

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

HCCHRPET/ E191 /2024

KENYA HUMAN RIGHTS COMMISSION..... 1ST PETITIONER
KATIBA INSTITUTE..... 2ND PETITIONER

VERSUS

NATIONAL ASSEMBLY.....1ST RESPONDENT
SENATE.....2ND RESPONDENT
CABINET SECRETARY, THE NATIONAL TREASURY
AND ECONOMIC PLANNING..... 3RD RESPONDENT
ATTORNEY-GENERAL.....4TH RESPONDENT

Certificate of Urgency

We, Ochiel J Dudley, Malidzo Nyawa, and Bosire Bonyi, Advocates certify this matter urgent because:

1. Petitioners contest the constitutionality of the Affordable Housing Act, 2024 assented to by the president on 19 March 2024.
2. The petitioner equally seeks conservatory orders suspending the operationalization of the Affordable Housing Act pending determination of its constitutional validity. Besides, Petitioners are aware of and seek consolidation with related matters pending before the court and coming up for directions on 12 April 2024.
3. The petition will be nugatory without conservatory orders. And the motion for consolidation will be nugatory unless this matter is certified urgent and placed before the same judge for directions on 12 April 2024.

Dated at Nairobi on 11 April 2024

OchielJD

Ochiel Dudley

Advocate for the Petitioners

Jointly drawn and filed by:

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NOTICE OF MOTION

TAKE NOTICE that this court will be moved on _____ of
2024 at 9:00am or per the causelist for hearing of this application for orders:

- a) This application is certified urgent.
- b) Pending hearing of the application, a conservatory order does issue suspending the implementation or enforcement of Part II (sections 4, 5, 6, and 7) of the Affordable Housing Act, 2024.
- c) Pending hearing of the Petition, a conservatory order does issue suspending the implementation or enforcement of Part II (sections 4, 5, 6, and 7) of the Affordable Housing Act, 2024.
- d) The court be pleased to decide either *suo moto* or after hearing parties if this petition raises a substantial matter of law under Article 165(4).
- e) The court be pleased to consolidate this petition with similar petitions pending before the court on related questions.

Which application is based on the grounds and supported by the affidavit of Christine Nkonge:

1. On 19 March 2024, the president assented into law the Affordable Housing Act 2024.
2. Under Section 1 of the impugned Act, Section 4 and 5 of the Act came into operation immediately thereafter. In effect, both employers and employees were obligated to deduct and remit to the Respondents the Affordable

housing levy each capped at 1.5% of the employee's monthly gross salary.

3. Believing that the law is unconstitutional for violating several constitutional provisions inter alia Article 1, 2, 6, 10, 24, 27, 40, 62, 67 of the constitution, the Petitioner has filed a Constitutional Petition to determine the constitutionality Affordable Housing Act and its continued enforcement.
4. Unless this court grants conservatory orders staying any further enforcement of Part II (sections 4, 5, 6, and 7) of the Affordable Housing Act, 2023 employers shall continue to deduct and remit the Affordable Housing Levy to KRA based on a law that could be ultimately declared unconstitutional.
5. Also, unless the Notice of Motion application for conservatory orders is certified urgent and heard ex parte in the first instance, the general members of the public shall continue to suffer from an unconstitutional law as their hard-earned salaries will be subject to the unconstitutional deductions.
6. Consolidation is necessary because of the related matters pending before the court.
7. This petition raises substantial questions of law and should be heard by an expanded bench appointed by the Chief Justice. The issues raised and the public interest evidenced by the number of parties already before the court point to the substantial questions of law.

Dated at Nairobi on 11 April 2024

OchielJD

Ochiel Dudley

Advocate for the Petitioners

Jointly drawn and filed by:

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To be Served Upon:

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

HCCHRPET/ E191 /2024

In the matter of: Affordable Housing Act, 2024 and threats and/or violations of the Constitution of Kenya, 2010

In the matter of: Violation of the Preamble of the Constitution of Kenya, 2010

In the matter of: Violations of Articles 1, 2(1) & (4), 3(1), 10, 19, 20, 21(1) (3) & (4), 22(1), 23(1) & (3), 24, 47, 165(3)(a) &(b),174, 186(2), 187, 189, 201, 244, 258(1) & (2), 259(1) and the Fourth Schedule of the Constitution of Kenya, 2010

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AND ECONOMIC PLANNING..... 3RD RESPONDENT

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PETITION

A. Introduction

1. The clamour for the 2010 Constitution was built on the need to correct the injustices which occurred due to the culture of *othering* and marginalisation in Kenya. These injustices were also due to the consolidation and centralisation of power in the central government in Nairobi.
2. Kenyans sought to correct this centralisation of powers by adopting devolution, which established two levels of government. In order to ensure that the county governments do not end up being mere extensions of the central government, such as in decentralised units, Kenyans adopted a

constitutional architecture and design that gives the two levels of government distinct roles. This petition challenges the sudden attitude of the national government in interfering with and/or usurping the roles of the county government.

3. In order to build a society that is centred along egalitarian lines, Kenyans adopted antipoverty tools in Article 43, known as socio-economic rights, including the right to adequate and accessible housing. They also imposed a typology of obligations on the state to realise this right. This petition challenges the constitutionality of the impugned Act on the basis that the same does not satisfy the obligations imposed on the state.
4. Whereas the Constitution establishes an objective normative value system which is binding on all organs and must permeate all areas of law, the procedure leading to the adoption of the impugned Act, as well as the substantive provisions of the Act, treat the Constitution as a mere structural one (an empty tin) devoid of values, aspirations and dreams. The Petition challenges both the procedure and substantive provisions of the impugned Act for ignoring our value objective system.
5. This humble petition of the petitioners asks this honourable Court to ensure that the spirit and text of the 2010 Constitution are not treated as mere suggestions, superfluous, ornamental or lofty aspirations. It asks this Honourable Court to end the (re)centralisation trend buried with the retired Constitution and enforce the values, principles, and standards Kenyans gave themselves with the current Constitution's promulgation.
6. It is for this reason that the petitioners move the Court.

B. Description Of Parties

Petitioners

7. The 1st Petitioner is Katiba Institute. It is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya's 2010 Constitution, helping to resist efforts to undermine that Constitution, and generally assisting in developing a culture of constitutionalism in Kenya.
8. The 2nd Petitioner is Kenya Human Rights Commission (KHRC). It is a non-governmental organisation whose objectives include promoting human rights and fundamental freedoms, good governance, and democracy.

Respondents

9. The 1st Respondent is the National Assembly. The National Assembly exercises legislative authority as a house of Parliament established under Article 93 of the Constitution. Its duties include representing the people of the constituencies, deliberating and resolving issues of concern to the people, enacting legislation, determining the allocation of revenue among the different levels of government, and overseeing national revenue expenditures.
10. The 2nd Respondent is the Senate. The Senate exercises legislative authority as a house of Parliament established under Article 93 of the Constitution. Among other things, the Senate represents the interests of counties, participates in making and deliberating bills concerning counties, and allocates and oversees national revenue.
11. The 3rd Respondent is the cabinet secretary for the national treasury and economic planning. The Cabinet Secretary is an office established by the national executive under Article 130 and is responsible for introducing the Impugned Act in parliament.
12. The 4th Respondent is the Attorney-General. The Attorney-General is an office established under Article 156 of the Constitution as the principal legal adviser to the government. The Attorney-General represents the national government in court or other legal proceedings.

C. Statement of Standing and Jurisdiction

13. The Petitioners institute this petition on the strength of Article 3(1), which states that every person has an obligation to respect, uphold, and defend the Constitution of Kenya 2010.
14. The Petitioners are persons envisaged under Article 258 of the Constitution, which provides every person with the right to approach this Honourable Court and institute court proceedings, claiming that the Constitution has been contravened or is threatened with contravention.
15. The petitioners bring this petition pursuant to article 258(2)(c) which states that in addition to a person action in their own interest, court proceedings under clause (1) may be instituted by person acting in the public interest.
16. Under Article 165(3)(d)(i) and (ii) of the Constitution of Kenya, the High Court has jurisdiction to hear any question respecting the interpretation of

this Constitution, including the determination of the question whether any law is inconsistent with or in contravention of this Constitution and whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, the Constitution

D. Background to the petition

17. The genesis of this Petition emanates from the enactment of the Finance Act 2023, which imposed a levy payable by employees and their employers said to be geared towards affordable housing. Several petitions were filed at the High Court, challenging the enactment process of the Finance Act 2023 and substantive provisions therein. This included Section 84 of the Act, which introduced the Affordable Housing Levy.
18. On 28.11.2023, the High Court, in *Okoti & 6 others v Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties) (Petition E181, E211, E217, E219, E221, E227, E228, E232, E234, E237 & E254 of 2023 (Consolidated))*, [2023] KEHC 25872 (KLR), declared among others, the Affordable Housing Levy, as enacted by Section 84 of the Finance Act, 2023, to be unconstitutional and therefore null and void.
19. The Affordable Housing Levy imposed by Section 84 of the Finance Act, 2023, was declared unconstitutional for, among other reasons, discriminating against persons in formal employment who were required to pay the levy while non-formal income earners were excluded. This discrimination, the court held, was unfair, discriminatory, irrational, and arbitrary and in violation of Articles 27 and 201 [b][i] of the Constitution.
20. In a ruling dated 26.01.2024, the Court of Appeal, in *National Assembly & 47 others v Okoti & 169 others (Civil Application E577, E581, E585 & E596 of 2023 (Consolidated))* [2024] KECA 39 (KLR), declined to grant a stay of declarations and orders issued by the High Court in Petition No. HCCHRPET E181 of 2023 [as consolidated], pending the hearing and determination of intended and impending appeals by parties dissatisfied with parts of the High Court decision.
21. Said to be necessitated by and to address the issues raised by the High Court in *National Assembly & 47 others v Okoti & 169 others (Civil Application E577, E581, E585 & E596 of 2023 (Consolidated))* [supra], Parliament passed the Affordable Housing Act, 2024 with amendments on 21st February 2024.

22. Unlike the National Assembly, the Senate barely conducted or facilitated any public participation prior to enacting the impugned Act.
23. Following the reading of the then Affordable Housing Bill, 2023, in the Senate on 22.02.2024 after its transmission from the National Assembly, the Clerk of the Senate published [an undated] notice inviting members of the public to submit any representations they may have on the Bill by way of memoranda. Deadline of submission of such memoranda was given as Thursday, 29.02.2024 at 5.00 pm.
24. Despite the significant public interest in the Bill [as noted by the joint committees of the National Assembly in their report following their public participation events], the Senate chose to severely limit public participation in its legislative procedure leading to the Act, in contravention of Constitution, including Articles 10, 118[1][b] and 201[a].
25. A similar call for public participation with regards to the Affordable Housing Bill, 2023, issued by the National Assembly on 09.12.2023, with a deadline of 28.12.2023 for submission of written memoranda, was the subject of conservatory orders stopping the process pending the hearing and determination of a petition, [*Apiyo v Attorney General & 2 others (Petition E013 of 2023)*] [2024] KEHC 1967 (KLR)], which faulted the adequacy of the proposed public participation exercise.
26. To address the concerns raised in the petition [even before the petition was heard and determined], the National Assembly revised its planned public participation programme to include physical meetings in at least nineteen counties spread right across the country. These remedial efforts to address the previously-limited public participation plans were deemed to have adequately resolved the issues in dispute in the judgment of the High Court at Kisumu dated 29.02.2024 in *Apiyo v Attorney General & 2 others (Petition E013 of 2023)* [supra.]
27. As is evident from the reports of the committees in the National Assembly and the Senate after the public participation exercise, there was wholesale exclusion of Kenyans' views on the Bill prior to its enactment by the Senate. This is in sharp contrast to the efforts deployed by the National Assembly in pursuit of its constitutional duty under Articles 10[2] and 118[1][b] with respect to the same Bill. The woeful inadequacy of public participation by the Senate before passing the Bill renders the process unconstitutional, null and void. This, in turn, invalidates the Bill as passed by the Senate, rendering

the resulting Affordable Housing Act, 2024, unconstitutional, null and void, having been enacted otherwise than in accordance with the Constitution, including under Articles 1[1, 2, 3[a]], 10[2], 109[4], 110 to 113, 118[1][b] and 122.

28. The enactment received Presidential assent on 19th March 2024 and was published in the Kenya Gazette on the same day as the Affordable Housing Act 2024.
29. As provided at Section 1[a], Sections 4 and 5 of the Act became effective on the date of the assent, with all other Sections commencing on such date as may be prescribed by the Cabinet Secretary by notice in the Gazette.

E. Legal basis for the petition

30. The Petition contests the constitutionality of the Affordable Housing Act, 20124, contending that the Act violates the spirit, tenor, aspirations and the text of the Constitution.
31. The Preamble to the Constitution in performing the throat clearing exercise recognises the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law.
32. Article 1(1) of the Constitution of Kenya 2010 embodies the concept of the sovereignty of the people and states that ‘All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution’.
33. Articles 2(1) and (4) of the Constitution provide that the Constitution is the supreme law of the Republic and binds all persons. Any law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
34. Article 3(1) states, ‘Every person has an obligation to respect, uphold and defend this Constitution.’
35. Article 6(2) states that ‘the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation’.
36. Article 10 establishes the national values and principles of governance. Article 10(1). The national values and principles bind all State organs, State officers, public officers, and all persons whenever any of them—
 - (a) applies or interprets this Constitution;

- (b) enacts, applies or interprets any law; or
 - (c) makes or implements public policy decisions.
37. Article 10(2) asserts that the national values and principles of governance include:
- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
 - (c) good governance, integrity, transparency and accountability; and
 - (d) sustainable development.
38. Chapter Four of the Constitution establishes the Bill of Rights. Article 19(1) states that '[t]he Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies'. According to Article 19(2), human rights and fundamental freedoms are protected to 'preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings'. The rights and fundamental freedoms guaranteed in the Bill of Rights:
- (a) belong to each individual and are not granted by the State;
 - (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
 - (c) are subject only to the limitations contemplated in the Constitution.
39. Article 20 addresses the application of the Bill of Rights. Articles 20(1)-(4) state that:
- (1) The Bill of Rights applies to all law and binds all State organs and all persons.
 - (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
 - (3) In applying a provision of the Bill of Rights, a

court shall—

(a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and

(b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of the Bill of Rights.

40. Article 21 addresses the implementation of rights and fundamental freedoms. Articles 21(1), (3) & (4) state that:

(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(4) The State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

41. Article 23(1) gives this Court ‘jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights’.

42. In proceedings alleging that a fundamental right or freedom has been denied, violated, infringed, or threatened, this Court may grant appropriate relief, including:

(a) a declaration of rights;

- (b) an injunction;
 - (c) a conservatory order;
 - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - (e) an order for compensation; and
 - (f) an order of judicial review.
43. Article 24(1) states that ‘A right or a fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
- a) the nature of the right or fundamental freedom;
 - b) the importance of the purpose of the limitation;
 - c) the nature and extent of the limitation;
 - d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
 - e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
44. Article 47(1) states that every person has the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair; and (2) if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
45. Article 110(1)(a) states that a ‘bill concerning county government’ includes ‘a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule’. Part 2(14) of the Fourth Schedule delegates the following functions and powers to county governments:
- Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

46. Article 165(3)(a) and (b) establishes the High Court and vests it with unlimited jurisdiction in criminal and civil matters to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened?. It also has jurisdiction under Article 165(3)(d):

to hear any question respecting the interpretation of this Constitution including the determination of—

- (i) the question whether any law is inconsistent with or in contravention of this Constitution;
- (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution....

47. Article 174 sets out the objects and principles of state government. They are:

- (a) to promote democratic and accountable exercise of power;
- (b) to foster national unity by recognising diversity;
- (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- (d) to recognise the right of communities to manage their own affairs and to further their development;
- (e) to protect and promote the interests and rights of minorities and marginalised communities;
- (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- (g) to ensure equitable sharing of national and local resources throughout Kenya;
- (h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and
- (i) to enhance checks and balances and the

separation of powers.

48. Article 185(2) of the constitution provides that a county assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.
49. Article 186 provides for the constitutional basis of the division of functions between the two levels of government. As per the Fourth Schedule of the Constitution, county governments are responsible for housing.
50. Article 189 (1) of the Constitution provides that Government at either level shall:
 - a) Perform its functions, and exercise its power, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
 - b) Assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
 - c) Liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.
51. Article 258(1) of the Constitution provides that every person has the right to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention.
52. Article 258(2) of the Constitution provides that 1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention. In addition to a person acting in their interest, court proceedings under clause (1) may be instituted by a person acting in public interest.
53. Article 259(1) requires that the Constitution be interpreted in a manner that:
 - (a) promotes its purposes, values and principles;
 - (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of

Rights;

- (c) permits the development of the law; and
- (d) contributes to good governance.

54. The Fourth Schedule of the Constitution distributes functions between the national government and the county governments. Part 2(14) distributes to the counties the function of

Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

F. Particulars of Constitutional Violations

a) Principle of distinctiveness and interdependence

55. The constitutional architecture and design of Kenya's system of devolution (Articles 1, 6, 174, 186, 187 and 189) establishes two levels of government with a certain measure of autonomy of the levels of government. The 47 counties are creatures not of the national government but of the Constitution as the expression of the sovereign will of the people of Kenya. Further, the Constitution establishes the concept of cooperative governance which requires some form of interdependence between the levels of government.
56. However, the system of cooperative governance imposes certain obligations upon the two levels of government. These are the obligation (a) to respect the constitutional status of the institutions of the other level of government, (b) to respect the functional and institutional integrity of the other level.
57. These obligations entrench the no-encroachment obligation which requires governments at either level not to encroach on the domain of the other. It is for this reason that the national government and even the national legislature cannot by way of legislative powers take over the functions of county governments. The only circumstance envisioned by the Constitution under which one level of government may perform the functions of the other is in the context of a transfer of functions the preconditions and parameters of which are specifically detailed under article 187.

58. Schedule four of the constitution splits functions between the two levels of government. Explicitly, the national government is given the function of developing a housing policy while the county government is given the mandate of county planning and development including any planning and/or developments relating to housing. This explicitness seems not to have been adhered to by parliament in passing the Affordable Housing Act.
59. In passing the Affordable Housing Act, parliament usurped the function of county governments on housing and gave them to the national government. This was done outside the confines of and without any reference to the provisions of article 187 on intergovernmental transfer of functions and powers which transfer ought to have been the precursor to any national-level deliberations touching on an Affordable Housing Act in so far the Act's provisions go beyond the national government's constitutional policy mandate.
60. Additionally, the Act violates the constitutional principle of distinctiveness in the following ways:
 - i. The management of the imposition or exception of the housing levy is left to the Cabinet Secretary for Treasury at the national level (Section 6).
 - ii. Section 10 mandates a board at the national level to among other things, facilitate the development of institutional housing units.
 - iii. Section 16(3) of the Act establishes a board to manage the affordable housing fund whose composition is made up of appointees of the National government save for a nominee of the council of governors. The board is merely an extension of the national executive.
 - iv. Part IV of the Act (Sections 34-40), which provides for the role of the county government in affordable housing, subservient the county governments to the National government. The county rural and urban affordable housing committee is made to operate below the board which operates at the national level.
61. The Act further violates the constitutional principle of interdependence in the following ways:
 - i. The principle of interdependence requires consultation between the two levels of government and other organs. Principle of interdependence frowns upon the trend where one organ unilaterally engages in actions which touch on the functions of another organ.

- ii. In passing this Act, the national government and the parliament did not consult the county governments. The views of the County governments were not sought prior to the commencement of the *affordable housing* project.
- iii. In passing this Act, the national government and the parliament did not consult with the other organs established by the Constitution such as the Commission on Revenue allocation.

b) Discrimination

- 62. The Constitution of Kenya prohibits both direct and indirect discrimination. The state is required to take measures to ensure that it erases any form of discrimination. The Affordable Housing Act goes further into effecting more discrimination
- 63. Section 4 of the Act creates the Housing Levy and provides that it will be imposed on the gross salary of an employee or the gross income of a person received or accrued, which is not subject to the gross salary. Section 5 mandates an employee to deduct and remit the amount from the salaries to the collector. This obligation on the employer is set to apply immediately.
- 64. However, there is no procedure in the Act on how the imposed tax is to be raised from the non-employed. Although the tax is mandatorily imposed on those in the formal employment sector, those in the informal employment sector are left untouched.
- 65. Without providing for the procedure on how the levy will be collected from those in the informal employment sector, the Act indirectly excludes them from application of the Act.
- 66. This deferential treatment of classes of citizens is not only discriminatory, irrational, and arbitrary but also unconstitutional.

c) Realisation of the right to affordable housing

- 67. The adoption of socioeconomic rights symbolises a commitment to transform Kenya from a society based on socioeconomic deprivation to one based on equal and equitable distribution of resources. Socio-economic rights are seen as antipoverty tools, a means of the realization of the conditions of the poor and less advantaged and the beginning of a generation that is free from socioeconomic needs.
- 68. By adopting the socio-economic rights, Kenyans craved for better lives in every aspect of their living. They dreamt of the eradication of poverty and inequality and the improvement of the overall standards of living of all people.

69. Kenyans under Article 21 imposed obligations on the state to observe, respect, promote, protect and fulfil the rights in the Bill of Rights. The state is also required to take legislative and policy steps to achieve the realisation of socio-economic rights under Article 43 of the Constitution. Further, the state is required to address the needs of the vulnerable groups within the society.
70. The Affordable Housing Act fails to give effect to these aspirations. The state fails to observe, promote, fulfil, and respect the right to accessible and adequate housing. Neither does the Act address the needs of the vulnerable groups within the society.
71. Although described as affordable housing, there is nothing affordable in the Act. Rather, the Act sets a system where the haves will be able to buy the houses while the have-nots remain homeless despite being compelled to contribute to their construction.
72. The Affordable Housing Act does not make an attempt to address the needs of the vulnerable groups within the society, including women, older members of the society, persons with disabilities, children, youth, members of marginalised communities and members of minority groups. In failing to do so, the Government fails to honour its constitutional obligations.

d) A participatory democracy

73. The Constitution establishes a participatory democracy by providing for the requirement of public participation in all affairs affecting the lives of the citizens of Kenya. The inclusion of public participation as a national value is an appreciation that the Kenyan citizenry is adult enough to express how they want to be governed.
74. The principle requires that parliament considers the views of the public. Although not binding, the views of the public must be given due consideration. The Constitution forbids parliament from considering the views collected as a mere formality just to satisfy the constitutional requirement. The Parliament of Kenya, as shown in the committee reports, ignored the bulk of public comments to lower the cost of living instead of increasing the tax burden.
75. Further, parliament is bound to ensure that it accords the public a reasonable level of participation. The Senate violated this constitutional injunction by failing to give the citizens a reasonable level of participation. Following the reading of the then Affordable Housing Bill, 2023, in the Senate on 22.02.2024 after its transmission from the National Assembly, the Clerk of the Senate published [an undated] notice inviting members of the public to

submit any representations they may have on the Bill by way of memoranda. Deadline of submission of such memoranda was given as Thursday, 29.02.2024 at 5.00 pm. This was just but 7 days.

76. The actions of the National Assembly and Senate violate Articles 1, 10, 118, and 201.

e) A fair and equitable tax burden

77. Although taxes are the lifeblood of governments, unchecked taxes remain a threat to human rights. It is for this reason that the constitution sets constitutional safeguards. The Constitution demands the “protection of the marginalised, social justice, and equity” (Article 10); “redress for the needs of the vulnerable” (Article 21(3)); and “fair and equitable” tax measures (Article 201). It also required “equity and fairness” and “flexibility” in tax measures. [National Tax Policy, 2023].
78. The UN Declaration on the Right to Development requires states to formulate national development policies that equitably improve ‘the well-being of the entire population and of all individuals’ (Article 2(3)) and take ‘appropriate economic and social reforms to eradicate all social injustices’ (Article 8). Also, the Guiding Principles on Extreme Poverty and Human Rights demand that fiscal policies concerning revenue collection, budget allocations and expenditure must comply with human rights standards and principles, particularly equality and non-discrimination.
79. The constitutional requirement for Equity and fairness demands taxation on the basis of ability to pay (vertical equity) and similar tax burdens on taxpayers with similar means (horizontal equity). Flexibility connotes dynamism and responsiveness to changing circumstances in the economy.
80. The Affordable Housing Act violates these constitutional provisions in three ways. Firstly, it is not flexible and dynamic since it imposes new taxes during an economic downturn. It is regressive by regressive because it disproportionately shifts the tax burden to the poor and marginalised
81. Secondly, the Affordable Housing Act imposes a flat tax rate at section 4(2) of one point five percent. The imposition of a flat tax rate is irrational and regressive taxes more of the income of low-income earners than high-income earners. This is because low income earners spend most of their income, unlike high income earners.
82. Thirdly, the imposition of new taxes during an economic downturn heavily impacts the ability of the marginalised, the poor and the have-nots to enjoy their rights, especially socio-economic rights such as the right to food,

health and education.

83. Citizens are further compelled to pay this tax so that they do not face the penalty under section 7 of the Act. Failure to pay this tax, a citizen will be liable to a penalty equal to three per centum of the unpaid amount due which shall be recoverable as civil debt. Such a penalty compels citizens to pay the taxes and live without realising their socio-economic rights.
84. The tax, although termed a housing levy, takes money from citizens without a guarantee that they will receive the houses. Actually, for one to receive the house, he or she needs to purchase the said house. Therefore, some Kenyans will be taxed to build houses which will be owned by the haves.

f) Principles of land use

85. Parliament, in enacting the Affordable Housing Act, failed to involve and/or seek views of the National Land Commission despite it being a critical Constitutional commission mandated with public land management.
86. Article 67 of the Constitution mandates the commission to:
 - a. manage public land on behalf of the National and County Governments;
 - b. recommend a national land policy to the national government
 - c. advise the national government on a comprehensive
 - d.
 - e.
 - f. ...
 - g. ...
 - h. To monitor and have oversight responsibilities over land use planning throughout the country.
87. Despite it being at the centre of public land management, neither the National Assembly nor the Senate involved it in the process leading to the enactment of the Act.
88. The Act equally does not explain the role the National Land Commission will undertake and the procedure to be used in identifying public land suitable for the Affordable Housing Project
89. Article 62 (4) of the constitution states that public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

90. However, in the Affordable Housing Act scheme, public land shall be alienated and allocated to private individuals buying the units constructed under this program without following the due process of converting public land into private land.
91. Since the allocation of these housing units depends on one's ability to purchase, the Affordable Housing Program will ultimately see public land being allocated only to private individuals who can afford to purchase the units.
92. Part V of the Act (Sections 41-47) is unconstitutional for removing the National Land Commission from the picture and replacing its constitutional role with a board created by the National Government. This action violates the desires of Kenyans who established the National Land Commission so as to remove the National government from land management.

g) Principle of legality and vagueness

93. The Constitution prohibits any form of arbitrariness. On this basis, the law requires clarity of provisions, mainly where the provisions affect the rights of citizens. Laws are not meant to leave unchecked discretion to its implementors and enforcers. Where laws accord their enforcers a lot of discretion and leave terms to the subjective interpretation of the enforcers, such laws run afoul of the Constitution.
94. Section 4 of the Act imposes the housing levy on two points: gross salary and gross income. The term gross income is not defined in the Act. Taxation principles require clarity and predictability of taxes. The provision runs afoul of constitutional principles.

h) Retroactive application of a statutory provision

95. There is an established principle of law that a provision that divests rights or impairs obligations that have accrued is unconstitutional. A legislation that affects rights cannot apply retroactively.
96. The values of good governance and the rule of law prohibit the retroactive application of a statutory provision to defeat the purpose of a court decision. Put differently, parliament cannot pass laws to defeat or amend a court decision.
97. The High Court, in *Okoti & 6 others v Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties) (Petition E181, E211, E217, E219, E221, E227, E228, E232, E234, E237 & E254 of 2023 (Consolidated))*, [2023] KEHC 25872

(*KLR*) declared section 84 of the finance Act, 2023 which imposed the Housing Levy as unconstitutional. Section 84 of the Finance Act, 2023 was amending the Employment Act. This meant that any monies collected under that regime were to be refunded.

98. Section 60 of the Affordable Housing Act provides that ‘any payment made, or action taken under the sections repealed under subsection (1) shall be deemed to have been paid or taken under this Act’. This attempt by parliament amounts to defeating the court decision. Such an action violates both the spirit and text of the Constitution, including articles 1, 2, 10 and 159 of the Constitution. The action of parliament is an affront to the judicial authority accorded to the judiciary by the Kenyan Citizenry.

i) An objective normative value-based system and unchecked powers

99. The objective normative value-based system established in the Constitution was not an accident. Instead, it was Kenyans' reaction to the unchecked powers vested in the executive branch. To constrain these powers, Kenyans decided to preclude the exercise of arbitrary power. They envisioned a society founded on values and principles, as seen in Article 10 of the Constitution, such as the rule of law, transparency, accountability, devolution of powers and good governance.
100. Therefore, the organisational governance framework was meant to give effect to this normative value-based system. An attempt such as the Affordable Housing Act to disrupt this organisational structure of governmental power violates the normative value-based system.
101. The normative value-based system is also violated when laws do not entrench accountability and limit power. Section 7 of the Act grants the Cabinet Secretary for Treasury unchecked powers on the income and category of people that can be exempted from the application of the housing levy.
102. The entire framework of the Act creates a board with massive powers and unseen discretion on fund management. The board, the main organ managing the fund, only reports to the Cabinet Secretary for treasury. In the same setup, the cabinet wields massive powers over those who sit on the board. Such a structure is foreign to the constitutional demands

G. Relief requested

103. The petitioners pray these or other appropriate reliefs under Article 23:

1. A declaration that the Affordable Housing Act 2024 is unconstitutional;
2. A declaration that the continued imposition of the Affordable Housing Levy and subsequent enforcement of Affordable Housing Act by the Respondents is unconstitutional and invalid;
3. An order of prohibition restraining the Respondents from charging, levying or in any way collecting the Affordable Housing Levy, 'Affordable Housing Levy' based on the aforesaid Affordable Housing Act.
4. An order of mandamus compelling the respondents to refund the already collected amounts to the respective employers and employees and to hand over to the respective county government any housing units located within the counties.
5. A declaration that Articles 10, 21(3), and 201 require tax measures to be socially just, adequate, equitable, and progressive and must not disproportionately shift the tax burden to the poor and marginalised.
6. A structural interdict directing the Respondents to conduct a human rights impact assessment of the tax measures proposed to fund any governmental program.
7. A permanent injunction barring the Respondents from imposing any tax without conducting a human rights impact assessment of that tax measure under Articles 10, 21(3), and 201 of the Constitution.

Dated at Nairobi on 11 April 2024

OchielJD
Ochiel Dudley

Advocate for the Petitioners

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The National Treasury

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
HCCHRPET/ E191 /2024

KENYA HUMAN RIGHTS COMMISSION..... 1ST PETITIONER
KATIBA INSTITUTE..... 2ND PETITIONER

VERSUS

NATIONAL ASSEMBLY.....1ST
RESPONDENT

SENATE.....2ND
RESPONDENT

CABINET SECRETARY, THE NATIONAL TREASURY

AND ECONOMIC PLANNING 3RD RESPONDENT

ATTORNEY-GENERAL..... 4TH RESPONDENT

AFFIDAVIT SUPPORTING THE APPLICATION AND MOTION

(SUPPORTING AFFIDAVIT)

I, Christine Nkonge, a resident in Nairobi County Nairobi make oath and swear that:

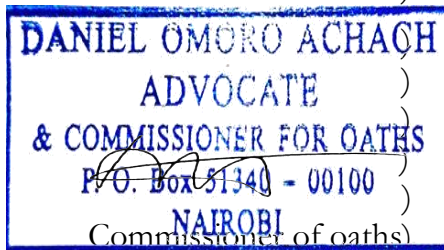
1. I am the Executive Director of Katiba Institute familiar with the facts, and duly authorised to swear this affidavit on behalf of the petitioners thus competent to swear this affidavit
2. On 19 March 2024, the president assented into law the Affordable Housing Act, 2024. Pursuant to Section 1 of the impugned Act, Section 4 & 5 of the Act came into operation immediately thereafter. In effect, both employers and employees were obligated to deduct and remit to the KRA the Affordable housing levy each capped at 1.5% of the employee's monthly gross salary. *I annex a copy of the Affordable Housing Act, 2024 marked as CN-1*
3. Believing that the law in is unconstitutional for violating several constitutional provisions inter alia Article 1, 2, 6, 10, 24, 27,40, 62, 67 of the constitution, the Petitioner has filed a Constitutional Petition to determine the constitutionality Affordable Housing Act and its continued enforcement.
4. I am equally aware that in the process of enacting the law, Parliament failed


to involve the necessary constitutional and statutory bodies mandated with the duty of implementing the right to housing. Such as the county governments or the National Land Commission or the National Housing Corporation.

5. To avert a continued enforcement of an unconstitutional law, the Petitioner seeks for conservatory orders pending hearing and determination of this application as well as the entire petition. This will save the members of the public from the agony they face arising from deduction of their salary.
6. This matter is brought in the interest of the members of the public.
7. I depose this affidavit in support of the Petition based on facts within my knowledge and believing it to be per the Oaths and Statutory Declarations Act, Cap 20.

Sworn by the Christine Nkonge on 11 April 2024

before me)




.....
Deponent

Jointly drawn and filed by:

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Kenya Gazette Supplement No. 69 (Acts No. 2)



REPUBLIC OF KENYA

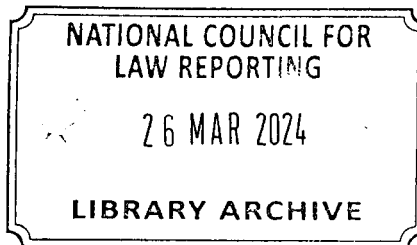
KENYA GAZETTE SUPPLEMENT

ACTS, 2024

NAIROBI, 19th March, 2024

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The Affordable Housing Act, 2024	21



This is the Exhibit Marked "CN-1"
Referred to in the Annexed Affidavit Declaration
of Christine Nkonge
Sworn / declared before me
this 11 day of April 20.24
at Nairobi

.....
Commissioner For Oaths

THE AFFORDABLE HOUSING ACT, 2024

Date of Assent: 19th March, 2024

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and guiding principles.

PART II—IMPOSITION OF AFFORDABLE HOUSING LEVY

- 4—Imposition of Levy.
- 5—Obligation of an employer.
- 6—Exemption from imposition of the Levy.
- 7—Default on payment of amount of Levy.

PART III—ESTABLISHMENT AND MANAGEMENT OF THE AFFORDABLE HOUSING FUND

- 8—Establishment of Fund.
- 9—Sources of funds.
- 10—Purpose of the Fund.
- 11—Allocations out of the Fund.
- 12—Investments by the Board.
- 13—Borrowing by the Board.
- 14—Five-year affordable housing investment programme.
- 15—Annual investment programme
- 16—Establishment of Board.
- 17—Functions of the Board.
- 18—Qualifications for appointment.
- 19—Tenure of office.

- 20—Filling of vacancy.
- 21—Conduct of affairs and business of the Board.
- 22—Committees of the Board.
- 23—Disclosure of interest.
- 24—Remuneration of Board members.
- 25—Chief Executive Officer of the Board.
- 26—Administrator of the Fund.
- 27—Fund not to be overdrawn.
- 28—Administrative costs.
- 29—Power of administrator of the Fund to access information.
- 30—Corporation Secretary.
- 31—Staff of the Board.
- 32—Delegation of powers.
- 33—The common seal.

**PART IV—ROLE OF COUNTY GOVERNMENTS IN
AFFORDABLE HOUSING**

- 34—Establishment of County Rural and Urban Affordable Housing Committees.
- 35—Qualifications for appointment.
- 36—Tenure of office.
- 37—Remuneration of the County Committee members.
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- 39—Functions of the County Committee.
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**PART V—IMPLEMENTATION OF THE
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APPLICATION PROCEDURE FOR AFFORDABLE
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48—Eligibility criteria.

49—Application for allocation of affordable housing unit.

50—Off-taking of affordable housing units.

51—Loan interest rate.

52—Voluntary savings.

**PART VII— OWNERSHIP OF AFFORDABLE
HOUSING UNITS**

53—Issuance of a certificate of ownership.

54—Restrictions to owners of affordable housing unit.

PART VIII— FINANCIAL PROVISIONS

55—Accounts and audit.

PART IX— MISCELLANEOUS PROVISIONS

56—Misappropriation of funds of the Fund.

57—Other offences.

58—Protection from personal liability.

59—Regulations.

60—Consequential amendment and transition.

61—Revocation of affordable Housing Fund Regulations.

**FIRST SCHEDULE – LIST OF AGENCIES
IMPLEMENTING
THE AFFORDABLE
HOUSING
PROGRAMME AND
PROJECTS**

**SECOND SCHEDULE – CONDUCT OF
AFFAIRS AND
BUSINESS OF THE
BOARD**

**THIRD SCHEDULE – CONSEQUENTIAL
AMENDMENTS**

THE AFFORDABLE HOUSING ACT, 2024

AN ACT of Parliament to give effect to Article 43(1)(b) of the Constitution; to provide a framework for development and access to affordable housing and institutional housing; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Affordable Housing Act, 2024 and shall come into operation as follows—

- (a) on the date of assent, section 4 and 5;
- (b) all other sections, on such date as may be prescribed by the Cabinet Secretary by notice in the *Gazette*.

2. (1) In this Act, unless the context otherwise requires—

“agency” means an institution allocated monies for affordable housing under section 11;

“administrator of the Fund” means the person designated as the administrator of the Fund under section 26 (1);

“affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;

“affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;

“Board” means the Affordable Housing Board established under section 16;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to affordable housing;

“Chief Executive Officer” means the person appointed as such under section 25;

“collector” means the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act;

Cap. 469.

“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

“Fund” means the Affordable Housing Fund established under section 8;

“institutional housing” means housing that is adequate and affordable for public institutions such as universities, colleges, police, defence forces, government pool housing and prisons; and

“Levy” means the Affordable Housing Levy imposed under section 4.

(2) For purposes of this Act, “affordable housing unit” refers to —

- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
- (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
- (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

3. (1) The objects of this Act shall be to—

- (a) give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing and to reasonable standards of sanitation;
- (b) impose a levy to facilitate the provision of affordable housing and institutional housing; and
- (c) provide a legal framework for the implementation of the affordable housing programmes and projects and institutional housing.

Objects and guiding principles.

(2) The implementation of this Act shall be guided by—

- (a) the national values and principles of governance under Article 10(2)(b) of the Constitution;
- (b) the principles of public finance under Article 201 of the Constitution; and
- (c) the values and principles of public service under Article 232 of the Constitution.

PART II—IMPOSITION OF AFFORDABLE HOUSING LEVY

4. (1) There is imposed a levy known as the Affordable Housing Levy.

Imposition of Levy.

(2) The Levy shall be at the rate of one point five percent of—

- (a) the gross salary of an employee; or
- (b) the gross income of a person received or accrued which is not subject to the Levy under paragraph (a).

(3) The Levy shall be payable to the collector, for remittance into the Fund, not later than the ninth working day after the end of the month in which the gross salary was due or gross income was received or accrued.

5. (1) An employer shall—

Obligation of an employer.

- (a) deduct and remit the amount referred to in section 4(2)(a) from the gross salary of an employee; and
- (b) remit an amount equivalent to the amount deducted under section 4(2)(a), to the collector.

(2) Without prejudice to the generality of section 6, any person who complies with the provisions of section 5 shall not be liable to pay the levy under section 4(2) (b).

6. The Cabinet Secretary for the time being responsible for the National Treasury may, on the recommendation of the Cabinet Secretary, provide, by notice in the *Gazette*, that—

Exemption from imposition of the Levy.

- (a) any income or class of income; or
- (b) any person or category of persons,

2024

Affordable Housing

No. 2

shall be exempt from the application of section 4 to the extent specified in the notice.

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

Default on payment of amount of Levy.

**PART III—ESTABLISHMENT AND
MANAGEMENT OF THE AFFORDABLE HOUSING
FUND**

8. There is established a fund to be known as the Affordable Housing Fund which shall be vested in, and managed by, the Board.

Establishment of Fund.

9. (1) There shall be paid into the Fund—

Sources of funds.

- (a) monies deducted or payable as the Levy under this Act;
- (b) monies appropriated by the National Assembly for the purposes of the Fund;
- (c) gifts, grants or donations;
- (d) voluntary contributions made under section 52;
- (e) income from investments made by the Fund;
- (f) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury; and
- (g) income accruing to the Fund in the course of the performance of its functions under any written law.

(2) Without prejudice to the generality of subsection 1(e) and (g), all of the proceeds of sale, rent, and interest shall be paid into the Fund.

10. (1) The purpose of the Fund shall be to provide funds for the design, development and maintenance of affordable housing, institutional housing and associated social and physical infrastructure.

Purpose of the Fund.

(2) Without prejudice to the generality of subsection (1), the Fund shall—

- (a) facilitate the provision of funds for affordable housing and affordable housing schemes in the promotion of home ownership;
- (b) provide low interest loans or low monthly payment home loans, where applicable for the acquisition of affordable housing units within the approved affordable housing schemes;
- (c) facilitate design, development and maintenance of affordable housing schemes in all counties;
- (d) facilitate development of institutional housing units;
- (e) develop long term finance solutions for the development and off-take of affordable housing;
- (f) provide funds for maintenance of any land or building, estate or interest therein, for any of the purposes of the Fund;
- (g) fund any other activities incidental to the furtherance of the objects of the Fund; and
- (h) facilitate the provision of services to the projects under the management of the Fund.

11. (1) The Board may allocate out of the Fund, monies for the—

Allocations out of the Fund.

- (a) development and off-take of affordable housing programmes and projects;
- (b) development of institutional housing; and
- (c) social and physical infrastructure.

(2) The monies may be allocated subject to the annual investment programme under section 15 and the provisions of Part V to the agencies set out in the First Schedule.

(3) The monies may be allocated to county governments in accordance with the Public Finance Management Act, 2012 and on such conditions as may be prescribed by the Cabinet Secretary for the time being responsible for the National Treasury.

Cap. 412A

(4) Despite the provisions of subsection (2), the Board shall allocate out of the Fund—

- (a) up to point five (0.5%) percent of the monies to the collector for the collection of the Levy as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary;
- (b) up to two percent of the monies to the Board for the administration of the Fund as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary; and
- (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.

(5) The monies under subsection (4)(c) shall be appropriated as a conditional grant to county governments.

(6) The First Schedule may be amended by notice in the *Gazette*.

12. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

Investments by the Board.

13. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

Borrowing by the Board.

14. (1) The Board shall develop a five-year affordable housing investment programme every five years.

Five-year affordable housing investment programme.

(2) The Board shall submit the affordable housing investment programme referred to in subsection (1) to the Cabinet Secretary and the Cabinet Secretary for the time being responsible for the National Treasury for onward transmission to the Cabinet for approval.

(3) Upon approval of the affordable housing investment programme by the Cabinet, the Cabinet Secretary shall submit the approved affordable housing investment programme to Parliament.

15. (1) The Board shall prepare an annual investment programme drawn from the five-year affordable housing investment programme which shall include—

Annual investment programme.

- (a) the proposed affordable housing projects;
- (b) the proposed institutional housing projects;
- (c) the proposed allocation of monies out of the Fund;
- (d) the proposed implementing agencies as set out in the First Schedule.

(2) The Board shall submit the annual investment programme referred to in subsection (1) to the Cabinet Secretary.

(3) The Cabinet Secretary shall submit the annual investment programme to Parliament.

16. (1) There is established a board to be known as the Affordable Housing Board.

Establishment of Board.

(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(3) The Board shall consist of the following—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary to the National Treasury or their representative designated in writing;
- (c) the Principal Secretary of the State Department for the time being responsible for matters relating to affordable housing or their representative designated in writing;

- (d) three other persons who shall be appointed by the Cabinet Secretary, of whom—
 - (i) one shall be a nominee of the Council of County Governors;
 - (ii) one shall be a nominee of the Central Organization of Trade Union; and
 - (iii) one shall be a nominee of the Federation of Kenya Employers;
- (e) three persons, not being public officers, appointed, through a competitive process, by the Cabinet Secretary and who shall possess qualifications in built environment, finance or law; and
- (f) the Chief Executive Officer, who shall have no right to vote at a meeting of the Board.

(4) In nominating a person to be a member under subsection (3)(d), the nominating bodies shall present the names of three persons to the Cabinet Secretary from amongst whom one shall be appointed.

(5) In appointing the members of the Board, the Cabinet Secretary shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) take into account regional balance;
- (c) consider special and marginalized groups including youth, women and persons with disability.

(6) The members of the Board referred to in subsection (3), (a), (d) and (e) shall be appointed at different times so that the respective expiry dates of their terms of office shall be at different times.

17. (1) The object and purpose for which the Board is established is to oversee the development of affordable housing, institutional housing and associated social and physical infrastructure in Kenya.

Functions of the Board.

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) co-ordinate the optimal utilisation of the Fund in the implementation of programmes and projects relating to the development of affordable housing and institutional housing and associated social and physical infrastructure;
- (b) seek to achieve optimal efficiency and cost effectiveness in the development of affordable housing programmes and projects funded by the Fund;
- (c) based on a five-year affordable housing investment programme and annual affordable housing investment programme, determine the allocation of financial resources required for the development of the affordable housing projects, institutional housing and associated social and physical infrastructure;
- (d) manage the Fund and allocate monies in accordance with section 11;
- (e) inspect and enforce compliance to this Act, guidelines and regulations set under the Act;
- (f) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (g) in implementing paragraph (f), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Cabinet Secretary for the time being responsible for the National Treasury;
- (h) identify, quantify and recommend to the Cabinet Secretary such other potential sources of revenue as may be available to the Fund for the development, of affordable housing programmes and projects and associated social and physical infrastructure for consideration by the Cabinet Secretary to the National Treasury;
- (i) approve the opening and closing of bank accounts of the Fund by the administrator of the Fund;
- (j) approve estimates of revenue and expenditure of the Fund for each financial year; and

- (k) perform such other duties as may be assigned by the Cabinet Secretary in writing.

18. (1) A person qualifies to be appointed as the Chairperson of the Board if that person—

Qualifications for appointment.

- (a) holds a degree from a university recognized in Kenya;
- (b) has ten years' experience in a senior management position in the public service or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person qualifies to be appointed as a member of the Board if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

19. (1) The Chairperson and the members of the Board shall hold office for a term of three years and may be eligible for re-appointment to a further and final term of three years.

Tenure of office.

(2) Despite the provisions of subsection (1), a member of the Board may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving dishonesty or corruption;
- (d) becomes incapable of carrying out the functions of their office, either arising from an infirmity of mind or body;

- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Board as provided for under section 23(1).

(3) A member of the Board shall cease to be a member of the Board if that member resigns from office by a notice in writing addressed to the appointing authority.

20. Whenever the office of the Chairperson or a member becomes vacant before the expiry of the term of office, the appointing authority shall, on the recommendation of the nominating body, where applicable, appoint a person who holds a similar qualification to fill the vacant position for the remainder of the term.

Filling of
vacancy.

21. (1) The conduct of affairs and business of the Board shall be in accordance with the Second Schedule.

Conduct of affairs
and business of
the Board.

(2) Subject to subsection (1), the Board may regulate its own procedures.

22. (1) The Board may establish such committees consisting of such members of the Board to deal with such matters as the Board may specify.

Committees of the
Board.

(2) The Board may co-opt persons who are not members of the Board to committees established under subsection (1) for a particular reason and such persons shall serve in such committees for such period as the Board may determine.

23. (1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or the dependants of the member are directly or indirectly interested in a private capacity, the member shall, as soon as practicable, after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion, or vote on any question relating on such matter.

Disclosure of
interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Failure to disclose such interest shall lead to the disqualification of the member from holding office as a member.

24. The Chairperson and the members of the Board shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Remuneration of Board members.

25. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board, in consultation with the Cabinet Secretary, on such terms and conditions of service as shall be specified in the instrument of appointment or otherwise in writing from time to time.

Chief Executive Officer of the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in a managerial capacity in built environment, finance, or law; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

26. (1) The Chief Executive Officer shall be the administrator of the Fund.

Administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) supervise and control the day-to-day administration of the Fund;
- (b) prepare the annual work plan for the Fund for approval by the Board;
- (c) open and operate the accounts of the Fund with the approval of the Board and the National Treasury;
- (d) prepare estimates of annual revenue and expenditure of the Fund and submit to the Board for approval;
- (e) implement policies approved by the Board for the attainment of the objects of the Fund;

- (f) advise the Board on matters relating to the administration of the Fund;
- (g) co-ordinate the monitoring and evaluation of affordable housing projects and programmes financed from the Fund;
- (h) keep books of accounts and other books and records in relation to the Fund of all activities and undertakings financed by the Fund;
- (i) be the custodian of the assets, property, and equipment of the Fund;
- (j) establish proper systems of internal control and management in accordance with provisions of the relevant laws;
- (k) subject to approval of the Board, authorise withdrawals out of the Fund;
- (l) ensure that money held in the Fund, including any earnings or accruals is spent only for the purpose for which the Fund is established;
- (m) prepare, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund in accordance with the Public Audit Act, 2015; and
- (n) undertake any other duty the Board may assign in furtherance of the objects and purpose of the Fund.

Cap. 412B

27. The administrator of the Fund shall ensure that no bank accounts of the Fund are overdrawn.

Fund not to be overdrawn.

28. The administrative costs of the Fund shall not exceed two percent of the latest audited financial statement of the Fund.

Administrative costs.

29. The administrator of the Fund may access any programme and project related data that the Administrator considers necessary for the performance of their functions under this Act.

Power of the administrator of the Fund to access information.

30. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board.

Corporation Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has at least ten years' experience in offering the services of a certified public secretary; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be responsible for—

- (a) providing guidance to the members of the Board on their duties, responsibilities and powers and how these should be exercised in the best interests of the Board;
- (b) ensuring that the procedures of the Board are followed and reviewed regularly, and that the members of the Board comply with written law;
- (c) assisting the Chairperson of the Board to organise the activities of the Board, including providing information, preparing agenda, issuing notices and preparing for meetings, conducting evaluations of the Board and development programmes of the Board;
- (d) providing secretarial services to the Board, including ensuring that the work plan of the Board is prepared and adhered to, circulating Board papers in advance of the meeting and keeping the record of attendance of the meetings;
- (e) ensuring that the minutes of the meetings of the Board and committees of the Board are promptly prepared and circulated;
- (f) keeping the members of the Board abreast of and informed on current governance practice;
- (g) keeping a record of conflicts of interest declared by each member of the Board; and
- (h) co-ordinating the governance audit process.

31. (1) The Board may appoint such members of staff as may be necessary for the proper discharge of the functions of the Board, on such terms and conditions of service as the Board may determine.

Staff of the Board.

(2) The staff of the Board shall be the secretariat of the Fund reporting to the Chief Executive Officer.

32. The Board may, by resolution generally or in any particular case, delegate to the administrator of the Fund, an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

Delegation of powers.

33. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except by the order of the Board.

The common seal.

(2) The common seal of the Board shall, when affixed to a document and is duly authenticated, be judicially and officially noticed, and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

PART IV— ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

34. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

Establishment of County Rural and Urban Affordable Housing Committees.

(2) The County Committee shall consist of the following—

- (a) a non-executive chairperson who shall be nominated by the county governor;
- (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
- (c) three other persons who shall be nominated by the county governor, of whom—
 - (i) one shall be a representative of a registered association of traders operating in the county;
 - (ii) one shall be a representative of a registered residential association; in the county;

(iii) one shall be a member of the public residing within the county; and

(d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) ensure that ethnic minorities within the county are adequately represented; and
- (c) consider marginalized groups including youth and persons with disability.

(5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

35. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

Qualifications for appointment.

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
- (c) has resided in the county for a period of not less than five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;

- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

36. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

Tenure of office.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

37. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Remuneration of the County Committee members.

38. (1) The conduct of affairs and business of the County Committee shall be in accordance with the Second Schedule to this Act.

Conduct of affairs and business of the County Committee.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

2024

*Affordable Housing***No. 2****39.** The County Committee shall—Functions of the
County
Committee.

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Cap 303, Laws of
Kenya.**40.** Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.County
legislation.**PART V—IMPLEMENTATION OF THE
AFFORDABLE HOUSING****41.** (1) The provisions of the Land Act shall, subject to subsection (2), apply to the allocation of public land for the implementation of the affordable housing scheme and development of institutional housing scheme.Allocation of
land.

Cap. 280

(2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner, carried out public participation and stakeholder engagement with the affected community within the county.

42. (1) The Board may appoint a national government agency to develop affordable housing units and the associated social and physical infrastructure.Agreement with
national
government
agency.

(2) Subject to the Public Finance Management Act, 2012, the Board may disburse such monies to the national government agency for the performance of the functions under subsection (1).

43. The Board may enter into an agreement with a public institution for—

Agreement for institutional housing.

- (a) the development of institutional housing units; and
- (b) the repayment of the monies paid out of the Fund for the development of the institutional housing units.

44. (1) The Board may enter into an agreement with a private institution—

Agreement with private institutions and persons.

- (a) to develop and construct affordable housing units and associated social and physical infrastructure; and
- (b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

45. (1) The Board may enter into an agreement with any approved institution or mortgage scheme to provide financing for the off-take of affordable housing units.

Agreement for financing.

(2) Subject to the Public Finance management Act, 2012, the Fund may disburse such monies to the approved institution as may be necessary for the performance of the function under subsection (1).

46. In the development of affordable housing units, the Board shall—

Community support.

- (a) as far as possible ensure locally available materials are used;
- (b) ensure labour is sourced from the local communities;

- (c) where a project is near a university or technical vocational institution ensure that the students get internships or practical experience from the projects where affordable housing projects are carried out.

47. The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement, —

Priority of ownership for slum residents.

- (a) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project;
- (b) put in place a mechanism for the resettlement of the residents; and
- (c) offer to the residents in that settlement, the first right of purchase of a unit in the project.

**PART VI—ELIGIBILITY CRITERIA AND
APPLICATION PROCEDURE FOR AFFORDABLE
HOUSING UNIT**

48. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

Eligibility criteria.

(2) In this section, a person means a natural person.

49. (1) A person who meets the criteria set out under section 48 and desires to be allocated an affordable housing unit, shall make an application to the Board in the specified manner.

Application for allocation of affordable housing unit.

(2) An application made under subsection (1) shall be accompanied by—

- (a) proof of requisite deposit as may be prescribed by the Cabinet Secretary;
- (b) a copy of the national identity card or such other form of identification as may be prescribed by the Cabinet Secretary;
- (c) copy of incorporation certificate in the case of a body corporate;
- (d) a copy of Kenya Revenue Authority personal identification number certificate and tax compliance certificate; and

(e) such other information as may be determined by the Board.

(3) In determining the allocation of an affordable housing unit under this section, the Board shall give preference to marginalised persons, vulnerable groups, youth, women and persons with disabilities.

50. (1) The Board may off-take affordable housing units under an affordable housing scheme if the affordable housing scheme—

Off-taking of affordable housing units.

- (a) has been approved by the Board;
- (b) meets policy and statutory requirements; and
- (c) meets any other criteria or conditions set by the Board.

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

51. The interest rate or administration fee for a loan issued under this Act, where applicable, shall be payable on a reducing balance at such rate as may be prescribed by the Cabinet Secretary.

Loan interest rate.

52. (1) An eligible person may make voluntary savings with the Fund for purposes of raising a deposit towards the allocation of an affordable housing unit.

Voluntary savings.

(2) An administrator of the Fund shall open separate bank account where voluntary savings shall be kept and any interest arising from investment of voluntary savings shall be credited to this account.

(3) The administrator of the Fund shall issue an account number to each person making a voluntary saving.

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

- (a) may withdraw their savings by issuing ninety days' written notice to the agency for refund with any accrued interest; or
- (b) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit.

(5) An application in subsection (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

PART VII – OWNERSHIP OF AFFORDABLE HOUSING UNITS

53. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

Issuance of a certificate of ownership.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

Cap. 286.

54. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

Restrictions to owners of affordable housing unit.

PART VIII – FINANCIAL PROVISIONS

55. (1) The administrator of the Fund shall cause to be kept proper books and records of account of the income, expenditure and assets of the Fund.

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the administrator of the Fund shall submit to the Auditor-General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and

- (b) a statement of the assets and liabilities of the Fund on the last day of that year.
- (3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

PART IX— MISCELLANEOUS PROVISIONS

56. (1) A person commits an offence if the person misappropriated any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act.

Misappropriation of funds of the Fund.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction—

- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and
 - (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.
- (3) The mandatory fine referred to in subsection (2)(b) shall be determined as follows—
- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (2)(b);
 - (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

57. (1) A person commits an offence if the person—

Other offences.

- (a) fails to give information or gives inaccurate or misleading information or falsifies information or misrepresents information required under this Act;
- (b) having possession of, or control over, or access to any documents, information, returns or forms relating to applications or granting of loans, communicates anything contained therein—

- (i) to any person other than a person to whom they are authorized by the Board to communicate it; or
- (ii) otherwise than for the purposes of this Act.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction to a fine not exceeding ten million shillings or imprisonment of a term not exceeding five years, or to both.

58. No matter or thing done by any person under this Act shall, if the matter or thing is done in good faith and in accordance with the law, render that person personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

59. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for better carrying into effect the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this section may prescribe—

- (a) the criteria for exemptions granted under section 6;
- (b) criteria for eligibility of allocation of an affordable housing unit under section 48;
- (c) requisite deposit for the housing under section 49(2);
- (d) identification documents under section 49;
- (e) regulations under Part V;
- (f) the criteria for change of affordable housing unit;
- (g) the provisions on voluntary savings;
- (h) the provisions relating to off-take of affordable housing units;
- (i) the inclusivity and diversity within affordable housing schemes;
- (j) the application and integration of technology-based platforms in the administration and management of affordable housing schemes;

- (k) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;
- (l) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
- (m) the interest rate or administration fee for a loan issued under section 51; and
- (n) criteria for eligibility of allocation of a low interest mortgage under section 52.

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

(4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

60. (1) The Acts specified in the first column of the Third Schedule are amended in the manner specified in the second column.

Consequential amendment and transition.

(2) Any payment made or action taken under the sections repealed under subsection (1) shall be deemed to have been paid or taken under this Act.

(3) Any commitment or obligation on the National government on affordable housing which have arisen or made in accordance with an Act of Parliament shall be deemed to be a commitment or obligation made under this Act.

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

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Affordable Housing

No. 2

61. (1) All regulations in force immediately before the commencement of this Act and applicable to affordable housing and voluntary contributions are hereby revoked.

Revocation of
affordable
Housing Fund
Regulations.

(2) All monies which immediately before the commencement of this Act, that were held by the National Housing Corporation under the Housing Fund Regulations, 2018 shall vest in the Fund and shall be deposited into the Fund.

(3) The National Housing Corporation shall account for and give a record of all contributions made under the Housing Fund Regulations, 2018.

(4) The administrator of the Fund shall notify the contributors and create an account for each contributor.

FIRST SCHEDULE

(ss. 11(2) and (6), 15(1)(d))

LIST OF AGENCIES FOR IMPLEMENTING THE AFFORDABLE HOUSING PROGRAMMES AND PROJECTS

1. County governments.
2. National Housing Corporation.
3. The Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund established under the Government Financial Management (Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund) Regulations, 2006.
4. State Department responsible for matters relating to affordable housing.
5. National Social Security Fund.
6. National Construction Authority.
7. State Department responsible for matters relating to Public Works.
8. The private sector agencies as may be approved by the Board to support affordable housing and institutional housing.

SECOND SCHEDULE*(ss. 21(1), 38(1))***CONDUCT OF AFFAIRS AND BUSINESS OF THE BOARD**

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

Meetings.

(2) The notice for a meeting of the Board shall be in writing, and shall be for a period of at least seven days from the expected day of the meeting.

(3) The Chairperson of the Board shall preside over all meetings of the Board and in the absence of the Chairperson, a person designated by members of the Board present at a meeting shall preside.

(4) The Chairperson of the Board may, on the written request made by majority of the members of the Board and within seven days of the request, convene an extraordinary meeting of the Board at such time and place as the Chairperson may appoint.

(5) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

2. The quorum for the conduct of business at a meeting of the Board shall be majority of the total members of the Board.

Quorum.

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding shall have a casting vote.

Decisions of the Board.

THIRD SCHEDULE*(s. 60(1))***CONSEQUENTIAL AMENDMENTS**

ACT	SECTION	AMENDMENTS
The Employment Act (No. 11 of 2007)	S. 31B	Repeal
	s. 31C	Repeal
The Income Tax Act (Cap. 470)	s. 15 (2)	Insert the following new paragraph immediately after paragraph (g)— (ga) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5 (b) of the Affordable Housing Act, 2024
	s. 30A	Insert the following subsection immediately after sub-section (1)— (1A) A resident individual who proves that in a year of income, the individual paid the affordable housing levy, shall for that year of income be entitled to the affordable housing relief
	Third Schedule, paragraph 9	Delete the word “three” and substitute therefor with the words one point five”
The Kenya Revenue Act (No. 2 of 1995)	First Schedule, Part II	Insert the following paragraph immediately after paragraph 14; “15. The Affordable Housing Act, 2024”

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SPECIAL ISSUE

Kenya Gazette Supplement No. 69 (Acts No. 2)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2024

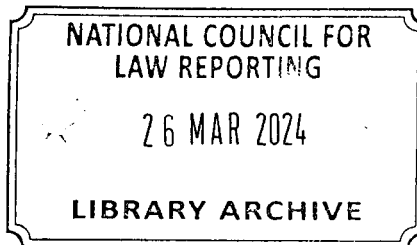
NAIROBI, 19th March, 2024

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Act—	PAGE
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This is the Exhibit Marked "CN-1"
Referred to in the Annexed Affidavit Declaration
of Christine Nkonge
Sworn / declared before me
this 11 day of April 20.24
at Nairobi


Commissioner For Oaths



THE AFFORDABLE HOUSING ACT, 2024

Date of Assent: 19th March, 2024

Date of Commencement: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and guiding principles.

**PART II—IMPOSITION OF AFFORDABLE
HOUSING LEVY**

- 4—Imposition of Levy.
- 5—Obligation of an employer.
- 6—Exemption from imposition of the Levy.
- 7—Default on payment of amount of Levy.

**PART III—ESTABLISHMENT AND
MANAGEMENT OF THE AFFORDABLE HOUSING
FUND**

- 8—Establishment of Fund.
- 9—Sources of funds.
- 10—Purpose of the Fund.
- 11—Allocations out of the Fund.
- 12—Investments by the Board.
- 13—Borrowing by the Board.
- 14—Five-year affordable housing investment programme.
- 15—Annual investment programme
- 16—Establishment of Board.
- 17—Functions of the Board.
- 18—Qualifications for appointment.
- 19—Tenure of office.

- 20—Filling of vacancy.
- 21—Conduct of affairs and business of the Board.
- 22—Committees of the Board.
- 23—Disclosure of interest.
- 24—Remuneration of Board members.
- 25—Chief Executive Officer of the Board.
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THE AFFORDABLE HOUSING ACT, 2024

AN ACT of Parliament to give effect to Article 43(1)(b) of the Constitution; to provide a framework for development and access to affordable housing and institutional housing; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Affordable Housing Act, 2024 and shall come into operation as follows—

- (a) on the date of assent, section 4 and 5;
- (b) all other sections, on such date as may be prescribed by the Cabinet Secretary by notice in the *Gazette*.

2. (1) In this Act, unless the context otherwise requires—

“agency” means an institution allocated monies for affordable housing under section 11;

“administrator of the Fund” means the person designated as the administrator of the Fund under section 26 (1);

“affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;

“affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;

“Board” means the Affordable Housing Board established under section 16;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to affordable housing;

“Chief Executive Officer” means the person appointed as such under section 25;

“collector” means the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act;

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“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

“Fund” means the Affordable Housing Fund established under section 8;

“institutional housing” means housing that is adequate and affordable for public institutions such as universities, colleges, police, defence forces, government pool housing and prisons; and

“Levy” means the Affordable Housing Levy imposed under section 4.

(2) For purposes of this Act, “affordable housing unit” refers to —

- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
- (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
- (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

3. (1) The objects of this Act shall be to—

- (a) give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing and to reasonable standards of sanitation;
- (b) impose a levy to facilitate the provision of affordable housing and institutional housing; and
- (c) provide a legal framework for the implementation of the affordable housing programmes and projects and institutional housing.

Objects and guiding principles.

(2) The implementation of this Act shall be guided by—

- (a) the national values and principles of governance under Article 10(2)(b) of the Constitution;
- (b) the principles of public finance under Article 201 of the Constitution; and
- (c) the values and principles of public service under Article 232 of the Constitution.

PART II—IMPOSITION OF AFFORDABLE HOUSING LEVY

4. (1) There is imposed a levy known as the Affordable Housing Levy. Imposition of Levy.

(2) The Levy shall be at the rate of one point five percent of—

- (a) the gross salary of an employee; or
- (b) the gross income of a person received or accrued which is not subject to the Levy under paragraph (a).

(3) The Levy shall be payable to the collector, for remittance into the Fund, not later than the ninth working day after the end of the month in which the gross salary was due or gross income was received or accrued.

5. (1) An employer shall—

- (a) deduct and remit the amount referred to in section 4(2)(a) from the gross salary of an employee; and
- (b) remit an amount equivalent to the amount deducted under section 4(2)(a), to the collector.

(2) Without prejudice to the generality of section 6, any person who complies with the provisions of section 5 shall not be liable to pay the levy under section 4(2) (b). Obligation of an employer.

6. The Cabinet Secretary for the time being responsible for the National Treasury may, on the recommendation of the Cabinet Secretary, provide, by notice in the *Gazette*, that— Exemption from imposition of the Levy.

- (a) any income or class of income; or
- (b) any person or category of persons,

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shall be exempt from the application of section 4 to the extent specified in the notice.

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

Default on payment of amount of Levy.

**PART III—ESTABLISHMENT AND
MANAGEMENT OF THE AFFORDABLE HOUSING
FUND**

8. There is established a fund to be known as the Affordable Housing Fund which shall be vested in, and managed by, the Board.

Establishment of Fund.

9. (1) There shall be paid into the Fund—

Sources of funds.

- (a) monies deducted or payable as the Levy under this Act;
- (b) monies appropriated by the National Assembly for the purposes of the Fund;
- (c) gifts, grants or donations;
- (d) voluntary contributions made under section 52;
- (e) income from investments made by the Fund;
- (f) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury; and
- (g) income accruing to the Fund in the course of the performance of its functions under any written law.

(2) Without prejudice to the generality of subsection 1(e) and (g), all of the proceeds of sale, rent, and interest shall be paid into the Fund.

10. (1) The purpose of the Fund shall be to provide funds for the design, development and maintenance of affordable housing, institutional housing and associated social and physical infrastructure.

Purpose of the Fund.

(2) Without prejudice to the generality of subsection (1), the Fund shall—

- (a) facilitate the provision of funds for affordable housing and affordable housing schemes in the promotion of home ownership;
- (b) provide low interest loans or low monthly payment home loans, where applicable for the acquisition of affordable housing units within the approved affordable housing schemes;
- (c) facilitate design, development and maintenance of affordable housing schemes in all counties;
- (d) facilitate development of institutional housing units;
- (e) develop long term finance solutions for the development and off-take of affordable housing;
- (f) provide funds for maintenance of any land or building, estate or interest therein, for any of the purposes of the Fund;
- (g) fund any other activities incidental to the furtherance of the objects of the Fund; and
- (h) facilitate the provision of services to the projects under the management of the Fund.

11. (1) The Board may allocate out of the Fund, monies for the—

Allocations out of the Fund.

- (a) development and off-take of affordable housing programmes and projects;
- (b) development of institutional housing; and
- (c) social and physical infrastructure.

(2) The monies may be allocated subject to the annual investment programme under section 15 and the provisions of Part V to the agencies set out in the First Schedule.

(3) The monies may be allocated to county governments in accordance with the Public Finance Management Act, 2012 and on such conditions as may be prescribed by the Cabinet Secretary for the time being responsible for the National Treasury.

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(4) Despite the provisions of subsection (2), the Board shall allocate out of the Fund—

- (a) up to point five (0.5%) percent of the monies to the collector for the collection of the Levy as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary;
- (b) up to two percent of the monies to the Board for the administration of the Fund as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary; and
- (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.

(5) The monies under subsection (4)(c) shall be appropriated as a conditional grant to county governments.

(6) The First Schedule may be amended by notice in the *Gazette*.

12. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

Investments by the Board.

13. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

Borrowing by the Board.

14. (1) The Board shall develop a five-year affordable housing investment programme every five years.

Five-year affordable housing investment programme.

(2) The Board shall submit the affordable housing investment programme referred to in subsection (1) to the Cabinet Secretary and the Cabinet Secretary for the time being responsible for the National Treasury for onward transmission to the Cabinet for approval.

(3) Upon approval of the affordable housing investment programme by the Cabinet, the Cabinet Secretary shall submit the approved affordable housing investment programme to Parliament.

15. (1) The Board shall prepare an annual investment programme drawn from the five-year affordable housing investment programme which shall include—

Annual investment programme.

- (a) the proposed affordable housing projects;
- (b) the proposed institutional housing projects;
- (c) the proposed allocation of monies out of the Fund;
- (d) the proposed implementing agencies as set out in the First Schedule.

(2) The Board shall submit the annual investment programme referred to in subsection (1) to the Cabinet Secretary.

(3) The Cabinet Secretary shall submit the annual investment programme to Parliament.

16. (1) There is established a board to be known as the Affordable Housing Board.

Establishment of Board.

(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(3) The Board shall consist of the following—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary to the National Treasury or their representative designated in writing;
- (c) the Principal Secretary of the State Department for the time being responsible for matters relating to affordable housing or their representative designated in writing;

- (d) three other persons who shall be appointed by the Cabinet Secretary, of whom—
 - (i) one shall be a nominee of the Council of County Governors;
 - (ii) one shall be a nominee of the Central Organization of Trade Union; and
 - (iii) one shall be a nominee of the Federation of Kenya Employers;
- (e) three persons, not being public officers, appointed, through a competitive process, by the Cabinet Secretary and who shall possess qualifications in built environment, finance or law; and
- (f) the Chief Executive Officer, who shall have no right to vote at a meeting of the Board.

(4) In nominating a person to be a member under subsection (3)(d), the nominating bodies shall present the names of three persons to the Cabinet Secretary from amongst whom one shall be appointed.

(5) In appointing the members of the Board, the Cabinet Secretary shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) take into account regional balance;
- (c) consider special and marginalized groups including youth, women and persons with disability.

(6) The members of the Board referred to in subsection (3), (a), (d) and (e) shall be appointed at different times so that the respective expiry dates of their terms of office shall be at different times.

17. (1) The object and purpose for which the Board is established is to oversee the development of affordable housing, institutional housing and associated social and physical infrastructure in Kenya.

Functions of the Board.

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) co-ordinate the optimal utilisation of the Fund in the implementation of programmes and projects relating to the development of affordable housing and institutional housing and associated social and physical infrastructure;
- (b) seek to achieve optimal efficiency and cost effectiveness in the development of affordable housing programmes and projects funded by the Fund;
- (c) based on a five-year affordable housing investment programme and annual affordable housing investment programme, determine the allocation of financial resources required for the development of the affordable housing projects, institutional housing and associated social and physical infrastructure;
- (d) manage the Fund and allocate monies in accordance with section 11;
- (e) inspect and enforce compliance to this Act, guidelines and regulations set under the Act;
- (f) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (g) in implementing paragraph (f), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Cabinet Secretary for the time being responsible for the National Treasury;
- (h) identify, quantify and recommend to the Cabinet Secretary such other potential sources of revenue as may be available to the Fund for the development, of affordable housing programmes and projects and associated social and physical infrastructure for consideration by the Cabinet Secretary to the National Treasury;
- (i) approve the opening and closing of bank accounts of the Fund by the administrator of the Fund;
- (j) approve estimates of revenue and expenditure of the Fund for each financial year; and

- (k) perform such other duties as may be assigned by the Cabinet Secretary in writing.

18. (1) A person qualifies to be appointed as the Chairperson of the Board if that person—

Qualifications for appointment.

- (a) holds a degree from a university recognized in Kenya;
- (b) has ten years' experience in a senior management position in the public service or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person qualifies to be appointed as a member of the Board if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

19. (1) The Chairperson and the members of the Board shall hold office for a term of three years and may be eligible for re-appointment to a further and final term of three years.

Tenure of office.

(2) Despite the provisions of subsection (1), a member of the Board may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving dishonesty or corruption;
- (d) becomes incapable of carrying out the functions of their office, either arising from an infirmity of mind or body;

- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Board as provided for under section 23(1).

(3) A member of the Board shall cease to be a member of the Board if that member resigns from office by a notice in writing addressed to the appointing authority.

20. Whenever the office of the Chairperson or a member becomes vacant before the expiry of the term of office, the appointing authority shall, on the recommendation of the nominating body, where applicable, appoint a person who holds a similar qualification to fill the vacant position for the remainder of the term.

Filling of
vacancy.

21. (1) The conduct of affairs and business of the Board shall be in accordance with the Second Schedule.

Conduct of affairs
and business of
the Board.

(2) Subject to subsection (1), the Board may regulate its own procedures.

22. (1) The Board may establish such committees consisting of such members of the Board to deal with such matters as the Board may specify.

Committees of the
Board.

(2) The Board may co-opt persons who are not members of the Board to committees established under subsection (1) for a particular reason and such persons shall serve in such committees for such period as the Board may determine.

23. (1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or the dependants of the member are directly or indirectly interested in a private capacity, the member shall, as soon as practicable, after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion, or vote on any question relating on such matter.

Disclosure of
interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Failure to disclose such interest shall lead to the disqualification of the member from holding office as a member.

24. The Chairperson and the members of the Board shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Remuneration of Board members.

25. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board, in consultation with the Cabinet Secretary, on such terms and conditions of service as shall be specified in the instrument of appointment or otherwise in writing from time to time.

Chief Executive Officer of the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in a managerial capacity in built environment, finance, or law; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

26. (1) The Chief Executive Officer shall be the administrator of the Fund.

Administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) supervise and control the day-to-day administration of the Fund;
- (b) prepare the annual work plan for the Fund for approval by the Board;
- (c) open and operate the accounts of the Fund with the approval of the Board and the National Treasury;
- (d) prepare estimates of annual revenue and expenditure of the Fund and submit to the Board for approval;
- (e) implement policies approved by the Board for the attainment of the objects of the Fund;

- (f) advise the Board on matters relating to the administration of the Fund;
- (g) co-ordinate the monitoring and evaluation of affordable housing projects and programmes financed from the Fund;
- (h) keep books of accounts and other books and records in relation to the Fund of all activities and undertakings financed by the Fund;
- (i) be the custodian of the assets, property, and equipment of the Fund;
- (j) establish proper systems of internal control and management in accordance with provisions of the relevant laws;
- (k) subject to approval of the Board, authorise withdrawals out of the Fund;
- (l) ensure that money held in the Fund, including any earnings or accruals is spent only for the purpose for which the Fund is established;
- (m) prepare, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund in accordance with the Public Audit Act, 2015; and
- (n) undertake any other duty the Board may assign in furtherance of the objects and purpose of the Fund.

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27. The administrator of the Fund shall ensure that no bank accounts of the Fund are overdrawn.

Fund not to be overdrawn.

28. The administrative costs of the Fund shall not exceed two percent of the latest audited financial statement of the Fund.

Administrative costs.

29. The administrator of the Fund may access any programme and project related data that the Administrator considers necessary for the performance of their functions under this Act.

Power of the administrator of the Fund to access information.

30. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board.

Corporation Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has at least ten years' experience in offering the services of a certified public secretary; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be responsible for—

- (a) providing guidance to the members of the Board on their duties, responsibilities and powers and how these should be exercised in the best interests of the Board;
- (b) ensuring that the procedures of the Board are followed and reviewed regularly, and that the members of the Board comply with written law;
- (c) assisting the Chairperson of the Board to organise the activities of the Board, including providing information, preparing agenda, issuing notices and preparing for meetings, conducting evaluations of the Board and development programmes of the Board;
- (d) providing secretarial services to the Board, including ensuring that the work plan of the Board is prepared and adhered to, circulating Board papers in advance of the meeting and keeping the record of attendance of the meetings;
- (e) ensuring that the minutes of the meetings of the Board and committees of the Board are promptly prepared and circulated;
- (f) keeping the members of the Board abreast of and informed on current governance practice;
- (g) keeping a record of conflicts of interest declared by each member of the Board; and
- (h) co-ordinating the governance audit process.

31. (1) The Board may appoint such members of staff as may be necessary for the proper discharge of the functions of the Board, on such terms and conditions of service as the Board may determine.

Staff of the Board.

(2) The staff of the Board shall be the secretariat of the Fund reporting to the Chief Executive Officer.

32. The Board may, by resolution generally or in any particular case, delegate to the administrator of the Fund, an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

Delegation of powers.

33. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except by the order of the Board.

The common seal.

(2) The common seal of the Board shall, when affixed to a document and is duly authenticated, be judicially and officially noticed, and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

PART IV— ROLE OF THE COUNTY GOVERNMENTS IN AFFORDABLE HOUSING

34. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

Establishment of County Rural and Urban Affordable Housing Committees.

(2) The County Committee shall consist of the following—

- (a) a non-executive chairperson who shall be nominated by the county governor;
- (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
- (c) three other persons who shall be nominated by the county governor, of whom—
 - (i) one shall be a representative of a registered association of traders operating in the county;
 - (ii) one shall be a representative of a registered residential association; in the county;

(iii) one shall be a member of the public residing within the county; and

(d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2) (a) and subsection (2) (d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) ensure that ethnic minorities within the county are adequately represented; and
- (c) consider marginalized groups including youth and persons with disability.

(5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

35. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

Qualifications for appointment.

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
- (c) has resided in the county for a period of not less than five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;

- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

36. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.

Tenure of office.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

37. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Remuneration of the County Committee members.

38. (1) The conduct of affairs and business of the County Committee shall be in accordance with the Second Schedule to this Act.

Conduct of affairs and business of the County Committee.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

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*Affordable Housing***No. 2****39.** The County Committee shall—Functions of the
County
Committee.

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Cap 303, Laws of
Kenya.**40.** Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.County
legislation.**PART V—IMPLEMENTATION OF THE
AFFORDABLE HOUSING****41.** (1) The provisions of the Land Act shall, subject to subsection (2), apply to the allocation of public land for the implementation of the affordable housing scheme and development of institutional housing scheme.Allocation of
land.

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(2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner, carried out public participation and stakeholder engagement with the affected community within the county.

42. (1) The Board may appoint a national government agency to develop affordable housing units and the associated social and physical infrastructure.Agreement with
national
government
agency.

(2) Subject to the Public Finance Management Act, 2012, the Board may disburse such monies to the national government agency for the performance of the functions under subsection (1).

43. The Board may enter into an agreement with a public institution for—

Agreement for institutional housing.

- (a) the development of institutional housing units; and
- (b) the repayment of the monies paid out of the Fund for the development of the institutional housing units.

44. (1) The Board may enter into an agreement with a private institution—

Agreement with private institutions and persons.

- (a) to develop and construct affordable housing units and associated social and physical infrastructure; and
- (b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

45. (1) The Board may enter into an agreement with any approved institution or mortgage scheme to provide financing for the off-take of affordable housing units.

Agreement for financing.

(2) Subject to the Public Finance management Act, 2012, the Fund may disburse such monies to the approved institution as may be necessary for the performance of the function under subsection (1).

46. In the development of affordable housing units, the Board shall—

Community support.

- (a) as far as possible ensure locally available materials are used;
- (b) ensure labour is sourced from the local communities;

- (c) where a project is near a university or technical vocational institution ensure that the students get internships or practical experience from the projects where affordable housing projects are carried out.

47. The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement, —

Priority of ownership for slum residents.

- (a) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project;
- (b) put in place a mechanism for the resettlement of the residents; and
- (c) offer to the residents in that settlement, the first right of purchase of a unit in the project.

**PART VI—ELIGIBILITY CRITERIA AND
APPLICATION PROCEDURE FOR AFFORDABLE
HOUSING UNIT**

48. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

Eligibility criteria.

(2) In this section, a person means a natural person.

49. (1) A person who meets the criteria set out under section 48 and desires to be allocated an affordable housing unit, shall make an application to the Board in the specified manner.

Application for allocation of affordable housing unit.

(2) An application made under subsection (1) shall be accompanied by—

- (a) proof of requisite deposit as may be prescribed by the Cabinet Secretary;
- (b) a copy of the national identity card or such other form of identification as may be prescribed by the Cabinet Secretary;
- (c) copy of incorporation certificate in the case of a body corporate;
- (d) a copy of Kenya Revenue Authority personal identification number certificate and tax compliance certificate; and

(e) such other information as may be determined by the Board.

(3) In determining the allocation of an affordable housing unit under this section, the Board shall give preference to marginalised persons, vulnerable groups, youth, women and persons with disabilities.

50. (1) The Board may off-take affordable housing units under an affordable housing scheme if the affordable housing scheme—

Off-taking of affordable housing units.

- (a) has been approved by the Board;
- (b) meets policy and statutory requirements; and
- (c) meets any other criteria or conditions set by the Board.

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

51. The interest rate or administration fee for a loan issued under this Act, where applicable, shall be payable on a reducing balance at such rate as may be prescribed by the Cabinet Secretary.

Loan interest rate.

52. (1) An eligible person may make voluntary savings with the Fund for purposes of raising a deposit towards the allocation of an affordable housing unit.

Voluntary savings.

(2) An administrator of the Fund shall open separate bank account where voluntary savings shall be kept and any interest arising from investment of voluntary savings shall be credited to this account.

(3) The administrator of the Fund shall issue an account number to each person making a voluntary saving.

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

- (a) may withdraw their savings by issuing ninety days' written notice to the agency for refund with any accrued interest; or
- (b) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit.

(5) An application in subsection (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

PART VII – OWNERSHIP OF AFFORDABLE HOUSING UNITS

53. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

Issuance of a certificate of ownership.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

Cap. 286.

54. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

Restrictions to owners of affordable housing unit.

PART VIII – FINANCIAL PROVISIONS

55. (1) The administrator of the Fund shall cause to be kept proper books and records of account of the income, expenditure and assets of the Fund.

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the administrator of the Fund shall submit to the Auditor-General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and

- (b) a statement of the assets and liabilities of the Fund on the last day of that year.
- (3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

PART IX— MISCELLANEOUS PROVISIONS

56. (1) A person commits an offence if the person misappropriated any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act.

Misappropriation of funds of the Fund.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction—

- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and
 - (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.
- (3) The mandatory fine referred to in subsection (2)(b) shall be determined as follows—
- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (2)(b);
 - (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

57. (1) A person commits an offence if the person—

Other offences.

- (a) fails to give information or gives inaccurate or misleading information or falsifies information or misrepresents information required under this Act;
- (b) having possession of, or control over, or access to any documents, information, returns or forms relating to applications or granting of loans, communicates anything contained therein—

- (i) to any person other than a person to whom they are authorized by the Board to communicate it; or
- (ii) otherwise than for the purposes of this Act.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction to a fine not exceeding ten million shillings or imprisonment of a term not exceeding five years, or to both.

58. No matter or thing done by any person under this Act shall, if the matter or thing is done in good faith and in accordance with the law, render that person personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

59. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for better carrying into effect the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this section may prescribe—

- (a) the criteria for exemptions granted under section 6;
- (b) criteria for eligibility of allocation of an affordable housing unit under section 48;
- (c) requisite deposit for the housing under section 49(2);
- (d) identification documents under section 49;
- (e) regulations under Part V;
- (f) the criteria for change of affordable housing unit;
- (g) the provisions on voluntary savings;
- (h) the provisions relating to off-take of affordable housing units;
- (i) the inclusivity and diversity within affordable housing schemes;
- (j) the application and integration of technology-based platforms in the administration and management of affordable housing schemes;

- (k) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;
- (l) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
- (m) the interest rate or administration fee for a loan issued under section 51; and
- (n) criteria for eligibility of allocation of a low interest mortgage under section 52.

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

(4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

60. (1) The Acts specified in the first column of the Third Schedule are amended in the manner specified in the second column.

Consequential amendment and transition.

(2) Any payment made or action taken under the sections repealed under subsection (1) shall be deemed to have been paid or taken under this Act.

(3) Any commitment or obligation on the National government on affordable housing which have arisen or made in accordance with an Act of Parliament shall be deemed to be a commitment or obligation made under this Act.

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

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Affordable Housing

No. 2

61. (1) All regulations in force immediately before the commencement of this Act and applicable to affordable housing and voluntary contributions are hereby revoked.

Revocation of
affordable
Housing Fund
Regulations.

(2) All monies which immediately before the commencement of this Act, that were held by the National Housing Corporation under the Housing Fund Regulations, 2018 shall vest in the Fund and shall be deposited into the Fund.

(3) The National Housing Corporation shall account for and give a record of all contributions made under the Housing Fund Regulations, 2018.

(4) The administrator of the Fund shall notify the contributors and create an account for each contributor.

FIRST SCHEDULE*(ss. 11(2) and (6), 15(1)(d))***LIST OF AGENCIES FOR IMPLEMENTING THE AFFORDABLE HOUSING PROGRAMMES AND PROJECTS**

1. County governments.
2. National Housing Corporation.
3. The Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund established under the Government Financial Management (Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund) Regulations, 2006.
4. State Department responsible for matters relating to affordable housing.
5. National Social Security Fund.
6. National Construction Authority.
7. State Department responsible for matters relating to Public Works.
8. The private sector agencies as may be approved by the Board to support affordable housing and institutional housing.

SECOND SCHEDULE*(ss. 21(1), 38(1))***CONDUCT OF AFFAIRS AND BUSINESS OF THE BOARD**

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

Meetings.

(2) The notice for a meeting of the Board shall be in writing, and shall be for a period of at least seven days from the expected day of the meeting.

(3) The Chairperson of the Board shall preside over all meetings of the Board and in the absence of the Chairperson, a person designated by members of the Board present at a meeting shall preside.

(4) The Chairperson of the Board may, on the written request made by majority of the members of the Board and within seven days of the request, convene an extraordinary meeting of the Board at such time and place as the Chairperson may appoint.

(5) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

2. The quorum for the conduct of business at a meeting of the Board shall be majority of the total members of the Board.

Quorum.

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding shall have a casting vote.

Decisions of the Board.

THIRD SCHEDULE*(s. 60(1))***CONSEQUENTIAL AMENDMENTS**

ACT	SECTION	AMENDMENTS
The Employment Act (No. 11 of 2007)	S. 31B	Repeal
	s. 31C	Repeal
The Income Tax Act (Cap. 470)	s. 15 (2)	Insert the following new paragraph immediately after paragraph (g)— (ga) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5 (b) of the Affordable Housing Act, 2024
	s. 30A	Insert the following subsection immediately after sub-section (1)— (1A) A resident individual who proves that in a year of income, the individual paid the affordable housing levy, shall for that year of income be entitled to the affordable housing relief
	Third Schedule, paragraph 9	Delete the word “three” and substitute therefor with the words one point five”
The Kenya Revenue Act (No. 2 of 1995)	First Schedule, Part II	Insert the following paragraph immediately after paragraph 14; “15. The Affordable Housing Act, 2024”