

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 23 (Kisumu County Acts No. 8)*



REPUBLIC OF KENYA

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# ***KENYA GAZETTE SUPPLEMENT***

## **KISUMU COUNTY ACTS, 2016**

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**NAIROBI, 9th December, 2016**

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2016**

**No. 8 of 2016**

*Date of Assent: 23rd November, 2016*

*Commencement Date: 9th December, 2016*

**ARRANGEMENT OF SECTIONS**

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**THE KISUMU COUNTY PERSONS WITH  
DISABILITIES ACT, 2016**

**AN ACT of Kisumu County to provide for the rights and privileges of persons with disabilities; to realize equalization of opportunities for persons with disabilities; to mainstream matters affecting persons with disability within the county; to establish the county Board for persons with disabilities, to establish a county development fund for persons with disabilities and for connected purposes—**

**ENACTED** by the County Assembly of Kisumu as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Kisumu County Persons with Disabilities Act, 2016. Short title.

2. In this Act unless the context otherwise requires— Interpretation.  
“Act” means the Kisumu County persons with disabilities Act;

“aged person” includes a person with a disability who has been forced into retirement from employment due to the nature his or her disability;

“assistive devices and services” means tools and specialized services including the services of qualified interpreters for the deaf and qualified teachers for the blind provided to persons with disabilities to assist them in education, employment or other activities;

“Board” means the Kisumu County Board for persons with disability established under section 4;

“County assembly” means the County Assembly of Kisumu;

“County government” means Kisumu County government;

“Chief executive officer” means the chief executive officer of the Board appointed under section 8;

“County public premise” means a building within Kisumu County to which members of the public are ordinarily admitted;

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succession and common seal and shall in its corporate name—

- (a) be capable of suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under the Act.

5. (1) The Board consist of—

Composition

- (a) three persons nominated by the organization representing persons with disabilities within the county and appointed by the executive committee member through an open and competitive process.
- (b) a person appointed by the executive committee member from each of the following Departments within the County Public Service—
  - (i) culture and social services;
  - (ii) education;
  - (iii) labor;
  - (iv) gender; and
  - (v) planning and economics

(2) The executive committee member shall appoint a person nominated under paragraph (1) (a) to be the chairperson.

(3) A person qualifies for appointment as a member or chairperson of the Board under paragraph (1) (a) if the person;

- (a) holds a degree in any social science from a recognized university;
- (b) has had a distinguished career of not less ten years in their respective field; and
- (c) meets the requirement of Chapter six of the Constitution and any other written law.

(4) Members appointed under paragraph 5 (1) (b) shall be the *ex-officio* members of the Board.

(5) Members shall elect from amongst themselves in the Board's first sitting, a person to be the vice chairperson.

(6) The chairperson and vice chairperson shall be of

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opposite gender.

(7) The chairperson or member may be removed from office by the executive committee member subject to article 47 of the Constitution.

6. The Board shall conduct its business as prescribed in the Schedule.

Conduct of business

7. The chairperson and member except the *ex-officio* member shall hold office for a period of three years and may be eligible for re-appointment for a single further term.

Terms of office

8. (1) There shall be a chief executive officer of the Board.

Chief executive officer

(2) The chief executive officer shall be appointed by the Board through an open and competitive process.

(3) A person qualifies for appointment as a chief executive officer if the person —

- (a) holds a degree in any social science from a university recognized in Kenya;
- (b) has had a distinguished career of not less than five years in their respective field; and
- (c) meets the requirement of chapter six of the Constitution and any other written law

(4) The chief executive officer shall hold office for a period of three years and may be eligible for reappointment for a further term.

(5) The chief executive officer shall be—

- (a) the Secretary to the Board.
- (b) responsible for the day-to-day management of the affairs of the Board.
- (c) the accounting officer of the Board;
- (d) responsible for carrying into effect the decisions of the Board; and
- (e) responsible for the supervision of staff of the Board.

9. The Board shall, in consultation with the County Public Service appoint such number of staff for effective

Staff

discharge of its functions under the Act.

10. (1) In discharging its functions under the Act, the Board shall —

Functions of the Board.

- (a) issue an adjustment order in accordance with the provisions of this Act;
- (b) formulate policies designed to—
  - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities within the County;
  - (ii) co-operate with the National Government through the National Council for Persons with Disabilities, during the national census, to ensure that accurate figures of persons with disabilities within the county are obtained;
  - (iii) advise the executive committee member on the provisions of any National Legislation or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the county;
  - (iv) recommend measures to prevent discrimination against persons with disabilities;
  - (v) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
  - (vi) encourage and secure the establishment of vocational rehabilitation centers and other institutions and other services within the County for the welfare, rehabilitation and employment of persons with disabilities; and
  - (viii) co-ordinate services provided within the county for the welfare and rehabilitation of persons with disabilities.
- (c) be responsible for the registration of —

- (i) persons with disabilities within the county;
  - (ii) institutions, associations and organizations, including those controlled and managed by the county government that provide services for the rehabilitation and welfare of persons with disabilities;
  - (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
  - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;
- (d) provide to the extent possible—
- (i) assistive devices, appliances and other equipment to persons with disabilities; and
  - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the county government.
- (e) consult with the county government in the formulation of suitable curricula for vocational rehabilitation centers and other training facilities for persons with disabilities within the County;
- (f) make provision for assistance to students with disabilities in the form of scholarships, bursaries, fee subsidies and other similar forms of assistance in both public and private institutions;
- (g) assess and report to the executive committee member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
- (h) consult with the county government in the provision of suitable and affordable housing for persons with disabilities;
- (i) perform such other functions in relation to the

welfare and rehabilitation of persons with disabilities as the Board may deem necessary; and

- (j) be responsible for the mainstreaming of matters affecting persons with disability within the county.

(2) Without prejudice to the provisions of sub section (1), the Board shall have the powers necessary for the proper discharge its functions under the Act.

11. The chairperson, member, chief executive officer and staff of the Board may be paid such salary, allowances as determined by the executive committee member in consultation with the salary and remuneration commission.

Salary and allowances.

### PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

12. (1) A person shall not deny a person with disabilities access to employment opportunities within the County Public Service for reason of his or her disability.

Non-discriminated in employment.

(2) An employee with disability shall be subject to the same terms and conditions of employment as the other employees.

(3) The Board shall ensure that at least five percent of all casual, emergency and contractual positions within the County Public Service are reserved for persons with disabilities.

(4) Subject to the provisions of the Employment Act, a person with disability is eligible to be engaged within the County Public Service as an apprentice or learner where the disability does not impede performance in particular occupations during the period within which the person is engaged.

13. An employer shall not discriminate against a person with disability in relation to—

Discrimination by employers prohibited.

- (a) advertisement of employment;
- (b) recruitment for employment;
- (c) creation, classification or abolition of posts;



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- (d) determination or allocation of wages, salaries, pensions, accommodation, leave or other benefits;
- (e) choice of persons for posts, training, advancement, apprenticeship, transfer, promotion or retrenchment;
- (f) provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) without prejudice to subsection (1), an employer shall not be deemed to have discriminated against a person with disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with disability that his or her employer has discriminated against him or her contrary to this Act may be presented to the Board for proper action.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void in so far as it purports to deny a person with disability any rights or privileges conferred under this Act.

(5) An employer shall provide such facilities or carry out such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities.

14. The Board shall establish and maintain a record of persons with disabilities within the county who are in possession of various levels of skills and training and shall

Records for job placement

update such records regularly for the purposes of job placement in the County Public Service.

15. (1) A person shall not deny a person with disabilities admission into county learning institution if the person qualifies for admission into such institution.

Admission into an educational institution.

(2) A learning institution managed by the County shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) A county learning institutions shall ensure that Kenyan Sign language and Braille is included in its curriculum.

16. The Board shall ensure that every County health facility put in place measures for the—

Health facilities

- (a) Vaccination and Immunization as away of preventing disability.
- (b) early identification of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public hospitals.
- (e) availing essential health services to persons with disabilities at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities;
- (g) prompt attendance by medical personnel to persons with disabilities; and
- (h) Mobile disability Assessment centres.

17. (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them have access to buildings, roads and other social amenities within the county.

Accessibility and mobility.

(2) A proprietor of a county public building or public service vehicle shall adapt it to suit persons with disability in such manner as may be specified by the Board.

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(3) A proprietor of a county public building is expected to comply with the provisions of this section within two years after the commencement of this Act.

18. (1) The Board shall ensure that every county public premise to which members of the public are ordinarily admitted whether on payment of a fee or not are accessible to persons with disabilities.

Adjustment orders.

(2) Without prejudice to the provisions of sub section (1), if the Board considers that any county public premise, service or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Board may serve upon the owner of such premise or amenity with an adjustment order setting out—

- (a) a full description of the premises, services or amenities concerned;
- (b) the grounds upon which the Board considers that the premises, services or amenities are inaccessible to persons with disabilities; and
- (c) the period within which the owner or provider concerned is to comply with the provisions of this Act.

19. (1) No person shall, on the ground of any disability, deny a person with disability—

Admission into premises.

- (a) admission into any county public premise to which members of the public are ordinarily admitted; or
- (b) the provision of any service or amenity to which members of the public are entitled, unless such denial is for the safety of such person.

(2) A person with disability who is denied admission into any county public premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have the recourse to a court of competent jurisdiction.

20. (1) A person with disability is entitled, to free access to the county recreational facilities during any social, sporting or recreational activities.

Access to recreational facilities

(2) A Person with disability is entitled to participate in

any county sporting activity.

#### PART IV—COUNTY DEVELOPMENT FUND

21.(1) There is established a Fund to be known as the County Development Fund for persons with disabilities.

County  
Development fund.

(2) The Fund shall be established as a permanent fund and the income there from shall be used for the benefit of persons with disabilities within the county.

(3) Without prejudice to sub section (2), the fund may be used to—

- (a) provide or contribute to the cost of assistive devices and services for persons with disabilities;
- (b) pay allowances to persons with disabilities falling in the following categories and who have no source of income—
  - (i) persons with severe disabilities without any formal training;
  - (ii) aged persons with disabilities; and
  - (iii) unemployed single parents with children with disabilities.
- (c) establishment of rehabilitation centers for persons with disabilities.
- (d) home based care for children with severe disabilities as severe mental disability, down syndrome, cerebral palsy and many more.

22. (1) The fund consists of—

Source : fund

- (a) such moneys as shall be appropriated by the county assembly;
- (b) income generated by investments made by the trustees; and
- (c) donations or gifts which the Board may receive for purposes of the Fund.

23. (1) The Fund shall be managed by a management Trustees consisting of—

Administration of  
the fund.

- (a) the chairman of the Board;
- (b) the chief executive officer of the Board;
- (c) a representative of the department responsible for finance;

- (d) a person nominated by the organization for persons with disabilities; and
- (e) a person with knowledge and expertise in matters relating to finance appointed by the executive committee member responsible for finance who shall be the accounting officer of the fund.

#### PART V—MISCELLANEOUS

24. (1) The Board shall cause to be kept proper books of accounts and records of the income, expenditure, assets and liabilities of the Board.

Accounts and audit.

(2) The books of accounts shall be prepared, audited and reported in accordance with the provisions of Article 226 of the Constitution and any other written law.

25. The financial year is the period of twelve months beginning the 1st of July in any year to the 30th of June of the subsequent year, both days inclusive.

Financial year.

26. The Board shall in each financial year prepare and submit to the executive committee member a report on the activities undertaken by the Board.

Annual report.

27. (1) The funds of the Board consist of—

Funds of the Board.

- (a) monies appropriated by the county assembly for purposes of the Board; and
- (b) any grants, gifts, donations or other endowments given to the Board.

28. A person who contravenes the provisions of this Act shall upon conviction be liable to imprisonment for a term of two years or fine not exceeding five hundred thousand or both.

General Penalty.

29. (1) The executive committee member may make regulations generally for the better carrying into effect of the provisions of this Act.

Regulations.

(2) Without prejudice to the generalities sub section (1) the Board may make regulations—

- (a) prescribing the procedures, forms and fees applicable for the registration of an organization under this Act; and
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities.

## SCHEDULE

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**Conduct of Business and Affairs of the Board****Vacancy**

1. The office of the chairperson or a member of the Board becomes vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the executive committee member;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) term of office expires;
- (e) is absent from three consecutive meetings of the Board without any good cause; or
- (f) is removed from office for any of the following grounds—
  - (i) violation of the Constitution or any other written law;
  - (ii) gross misconduct or misbehavior;
  - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
  - (iv) incompetence or neglect of duty; or
  - (v) bankruptcy.

**Meetings**

2. The Board shall meet at least four times in any financial year.

**Time and place of meetings**

3. A meeting of the Board shall be held on such date and at such time and place as the Board may determine.

**Special meetings**

4. The chairperson may in consultation with the Chief executive officer issue a seven day notice for purposes of convening a special meeting of the Board.

**Quorum**

5. Quorum for the conduct of business at a meeting of the Board shall be any three members of the Board.

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**Voting**

6. The chairperson shall preside at every meeting of the Board at which he or she is present and in the absence of the chairperson at a meeting, the vice chairperson, shall preside and in the absence of both the chairperson and the vice chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

**Decisions of the Board**

7. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members present and voting at the meeting.

**Validity of proceedings**

8. Subject to paragraph 1, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.