

MINISTRY OF HEALTH

OFFICE OF THE CABINET SECRETARY

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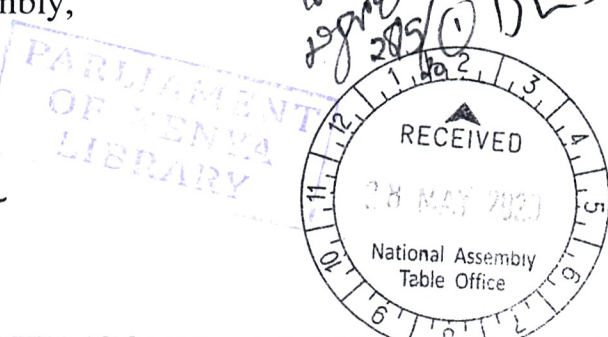
Ref. No: MOH/LEGAL/ 055(33)

26th May, 2020.

Mr. Michael Sialai, EBS
Clerk of the National Assembly,
Parliament Buildings,
NAIROBI.

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Dear Mr Sialai



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RE: THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (MOMBASA OLD TOWN) ORDER, 2020- L.N. 84/2020

We make reference to the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa Old Town) Order, 2020 (L.N. 84/2020), published on 6th May, 2020.

In line with the requirements of sections 5A and 11 of the Statutory Instruments Act, 2013, please find enclosed herewith copies of the captioned Order together with the accompanying explanatory memorandum, for your necessary action.

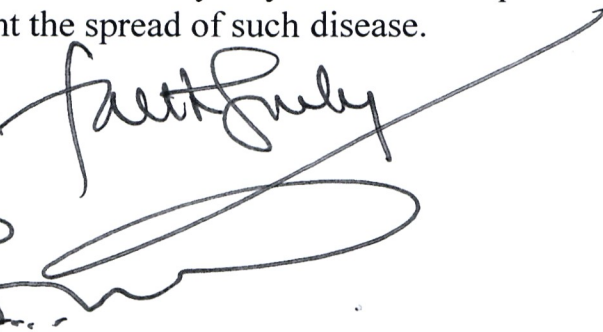
The said Order was made pursuant to section 36 of the Public Health Act and Rule 3 of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 (L.N. 50/2020) which vests in the Cabinet Secretary for Health the power to make Rules, whenever any part of Kenya appears

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Tabled by: LOM Han Aden Duale
Clerk-at the Table: [Signature]



to be threatened by any formidable epidemic, endemic or infectious disease, to prevent the spread of such disease.

Yours

A handwritten signature in black ink, appearing to read 'Mutahi Kagwe', written over a long horizontal line that extends across the page.

**SEN. MUTAHI KAGWE, EGH
CABINET SECRETARY.**

Encl.

Copy to: Principal Secretary

EXPLANATORY MEMORANDUM TO THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (MOMBASA OLD TOWN) ORDER, 2020-L.N. 84/2020

A. The Purpose of the Order

1. The Order has been published in exercise of the powers conferred by Section 36 of the Public Health Act and Rule 3 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, (L.N. 50 of 2020).
2. The general purpose of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 is to prevent the spread of COVID-19. The specific objectives of the Rules include to:
 - (i) to provide for the restriction of movement into and out of COVID-19 infected areas;
 - (ii) to provide a framework for prohibiting and or regulating certain public gatherings;
 - (iii) to define hygiene conditions to be applied in public places during the restriction period; and
 - (iv) to provide for penalties for violations thereof.
3. The effect of the Order is to bring Mombasa Old Town under the provisions of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020.

B. Legislative Context

4. Section 35 of the of the Public Health Act, Chapter 242 of the Laws of Kenya gives the Minister (Cabinet Secretary) responsible for Health (hereinafter, the Cabinet Secretary) the power to declare, by order, a disease a formidable epidemic disease. By Legal Notice No. 37 dated 27th March 2020, the Cabinet Secretary declared COVID-19 a formidable epidemic disease. Section 36 of the Public Health Act gives the Cabinet Secretary for Health the power to make

to prevent the spread of a formidable epidemic, endemic or infectious disease. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 were made in this context.

5. Rule 3 of these Rules provides that “*the Cabinet Secretary may, by order, declare these Rules to be in force within an area specified in the order and such area shall be deemed to be an infected area.*”

C. Policy Background

6. The World Health Organization declared COVID-19 a public health emergency on 30th January 2020. Since then, the disease continues to spread rapidly, across boundaries. The disease spreads mainly through close contact with infected persons. On 13th March 2020, Kenya confirmed its first case of COVID-19. As at 6th May 2020, there were a total of five hundred and eighty-two (582) confirmed case of COVID-19 in Kenya, with twenty-six (26) deaths and one hundred and ninety (190) recoveries.
7. Mombasa Old Town has been identified as a hotspot for the community spread of the COVID-19. As at 6th May 2020, there were 64 confirmed cases of COVID-19 in the area. It is therefore important to mitigate the potential risk of the spread to the larger Nairobi Metropolitan Area.
8. The World Health Organization has provided guidelines on measures that need to be taken to prevent and control the spread of COVID-19. Some of these measures had been or are being implemented in several jurisdictions that have been afflicted by COVID-19. These measures include maintaining social distance; washing hands with soap and water; observing respiratory hygiene and the safe management of dead bodies in the context of COVID-19.
9. The provisions of the Rules which the Order invokes, seek to give effect to the foregoing prevention and control measures that have been recommended by the World Health Organization and/or implemented in other jurisdictions faced with the COVID-19 pandemic, in order to prevent and control the spread of COVID-19.

D. Public Consultations

10. In view of the emergency circumstances occasioned by the rapid spread of COVID-19, and the need to prevent and control the spread of the same, public consultations were not feasible prior to the publication of the Order. It would be appreciated that the measures that the Order seeks to implement are reflective of the necessary executive action that, as a matter of necessity, has to be taken urgently, to prevent and contain the further spread of COVID-19.
11. It would also be appreciated that the objectives of the Order would have been undermined if the Orders were to be subjected to public participation prior to their publication. The purpose of the Order as read with the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 is to restrict movement into and out of Mombasa Old Town, this being the identified infected area. Disclosing the Order prior to publication, especially through public participation, would only have led to panic reactions and pre-emptive mass movements, with the consequence that the Order would serve no meaningful purpose.
12. While as noted above, there are infected persons within Mombasa Old Town, not all of them have been identified, tested and isolated, partly due to limitations of contact tracing, and the time required to undertake the said contact tracing. Consequently, without the restrictions imposed by the present Order, interactions with such persons would enable community transmission across the area and outside, thereby jeopardizing efforts at containing the spread of the disease.
13. Indeed, and in any case, it is noteworthy that the general rules, being the *Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 (L.N. 46 of 2020)* were subjected to public consultations following their publication. The *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* which the Order invokes, reflect most of the comments and views which, although given in the context of the earlier set of rules, provided the public's general views and suggestions on the legal response measures to contain COVID-19. It is also noteworthy that Rule 12 of the said *Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020* gives the Cabinet Secretary the power to declare any place to be an infected area and to

thereupon regulate and/or prescribe such activities and conduct that may be carried out in the infected area, which is, in essence, the effect of the present rules.

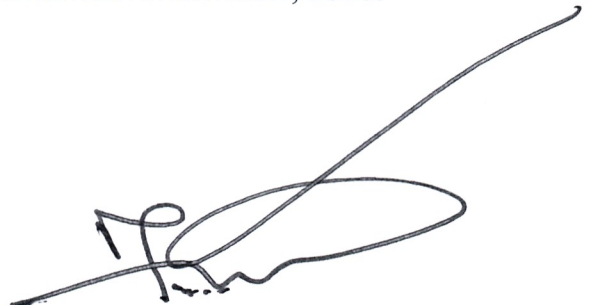
E. Guidance

14. The Ministry of Health, the Office of the Government Spokesman and Mombasa County Government shall sensitize members of the public on the provisions and requirements of the Order and the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020*.

F. The Contact Person in the Ministry of Health

The contact person at the Ministry of Health shall be the Cabinet Secretary, Sen. Mutahi Kagwe EGH or the Principal Secretary, Ms. Susan Mochache CBS.

Dated the 26th May , 2020.



Sen. Mutahi Kagwe, EGH
Cabinet Secretary for Health.

LEGAL NOTICE No. 84

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(MOMBASA OLD TOWN) ORDER, 2020

IN EXERCISE of the powers conferred by Section 36 of the Public Health Act and Rules 3 and 10 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, the Cabinet Secretary for Health makes the following Order—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(MOMBASA OLD TOWN) ORDER, 2020

1. This Order may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa Old Town) Order, 2020.

Citation.

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

Interpretation.

“Mombasa Old Town” means that area covering Mombasa Old Town which comprises Mombasa Sub County, Mvita Constituency in Mji wa Kale location and Makadara sub-locations having its boundaries being north of Fort Jesus and the following streets:

- (a) To the North – Mlango wa Papa Road.
- (b) To the East – The Indian Ocean.
- (c) To the South – Makadara Road.
- (d) To the West – Digo Road.

3. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in Mombasa Old Town for fifteen (15) days with effect from 1900HRS on Wednesday 06 May 2020 until 2359HRS on Thursday 21 May 2020.

Application

4. Notwithstanding the provisions of this Order, the Order shall not apply to the services, personnel or workers exempted as specified in the Schedule hereto in so far as movement is concerned.

Exemption

SCHEDULE

- (1) Medical professionals and health workers.
- (2) National security, and officers under the National Administration and Co-ordination of National Government.
- (3) Public health and sanitation officers in the County Governments.
- (4) Humanitarian assistance offered by the United Nations Agencies.
- (5) Licensed pharmaceuticals companies, pharmacies and drug stores.
- (6) Licensed broadcasters and media houses.
- (7) Kenya Revenue Authority.
- (8) Kenya Airports Authority, Kenya Civil Aviation Authority and Licensed Civil Aviation Service Providers.
- (9) Kenya Ports Authority and Licensed Port Operators.
- (10) Power production and distribution Companies.
- (11) Kenya Railways Corporation.
- (12) Kenya Pipeline Company.
- (13) Water service providers.
- (14) Food and farm produce processors, distributors, dealers, wholesalers and transporters.
- (15) Licensed supermarkets, minimarkets and hypermarkets.
- (16) Licensed distributors and retailers of petroleum and oil products and lubricants.
- (17) Licensed telecommunications operators and service providers.
- (18) Licensed banks, financial institutions and payment service providers.
- (19) Fire brigade and emergency response services.
- (20) Licensed security firms.
- (21) Postal and Courier services.
- (22) Kenya Ferry Services.
- (23) Such other personnel as may be permitted, in writing, by the County Police Commander.

Dated the 6th May, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.