

THE NYERI COUNTY TEA CESS BILL , 2016

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THE NYERI COUNTY TEA CESS BILL, 2016

A Bill for

An Act of the County Assembly for the introduction of the Tea Cess and the usage and management of the Cess and connected purposes.

ENACTED by the County Assembly of Nyeri County in the Republic of Kenya as follows –

PART I – PRELIMINARY

Short Title and Commencement 1. This Act may be cited as The Nyeri County Tea Cess Act 2015 and shall come into force upon publication.

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

“Tea Cess” means the Cess from the Agricultural produce known as green leaf from the tea bush grown in the County;

“Tea” means the plant known botanically as *Cammellia Sinensis* and includes its seed, tea plants and the leaf, whether on plant or detached there from, and, in the latter case, whether green tea, other versions of tea or manufactured tea;

“Tea farmer” means a registered tea grower, registered to a tea factory under provisions prescribed by written National Laws and cultivating the tea crop or who intends to plant and cultivate tea in the County;

“Tea grower” has the same meaning and description as Tea Farmer;

“Tea factory” means a factory to process green tea leaf into made tea and licensed by the relevant authority under the Laws of the land to carry out that business;

“Tea Factory Company” means a Company registered under the Company’s Act CAP 486 Laws of Kenya and which Company owns the Tea Factory that processes the tea leaves;

“Board of Directors” mean the directors of the Tea Factory Company;

“Tea manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products;

“Committee” means the committee established under this Act, to manage the tea feeder road infrastructure repairs and any other

project that may be legally developed/considered for which the Tea cess would be used;

“Factory Management” means the factory unit manager and the field services manager of a factory company.

“Tea Cess agent” means the agent appointed by the County by written instrument to be the collection agent for the Tea Cess;

“County Public Officer” means a county public officer within the meaning of section 2 of the County Government Act, 2013;

“County receiver of revenue” means the persons appointed pursuant to Section 2 of the County Government Act, 2013;

“County revenue collector” means the county public officer appointed pursuant to section 158 of the Public Finance Management Act, 2012;

“County” means the County Government of Nyeri.

“County Executive Member” means county executive member responsible for Agriculture, livestock, fisheries and cooperative development.

Part II - CESS

- Tea Cess
3. (1) The County shall levy a Cess known as a County Tea Cess.
- (2) The County Tea Cess shall be deducted from the green leaf of each grower registered to a Tea Factory;
- (3) The Tea Cess shall be utilized as for purposes provided under this Act.
- (4) the tea cess shall be collected by the Tea Factory(or tea factory’s appointed agents(s) on behalf of the County.
- (4) The Tea Cess shall be determined by the County Executive for for Agriculture and shall not exceed 1% of the green leaf proceeds.
- Purpose of the Cess
4. (1) The primary purpose of the Tea Cess, shall be to ensure that the infrastructure of the tea growing areas, including but not limited to access roads, bridges and other public utilities are in reparable condition for the tea produce to reach the tea factory and from the factory to the tea markets;
- (2) Tea Cess may be used for any other lawful purpose as would be decided by the Committee;
- provided that such other purpose would be for the benefit of the tea farmer in general and if the County Government using other resources would have addressed or managed the infrastructure mentioned in sub section (1) above;

PART III – TEA CESS COMMITTEE

- Establishment of the Tea Committee
5. There is established a Tea Cess Committee -
- Composition of the Committee
6. The Committee shall be composed of -
- a) A Chairman from among the factory board of directors
 - b) The factory board of directors to be members of the committee
 - c) The ward administrator where the factory is located will be the secretary to the committee.
 - d) The factory management will be ex-official members
 - e) The Committee members shall appoint a Vice Chairman from amongst their number and who will deputize the Chairman in his absence;
 - f) Provided that the chairman and Vice-Chairman shall be appointed from the factory board of directors.
 - g) Affirmative action in line with the Constitution of Kenya, shall be considered in the setup of the Committee;
- Functions of Committee
7. The functions of the committee are –
- (a) To advise the County Executive Member on collection of the Tea Cess;
 - (b) To manage the collection of the cess;
 - (c) To deliberate on the projects to which the Tea Cess funds will be applied; and
 - (d) any other functions as shall be assigned in relation to this Act by the County Executive Member.
- Conduct of meetings
8. The Committee shall sit at least three times and not more than six times a year and shall cause minutes and record of deliberations;
- Quorum of meetings
9. The quorum of the Committee shall be at two thirds of the members.
- Allowance
10. (1) Allowances of the Committee shall be as determined by the Salaries and Remuneration Committee.
- (2) the allowances provided for under subsection(1) shall not be draned from the Tea Cess Funds
- Records
11. The Committee shall cause to be published an annual report, itemizing the usage of the Tea Cess funds, and such report comprising the annual audited accounts of the tea cess and a technical reports will be tabled before the County Assembly Committee for Agriculture, Livestock Development and Fisheries.

PART IV – GENERAL PROVISIONS

Penalties

12. Any person who fails to comply with the provisions of this Act shall be guilty of an offence and shall be liable to a fine of not less than Kenya shillings fifty shillings but not exceeding one hundred thousand shillings or a term of imprisonment of not exceeding (6) six months or both.

Regulations

13. The Executive member may make regulations for the better utilization and management of this Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill aims at fulfilling the requirements of the Constitution of Kenya in respect to Agricultural Produce Cess (APC), and filling in a gap left by the decision of the Constitutional Court of Kenya.

In late 2014, the Constitutional Court of the High Court of Kenya passed judgement stopping the County Government of Narok, Nairobi, Nyeri, Murang'a, Trans Nzoia, Uasin Gishu, Nandi, Nakuru and Ministry of Agriculture, Livestock and Fisheries, Ministry of Devolution and Planning and the National Treasury (sued in the matter) from levying any Agricultural produce Cess unless and until the Counties had passed legislation in respect to the Cess being levied.

It is apparent that our County of Nyeri has too not enacted the Law and would therefore be subject to the court's decision.

The petitioners in the matter before the court, claimed that the proceeds of APC were initially collected under Section 201 of the Local Government Act (Cap 265 laws of Kenya) as read with Section 192A of the Agricultural Act (Cap 318 Laws of Kenya), which had empowered local authorities to pass by-laws imposing payments of Agricultural Produce Cess. They further indicated that following the repeal of the Local authorities Act by the County Government Act and the repeal of the Agriculture Act by Section 45 of the Agriculture, Fisheries and Food (AFFA) do not contain legal and regulatory provisions that save the taxation regime contained in the repealed local Government Act and Agriculture Act and that there was therefore no legal basis for levying of Agricultural Produce Cess by County Governments and that Article 210 of the Constitution prohibits levying of any taxes unless it is provided for by legislation.

The court agreed with the petitioners and ruled that unless there is a specific legal framework on the subject of levying of agricultural produce cess, the actions of the respondents in continuing to levy/charge Agricultural Produce Cess or related tax without a supporting legal framework expressly violates the provisions of Article 210(1) of the Constitution that provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation.

Collection of the APC has thus been stopped by the collecting agents, including the Tea Cess.

Tea roads that have hitherto been repaired/maintained by tea factories have started slipping into a state of disrepair, hampering the accessibility of the tea product to the factory and from the factories to the outside market. This in the long run will deny the County and the Kenyan Citizens who hail and carry out business in the County, from benefitting from revenue

from the Tea produce.

Tea is Kenya's highest foreign exchange earner in our County it is the highest food/cash crop revenue earner. It is for this and reasons stated earlier that the Tea Cess Bill is proposed with the intention that special emphasis be placed on this very important crop, grown by small peasant farmers, whose sweat should not be ignored and shunted aside by not providing for legislation and guidance on the infrastructure for the passage of the crop.

The thinking behind this Bill is that the County should set aside additional revenue to maintain all roads, including tea roads and where after the amount of Tea Cess levied would in time reduce and subsequently diminish.

**HON. KIBIRA NGUNYI
CHAIRPERSON: AGRICULTURE, LIVESTOCK AND
FISHERIES COMMITTEE**

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