



MINISTRY OF HEALTH
OFFICE OF THE CABINET SECRETARY

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Ref. No: MOH/LEGAL/055(27)

11th May, 2020

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

PARLIAMENT
OF KENYA
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committee
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Dear *Sialai,*

RE: THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (KILIFI COUNTY) (EXTENSION) ORDER, 2020 – L.N. 74/2020

We make reference to the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kilifi County) (Extension) Order, 2020, published on 27th April, 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

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 2 nd JUN 2020	
DAY: <i>Monday</i>	
TABLED BY:	<i>Hon Aden Duale</i>
CLERK AT THE TABLE:	<i>LM</i>



Secretary for Health the power to make rules, whenever any part of Kenya appears to be threatened by any formidable epidemic, endemic or infectious disease, to prevent the spread of such disease.

Yours *Sincerely*



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

Encl.

Copy to: Principal Secretary



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**EXPLANATORY MEMORANDUM TO PUBLIC HEALTH (COVID-19 RESTRICTION
OF MOVEMENT OF PERSONS AND RELATED MEASURES) (MANDERA COUNTY)
ORDER, 2020**

A. The Purpose of the Order

1. The *Public Health (COVID – 19 Restriction of Movement of Persons and Related Measures (Mandera County) Order, 2020 (L.N. No. 71 of 2020)* 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 Mandera County 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

said Act gives the power to make rules 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 22nd April, 2020, there were a total of three hundred and three (303) confirmed cases of COVID-19 in Kenya, with fourteen (14) deaths and sixty-seven (67) recoveries. Of these, eight (8) are from Mandera County, a county bordering Ethiopia and Somalia and also open to public movement into and out of the county from other parts of the country.
7. 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.
8. 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

9. 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.

10. 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 Mandera County, 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.
11. While there is reasonable probability that Mandera County certainly has infected persons, 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 county and outside, thereby jeopardizing efforts at containing the spread of the disease.
12. 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. 46/2020)* 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

13. The Ministry of Health, the Office of the Government Spokesman and the Manderu 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, Hon. Mutahi Kagwe, EGH or the Principal Secretary, Ms. Susan Mochache, CBS.

Dated the, 2020



Sen. Mutahi Kagwe, EGH
CABINET SECRETARY.

SPECIAL ISSUE

Kenya Gazette Supplement No. 58

871

27th April, 2020

(Legislative Supplement No. 39)

LEGAL NOTICE NO. 71

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(MANDERA COUNTY) ORDER, 2020

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, the Cabinet Secretary for Health makes the following Order—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(MANDERA COUNTY) ORDER, 2020

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

Citation.

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

Interpretation.

“Mandera County” means that area covering Mandera County and all the adjoining areas as delineated on the map set out in Schedule I.

3. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in Mandera County for twenty one days with effect from 1900HRS on Wednesday, 22 April, 2020 until 2359HRS on Wednesday, 13 May, 2020.

Application

Dated the 22nd April, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.

