

REPUBLIC OF KENYA



GOVERNMENT OF MAKUENI COUNTY



**MAKUENI COUNTY TAX WAIVERS ADMINISTRATION BILL,
2024**

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SCHEDULE ONE

Application forms

AN ACT of the County Assembly of Makueni to provide for the regulation and administration of tax waivers; to give further effect to article 210 of the Constitution of Kenya and for connected purposes.

ENACTED by the County Assembly of Makueni, as follows-

PART I- PRELIMINARY

1. Short title and commencement

This Act may be cited as the Makueni County Tax Waivers Administration Act, 2024 and shall come into force on the date of publication in the Kenya *gazette*.

2. Interpretation

In this Act, except where the context otherwise requires-

“**County Government**” means the County Government of Makueni;

“**County Assembly**” means the County Assembly of Makueni;

“**Executive Committee Member**” means the Executive Committee Member responsible for Finance in the County;

“**tax**” includes any rate, fee, charge or penalty imposed on such tax, rate or fee by any revenue raising law payable by any person to the County Government, whether it has become due or not;

“**tax waiver**” means the forbearance of tax collection, partial or full remission, spreading out a payment in respect of tax already accrued and any variation of the amount due or interest or penalty due on any amount owing to the County Government;

“**Council**” means the National Council for Persons with Disabilities established under Section 3 of the Persons with Disabilities Act, 2003; and

“**disability**” has the same meaning as defined by Persons Living with Disability Act 2003.

3. Objects of the Act

The object and purpose of this Act is to-

- a) Give further effect to Article 210 of the Constitution of Kenya, 2010 as regards tax waivers and the administration thereof;
- b) Give further effect to Section 159 of the Public Finance Management Act, 2012
- c) Ensure transparency in the administration of taxes and other revenue, in particular in the waivers thereof; and
- d) Provide for the procedure applicable to and requirements for tax waivers.

**PART II- AUTHORITY TO WAIVE TAX AND ADMINISTRATION OF TAX
WAIVERS**

4. No tax may be waived except in the manner provided by law

Waiving of taxes shall be done only in accordance with this Act or any other written law.

5. Power of the Executive Committee Member to waive tax

- (1) The County Executive Committee Member may waive in whole or part a tax imposed by the county government and its entities in accordance with criteria prescribed in this Act or any other written law.
- (2) The power of the Executive Committee Member to waive tax shall be exercisable, in respect of every transaction, but in any case, only in the following circumstances:
 - a) where the waiver is for purposes of encouraging defaulting tax payer(s) to pay such amount as may enable the County Government recover part or part of the amount owing from the defaulting payer(s);
 - b) where, in the opinion of the Executive Committee Member, there exists such compelling circumstances that make it equitable, expedient or in the interest of the financial advantage to the County that the waiver be made;
 - c) An order of a court is in force that specifies the imposition or payment of a tax at a lower rate or amount than is provided for in revenue law under which the tax is imposed or payable;
 - d) It is not cost effective to take action to recover the tax;
 - e) where, persons with disabilities who are registered with the National Council for Persons with Disabilities seek for the waiver, the County Executive Committee Member, may if satisfied that the case is deserving, grant the waiver either in part or in full depending on recommendation from a qualified medical officer.
 - f) For any other public interest reason with approval of county executive committee.
- (3) Subject to section 6, a person may apply for a specific type of waiver or variation of a tax, rate, fee or charge to the county to the County Executive Committee Member;
- (4) An application made under subsection (3) above shall be in the prescribed form and shall include the following details:
 - (a) Full names of the person applying for the waiver;
 - (b) National Identity card number of the applicant;
 - (c) Telephone number of the applicant;
 - (d) Place of residence;

- (e) Type of waiver being applied;
 - (f) Amount of waiver being requested;
 - (g) Where applicable an invoice indicating the amount payable;
 - (h) Detailed analysis of the benefits to accrue to the county government from the waiver where applicable;
 - (i) Reasons for which waiver is requested; and
 - (j) Any other detail as may be prescribed by the County Government.
- (5) An application made under subsection (3) above shall be in writing and addressed through the County Executive Committee Member, responsible for the respective department under which a waiver or variation of the tax, rate, fee or charge is sought.
 - (6) Where the County Executive Committee Member rejects an application made under subsection (3), they shall give reasons for rejecting the application.
 - (7) The County Executive Committee Member shall within fourteen (14) days after making a decision on an application inform the applicant of the outcome of the decision related to the application.
 - (8) A person or body granted a waiver or variation of a rate, tax, fee or charge is not subject to any collection or enforcement procedure in respect of the rate, tax, fee or charge that is waived or the part of the rate, tax, fee or charge that is varied.
 - (9) A person must fulfil all other tax obligations to the County Government before they can become eligible for a waiver under this Act.

6. Types of waivers

- (1) The County Executive Committee Member may grant the following waivers;
 - (a) Investment Waiver- Waiver granted to incentivise investment in the county;
 - (b) Health Services Waivers- to offer relief to financially incapable patients
 - (c) Discount Waiver- Granted to businesses to encourage timely and voluntary compliance;
 - (d) Waiver for persons living with disability
 - (e) Partnership Waiver- Granted to organisations or individual partnering with the county for a mutually beneficial project(s) and program(s);
 - (f) Property Tax Waiver- Granted to organisations or individual with land within Makeni county for a mutual benefit of the County and the owner;
 - (g) Penalty/interest waiver for taxes which attract penalties or interest;
 - (h) General Waivers- Granted to all revenue payers for a specific reason and time
 - (i) Any other waiver as may be determined by the County Executive Committee Member from time to time.

7. Adhoc committees for processing applications

- (1) The County Executive Committee Member may constitute an ad hoc committee to review and process waiver applications that require expert opinion and vetting to ensure that they comply with relevant laws and this Act.

8. Waiver of Penalties and Interest

- (1) A person liable to a penalty or interest may apply in writing to the County Executive Committee Member for the remission of the penalty or interest payable and such application shall include the reasons for the application;
- (2) The County Executive Committee Member may, upon an application under sub-section (1) or on his/her own motion and with the approval of county executive committee, remit, in whole or in part any penalty or interest payable by a person for any of the reasons listed under section 5(2); and
- (3) Penalties and interests charged under fraud or tax evasion are excluded from consideration for waiver.

9. Criteria for processing health services waivers

- (1) In granting a waiver or a variation on health services fees and charges under this Act, the County Executive Committee Member shall take into account recommendations from County Executive Committee Member responsible for Health Services;
- (2) The County Executive Committee Member responsible for Health Services shall appoint a waiver committee in every hospital.
 - (a) The waiver committee shall comprise of—
 - (i) Health Administrative officer, who shall be the Chairperson;
 - (ii) Medical social worker, who shall be the secretary;
 - (iii) Three other officers who shall be nurses in-charge of major wards.
 - (iv) Medical superintendent;
 - (b) The role of the waiver committee shall be;
 - (i) To assess the waiver applications and recommend waiver for deserving cases;
 - (ii) The waiver committee shall meet once weekly.
- (3) There shall be an elaborate exemption system that shall ensure promotion of health for special groups and treatment of certain disease conditions. The special groups shall include —
 - (a) Children under 5 years of age;

- (b) Adults over 65 years of age;
- (c) Orphans and vulnerable children;
- (d) Prisoners;
- (e) Gender Based Violence victims;
- (f) Expectant women; and
- (g) Persons with disabilities.

10. Criteria for processing waivers for persons living with disabilities

(1) Persons living with disabilities who are operating a business, own a property or an income generating activity, business promotion, outdoor advertisement or any other business in Makeni County may apply to the County Executive Committee Member for waiver from such fees and charges and any other associated levies thereof;

(2) To qualify for tax waiver under subsection (1) above, an applicant must meet the following criteria:

- (a) Have a disability assessment report that details the nature of disability from a Government gazetted hospital;
- (b) Be registered with the National Council for Persons with Disabilities (NCPWDs) and in possession of a valid disability membership card;
- (c) Be in possession of an invoice of the current year that the customer is requesting to be waived;
- (d) Be the one running the day-to-day operations of the business;
- (e) Duly filled waiver application forms.

(2) An applicant under this Section shall attach the following mandatory documents:

- (a) Copy of current disability assessment report from a government hospital duly signed by a medical officer of health;
- (b) KRA exemption or waivers statement indicating amount waived for the applicant within the last two years;
- (c) Copy of National Identification Card;
- (d) Copy of NCPWD disability card;
- (e) A copy of the previous waiver document or single business permit where applicable;

11. Exception on waivers

- (1) Granting a waiver shall not apply to the following;
- (a) Estate of a deceased person;
 - (b) Transferee of an ongoing business.

12. Duration of Waiver

(1) The Executive Committee Member may grant waiver on such a duration as;

- (a) Not more than one year in respect to business licenses, property taxes and outdoors fees and charges
 - (b) Any other duration depending on type and circumstances of waiver request.
- (2) The Executive Committee Member may grant extension of waiver after the expiry of initial period for such a duration;
- (a) Not exceeding one year;
 - (b) Any other period depending on type and circumstances of waiver extension request.

13. Waivers to be Published

- (1) Where the Executive Committee Member intends to give a general waiver of any tax, fee or charge, he or she shall publish such intention in a paper with wide circulation in the county, in the official county website and such other means as may be deemed to adequately reach the intended audience, not less than fourteen (14) days before the intended date of the waiver.

14. Record of Waivers

- (1) The Executive Committee Member shall in respect of every waiver of rate, tax, penalty, interest, charge or fee;
- (a) Maintain a public record of each waiver together with reasons for each waiver and,
 - (b) Such record shall be in a manner as prescribed by offices of Controller of Budget and Auditor General.
- (2) The County Executive Committee Member shall include in the report under sub-section (1) above, the following details in respect of each waiver or variation;
- (a) the full name of the person benefiting from the waiver or variation;
 - (b) the amount of rate, tax, fee or charge waived or varied;
 - (c) the year to which the waiver or variation relates;
 - (d) the reasons for the waiver or variation; and
 - (e) the relevant law for which the waiver or variation was granted.

15. Report of waivers to the County Assembly

- (1) Every waiver shall be reported to the County Assembly and the Office of Auditor General not later than two months after the end of the Financial Year in conformity with Section 165 (4) and (5) of the Public Financial Management Act, 2012.

16. Prohibition of waivers for State or Public Officers

- (1) The Executive Committee Member shall not waive rate, tax, charge or fees or authorise the exclusion of a State Officer or Public Officer from payment of tax or fees by reason of the office held by that State Officer or Public Officer or the nature of the work of the State Officer or Public Officer.

PART III- MISCELLANEOUS PROVISIONS

17. Offences and general penalty

- (1) It shall be an offence for any person to give false and or misleading information in order to obtain a tax waiver or variation under this Act.
- (2) Any person that commits an offence under this Act for which no penalty is provided for shall on conviction be liable to a fine not exceeding KES. 100,000 or to an imprisonment term not exceeding one year or to both.

18. Review

- (1) Any person or institution aggrieved by a decision of the County Executive Committee Member may, within twenty-one (21) days from the date of the communication of the decision, apply for review to the review committee.
- (2) The review committee shall comprise of—
 - (a) County Attorney, who shall be the Chairperson;
 - (b) County Executive Committee Member responsible for Trade,
 - (c) County Executive Committee Member from relevant department for whom a waiver has been declined;
 - (d) Two relevant technical officers appointed by County Attorney.
- (3) The role of the review committee shall be to assess the reason and circumstances for declination of a waiver request

4 The review committee shall make a recommendation in writing to the County Executive Committee Member within 21 days .

19. Regulations

- (1) The Executive Committee Member may make Regulations for the better carrying out of the provisions of this Act.
- (2) Notwithstanding the generality of sub-section (1), the Regulations may provide for-
 - a) the procedure of application for tax waivers;
 - b) Prescribed forms for the implementation
 - c) Criteria for assessing amount of waiver to be granted and,
 - d) Documents required with respect to applications for tax waivers
 - e) Procedure for designating a type of tax waiver not provided for under this Act

MEMORANDUM OF OBJECTS AND REASONS

This Bill proposes to give further effect to principles set out in the constitution by providing for the conditions of the administration of tax waivers. The Bill delegates legislative authority to the County Executive Member responsible for Finance on the procedures and timelines for application of waivers.

This is a money Bill under the provisions of Section 21(4) of the County Government Act 2012.

SCHEDULE ONE – APPLICATION FORMS

WB2024-01

REPUBLIC OF KENYA

GOVERNMENT OF MAKUENI COUNTY



**THE COUNTY TREASURY
P.O BOX 78-90300 MAKUENI Tel No. 020-2034944**

Email: finance@makueni.go.ke contact@makueni.go.ke web: www.makueni.go.ke

**APPLICATION FORM FOR WAIVER
(PATIENTS)**

Part A- Details of Applicant

1. Full names of Patient
2. Name of health facility.....
3. Identity Card number
4. Telephone number
5. Place of residence
Village....., sub-ward.....
ward..... sub-county.....
6. Patient’s next of Kin.....
7. Amount of waiver requested Kshs.....
8. Reasons for the application of
waiver.....
...
.....
.....

NB-Attach breakdown of hospital bill

Personal declaration

I hereby declare that the information provided above is true and correct

Name.....

Sign.....**Date**.....

Part B- For Official use

Granted	Not Granted
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Approval is hereby
verification

upon investigation and

If not granted reasons

.....
.....
.....

Signed.....

Date.....

County Executive Committee Member Finance

REPUBLIC OF KENYA

GOVERNMENT OF MAKUENI COUNTY



THE COUNTY TREASURY
P.O BOX 78-90300 MAKUENI Tel No. 020-2034944

Email: finance@makueni.go.ke contact@makueni.go.ke web: www.makueni.go.ke

2. APPLICATION FORM FOR WAIVER

(General)

Part A- Details of Applicant

1. Full names
.....
2. Identity Card number
3. Telephone number
4. Place of residence/location
Village....., sub-ward.....,
ward..... sub-
county.....
5. Nature of waiver being applied
for.....
6. Reasons for the application of waiver
7. Amount of waiver being requested
Kshs.....

Personal declaration

I hereby declare that the information provided above is true and correct

Sign.....Date.....

Part B- For Official use

Granted	Not Granted
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Approval is hereby
verification

upon investigation and

If not granted reasons

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.....
.....

Signed.....Date

County Executive Committee Member Finance

WB2024-03

REPUBLIC OF KENYA

GOVERNMENT OF MAKUENI COUNTY



THE COUNTY TREASURY
P.O BOX 78-90300 MAKUENI Tel No. 020-2034944

Email: finance@makueni.go.ke contact@makueni.go.ke web: www.makueni.go.ke

APPLICATION FORM FOR WAIVER
(PWDs)

Part A- Details of Applicant

1. Full names
2. Identity Card number
3. PWD Card number.....
4. Telephone number
5. Place of residence/location
Village....., sub-ward.....,
ward..... sub-county.....
6. Nature of waiver being applied
for.....
.....
7. Reasons for the application of
waiver.....
...
.....
8. Amount of waiver being requested
Kshs.....

Personal declaration

I hereby declare that the information provided above is true and correct

Sign.....Date.....
.....

Part B- For Official use

Approval is hereby Granted Not Granted upon investigation and verification

If not granted reasons

.....
.....
.....
.....

Signed..... Date

.....

County Executive Committee Member Finance