

SPECIAL ISSUE

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(Kilifi County Legislative Supplement No. 1)

LEGAL NOTICE NO. 1

THE URBAN AREAS AND CITIES ACT

(No. 13 of 2011)

THE COUNTY GOVERNMENT OF KILIFI

THE MTWAPA MUNICIPALITY CHARTER

PREAMBLE

WHEREAS Article 2 of the Constitution provides that the Constitution is the supreme law of the Republic of Kenya and binds all persons and all State organs at both levels of Government;

WHEREAS Article 184 of the Constitution of Kenya, 2010 mandated Parliament to enact a legislation to provide inter-alia the criteria for classifying areas as urban areas and cities; establishing the principles of governance and management of urban areas and cities and to provide for participation by residents in the governance of urban areas and cities;

WHEREAS Parliament enacted the Urban Areas and Cities Act in the year 2011 which legislation had an effective date falling after the first elections held under the Constitution of Kenya, 2010;

§the prescribed form of a Municipal Charter;

WHEREAS section 72 of the Interpretations and General Provisions Act allows for substantial conformity of any instruments required to be in a prescribed form under any statute in Kenya;

WHEREAS the County Assembly of Kilifi duly approved the request by the Governor of the County Government of Kilifi for conferment of status of Municipality of Mtwapa on the 2nd November, 2023;

NOW THEREFORE, IN EXERCISE of the powers conferred by section 9 (1) of the Urban Areas and Cities Act (No. 13 of 2011) as complemented by section 72 of the Interpretations and General Provisions Act (Chapter 2) and all other enabling provisions of law, the Governor of Kilifi County HEREBY GRANTS the Municipality of Mtwapa this Municipal Charter on this 17th day of November, 2023.

PART I—INCORPORATION, NAME AND BOUNDARIES

Incorporation and Name

1. (1) This Charter is the Municipal Charter of the Municipality of Mtwapa, within Kilifi County, Kenya.

(2) All processes affecting the Municipality shall be served on the Municipal Manager or the person for the time being holding the office of the Municipal Manager.

Boundaries

2. The boundaries of Junju Ward, Mtepeni Ward and Shimo La Tewa Ward as now existing or as may subsequently be altered shall be the boundary of the Municipality of Mtwapa.

PART II—POWERS, OBJECTS AND FUNCTIONS OF THE MUNICIPALITY

Powers of the Municipality

3. (1) The Municipality of Mtwapa shall have all the powers, general and special, governmental or proprietary, expressed or implied, which may be possessed or assumed by municipalities under the Urban Areas and Cities Act, the County Governments Act and the Kilifi County laws.

(2) No enumeration of specific powers in this Charter shall be held to be exclusive. All such powers shall be exercised in the manner prescribed in this Charter, or, if not prescribed herein, in such manner as the Board of the Municipality may determine, or, unless a contrary intent appears in this Charter or in the By-laws and Resolutions of the Board of the Municipality, in such manner as may be provided by the Kilifi County Laws.

Objects of the Municipality

4. The objects of the Municipality of Mtwapa are to—

- (a) provide for efficient and accountable management of the affairs of the Municipality;
- (b) provide for a governance mechanism that will enable the inhabitants of the Municipality to—
 - (i) participate in determining the social services and regulatory framework which will best satisfy their needs and expectations;
 - (ii) verify whether public resources and authority are utilized or exercised, as the case may be, to their satisfaction;
 - (iii) enjoy efficiency in service delivery;
- (c) vigorously pursue the developmental opportunities which are available in the Municipality and to institute such measures as are necessary for achieving public order and the provisions of civic amenities, so as to enhance the quality of life of the inhabitants of the Municipality;

- (d) provide a high standard of social services in a cost-effective manner to the inhabitants of the Municipality;
- (e) promote social cohesiveness and a sense of civic duty and responsibility among the inhabitants and stakeholders in the Municipality in order to facilitate collective action and commitment towards achieving the goal of a harmonious and stable community;
- (f) providing for services, by-laws and other matters for Municipality's benefit; and
- (g) fostering the economic, social and environmental well-being of its community.

Functions of the Municipality

5. The Municipality of Mtwapa shall, within its boundaries, perform the following functions—

- (a) promotion, regulation and provision of refuse collection and solid waste management services;
- (b) promotion and provision of water and sanitation services and infrastructure (in areas within the Municipality not served by the Water and Sanitation Provider);
- (c) construction and maintenance of urban roads and associated infrastructure;
- (d) construction and maintenance of storm drainage and flood controls;
- (e) construction and maintenance of walkways and other non-motorized transport infrastructure;
- (f) construction and maintenance of recreational parks and green spaces;
- (g) construction and maintenance of street lighting;
- (h) construction, maintenance and regulation of traffic controls and parking facilities;
- (i) construction and maintenance of bus stands and taxi stands;
- (j) regulation of outdoor advertising;
- (k) construction, maintenance and regulation of municipal markets and abattoirs;
- (l) construction and maintenance of fire stations; provision of fire-fighting services, emergency preparedness and disaster management;
- (m) promotion, regulation and provision of municipal sports and cultural activities;
- (n) promotion, regulation and provision of animal control and welfare;
- (o) development and enforcement of municipal plans and development controls;

- (p) municipal administration services (including construction and maintenance of administrative offices);
- (q) promoting and undertaking infrastructural development and services within municipality; and
- (r) any other functions as may be delegated by the County Executive Committee.

PART III—THE BOARD OF THE MUNICIPALITY OF MTWAPA

Establishment of the Board

6. (1) There shall be a Board of the Municipality of Mtwapa.

(2) The Board of the Municipality shall be a body corporate with perpetual succession and a common seal with all the attributes provided under section 12(2) of the Urban Areas and Cities Act and shall in its own corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments within the limits imposed by law;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions in accordance with the Urban Areas and Cities Act or any other written law which may lawfully be done or performed by a body corporate.

(3) There shall be a principal and agency relationship between the County Government of Kilifi and the Board of the Municipality.

PART IV—POWERS AND FUNCTIONS OF THE BOARD OF THE MUNICIPALITY

Powers of the Board

7. (1) The Board of the Municipality shall have all the powers and perform all functions vested in boards of municipalities under the Urban Areas and Cities Act, the County Governments Act, Kilifi County laws and its By-laws.

(2) Except as this Charter otherwise provides, all powers of the Municipality shall be vested in the Board of the Municipality.

(3) The Board of the Municipality shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the Board of the Municipality.

(4) Subject to the Constitution and any other written law, the Board of the Municipality shall, within the boundaries of the Municipality of Mtwapa—

- (a) exercise executive authority as delegated by the County Executive Committee of the County of Kilifi;

- (b) ensure provision of services to its residents;
- (c) impose such fees, levies and charges as may be authorized by the County Government for delivery of services by the Municipality;
- (d) promote constitutional values and principles;
- (e) ensure the implementation and compliance with policies formulated by both the National and County Government;
- (f) make By-laws or make recommendations for issues to be included in By-laws;
- (g) ensure participation of the residents in decision making, its activities and programmes in accordance with the Schedule to this Act as provided in the County Governments Act, 2012 and any other national legislation on public participation; and
- (h) exercise such other powers as may be delegated by the County Executive Committee of the County of Kilifi.

(5) Notwithstanding any other provision of law or this Charter, the Board of the Municipality shall exercise such executive authority as may be delegated by the County Executive Committee for the necessary performance of its functions.

Functions of the Board

8. The Board of the Municipality perform the following shall functions—
- (a) oversee the affairs of the Municipality;
 - (b) develop or adopt policies, plans, strategies and programmes and set targets for service delivery;
 - (c) formulate and implement an integrated development plan;
 - (d) control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centers, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the Municipality as may be delegated by the County Government of Kilifi;
 - (e) promoting and undertaking infrastructural development and services within Municipality as delegated by the County Government of Kilifi;
 - (f) developing and managing schemes, including site development in collaboration with the relevant National and County agencies;
 - (g) maintaining a comprehensive database and information system of the administration;
 - (h) administering and regulating its internal affairs;

- (i) implementing applicable national and county legislation;
- (j) entering into contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions;
- (k) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the Board of the Municipality;
- (l) preparing and submitting its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill;
- (m) collecting rates, taxes levies, duties, fees and surcharges on fees as delegated by the County Government of Kilifi;
- (n) implementing tariff, rates and tax and debt collection policies as delegated by the County Government of Kilifi;
- (o) monitoring the impact and effectiveness of any services, policies, programs or plans;
- (p) establishing, implementing and monitoring performance management systems;
- (q) promoting a safe and healthy environment;
- (r) facilitating and regulating public transport: and
- (s) performing such other functions as delegated by the County Government of Kilifi.

Composition of the Board of the Municipality

9. (1) The Board of the Municipality shall be composed of not more than nine members appointed by the County Governor with approval of the County Assembly.
- (2) The members of the Board appointed in sub-article (1) shall be constituted as follows—
- (a) the County Executive Committee Member for the time being responsible for Cities and Urban Areas or the designated alternate;
 - (b) the Chief Officer for the time being responsible for Urban Development;
 - (c) three Members who shall be appointed by the County Governor with approval of the County Assembly;
 - (d) four other members nominated by an association and appointed by the County Governor with the approval of the County Assembly; and
 - (e) the Municipal Manager who shall be the Secretary to the Board and shall be an ex officio member of the Board.

(3) The four members of the Board of Municipality specified under sub-article (2)(d), shall be nominated by—

- (a) an umbrella body representing professional associations in the area;
- (b) an association representing the private sector in the area;
- (c) a cluster representing registered associations of the informal sector in the area;
- (d) a cluster representing registered neighborhood associations in the area;
- (e) identified by the organizations specified under sub-article (2); and
- (f) require the organizations to produce—
 - (i) signed minutes as evidence of an accountable process of nomination;
 - (ii) evidence of compliance with statutory obligations; and
 - (iii) vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the Board.

(4) In appointing members of the Board of the Municipality, the County Governor shall ensure gender equity, representation of persons with disability, youth and marginalized groups.

Term of the Board of the Municipality

10. A member of the Board of the Municipality shall hold office for a term of five years on a part-time basis.

Eligibility for Appointment as Member of the Board of the Municipality

11. A person shall be qualified for appointment as a member of the board if that person—

- (a) holds at least a diploma from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least five years' post-qualification professional experience;
- (d) satisfies the requirements of Chapter Six of the Constitution;
- (e) is ordinarily resident or has a permanent dwelling in the Municipality; and
- (f) carries on business in the municipality or has lived in the municipality for at least five years.

Chairperson of the Board of the Municipality

12. (1) At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Chairperson of the Board of the Municipality.

(2) The Chairperson of the Board shall hold office for a term of five (5) years.

(3) A person shall be eligible for election as a chairperson of the board if that person—

- (a) holds a degree from an institution recognized in Kenya;
- (b) has a distinguished career in a medium level management position in either the private or public sector;
- (c) holds at least ten years' post-qualification professional experience;
- (d) satisfies the requirements of Chapter Six of the Constitution;
- (e) is ordinarily resident or has a permanent dwelling in the Municipality; and
- (f) carries on business in the Municipality or has lived in the Municipality for at least five years.

Powers and Functions of the Chairperson

13. The Chairperson of the Board of the Municipality of Mtwapa shall—

- (a) be the head of the Board of the Municipality;
- (b) chair the meetings of the Board of the Municipality; and
- (c) perform such other duties as may be delegated by the Board of the Municipality.

Vice-Chairperson of the Board of the Municipality

14. (1) At the first regular meeting of the Board of the Municipality, members of the Board of the Municipality shall elect from amongst themselves, a Vice-Chairperson of the Board of the Municipality.

(2) The Chairperson and the Vice-Chairperson of the Board of the Municipality shall at all times be of opposite gender.

(3) The Vice-Chairperson shall, in the absence of the Chairperson, perform the functions of the Chairperson and shall perform such other functions as may be delegated by the Chairperson.

(4) The Vice-Chairperson of the Board shall hold office for a term of five (5) years.

Removal of the Chairperson and Vice-Chairperson

15. (1) The Chairperson and the Vice-Chairperson of the Board of the Municipality may be removed by—

- (a) the Governor;
 - (b) a decision of at least two-thirds of the members of Board of the Municipality;
- or

(c) upon petition by a resident of the Municipality where the petition has been received, considered and its merit affirmed.

(2) The procedure for the removal of a Chairperson or Vice-Chairperson of the Board of the Municipality under sub-article (1) above may be provided by Regulations under the Urban Areas and Cities Act and, in the absence, thereof in accordance with Kenyan law having regard to fair labor practices.

(3) Any vacancy arising out of the removal of a Chairperson or the Vice-Chairperson of Board of the Municipality may be filled in the manner provided under Article 12 and 14 respectively.

Committees of the Board of the Municipality

16. (1) The Board of the Municipality may—

- (a) establish such Committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under the Urban Areas and Cities Act;
- (b) delegate to such Committee such functions as are necessary for the efficient performance of its duties in respect to the whole or any part of the area under the jurisdiction of the Board of the Municipality; and
- (c) include persons who are not members of the Board in any Committee.

(2) The Committees of the Board of the Municipality to which members of the Board of the Municipality delegate any of their powers and functions must follow procedures which are based as far as they are applicable on those provisions of this Charter which govern the taking of decisions and performance of functions by the Board of the Municipality.

Remuneration of the Members of the Board of the Municipality

17. The Board of the Municipality shall not be entitled to a salary, however, they shall be paid such allowance and benefit as the County Executive Committee shall, with the approval of the County Assembly and on advise of the Salaries and Remuneration Commission determine.

Removal of Members of the Board of the Municipality

18. (1) A member of the Board of the Municipality shall cease to hold office if the member—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

- (d) resigns in writing to the Governor;
- (e) without reasonable cause, the member is absent from three consecutive meetings of the Board or Committee of the Board of the Municipality within one financial year;
- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) fails to declare his or her interest in any matter being considered or to be considered by the Board or Board Committees;
- (i) engages in any gross misconduct; or
- (j) dies.

- (2) A member of the Board of the Municipality may be removed from office by—
- (a) the County Governor;
 - (b) a decision of at least two-thirds of the members of the Board of the Municipality; or
 - (c) upon petition by the residents of the Municipality.

(3) The procedure for the removal or petition for removal of a member of the Board of the Municipality under Article 18 (1) above shall be provided by Regulation under the Urban Areas and Cities Act and in the absence thereof in accordance with Kenyan law having regard to fair labor practice.

(4) Any vacancy arising out of the removal of a member of the Board of the Municipality may be filled in the manner provided under Article 9.

Meetings of the Board of the Municipality

19. (1) The Board of the Municipality shall hold its sittings to transact the business of the Board once every three months.

(2) Notwithstanding Article (1) above, the Chairperson of the Board of the Municipality may, and upon request in writing by at least one-third of the members of the Board of the Municipality shall, convene a special meeting to transact any urgent business of the Board of the Municipality.

(3) All regular meetings of the Board of the Municipality called for the purpose of transacting public business, where a majority of the members elected are present, shall be open to the public.

(4) The Board shall have the privilege of holding executive sessions from which the public is excluded, however, no by-laws, resolution, rule or regulation shall be finally adopted at such an executive session.

Quorum

20. At least two-thirds of the members of the Board of the Municipality are shall form the quorum conduct business.

Conflict of Interest

21. A member of the Board of the Municipality who has a conflict of interest in any discussions or decision-making regarding any subject or transaction under consideration by the Board of the Municipality, shall not participate in the discussions or decision-making, and is not entitled to vote on the subject or transaction relating to it.

Rules of the Board Meetings

22. The Board of the Municipality shall by resolution adopt rules to govern its meetings.

Record of Information of the Board

23. (1) The minutes and other information of the Board of the Municipality shall be kept by the Secretary of the Board of the Municipality.

(2) Access to information on the activities and resolutions of the Board of the Municipality shall be as provided for under the Urban Areas and Cities Act and other applicable laws.

Citizen Fora

24. (1)The Board of the Municipality shall ensure the development of mechanisms for the participation of the residents of the Municipality of Mtwapa in the management and administration of the Municipality.

(2) All recommendations from the Citizen Fora of the Municipality of Mtwapa shall be forwarded to the Board of the Municipality for deliberations.

(3) All recommendations on issues raised in the Citizen Fora and addressed by the Board of the Municipality shall be forwarded to the Municipal Manager for implementation.

PART V—LEGISLATIVE AUTHORITY

By-Laws

25. The Board of the Municipality shall exercise its legislative authority by passing Municipality By-laws.

Passing of By-Laws

26. (1)Except as authorized by Article 26 (2) below, passing of By-laws shall require approval by a majority of the Board of the Municipality at two meetings.

(2) The Board of the Municipality may adopt a By-law at a single meeting by the unanimous approval of at least a quorum of Board, provided the proposed By-law is available in writing to the public at least one week before the meeting.

(3) Any substantive amendment to a proposed By-law must be read aloud or made available in writing to the public before the Board of the Municipality adopts the By-law at that meeting.

(4) After the adoption of a By-law, the vote of each member must be entered into the Board minutes.

(5) After adoption of a By-law, the Chairperson of the Board must endorse it with the date of adoption and his title.

Effective Date of By-Laws

27.(1) By-laws shall take effect on the 30th day after adoption, or on a later day provided in the By-law.

(2) A By-law may take effect as soon as it is adopted or any other date less than 30 days after adoption if it contains an emergency clause.

PART VI — ADMINISTRATIVE AUTHORITY

Resolutions

28. The Board of the Municipality shall exercise its administrative authority by approving resolutions.

Approval of Resolutions

29. (1) Approval of a resolution or any other Board administrative decision shall be made through a consensus by the Board.

(2) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the Board adopts the resolution at that meeting.

(3) After approval of a resolution or other administrative decision, the vote of each member must be entered into the Board minutes.

Effective Date of Resolutions

30. Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.

PART VII — THE MUNICIPAL MANAGER

Office of the Municipal Manager

31. (1) There shall be a Municipal Manager as provided for in section 28 of the Urban Areas and Cities Act.

(2) The Municipal Manager shall be the administrative head of the Municipality of Mtwapa.

Appointment and Term

32. (1) The Municipal Manager shall be competitively recruited and appointed by the County Public Service Board.

(2) The Municipal Manager may be appointed under such terms and conditions as the County Public Service Board may determine.

Qualifications

33. (1) The Municipal Manager shall—

- (a) be a citizen of Kenya;
- (b) hold a degree from a university recognized in Kenya or its equivalent; and
- (c) have served and has proven experience of not less than ten years in administration or management either in public or private sector.

(2) In appointing the Municipal Manager, the County Public Service Board shall ensure—

- (a) gender equity;
- (b) the inclusion of minorities and marginalized communities; and
- (c) the person satisfies the requirements of Chapter six of the Constitution.

Functions and Powers of the Municipal Manager

34. (1) The Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.

(2) The Municipal Manager shall perform the following functions—

- (a) Act on behalf of the Board of the Municipality—
 - (i) in ensuring the execution of the directives of the Board of the Municipality; and
 - (ii) during all intervals between meetings of the Board of the Municipality.
- (b) prepare and present for approval of the Board of the Municipality, an annual estimate of revenue and expenditure to fund and carry out the programmes and operations of the Board;
- (c) be principally responsible for building and maintaining a strong alliance and effective working relationships between the Board of the Municipality and the civil society, private sector and community-based organizations;
- (d) cause to be prepared, transmitted to the Board of the Municipality, and distributed to the public at least an annual report on the activities and

accomplishments of the departments and agencies comprising the executive branch of the Municipality.

- (e) act as an ex officio member of all committees of the Board of the Municipality; and
- (f) such other functions as the Board may, by order, confer upon the Municipal Manager.

(3) The Municipal Manager shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the Municipality.

(4) The Municipal Manager shall have the power and shall be required to—

- (a) exercise supervision over all departments and agencies of the Municipality and provide for the co-ordination of their activities;
- (b) enforce the provisions of this Charter, Municipal By-laws, and all applicable laws;
- (c) exercise powers granted to the Municipal Manager in this Charter, By-laws and applicable laws concerning the appointment and removal of certain officers, employees, and members of committees of the Board of the Municipality;
- (d) exercise such other powers as may be prescribed by this Charter, by-laws and applicable laws.

(5) The Municipal Manager shall—

- (a) attend all Board of the Municipality meetings unless excused by the Chairperson of the Board or the Board of the Municipality;
- (b) make reports and recommendations to the Board of the Municipality about the needs of the Municipality;
- (c) administer and enforce all Municipality By-laws, resolutions, franchises, leases, contracts, permits, and other Municipality decisions;
- (d) supervise Municipality employees;
- (e) organize Municipality departments and administrative structure;
- (f) prepare and administer the annual Municipality budget;
- (g) administer Municipality utilities and property;
- (h) encourage and support regional and intergovernmental co-operation;
- (i) promote cooperation among the Board of the Municipality, staff and citizens in developing Municipality policies and building a sense of community;
- (j) perform other duties as directed by the Board of the Municipality;

(k) delegate duties, but remain responsible for acts of all subordinates.

(6) The Municipal Manager shall have no authority over the Board of the Municipality.

(7) The Municipal Manager shall be entitled to attend meetings of the Board of the Municipality but shall not be entitled to vote.

Remuneration

35. The County Public Service Board shall set the compensation and determine the conditions of employment of the Municipal Manager.

Removal of the Municipal Manager

36. (1) The Municipal Manager may be removed from office by a resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the Municipality.

(2) The Municipal Manager shall cease to hold office upon the lapse of the employment term of if he/she—

(a) is unable to perform the functions of the office by reason of mental or physical infirmity;

(b) is declared or becomes bankrupt or insolvent;

(c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;

(d) resigns in writing to the Board;

(e) without reasonable cause, is absent from three consecutive meetings of the Board of the Municipality;

(f) is found guilty of professional misconduct by the relevant professional body;

(g) is disqualified from holding a public office under the Constitution;

(h) engages in any gross misconduct; or

(i) dies.

(3) Any vacancy arising in the office of the Municipal Manager may be filled in the manner provided under Article 32.

(4) When the Municipal Manager is temporarily disabled from acting as Municipal Manager or when the office of the Municipal Manager becomes vacant, the Governor of the Municipality shall temporarily appoint a qualified person to be an Acting Municipal Manager.

(5) The Governor shall inform the County Public Service Board of such appointment within seven (7) days.

(6) The Acting Municipal Manager shall have the authority and duties of the Municipal Manager except that the Acting Municipal Manager may appoint or remove employees only with approval of the Board of the Municipality.

(7) An Acting Municipal Manager shall hold office until such a time as a new Municipal Manager shall be appointed by the County Public Service Board.

PART VIII – MUNICIPAL FINANCES AND FINANCIAL MANAGEMENT

Sources of the Municipality's Funds and Revenue

37. The Board of the Municipality shall derive its revenue and funds from—

- (a) monies allocated by the County Assembly for the purposes of the management and service delivery of the Board;
- (b) monies or assets that may accrue to the Board in the course of the exercise of its powers or the performance of its functions;
- (c) all monies or grants from any other legitimate source provided or donated to the Board;
- (d) revenue arising from rates, fees, levies, charges and other revenue raising measures which is retained by Municipality for the purpose of defraying its costs for providing services;
- (e) investment income; and
- (f) borrowing.

Appointment of the Municipality Accounting Officer

38. The Municipality Accounting Officer shall be designated by the County Executive Committee Member for Finance in the manner provided under section 148 of the Public Finance Management Act.

Functions and Powers of the Municipality Accounting Officer

39. (1) The Municipality Accounting Officer shall have all the powers and perform all the functions of accounting officers as provided under the Public Finance Management Act.

(2) Without prejudice to the foregoing, the Municipality Accounting Officer shall be responsible for managing the finances of the Municipality.

Financial Year

40. (1) The Municipality shall operate on an annual budget.

(2) The financial year of the Board of the Municipality shall be the period of twelve months ending on the thirtieth June in each year.

Budget

41. The budget of the Board of the Municipality shall be developed in the manner provided under section 175 of the Public Finance Management Act.

Management of Municipality Finances

42. (1) The Board of the Municipality shall, with the approval of the County Executive Committee member for finance, open and maintain a bank account in the name of the Municipality.

(2) All monies received by the Board of the Municipality shall be paid into the Municipality's bank account promptly and in accordance with the Public Finance Management Act.

Borrowing by the Municipality

43. The Board of the Municipality may only borrow from—

- (a) the County Government;
- (b) through the County Government; or
- (c) by way of a bank overdraft; and subject to such terms as may be imposed by the County Assembly or such terms as provided by law.

Audit

44. The audit of the Board of the Municipality shall be as provided under section 46 and 47 of the Urban Areas and Cities Act.

PART IX— MUNICIPALITY PERSONNEL

Municipality Personnel

45. The Board of the Municipality may employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or any other law.

Management of Municipal Personnel

46. Employees of the Municipality shall be under the general guidance of the Municipal Manager.

Retirement Systems

47. The Board of the Municipality may do all things necessary to include its officers and employees, or any of them within any retirement system or pension system under the terms of which they are admissible, and to pay the employer's share of the cost of any such retirement or pension system out of the general funds of the Board of the Municipality.

Compensation of Municipal Personnel

48. The compensation of all employees of the Municipality shall be set by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

PART X—MUNICIPALITY PROPERTY

Acquisition, Possession and Disposal

49. (1) The Board of the Municipality is a body corporate and may acquire real, personal, or mixed property for any public purpose by purchase, gift, bequest, devise, lease, or otherwise and may sell, lease, or otherwise dispose of any property belonging to the Municipality.

(2) All town property and funds of every kind belonging to or in the possession of the town (by whatever prior name known) at the time this Charter becomes effective are vested in the Municipality, subject to the terms and conditions thereof.

Compulsory Acquisition

50. (1) Whenever the Municipality deems it necessary to acquire private land for its purposes, it shall request the County Executive Committee Member to request the National Land Commission to acquire the land on its behalf.

(2) The provisions of the Land Act shall apply to any intended compulsory acquisition by the Municipality of property within the Municipality.

Municipal Buildings

51. The Board of the Municipality may acquire, obtain by lease or rent, purchase, construct, operate, and maintain all buildings and structures it deems necessary for the operation of the Municipality.

Protection of Municipality Property

52. The Board of the Municipality may do whatever may be necessary to protect Municipal property and to keep all Municipal property in good condition.

PART XI—GENERAL PROVISIONS

Oath of Office

53. (1) Before entering upon the duties of their offices, the members of the Board shall take and subscribe to the following oath or affirmation—

(1) “I, [...], being called on to exercise the functions of [Municipal Manager/Chairperson, etc.] of the Municipality of Mtwapa, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that except with the authority of the Board of the Municipality of Mtwapa, I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the

Municipality committed to my secrecy, except as may be required for the due discharge of my duties as [Municipal Manager/Chairperson, etc.] of the Municipality of Mtwapa or otherwise under the law. (In the case of an oath— So help me God.”

(2) The Municipal Manager shall take and subscribe to this oath or affirmation before the County Governor or before one of the sworn deputies. All other persons taking and subscribing to the oath shall do so before the Municipal Manager.

Amendments to the Charter

54. (1) The Governor may at any time, after consultation with the Board of the Municipality, amend any provision of this Charter.

(2) The Governor shall cause a copy of the amended Charter to be laid before the County Assembly within 30 days of its amendment for approval.

Severability

55. If, at any time, any provision of this Charter is or becomes illegal, invalid or unenforceable in any respect under Kenyan law, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired.

PART XII—TRANSITIONAL PROVISIONS

Effective Date of Charter

56. The provisions of this Charter shall be in effect from the date of publication in the *Kenya Gazette*.

Rights and Privileges Preserved

57. Nothing in the Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are Town Officials, Officers or Employees at the time of its adoption.

Departments

58. All Town Departments shall continue to operate with the same powers, duties, activities, budgets, and employees as were in effect at the time this Charter becomes effective until changed by the Municipal Manager with the approval of the Board of the Municipality.

Made on the 17th November, 2023.

GIDEON MAITHA MUNG'ARO,
Governor, Kilifi County.