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MINISTRY OF HEALTH

OFFICE OF THE CABINET SECRETARY

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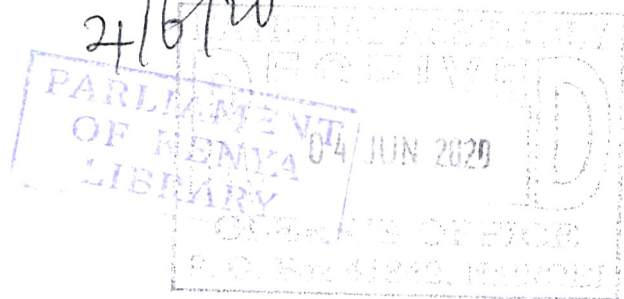
Ref. No: MOH/LEGAL/055(34)

2nd June, 2020.

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

DLSP.

2/6/20



Dear Sialai,

RE: THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (MANDERA COUNTY) (EXTENSION) ORDER, 2020- L.N. 85/2020

We make reference to the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mandera County) (Extension) Order, 2020 (L.N. 85/2020)*, published on 13th 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 has been 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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to be threatened by any formidable epidemic, endemic or infectious disease, to prevent the spread of such disease.

Yours

faithfully



SEN. MUTAHI KAGWE, EGH
CABINET SECRETARY.

Encl.

Copy to: Principal Secretary



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SPECIAL ISSUE

Kenya Gazette Supplement No. 71

985

13th May, 2020

(Legislative Supplement No. 49)

LEGAL NOTICE No. 85

THE PUBLIC HEALTH ACT

(Cap. 242)

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

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

Citation.

2. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mandera County) Order, 2020 published vide Legal Notice No. 71 dated 22nd April, 2020, is extended for twenty-one days with effect from the 14th May, 2020.

Extension of L.N.
51/2020.

Dated the 13th May, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.

EXPLANATORY MEMORANDUM TO THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (MANDERA COUNTY) (EXTENSION) ORDER, 2020- L.N. 85 OF 2020

A. The Purpose of the Order

1. The *Public Health (COVID – 19 Restriction of Movement of Persons and Related Measures (Mandera County) (Extension) Order, 2020 (L.N. No. 85 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) (Mandera County) (Extension) order, 2020 is to prevent the further spreading of COVID-19 and more specifically-
 - (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.

B. Legislative Context

3. 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 Cabinet Secretary the power to make rules to prevent the spreading 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.

4. Rule 3 of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 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

5. 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 13th May, 2020, there were a total of seven hundred and thirty-seven (737) confirmed cases of COVID-19 in Kenya, with forty (40) deaths and two hundred and eighty-one (281) recoveries.
6. 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.
7. 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

8. 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.

9. It would also be appreciated that the objectives of the Order would have been undermined if the Order were to be subjected to public participation prior to its 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.
10. 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.
11. 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 Order.

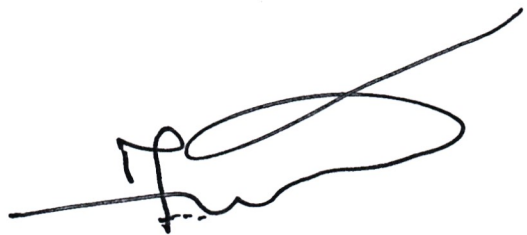
E. Guidance

12. The Ministry of Health, the Office of the Government Spokesman and the Mandera 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 2nd JUNE , 2020.



**Sen. Mutahi Kagwe, EGH
CABINET SECRETARY.**