

by Hon. Pius Koheno

Mr.
PCA CLIP
28/06/2017

REPUBLIC OF KENYA

COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY –FIFTH SESSION

REPORT OF THE
SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION ON THE
CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT ACT (NAIROBI CITY
COUNTY ASSEMBLY CAR LOAN AND MORTGAGE SCHEME FUND) REGULATIONS,
2017.

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

JUNE, 2017

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Approved
~~R. Wang~~
28/06/2017

(T&J/RM/O--/2017)

by Hon. Pius Kotiem
on 28/06/2017

GOVERNMENT OF NAIROBI CITY COUNTY



Mr.
PCA CLSP)

28/06/2017

NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

(5TH SESSION)

NOTICE OF MOTION – (Chairperson, Select Committee on
Delegated Legislation)

Hon. Speaker, I beg to give notice of the following motion:-

THAT, this Assembly adopts THE REPORT OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT ACT (NAIROBI CITY COUNTY ASSEMBLY CAR LOAN AND MORTGAGE SCHEME FUND) REGULATIONS, 2017, laid on the Table of the Assembly today, Wednesday 28th June, 2017.

(Chairperson, Select Committee on Delegated Legislation)

Approved
[Signature]
28th / 06 / 2017

1.0 PREFACE

Mr. Speaker Sir,

The Select Committee on Delegated County Legislation is established under Standing Order 190 and its mandate among others as outlined under Standing Order 190 is to consider in respect of any statutory instrument whether it-

- a. is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
- b. infringes on fundamental rights and freedoms of the public;
- c. contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- d. contains imposition of taxation;
- e. directly or indirectly bars the jurisdiction of the Courts;
- f. gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- g. involves expenditure from the Consolidated Fund or other public revenues;
- h. is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
- i. appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

It is important to understand the clarification of a statutory instrument pursuant to Standing Order 190 (5) which states that: -

“Statutory instrument” means 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”

1.1 Committee Membership

The Select Committee on Delegated County Legislation was constituted by the Assembly on Tuesday 30th April, 2013 comprising of the following Members:-

- | | | |
|-------------------------------|---|-----------------|
| 1. Hon. Pius O. Otieno | - | (Chairman) |
| 2. Hon. Shadrack Juma | - | (Vice-Chairman) |
| 3. Hon. Kennedy Oduru, MCA | | |
| 4. Hon. Fredrick Njogu, MCA | | |
| 5. Hon. Samuel N Njoroge, MCA | | |
| 6. Hon. Daniel M Mari, MCA | | |
| 7. Hon Samuel Mwangi, MCA | | |

8. Hon. Jaffer Kassam, MCA
9. Hon. Elkana Mauti, MCA
10. Hon. Wilfred Odalo, MCA
11. Hon. Erastus Mburu, MCA
12. Hon. Petronilla Nafula, MCA
13. Hon. Joyce Bocha, MCA
14. Hon. Alexina Mudi, MCA
15. Hon. Martin King'ethu, MCA
16. Hon. Christine Abuto, MCA
17. Hon. Amina Mohammed, MCA
18. Hon. Monica Ndegwa, MCA
19. Hon. Hawa Dafala, MCA

1.1 Acknowledgement

Mr. Speaker Sir,

I wish to sincerely thank Members of the Committee for their patience, sacrifice and hard work despite their other commitments and tight schedules, in their endeavors to deliberate on the Regulations. The Committee also wishes to sincerely thank the Offices of the Speaker, the Clerk of the County Assembly and the secretariat for their support to the committee that enabled Members execute their work.

It is my honour and pleasure on behalf of the Committee on Delegated County Legislation, to present this Report of the Select Committee on Delegated County Legislation on the Public Finance Management (Nairobi City County Assembly Car Loan and Mortgage Scheme Fund) Regulations, 2017 with recommendations to the Assembly for consideration and adoption pursuant to the provisions of Section 116 of the Public Finance Management Act, 2012

Thank You.

SIGNED.....

Hon. Pius Owino, MCA

(Chairperson, Select Committee on Delegated County Legislation)

DATE:.....

28/6/17

2.0 INTRODUCTION

Mr. Speaker Sir,

The Public Finance Management (Nairobi City County Assembly Car Loan and Mortgage Scheme Fund) Regulations, 2017 were laid on the floor of the Assembly on Tuesday, 13th June, 2017. Pursuant to Section 116 of the Public Finance Management Act, 2012, the regulations were thereafter committed to the Select Committee on Delegated County Legislation for scrutiny and report to the Assembly.

The committee identified and resolved to meet the following parties to the Regulations before making appropriate recommendations;

- . The County Assembly Senior Finance Officer; and
- . The County Assembly Legal Counsel

The Committee managed to meet all the parties who gave their views.

3.0 THE PUBLIC FINANCE MANAGEMENT (NAIROBI CITY ASSEMBLY CAR LOAN AND MORTGAGE SCHEME FUND) REGULATIONS, 2017

Mr. Speaker Sir,

3.1 Legal Basis of the Public Management (Nairobi City Assembly Car Loan and Mortgage Scheme Fund) Regulations, 2017

Section 116 of the Public Finance Management Act, 2012 provides for the Officer Administering the fund to administer the County Assembly Car Loan and Mortgage Scheme Fund in accordance with a framework and criteria approved by the County Assembly

3.2 Objects of the Public Finance Management (Nairobi City County Assembly Car Loan and Mortgage Scheme Fund) Regulations, 2017

The objects and purpose of the Public Finance Management (Nairobi City Assembly Car Loan and Mortgage Scheme Fund) Regulations, 2017 is to operationalize specific provisions of Section 116 of the Public Finance Management Act, 2012 and to provide for Car Loan and Mortgage Scheme for the provision of finance assistance to Members of County Assembly as well as staff.

4.0 AN ANALYSIS OF THE REGULATIONS

Mr. Speaker Sir,

Introduction

The Regulations are made pursuant to powers conferred by section 116 of the Public Finance Management Act, No. 18 of 2012.

Regulation 1 & 2

These are the citation and interpretation regulations.

Regulation 3

Establishes the Nairobi City County Assembly Car Loan and Mortgage Scheme Fund as a successor to the Nairobi City County Assembly Car Loan Scheme Fund, 2014 and the Nairobi City County Assembly Mortgage Scheme Fund, 2014.

Regulation 4

Sets the object of the Fund which is to provide loans to members of the scheme for

- (a) the purchase of vehicles; and
- (b) the purchase, development, renovation or repair of residential property.

Regulation 5

Makes provision on the sources and administration; the sources of the fund include;

- a) monies standing to the credit of the account on the date of coming into operation of these Regulations,
- b) additional monies appropriated by the County Assembly to the Fund, and
- c) interest accruing to the Fund.

It also provides that the Fund shall be administered as a special account in the County Assembly Fund and be operated by the officer administering the Fund

Regulation 6

Establishes the Loans Management Committee and makes provision on the meetings of the Committee whose quorum shall be one third of the members.

The Committee shall comprise of;

- (a) the Leader of the Majority Party, who shall be the chairperson;
- (b) the Leader of the Minority Party, who shall be the vice-chairperson;

- (c) the Majority Whip of the County Assembly;
- (d) the Minority Whip of the County Assembly;
- (e) four members of the county assembly nominated by the members of county assembly;
- (f) three members of staff of the County Assembly, elected by the staff of the County Assembly; and
- (g) the Clerk of the County Assembly who shall be the officer administering the Fund, an *ex-officio* member of the Committee and the secretary to the Committee

Regulation 7

Sets the functions of the Committee which are to;

- (a) approve applications for loans in accordance with the existing terms and conditions of borrowing;
- (b) recommend to the Board the appointment of a financial or mortgage institution to provide administrative services of the Fund; and
- (c) supervise the day-to-day running of the Fund.

Regulation 8

Provides for the operation of the Fund including manner of application, approval and release of funds.

Regulation 9

Sets out the manner of administration of the Fund.

Regulation 10

Empowers the Nairobi City County Assembly Service Board; when it considers appropriate to appoint a financial or mortgage institution.

Regulation 11

Makes provision on the responsibilities of the financial or mortgage institutions appointed under Regulation 10.

Regulation 12

Makes provision on interests on loans under these Regulations which shall be 3%.

Regulation 13

Makes it mandatory for loans granted under these Regulations to be insured for the benefit of the member against death and disability.

Regulation 14

Provides on the mode of loan repayment which shall be by deduction from the borrower's salary.

Regulation 15

Sets conditions for disbursement of a car loan including;

- a) that the vehicle not exceed 8 years from date of manufacture; and
- b) that the log book of the vehicle be issued jointly between the County Assembly Service Board and the member of the scheme and be kept in custody of officer administering Fund.

Regulation 16

Allows for the release of a copy of the logbook upon borrower's request for purposes of renewal.

Regulation 17

Provides the car loan amounts which shall be the value of the vehicle to the maximum amount set by SRC, with the maximum amount for members being as set in the Schedule.

It further allows for an additional loan advance not exceeding 10% of the value of the vehicle from the Fund to the member to cater for an overhaul of the engine of the vehicle.

Regulation 18

Sets the car loan repayment period to a maximum of 5 years or within the remaining period of the service of the member whichever is earlier.

Regulation 19

Makes it mandatory to comprehensively insure the vehicle purchased through the Scheme.

Regulation 20

Provides for discharge upon full repayment of loan and the issuance of a signed loan discharge certificate prescribed by the Committee.

Regulation 21

Mandates the borrower to provide a duly signed transfer deed and a letter authorizing the Board to sell the vehicle in case of default in repayment

Regulation 22

Makes provision on utilization of mortgage loan including for; purchase, development and renovation or repair of residential property for the occupation of the applicant or their immediate family.

Regulation 23

Provides on the mode of application for mortgage loan including the required documents and attendant costs.

Regulation 24

Makes provision on instances of intended purchase of leasehold property limiting the grant of the loan to where the expiry date of such lease is at least forty-five years beyond the final loan repayment date.

Regulation 25

Sets the maximum loan amount which shall be the value of the property intended for purchase subject to the maximum amount set by SRC with the maximum amount being as set in the Schedule.

It also allows a member eligibility for a maximum of two mortgage loans provided they don't run concurrently.

Regulation 26

Makes it mandatory for the valuation of property that is subject of a mortgage loan under these regulations to be performed by a competent valuer from among the list of pre-qualified valuers.

Regulation 27

Provides that the Board shall have a charge registered on the property financed through a loan granted under these regulations with all legal documentation and disbursement being supervised by the officer administering the Fund.

Regulation 28

Mandates a borrower to take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Board.

Regulation 29

Mandates the officer administering Fund to keep in safe custody all original documents relating to a property financed under these Regulations.

Regulation 30

Provides for a two phased disbursement of a loan granted for development of a residential property as below;

- (a) the first disbursement, based on the value of the land on which the residential property is proposed to be developed; and
- (b) the subsequent disbursements, based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant.

Regulation 31

Sets the loan repayment period to a maximum of 20 years or within the duration of the remaining period of service of the member.

Regulation 32

Provides for discharge of member from liability upon full repayment of loan and the provision of such member with a signed loan discharge certificate.

Regulation 33

Permits the Board; in case of default in repayment, to sell the charged property by public auction or private treaty.

Regulation 34

Permits the Board to supplement these Regulations and to issue guidelines on;

- (a) the purchase and development of land and residential properties;
- (b) the utilization of surplus Funds for the purchase and development of land and residential property; and
- (c) such other matters as may be necessary for the proper management and administration of the Fund

Regulation 34

Repeals the Public Finance Management (Nairobi City County Assembly Car Loan Scheme Fund) Regulations, 2014 and the Public Finance Management (Nairobi City County Assembly Mortgage Scheme Fund) Regulations, 2014.

5.0 COMMITTEE OBSERVATIONS

Mr. Speaker sir,

The Committee observed that the proposed regulations are well intended; they meet the requirements of the Constitution and all other enabling legislations on public finance management and are aimed at safeguarding public resources invested in the fund.

6.0 RECOMMENDATION

Mr. Speaker sir,

The Committee recommends that in accordance with Standing Order 190(4) (a):-

This Assembly approves the Public Finance Management (Nairobi City County Assembly Car Loan and Mortgage Scheme Fund) Regulations, 2017 without amendments.

COMMITTEE MEMBERS


1. Hon. Pius O. Otieno - (Chairman)
2. Hon. Shadrack Juma - (Vice-Chairman)
3. Hon. Kennedy Oduru, MCA
4. Hon. Fredrick Njogu, MCA
5. Hon. Samuel N Njoroge, MCA
6. Hon. Daniel M Mari, MCA
7. Hon Samuel Mwangi, MCA
8. Hon. Jaffer Kassam, MCA
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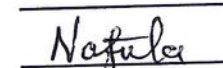

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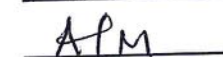




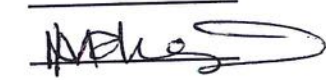









SUBMISSION FROM SENIOR FINANCE OFFICER NAIROBI CITY COUNTY ASSEMBLY

FACTORS INFORMING REVIEW OF CAR LOAN AND MORTGAGE REGULATIONS;LEGAL NOTICE No. 1 & 2 OF 2014

In its meeting held on 17th December 2016, the Loans Management Committee discussed various provisions of the Public Finance Management (*Nairobi City County Assembly Car Loan Scheme Fund*) Regulations, 2014 and the Public Finance Management (*Nairobi City County Assembly Mortgage Scheme Fund*) Regulations, 2014. The Committee noted that some provisions required amendments as they were either erroneous or had been made irrelevant by passage of time. The provisions included;

- 1) Reference to “hire purchase agreement” under Definition of terms in the Car Loan Regulations does not apply as there is no Hire Purchase agreement at all under the Car Loan Purchase process;
- 2) There was no reference to Loan “Application Form” under definition of terms. There is need to define the form under definition of terms. Regulation 7 refers to a Hire Purchase proposal form which in essence should be the Loan Application Form
- 3) Current Membership of the Loans Management Committee comprises Members of The County Assembly Only. Staff Members being beneficiaries of the funds required representation through Human Resource Department and the existing Staff Welfare Association.
- 4) The need to merge the Car Loan Scheme Fund and the Mortgage Scheme Fund into one Fund for ease of administration.
- 5) Regulation 9 of the Car Loan Regulations provided for temporary release of Logbooks. This may pose a risk to the fund as the logbooks are the only security for the loans borrowed. Regulations may provide for release of a Photostat copy of the Logbooks upon written request by a borrower.
- 6) The Car Loan regulations under Regulation 11 provides that a loan granted under the Regulations shall carry an interest of three percent per annum. For avoidance of ambiguity there is need to add the phrase “on reducing balance” after the term ‘per annum’;
- 7) The Car loan Regulations under Regulation 13(4) provides that every loan granted under the regulations shall be insured to the benefit of the member of the Scheme. However the Insurance should be for the benefit of the Fund and not the member with the member as an interested party. The insurance cost should be borne by the member and the needs to be clear in the Regulations;

- 8) Regulation 12(3) of Mortgage Regulations provides restrictions for amounts advanced based on the value of the property. There is need to review this restriction to either market value or mortgage value as may be given by a competent valuer.
- 9) The Mortgage Regulations under Regulation 12(1) provides that a member shall qualify for a mortgage amount not exceeding **three shillings**. This is erroneous since the maximum amount set by SRC is Ksh. Three Million. This needs to be worded to read ‘....the amount accessible by a member shall be as advised by The Salaries and Remuneration Commission from time to time’

After deliberations the committee resolved as follows;

- That the Regulations be amended as indicated above;
- That the membership of the Committee be expanded to include members of staff;
- Provide a Regulation to authorize the administrator of the fund to make administrative expenditures from the earnings of the fund;
- The two funds to be merged into one fund to be called Car Loan and Mortgage Scheme Fund;
- The clerk to liaise to with SRC with the objective of combining the Car Loan and mortgage benefits into one benefit of Ksh.5Million.

In addition to the above discussions by the Committee, the Controller of Budget in her letter ref COB/NBI/004/1(1) dated 10th January 2017 raised concerns about some provisions of the Regulations. Some of the issues raised by the Controller of Budget included;

1. Long Title. The Regulations are purportedly issued by the County Assembly Service Board contrary to Section 116(1) of the Public Finance Management Act, 2012 which provides that Regulations are to be issued by the County Executive Committee Member Responsible for Finance.
2. Responsibilities of the Committee established under Regulation 6.
3. Formula calculating maximum mortgage loan disbursements under Regulation 12 of the Mortgage Regulations. Maximum Loan disbursable should be as provided by the Salaries and Remuneration Commission.

The above amendments have been addressed in the Reviewed Regulations.