CEC Member impose Cess on Agricultural Produce within the County in accordance with the First Schedule of this Act.

(2) The CEC Member for Finance and Economic Planning may impose Cess on any other agricultural produce not already provided for under the First Schedule of this Act by Regulations, and may make such incidental provisions as are necessary or expedient for the collection of the Cess by the County Revenue Board.

Payment of Cess

5. (1) The cess imposed under this Act shall be payable by the agricultural producer to the county government through the processing plant at the time when the plant takes delivery of the produce or product of the produce.

(2) Any person whether within or outside the county who buys or markets on behalf of an agricultural producer, agricultural produce on which cess is payable and on which no cess has been paid shall deduct from the money payable to the agricultural producer an amount equal to the cess payable on the produce and remit the amount to the county government.

(3) The processing plant shall ensure that all the amounts deducted as cess are remitted to the County Government by the 20th day of the next month.

(4) The County Government may deploy inspectors to processing plants and barriers to ensure compliance with provisions of this Act.

(5) In any proceedings it shall be presumed, where agricultural produce on which cess is brought in regard to failure to pay or remit cess, that no cess has been paid on that produce until the contrary is proved.

(6) Any processing plant which fails to comply with the provisions of sub-section (3) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

(7) Notwithstanding the provisions of sub-section (6) the County Government may impose a penalty for late remittance of the cess due and owing.

(8) The County government shall recover cess remittable by the plant whether or not the plant collected the cess from the agricultural producer and the cess owing shall be a civil debt recoverable summarily.

Designated Points

6. (1) An authorized officer shall ensure that Collection of Cess on products originating from the County is collected at designated points.

(2) All Cess collected at the County designated points shall be accounted for and remitted to the Cess Fund Account on a daily basis.

(3) An authorized officer shall maintain and keep records of all Cess collected at his or her County designated points.

(4) This section shall not apply to crops not produced in the County that are on transit through the County on national trunk roads and to which Cess has already been paid in another County in accordance with Article 209 (5) of the Constitution of Kenya, 2010.

(5) Notwithstanding sub-section 4 above, any goods destined for markets within Kisumu County shall be subjected to offloading fees prescribed from time to time by the applicable Finance Act.

(6) The County Executive Member shall determine and publish all County designated points from which Cess shall be collected.

APPLICATION OF PROCEEDS OF CESS.

Utilization of Cess

7. (1) Any moneys received by the County Revenue Board for the purposes of this Act, shall, after due appropriation made by the County Assembly by law, be utilized by the County Government to meet the expenditure incurred in connection with measures which are necessary or expedient to promote the improvement, development and maintenance of infrastructure in crop growing areas.

(2) Without prejudice to the generality of the provisions of sub-section (1), the proceeds of the duty levied and collected under this Act may be utilized by the County Government for all or any of the following purposes, namely—

- (a) undertaking, assisting or encouraging, agricultural, industrial, technological and economic research, including research on the utilization of the products obtained from any produce;
- (b) supplying technical advice to cultivators, growers and millers;
- (c) encouraging the adoption of improved methods of cultivation and storage of crops;

- (d) producing, testing and distributing improved varieties of crops or assisting such work;
- (e) assisting in the control of insects and other pests and diseases of the crops, both in the field and in storage;
- (f) promoting the improvement of the marketing of produce and the products obtained therefrom in India and abroad including the setting up and adoption of grade standards for the produce and the products obtained therefrom;
- (g) collecting statistics from cultivators, growers, dealers and occupiers of mills on all relevant matters and promoting improvement in the forecasting of crops and the preparation of all relevant statistics relating to the crops and the products obtained therefrom;
- (h) maintaining, and assisting in the maintenance of, such institutes, farms and stations as the Central Government may consider necessary;
- (i) advising and providing assistance on all matters connected with the improvement of the cultivation of crops (including advising on the best and most suitable varieties of the crops to be cultivated) and the improvement of the industries using the crops and the products obtained therefrom;
- (j) promoting and encouraging the co-operative movement in any connected industry;
- (k) adopting such measures as may be practicable for ensuring remunerative returns to the growers;
- (l) organizing the establishment of cultivators', growers', millers' and consumers' organization's;
- (m) aiding and encouraging the establishment of exhibitions for demonstrating the uses of the produce and the products obtained therefrom;
- (n) adopting any other measures which the Central Government may deem to be necessary or advisable to carry out the purposes of this Act.

Establishment of Cess Management Committee

8. The Kisumu County Agricultural Sector Consultation and Cooperation Mechanism Committee (KCASCOM) established pursuant to Section 5 of the Kisumu County Agricultural Sector Coordination Act, 2024 shall be the cess management Committee.

Functions of the Committee

9. Without prejudice to the functions of the Committee provided for in Section 6 of the Kisumu County Agricultural Sector Coordination Act, 2024, the Committee shall further promote scientific, technological, social and economic research and education relating to the management, administration and utilization of the Agricultural Produce Cess and shall—

- (a) advise the CEC Member on collection and management of Cess;
- (b) deliberate on the projects to which the Cess funds shall be applied; and
- (c) any other function as shall be assigned in relation to this Act by the CEC Member.

PART III — ESTABLISHMENT OF THE KISUMU COUNTY CESS FUND.**Establishment of the Fund**

10. (1) The CEC Member for Finance and Economic Planning shall pursuant to Section 116 of the Public Finance Management Act establish the Kisumu County Cess Fund.

- (2) The Fund shall consist of—
 - (a) the agricultural produce cess imposed pursuant to this Act;
 - (b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;
 - (c) moneys from any other source approved by the County Assembly.

Regulations for the Fund

11. The CEC Member for Finance and Economic Planning shall formulate Regulations for the management and administration of the Fund.

PART IV — MISCELLANEOUS**Regulations**

12. The CEC Member shall, formulate regulations for the purpose of carrying into effect the provisions of this Act prescribing the forms and fees to be paid for anything to be done under this Act.

Waiver of Cess

13. (1) The CEC Member may waive the Cess payable under this Act to any products, persons or group of persons to whom this Act apply.

(2) A waiver of Cess under this Act shall be for a determinate period not exceeding one year.

(3) Where such waiver is made, the CEC Member shall give reasons for such waiver and tabled before the Assembly the list of persons to whom payment of Cess is waived and the reasons thereof.

(4) The Assembly may overturn any such waiver if it is of view that sufficient grounds exist for the waiver of Cess as made by the CEC Member.

Obligations to keep records

14. (1) The processing plant shall make and keep such up to date books, accounts and records as are reasonably necessary to determine the mass of agricultural produce supplied to it and cess deductions made thereof for a period of at least seven years after the completion of the transactions to which they relate.

(2) The CEC Member may by notice in writing given to the processing plant, direct the plant as to the books, accounts and records the processing plant is required to make and keep.

(3) An authorized officer shall be allowed access, within working hours to the records referred to in subsection (1).

(4) Any processing plant which fails to comply with the requirements of this section commits an offence and shall on conviction be liable to a fine not exceeding Three million shillings.

General Penalty

15. A person who contravenes any provision of this Act, or commits an offence for which no penalty is prescribed, shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a period not exceeding six months, or to both.

Restraint of Breaches to this Act

16. Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be, violated, may petition the High Court for—

- (a) a declaration that the provisions of this Act are being, have been, are about to be contravened;
- (b) an injunction restraining any specified person from carrying out the contravention;
- (c) a writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or
- (d) any other lawful remedy.

Offences

17. An authorized officer having a duty to perform under this Act and who—

- (a) interferes with any process or person under this Act, so as to defeat the provisions, requirements or purposes of this Act;
- (b) where required under this Act to do anything, or to give effect to the provisions of this Act, fails to do such thing;
- (c) without reasonable cause omits to do something in breach of his or her duty under this Act;
- (d) willfully contravenes the provisions of this Act to give undue advantage or favor to another person;
- (e) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act, commits an offence and shall be liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

Indemnity from Personal Liability

18. Neither the Executive Committee Member nor any other person shall be personally liable to any action or proceedings for or in respect of any act or thing done or omitted to be done in good faith in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act.

Supersession

19. If any conflict arises between the provisions of this Act and any other Act of Kisumu County Assembly with respect to the collection, management, administration or regulation of Cess, the provisions of this Act shall prevail.

Dispute Resolution

20. For the purposes of ensuring expeditious resolution of disputes arising between the County Government, farmers and other crop dealers, the CEC Member shall make rules to provide the procedure for arbitration of such disputes.

Consequential Amendments

21. The Kisumu County Crop Agriculture Act, 2019 is amended in Section 13 by deleting the phrase “The Member of the Executive Committee” and replacing therefor with the phrase “the CEC Member for Finance and Economic Planning may in consultation with the CEC Member for Agriculture”

SCHEDULE

CROPS WITH BREEDING PROGRAM UNDER COMPULSORY CERTIFICATION

Sugarcane.....	Sacharum spp.
Tea	Camellia
spp. Coffee	Rhodes
Coffea	spp.
grass.....	Chloris gayana
Irish potatoes.....	Solanum tuberosum L.
Cotton	Gossypium
spp. Sunflower	Helianthus
annus L. Soya beans	Glycine max (L.) Merr.
Beans.....	Phaseolus vulgaris L.
Barley	Hordeum vulgare
L. Finger millet	Eleusine coracana (L.)
Gaertn. Maize	Zea mays S.
Pearl millet	Pennisetum (L.)
R.Br. Rice	Oryza sativa
L. (1) Sorghum	Sorghum bicolor (L.)
Moench. Wheat	Triticum spp

MEMORANDUM OF OBJECTS AND REASONS

The principal objective of the Kisumu County Agricultural Produce Cess Bill, 2024 is to impose a cess on agricultural produce within Kisumu County. This cess is intended to fund critical infrastructure, services, and development projects in crop-growing areas, thereby enhancing agricultural productivity and supporting sustainable economic growth within the county. The Act also establishes a framework for the collection, management, and efficient utilization of cess revenue through transparent processes that benefit agricultural producers and the local economy.

Since the absence of a dedicated cess management mechanism has affected the funding and development of infrastructure and essential services in agricultural areas, this Act seeks to address issues such as:

- (a) inadequate infrastructure supporting agricultural production and transportation;
- (b) lack of funding for research, technological innovation, and pest management;
- (c) limited support for market access and competitiveness of local produce;
- (d) inefficient cess collection and administration.

By establishing a Kisumu County Cess Fund and mandating oversight by a dedicated Cess Management Committee, this Act seeks to mitigate these challenges and promote the sustainable development of Kisumu's agricultural sector.

PART I (Clauses 1-2) contains preliminary provisions, including the short title and interpretation clauses for the Act.

PART II (Clauses 3-8) outlines the procedures for the administration and management of cess, including the power of the County Executive Committee (CEC) Member for Finance to impose cess on specified agricultural produce and ensure its collection through processing plants. This part provides for the timely remittance of cess and includes penalties for non-compliance to encourage responsible management.

PART III (Clauses 9-10) establishes the Kisumu County Cess Fund, managed by the CEC Member for Finance and Economic Planning. This Fund will consist of cess collections, donor funds, and other approved sources, ensuring sufficient resources are available for reinvestment in agricultural infrastructure and services.

PART IV (Clauses 11-13) includes miscellaneous provisions, such as offenses related to interference with cess administration, indemnity from

personal liability for officials acting in good faith, and the delegation of powers to the CEC Member to create regulations supporting the Act.

PART V (Clause 14) addresses transitional provisions to ensure a smooth implementation process.

Statement on the Delegation of Legislative Powers and Limitation of Fundamental Rights and Freedoms

This Act delegates legislative powers to the CEC Member for Finance and Economic Planning and the CEC Member for Agriculture to make regulations necessary for the effective implementation of its provisions. The Act does not limit any fundamental rights and freedoms.

Statement That the Bill Is a Money Bill within the Meaning of Article 114 of the Constitution

This Bill is not a Money Bill, however, the enactment of this Bill will result in additional expenditure of public funds, which will be appropriated by the County Assembly for purposes of implementing its provisions.

Dated the 28th October, 2024.

REGINA KIZITO,
Member of the County Assembly.