

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF MOMBASA

**DEPARTMENT OF TOURISM, CULTURE AND TRADE
DEVELOPMENT**

**MOMBASA COUNTY MARKET AREA MANAGEMENT
POLICY**

JANUARY 2024

EXECUTIVE SUMMARY

Efficiency in trade operations is a crucial driver for economic growth and development. Well-developed market infrastructures and networks as well as harmonious and orderly market operations contribute towards increasing the efficiency of trade operations. The Mombasa County Department of Trade Tourism and Culture, Directorate of Trade is mandated with the role of trade promotion and regulation. The Directorate has developed and manages a total of 17 markets. In addition to the 17 markets, there are several other undeveloped and unmapped markets sites spread across the county.

The management of the active markets and the mapping and development of the new markets sites has not been without its share of challenges, with the most significant one being the lack of a legal framework and clear plans and procedures to guide market operations. This policy aims at addressing this among the many other challenges that hinder efficiency in market operation. This will be done through the identification of the major challenges facing the trade and markets sectors within the county, an analysis of the strength and opportunities that the county can leverage on to achieve its objectives as well as the weaknesses and threats that might hinder the attainment of these goals. The identification of this issues will make it possible to develop clear strategies aimed at addressing them. The policy will also provide the legal and institutional base for addressing these issues as well a framework for monitoring, evaluating and reviewing it.

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ABBREVIATIONS AND ACRONYMS

ADP- Annual Development Plan

ADR- Alternative Dispute Resolutions

CEC- County Executive Committee

CIDP- County Integrated Development Plan

CO- Chief Officer

CSO- Community Service Organizations

EACC- Ethic and Anti-Corruption Commission

EXCOM- Executive Committee Member

FSDS- Food, Supply, and Distribution System

KPLC- Kenya Power and Lighting Company

KLRC- Kenya Law Reform Commission

MEAL- Monitoring, Evaluation, Accountability, and Learning

NEMA- National Environment Management Authority

PPP- Public Private Partnership

SWOT- Strengths, Weaknesses, Opportunities, and Threats

TOR- Terms of Reference

CHAPTER ONE: BACKGROUND

1.1 Background and Rationale

Mombasa is a coastal city located in the South-Eastern part of the Coastal region of Kenya, which is 200 nautical miles inside the Indian Ocean. The County is the home of second largest city in Kenya and borders Kilifi County to the North, Kwale County to the South-West and the Indian Ocean to the East. The city serves as the headquarters of Mombasa County. The main industries that provide employment opportunities to the people of Mombasa include manufacture and processing, the Port of Mombasa, Kenya Ferry Services, Container Freight Terminals, and expansive hotels. Mombasa city being an ancient town, hosts several tourist attractions and world heritage sites. Of significant mention is the historic Fort Jesus Museum which is a UNESCO World Heritage site.

Mombasa has a cosmopolitan population, with the Swahili people and Mijikenda predominant. Other communities include the Akamba and Taita Bantus as well as a significant population of Luo, Luhya, Gusii and Kikuyu. The major religions practiced in the city are Christianity and Islam. Over the centuries, many immigrants and traders have settled in Mombasa, particularly from the Middle East and South Asia.

Mombasa County is an island connected to the mainland by bridges and ferries. Consequently, the county provides ferry services to serve its population which links the Mombasa Island to Likoni and subsequently to Kwale, and Tanzania through the Lunga-Lunga Border. The county has an important Standard-Gauge Railway (SGR), country's largest infrastructure project since independence that connects city of Mombasa with Nairobi City. In June 2017, the SGR's first fare-paying passengers boarded the "Madaraka Express" which was celebrated across the country. The SGR services serve an average of 1 million passengers and 10 million tons for cargo per year. The County has one international airport, the Moi International which is the second largest in Kenya and is used by both domestic and international flights. The airport is essential in the promotion of tourism and provides investment opportunities in the coastal region.

The County has a total of 17 Markets within the 30 wards having major markets at the sub-county headquarters and along major roads. Mombasa town which is the County headquarters is home to many markets and a home of the major challenges being experienced in markets management.

There are lands spaces set aside and designated as market areas where market facilities have been and continue to be constructed to provide traders with conducive trading environment. The markets were previously managed by the defunct local authorities; Municipal Councils and Town Councils, the by-laws that were used to manage the markets are now obsolete and there is need to develop a new legal framework to regulate the markets.

The County Markets needs to be orderly, neat and well organized. This would attract more customers as well as investors in the sector. Restraining traders from encroaching the streets would make the town more systemic and attract more investors in Mombasa town. The business premises would also get higher tenants occupancy.

1.2 Purpose and Scope of the Policy

This policy seeks to implement section 7 of part 2 of the Fourth schedule of the constitution which devolved the function of trade development and regulation including markets. It is informed by the need for a strategic approach to address the challenges in Mombasa County with regard to Market Management.

The County Government of Mombasa acknowledges that, markets provide for the needs of the community, ranging from the provision of fresh food to goods and services. We further recognize the potential contribution of markets to community life and local economies. Markets can complement the offerings of local businesses and provide opportunities for emerging enterprises. This policy covers all the Markets set up within Mombasa County and seeks to address the gaps that exist in legal framework and will streamline the management of market areas in Mombasa County to secure an organized and orderly business environment. The county hopes to develop and groom quality markets in the County that will be renown and attract traders and customers internationally.

1.3 Objectives of the Policy

The aim of this policy is to ensure there is a legal framework to guide Mombasa County to establish, refurbish, renovate, maintain, manage, and regulate public markets. The policy further seeks to promote enterprises and industries in the county through provision of trading spaces and managing the trading spaces.

The broad objectives of this policy are;

- To establish a Directorate in-charge of the Markets

- To create an assessment framework for markets development planning purposes.
- To Mobilize Resources to ensure effective market management in Mombasa County.
- To establish market spaces allocation, ownership terms and transfers framework
- To develop a sample market by-law to be customised for adoption by all markets
- To establish legal framework for establishment of market committees
- To establish a market dispute resolution mechanism
- To regulate trade in the market
- To establish offences and penalties for non-compliance with the market policy
- To develop legislative framework for effective Market Management.
- To develop Market infrastructure and amenities management system
- To hold stakeholder's engagement on environmental impact
- To integrate market safety practices into the county health and safety policies and laws
- To establish Transparency and accountability culture in the markets
- To develop dispute resolution mechanism
- To develop enforcement mechanisms in market revenue collection

1.4 Policy Development Process

The Mombasa Market Policy development was led by the Department of Trade, Tourism and Culture. Extensive consultations were held with all stakeholders and 17 market sector heads.

The formulation of this policy has been designed to address the major needs, challenges and opportunities with regards to Market Management. The policy is aimed to birth the market bill as the main legal framework for market management matters.

CHAPTER TWO: SITUATION ANALYSIS

2.1 Overview

The trade sector is crucial component for the growth of the local economy as it touches the lives of different players at different levels. Mombasa County has approximately 17 active and developed markets that are spread across the 6 sub-counties and many other undeveloped sites that have been set aside for markets. The management and development of these markets is the mandate of the Department of Trade, Tourism, and Culture. However, the County of Mombasa does not have an existing legal framework on markets thus the challenge of settling issues related to management and development of the markets.

Markets need harmonization in their operations for uniformity and rule of law to be upheld. Notably, there is political goodwill both from the County Executive Committee and from the County Assembly Sectoral Committee within the trade sector to ensure effective market management as a way of fostering growth within the county. In addition, majority of the traders in the county are organized in groups with governance structures. Moreover, the county has established modern markets and a land bank to construct more modern markets to accommodate all traders. However, the county continues to face a number of challenges, which are a great impediment to market development. A SWOT analysis of the current situation will contribute significantly towards identifying the strength and opportunities that the county can leverage on to achieve its objectives as well as the weaknesses and threats that might hinder the attainment of these goals.

Strengths	Weaknesses
<ul style="list-style-type: none">• Existence of already developed market spaces and infrastructure• Existence of land set aside for more expansion and development of markets• Availability of an established and staffed department in charge markets• Availability of a budgetary provision for market development and management• Existence of well-organized traders and market management committees•	<ul style="list-style-type: none">• Insufficient budgetary allocation relative to the markets needs and bills• Inadequate staffing to manage all the county markets• Lack of proper measures and ways to tracks and manage market utility bills• Lack of a legal backing for market management activities• Low adoption of technology in the management of markets

	<ul style="list-style-type: none"> • Lack of enforcement officers within the department
Opportunities	Threats
<ul style="list-style-type: none"> • Political goodwill from both the executive and the county assembly to foster the growth of markets • More funds can be availed for market management with sufficient lobbying • There is a high potential for public-private partnerships within the trade sector • 	<ul style="list-style-type: none"> • Political interference in management of markets • Lack of synergy and cooperation between the Department of Trade and other concerned departments on matters involving market management • Competition from upcoming private markets • Encroachment by traders in undesignated trading areas poses a significant threat to the already developed markets • Poorly located market spaces hence making them unfavorable for traders to occupy and conduct their business • Corruption and grabbing of land set aside for markets

CHAPTER THREE: CHALLENGES TO BE ADDRESSED

3.1 Lack of legal Framework for Market Management.

The county does not have any legal framework and this is quite an Impediment to ensure there is a guideline in market development planning. This will ensure feasibility studies are done and projects are prioritized on need basis.

Market spaces allocation, utilization, ownership and transfer of market stalls is done though in unsystematic way. Developing a legal guide would harmonize the process of allocation, utilization, ownership, and transfers. This would provide a legal backing for the county even on the litigation cases in court and solving other disputes.

Market management committees implement the Markets by-laws while managing the markets. This policy will legalize the market management committees and issue a sample by-law that will be customized to the needs of different markets. The committees will be legally constituted and their decisions cannot be challenged if they operate within the provisions of the law. This will also eliminate biasness and self-centered decisions that led to high number of complaints.

The legal framework will give a guide in dispute resolution procedures and the appeal of decisions made. Currently decisions are made on the officer's judgement and we can only hope fairness and equity will be upheld. Uniformity will apply in cases and there will be higher levels of satisfaction with complainants and the procedure will be well documented.

Trade regulation and compliance enforcement to existing laws has been a big challenge as enforcement procedures and role is not provided in any legal framework. The implementers risk being prosecuted. This leaves the markets lawless and disorderly, a problem we hope to solve.

The county market utility bills are very high because of misuse of water and electricity. This policy seeks to provide for market utilities management and increasing accountability and responsibility of market users to efficiently utilize the available resources and come up with some cost-sharing plan. Common amenities like ablution and sanitation blocks are poorly managed and we seek to establish a plan to manage them.

The county further requires to establish a director in charge of markets so that it can vest powers to a certain office or officer. In dispute resolution, in allocation of market space and in litigation matters in relation to markets.

3.2 Budgetary Constraints to Finance the Development, Refurbishment and Maintenance of Market Infrastructure in Mombasa County.

The County Government of Mombasa is committed to the setting up of adequate markets to meet the demands of the residents of Mombasa . Unfortunately, the cost of setting up new markets and management of existing markets is very expensive. There is need for the county to invent innovative ways to attempt to address the challenge of setting up of markets in the County through strategic partnerships and also setting up market fund for operation and maintenance of market.

3.3 Absence Of an Assessment Framework for The Approval of Market Site Applications and Market Proposals.

The County Government of Mombasa through the defunct Mombasa Municipal approved and allocated market developers permission to construct and operate markets in the council land unfortunately because there was no laid down guidelines and legal framework the developers took advantage and build commercial and residential houses on land set out for market purpose. There is need to elaborate to each market user the duty to maintain and proper utilize markets sites.

3.4 High Environmental Impact by Market's Operators on The Environment and Congestion of Markets in Mombasa County.

Unfortunately, all economic activities have environmental consequences. There is need to control pollution within the markets within Mombasa County. All market users must be sensitized on the proper use of market spaces to ensure minimal damage to the environment.

Market Operators within the county must ensure ease of access and decongestion by ensuring that the standard number of users in the market is maintained. Market Operators are responsible for site accessibility, safety of crowd movements and compliance.

3.5 Absence Of County Health and Safety Practices to Rectify Hazards and Problems Affecting the Market.

Market Operators are responsible for ensuring all stallholders involved in the preparation, sale, or provision of food comply with the provisions of Food Safety in Kenya. Market Operators must also ensure stallholders hold Food Premises permits and comply with permit conditions. There is no structured way to ensure this within Mombasa County. There is need to ensure continuous inspection of

the market by authorities in the markets at any time to ensure public health and safety.

Notably, the County markets in Mombasa suffer greatly from low hygiene standards. Moreover, there is no clear framework for disasters management and preparedness for both natural and manmade disasters. Consequently, because there is limited storage facilities and overcrowding, disasters have been on the rise.

3.6 Limited Revenue Fees and User Charges to Adequately Maintain the Markets in Mombasa.

The county of Mombasa has a schedule for fees for markets through the County Finance Bill. Commercial Market Operators pay a commercial fee. Market land use fees are important to ensure the county has revenue to maintain the markets. There is need for county to review their fees and charges to match current market rates to enable the directorate carry out its functions.

3.7 Poor Market Infrastructure and Amenities Management System

Market infrastructures, facilities, and services are essential elements of the food supply and distribution system (FSDS). These must be properly planned, maintained, managed, and developed to accommodate the rapidly increasing food quantities. There is growing awareness of the need for the county Government of Mombasa to take on a proactive and coordinating role in the development of sustainable market infrastructure in the county. There is need to provide for essential amenities within the county such as adequate water, electricity and toiletry services to ensure proper management of the markets.

3.8 Corrupt Practices

The communities have taken a culture of bribery, treating, undue influence, personation, and aiding, abetting, counseling, and procuring personation. This hinders revenue collection, interferes with market space allocation, and service delivery in the markets.

The County government will consult the community on issues related to markets and ensure participation in establishing policies and structures to eliminate corrupt practices. This will mainly through civic education, open forums to get feedback and public participation while initiating projects and programs. This will help in building a new culture that will drive out corruption in all markets operations. Feedback and evaluation can be conducted and key indicators will

be rise in revenue from the market, reduced number of corruption reported cases, reduced number complaints and rise in customer satisfaction.

3.9 Laws That Support Corrupt Practices Eradication

There no laws or policies that directly state what happens when the market users or traders are involved in corrupt practices. Punitive provisions will discourage the corrupt practices and finally a new corruption free culture shall be adopted. There should be procedures of reporting Staff engaging in corrupt practices with anonymity and the staff code of conduct takes up the case. This can be done through civic education, provision of corruption reporting help/hotline that are toll free, provide physical drop boxes in market areas.

3.10 Lack Of Dispute Resolution Mechanisms

There are no clear dispute resolution procedures and mechanisms. Uniformity in handling cases is key to ensure customer satisfaction and reduce customer compliant. Having policy guidelines on how to handle specific issues, process of reporting and procedures for handling compliant will ensure improved customer service and satisfaction.

CHAPTER FOUR: LEGAL AND INSTITUTIONAL FRAMEWORK

4.1 Overview

The County Government of Mombasa is committed to ensuring effective Market Area Management. To give effect to this policy, a legislative framework will be developed to streamline and institutionalise mechanisms and procedures for effective market area management.

This policy aims at providing a broad and overarching legal framework for development of key policies, strategies and legislative documents, which include:

- Development of markets infrastructure
- Assessment and approval of market sites and spaces
- Environmental impact risk assessment and mitigation
- Safety practices in the market
- Revenue collection and maximization and enforcement
- Market infrastructure and amenities management
- Corruption elimination in the markets

The laws affecting markets, which include;

- ❖ Mombasa Finance policy and Laws
- ❖ Land policy
- ❖ Public Health, safety and sanitation policy

This Policy establishes coherence with other policy documents and laws where possible its implementation plan will incorporate elements of these other strategies, policies and plans in order to ensure as much coherence as possible.

The market area management policy also becomes a point of reference for sectorial policies and strategies that will be developed in the future, to ensure that such policies and strategies are in harmony with the overall market management policy.

CHAPTER 5: STRATEGIES FOR POLICY IMPLEMENTATION

6.1 Overview

In response to the issues discussed in the earlier chapters, the following policy objectives and strategies have been identified. These policy objectives are as follows.

Objective 1: To Establish a Directorate In-Charge of The Markets

Strategies

1. Draft a Bill that establishes the Directorate in charge of markets and stipulates the powers of the office.
2. Deploy staff to serve in the Directorate
3. To equip the office for effective and efficient service delivery
4. Capacity build staff of the Directorate for effective implementation of the Act

Objective 2: To Create an Assessment Framework for Markets Development Planning Purposes.

Strategies

1. Map out all market sites in the county
2. Conduct a prefeasibility study for markets project development prioritization
3. To develop guidelines for markets models and structures standards
4. Draft guidelines for development of market sites

Objective 3: To Mobilize Resources to Ensure Effective Market Management in Mombasa County.

Strategies

1. Strengthen Strategic partnerships.
2. Mobilize adequate resources for the market sections through lobbying.
3. Create a fund for management of Markets.
4. Pursue funds from non-government agencies (Development partners)

Objective 4: To Establish Market Spaces Allocation, Ownership Terms and Transfers Framework

Strategies

1. Develop guidelines and procedures for market space allocation, ownership terms and transfers.
2. To develop utilization terms, ceases of ownership and impounding guidelines

Objective 5: To Develop a Sample Market By-Law to Be Customised for Adoption by All Markets

Strategies

1. Conduct a baseline survey and review existing market constitutions for market management needs identification
2. Conduct public participation for markets by-laws development
3. Draft a model market management by-law
4. Customise the market management by-law for all markets

Objective 6: To Establish Legal Framework for Establishment of Market Committees

Strategies

1. Draft a clause in the Bill that establishes the market management committees.
2. Develop guidelines for implementation in appointment and TOR for market management committees

Objective 7: To Establish a Market Dispute Resolution Mechanism

Strategies

1. Draft a clause in the Bill that addresses dispute resolution
2. Establish conflict resolution mechanism procedures
3. Create dispute resolution committee /tribunals

Objective 8: To Regulate Trade in The Market

Strategies

1. To implement and enforce the fair-trade practices law in the markets
2. To implement public health Act
3. protect existing markets from unfair competition
4. To develop guidelines for public market zoning

Objective 9: To Establish Offences and Penalties for Non-Compliance with The Market Policy

Strategies

1. Draft a clause in the Bill that stipulates the offences and penalties for non-compliance with the Bill and other laws
2. Develop guidelines for implementation of the clause

Objective 10: To Develop Legislative Framework for Effective Market Management.

Strategies

1. Develop markets management Act.
2. Develop regulation and guidelines on the market management.

Objective 11: To Develop Market Infrastructure and Amenities Management System

Strategies

1. To develop market utilities management system (bills for Water, electricity)
2. Establish waste management system
3. Provide necessary amenities in the market
4. Develop new and rehabilitating the existing markets
5. Develop guidelines on all market operations
6. Create guidelines for adoption by all market management committees

Objective 12: To Establish Transparency and Accountability Culture in The Markets

Strategies

1. Develop Corruption Risk management
2. Create whistle blowing framework
3. Develop avenues for reporting corruption cases

Objective 13: To Develop Enforcement Mechanisms in Market Revenue Collection

Strategies

1. To develop revenue collection maximization mechanism
2. To develop revenue default of payment enforcement procedures
3. To create revenue maximization Enforcement team

CHAPTER SIX: STAKEHOLDERS' RESPONSIBILITIES

7.1 Linkage with Stakeholders

The County Government of Mombasa continues to play the lead role in formulating strategic plans to implement this policy, building partnerships among stakeholders and ensuring availability of resources by enhancing the participatory partnership with investors, development partners, international agencies, CSOs, and other bodies. The contribution of these Stakeholders has been valuable and the County Government will continue to encourage this collaboration and partnerships for the purposes of realizing synergies, providing linkages, promoting trust, goodwill, and ownership among all stakeholders.

CHAPTER 7: TARGETED AUDIENCE AND THEIR ROLE AND OBLIGATIONS

1. The traders

Conduct business in the specified area

Adhere to the stipulated rules and regulations about market structure

Keep the workspace clean

2. Market Management Committee

To represent and protect open air market against unfair trade practices and illegal traders

To present the grievances of the traders to the necessary authority such as the county government and the national government

To maintain an updated list of traders operating within the markets.

3. Service providers

KPLC

Distribution of power in the market by ensuring that there is adequate line capacity to maintain supply and quality of electricity in all the markets

Water Suppliers (MOWASCO ETC)

Provide high quality water and sewerage services to the market traders

CHAPTER 8: MONITORING, EVALUATION, ACCOUNTABILITY AND LEARNING

The Monitoring, Evaluation, Accountability and Learning (MEAL) system adopted for this policy will be designed to provide feedback to stakeholders to ensure accountability, transparency, facilitate appropriate decisions on future implementation and review of the policy to ensure that the input, delivery, work schedules, and target outputs are progressing according to the plan.

The Department of Trade, Tourism, and Culture will undertake MEAL activities periodically and at the various phases.

This policy makes provisions for establishment of effective monitoring, evaluation, research, learning, and application to all programs. This policy stresses effective MEAL to ensure sustainable, transparency, accountability and professionalism at all levels.

The MEAL will also include:

- a) Quarterly review and assessment of the goals and strategic interventions
- b) Monthly review of activities and their time schedules of execution to ensure timely service delivery.
- c) Quarterly monitoring of activities and match outcome with the expected results in order to address the variations
- d) Annual review various tools and guidelines to ensure efficiency
- e) implementation and review of CIDP, ADP and annual work plan in the market management

CHAPTER NINE: POLICY REVIEW, TRANSITION AND POLICY IMPLEMENTATION

This policy will be reviewed every three (3) years or as need arises and its implementation monitored systematically due to the markets dynamism.

Existing structures and initiatives will remain in force and guidelines will be issued by Department of Trade, Tourism and Culture as and when need arises to operationalize this policy. Such guidelines shall take into consideration the principles of this policy. An appropriate legal framework shall be developed for the effective implementation of this policy.

CHAPTER TEN: CONCLUSION AND WAY FORWARD

The Department is committed to implement this policy and ensure all strategies are implemented. We are enthusiastic about the Bill development that will be used as the main reference law in market management.

