Issue 09 · 20th November 2026. Legal and policy developments shaping Kwale County, and what they mean for the sectors that drive it. This newsletter tracks new, upcoming and ongoing legal and policy decisions affecting Kwale County, and what they mean economically across key sectors.

MINING

On November 19, 2026, the Ministry of Mining, Blue Economy and Maritime Affairs named the **Frontier Minerals Consortium** comprising, Frontier Minerals, Bunker Hill Mining, ReElement Technologies, and American Resources Corporation, as the preferred bidder to develop the Mrima Hill rare earth elements (REEs) and niobium deposits in the Lunga-Lunga sub-county. Valued at an estimated KSh 8.12 trillion (approx. $64 billion) in on site resource potential, the tender outcome comes after a bidding process.

Crucially, this announcement does not confer a right to mine or even to prospect. Under the law, preferred bidder status only initiates a stringent, multi-agency legal process.

For institutional investors, project financiers, and regional corporate operators, however, the announcement represents the start of a detailed regulatory process rather than an immediate green light for extraction.

Policy Framework

Kenya's mining sector is governed by a two-tier policy anchored in the **Mining and Minerals Policy (2016)** (operationalized by the **Mining Act, 2016**) and the **Minerals, Mining and Beneficiation Policy (2026)**.

The Mining and Minerals Policy (2016) and Mining Act (2016) are the foundational framework establishing the core legal rules still binding today, providing:

- **State Ownership & Competitive Tendering:** All unextracted minerals vest in the National Government in trust for the people. For deposits with known mineralization, the state can bypass "first-come, first-served" licensing and allocate rights via competitive public tender.
- **Strategic Minerals Designation:** The framework empowers the Cabinet Secretary to classify critical minerals—explicitly including **niobium and rare-earth elements (REEs)**—as "Strategic Minerals," subjecting them to increased state oversight, state equity participation, and stricter development conditions.
- **Surface Rights vs. Subsoil Rights:** A mineral award does not override land ownership or protected-area statutes. Under the Mining Act, operators must secure explicit landowner/community consent, Environmental Impact Assessment (EIA) licenses, and custodial clearances (such as the Kenya Forest Service and National Museums of Kenya) where land holds ecological or cultural status.

Unveiled in mid-2026 by the Ministry of Mining, Blue Economy and Maritime Affairs, the Minerals, Mining and Beneficiation Policy shifts Kenya's focus from raw extraction to domestic industrialization:

- *Mandatory Value Addition & Beneficiation:* The defining pillar of the 2026 policy is ending the export of raw, unprocessed mineral concentrates. Investors are evaluated on their commitment and technological capacity to refine and process minerals within Kenya.
- *Expanded Community Royalty Sharing (70/20/10 Formula):* Alongside 2026 royalty-sharing regulations, the policy increases the host community's share of mineral royalties from **2% to 10%** (alongside 70% to the National Government and 20% to County Governments), administered through formal Community Royalty Sharing Committees.
- *Institutional Reform:* To resolve bottlenecks that stalled major projects in the past, the policy proposes a specialized Mining Tribunal (to speed up sector disputes outside ordinary court backlogs), an independent Mineral Regulatory Authority, a Mineral Sovereign Fund, and an upgraded Geological Survey.

The Constitutional and Statutory process before extraction

The mining award notice only designates Frontier Minerals as preferred bidder, operations cannot begin until the consortium and the Ministry complete the sequential constitutional and statutory processes:

1. Resolution of procurement challenges and pending litigation

Before executing a binding Mineral Agreement or granting a mineral right, active legal challenges must be cleared:

PPARB Procurement Review (Statutory Standstill): Under the Public Procurement and Asset Disposal Act (PPADA) and the Mining (Award of Mineral Rights by Tender) Regulations, 2017, aggrieved bidders have a statutory window (running through December 10, 2026) to challenge the award before the Public Procurement Administrative Review Board (PPARB). Runner-up bidder RareX Limited (partnered with Iluka Resources) has signaled a challenge alleging that Frontier submitted its Expression of Interest (EOI) after the statutory deadline and was therefore ineligible. Filing a Request for Review triggers an automatic statutory suspension of contract signing until the PPARB, and any subsequent High Court judicial review, determines the dispute.

Kwale High Court Constitutional Petitions: Civil society petitioners led by the Centre for Litigation Trust (CLT) filed constitutional petitions in the Kwale High Court challenging bilateral mineral arrangements over Mrima Hill on grounds of inadequate public participation (Article 10), access to information (Article 35), exclusion of the Kwale County Government, and threatened infringement of environmental rights (Article 42). Any orders issued in these proceedings must be resolved prior to extraction implementation.

2. Protected area and Cultural heritage consents

Mrima Hill is subject to overlapping statutory protections: it is a gazetted Forest Reserve, a Nature Reserve, a gazetted National Monument (designated in 1992 under the antiquities and heritage framework), and a Sacred Kaya Forest revered by the Digo and wider Mijikenda communities. Under the Mining Act, mineral operations are strictly prohibited on such protected lands without express written consents from the statutory custodians:

- **Kenya Forest Service (KFS) & Parliamentary Forest Excision:** Express written consent from the Director of KFS is mandatory. Furthermore, if open-pit extraction or processing infrastructure requires altering forest boundaries or degazetting part of Mrima Forest Reserve, the Forest Conservation and Management Act, 2016 requires a public petition, an independent environmental assessment, and formal approval by Parliament.
- **National Museums of Kenya (NMK):** Because Mrima Hill is a gazetted National Monument, the Mining Act and the National Museums and Heritage Act require formal written clearance from the NMK and the Cabinet Secretary responsible for culture and heritage, ensuring preservation or mitigation protocols for cultural and archaeological assets.
- **Traditional Kaya Custodians:** The law prohibits mining on land set apart for religious or cultural purposes without the consent of the appropriate authority—necessitating formal engagement and sacred-site protocols with the Kaya elders and local cultural councils.

3. Host community consent, land tenure and resettlement

Land surrounding and bordering the Mrima Hill reserve comprises a mix of unregistered community land held in trust by the Kwale County Government under the Community Land Act, 2016, alongside private agricultural smallholdings:

- **Free, Prior, and Informed Consent (FPIC):** Under the Mining Act, no mineral right may be granted over community land without the express consent of the affected community (or the County Government holding unregistered community land in trust), obtained through documented, inclusive public consultations.
- **Private Landowner Consent & Compensation:** Where surface operations, access corridors, or buffer zones affect private land, the law requires written consent from lawful owners or occupiers. The consortium must negotiate and pay prompt, just, and fair compensation for land acquisition, crop loss, structures, and resettlement prior to entry.

4. Environment Impact Assessment

- **NEMA EIA Licence (Condition Precedent):** Frontier Consortium must commission an independent Environmental and Social Impact Assessment (ESIA) study—incorporating mandatory public hearings in Kwale County—and obtain an EIA Licence from the National Environment Management Authority (NEMA) before a mining licence can be issued.
- **Environmental Protection Bond:** The developer must deposit an environmental protection bond sufficient to cover full ecological rehabilitation and mine closure costs.

5. Feasibility Study, Mine Plan and Strategic Mineral Terms

Niobium and rare earth elements are gazetted as Strategic Minerals prompting keen State oversight:

- **Bankable Feasibility & Closure Plans:** Frontier Consortium must submit a comprehensive feasibility study, an approved technical programme of mining operations, and a binding site restoration and mine-closure plan.
- **State Equity & Local Value Addition:** For large-scale mining licences and strategic minerals, the State is entitled to a 10% free-carried equity interest in the project company (with options for additional commercial participation). Additionally, under strategic mineral export restrictions, the Mineral Agreement must legally bind the consortium to its commitment to establish domestic processing and refining capacity in Kenya rather than exporting raw, unrefined ore.

6. Community Development Agreement and Royalty Sharing Framework

To prevent the local socio-economic grievances that have previously stalled extractive projects across East Africa, the Mining Act mandates binding local benefit-sharing instruments:

- **Mandatory Community Development Agreement:** The licence holder must negotiate and execute a legally enforceable CDA with the host community committee, committing defined annual financial contributions toward local infrastructure, education, health, and livelihood projects, alongside local employment and procurement targets.
- **Constitutional & Statutory Royalty Distribution:** The gross mineral royalties payable to the state must be stipulated and distributed according to the statutory formula: 70% to the National Government, 20% to the Kwale County Government, and 10% directly to the host community.

7. Parliament ratification under the Constitution

- **Constitutional Mandate (Article 71):** The Constitution mandates that any transaction involving the grant of a right or concession by or on behalf of the national government to another person for the exploitation of any natural resource of Kenya is subject to ratification by Parliament.
- **Bicameral Procedure under the Ratification Act, 2016:** Under the Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016, once the Cabinet Secretary executes the Mineral Agreement and approves the large-scale Mining Licence, the transaction must be tabled before both the National Assembly and the Senate (given the direct constitutional link to county land and natural resources). Until Parliament formally ratifies the grant, the concession remains legally incomplete and vulnerable to constitutional invalidation.

Impact

20% Royalty Share: Under the County Governments Additional Allocations Act, 2026, the 20% county share is classified as an unconditional allocation. Once appropriated by the Kwale County Assembly, the County Executive can deploy these funds across county-wide priorities (infrastructure, healthcare, water, or debt reduction) without restriction to the immediate mine ward.

Beneficiary Mapping (30-Day Rule): The 2026 regulations raised the effective community entitlement from the 2% baseline used in older legacy agreements to the full 10% statutory share. Within 30 days of a full Mining Licence being issued for Mrima Hill, the Cabinet Secretary for Mining must formally identify and gazette the exact beneficiary host communities.

LANDS

Government Launches Five-Year Programme to Accelerate Digitisation of Land Records

On 16 November 2026, the State Department for Lands and Physical Planning launched the five-year Housing Finance, Lands and Sustainable Investments (HOFLASI) Project, with support from the World Bank. The initiative seeks to modernise land administration through digitisation of land records, improvement of land registries, investment in survey infrastructure and enhancement of the Ardhisasa platform.

The project will also support the review and modernisation of existing land policies and laws. As part of its initial implementation, field teams were deployed to assess 18 land registries across eight counties, including Mombasa, between 16 and 27 November 2026. The assessment will identify infrastructure and operational gaps requiring intervention to improve land administration services.

Impact

Improved property transactions: Digitisation of land records could reduce delays in conducting land searches, registration and other property transactions, making it easier for businesses and investors to undertake property-related transactions.

Transparency and security of land ownership: Modernised registries and improved digital record management could strengthen the integrity of land records, reduce administrative inefficiencies and help minimise disputes arising from incomplete or inaccessible ownership information.

Implications for the Coast property market: Although Kwale is not among the counties included in the initial registry assessment, the inclusion of neighbouring Mombasa makes the initiative relevant to the wider Coast property market. Its eventual expansion could improve access to land administration services and strengthen confidence in property transactions across the region.

TOURISM AND WIDLIFE

Kwale County Investment Corporation Bill, 2026 – Stakeholders' push for a Complementary Investment Model

The County Assembly of Kwale is considering stakeholder views on the proposed Kwale County Investment Corporation Bill, 2026, following public participation hearings conducted across all 20 wards between 10th and 13th November, 2026. The consultation process culminated in a consolidated stakeholders' forum convened by the Committee on Planning, Trade, Tourism and Co-operative Development on 16th November 2026 at the Kwale Cultural Centre.

A key issue for the tourism sector is the proposed Corporation's role in private-sector investment, particularly in established tourism areas such as Diani and Shimoni. Hospitality associations, beach operators and community conservancies have emphasised the importance of positioning the Corporation as a co-investor and infrastructure enabler, rather than a competitor to existing private enterprises.

This distinction is significant for Kwale's tourism economy. The Corporation's investment approach will influence how county resources are deployed, how private capital is mobilised and whether local businesses and community-based enterprises benefit from improved investment infrastructure. Its mandate and operational framework should therefore support private-sector participation while addressing infrastructure and investment gaps that constrain local enterprise.

Impact

Private-sector participation: The Corporation's final mandate will be important in determining whether private tourism operators can participate in county investment projects without facing competition from a county-owned entity.

Tourism infrastructure: A complementary investment model could help address infrastructure gaps in Diani, Shimoni and other tourism destinations while supporting existing hospitality and beach enterprises.

Community investment: The inclusion of community conservancies in the stakeholder engagement highlights the importance of ensuring that investment arrangements also recognise local enterprises and community interests.