

# BAN ON PLASTIC BAGS: WHAT YOU NEED TO KNOW

Kenyans are adjusting to life without plastic bags after the ban that came into effect on the 28<sup>th</sup> August, 2017. The ban stems from the global trend of phasing out plastic paper bags which are blamed for disastrous effects on marine life and the environment in general. The forerunners in this endeavour are countries like Denmark and Ireland which have imposed charges and taxes against the use of plastic bags, leading to a steep decline in the production and use of these materials. Closer home, Rwanda carries the torch in the African continent. It has enacted strict laws against the use of plastic bags to the extent that passengers travelling to the country have to hand over all plastic bags before being allowed to enter the country.

In his speech delivered at a stakeholder forum in UN-Gigiri on the 21<sup>st</sup> June, 2017, the Director General of National Environment Management Authority (the “**NEMA**”) stated that a survey carried out in 2010 in Kenya showed that an estimated 24 million plastic bags were used in Kenya monthly. These materials take anything between 20 and 1000 years to biodegrade and therefore have a long term presence in our environment. Like most developing countries, Kenya is yet to develop efficient and eco-friendly waste management strategies for the disposal of plastic bags. As a result, there is widespread pollution across most ecosystems and the

situation gets worse each day. Some of the hazards posed by the use of plastic bags include damage to the ecosystem, air pollution when the bags are burnt, blockage of drainage systems as well as risk to the health and lives of animals upon consumption of the plastic materials.

Article 42 of the Constitution of Kenya 2010 guarantees every person the right to a clean and healthy environment. Such environment is to be created and protected through legislation for future generations. The State is obligated to ensure a sustainable exploitation and conservation of the environment and to eliminate all activities that are likely to endanger the environment.

The Environmental Management and Co-ordination Act, (the “EMCA”) provides for the precautionary principle for sustainable development. UNESCO notes that the purpose of this principle is to diminish or altogether avoid any risk that is likely to cause harm to human beings and the environment.

It is against this backdrop that, Judi Wakhungu, the Cabinet Secretary in charge of Environment and Natural Resources, issued the Gazette Notice Number 2356 of 2017 which was published in the Special Gazette Issue of the 14<sup>th</sup> March, 2017. It is now an

offence for any person to use, import or manufacture plastic carrier bags in Kenya.

The effect of this Gazette notice is to ban all plastic carrier bags and flat bags used for commercial and household packaging. Plastic bags used for primary industrial packaging are, however, exempted from the ban so long as they are used for industrial primary packaging at the source of the product and are not available for sale at the counter or given freely outside the industrial setting. The exemption also includes disposal bags for handling of biomedical and hazardous waste and garbage bin liners. Furthermore, these bags must be clearly labeled (printed) the name of the industry manufacturing the product and the end-user. Plastic sheets used for construction, greenhouses, covering as well as cling films / stretch films used for wrappings and bopp self adhesive tapes are also excluded from the ban. Bags issued at duty free shops are also exempted from the ban due to ICAO and IATA rules. However, any traveler coming into Kenya is required to leave such duty free bags at the point of entry.

The general penalty for contravening the provision of the EMCA is imprisonment for a term of not less



than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment. This is the penalty applicable to breach of the ban on plastic bags.

According to Kenya Association of Manufacturers ("KAM"), there are over 176 plastic manufacturing companies in Kenya which directly employ 2.89% of all Kenyan employees and indirectly employ over 60,000 people. These jobs and livelihoods will be endangered by this ban. Small-scale traders and bag manufacturers have also complained that the ban would result in loss of jobs and profits.

KAM recently filed a suit in the Nairobi Environment and Land Court challenging the ban on plastic bags arguing that, if upheld, it would lead to massive losses in the affected industries. The Court, however, dismissed the suit holding that if KAM's orders were granted the plastic bags would continue to suffocate the environment to the detriment of the Kenyan population as a whole, while serving the commercial interests of a section of a small section of the population.

NEMA has developed an implementation strategy covering publicity, compliance enforcement and scientific information mobilization. Manufacturers and importers are

required to declare all their remaining stocks to NEMA for the necessary action. NEMA has further entered into an arrangement with major supermarkets – Uchumi, Tusksys and Nakumatt – for the collection and recycling of plastic bags.

All manufacturers, importers and users of plastic bags used for primary industrial packaging are required to obtain clearance letters, on application and justification to NEMA, allowing them to continue with the manufacture, importation and use of plastic bags.

This is not the first time that Kenya has attempted to ban the use of plastic bags. It is indeed the third time. Unfortunately, past attempts have failed because of stiff opposition from manufacturers of these products on grounds of profit and alleged loss of jobs. In all these occasions, commercial interests have prevailed over the common good. One can only hope that in the spirit of the new Constitution which is people-centred, this latest ban will be implemented sustainably to its logical conclusion to enable the industry to re-engineer itself and come up with environmentally acceptable alternatives. If this move succeeds, other countries in the region are likely to follow suit and East Africa may very soon become a beacon of hope in environmental conservation.

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