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ESTABLISHMENT OF THE MOMBASA COUNTY ARDHI FUND: A NEW CHAPTER IN LAND GOVERNANCE

In a significant policy shift aimed at addressing years of land-related challenges, the Mombasa County Government, under the leadership of the Governor, Hon. Abdulswamad Nassir, established the Mombasa Ardhi Fund (the "Fund") through the enactment of the Public Finance Management (Mombasa County Ardhi Fund) Regulations, 2024 (the "Regulations").

The Fund is a new initiative aimed at streamlining land transactions, promoting equity in access to land documentation and addressing historical land injustices across the county. This development has significant implications for property owners, developers, investors, and professionals involved in the real estate sector.

For decades, Mombasa has battled issues such as undocumented land ownership, overlapping claims, and a lack of proper land records, often resulting in tension, disputes, and stalled developments. The creation of this Fund is expected to be a direct response to these deeply rooted challenges. This reflects the County Government's commitment to sustainable urban planning, investor confidence and community harmony.

The Regulations establish the Mombasa County Ardhi Fund Board mandated to oversee and administer the Fund in accordance with its objectives.

OBJECTIVES OF THE FUND

The object and purpose of the Fund shall be to provide funds to promote the realization of the constitutional rights, including:

a) to give effect to Article 43(b) of the constitution to promote the realization of the constitutional right to accessible and adequate housing;
b) to give effect to Article 174 (e) and (f) of the constitution; to protect and promote the interests and rights of minorities and marginalized communities and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; and
c) mobilize resources to promote the realization of the right to accessible and owning land.

SOURCES OF FUNDING

The sources of funding of the Fund shall include:

a) Land rates;
b) monies appropriated by the County Assembly;
c) repayment of the loan lent from the Fund to a resident for the purchase of identified parcel(s) of land;
d) proceeds from the affordable housing projects;
e) any gifts, donations, grants and endowments from legal sources made to the Fund; and
f) such funds as may vest in or accrue to the Fund in the performance of its functions under this Regulations or any other written law.

COMMENCEMENT AND IMPLEMENTATION

The Fund is expected to commence operations in July 2025, after funding and shall begin with high-priority zones across Mombasa. These will include:

- densely populated settlements;
- areas under adjudication; and
- parcels with a history of unresolved land claims.

The rollout is designed to be phased, with the County Lands Department coordinating closely with the National Land Commission and other actors.

CONCLUSION

As implementation soon begins, stakeholders, especially landowners, developers, and communities in affected areas should stay informed and prepared for the legal, financial, and procedural implications that may arise.

Landowners with parcels encroached by informal settlements may consider selling them to the County Government through the Fund. Such sales will be subject to valuation and compensation at market rates. Subsequently, the county may resell the land to occupants or qualifying beneficiaries at agreed terms, followed by the issuance of title deeds. This process offers a potential win-win solution thereby formalizing tenure for current residents while offering fair compensation to willing registered landowners.

Whether you are seeking to regularize land ownership, pursue compensation, or navigate conveyancing processes, early legal guidance is key to ensuring compliance and protecting your interests.

CONTACT US

At **CM Advocates LLP,** we have a dynamic team of real estate lawyers dedicated to helping with all legal matters arising from the rollout of the Mombasa Ardhi Fund, including compensation, regularization, and conveyancing. Should you have any questions regarding the Mombasa Ardhi Fund or need legal advice, please do not hesitate to contact us at **mombasaoffice@cmadvocates.com** or the contributor **Ivy Njuguna** at ***injuguna@cmadvocates.com***.

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