

KEPSA WEEKLY LEGISLATIVE BULLETIN

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Increased levies next battle ground as Counties seek more resources

The impeachment of Governor Martin Wambora over alleged procurement shortcomings in the Embu County has raised fresh questions over the sufficiency of existing mechanisms on the management of resources under devolved government.

This comes against the backdrop of growing concern over the general increase in levies and charges imposed through the Finance Act passed by various County Assemblies as they seek new revenue streams to cover budgetary shortfalls.

Under the Constitution, county governments are expected to receive a minimum 15 per cent of the national budget once their supplementary estimates are submitted and approved by Parliament. However, the government has since the last financial year earmarked 30 per cent of the national budget to the Counties – and there are calls to increase this further.

As County governments struggle with budget deficits, levies and charges have become the new revenue raising streams which has in turn raised concern from business enterprises wary over the increasing cost of doing business.



Last November, for instance, the Nakuru County government kicked a storm following its proposal to impose a 1 per cent cess on gross sales of flowers. The flower sub-sector warned that this would impact adversely on sales by increasing the cost to consumers. Lower sales



would ultimately be counter-productive to the objective of increasing revenue to the County government.

What the case of Nakuru and other Counties has helped highlight is that, the new constitution, in creating two distinct levels of government – national and county governments – has created grey areas over how fiscal issues should be addressed as County governments seek raising adequate resources to finance the provision of goods and services.

It should be noted that the Constitution demands reliable sources of revenue for County governments under Article 175(b) which notes that “county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively”

Since the establishment of the new County governments, following the March 4 elections, it is obvious – and as expected – that the counties are under tremendous pressure to develop innovative financing mechanisms to raise additional resource streams to finance the provision of goods and services in their respective jurisdictions. This has led to a raft of new levies and charges which has created undue uncertainty to investors in the absence of clear guidelines on how County governments should proceed in raising new revenue streams.

Devolution has introduced new structures of governance and bureaucracy which will inevitably require additional budgetary resources. Ultimately, it is the taxpayer and especially, the private sector, which will bear the burden of footing the bill.

There is a risk, though, that increased county fiscal autonomy has resulted in some counter-effective levies, taxes, charges, fees and licenses. If not well thought through, and reviewed through a consultative process with key stakeholders, these measures will end up undermining the business operating environment.

While it must be appreciated that the demands placed upon counties will increase the appetite for new or increased levies, fees and charges on certain services, a mechanism of consultation and public participation is of the essence as required under Article 10 of the Constitution. Indeed, and in addition to article 10, article 196 (2) makes it mandatory for County assemblies to “facilitate public participation and involvement in the legislative business of the assembly”.

Consultation and public participation will provide an opportunity to businesses, industries and various sectors that are bound to be affected by any increases provide their views on the potential ramifications of such increases. Such consultation will distill the ramifications of proposed increases and ensure that they are not unduly burdensome on those to whom they are levied. In this way, the imposition of any new levies and charges will be better rationalized and benefit from broader stakeholders’ buy-in.

Next week: Principles and limitations which must inform taxation measures by County governments

Procurement law a thumbs up to Kenya's youth

Parliament last week passed an amendment to the Public Procurement and Disposal Act in a move geared towards enhancing opportunities for the youth to benefit from procurement contracts issued by public bodies. In Kenya, the government is the biggest procurer of goods and services and the 30 per cent quota earmarked for the youth is expected to open up significant opportunities for economic advancement for entrepreneurs aged below 35.

Last week's amendment that was tabled by nominated MP, Johnstone Sakaja, is seen as fulfilling a major election campaign pledge by the Jubilee government on youth empowerment.

The youth can now access the 30 per cent quota by applying either as individuals, associations or incorporated companies that draw membership from persons below the age of 35.



While the Cabinet Secretary is expected to issue guidelines on how this quota requirement will be implemented, it is expected that public entities will be obliged to periodically report on their compliance.

The amendment to the Public Procurement and Disposal Act is seen as reinforcing Articles 55 and 227(2) of the Constitution which seek affirmative action for the economic advancement of marginalized group. The youth is included in this category.

Following this amendment, the Cabinet Secretary is expected to issue guidelines to facilitate implementation but also to guard against any potential abuse of the quota through conferring a benefit to persons outside the youth bracket.

Well implemented, this amendment would be one way of redressing the disadvantaged position of the youth who have in the past had limited capacity and opportunity to benefit from contracts issued by public entities.

News on KEPSA legislative engagements

Land Fraud: Are laws on professional misconduct equal to the challenge?

Last week, we reviewed regulation of laws through the Complaints Commission. This week we highlight KEPSA views and recommendations on the adequacy of existing regulations and mechanisms amongst Surveyors in combating the vice of land fraud

Surveyors are regulated under the Survey Act (Chapter 28). This Act, however, does not set out any specific mechanisms for disciplinary procedures even though it creates specific offences on professional misconduct.

One such offence is that relating to one holding himself surveyor while not so would amount to fraudulent minimal fine not exceeding imprisonment not exceeding imprisonment.



created under section 36 as qualified to practice as a qualified. This offence which misrepresentation attracts a Kshs 3,000 or a term of 6months or both such fine and

Beyond this offence, the Act is disciplinary matters and it been left to internal established by the Institution of Kenya Surveyors which has a Professional Practice and Ethics Committee responsible for setting standards and enforcing discipline on members based on any complaints over professional misconduct.

fairly silent on how to address would appear that these have disciplinary mechanisms

However, in the absence of strong mechanisms anchored on the parent Act establishing the Institution of Surveyors of Kenya, the Committee has limited powers and is largely confined to meting out penalties and sanctions based on what is internally agreed within the Institution.

It is recommended that the Surveyors Act be reviewed to incorporate specific provisions on disciplinary matters. The Act should specifically make provision on the process of discipline; provide sufficient safeguards for due process; and, provide for more deterrent penalties.



In the absence of such changes, and at any rate before such review, the Institution of Surveyors of Kenya should strengthen its Professional Practice and Ethics Committee to effectively address issues that are likely to arise such as land fraud.

Next week: A focus on regulation of Estate Agents and Valuers in addressing professional misconduct over land fraud