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MARSABIT COUNTY ACTS, 2016

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THE MARSABIT COUNTY TOURISM ACT, 2016

No. 8 of 2016

Date of Assent; 28th October, 2016

Date of Commencement; 18th November, 2016

AN ACT of the County Assembly of Marsabit to provide for development, management, marketing and regulation of sustainable local tourism and for connected purposes

ENACTED by the County Assembly of Marsabit, as follows—

PART I—PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Marsabit County Tourism Act, 2016 and shall come into operation upon expiry of fourteen days from the date of publication.

Interpretation

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

“county” means the County Government of Marsabit;

“executive committee member” means the County Executive Member for the time being responsible for matters relating to tourism;

“responsible tourism” includes tourism which—

- (a) seeks to avoid negative economic, environmental and social impacts;
- (b) generates greater economic benefits for local people and enhances the well-being of host communities;
- (c) involves local people in decisions that affect their lives;
- (d) provides enjoyable experiences for tourists through meaningful connections with local people and a greater understanding of local cultural, social and environmental issues;
- (e) provides access for physically challenged people; and
- (f) is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence.

“Tourism Activities” has the meaning assigned by section 2 of the Tourism Act ;

"tourism area" means an area designated as a Tourism Area under section 6;

"unit" means the Tourism Administrative and Licensing Unit established under section 4 of this Act;

Objects of the Act

3. The Objects of this Act is to—

- (a) ensure the National Government policy on the promotion, management and marketing of tourisms is implemented at the county level;
- (b) provide for the promotion and regulation of tourism activities in the county;
- (c) promote the practice of responsible and sustainable tourism;
- (d) Provide a platform for tapping of unexploited tourism products and services in the county; and
- (e) Provide for the effective domestic, national and International marketing of the county as a tourist destination of choice.

PART II—ESTABLISHMENT OF TOURISM UNIT AND MANAGEMENT INSTITUTIONS

Establishment of Tourism Regulatory and Licensing Unit

4. (1) There is established a unit to be known as the Tourism Administrative and Licensing Unit which is an entity within the department of tourism headed by the County Executive Committee Member for the time being responsible for matters relating to tourism and who shall discharge its functions in accordance with the provisions of this act and any other written laws.

Composition of the Unit

(2) The Unit shall comprise of—

- (a) The County Executive Member who shall be the head of the unit;
- (b) The Chief Officer; and
- (c) The departments or offices of the unit responsible for tourism matters.

Functions of the Unit

(3) The functions of the unit shall be to—

- (a) Implement national tourism policies, strategies and programs;

- (b) Develop and implement county tourism development plans, programs and projects;
- (c) Co-ordinate and facilitate the management and control county specific tourism activities;
- (d) Develop partnerships between county governments and other stakeholders in tourism matters;
- (e) Develop community based tourism projects and programs;
- (f) Develop programs for attraction of tourism investment in the country;
- (g) Implement the provisions of the tourism act and any other laws relating to tourism in the county;
- (h) Render technical support to county based entities engaged in tourism activities and services;
- (i) Solicit for funds for development of tourism facilities in the county;
- (j) Sensitization of communities on conservation of tourism attractions within the county; and
- (k) Collection and compilation of tourism information and data in the county.

Formulation of County Tourism Strategy

5. (1) The Executive Committee Member shall, formulate and publish in the *Gazette* a County Tourism Strategy at least once every ten years, in accordance with which the local tourism sector shall be developed, managed, marketed and regulated.

(2) The County Tourism Strategy shall prescribe the principles, objectives, standards, indicators, procedures and incentives for the development, management and marketing of sustainable tourism and shall, in particular prescribe—

- (a) for the packaging of niche tourism products and services;
- (b) standards for tourism local area development plans;
- (c) measures to facilitate and enhance local tourism taking cognizance of the national government's strategies;
- (d) priority areas for tourism development, capacity building and training;

- (e) innovative schemes, incentives and ethics to be applied in the development and marketing of sustainable local tourism, including public private partnerships;
- (f) clear targets indicating projection in tourism growth over the next five years;
- (g) county tourism research and monitoring priorities and information systems, including—
 - (i) collection and management of tourism data and information;
 - (ii) intelligence gathering;
 - (iii) procedures for gathering tourism data and the analysis and dissemination of tourism information; and
 - (iv) tourism management information systems;
- (h) measures necessary to ensure equitable sharing of benefits in the tourism sector;
 - (i) adaptation and mitigation measures to avert adverse impacts of climate change on tourism and tourism products and services;
- (j) reflect regional co-operation and common approaches in tourism development, marketing and regulation; and
- (k) any other matter that the Executive Committee Member in charge of tourism affairs considers necessary to enhance sustainable tourism in the county.

(3) The Executive Committee Member shall periodically review the County Tourism Strategy and may, by notice in the gazette, publish a revised county tourism strategy

(4) The Executive Committee Member and all relevant public bodies shall, when exercising or performing any statutory function, take into account and give effect to the County Tourism Strategy

(5) The Executive Committee Member shall, when formulating a County Tourism Strategy under subsection (1), consult the public in accordance with the County Government Act and other written laws.

PART III—TOURISM AREAS

Designating Tourism Areas

6. (1) The Executive Committee Member may by notice in the *County Gazette* designate tourism Areas in consultation with the Cabinet Secretary responsible for tourism at the national level.

(2) An area contemplated for designation in section 6(1) is considered if the area has—

- (a) historical and cultural significance;
- (b) environmental beauty;
- (c) existing or potential leisure facilities within its bounds or at reasonable distance;
- (d) sufficient in size capable of being utilized for bringing in new investments in tourism establishments and
- (e) Strategic location for the development of tourism activities.

(3) The County Executive Member for the time being responsible for tourism shall make regulations on access and tourism activities in the designated areas.

Tourism Enterprises

7. (1) The unit may classify tourist enterprises in accordance with specification prescribed in the First Schedule to this Act.

(2) A license to carry any of the categories of tourist enterprise shall not entitle the holder thereof to carry any other category.

PART IV—TOURISM LICENSING

Requirement for License

8. (1) Any person wishing to carry on a tourist enterprise shall apply for a license to the administrative and licensing unit in form specified in the Regulations.

(2) A person seeking a license or any variation of a license held by him shall apply to the unit in such manner and form as may be prescribed under this Act.

(3) In granting the license, the unit shall be mindful of the interests of tourism industry as a whole and applicant's ability to provide and maintain service applied for.

- (4) The license shall be—
 - (a) granted on payment of such fee as may be prescribed by the administrative and licensing unit;
 - (b) issued for such period as may be prescribed in the Regulations; and
 - (c) renewed with same or adjusted terms upon payment of the prescribed fees.

- (5) Where the application for renewal specified in paragraph (c) is made in good time, the enterprise may continue to operate until the license is renewed or otherwise as the case may be.

Application for Amendment of License

9. (1) An application for amendment of a license issued, or for its transfer from a business entity to another shall be dealt with in the same manner as application for original application for a license.

(2) A notice on the license amendment or transfer shall be published in the *County Gazette*.

Transfer of License

10. (1) A license issued under this Act may be transferred by the holder to another person only in respect of the tourism activity or service in relation to which that license was issued.

(2) Where a license is transferred under this section, the person to whom it is transferred and the person transferring it shall jointly notify the unit in writing of the transfer within thirty days after the transfer.

(3) Where no joint notification of a transfer is given in accordance with subsection (2), the license shall be deemed not to have been transferred.

(4) A transfer of a license under this section shall take effect on the date the Unit is notified of that transfer.

(5) A person who contravenes the provisions of this section commits an offence.

Suspension of License

11. The unit may, suspend a license issued under this Act where—

- (a) a licensee is being investigated in relation to an offence under this Act;
- (b) an allegation of misconduct has been made against a licensee;
- (c) the licensee made a false declaration in the application for the license; or
- (d) a licensee has contravened a provision of this Act.

Cancellation of License Issued

12. The unit may cancel issued under this part, where the enterprise, or the owner or person in charge thereof is convicted of an offence under this Act and regulations made, or of any other offence involving dishonesty in connection with the operation of the tourism enterprise.

Appeals on Grant of Licenses

13. (1) Any person aggrieved by any decision of the Tourism Unit in matters relating to issue, renew, amendment or cancellation of a license may within 30 days appeal against the decision of the Tourism Board to the courts.

(2) Upon receipt of an appeal under subsection (1), the courts shall cause such investigation into the matter and may, during such investigation, permit the enterprise to operate or continue to operate, subject to conditions which may be imposed.

(3) After such investigation, the courts may uphold, reverse, amend it or make such other decision as considered proper in the circumstances.

(4) Where subject to appeal there is decision of cancellation of a license, the County Executive Committee Member may permit the enterprise a period of up to six months to wind up the enterprise.

PART V—OFFENCES AND PENALTIES

Offence on Licenses

14. (1) No person shall carry out any tourist enterprise other than in accordance with terms and conditions of a license issued.

(2) For the purpose of subsection (1), the carrying of a tourist enterprise includes negotiating, soliciting, canvassing or accepting business for the enterprise and engaging in correspondence with a person who may become a customer of the enterprise, or with an agent of such person, concerning the business of that enterprise.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of two hundred thousand shillings or to imprisonment for a term not exceeding six months or both on conviction.

General Offences and Penalty

15. Any person who—

- (a) knowingly publishes, or causes to be published, any false or misleading information in connection with or in respect of any tourist enterprise;
- (b) fraudulently gives false information to the administrative and licensing unit for the purpose of obtaining a license which would otherwise not be entitled;

- (c) hinders or obstructs an officer of the administrative and licensing unit authorized, or refuses without sufficient reason to the officer in the performance of duties, under this Act;
- (d) contravenes or fails to comply with any provision of this Act or any regulations made there under, with which it is his duty to comply, and for which a penalty has not been provided for elsewhere in the Act shall be guilty of an offence and shall be liable to a fine of not exceeding two hundred thousand shillings or to imprisonment for a period of up to six months or both.

PART VI—GENERAL PROVISIONS

Miss Tourism

16. (1) There may be organized an annual Miss tourism contest in the county.

(2) The holder of Miss Tourism post would be entitled to an honoraria and other benefits as the administrative and licensing unit may determine.

(3) The County Executive Committee Member for the time being responsible for matters relating to tourism may on his own motion or on the recommendation of tourism agencies make Regulations prescribing the rights and benefits of Miss Tourism.

Public Participation

17. In making decisions under the Act, there should be sustained efforts in incorporating the views of the people.

Regulations

18. The County Executive Member shall make Regulations to establish tourism area and all other matters required by this Act or which are necessary for the better carrying out of, or giving effect to the provisions of this Act.

Application of the Tourism Act No. 28 of 2011

19. The provisions of National Legislation Tourism Act shall be applicable in the county.

SCHEDULE I
TOURIST ENTERPRISE

(Section 6)

Categories of Tourism Enterprises

A - Operations that offer facilities only on site, such as hotels, motels, guest houses and apartments.

B- Operations that offer facilities on and off site, such as tourist camps, lodges, caravans, and tented tourist camps, which also operate tours which require the services of professional guides.

C- Operations that offer facilities off site only, such as safari or tour operators and any enterprise that receives and transports travellers and guests, providing them with sleeping accommodation and food and beverages in equipment that is not geographically fixed.

D - Operations that act as agents only, such as travel agents.