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MACHAKOS COUNTY ACTS, 2022

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THE MACHAKOS COUNTY CULTURAL HERITAGE ACT, 2022

No. 12 of 2022

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Date of Commencement: 3rd August, 2022

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THE MACHAKOS COUNTY CULTURAL HERITAGE ACT, 2022

AN ACT of the County Assembly of Machakos to provide for the promotion, protection, sustainable exploitation, and enjoyment of culture and cultural heritage in the County; to provide for the participation of people in the cultural life of their choice; to provide for the recognition of the diversity of cultures in the County; to provide for the establishment of the Machakos County Cultural Center and for connected purposes

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Machakos County Cultural Heritage Act, 2022.

Interpretation

2. In this Act, unless the context otherwise requires— “Authorized Officer” means an officer appointed under section 7;

“County” means Machakos County;

“County Assembly” means the County Assembly of Machakos;

“County Cultural Center” means the Machakos County Cultural Center established under section 8;

“cultural activities” means those activities which at the time are considered as a specific attribute, their use or purpose embody or convey cultural expressions, irrespective of the commercial value they may have;

“cultural diversity” means the manifold ways in which the cultures of groups and communities find expression which are passed on within and among the groups and communities;

“cultural expressions” means those expressions that result from the creativity of individuals, groups and communities and have symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities;

“cultural heritage” includes artefacts, monuments, buildings, museums, cultural activities, articles and sites that have a diversity of values including symbolic, historic, aesthetic, ethnological, anthropological, scientific or social significance;

and cultural heritage to promote inter- cultural respect and mutual benefits.

Application of this Act

4. This Act applies to cultural activities and heritage within the County and which have not been declared part of national heritage and which are not covered under the National Museums of Kenya.

PART II—ADMINISTRATION, PROTECTION AND REGULATION OF CULTURAL ACTIVITIES AND HERITAGE

Responsibilities of the County Government on Culture

5. (1) The County government shall promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication information, mass media, publications, libraries and other cultural heritage.

(2) The County government shall—

- (a) hold in trust for the communities in the County, any cultural articles and cultural sites not owned by an individual or organization;
- (b) protect cultural sites and historical monuments in the County and promote tourism in relation thereto;
- (c) promote and facilitate research and recording of cultural history and the archiving of historical records and artefacts;
- (d) participate, promote, develop and encourage different communities, groups and individuals in the County to participate in cultural expressions and activities within and outside the County including—
 - (i) performing arts;
 - (ii) traditional craftsmanship;
 - (iii) oral traditions and expressions including language as a vehicle of the intangible cultural heritage;
 - (iv) social practices, rituals and festive events; and
 - (v) knowledge and practices concerning nature and the universe.
- (e) facilitate, support and oversee the co-ordination of cultural activities within the County; conduct and facilitate civic education and public discussions to create awareness on

- (a) no person is compelled to participate in a cultural activity or perform, observe or undergo any cultural practice or rite without that person's choice;
- (b) the performance or enjoyment of any cultural activity by any individual or community does not prejudice the rights and fundamental freedoms of other people; and
- (c) cultural activities, practices, expressions or rites which undermine human dignity are discouraged.

Staff of the Department

7. The County Public Service Board, in consultation with the Executive Committee Member shall appoint such staff as may be necessary for the administration of this Act.

Establishment of cultural centres

8. (1) There is established the Machakos County Cultural Center.
- (2) The objectives of the County Cultural Center are to provide—
- (a) a theatre for the performance of music, dance and drama;
 - (b) a place for the exhibition of works of art and craft, and cultural artefacts;
 - (c) a stage for film shows of cultural, educational, developmental, hygienic or social importance to the community;
 - (d) a place to hold meetings to discuss matters of literary, historical, scientific or educational interest or importance; and
 - (e) such other use as the Department may approve.

(2) To achieve similar objectives as the County Cultural Center, the Department shall establish at least one cultural center at each Sub-County.

Determination of article of a cultural nature

9. (1) The Department may, where necessary, determine whether an article is an article of a cultural value taking into consideration its usage, historical significance and any other relevant matter.

(2) If an article is determined to be an article of a cultural value, the Department shall declare it to be an article protected under this Act.

Registration of a cultural article

11. The Department, in consultation with the recognized elders of a community in the County, may register the ownership of a cultural heritage article or activity.

Establishment of cultural industries

12. (1) The Department shall encourage communities to establish cultural industries of the copyrighted articles or activities for the purpose of creating employment and other benefits for the community and where possible, provide financial support to ensure the establishment of the industry.

(2) The cultural articles produced by any industry established under subsection (1) shall be provided in the open market by the community.

Declaration of a cultural site

13. (1) The Executive Committee Member may, after consultation with the Department and after taking into consideration the usage, historical significance and other relevant matters relating to a site, declare any site to be a cultural site protected under this Act.

(2) The Executive Committee Member may enter into a written agreement with any person, State organ, local community or organisation—

(a) to provide for the management and maintenance of a cultural site; and

(b) to regulate and control human activities within a cultural site.

Protection of cultural sites

14. (1) The Department shall take such measures as may be necessary to protect any cultural site which may be endangered including—

(a) purchasing or registering of the site;

(b) licensing of persons or organisations dealing with the sites;

(c) temporary closing an endangered site for a given period; and

(d) managing and maintaining a site for a given period.

(2) If the owner of a private cultural site desires to sell the site, the owner shall inform the Department and the Department shall have the first priority to purchase the site.

- (b) the activities that may be undertaken on the site;
- (c) the fees payable for entry; and
- (d) where it applies, information on closure of the site under section 16(4).

(2) No person, other than an Authorised Officer, may remove or alter the contents of a notice displayed on the notice board.

(3) A notice displayed on the notice board may contain a graphic representation to convey the required meaning.

(4) A person who defaces or alters a notice displayed on the notice board or otherwise contravenes any of the provisions of this section, commits an offence.

Conditions of entry

- 18.** No person shall, while in or at a cultural site—
- (a) break, damage, destroy, tamper with, remove, misuse, disfigure or use anything or fail to observe any instruction issued by the Department;
 - (b) unless authorised to do so, pull out, pick, cut, damage or have possession any plant growing in the cultural site;
 - (c) write, paint, draw pictures or a symbol, emblem or the like on a structure or path in the site;
 - (d) excavate soil, sand or stone or remove organic or inorganic objects unless one is in possession of a permit issued in relation thereto;
 - (e) deface or disfigure anything within the site by pasting or affixing in any way any bills, papers, placards, notices or anything else;
 - (f) wash, polish or repair a vehicle in the site, except emergency repairs;
 - (g) burn refuse, litter or dump any refuse, garden refuse or building materials;
 - (h) dispose of any burning or smouldering object contrary to the manner provided on the notice board; and
 - (i) enter or leave a cultural site other than by way of the official entry and exit or without having paid the entrance fees;

PART IV—MISCELLANEOUS PROVISIONS

Register of cultural articles and sites

23. The Department shall keep a register of all articles of a cultural nature and cultural sites declared under this Act and shall include in the register the type of article or site, the community to which it relates and any other information of interest relating to the article or site.

Offences

24. A person commits an offence who—

- (a) is wrongfully in possession of a cultural article;
- (b) aids or abets another person to steal a cultural article;
- (c) sells or attempts to sell an endangered cultural article without authority;
- (d) destroys or attempts to destroy a cultural article, site or activity;
- (e) forges or defrauds with intent to have an item declared-a culturalarticle; or
- (f) removes or attempts to remove a cultural article from its lawful custody, without authority to do so.

(2) A person who commits an offence under subsection (1) is liable, upon conviction to a term of imprisonment not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

General penalty

25. A person who commits an offence under this Act for which no other penalty has been given shall, upon conviction, be liable to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings or to both.

Power to issue permit

26. The Department shall issue permits relating to the management of cultural centres, sites or institution and the use of flora or fauna of cultural importance in accordance with this Act and any relevant national legislation.

