

SPECIAL ISSUE

Kenya Gazette Supplement No. 9 (Taita Taveta County Acts No. 4)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TAITA TAVETA COUNTY ACTS, 2023

NAIROBI, 22nd March, 2024

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**THE TAITA TAVETA COUNTY PERSONS WITH DISABILITIES
ACT, 2023**

No. 4 of 2023

Date of Assent: 21st December, 2023

Date of Commencement: 22nd March, 2024

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**THE TAITA TAVETA COUNTY PERSONS WITH DISABILITIES
ACT, 2023**

AN ACT of the County Assembly of Taita Taveta to provide for the rights and rehabilitation of persons with disabilities; to achieve equality of opportunities for persons with disabilities; to establish the Taita Taveta County Board for Persons with Disabilities; and for connected purposes.

ENACTED by the County Assembly of Taita Taveta, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Taita Taveta County Persons with Disabilities Act, 2023.

Interpretation

2. In this Act unless the context otherwise requires—

"aged person" includes a person with a disability who has been forced into retirement from employment due to his disability;

"Assistive devices and services" means implements, tools and specialized services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities;

"Board" means the Taita Taveta County Board for Persons with Disabilities established under section 4;

"disability" includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities;

"discriminate" means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a person with a disability;

"doctor" means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act;

"organizations for persons with disabilities" means associations or societies formed for the purposes of rendering services to persons with disabilities; "organizations of persons with disabilities" means associations or societies formed by persons with disabilities for their welfare and protection;

"usual day-to-day activities" means the activities of daily living which an ordinary person would reasonably be expected to carry out.

Objects and purpose of the Act

3. The object and purpose of this Act is to ensure the realization of the rights of persons with disabilities in the County through—

- (a) the establishment of a county Board for persons with disabilities;
- (b) setting out of the rights and privileges of persons with disabilities; and
- (c) generally protect persons with disabilities from any form of discrimination; and
- (d) promotion of social, economic and political welfare of persons with disabilities.

PART II—ADMINISTRATION

Establishment of the Board

4. (1) There is established the Taita Taveta County Board for Persons with Disabilities.

(2) The Board shall be a body corporate.

Membership of the Board

5. (1) The Board shall consist of the following members appointed by the County Executive Committee Member in charge of Social Welfare—

- (a) two persons nominated by organizations representing persons with various categories of disabilities within the County; of which one person should be the County Coordinator for the National Council for Persons with Disabilities.
- (b) two members with expertise in matters relating to disability appointed from a panel of names submitted to the County Executive Committee Member by organizations for persons with disabilities;
- (c) four members representing the Department responsible for the following—
 - (i) culture and social services; -
 - (ii) education;
 - (iii) labour;
 - (iv) health; and
- (d) such other members as may be co-opted by the Board with the approval of the County Executive Committee Member incharge of Social Welfare. Provided that the membership of the Board shall not exceed nine persons, out of whom at least a third of the members shall be persons with disabilities;

(2) The County Executive Committee Member in charge of Social Welfare shall appoint one of the members appointed under subsection (1)(a) as the chairperson.

(3) The County Executive Committee Member in charge of social welfare shall appoint one of the members appointed under subsection (1)(b) as the vice-chairperson.

(4) The chairperson and the vice-chairperson shall be of the opposite gender.

(5) In nominating or appointing persons as chairperson and members of the Board, the County Executive Committee Member in charge of social welfare shall ensure that the process is carried out in an open and transparent manner and that—

- (a) the membership of the Board shall equitably represent the types of disabilities occurring in the County;
- (b) not more than two-thirds of the members are of the same gender; and
- (c) the composition of the Board shall reflect the regional and ethnic diversity of the people of Kenya.

Tenure of office

6. The chairperson, vice-chairperson and members shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

Chief executive officer

7. (1) There shall be a chief executive officer of the Board.

(2) The chief executive officer shall be appointed by the County Public Service Board in a competitive process.

(3) To qualify for appointment as a chief executive officer, a person shall—

- (a) possess a degree in a relevant field from a recognized university; and
- (b) have had experience in management for a period of not less than five years.

(4) The chief executive officer shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of three years.

(5) The chief executive officer shall be an *ex-officio* member of the Board.

(6) The chief executive officer shall—

- (a) subject to the direction of the Board, be responsible for day-to-day management of the affairs of the Board;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Board; and
- (c) carry out any other function as may from time to time be assigned by the Board.

Functions of the Board

8. (1) The functions of the Board shall be—

- (a) to issue adjustment orders under the provisions of this Act;
- (b) to formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
 - (ii) co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning;
 - (iii) advise the County Executive Committee Member on the provisions of any National Legislation or agreement relating to the welfare or rehabilitation of persons with disabilities;
 - (iv) recommend measures to prevent discrimination against persons with disabilities;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (vi) encourage and secure the rehabilitation of person with disabilities within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centers and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities; and
 - (viii) co-ordinate services provided in the County for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counseling;

(c) to register—

- (i) persons with disabilities;
- (ii) institutions, associations and organizations, including those controlled and managed by the County Government that provide services for the rehabilitation and welfare of persons with disabilities;
- (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
- (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;

(d) to provide, to the maximum extent possible:-

- (i) assistive devices, appliances and other equipment to persons with disabilities; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the County Government;
- (e) to consult with the County Government in the formulation of suitable curricula for vocational rehabilitation centers and other training facilities for persons with disabilities;
- (f) to make provision for assistance to students with disabilities in the form of scholarships, fee subsidies and other similar forms of assistance in public institutions;
- (g) to assess and report to the County Executive Committee Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
- (h) to consult with the County Government in the provision of suitable and affordable housing for persons with disabilities;
- (i) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act;
 - (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Board may deem necessary; and
 - (k) to perform such other functions as may be assigned to the Board under this or any other Act.

(2) Without prejudice to the provisions of subsection (1), the Board shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—

- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
- (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the County Executive Committee Member in charge of social welfare;
- (c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Board as the Board may with the approval of the County Executive Committee Member in charge of social welfare determine; and
- (d) with the approval of the County Executive Committee Member in charge of social welfare, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Rights of Persons with Disabilities

Realization of rights of persons with disabilities

9. The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities.

Right not to be discriminated in employment

10. (1) No person shall deny a person with a disability access to opportunities for suitable employment

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Discrimination by employers prohibited

11. (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;

- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court.

(4) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities.

Right not to be discriminated in an educational institution

12. (1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course—

- (a) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.
- (b) Special schools and institutions, especially for the deaf, the blind and the mentally challenged, shall be established to cater for formal education, skills development and self-reliance.

Special and non-formal education

13. The Board shall work in consultation with the relevant agencies of County Government and the National Government to make provisions for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Health of persons with disabilities

14. The Board shall ensure that the implementation of the County health programme puts measures in place for—

- (a) prevention of disability;
- (b) early identification of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public health institutions; the County government to enroll the vulnerable persons with disability under universal health coverage so that they can also access health care at private health institutions.
- (e) availing essential health services to persons with disabilities at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities; and
- (g) prompt attendance by medical personnel to persons with disabilities.

Right to accessibility and mobility

15. Persons with disabilities are entitled to a barrier free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Adjustment orders

16. (1) This section shall apply to—

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and
- (b) any services or amenities ordinarily provided to members of the public.

(2) Without prejudice to the provisions of section 15, if the Board considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Board may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities concerned an adjustment order-

- (a) setting out—
 - (i) a full description of the premises, services or amenities concerned; and
 - (ii) the grounds upon which the Board considers that the premises, services or amenities are inaccessible to persons with disabilities;
 - (iii) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned; and
 - (iv) Stipulating the period within which the action referred to in paragraph
- (b) shall be commenced and completed.
- (3) Before serving an order under subsection (2) the Board shall serve notice upon the person concerned—
 - (a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order;
 - (b) stipulating the maximum period that the Board considers reasonable for the implementation of the action it proposes to order; and
 - (c) calling upon the person concerned, if he wishes to do so, to make representations to the Board within thirty days from the date of the service of the notice.
- (4) After considering any representations described in subsection (3)
- (c) the Board may issue, or refrain from or defer the issuing of, an adjustment order.
- (5) Within thirty days after an adjustment order is confirmed or issued under subsection (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—
 - (a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;
 - (b) the period stipulated for implementing the adjustment order is unreasonable;
 - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or

(d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order.

(6) Upon hearing an appeal under subsection (5) the Court may confirm, vary or set aside the adjustment order appealed against; and make such order as to the costs of the appeal as it thinks fit.

Prohibition of adjustment orders against government institutions

17. The Board shall not serve an adjustment order upon-

- (a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Act except with the consent of the County Executive Committee Member responsible for health; or
- (b) any school or educational or training institution controlled or managed by the County Government or registered under the Education Act except with the consent of the County Executive Committee Member responsible for the administration of the institution or Act concerned.

Right to sports and recreation

18. All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the County Government during social, sporting or recreational activities.

(1) Persons with disabilities shall be entitled to participate in all county sports events.

(2) For the purpose of subsection (2) the County Executive Committee Member responsible for sports shall, in consultation with the Board, provide the necessary suitable environment including-

- (a) architectural infrastructure;
- (b) apparatus and equipment;
- (c) training and medical personnel; and
- (d) transportation facilities for the participants.

(3) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

PART VI—MISCELLANEOUS

Failure to obey an adjustment Order and Discrimination

19. (1) A person is guilty of an offence if the person

- (a) fails to comply with an adjustment order issued under this Act;
- (b) discriminates against a person with disability contrary to this Act; or

- (c) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person injured by the offence such sums of money in compensation as the court may deem appropriate.

Giving false information to get registered

20. A person is guilty of an offence if the person knowingly gives false information to the Board for the purpose of being registered or for the purpose of acquiring any privilege or right due to persons so registered.

General penalty

21. A person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

Enforcement

22. (1) The Board may cause to be taken appropriate legal action if the Board believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act; And
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest.

Act No. 14 of 2003

23. The provisions of this Act are in addition to and not in derogation of the Persons With Disabilities Act.

Regulations

24. The County Executive Committee Member in charge of social welfare may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations—

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities; and

- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act.

THE TAITA TAVETA COUNTY BOARD FOR PERSONS WITH DISABILITIES

1. A member of the County Board may-

- (a) resign his office by notice in writing to the County Executive Committee Member in charge of social welfare; or
- (b) be removed by the County Executive Committee Member in charge of social welfare by notice in writing if he:-
- (i) is subject to a vote calling for his removal by a two thirds majority of all members of the County Board;
- (ii) has been absent from five consecutive meetings of the County Board without permission of the chairperson;
- (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
- (iv) is an undischarged bankrupt;
- (v) is convicted by a Court of an offence punishable by a term of imprisonment; or
- (vi) is otherwise unable or unfit to discharge his functions.

2. Where the office of a member becomes vacant the vacancy may with the approval of the County Executive Committee Member in charge of social welfare be filled through the majority vote of the members for the remainder of the term.

3. The County Board shall pay to its members such remuneration as the County Executive Committee Member may approve.

4. The County Board shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

5. A meeting of the County Board shall be held on such date and at such time as the County Board shall decide. or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson.

6. Unless otherwise decided by a two-thirds majority of the members of the County Board, at least fourteen days' written notice of every meeting of the County Board shall be given to every member of the County Board.

7. The quorum of a meeting of the County Board shall be fifteen members.

8. (1) The chairperson, or in his absence, the vice-chairperson, shall preside at every meeting of the County Board.

(2) In the absence of both the chairperson and vice-chairperson, the members present may choose one of their member to preside at the meeting.

9. A decision of the majority of members of the County Board present at any meeting of the County Board shall be deemed to be the decision of the County Board and if upon any question the voting shall be equal, the chairperson, vice- chairperson or other person presiding shall have a second and casting vote.

10. No act, decision or proceedings of the County Board shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the County Board being defective.