GOVERNMENT OF NAIROBI CITY COUNTY

SHAURI KWA UAMINIFU

THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

SECOND ASSEMBLY-THIRD SESSION

NBI CA. PLC. 2019 / (052)

4th July, 2019

PAPER LAID

Pursuant to Standing Order 191 (6) I beg to lay the following Paper on the Table of the Assembly, today Thursday 4th June, 2019.

THE REPORT OF THE SELECT COMMITTEE ON PUBLIC ACCOUNTS ON THE CONSIDERATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30 JUNE, 2017

(Chairperson, Select Committee on Public Accounts)

Approved for tabling.
04/July/2019.

Paper laid
4th July 2019
by Hon
David Mberia
F.C.A.
4/7/2019

Copies to:
The Speaker
The Clerk
Hansard Editor
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The Press

NAIROBI CITY COUNTY

NAIROBI CITY COUNTY ASSEMBLY

SECOND ASSEMBLY – THIRD SESSION

THE REPORT OF THE SELECT COMMITTEE ON PUBLIC ACCOUNTS

ON

THE CONSIDERATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30TH JUNE, 2017

Clerks Chambers
Nairobi City County Assembly
City Hall Buildings
NAIROBI

June 2019

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ABBREVIATIONS

CRF - County Revenue Fund

CEC - County Executive Committee

CEO - Chief Executive Officer

DCI - Director of Criminal Investigations

DPP - Director of Public Prosecution

EACC - Ethics and Anti- Corruption Commission

FY – Financial Year

IFMIS - Integrated Financial Management Information System

KCB - Kenya Commercial Bank

KEMSA – Kenya Medical Supplies Agency

KENAO – Kenya National Audit Office

KRA – Kenya Revenue Authority

MCA- Member of County Assembly

NCC - Nairobi City Council

NLC - National Land Commission

PAC – Public Accounts Committee

PFM – Public Finance Management

CHAIRPERSONS FOREWORD

Honourable Speaker, on behalf of the Select Committee on Public Accounts and pursuant to the provisions of Standing Order 191(6), it is my pleasant privilege and honour to present to this Assembly this report of the Public Accounts Committee on the consideration of the "The report of the Auditor General on the financial Statements of Nairobi City County Executive for the year ended 30th June, 2017".

Honourable Speaker, the role of the County Assembly in holding Accounting Officers accountable in the spending of public funds cannot be over-emphasized. Section 131 of the Public Finance Management Act, 2012 only mandates the County Assembly to authorise any expenditure by County Government entities. The Assembly is therefore expected to oversight the use of funds it appropriates. Consequently, it goes without saying that in matters of oversight of County Government entities, the County Assembly is the first point of call. Any other institution that may play a similar role is only secondary. It is against this backdrop that the Auditor General pursuant to Article 229 of the Constitution submits annual reports to the County Assembly in order for the Assembly to take appropriate action. Once the report is submitted and tabled, it is committed to the PAC for consideration and reporting.

This Committee report is a culmination of a rigorous and a long exercise carried out by the Committee in its scrutiny of the report of the Auditor General. The Committee held seventy (70) sittings during which it received both written and oral evidence from Accounting Officers and other witnesses on audit queries raised by the Auditor-General. Minutes of the Committee's meetings are annexed to this report. In its scrutiny, the Committee was concerned in determining whether, in the year under review, Accounting Officers upheld key principles of public finance management namely; value for money, efficiency, and effectiveness in public spending. The Committee also endeavoured to hold the County Government and its officers to account for delivery of public services.

A major challenge that the Committee frequently encountered was the high level of unpreparedness on the part of a number of Accounting Officers, which necessitated early responses forcing the Committee to call for fresh responses. In addition, other Accounting officers sought last-minute postponement of their appearance before the Committee, further eating into the Committee's limited time. In future, the Committee will not condone similar actions and will take stern measures against such officers. I want to thank the Hon. Speaker and the House for allowing us more time to dispense the matter.

Honourable Speaker, the Committee upon careful examination of the evidence brought before it identified various issues that continue to hinder prudent financial management leading to misappropriation of public funds hence poor service delivery. The issues include; irregularities in procurement processes, challenges in implementation of development projects, high legal fees and shortcomings of the Legal Department, irregular allocation and encroachment of public properties, mismanagement of own source revenue and skewed contracts that the County Government enters. To this end, the Committee has taken a pragmatic step by holding to account individual officers for their various acts of omission and/or commission that occasioned loss of public funds. In some cases, the Committee has invoked the provisions of Article 226(5) of the Constitution and recommended that the concerned officers make good the losses that have arisen under their watch, upon conclusive investigations by the relevant investigative agencies. In addition, the Committee has recommended that some service providers/contractors be blacklisted for their proven inefficiency in project implementation.

In conclusion, **Honourable Speaker**, I would like to thank all the Accounting Officers and witnesses who appeared before the Committee and provided responses, which provided valuable insights into the issues raised by the Auditor General. In particular, the Committee thanks both the former and the current Ag. Chief Officers responsible for Transport and Public Works namely, Engineer Karanja and Engineer Muthama for their elaborate responses and consistency in attending Committee hearings when invited including accompanying Members to various site visits. I wish also to register my appreciation to fellow Honourable Members of the Committee, the Offices of the Speaker and the Clerk of the County Assembly, and the Office of the Auditor General for their steadfast support. Special appreciation also goes to the members of the Committee secretariat who have had to go beyond the normal call of duty on numerous occasions.

Honourable Speaker, on behalf of the Public Accounts Committee, I now wish to table the report and urge the Assembly to adopt it and the recommendations therein.

………………………………………………………

Hon. Wilfred Oluoch Odalo, MCA

We Members of the Public Accounts Committee (PAC) do hereby affix our signatures to this report to affirm the correctness of the contents and support for the report: -

1. Hon. Wilfred Odalo, MCA-Chairperson ……………………………
2. Hon. Fredrick Njogu, MCA-Vice Chairperson ……………………………
3. Hon. Waithera Chege, MCA ……………………………
4. Hon. Peter Imwatok, MCA ……………………………
5. Hon. Moses Ogeto, MCA ……………………………
6. Hon. Rose Adhiambo Ogonda, MCA ……………………………
7. Hon. Anthony Karanja, MCA ……………………………
8. Hon. Peter Wanyoike, MCA ……………………………
9. Hon. Charles Thuo, MCA ……………………………
10. Hon. Peter Warutere, MCA ……………………………
11. Hon. David Mberia, MCA ……………………………
12. Hon. Joseph Wambugu, MCA ……………………………
13. Hon. Silvia Museiya, MCA ……………………………
14. Hon. Lawrence Otieno, MCA ……………………………
15. Hon. Esther Nyangweso, MCA ……………………………
16. Hon. Redson Otieno, MCA ……………………………
17. Hon. June Juliet Ndegwa, MCA ……………………………
18. Hon. Millicent Jagero, MCA ……………………………
19. Hon. Elizabeth Nyambura, MCA ……………………………

1.0. INTRODUCTION

1.1. Mandate of the Public Accounts Committee

The Public Accounts Committee derives its mandate from Standing Order 197 (2) of the Nairobi City County Assembly, which provides that: -

"The Public Accounts Committee shall be responsible for the examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the Committee may think fit".

The primary mandate of the Committee is therefore to oversight the expenditure of public funds by Nairobi City County entities, to ensure value for money and adherence to government financial regulations and procedures. The Committee further aims at ensuring that Nairobi City County public funds are prudently and efficiently utilized. The Committee executes its mandate on the basis of annual and special audit reports prepared by the Kenya National Audit Office (KENAO).

Article 229 (8) of the Constitution provides that within three months after receiving the report of the Auditor General, Parliament or the **County Assembly** shall debate and consider the report and take appropriate action. It is on this basis that this report has been produced by the Committee for consideration and adoption by the County Assembly.

1.2. Guiding principles

In the execution of its mandate, the Committee is guided by core constitutional and statutory principles on public finance management, as well as established customs, traditions, practices and usages. These principles include the following: -

(a) Constitutional Principles on Public Finance

Article 201 enacts fundamental principles aimed at guiding all aspects of public finance in the Republic. It states that the principles are, *inter alia, openness and accountability, including public participation in financial matters; public money shall be used in a prudent and responsible way; and financial management shall be responsible, and fiscal reporting shall be clear.* The Committee places high regard on these principles, among others, and has been guided by them in the entire process that has led to this report.

(b) Direct Personal Liability

Article 226(5) of the Constitution is unequivocal that: - *"If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not".* Consequently, Section 203(1) of the PFM Act, 2012 enacts that: - *"A public Officer is personally liable for any loss sustained by a county government that is attributable to-*

(a) the fraudulent or corrupt conduct, or negligence, of the officer; or

(b) the officer's having done any act prohibited by sections 196, 197 and 198"

The Committee considers this Constitutional and legal provisions as the basis for holding Accounting Officers and other Public Officers directly and personally liable for any loss of public funds that may occur under their watch.

1.3. Obligations of the Accounting Officer

Article 226(2) of the Constitution provides, inter alia, that: *"the Accounting Officer of a national public entity is accountable to the National Assembly for its financial management, and the Accounting Officer of* ***a county public entity*** *is accountable to the* ***County Assembly*** *for its financial management".* Subsequently, Section 149(1) of the Public Finance Management (PFM) Act, 2012 provides that: *"An accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—*

(a) lawful and authorized; and

(b) Effective, efficient, economical and transparent."

These provisions obligate all the Accounting Officers to appear before the PAC to respond to audit queries raised by the Auditor General.

1.4. Committee Membership

The Committee comprises of the following members: -

1. **Hon. Wilfred Odalo, MCA-Chairperson**
2. **Hon. Fredrick Njogu, MCA-Vice Chairperson**
3. Hon. Waithera Chege, MCA

4. Hon. Peter Imwatok, MCA
5. Hon. Anthony Karanja, MCA
6. Hon. Peter Wanyoike, MCA
7. Hon. Charles Thuo, MCA
8. Hon. Juliet Ndegwa, MCA
9. Hon. Elizabeth Nyambura, MCA
10. Hon. Peter Warutere, MCA
11. Hon. Joseph Wambugu, MCA
12. Hon. Sylvia Museiya, MCA
13. Hon. Millicent Jagero, MCA
14. Hon. Rose Adhiambo Ogonda, MCA
15. Hon. Moses Ogeto Nyangaresi, MCA
16. Hon. Lawrence Otieno, MCA
17. Hon. Esther Nyangweso, MCA
18. Hon. Redson Otieno, MCA
19. Hon. David Mberia, MCA

1.5. Committee Secretariat

1. Shadrack Makokha (**Clerk Assistant**)
2. Anthony Nyandiere (**Audio Officer-Hansard**)
3. Faith Wairimu (**Office Assistant**)

2.0. KEY ISSUES AND RECOMMENDATIONS

The Committee has identified issues it considered grave and subsequently made recommendations that require urgent attention. The issues include:-

1. ***Implementation of previous Assembly recommendations***

Section 53 of the Public Audit Act, 2015 provides that: -

"(1) The relevant accounting officer of a state organ or public entity shall within three months after Parliament or County Assembly has considered and made recommendations on the audit report—

(a) *take the relevant steps to implement the recommendations of Parliament or County Assembly on the report of the Auditor-General; or*

(b) *give explanations in writing to the Parliament or County Assembly on why the report has not been acted upon.*

(2) Failure to comply with the provisions of subsection (1), the accounting officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others".

Standing Order 193 further provides that: - *"Within sixty days of a resolution of the County Assembly or adoption of a report of a select committee, the relevant Member of the Executive Committee under whose portfolio the implementation of the resolution falls shall provide a report to the relevant committee of the County Assembly in accordance with Article 153(4) (b) of the Constitution".*

The Committee observed that upon adoption of the previous Committee report by the Assembly, the Clerk of the County Assembly forwarded the report to the County Executive for implementation by various Accounting Officers. However, it was noted that most Accounting Officers who were required to take various actions failed to implement or report to the Assembly why they never implemented recommendations of the Assembly. It is appalling to note that some Accounting Officers claimed that they had never seen the report. Some of the notable recommendations that were never implemented include:-

(i) Termination of contract between the County Government and Webtribe Ltd regarding the Jambopay revenue collection system and subsequent development of an internal fool proof automated revenue collection system. The recommendation was to be implemented by the CEC Member, Finance & Economic Planning and the CEC Member responsible for ICT together with their respective Chief Officers (Accounting Officers).

(ii) Repossessing of grabbed parcels of land namely; Komarock Ward Offices land, Mutuini hospital land,Land belonging to High Ridge Health Centre and part of land now occupied by Highways Store. The recommendation was to be implemented by the Chief Officer, Lands.

(iii) Reprimanding of parking attendants for possible loss of Kshs. 6,599,567 in parking fee revenue. The recommendation was to be implemented by the CEC Member for Finance and the Chief Officer, Public Service Management.

(iv) Reprimanding of the County Executive Committee for Finance and Economic Planning Chief Officer for Finance during the FY 2016/17 for various omissions with respect to revenue collection, keeping faulty financial records, committing the County Government in fraudulent contracts amongst others. The recommendation was to be implemented by the CEC Member for Finance and Economic Planning and the respective Chief Officer (Accounting Officer).

(v) Reconstitution of the Legal Department. The recommendation was to be implemented by the Chief Officer, PSM in conjunction with the County Public Service Board.

The Committee made the following recommendations:-

i) **The County Assembly finds all Officers who were supposed to implement the aforementioned recommendations (and other recommendations contained in the entire Assembly report) but failed to do so, and never reported to the Assembly why the recommendations were not implemented, to be in contempt of the County Assembly and consequently the appointing authorities sanctions them in accordance with Section 53(2) of the Public Audit Act, 2015.**

ii) **All Accounting Officers should take personal interest in business before the Assembly and act on any resolutions/recommendations made by the Assembly.**

It is also worth noting that the report of the Committee was forwarded to state agencies such as the Director of Criminal Investigation (DCI), the Director of Public Prosecutions (DPP), the Ethics and Anticorruption Commission (EACC) and the National Lands Commission (NLC) for them to take appropriate action. Both the EACC and the DCI responded to the Committee vide letters **Ref: EACC/6/15/1/VOL.VI/178-73315** dated **23rd May, 2018** (Annexure 2) and **Ref: CID/IB/ECCU/SEC/4/4/1/VOL, XXIX/23** dated **11th June, 2018** (Annexure 3) respectively that they had commenced investigations on the Assembly recommendations in order to take action. It is the hope of the Committee that the recommendations of the Committee will be acted upon by these state agencies. The Committee shall continue forwarding its recommendations to the institutions. In particular, the Committee invites the NLC to act speedily on grabbed public lands so that title deeds obtained fraudulently can be revoked and the properties used for the original intended purpose.

2. ***Designation of Accounting Officers and their obligations***

Section 148 of the Public Finance Management Act, 2012 provides for the procedure of designating Accounting Officers of County Government entities. Subsection (1) provides that; '*A County Executive Committee member for Finance shall, except as otherwise provided by law, **in writing designate** accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation*". Further, subsection (2) provides that: "*except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity*". The PFM Act, 2012 defines a County Government entity as; "*any department or agency of a county government, and any authority, body or other entity declared to be a county government entity.*" This therefore means that County Government departments are County Government entities which ought to have substantive and individual accounting officers. The departments are separately headed by the Chief Officers as provided for under Section 45(4) of the County Governments Act, 2012 which makes a County Chief Officer as authorized officer in respect of exercise of delegated power.

The Committee while interrogating the report of the Auditor General observed that in the FY 2016/17 and 2017/2018, the Chief Officers had not been duly designated as Accounting Officers hence they could not be fully accountable for the expenditure under their Departments. All matters finance and procurement had been centralised at the County Treasury and in the office of the County Secretary relegating County Departments as mere spectators. The Chief Officers had limited role in determining what programs would be financed yet the Departments are supposed to be the spending units with individual bank accounts so that they can have financial autonomy to implement their own programs. The Committee notes that centralization of finances in one office i.e. the office of County Secretary and the County Treasury stifles the performance of Sectors and Departments, is a recipe for corruption and a hindrance to financial accountability.

The Committee recommends that the CEC Member for Finance and Economic Planning should follow the law when designating Accounting Officers for County Executive Entities. Accordingly, the CEC Member should immediately assign full accounting functions to the Chief Officers for the various Sectors/Departments they administer and ensure that they have financial autonomy.

3. *Irregularities in procurement processes*

Accounting Officers during the year under review flouted procurement processes as provided for in the Public Procurement and Disposal Act, 2015 for reasons only known to them. Despite the fact that there was no loss of funds during the year under review, non-adherence to procurement rules and procedures opens avenues for corruption and loss of public funds. For instance, the County Government embarked on a process of procuring items to usher in the New Year, 2016. One of the items procured amongst others was fireworks worth Kshs 6.3 million. The tender was awarded to Tononoka Fireworks Limited. The Auditor General reported that payment vouchers lacked contract documents and no reasons were given for applying restricted tender instead of open tender. Upon examination of the responses and documents provided by the County Executive, the Committee observed that the procuring entity (Trade, Commerce, Tourism and Cooperative Sector) did not strictly adhere to procurement rules and processes. In addition, there was no policy or procurement plan to guide the process especially on ushering in of a New Year.

The Committee has recommended that Accounting Officers and the Head of Procurement should ensure that procurement laws and procedures are strictly adhered to when initiating and conducting a procurement exercise in order to forestall audit queries and to safeguard public resources.

4. *Challenges in implementation of development projects*

The role of any Government is to provide a conducive environment for its citizen to conduct business and earn a leaving. The conducive environment is enabled through infrastructural development e.g. roads, markets, streetlights, drainage systems amongst others. However, the process of implementing development projects in the County has encountered many challenges. Of significance, during the period under review, there was unacceptable slow implementation of development projects. For instance, the County Government contracted various companies to construct roads within the County. However, by close of the financial year most projects had not commenced while those that had commenced had not covered substantive ground. Following the Committee site visit to various projects and interrogation of responsible county officers and contractors, the Committee noted the following:-

i) Some contractors had abandoned the sites and only resurfaced when they heard that the Committee would be visiting the sites. In addition, the quality of construction works was extremely poor.

ii) Some of the companies contracted to construct or rehabilitate roads within the County lacked financial and technical capacity to deliver. This was the case of **M/S Elite ITS Ltd** responsible for construction of Plains View Likoni link road in South B Ward and rehabilitation of Academy Road in Karen Ward.

The Committee has made the following recommendations;-

i) **That M/S Elite ITS Ltd be blacklisted and never be a warded service contracts by the County Government due to their proven inefficiency.**

ii) **That before engaging a service provider especially contractors for capital projects, the County Executive must at all times undertake due diligence and determine whether the service provider has the requisite financial capacity, technical expertise and demonstrated experience to perform the work. In future, the CEC Member for Finance and Economic Planning should hold liable officers who award tenders to incapacitated companies.**

iii) **That the CEC Member for Finance and Economic Planning should establish project management teams in Sectors whose mandate should include conceptualization of viable projects with definite completion timelines and adhere to the tenets of project management.**

5. *Legal fees and shortcomings of the Legal Department*

The County Government has myriad legal demands, which cannot be fulfilled by the legal department as presently constituted. This has led to outsourcing of legal services at extremely high rates. If the same is not checked, the county will spend substantive amount of its funds on legal fees. The legal debt/cost for the County Government at the moment stands at **Kshs 4 billion** being inclusive of both court judgmental (decretal) sums and cost incurred to defend the County Government. During the period under review, the County Government spent Kshs. 645,260,543 on legal fees exceeding the approved budgetary allocation of Kshs.105, 000,000 resulting in an over-expenditure of Kshs.540, 260,543 or 515%. It was astonishing that the County Treasury never presented a supplementary budget to regularise the expenditure as provided for under Section 196 (1) of the Public Finance Management Act, 2012. In addition, the then County Attorney, Mr. Gad Awuonda failed to provide professional advice to the County Government in this regard.

The Committee also established that some of the advocates were paid without following due process. For instance, the then Director responsible for Legal Services Mr. Karisa Iha and later Mr. Erick Abwao both of whom were not Accounting Officers as per the provisions of Section 148 of the PFM Act, 2012 unilaterally negotiated with the law firms and agreed on legal fees to be charged by the said advocates based on non-existence valuation reports on cases involving County properties as required by the Advocates Remuneration Order. In addition, the Legal Department never kept proper records of the cases in court. In essence, the payments were made without any supporting documents. The Committee suspects there was collusion between contracted advocates and County Officers with the intention to defraud the County Government through fictitious legal fees.

Similarly, in some cases, the Legal Department did not provide support to contracted law firms in terms of information to enable the law firms fully prosecute the cases. This was the situation with the case involving Munikah & Co. Advocates with respect to RMCC No. 2 of 2003 [City Council of Nairobi vs Attorney General (on behalf of the Commissioner of Lands as Trustee for various Government Ministries)] where the Council was suing the national government to pay outstanding land rates. In the end, the County Government did not achieve its goal to obtain the outstanding land rates. Equally, the County Government failed to undertake negotiations with law firms in order to settle at reasonable legal fees as provided for under the Advocates Remuneration Order. This led to advocates quoting outrageous legal fees they desired. The Committee suspects this was a pre-determined way to siphon County funds. The Committee has made the following recommendations:-

i) **The Chief Officer, Public Service Management (PSM) and the County Public Service Board (CPSB) should immediately establish a functioning Legal Department with the capacity to address the myriad legal demands of the County Government.**

ii) **In the event there is need for outsourcing of legal services, a competitive procurement process should be instituted in line with the Public Procurement and Disposal Act, 2015. The law firms contracted should be monitored and given adequate support in order to prosecute their cases to the advantage of the County Government. In addition, the Accounting Officer should at all times negotiate with the firms so that reasonable legal fees are settled on.**

iii) The County Treasury, in consideration of the recommendations of the pending bills task force, should proceed and pay genuine legal fees claims.

iv) The County Treasury should spend legal fees and decretal sums from the individual Sectors/Departments the cases in question relate to. Adequate budgetary allocation should be put in place to cater for the same.

v) The Director of Public Prosecution (DPP) should institute charges against Mr. Gregory Mwakanongo (former CEC Member, Finance & Economic Planning, Mr. Luke Gatimu (Former Chief Finance Officer) and Mr. Maurice Okere (Former Head of Treasury Accounting) and Mr. Karisa Iha (Former Director, Legal Services) for breach of Section 196 of the PFM Act, 2012.

vi) The DCI and EACC should conduct further investigations with respect to the legal fees paid or owed to Kithi and Company Advocates with a view of instituting charges against persons within the County Government and the law firm in question for colluding to defraud the County Government, if found culpable. Meanwhile the County Government should stop any further payments to the law firm until the investigations are completed.

6. *Irregular allocation and encroachment of public properties*

The Auditor General still raised the issue of grabbing or irregular allocation of County Properties. This vice has been in existence for a long time and exposes the impunity exhibited by the officers in the Lands and Legal departments. Some of the properties that have been grabbed are so important to the residents that they cannot be left to greedy private developers. They include:-

i) Part of City Parkland, which has been grabbed/encroached by Bowling Green Safari whose proprietor is one Mr. George Wainaina. Several other persons have also hived part of the land and built residential flats. **The Committee has recommended that the Chief Officer Lands and the Chief Officer in charge of parks immediately evicts the persons and restore the Park to its natural state.**

ii) High Ridge Health Centre; the health centre was demolished and the parcel of land allocated to private developers. The Committee established that a private bus company had converted part of the land as its garage and parking lot. **The Committee has recommended that the CEC Member and the Chief Officer for Lands should take personal interest in this matter, engage the National Lands Commission with a view of revoking fraudulent titles that the private developer may have acquired and ensure that within three (3) months of adoption of this report they survey, demarcate and fence the property and put it to the original intended use**

iii) Land measuring 20.5 acres, now occupied by Highways Stores; a portion of the land measuring 8.5 acres has been allocated to unknown private developers. **The Committee has recommended that the County Government proceeds to survey demarcate and process proper ownership documents for the part of the land LR. No. 209/2531 that it still owns. Meanwhile, the Ethics and Anti- Corruption Commission (EACC) and the National Land Commission (NLC) immediately institute investigations on all transactions on the land especially the transfer to private entities to determine whether the transfers were irregular and if so, those involved prosecuted while the transfers revoked.**

7. ***Miss-management of own source revenue***

The Constitution at Article 209 (3) grant County Governments authority to generate their own revenue by imposing property, entertainment and any other tax that may be prescribed by an Act of Parliament. However, the County Treasury has dismally performed in collecting local revenue. It is appalling that, during the year under review, Nairobi City County with all the tremendous resources its boasts compared to other Counties had a revenue shortfall of Kshs. 8,632,798,526 or (44%). According to the Committee, several reasons explains this shortfall:-

i) *Non- sweeping of revenue to County Revenue Fund (CRF) Account;* - the County Executive collected local revenue amounting to Kshs.10, 933,201,475, however, only Kshs.2, 420,840,729 or (22%) of revenue collected was banked in the CRF account. The balance of Kshs.8, 512,360,746 was spent at source contrary to Section 109 of the Public Finance and Management Act, 2012. Spending at source reduces accountability and leads to pilferage. **The Committee has recommended that the CEC Member for**

Finance & Economic Planning and the Chief Officer, Finance must take necessary steps and ensure that all funds raised or collected on behalf of the County Government are deposited in the County Revenue Fund.

ii) *Failure to enforce collection of rates and fees*; - outstanding rates as at 30th June 2017 amounted to Kshs. 305,367,800,145. This is a substantial amount that if collected would finance the County budget. In fact, the County would not even require exchequer releases. A majority of outstanding rates relates to Land Rates, Urban Development debtors and Way Leave fees. For instance, regarding large Format Advertisements, the following companies owes the County Government as follows; Ad site Ltd Kshs 631,657.78, Alliance Media, Kshs 470,068.00, Centurion, Kshs 825,020.00, Creative Space, 1,370,223. In total, the outstanding large Format Advertisements stands at 107,953,180.61. Regarding Street Light Advertisement, the following companies owes the County Government as follows; Magnate ventures ltd, Kshs 17,809,355, Tangerine investments, 11,889,847, Adsite; 10,510,620. In total street light advertisement, arrears stands at Kshs 106,086,439. Regarding Way-leave Fees, the following companies and institutions owes the County Government as follows; Kenya Power and Lighting, Kshs 694,772,400, Jamii Telecommunications ltd, Kshs 15,147,950, Telkom Kenya Ltd, Kshs 17,740,988. In total Way-leave Fees Debtors stand at 752,140,671.50. **The Committee recommends that the CEC Member, Finance and Economic Planning should take a personal interest in this matter and ensure that all rates defaulters pay the outstanding amounts. Meanwhile all those persons and companies with outstanding rates should immediately be stopped from transacting business within the County until they clear their dues. The County Government should also negotiate debt swaps with the Companies it owes.**

iii) *Weaknesses of the Jambopay revenue collection system*; as reported by the Committee in its previous report, Jambopay revenue collection system that was adopted by the County Government did not have capacity to collect revenue on behalf of the County Government. The Committee had observed then that the system was prone to manipulation as demonstrated by the delay in remittance of the collected revenue to the CRF account. Indeed, the Committee had recommended that the County Executive terminates its engagement with the Webtribe ltd the provider of the system and develop its own internal system. During the year under review, the County Government paid 1.25% of the value of all the cash office transactions that were made using the Jambopay system to Webtribe. However, the same was not provided for in the service agreement. In fact, the County Executive did not do validation/reconciliations and did not have access to the trust account of actual revenue collected by Jambopay. In addition, the service agreement provided for situations when there could be system down time. However, there was no amount or penalty that was put in place chargeable to Webtribe in the event of unavailability of the system attributed to them. The Auditor General reported that a review of system logs indicated that the system failed on several occasions and customers had challenges paying revenue. For instance, a sample of days when the parking section had challenges with the system, logs revealed that an estimated 99 hours could have been lost resulting to a probable loss of Kshs.24, 000,000.

The Committee observed that by failing to undertake due diligence prior to signing the service agreement, all the signatories representing the County Government and their counsel are liable for the loss of funds that occur during Jambopay system down time period. The officers are therefore liable for punishment prescribed under Article 226(5) of the Constitution.

The Committee has recommended that pursuant to Article 226(5) of the Constitution and Section 203(1) of the PFM Act, 2012, the CEC Member for Finance and Economic Planning should liaise with state agencies namely DCI, EACC & DPP and cause to recover all monies that may have been lost through the illegal service charge and whenever system down time occurred within Jambopay from all the signatories representing the County Government in the contract between the County Government and Webtribe ltd.

8. ***Inadequacies of Service Contracts***

The County Government time and again enters into contractual obligations with entities such as service providers or other state agencies/institutions. A review of the contracts/agreements revealed that they are always skewed to the disadvantage of the County Government. For instance, during the year under review, the County Government entered into agreements with entities such as Webtribe ltd the provider of Jambopay system. A review of the contract revealed that in all intents, the County Government stood to lose. For example, there were no provisions for what would happen in terms of compensating the County Government whenever they system failed. Secondly, the County Government could not access the trust account which was the primary account where revenue hit first before being remitted to the CRF Account. Another scenario is when the National Government agreed with the County Government that County Hospitals provide free maternity services and in turn, the National Government would reimburse the fees. However, several County Hospitals have not received the refunds even after offering the services as follows; Pumwani Maternity, Kshs. 168,453,193, Dagoretti Sub District Hospital, Kshs. 3,309,084, Mama Lucy Kibaki County Hospital, Kshs. Kshs.81, 483,765 and Mbagathi Hospital, Kshs. 21,405,000. The same applies to service agreements with road construction companies where the companies have a lot of leeway in extending their timeframes of executing the contracts. **The Committee recommends that due diligence must be carried out by persons executing contracts on behalf of the County Government, and if there is any loss of funds due to their negligence while entering into agreements, they should be held liable.**

9. ***Further investigations, prosecutions and disciplinary actions***

In order to deter Accounting Officers from occasioning loss of public funds in future and also to recover public funds that might have been lost, the Committee has recommended for further investigation/prosecution and disciplinary action against persons the Committee consider most responsible. The persons and/or the issues include:-

i) Prosecution of County Officers and Directors of Jambopay for conspiring to defraud the County Government through illegal service charge on revenue collected through Jambopay revenue collection system at the cash office.

ii) Prosecution of all persons involved in the irregular acquisition of the KCB loan namely: the former Governor H.E. Evans Kidero, former County Treasury Officials (i.e. former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu) and Mr. John Oringo on behalf of KCB for contravening Article 212 of the Constitution and Section 142 of the Public Finance Management Act, 2012 when instituting the buy-out of the loan facility.

iii) Prosecution of Mr. Gregory Mwakanongo (former CEC Member, Finance & Economic Planning, Mr. Luke Gatimu (Former Chief Finance Officer), Mr. Maurice Okere (Former Head of Treasury Accounting) and Mr. Karisa Iha (Former Director, Legal Services) for breach of Section 196 of the PFM Act, 2012 with regards to expenditures relating to legal fees and for occasioning loss of public funds due to their negligence in as far as contracted law firms are concerned.

iv) Further investigations be carried out by the DCI and EACC with respect to the legal fees paid or owed to Kithi and Company Advocates with a view of instituting criminal charges against persons within the County Government (namely; Mr. Erick Abwao-former Assistant Director Legal Services, Mr. Karisa Iha-former Director, Legal Services, Mr. Gregory Mwakanongo-former CEC Member Finance & Economic Planning and Mr. Luke Gatimu- former Chief Officer, Finance) and the law firm in question for colluding to defraud the County Government, if found culpable.

v) Further investigations be carried out by the DCI and the EACC regarding the supply and installation of the Integrated Urban Surveillance System for Nairobi Metropolitan Area (Nairobi Central Business District) with a view of determining whether there was a deliberate attempt to siphon public funds and institute criminal and civil proceeding against all officers and persons involved if found that there was loss of public funds.

3.0. WITNESSES AND SITTINGS

The **Ag. CEC Member for Finance and Economic Planning, Mr. Allan Igambi, Accounting Officers** for various County Executive Departments and other mentioned witnesses appeared before the Committee on various dates to adduce evidence on the audited Financial Statements of the Nairobi City County Executive for the year ending 30th June 2017.

The witnesses appeared as follows: -

DATE	WITNESS(ES)/INVITEES
28/01/2019 & 5/02/2019	– CEC Member, Finance – Chief Officer, Finance
29/01/2019	Chief Officers:- – Finance – Health – Public Works
31/01/2019	Chief Officers:- – Finance – Head of Procurement – Public Service Management
24/01/2019	Chief Officers:- – Finance – Environment
29/01/2019 & 13/02/2019	Chief Officers:- – Health
30/01/2019	Chief Officer – Finance – Public Works
30/01/2019	Chief Officer – Finance – Ag. County Attorney
31/01/2019	Chief Officer – Finance – ICT
4/02/2019 & 13/02/2019	Chief Officer, Lands
6/02/2019	Chief Officer, Tourism
7/02/2019, 11/02/2019 & 26/02/2019	Chief Officer, Environment

19/02/2019	Chief Officer, Education
27/02/2019 & 14 & 26/03/2019	– Gad Awuonda- Former County Attorney – Karisa Iha – Former, Director, Legal Services – Gregory Mwakanongo- Former CECM Finance and Ag. County Secretary – Erick Abwao- Former Assistant Director, Legal – J. Mageto- Former Accountant, Legal Department – Koceyo & Co Advocates
2/04/2019	Sit Visits- – Ruai Street Children Rehabilitation Centre – Eastleigh Social Hall
27/02/2019 & 20 & 28/03/2019	Procurement of fireworks Tender Committees Members:- i) Dr. Luke Gatimu ii) Ms. Ann Athoro iii) Eng. Judah Abeka iv) Mr. George Ombua v) Mrs. Anne Kirui vi) Mrs. Winnie Mathini vii) Dr. Samuel Ochola viii) Mr. Patrick Mwangangi ix) Mr. John Okuku x) Mr. H. M. Agwena xi) Mr. Massai Nasri xii) Ms. Eva Wairuko xiii) Mr. Samuel Gitau
28/02/2019	Chief Officer, Roads
28/02/2019	i) Officials from the Directorate of Metropolitan, National Ministry of Transport. ii) Director, M/s Nanjing LES Information Technology Limited
11/03/2019, 12/03/2019 & 2/04/2019	– Site visit to Roads in various wards – Site visit to city park – Site visit Ruai
13,14 &21 /03/2019	Law Firms/Advocates – Tom Ojienda & Co – Achola Jaoko & Co – Koceyo & Co – Wachira & Co – Municah & Co – Wachira & Co

	– Rachier & Co
23 & 24/4/2019	Contractors:- a) M/S Solid Waste Collectors b) M/S Mon Cons General Contractors c) M/S Buldel Enterprise Ltd d) M/S Suntech Construction Ltd e) M/S Uba Construction Ltd f) M/S Rhino (EA) Ltd g) Quanta Frontier technologies h) M/S Elite ITS Ltd i) M/S Platinum Construction

The Committee held seventy (**70**) sittings in the period of the examination during which submissions were presented before the committee on the queries raised by the auditor general. Minutes of the Committee's sittings and the submissions tabled by the Accounting Officer are annexed to this report as Volume (1) and Volume (2).

4.0. FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDING 30TH JUNE, 2017

The queries raised by the Auditor General are outlined in the paragraphs as follows:

Basis for Disclaimer of Opinion

4.1. Inaccuracies in the Financial Statements

4.1.1. Discrepancy between Ledger and Financial Statements

The statement of receipts and payments reflects payments totalling Kshs.24, 962,045,715. However, eighteen expenditure items amounting to Kshs 7, 925,600,412 included in the financial statements differs with the related ledger figures totalling Kshs.6, 105,945,419 for the items. The resulting difference of Kshs.1, 819,654,993 between the ledger and the financial statements has not been reconciled or explained. In the circumstances, the accuracy of reported expenditure of Kshs.24, 962,045,715 cannot be confirmed.

Submissions by the Accounting Officer

The Ag. CEC Member, Finance and Economic Planning and the Ag. Chief Officer Finance admitted the audit finding and submitted that the variance between ledger balances and financial statements was brought about by the following payments made outside IFMIS System: -

No.	Description	Amount (Kshs)	Remarks
1.	The Kenya Revenue Authority KRA Agency Notice	1,017,393,208	KRA unilaterally took over funds from the County Revenue Account CRA at Central Bank of Kenya through an agency notice. This was to recover tax arrears owed to KRA. The payments had not been budgeted for and this was not processed via IFMIS.
2.	Legal Fees	592,437,994	This relates to legal fees and decretal sums paid to individual

			entities during the year. The courts issued the County government with garnishee orders and warrants of arrests to senior officers.
3.	Kenya Power-Electricity Bills	216,070,000	- This relates to payment to KPLC after the electricity firm cut power supply to City Hall that necessitated negotiations on the standing order. - Electricity bills paid through bank standing order and monthly payments done during the year were journalised in IFMIS after the close of the financial year.

Committee observations and findings

i) Failure by the Accounting Officer to disclose this information to the Auditor General during the audit period implies that the Officer never intended to fully disclose the financial status of the County Executive. Equally, the Accounting Officer did not avail the amended financial statements for audit review by the Auditor General as requested.

ii) The County Treasury failed to meet its obligations including remitting of statutory deductions to relevant entities such as KRA and payment of electricity bills leading to interruption of service delivery and risking County finances as was in this case.

iii) The Accounting Officer was required to avail all the Garnishee orders and warrants of arrests to support the figures in question which he never did. In addition, decretal sums ought to be budgeted for under legal fees for each Sector/Department.

Committee recommendations

i) The County Treasury must at all times meet its obligations including remitting of statutory deductions to relevant entities such as KRA and payment of electricity bills to avoid interruption of service delivery and risking County finances as was in this case.
ii) The County Treasury should spend legal fees and decretal sums from the individual Sectors/Departments the cases in question relate to. Adequate budgetary allocation should be put in place to cater for the same.
iii) The Accounting Officer of the County Treasury must at all times provide complete financial statements/records and disclose all financial information to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229(4) of the Constitution, and Section 149(2)(k) of the Public Finance Management(PFM) Act, 2012.
iv) The Accounting Officer must at all times discharge his or her responsibilities in management of public finances as provided for in Section 68 of the Public Finance Management Act, 2012.

4.1.2. Variations between Balances in the Statement of Receipts and Payments and the Actual Payments - Acquisition of assets.

The statement of receipts and payments reflects expenditure totalling Kshs.1, 762,711,478 in respect of acquisition of assets. However, a comparison of the balances presented against the IFMIS payments report revealed material variances. Further verification of payments in the IFMIS payments report against the bank statements revealed that most of the payments were not reflected in the bank statements. The variations are as analysed below:

Item	Figure as per Financial Statement	Figure as per IFMIS payment Details	Payments Verified in Bank Statements	Variance (Financial Statements vs. Verified Payments in Bank Statements)
Construction of Buildings	67,693,935	165,133,835	35,413,575	32,280,360
Refurbishment of Buildings	72,838,053	26,328,742	7,053,867	65,784,186

Construction of Roads	596,741,989	246,011,460	24,426,003	572,315,986
Construction and Civil Works	499,729,375	192,956,311	6,300,000	493,429,375
Overhaul and Refurbishment of Construction and Civil Works	148,214,401	60,617,776	0	148,214,401
Purchase of Specialized Plant, Equipment and Machinery	190,981,271	88,080,008	0	190,981,271
Total				**1,503,005,579**

In view of the above variances, the accuracy of acquisition of assets expenditure of Kshs.1, 762,711,478 for the year ended 30 June 2017 cannot be confirmed.

Submissions by the Accounting Officers

The Ag. CEC Member, Finance and Economic Planning and the Ag. Chief Officer Finance admitted the audit finding and submitted that: -

i) All County Government suppliers who delivered goods and services as indicated in the Financial Statements were paid either through Central Bank internet banking system or Co-operative Bank Account. In some instances, due to cash-flow problems, some payments were split into more than one payment and paid in instalments during the year. Such payments reflect in the bank statements as individual entries rather than whole amounts owed to a supplier for each transaction. Further, Payments relating to suppliers paid in internet banking and through the cheque system were paid net of tax.

ii) During this period the County was using both the on-line and cheque system for payments of suppliers that led to the issues highlighted. However, the County Treasury has put in measures to ensure assets acquisitions are reconciled and entered into the asset register. The County Treasury has also fully embraced end to end IFMIS payments processing to ensure that payments to suppliers of goods are entered into the IFMIS System and paid through internet banking in-order to enhance reconciliation of transactions and to improve on financial reporting.

iii) Accounts analysis in support of acquisition of assets has since been forwarded to the auditors. The County Treasury was not able to submit in time after experiencing challenges in generation of the accounts analysis where IFMIS was producing blank reports due to system error at the time. A schedule of the asset analysis showing assets paid for is provided for the Committee to review.

Committee observations and findings

i) The County Treasury either failed to adhere to General Accounting principles or altered the financial records to conceal information since the financial statements should be an extract of the ledger and as such there should be no difference.

ii) Failure by the Accounting Officer to disclose this information to the Auditor General during the audit period implies that the Officer never intended to fully disclose the financial status of the County Executive. Equally, the Accounting Officer did not avail the amended financial statements for audit review by the Auditor General as requested.

iii) During the year under review, IFMIS had already been rolled out and thus all payments ought to have been done through the system in adherence to National Treasury guidelines.

Committee recommendations

i) Accounting Officers must at all times provide complete financial records and corresponding payment records to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229(4) of the Constitution and Section 149(2)(k) of the Public Finance Management(PFM) Act, 2012.

ii) The CEC Member for Finance and Economic Planning should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

iii) The Chief Officer, Public Service Management (PSM) should take administrative action against the Chief Finance Officer at the time of audit for negligence of duty and report him to the relevant professional body for professional misconduct.

iv) **The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.**
v) **The Accounting Officer must at all times discharge his or her responsibilities in management of public finances as provided for in Section 68 of the Public Finance Management Act, 2012.**

4.1.3. Unauthorized Budgetary Reallocation

As disclosed in Note 6 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.6, 462,971,486 against use of goods and services for the year ended 30 June 2017. Included in this amount is a reallocation of Kshs.225, 557,043 without the formal approval of the County Assembly, hence unauthorized expenditure. Consequently, the validity of the unauthorized expenditure amounting to Kshs.225, 557,043 cannot be confirmed.

Submissions by the Accounting Officers

The Ag. CEC Member, Finance and Economic Planning and the Ag. Chief Officer Finance admitted the audit finding and submitted that: -

i) In the implementation of the County Budget, every sector is responsible for the management the implementation of the budget including processing of all payments. The County Treasury through the Sector Accountants provides technical assistance to sectors in order to ensure sector budgets are implemented as approved by the County Assembly. Specifically, every sector is responsible for ensuring that the all expenditures are in accordance with the approved budget.
ii) It is however observed that in processing payments by various sectors, several payments were erroneously charged in the wrong accounts during the processing of the payments by the sectors. In the foregoing, the budgetary codes misallocated have been noted and appropriate measures taken by making necessary adjustments through journal entries in IFMIS.
iii) In addition to the action taken in correcting the errors, the County Treasury has strengthened the validation unit by building capacity in terms of increasing number of

officers managing the unit and also training the officers. This will ensure payments are processed in accordance with the approved plans.

Committee observations and findings

i) The CEC Member for Finance and Economic Planning during the year under review was supposed to approve all budget reallocations by the Sectors and thereafter submit a supplementary budget to the County Assembly which he failed to do.

ii) By allowing the re-allocation of budgets without the approval of the County Assembly, the CEC Member for Finance and Economic Planning during the year under review was in breach of Section 135 of the PFM Act, 2012 since no supplementary budget was presented or approved by the County Assembly to regularize the expenditure.

iii) The County Government has consistently prepared unrealistic budgets which fail to cover all expenditures leading to re-allocations which may be abused by the Sectors.

Committee recommendations

i) Accounting Officers must at all times implement the budget as approved by the County Assembly. In the event of any reallocations, the County Treasury must submit a supplementary budget to the Assembly for approval in compliance with Section 135 of the PFM Act, 2012.

ii) The County Executive should strive to prepare re-alistic budgets

iii) The Director of Public Prosecution should institute criminal proceedings against the CEC Member for Finance and Economic Planning during the year under review for breach of Section 135 of the PFM Act, 2012.

4.1.4. Unsupported Balances for Acquisition of Assets

Although Note 10 to the financial statements reflects expenditure totalling to Kshs.1, 762,711,478 in respect of acquisition of assets, only an amount of Kshs.61, 174,422 was verified as paid. There was no documentary evidence of the balance of Kshs.1, 701,537,056 as having been paid. Verification of the expenditure items revealed that the figures were extracted from the trial balance and the appropriation accounts. The breakdown of the figures as per the individual ledger transactions was however not provided to support the consolidated amounts. The accuracy of the expenditure totalling Kshs.1, 762,711,478 on acquisition of assets cannot therefore be confirmed.

Submissions by the Accounting Officers

The Ag. CEC Member, Finance and Economic Planning and the Ag. Chief Officer Finance admitted the audit finding and submitted that: -

i) All County Government suppliers who delivered the assets as indicated in the Financial Statements were paid either through Central Bank internet banking system or Co-operative Bank Account. In some instances, due to cash-flow problems, some payments are split into more than one payment and paid in instalments during the year. Such payments reflect in the bank statements as individual entries rather than whole amounts owed to a supplier for each transaction. Payments relating to suppliers paid in internet banking and through the cheque system were paid net of tax.

ii) During this period the County was using both the on-line and cheque system for payments of suppliers that led to the issues highlighted. However, the County Treasury has put in measures to ensure assets acquisitions are reconciled and entered into the asset register. The County Treasury has also fully embraced end to end IFMIS payments processing to ensure that payments to suppliers of goods are entered into the IFMIS System and paid through internet banking in-order to enhance reconciliation of transactions and to improve on financial reporting.

iii) Accounts analysis in support of acquisition of assets has since been forwarded to the auditors. The County Treasury was not able to submit in time after experiencing challenges in generation of the accounts analysis where IFMIS was producing blank reports due to system error at the time. A schedule of the asset analysis has been provided.

Committee observations and findings.

i) The County Executive Sectors failed to prepare work plans detailing which programs/activities would be undertaken during the year under review which would then have formed the basis for acquisition of assets and payment of suppliers.

ii) Accounting Officers exhibited either incompetence or negligence by failing to prepare payment vouchers as per the cash flows hence leading to splitting of cheques.

iii) The Chief Officer, Finance could not account for all the payment vouchers relating to acquisition of fixed assets and final payment to suppliers.

Committee recommendations

i) **The CEC Member for Finance and Economic Planning should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.**

ii) **Accounting Officers should prepare work plans detailing which programs/activities would be undertaken during a particular financial year consistent with the approved estimates.**

4.2. Pending Accounts Receivables

Records reviewed indicate that accounts receivables as at 30 June 2017 amounted to Kshs. 307,697,852,532, an increase of Kshs. 98,689,356,423 (47%) from Kshs. 209,008,496,109 reported in 2015/2016. Contrary to the guidelines issued by the Public Sector Accounting Standards Board, no disclosures have been made in the notes to the financial statements for the accounts receivables balance of Kshs.307, 697,852,532 as at 30 June 2017.

Submissions by the Accounting Officers

The Ag. CEC Member, Finance and Economic Planning admitted the audit finding and submitted that increase in accounts receivable is as a result of increase in outstanding rates due to the following reasons:

i) There has been a rapid increase in number of new Rates Accounts of formally unrated plots of subdivision schemes, private Land Developers; individual plots owners, Government entities, which were opened by Rates Department as conveyed by the Chief Valuer.

ii) Most of the plot owners have not paid substantial amounts on the new accounts and hence the apparent increase on Rates Debtors in FY 2016/2017.

iii) Properties under Commissioner of Lands have large undue interest balances that attract cumulative interest that ultimately affects the balance as at 30th June, 2017.

iv) The National Government has not been making payment in Lieu of Rates for the last 8 years hence annual rates debited in its accounts increase the Debtors position.

v) The second half of FY2016/2017 was during the 2017 volatile Electioneering period and most Rate Payers defaulted on payment of rates due to uncertain political environment, therefore the debtors increased drastically. Rates attract cumulative interest on unpaid amounts and this increases rates Debtors rapidly.

Committee observations

i) The explanation given by the Ag. Chief Officer, Finance on why the receivables remain high is not satisfactory since the County Treasury has all the instruments and the capacity to collect its receivables.

ii) The Ag. Chief Officer, Finance also did not provide schedules showing the County debtors, the amount and supporting evidence and whether the debtors are committed to pay.

Committee recommendations

i) **The CEC Member Finance and Economic Planning should spearhead in the development of a policy/mechanism on how to manage/collect all accounts receivables.**

ii) **The Chief Officer, Finance should prepare schedules showing the County debtors, the amount and supporting evidence of all accounts receivables.**

iii) **The CEC Member Finance and Economic Planning should formally engage the national government through the existing intergovernmental relations mechanism with a view of demanding the pending receivables from the National Government.**

4.2.1. Outstanding Rates

Outstanding rates as at 30 June 2017 amounted to Kshs. 305,367,800,145, equivalent to 99% of the total outstanding accounts receivables, which is an increase of Kshs. 97,780,672,110 (47%) from Kshs. 207,587,128,035 reported in 2015/2016 financial year. The significant increase in outstanding receivables and in particular outstanding rates is an indication that the County Government has not put adequate measures in place to collect and clear the outstanding rates. Further, supporting schedules for way-leave fees balance of Kshs.

752,140,672 were not presented for audit review while a 100% movement of urban development debtors from Kshs. 79,469,229 as at 30 June 2016 to a nil balance as at 30 June 2017 was not explained. As noted in the previous year, the likelihood of collecting the outstanding rates from the defaulters appears to be too low. This is indicative of significant impairment on the outstanding rates balance of Kshs. 305,367,800,145 as of 30 June, 2017. Further, ageing analysis for the outstanding rates balance has not been made available for audit review.

Submissions by the Accounting Officers

The Ag. CEC Member, Finance and Economic Planning admitted the audit finding and submitted that: -

i) The County Government endeavoured by all means possible to collect Revenue from Land Rates during the FY 2016/2017 as mandated by the Valuation for Rating Act Cap 266 and Rating Act, Cap 267. During the period the following strategies were used to enhance Rates Revenue Collection:
   - Serving demand notes and notices on site through Sub County Administration and the Debt Collection Unit.
   - Carrying out 'Operation Clamp Down' on rates defaulters.
   - Sending Demand notes through the Post Office.
   - Advertising names of Large Defaulters on the Print Media to name and shame.
   - Filing cases in Court to recover rates owed by large defaulters.

ii) The Revenue collected from Land Rates has been rising progressively over the years. The County Treasury has adopted feasible revenue collection strategies' in collection of Land Rates from defaulters and is continuing to do more each quarter resulting in increased Land rates collection each year.

iii) Outstanding Urban Development Debtors and Way Leave fees balances are as follows:

a) Large Format Advertisements as at 30th June 2017

No.	Company Name	Balance(Arrears) (Kshs)
1	Ad site Ltd	631,657.78
2	Advert Eyez	39,991.66

3	Alliance Media	470,068.00
4	Artbright	34,288.00
5	Backlite Ltd	658,401.00
6	Base Media	557,891.66
7	Base One	821,076.66
8	Brand Firm Ltd	694,159.00
9	Centurion	825,020.00
10	Consumer Link Comm.	59,688.54
11	Creative Space	1,370,223.00
12	ENG K LTD	2,483,391.20
13	Global Outdoor	316,816.15
14	Ingeneous Concept	3,021,892.00
15	Kremm Investments	1,608,543.57
16	Look Media	561,989.00
17	Magnate Ventures Ltd	56,106,259.68
18	Media Quest Ltd	1,073,332.00
19	Spellman & Walker	1,257,390.00
20	Supreme Outdoor	1,792,473.43
21	Taifa Outdoor	256,122.93
22	Tangerine Investments	576,043.50
23	Think Outdoor	31,098,237.00
24	Wide reach Ltd	1,502,412.85
25	KBC	135,812.00
	Total	**107,953,180.61**

b) *Street Light Advertisement Arrears, as at 30th June, 2017*

No	Company	Balance(Arrears) (Kshs)
1	Peermont advertisers	4,886,010.00

2	Magnate ventures ltd.	17,809,355.00
3	Tangerine investments	11,889,847.00
4	Marked holding	327,610.00
5	Adsite	10,510,620.00
6	Iq marketing	3,241,208.00
7	Almumin advertising	11,875,442.00
8	Horizon media	5,732,428.00
9	Firmbridge limited	2,373,366.00
10	Transad advertising	2,867,881.00
11	Aim research	849,260.00
	Total	**106,086,439.00**

c) ***Way-leave Fees Debtors as at 30th June 2017***

No	Company	Balance(Arrears) (Kshs)
1	Kenya Power and Lighting	694,772,400.00
2	Jamii Telecommunications LTD	15,147,950.00
3	Telkom Kenya Ltd	17,740,988.00
4	Frontier Optical Networks	4,879,750.00
5	Liquid Telecommunications (K) Ltd	13,714,743.00
6	MTN (Kenya) Ltd	5,884,840.50
	Total	**752,140,671.50**

Committee observations

i) The explanation given by the Chief Officer, Finance for non-collection of outstanding rates is not satisfactory since the County Treasury has all the instruments and the capacity to collect the rates a power it has be given under Article 209(3) of the Constitution.

ii) There could be a possibility that County Treasury Officials and Officers from the parent sectors where the rates are domiciled collude with the defaulters in order to deny the County Government revenue

iii) The County Treasury failed to provide the schedules during audit period thus raising questions on their credibility.

Committee recommendations

i) **The CEC Member, Finance and Economic Planning should take a personal interest in this matter and ensure that all rates defaulters pay the outstanding amounts. Meanwhile all those persons and companies with outstanding rates should immediately be stopped from transacting business within the County until they clear their dues.**

ii) **The CEC Member for Finance should enlist the services of investigatory state agencies such as the DCI and EACC to unravel any possible collusion between County Government Officers (officers in the rates and city planning departments) and companies/persons that fail to pay their rates.**

iii) **The CEC Finance and Economic Planning should develop a policy on rates collection and develop strategies on how to re-engineer the rates collection section for maximum collection. The policy should propose severe penalties for those who default on their rates while providing incentives for those who pay.**

4.2.2. Outstanding impressts

The statement of assets reflects accounts receivable balance on account of outstanding imprests of Kshs. 74,147,605 as at 30 June 2017 (2015/2016 - Kshs. 25,199,363). However, the outstanding imprests were not supported by an updated imprest register. Consequently, the completeness and accuracy of the imprests balance of Kshs. 74,147,605 as of 30 June 2017 cannot be confirmed.

Submissions by the Accounting Officers

The Ag. CEC Member, Finance and Economic Planning admitted the audit finding and submitted that: -

i) The County has been implementing the Government Financial Regulations which require imprests to be surrendered within a stipulated time period and any un-surrendered imprests are recovered in full through the salary system IPPD where salary is deducted until the imprest issued is fully recovered. However, the major challenge of multiple imprest issuances arise due to delay in payment and it's not prudent to penalize a holder who has not been paid.

ii) The outstanding imprest balance of Kshs. 74,147,605 was a product of two types of registers which the imprest control unit maintains:

- Manual register: -All imprests and surrenders which are processed through the office are recorded here and the balances used as a basis of deriving up the outstanding imprest figure. (Registers 3.no available)
- Electronic: – IFMIS which is the official government financial system keeps track of all imprests processed but fails to provide accurate balances due to the various levels of approval required.

iii) The County treasury through memo Ref: FIN/3/16/2017 forwarded the imprest list to the Chief Officer Public service management to initiate recovery of Kshs. 74,147,605 from salaries which was duly done.

Committee observations

i) Accounting Officers continue to contravene Government financial regulations and procedures on imprest as supplemented by various circulars issued by National Treasury.

ii) Accounting officers did not keep proper and up-to-date imprest records during the period under review.

Committee recommendations

i) **All Accounting Officers should institute measures to ensure that County Government staff adhere to government regulations and procedures on imprests to guard against malpractices.**

ii) **Accounting Officers must at all times provide complete financial records, corresponding imprests records to the Auditor General within the stipulated period** of three months after close of the Financial Year as provided for in Article 229 (4) of the Constitution and section 81 (4) (a) of the Public Finance Management Act, 2012.

4.2.3. Loading Zones

Outstanding loading zones balance amounted to Kshs.559, 080,800 as at 30 June 2017 representing an increase of Kshs.95, 180,000 from the previous year balance of Kshs.463, 900,800. Further, included in vehicle parking fees of Kshs. 2,025,471,174 disclosed in Note 4 to the financial statements is revenue from loading zones of Kshs. 268,384,100 while the schedule presented has a figure of Kshs. 223,140,000. The resulting to difference of Kshs.45, 244,100 has not been explained. In addition, no explanation has been provided for the perennial non-collection of loading zone debts.

Submissions by Accounting Officer.

The Ag. Chief Officer, Finance admitted the audit finding and submitted that: -

i) The accumulated arrears are by Government institutions who have failed to remit despite several reminders. The County Government petitioned senate to help in follow up on government debts on loading zones.

ii) The County Government will number all the loading zones to improve in monitoring of the payments and identify those in arrears for immediate revoking and change to daily parking.

Committee observations

i) The County Government lost and continues to lose revenue due to non-payment by entities using loading zones i.e. both private and government institutions.

ii) The County Treasury does not have adequate information on the number, location and the designated users/beneficiaries of all loading zones in the County.

iii) The responsible County Officers fail to enforce measures aimed at collecting revenue from the loading zones partly due to negligence and weak legal provisions on loading zones.

Committee recommendations

i) The Chief Officer, Finance and the Head of Revenue/Parking should within 1 (one) month of adoption of this report reposes and convert all loading zones with outstanding balances to on street parking.

ii) The Chief Officer, Finance and the Chief Officer Transport and Public Works should within three (3) months of adopting of this report spearhead the process of identifying and marking all the loading zones within the City and identify their designated users.

4.3. Cash and Cash equivalents

The statement of assets reflects overdrawn bank balances of Kshs.499, 972,132 as at 30th June 2017 and as disclosed in Note 4 to the financial statements. This represents a decrease of Kshs.776, 902,731 from the previous year`s negative balance of Kshs.1, 276,874,863. However, examination of individual bank balances revealed the following anomalies:

4.3.1. In Accurate Balances

(i) Note 14A to the financial statements reflects Central Bank of Kenya-Revenue A/C No: 1000171863 balance of Kshs.191, 921,490 but the respective cash book reflects a balance of Kshs.259, 528,989 resulting in un-reconciled difference of Kshs.67, 607,499.

(ii) Further, the following balances reflected in the Note to the financial statements are the bank statement balances instead of the cash book balances resulting in un-reconciled differences as detailed below:

Name of Bank, Account No. & currency	Cashbook Balance (Kshs)	Reported Balances (Kshs)	Difference (Kshs.)
Cooperative Bank Imprest Account-01141232396601	(4,119,777,707)	(891,961,441)	(3,227,816,266)
Cooperative Bank Solid Waste Management Account-01141232396606	(169,059,799)	1,600,305	(167,459,494)

Pumwani Hospital Account - National Bank Account No.102100895400	7,829,103	9,967,662	(2,138,559)
Mama Lucy Kibaki Hospital - KCB Account No.1133233864	-	30,460,569	(30,460,569)
Mutuini Dagoretti Sub County District Hospital -National Bank -Account No.102100895400	-	14,154	(14,154)
	(4,281,008,403)	(849,918,752)	(3,431,089,651)

The miss-statements as analysed above resulted to an overstatement of cash and cash equivalents balance by Kshs. 3,431,089,651.

(iii) Further, analysis for the following reconciling items were not provided for audit verification;

Bank Account	Payments in cash book not yet recorded in bank statement (Un Presented Cheques) (Kshs.)	Deposits in the Bank Statement not in the cashbook (Kshs.)
Cooperative Bank-Revenue A/C No: 01141232396600		201,445,104.02
Cooperative Bank-Imprest A/C No: 01141232396601	1,053,098,522	2,174,717,744.08
Cooperative Bank-Solid waste management A/C No: 01141232396606	45,352,461	125,307,642.97

iv) Reconciliation statement for Cooperative Bank-Kenya Roads Board A/C No: 01141232396604 reflects bank balance of Kshs. 24,827,964 but the bank confirmation certificate reflects nil balance as at the same date. No explanation has been provided for this anomaly.

Submissions by Accounting Officer.

The Ag. Chief Officer, Finance admitted the audit finding and submitted that: -

i) Central bank of Kenya account 1000171863 reported balance as at 30th June, 2017 Kshs. 191,921,490 was due to a system error, the correct balance is Kshs. 259,528,989 as indicated in the cashbook and bank certificate and not 191,921,490. A system reversal in the CBK account on 3rd July, 2017 brought about the variance reported. The cashbook and the bank certificates are available for confirmation.

ii) Cooperative Bank Kenya Roads Board account was erroneously reported as a/c 01141232396604 which is not active and has a (zero) 0 balance. The correct account number is 01136005723604 with a balance of Kshs. 24,828,623.90 at the close of the financial year. Provided is bank statement for cooperative bank Kenya Roads Board Account 01136005723604.

Committee observations

i) The misstatement of bank balances either confirm that the County Treasury intended to conceal certain information for reasons only known to the Accounting Officer or it confirms the incompetency/negligence of the County Treasury.

ii) The Chief Officer, Finance during the year under review failed to perform his duties as required of him as the Accounting Officer of the County Treasury.

Committee recommendations

i) Accounting officers must at all times ensure that all documentation relating to financial statements are submitted to the Auditor General pursuant to the provisions of section 149(2)(k) of the Public Finance Management Act, 2012.

ii) Accounting officer must at all times keep accurate financial and accounting records in compliance with section 149 (2) (b) of the Public Finance Management Act, 2012.

iii) The CEC Member for Finance and Economic Planning should sanction the Chief Officer, Finance during the period under review for negligence of duty.

4.3.2. Non-Disclosure of Nairobi Ward Fund Account Balances

The Nairobi City County Executive operated a Ward Development Fund Account No.0082120378001 at Chase Bank. The Account had a balance of Kshs.4, 984,545 as at 30 June 2017 with available balance of Kshs.992, 300 as at the same date. The difference of Kshs.3, 992,245 was being held under moratorium due to the receivership status of the bank. However, this information was not disclosed in the financial statements of the County

Executive as at 30 June 2017. Consequently, the cash and cash equivalents position of the County Executive as reported in the financial statement is misleading and not fairly stated.

Submissions by Accounting Officer.

The Ag. Chief Officer, Finance admitted the audit finding and submitted that:-

i) The Ward Development Fund Account was opened at chase Bank which is now under receivership with an account balance of Kshs.4, 984,545. Due to the moratorium only Kshs.992, 300 is available.

ii) At the time of audit the changes in the signatories to the accounts had not been effected creating access challenges at the time. However, no withdrawals have been made to the account and the balances remain as reported.

Committee observations

i) Had the Chief Finance Officer provided the information to the Auditor General during the audit period, this matter would not have been an audit query.

ii) The Committee marked the matter as resolved.

Committee recommendations:-

The Chief Officer, Finance should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.

4.3.3. Weak Controls on Bank Reconciliation

Note 14A to the financial statements indicates that Nairobi City County Executive operated twenty-three operational bank accounts during the year under review with a closing balance of negative Kshs. 499,972,132. None of the accounts had the reconciliation statements reviewed by relevant senior officers. It was further noted that all the bank reconciliations did not indicate the officers who prepared them and also the date the reconciliation was done. As a result, it is not possible to confirm whether the County Executive was in compliance with regulation 90 (1) of Public Finance Management (County Government) Regulations, 2015.

Submissions by Accounting Officer.

The Ag. Chief Officer, Finance admitted the audit finding and submitted that: -

i) Nairobi city county operated twenty-three (23) operational accounts during financial year 2016/2017with negative balance of 499,972,132. Negative bank balances was as a result of bank overdraft facility that was secured for repayment of salaries repayable and renewed at the end of every month which was authorized by the county assembly as per attached copy of approval dated 24/10/2014.

ii) Balance brought forward in the cash books for Cooperative imprest account 01141232396601 and Cooperative solid waste management account 01141232396606 are adjusted cashbook balances as per the provided cashbooks. Balances brought forward for cooperative bank account 01141232396600 was an error which process of adjustment has commenced.

iii) Schedules of payments in cashbook not yet recorded in bank statements (un-presented-cheques) for Co-operative Bank Account – Imprest Account No. 01141232396601 Kshs.1, 053,098,522 and solid waste management account number 01141232396606 Kshs.45, 352,461.

iv) In order to strengthen bank reconciliation reports a training was organized with National Treasury on cash management with the aim of improving reports generated from by the section.

Committee observations

i) Lack of controls in bank reconciliation section is a risk that may be exploited to defraud County Government funds.

ii) The Chief Officer, Finance during the year under review failed to perform his duties as required of him as the Accounting Officer of the County Treasury.

Committee recommendations

i) Chief Officer Finance should institute proper accounting mechanisms within the County Treasury and effectively perform his duties in accordance with Section 149 of the PFM, Act, 2012.

ii) Accounting officer must at all times keep accurate financial and accounting records in compliance with section 149 (2) (b) of the Public Finance Management Act, 2012.

iii) **The CEC Member for Finance and Economic Planning should sanction the Chief Officer, Finance during the period under review for negligence of duty and report him to the relevant professional body for professional misconduct.**

4.3.4. Overdrawn Accounts

Nairobi City County Executive had four (4) overdrawn accounts as at 30th June 2017 as tabulated below:

Account Name	Amount (Kshs)
Equity Bank-General collection A/C No: 0810263520904	11,112
Equity Bank-General collection A/C No: 0810271586663	256,092
Cooperative Bank-Imprest A/C No: 01141232396601	891,961,441
Kenya Commercial Bank-current A/C No: 1159076065	3,790,179
Total	**896,018,824**

No reasons were given for overdrawing the accounts contrary to Section 119(4) and (6) of the Public Finance Management Act, 2012.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) The County treasury has since then repaid the short-term loan facility owed to Co-operative Bank of Kenya of Kshs. 891,961,441 at the close of the financial year. Authority from County Assembly to acquire a short-term loan facility with Cooperative Bank on our Imprest A/C 01141232396601 has been provided.

ii) Kenya Commercial Bank Current Account is an interest payment account; the account overdraw was as a result of in ability of the county to repay interest in time due to financial constraints facing the county at the time.

iii) The Equity Bank accounts have been dormant over time leading to negative amount balances brought about by bank charges on the accounts. The County Treasury has endeavoured to close all the dormant accounts in the County.

Committee observations and findings

The Committee made the following observations and findings: -

i) As confirmed by the Ag. Chief Officer, finance some bank accounts were overdrawn contrary to Section 199(4) of the PFM Act. The Chief Officer could not any avail any proof of authorization for overdrawing.

ii) The County Treasury failed to reconcile bank accounts as required under the PFM Act, 2012 regulations.

Committee recommendations

i) The CEC Member for Finance and Economic Planning should hold the Chief Officer, Finance during the year under review liable for breach of Section 119(4) and ensure that the officer incurs the full cost of the overdrawn amount in accordance with Section 119(6) of the PFM Act, 2012.

ii) The Chief Officer, Finance must ensure that the County Executive adheres to the provisions of the PFM Act, 2012 in all financial transactions.

4.3.5. Non Maintenance of Cashbook and Bank Reconciliation Statements

Cash books and bank reconciliations for the following bank accounts for the year under review were not maintained:

Name of Bank, Account No. & currency	Reported Balances (Kshs)
Equity Bank-General collection A/C No: 0810263520904	(11,112)
Equity Bank-General collection A/C No: 0810271586663	(256,092)
Mutuini Dagoretti Sub County District Hospital -National Bank -Account No.102100895400	14,154
Total	(253,050)

Non-maintenance of cashbooks and non-preparation of bank reconciliation statements contravenes regulation 90 (1) of the Public Finance Management (county government) Regulations, 2015.

Submissions by the Accounting Officer

The Accounting Officer admitted the audit finding and submitted that the bank reconciliation has since then been provided for review.

Committee observations and findings

i) Failure by the Accounting Officer to prepare and maintain cashbook and bank reconciliation statements which are primary accounting tools implies that the Accounting Officer never intended to fully disclose the financial status of the County Executive during the year under review for personal reasons.

ii) The Chief Officer, Finance during the year under review failed to perform his duties as required of him as the accounting officer of the County Treasury. The CF

Committee recommendations

i) **The CEC Member, Finance & Planning should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.**

ii) **Accounting officer must at all times keep accurate financial and accounting records in compliance with section 149 (2) (b) of the Public Finance Management Act, 2012.**

iii) **The CEC Member for Finance and Economic Planning should sanction the Chief Officer, Finance during the period under review for negligence of duty.**

4.4. Pending Accounts Payables

(i) Disclosed at Note 17 to the financial statements is a summary of pending accounts payables amounting to Kshs. 56,516,365,308 as at 30 June 2017, an increase of Kshs. 8,218,746,469 (17%) from the previous year balance of Kshs. 48,297,618,839 as analysed below:

Details	**Current year Final (Kshs.)**	**Prior year Actual (Kshs.)**	**Increase (Kshs.)**	**% Increment**
Pending Merchants payables	6,614,150,772	5,332,716,053	1,281,434,719	24%
Pending Staff Creditors	142,249,068	107,548,846	34,700,222	32%
Other pending bills	44,786,733,639	39,422,844,055	5,363,889,584	14%
Outstanding Loan	4,973,231,829	3,434,509,885	1,538,721,944	45%
Total	56,516,365,308	48,297,618,839	8,218,746,469	17%

No justifiable reason was provided for the 17% increase in accounts payables.

(ii) Had the pending bills of Kshs. 56,516,365,308 been paid and the expenditure charged to the accounts for 2016/2017, the County Executive would have recorded a deficit of Kshs. 55,694,170,987 instead of the surplus of Kshs. 822,194,321 now reflected in the statement of receipts and payments for the year then ended. Failure to settle the bills in the year to which they relate adversely affects the following year's provision to which they have to be charged.

(iii)Although the County Executive maintained a soft copy of the ledger for the above pending payables, the updated individual creditors' ledgers were not maintained. In addition, aging reports for the creditors were not maintained and the creditors' control accounts do not reflect payments made by the County Executive. Consequently, the accuracy, validity and valuation of County Executive's indebtedness to the creditors of Kshs.56, 516,365,308 cannot be confirmed.

(iv)In addition, and as disclosed under Note 17.3, other pending bills as of 30 June 2017 amounted to Kshs. 44,786,733,639which comprised mainly of unremitted statutory deductions as analysed below:

Creditors	**2016/2017 FY Balance (Kshs)**	**2015/2016 FY Balance (Kshs)**	**Change (Kshs)**
KRA	3,922,081,365	3,128,673,889	793,40,476
NSSF	470,808,346	509,097,305	-38,288,959
On-Lent Water Loans	15,328,285,000	15,328,285,000	0
Govt – Guaranteed Loans	3,815,640,000	3,815,640,000	0
Laptrust Principal	5,812,450,194	5,296,304,468	516,145,726
Laptrust Penalties	3,088,249,653	1,904.323,121	1,183,926
Lap-Fund Principal	2,041,834,795	2,031,894,745	9,940,050
Lap-Fund Penalties	7,683,011,712	4,784,252,954	2,898,758,758
Laptrust Actuarial Deficit/ interest	2,624,372,573	2,624,372,573	0
	44,786,733,639	39,422,844,055	5,363,889,584

The increase of Kshs.5, 363,889,584is largely attributed to penalties accrued on late remittance of Laptrust and Lapfund which increased by Kshs. 4,082,685,290. The County continues to incur penalties due to delayed remittance and settlement of statutory deductions. No explanation has been provided as to why the statutory deductions were not paid to relevant bodies as required.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) Creditor's ledgers are updated on a daily basis however each voucher is entered as a separate payment for compilation to allow the section track payment of individual vouchers. The creditors' ledger is broken down to individual vouchers/ schedules that constitute the Kshs.6.6M are hereby attached for your review. This consists of the individual balances owed to contractors and supplier for construction and refurbishment of buildings, construction of civil works (roads, drainages' & refurbishments), supply of goods and supply of services and the hospital creditors (Appendix CR1).

ii) Statutory creditors on the other hand are paid on a monthly basis as at when salary is being paid. A monthly analysis of deductions and payments to statutory creditors is attached for your review (Appendix CR2).

iii) The County through the ICT department procured for the installation and commissioning of a tier II data Centre which has recently been launched. The data centre will host all the County information systems that includes an Enterprise Resource Planning (ERP) which is the county core software system that will among others integrate the financial reporting process and management of creditors is one of the key components expected to enhance itemized individual management of the suppliers and contractors.

iv) On the concerns raised about non-payment amounts owed to Statutory Creditors. The County in the year under review experienced the challenges specified below which interfered with its cash flow position;

   a) Failure to Realize County Projected Revenue Collections;

- The County did not meet its projected revenue in the budget by about 20% during the year leading to non-financing of some of its core expenditure.
- This impacted negatively on the County's ability to honor financial obligations as and when they fell due.

b) Late Exchequer releases;

- The National Treasury delay in remittance of Exchequer Release delayed payments to statutory creditors.

c) High Interest and penalties charged by statutory creditors;

- Statutory creditors charge high interest rates and penalties in accordance with Section 76 (1) of Legal Notice No. 50 on the Local Authorities Pensions Trust Rules, 2007 and Section 53 of the Retirement Benefits Act Cap 197.
- Lap-trust charges interest at the rate of 1.25% per month (15% per annum) compounded and Lap-fund at the rate of 3% per month (36% per annum) compounded. This has continually affected payments to other statutory creditors like K.R.A.

iv) The County Government has taken the following measures to address the afore stated challenges;

- The County has embarked on remitting statutory deductions to the various statutory creditors as at when salary is paid.
- The County is currently negotiating with the National government to pay it obligation in contribution in lieu of rates and reserved parking. These resources will be used to retire some of these historical debts that have high interest rates.
- In our discussions with KRA it was agreed that agency notices for non-payment of PAYE shall not be issued where the National Treasury has delayed remittance of the exchequer release to the County.

Committee observations and findings

The Committee made the following observations and findings: -

i) The Chief Officer Finance during the year under review by failing to keep updated records on pending accounts payables failed on his duties as the Accounting Officer of the County Treasury during the year under review.

ii) Failure by the Accounting Officer to keep proper records of all pending bills may result in inflated demands by county creditors since there would be no records to base on.

iii) Pending Bills relating to statutory deductions of employees is as a result of complete failure by the County Treasury to remit the deducted amounts to the relevant statutory entities thus exposing the County Government to huge unnecessary penalties every month.

iv) Some of the loans regarded as pending bills were illegally acquired by the County Executive hence they require forensic auditing before they are settled.

Committee recommendations

i) The County Treasury should immediately prioritize remittance of employee deductions to the relevant entities to save the County Government from incurring unnecessary cost in terms of penalties and to secure employee retirement benefits.

ii) The CEC Member for Finance and Economic Planning should submit to the County Assembly the report of the task-force appointed by H.E. the Governor to scrutinize pending bills. All genuine pending bills as determined by the task-force should be budgeted for in the next financial year and fast-tracked for payment.

iii) The CEC Finance and CFO at the time of the audit should be held to account for occasioning loss of funds by the County Government for failing on their responsibility of remitting employee deductions thus making the County Government to be slapped with huge penalties.

iv) The Accounting Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

4.5. Revenue Management

The statement of receipts and payments reflects County own source revenue of Kshs. 10,933,201,474 for the period ended 30June 2017 compared to revenue collected in 2015/2016 of Kshs. 11,237,972,877 resulting in a decrease of Kshs. 304,771,403 or (3%). Further comparison between the budget figure of Kshs. 19,566,000,000 and actual own source revenue of Kshs. 10,933,201,474 indicate a revenue shortfall of Kshs. 8,632,798,526 or (44%). Trend analysis on the specific revenue items could not be performed since the format of the presentation of financial statements and budget were not consistent. The following unsatisfactory matters were noted also with regard to the management of revenue:

4.5.1. Revenue to the County Revenue Fund

As reported in the last financial year, the County Executive has not been sweeping all revenue collected from own source. During the financial year under audit, the County Executive collected revenue amounting to Kshs.10, 933,201,475 from the County own generated receipts. Audit of the County Revenue Fund revealed that only Kshs.2, 420,840,729 or (22%) of revenue collected was banked in the County Revenue Fund Account. The balance of Kshs.8, 512,360,746was spent at source contrary to Section 109 of the Public Finance and Management Act, 2012.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) The County has structured the top six revenue streams into full Departments with proper staffing to competently implement the revenue enhancement strategies namely:

   - Publicity to inform the citizen on the County dues, when & amount payable and the consequences of being in default.
   - Have accurate data on all customers and update the payment status and promptly issue bills and demand notices.
   - Carryout continuous inspections & enforcements to enhance compliance.
   - Undertaking variance analysis and take corrective measure where it is negative.

ii) It is true that the County at the time was still using the LAIFOMS format which had the old defunct Council Departments hence all the new sectors from the devolved functions are all categorized under miscellaneous revenues.

iii) The format of the budget and the financial statements is currently being reported as per the National Treasury and Public Sector Accounting Standard Board guidelines. Further budgeting has been aligned to the chart of accounts as per the financial reporting template. We no longer do the budgets manually in excel sheets. By that time the Hyperion module of IFMIS which is used in capturing the budget was not fully operational and it came to be operational in the FY 2015-2016.

iv) The county collects revenues which are mainly deposited to the Co-operative Bank Revenue account. Historical agreements that the defunct City Council of Nairobi had engaged in to settle the debts has led to challenges that made it difficult for the County Government to comply with the PFM Act, 2012 which requires that sweeps collected revenue into the County Revenue Fund (CRF) daily.

v) The debts are in respect to institutions which cripple our operations such as Kenya power, KRA where agency is instituted. Further, the county has been facing many court orders and warrant of arrests against senior officers for payment of decrees and other fees. Attached are some court orders.

vi) On many occasions, the County Government is faced with operational crises which occasions require urgent attention for instance need for special focus on garbage collection, floods necessitating urgent address, emergencies like fire outbreaks, collapse of buildings. Such events at times demand that we spend some funds from the cooperative bank account before it has been swept to the County Revenue Fund.

vii) The County Government is renegotiating the terms of payment with creditors as well as working tirelessly to increase revenue collection which will enable the County Treasury to properly plan and execute payments as per the requirements.

viii) Currently the county is in compliance with the PFM Act, 2012 and sweeps all revenue collected on daily basis. Further, the county is currently reporting through the IFMIS Charter of accounts which implies that approved estimates should be in the same format as revenue sources for ease of comparison.

Committee observations and findings

i.) The County Executive failed to adhere to Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012 which stipulates that all funds raised or collected on behalf of the County Government should be deposited into the County Revenue Fund account.

ii.) The County Treasury failed to keep proper financial records with respect to the locally collected revenue.

Committee recommendations

i) **The CEC Member Finance & Economic Planning and the Chief Officer, Finance must take necessary steps and ensure that all funds raised or collected on behalf of the County Government are deposited in the County Revenue Fund.**

ii) **The County Treasury should always keep up-to-date records of all the revenue collected locally.**

iii) **The Director of Public Prosecution should institute prosecution proceedings against the CEC Member Finance and the Chief Officer, Finance at the time of the audit for breach of Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012.**

4.5.2. Compliant and Non-Compliant Vehicles On-Street Parking

Examination of records for vehicles parked within Nairobi City County during the year revealed that out of 1,305,440 vehicles parked, 402,401 or (31%) were compliant while the remainder, 903,039 or (69%) were uncompliant resulting in a probable revenue loss of Kshs. 270,911,700 (based on street parking fees of Kshs.300 per vehicle). The management is yet to put in place adequate measures to curb the non-compliance.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) The variance between compliant and non-compliant vehicles arises due to the following: -

- The system does not reconcile after the non – compliant vehicles pays. The County Government communicated to Jambo-pay to upgrade the system for it to be able to reconcile.
- On the error of querying by attendants, the attendant sometimes can insert the wrong number plate when querying i.e. errors of commission and omission thus increasing the number of non-compliant which in real sense the vehicles were not on the street
- Government vehicles with normal number plates, staff/employee, vehicles from other counties, VIP stickers visiting the city are not charged parking fee.

ii) To curb collusion of employees and motorists reshuffle of staff is done after every two months for both the attendants and supervisors. The county has introduced a cashless payment system in the parking department ensuring that all monies collected are banked intact.

iii) The county is in the process of purchasing scanners to reduce the same. In addition, the ICT department is exploring the possibility of designing and implementing a smart parking management solution based on the Radio Frequency Identification (RFID) and internet as part of the County ICT Transformation programme.

iv) Usually Parking boys are the ones who induce clients not to pay for parking fees thus depriving county of revenue and Inspectorate department have been requested to remove them from the parking areas.

Committee observations and findings

The Committee while appreciating the measures put in place by the County Executive was not convinced by the reasons provided by the Ag. Chief Officer, Finance with respect to variance of the revenue collected at the parking and observed as follows.

i) The Committee holds the view that parking revenue must have been lost through fraud and collusion among motorists, parking attendants and senior County Treasury officials.

ii) The Jambopay revenue collection system as found out by the Committee in its previous report does not have capacity to collect revenue on behalf of the County

Government hence the loss of revenue as reported by the Auditor General and admitted by the Accounting Officer.

Committee recommendations

i) **The County Treasury should fully automate all parking fee collection within four (4) months of adoption of this report and disciplinary action must be taken against parking attendants who fail to comply. A new fool-proof and internal electronic platform proposed by the Accounting Officer must be developed in compliance with the previous Committee report.**

ii) **The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of non-payment by motorists personally liable for the loss of revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that:-'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).***

4.5.3. Unaccounted for Clamps

Examination of enforcement revenue revealed that the system was releasing clamped vehicles without payments or the requisite approved penalty. During the year, the number of vehicles clamped were 25,700as per the system records. The unaccounted-for clamps (vehicles unclamped without valid reasons) totalled to 15,388 or (60%) of the total clamped vehicles. Consequently, the County lost revenue equivalent to the unauthorized releases. Control over issuance and accountability over the clamps are weak and prone to manipulation. For instance, there is no system for monitoring the activities of field officers on the clamped vehicles to ensure that those unclamped have paid.

Submissions by the Accounting Officer

The Ag. Chair Officer, Finance submitted that: -

i) The county through its Jambo pay system has a querying option which the enforcement department uses to ensure that all vehicles not paid for are clamped (ensure compliance). The government vehicles with work tickets, staff vehicles and those with VIP stickers erroneously clamped.

ii) The office has introduced a specific team to do an analysis and verification of clamped and unpaid for vehicles and thus are able to detect areas of rampant non-compliance and non-payment of penalties.

Committee observations

i) The County Government lost and continue to lose revenue due to inaction by parking attendants who by design fail to enforce revenue collection.

ii) The existing systems of enforcing parking fee collection and enforcing penalties for non-complying vehicles are weak and prone to manipulation. The Jambopay system that is relied own has no capacity to either enforce or to detect non-compliance as already determined by the Committee.

Committee recommendations

i) **The Officer in Charge of Parking must take necessary steps and ensure that any clamped vehicle must pay the requisite penalties prior to their release and proper documentation kept.**

ii) **The County Government should immediately procure an automated system to monitor the clamping and unclamping of vehicles.**

iii) **The County Government should immediately develop a legislation on parking for introduction in the County Assembly within three (3) months of adoption of this report.**

4.5.4. Loss of Revenue Due to System Downtime in Off Street Parking

As reported in the previous year, the County Executive automated the following off-street parking; Law Courts, Sunken, Nginda and Intercontinental parking areas with 70, 240, 22 and 36 parking slots, respectively. Nevertheless, the automated system was noted to be down for significantly long durations necessitating use of manual ticketing which is prone to manipulation. Site visits to the parking areas on diverse dates in the financial year under review revealed that vehicles were normally double parked which is an indication of revenue collection in excess of a parking area's potential. However, examination of revenue returns for the four parking areas indicated annual revenue of Kshs.20, 820,710 versus estimated revenue collection capacity based on the available number of parking slots of Kshs. 33,678,000 resulting to a variance of Kshs.12, 857,290. The variance has not been explained. The cost benefit analysis of the computerization of the parking lot may not have been realized.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) There are only two fixed automated parking venues with an entry/exit barrier i.e. Law Courts and Sunken. Nginda and Intercontinental on the other hand are not automated, have no barrier and operate using online phone gadgets to detect noncompliance.

ii) Jambo pay systems have taken over the running of the revenue system and introduced paperless transactions and maintenance is done by Jambo-pay.

iii) Double parking at the Law Courts is done by County staff who have been allowed to do so to vacate them from on street parking's and are not required to pay.

Committee observations and findings

i.) The automated system relied on by the County Government is not fool proof, transparent and has no a back-up during system downtime.

ii.) Manual collection of parking fees that is resorted to at the mentioned car parks is susceptible to corruption since parking attendants seem to conclude with motorists who intend to evade paying parking fees hence leading to loss of revenue as noted by the Auditor General.

Committee recommendations

i) **The County Government should review its existing automated revenue collection system with a view of ensuring that it is free from manipulation, transparent and has back-up in case of system down-time; and**

ii) **The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of audit personally liable for the loss of Kshs. 12, 857,290 in revenue in** accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that: - 'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).*

4.5.5. Compensation for System Down Time- Jambo pay system

A review of the Service Level Agreement entered between Webtribe and Nairobi County classifies the unavailability and downtime problems into priority level definitions and the action which Webtribe will undertake to ensure the resumption of the application. However, there is no amount or penalty that has been put in place chargeable to Webtribe in the event of unavailability of the system attributed to them. A review of system logs indicates that the system failed on several occasions and customers had challenges paying revenue. A sample of days when the parking section had challenges with the system logs revealed that an estimated 99 hours could have been lost resulting to a probable loss of Kshs.24,000,000.A request for information from the ICT department on the actual downtime for all the revenue streams was not provided for audit purposes. No compensations have been given for the system downtime. In the circumstances, without a binding clause in the contact document on who and how much should be compensated on system down time, the County Executive will not be compensated in case of system downtime. Further, the County Executive stands to lose revenue in the event of prolonged system down time.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) The Service Level Agreement entered between Webtribe and Nairobi County did not specify the amount or penalty chargeable to Webtribe in the event of unavailability of the system attributed to them. However, in cases of losses the County is required to demand for compensation from Webtribe. In addition, the ICT Department has put in place a reporting procedure where the Ejijipay service provider is tasked to report when there is a downtime and a clear mitigation mechanism based on the downtime causes. Downtime's however are noted in both cases either in Laifoms or Jambopay systems where impact is high and correspondence is done by both institutions.

ii) Part 2.1.9 of the service agreement with Webtribe spells out the fact that Web Tribe should take all measures necessary to ensure e-payment service availability. It is unfortunate that the SLA does not specify action to take in case of any system challenge. Matters compensation and how the amount to compensate is not mentioned as well.

iii) It is important to note that the new Administration addressed the same in a meeting held on 1st, September, 2017 where the CEO agreed to the reduction of transaction fee of 4.5% to 4.0% if all revenue streams are covered under e-payment platform by amending the contract. Further, the cash office transaction fee of 1.25% charged by Web Tribe be considered.

iv) The 1.25% fee charged for the cash office transactions was also discussed in February, 2015 (as per attached annex Rev 4) which required the varied contract to be availed for signature and also for Finance to process the payments. The document is yet to be availed.

Committee observations and findings

The Committee made the following observations and findings: -

i) As already determined by the Committee in its previous report, the service agreement between the County Government and Webtribe was skewed in favour of Webtribe. Of significance as reported by the Auditor General, the County Government has no recourse in case of system down time and thus leads to loss of public funds.

ii) By failing to undertake due diligence prior to signing the service agreement, all the signatories representing the County Government and their counsel are liable for the loss of funds that occur during Jambopay system down time period. The officers are therefore liable for punishment prescribed under Article 226(5) of the Constitution which provides that: - *"If the holder of a public office, including a political office, directs* *or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not"* and Section 203(1) of the PFM Act, 2012 which provides that: - *"a public Officer is personally liable for any loss sustained by a county government that is attributable to-*

(c) the ***fraudulent*** *or* ***corrupt conduct,*** *or* ***negligence,*** *of the officer; or*

(d) the officer's having done any act prohibited by sections 196, 197 and 198"

Committee recommendations

The Committee recommends that: -

i) **The CEC Member for Finance implements the previous resolution of the Committee on Jambopay system which was;** *"the County Government should invoke the provisions of Clause 17 of its agreement with Webtribe Ltd and terminate the agreement following the breach of Clauses 24 and 25 by Webtribe Ltd of the said agreement"* and *"the County Government should within five (5) months of adoption of this report develop its own internal and fool proof automated revenue collection system".*

ii) **Pursuant to Article 226(5) of the Constitution and Section 203(1) of the PFM Act, 2012, the CEC Member for Finance and Economic Planning should liaise with state agencies and cause to recover all monies that may have been lost whenever system down town occurred within Jambopay from all County Government signatories in the contract between the County Government and Webtribe ltd for occasioning loss of public funds through irregular expenditure.**

4.5.6. Spending at Source by Jambopay of 4.5% of Revenue Collected

The statement of receipts and payments reflects county own source revenue totalling to Kshs. 10,933,201,475 out of which revenue collected through Jambopay was Kshs. 7,924,761,266 representing 72% of the total revenue collected. It was noted that revenue reflected in the LAIFOMs was net of the vendors' fees of 4.5%. Documents detailing the 4.5% deductions by Jambopay during the year were not however provided for audit review. In the circumstances, it was not possible to confirm the total amount of money the company had deducted in 2016/2017 and in the past financial years.

Further, the County Executive does not do validation/reconciliations and does not have access to the trust account of actual revenue collected by Jambopay. As noted in the previous reports, since the County Executive is able to collect this revenue through its own effort, then the cost of the contract should have been a percentage of the incremental revenue over and above the average actual revenue collected over an agreed period of time. Basing the cost of the contract on the total revenue would mean that M/S Webtribe Ltd will gain both from the Nairobi City County own effort\efficiency and convenience brought about by the system despite the fact that all revenue is collected by the County staff.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that the County Government has initiated discussions with Jambo pay on the service level agreement and the clauses to the contract. Further to this, the ICT Department has commenced the process of engaging electronic payment solution providers given that the current contract of M/s Webtribe Limited (Jambopay) is expected to end in April, 2019.

Committee observations and findings

i) The service agreement between the County Government and Webtribe was skewed in favour of Webtribe. In this case, as reported by the Auditor General, the cost of collecting the funds by Webtribe on behalf of the County Government was inflated and is not proportional with the funds collected.

ii) By failing to undertake due diligence prior to signing the service agreement, all the signatories representing the County Government and their counsel are liable for the loss of funds that the County incurred due to the inflated Webtribe service fee.

iii) By failing to submit all transactions relating to Jambopay to the Auditor General, the CEC Member for Finance and Economic Planning and the Chief Officer, Finance during the period under review may have wanted to conceal information in order to defraud the County Government and were also in breach of Section 149(2) (k) of the PFM, Act, 2012 and committed an offence under Section 62(1) (a) (b) of the Public Audit Act, 2015.

Committee recommendations

i) **Pursuant to Article 226(5) of the Constitution and Section 203(1) of the PFM Act, 2012, the CEC Member for Finance and Economic Planning should liaise with state agencies and cause to recover all monies that may have been lost due to inflated Webtribe service fee from all the signatories representing the County Government in the contract between the County Government and Webtribe ltd.**

iv) **The DPP should consider instituting charges against the Chief Officer, Finance during the period under review for committing an offence under Section 62(1) (a) (b) of the Public Audit Act, 2015.**

4.5.7. Revenue Recognition, Basis of Retention and Payment of Transaction Fee to Webtribe

The following information on Jambopay system was also not provided for audit review:

(i) Reports of revenue generated from Jambopay to compare with LAIFOMs revenue report.

(ii) Reconciliation reports on the expected revenue from Jambopay in relation to LAIFOMs.

(iii) Payments of the 4.5% of revenue generated by the County through Jambopay.

(iv) Trust account where all County funds are deposited before remittance to the County.

The payment vouchers examined revealed that the County also pays 1.25% of the value of all the cash office transactions that are made using the Jambopay system to Webtribe. However, the contract document provided for audit review does not have a provision for the payment of 1.25% of the transactions at the cash office. In addition, for the transactions made either through the mobile or web application, the funds collected are credited into a virtual account that is managed by PKF who later settles the net amount to the County. However, contract document in respect of an agreement if any between PKF and the County Government for the management of the virtual account was not provided for audit review.

In the circumstances, it is not possible to confirm the total revenue collected by Jambo Pay. Further payment to Webtribe of 1.25% is deemed irregular since there is no binding contract or addendum between the Nairobi County and Webtribe ltd.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that: -

i) In ascertaining the amount of money to be remitted to the County by Webtribe, the revenue accountants use the Jambopay dashboards and reports to reconcile and compute how much they expect to receive from Webtribe. Further, the county receives settlement statements from Web Tribe on monthly basis.

ii) The Revenue officers do reconcile revenues collected through Jambo Pay with the revenue figures captured in LAIFOMS. Reconciliation for the revenues between Jambo Pay and LAIFOMS is an on-going process.

iii) Sec. 109 of the Public Finance Management Act, 2012, provides "The County Treasury for each County Government shall ensure that all money raised or received by or on behalf of the County Government is paid into the County Revenue Fund". However, in clause No.24 of the contract between Nairobi County and Web Tribe it is stated that Web-tribe shall settle net value of successful transactions of NCC transactions through Jambopay within 12 hours for cash transactions and 72 hours for Visa and other electronic card transactions in daily batches to NCC nominated bank account.

iv) This matter was discussed in the meeting held at the Governor's office on 1st, September, 2017 and noted under item No. 20 that Web-tribe should stop deducting their commission at source as it contravenes the PFM Act, 2012.

Committee observations and findings

i) By paying 1.25% of the value of all the cash office transactions that are made using the Jambopay system to Webtribe, a fee that was not part of the service agreement, the Chief Officer for Finance and all Officers involved in the transactions and the Directors of Webtribe Ltd, conspired to defraud the County Government.

ii) By failing to submit all transactions relating to the irregular payment to the Auditor General, the CEC Member for Finance and Economic Planning and the Chief Officer, Finance during the period under review confirms that the Officers concealed information in order to defraud the County Government and also committed an offence under Section 62(1) (b) of the Public Audit Act, 2015.

Committee recommendations

i) The DPP should institute criminal proceedings against the Chief Officer and the CEC Member for Finance and Economic Planning during the period under review and the Directors of Jambopay for conspiring to defraud the County Government through the illegal service charge.

ii) The CEC Member for Finance and Economic Planning and the Chief Officer, Finance during the period under review be sanction for breach of Section 62(1) (b) of the Public Audit Act, 2015.

4.5.8. Reduction in Revenue Collection

Mama Lucy Kibaki and Mbagathi Hospitals collected Kshs.121, 636,084of revenue from different revenue streams during the financial compared to Kshs.181, 193,975 in 2015/2016, a reduction of Kshs.59, and 557,891 translating to 33% revenue shortfall as detailed below:

Comparison of Previous year revenue and current year				
	2016-2017 (Kshs)	2015-2016 (Kshs)	Shortfall (Kshs.)	% Shortfall
Mama Lucy Kibaki	63,196,278	92,959,221	29,762,943	32%
Mbagathi Hospital	58,439,806	88,234,754	29,794,948	34%
Total	**121,636,084**	**181,193,975**	**59,557,891**	**33%**

No explanation was provided for the revenue shortfall.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that owing to prolonged doctor's strike which begun on December 2016 to March 2017, the revenue dropped drastically as per the audit team's observation. This was caused by most of the activities in the hospitals stopping due to lack of doctors in the facility hence there was no admission of patients in the wards which is the main revenue generating stream.

Committee observations and findings

i) Revenue shortfalls affect the overall implementation of the budget thus hampering service delivery.

ii) The County Government has weak mechanisms of addressing its labour relations hence the recurrent long workers strikes whenever labour disputes occur.

iii) Apart from the Doctors strike alluded to by the Ag. Chief Officer, Finance, the hospitals still faces a myriad of challenges in revenue collection and financial management which may explain the revenue shortfalls. The challenges include:

(a) Spending at source by the hospitals contrary to the provisions of the PFM, Act, which is vulnerable for abuse.

(b) Reliance on manual collection of revenue that is a high risk for misappropriation of funds.

(c) Lack of a clear policy on charges that ought to be

Committee recommendations

i) **The CEC Member for Finance and Economic Planning should ensure that all revenue collected is deposited in the CRF Account. Alternatively, the CEC Member for Finance and Economic Planning should develop a legislation/policy to guide instances and how hospitals may spend at source.**

ii) **The CEC Member for Finance and Economic Planning should within four (4) months of adoption of this report automate all revenue collection in hospitals**

iii) **The Chief Officer, PSM and the Secretary to the board should develop a policy that will provide a framework on how to deal with industrial action by County employees, especially health workers, to avert interruption of service delivery.**

4.6. Non-Disbursement of Capitation and Free Maternity Funds

The County Government has received free maternity reimbursement from the Ministry of Health amounting to Kshs.281, 567,500 for various hospitals in the County since the inception of the programme in 2013/2014. The following unsatisfactory matters have been observed:

4.6.1. Pumwani Maternity

Pumwani Maternity Hospital expected cumulative reimbursement up to 30 June 2017 was Kshs. 342,305,100 against an actual amount of Kshs. 173,851,907 received, resulting in a shortfall of Kshs. 168,453,193. Details are as tabulated below:

Period	No. of Deliveries	Expected Reimbursement (Kshs)	Amount Received (Kshs)	Balance (Kshs)
June 2013-June 2014	19,637	98,185,500	154,096,907	(55,911,407)

July 2014-June 2015	19,116	95,580,000		95,580,000
July 2015-Jan 2016	9,481	47,405,000		47,405,000
Feb 2016-May 2016	6,568	32,840,000	19,755,000	13,085,000
Jun-16	1,663	8,315,000		8,315,000
July 2016-June 2017	11,279	59,979,600	0	59,979,600
	56,465	342,305,100	173,851,907	168,453,193

Despite the County Government receiving the free maternity funding; reimbursement were not made to the hospital thus affecting its daily operations.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance and the Chief Officer, Health submitted that: -

i) The observation by the audit team is correct and follow-ups at county level have been made but reimbursement has not yet been done to date.

ii) The County on the other hand experienced cash flow shortfalls during the period that preceded the electioneering period making it difficult to fund some of its operations.

Committee observations and findings

i) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two levels of governments and subsequently hampers service delivery at the County health facilities.

ii) Some of the funds received from the National Government specifically meant for maternity services refund were diverted to other projects/activities.

iii) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund.

iv) County Governments are always at a disadvantaged position whenever the National Government engages them on contractual matters as witnessed in this case of failure to disburse maternity fee refunds and the issues surrounding the purchase of medical equipment.

v) A visit to the hospital revealed that the hospital lacks capacity to reconcile its records relating to deliveries and National Hospital Insurance Fund (NHIF) reimbursements thus the hospital may end up losing funds due to poor record keeping. In addition, the hospital was operating a savings account contrary to the PFM Act, 2012 and was spending revenue at source.

Committee recommendations

i) **The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs.168, 453,193 in order for the hospital to supplement its already over-stretched resources. The CEC Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.**

ii) **In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.**

iii) **The hospital with the support of the parent Sector should put in place a digital system for reconciling daily deliveries with the NHIF reimbursements.**

iv) **The CEC Member for Finance should sanction the Hospital Administrator and the hospital accountant for operating an illegal savings account.**

4.6.2. Dagoretti Sub - district Hospital

Dagoretti Sub District Hospital expected cumulative reimbursement of Kshs. 4,590,000 up to 30 June 2017 against amounts received so far of Kshs. 1,280,916 resulting to a shortfall of Kshs. 3,309,084. During the financial year under audit, the hospital did not receive any free maternity reimbursements from the Ministry of Health.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance and the Chief Officer, Health submitted that: -

i) The observation by the audit team is correct and follow-ups at county level have been made but reimbursement has not yet been done to date.

ii) The County Government on the other hand experienced cash flow shortfalls during the period that preceded the electioneering period making it difficult to fund some of its operations.

Committee observations and findings

i) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two levels of governments and subsequently hampers service delivery at the County health facilities.

ii) Some of the funds received from the National Government specifically meant for maternity services refund were diverted to other projects/activities.

iii) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund.

iv) County Governments are always at a disadvantaged position whenever the National Government engages them on contractual matters as witnessed in this case of failure to disburse maternity fee refunds and the issues surrounding the purchase of medical equipment.

v) A visit to the hospital revealed that the hospital lacks capacity to reconcile its records relating to deliveries and National Hospital Insurance Fund (NHIF) reimbursements thus the hospital may end up losing funds due to poor record keeping.

Committee recommendations

i) **The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs. 3,309,084 in order for the hospital to supplement its already over-stretched resources. The CEC Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.**

ii) **In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed** contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.**

iii) **The hospital with the support of the parent Sector should put in place a digital system for reconciling daily deliveries with the NHIF reimbursements.**

4.6.3. Mama Lucy Kibaki County Hospital

The Mama Lucy Kibaki County Hospital had 3,468 deliveries during the year resulting in amount of Kshs. 17,340,000 to be reimbursed by the National Government. However, no amount was reimbursed during the year. In addition, an amount of Kshs.81, 483,765 has not been reimbursed to the hospital since the inception of the free maternity programme.

Submissions by the Accounting Officer

The Accounting Officer submitted that the observation by the Auditor General was correct and follow-ups at county level have been made but reimbursement has not yet been done to date.

Committee observations and findings

i) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two levels of governments and subsequently hampers service delivery at the County health facilities.

ii) Some of the funds received from the National Government specifically meant for maternity services refund were diverted to other projects/activities.

iii) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund.

iv) County Governments are always at a disadvantaged position whenever the National Government engages them on contractual matters as witnessed in this case of failure to disburse maternity fee refunds and the issues surrounding the medical equipment.

Committee recommendations

i) **The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs.81, 483,765 in order for the hospital to** supplement its already over-stretched resources. The CEC Member for Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.

ii) In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.

4.6.4. Mbagathi Hospital

Mbagathi Hospital had 4,281 deliveries during the year and the total amount to be reimbursed for the deliveries for the year under review was Kshs. 21,405,000. However, no reimbursement was made to the hospital during the year. The continued delay in reimbursements of free maternity funds adversely affect service delivery by the hospital.

Submissions by the Accounting Officer

The Accounting Officer submitted that the audit report is correct and follow-ups at county level have been made but reimbursement has not yet been done to date.

Committee observations and findings

i) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two levels of governments and subsequently hampers service delivery at the County health facilities. A visit to the hospital revealed that the hospital has deplorable facilities not befitting to serve the many patients who seek treatment at the hospital.

ii) Some of the funds received from the National Government specifically meant for maternity services refund were diverted to other projects/activities.

iii) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund.

iv) County Governments are always at a disadvantaged position whenever the National Government engages them on contractual matters as witnessed in this case of failure to disburse maternity fee refunds an

Committee recommendations

i) The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs. 21,405,000order for the hospital to supplement its already over-stretched resources. The CEC Member for Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.

ii) In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.

4.7. Development Projects

4.7.1. Slow Rate of Implementation of Development Projects

According to the County approved budget for 2016/2017 financial year, the Transport, Infrastructure and Public Works Sector was allocated Kshs. 430,000,000 and Kshs. 1,976,827,176 for maintenance of roads and construction of roads, respectively. A schedule of projects earmarked for implementation during the year provided for audit verification indicated that the County initiated twenty-five road projects at a total cost of Kshs.1, 332,154,416. The following shortcomings were however noted:

(i) Out of the twenty-five projects initiated, six projects worth Kshs. 265,955,445 representing 20% had not commenced nineteen months later.

(ii) Out of the nineteen projects started, only four projects with works worth Kshs. 69,952,071 had been certified for payments.

(iii) Contractors for Ruai ward roads and California estate roads projects had abandoned the works for non-payment of the first certificates.

(iv) No single payment had been made for the certified works as at close of the financial year.

Consequently, the residents of Nairobi City County did not get value for money in respect of the road projects undertaken by the Transport, Infrastructure and Public Works Sector.

Submissions by the Accounting Officer.

The Accounting Officer admitted the audit finding and submitted that: -

i) The management did not achieve the desired targets on project implementation due to:

- Inadequate personnel to address the ever increasing demand for service delivery. The sector has been experiencing shortage of professional staff through retirement, transfers and or natural attrition without any replacement;
- Lengthy procurement process leading to delays in project implementation;
- Planning, Revenue Collection and Disbursement of funds are not devolved thus sectoral delivery priorities are determined by a different sector; and
- Cash flow challenges as stated above.

ii) The County Government is committed to completing all ongoing and abandoned projects before starting new ones.

Committee observations and findings

i) The Committee found out as follows with respect to the current status of the projects following its site inspection visits and meetings with contracted service providers: -

(a) *Construction of Plains View Likoni link road in South B Ward.*

The contract was awarded to **M/S Elite ITS Ltd** on 16th December, 2016 at a contract sum of **Kshs 183,594,004**. The project was expected to be completed on or before 14th January, 2018. The completion date was further extended to 30th June, 2019 at the request of the contractor. At the time the Committee visited the site, the project was only 40% done meaning the project would not be completed as per the contract duration even after the extension sought was granted. The Committee also noted that there were no indications that the contractor was actively on site. The works had caused serious flooding in the area and residents claimed that individuals had lost their lives after drowning in trenches left unattended to by the contractor. The Director of the Company when inquired on why the company had abandoned the project exhibited arrogance threatened the area MCA and was not willing to provide information and thus the Committee labelled him as a hostile witness.

The Committee heard that the contractor was undertaking several projects in the County and even other Counties yet the Company has no capacity to deliver. Despite the dire situation of the project, the company had been paid all the amount of the certified works being Kshs 48, 126,932. It was claimed that the contractor uses the funds to finance other projects the Company is involved in outside the County.

(b) *Rehabilitation of Academy Road in Karen Ward.*

The contract was equally awarded to **M/S Elite ITS Ltd** on 16th December, 2016 at a contract sum of Kshs 75,455,738. The project was expected to be completed by 5th January, 2018. The completion date was further extended to 6th June, 2019. At the time the Committee visited the site, the project was 65% done but key works such as backfilling and paving had not been done meaning the project would not be completed as per the contract duration even after extension of the duration. The state of the road had caused serious inconveniences to residents as they could not access their places since the contractor had closed the road and no alternative access had been provided. Despite the situation of the project, the company had been paid all the amount of the certified works being Kshs 47,361,704.75. The Contractor could not provide sufficient reasons why the project had stalled despite having been paid.

(c) *Completion of Kimondo Road in Kware & Pipeline Ward.*

The contract was awarded to **M/S Platinum Construction** Company on 21st July, 2017 at a contract sum of Kshs 198,550,260. The project was expected to be completed by2nd February, 2019. The completion date was further extended to 2nd August, 2019. The project is 55% done and the contractor is on site. However, the project implementation by the contractor is slow. So far the contractor has been paid Kshs 36,320,077 of the contract sum.

(d) *Grading and gravelling of Madoya Roads within Huruma Ward*

The contract was awarded to **M/S Solid Waste Collectors** Company Ltd on 16th December, 2016 at a contract sum of Kshs 4,903,552. The project was expected to be completed by 25th August, 2018. The completion date was further revised to end on 22nd November, 2018. The project is only 15% done and as such it would not be completed as per the contract duration.

(e) *Construction of New Donholm Road*

The contract was awarded to **M/S Mon Cons General Contractors** Ltd on 16th December, 2016 at a contract sum of Kshs 94,332,128. The project was expected to be completed by 16th August, 2017. The completion date was further revised upwards by six (6) weeks. By the time the Committee visited the site, the contractor had not completed the works although works were ongoing. The Committee raised concerns over the quality of the road such that the bitumen was already peeling off. In addition, the contractor had not provided adequate drainage.

(f) *Construction of selected roads in Utawala Ward*

The contract was awarded to **M/S Buldel Enterprise Ltd** on 16thDecember, 2016 at a contract sum of Kshs 166, 929,945. It was expected to be completed by 3rd January, 2018. The completion date was further revised to end on 31st May, 2019. The project is 70% complete meaning the project would not be completed as per the contract duration. However, when the Committee visited the site no works were on-going. The contractor has so far been paid Kshs. 90,550, 198.73 being 55% of the certified works.

(g) *Grading and gravelling of Kasarani Ward roads*

The contract was awarded to **M/S Suntech Construction Ltd** on 23rd December, 2016 at a contract sum of Kshs 22, 932,040. The project was expected to be completed by 15th February, 2018. The project is 80% complete but the contractor has abandoned the site due to non-payment. Amount certified for payment so far is Kshs 16,416,758, however, the contractor has never been paid any amount. The contract completion date was not revised despite the elapse of the contract duration. The Contractor sited interference by locals especially during the electioneering period and blamed the site engineer for not responding to his request for extension. On his part, the site engineer claimed he never received a formal request for extension. The status of the project and its completion date is therefore uncertain as both the site engineer and the contractor engage in blame games. However, the Committee observed that it was unfair and disheartening that despite the project being 80% done, the contactor has never been paid even a single cent.

(h) Completion of Thiong'o road in mountain view ward

The contract was awarded to **M/S Uba Construction Ltd** on 16th July, 2016 at a contract sum of Kshs 128,208,957. The project was expected to be completed by15th May, 2019. The completion date was further extended to 15th May, 2019. By the time the Committee visited the site, the contractor had not completed the works although works were ongoing. The contractor raised concern over interference by locals who resist being relocated to pave way for construction of drainage systems.

(i) Rehabilitation of Selected Roads in California Estate, California Ward

The contract was awarded to **M/S Rhino (EA) Ltd** on 14th March, 2017 at a contract sum of Kshs 22, 932,040. The project was expected to be completed by 14th November, 2017. By the time the Committee visited the site, the project was 50 % done but the contractor had abandoned the site due to non-payment. It is worth noting that despite the contractor having presented certificates to the Site Engineer and the Chief Officer, Roads for certification, none had been certified for payment. In addition, the director of the company is now deceased and the widow is the one managing the Company. The widow has been frustrated by County Officials on several occasions especially regarding payment. The widow was ready to complete the project if paid.

(j) Rehabilitation of Gathuru Road.

The contract was awarded to **Quanta Frontier technologies** on23rd December, 2016 at a contract sum of Kshs 78, 801,171.80. The project was expected to be completed by 28th May, 2018. The duration was further revised until 11th June, 2019 on the request of the contractor. By the time the Committee visited the site, the project was 70 % done and the contractor was on site with minimal works going on. It is highly unlikely that the project would be completed within the contract period as revised.

ii) The contracts between the County Government and the Service contractors are poorly drafted and skewed to the advantage of contractors hence prone for abuse as witnessed by several project duration extensions requested by the contractors and ultimately granted by the County Government. In addition, the Committee could not conclusively determine who keeps custody of the contracts.

iii) Some of the projects have been in implementation for more than three (3) years and are subsequently rolled over to the subsequent financial year yet the local residents continue to suffer. Equally, the County Government and tax payers does not receive value for money such that by the time the projects are completed, the sections of the roads that were first to be constructed are completely destroyed and the sections require to be re-done. The projects include:

- Construction of Plains View Likoni link road in South B Ward.
- Rehabilitation of Academy Road in Karen Ward
- Completion of Kimondo Road

iv) Arising from the site visit, some contractors had abandoned the sites and only resurfaced when they heard that the Committee would be visiting the sites. In addition, the quality of construction works was extremely poor.

v) **M/S Elite ITS Ltd** responsible for construction of Plains View Likoni link road in South B Ward and rehabilitation of Academy Road in Karen Ward proved to be inefficient in its work.

vi) Some of the companies contracted to construct or rehabilitate roads within the County lack financial and technical capacity to deliver.

vii) Failure to settle bills in time inconveniences suppliers and portrays the County Government in bad light. Some of the contractors have been rendered bankrupt for having either provided services or supplied commodities using their funds but have since not been paid while some have resolved not to ever transact with the County Government.

Committee recommendations:-

i) M/S Elite ITS Ltd responsible for construction of Plains View Likoni link road in South B Ward and rehabilitation of Academy Road in Karen Ward should be blacklisted and never be a warded service contracts by the County Government due to its proven inefficiency.

ii) The County Treasury should fast-track payments due to the following contractors so that they can conclude their works: -

a) M/S Solid Waste Collectors

b) M/S Mon Cons General Contractors

c) M/S Buldel Enterprise Ltd

d) M/S Suntech Construction Ltd

e) M/S Uba Construction Ltd

f) M/S Rhino (EA) Ltd

g) Quanta Frontier technologies

h) M/S Platinum Construction

iii) Before engaging a service provider especially contractors for capital projects, the County Executive must at all times undertake due diligence and determine whether the service provider has the requisite financial capacity, technical expertise and demonstrated experience to perform the work. In future, the CEC Member for Finance and Economic Planning should hold liable officers who award tenders to incapacitated companies.

iv) The County Executive should ensure that it executes contracts within the Financial Year they relate to through proper planning and realistic budgeting to avoid accumulation of huge interest demanded by contractors for breach of contract.

v) The CEC Member for Finance and Economic Planning should establish project management teams in Sectors whose mandate should include conceptualization of viable projects with definite completion timelines and adhere to the tenets of project management.

4.7.2. Stalled Key Projects

4.7.2.1. Construction of Ruai Street Children Rehabilitation Centre

Construction of Ruai Street Children Rehabilitation Centre commenced in 2015 as one of the flagship projects of the County. The contract was awarded to Tecina General Contractors Limited at a contract price of Kshs. 126,956,200. In July 2016, works valued at Kshs.21, 773,719 were certified for payment. However, as at the time of audit, the first certificate had not been paid. A visit to the project in January 2018 revealed that the project had stalled and that the contractor had abandoned the project due to non-payment. Education, Youth Affairs, Sports, Culture and Social Services Sector responsible for the project nevertheless had an approved budget of Kshs.150, 000,000 for construction of buildings.

Submissions by the Accounting Officer

The Accounting Officer submitted that: -

i) The Contract was awarded to Tecina General Contractors Ltd. in July 2015. The ground breaking was done in March, 2016. However, the construction works stalled due to non-payment of the first certificate of Kshs. 21,773,710.00 raised in July, 2016.

ii) The Sector is in Liaison with Finance and Economic planning sector to have the funds released to enable the Contractor resume site.

Submissions by the Contractor (Tecina General Contractors Limited)

The Director of the Company submitted that:-

i) The Company has been facing challenges of delayed payment thus the slow implementation of the project.

ii) The Committee should intervene so that the payments can be made on time. The company is willing and capable to complete the project.

Committee observations and findings

i) The project was well thought out and if fully implemented would alleviate the street children menace that the County Government grapples with. The centre has the potential of accommodating several children and its location far away from the CBD is ideal for rehabilitating the children.

ii) Despite constant delays payments, by the time the Committee visited the site, the contractor had done extensive works and had completed constructing the ground floors. If the project is abandoned and left at that stage, the County Government would lose the resources already invested in the project and would not realize the noble objectives of the project.

iii) The parcel of land on which the rehabilitation centre sits on is not secured and hence is susceptible for grabbing.

iv) Failure to settle bills in time inconveniences contractors and portrays the County Government in bad light. Some of the contractors have been rendered bankrupt for having either provided services or supplied commodities using their funds but have since not been paid while some have resolved not to ever transact with the County Government

Committee recommendations

i) **The County Treasury should within 1 (one) month of adoption of this report release funds owed to Tecina General Contractors Ltd inclusive of interest accrued on delayed payments based on the current market rates to enable the contractor finalize the project.**

ii) **The Procurement Department should consider invoking the relevant provisions of the Public Procurement and Disposal Act, 2015 and allow the contractor to fence the centre once completed and construct the access roads to the centre. This will secure the project and ease access to the centre.**

4.7.2.2. Construction of Joseph Kang'ethe Social Hall

The Project commenced in August 2015 and was due for completion in August 2016. The contract was awarded to Derrow Brothers Construction Ltd. at a contract price of Kshs.61, 081,436. The first certificate for works valued at Kshs. 21,928,395 was approved on 17 March 2016 and paid in October 2016. A visit to the project in January 2018 revealed that the project had stalled.

Submissions by the Accounting Officer

i) The Contract was awarded to Derrow Brothers Construction Ltd. in August, 2015. The ground breaking was done in November, 2015. However, the construction works stalled due to non-payment of the first certificate of Kshs. 21,928,395.00 raised in March, 2016.

ii) The payment was however made in October, 2016. The Contractor is yet to resume works citing financial challenges in the County. The Sector has recommended that the contract be terminated.

Committee observations and findings

i) The County Government failed to honour its obligation leading to the abandoning of the site by the contractor.

ii) The social hall is a necessity for area residents since it would be used for various social functions.

iii) Some social halls have been neglected while others were poorly conceptualized by the Sector. For instance, the Committee was informed that Eastleigh Social Hall was conceptualized as a public private partnership venture. However, the private partner, M/S Marchais Ltd failed to honor its obligations and has instead turned sections of the hall into a shopping mall while part of the land has been grabbed.

Committee recommendations

i) The County Treasury should immediately release funds owed to Derrow Brothers Construction Ltd, if any, since the same was budgeted for.

ii) The Chief Officer, Education and responsible resident engineer should inform the said contractor to resume works immediately, if the contractor fails to resume within a period of one (1) month from the date of adoption of this report, the contract should be terminated and another contractor engaged.

iii) The County Government should execute contracts within the financial year they relate to.

iv) The Auditor General should undertake a special audit on the Private-Public Agreement between the County Government and M/S Marchais Ltd regarding Eastleigh Social Hall and report in the next Financial Year in order for the Committee to take appropriate action.

4.7.2.3. Stalled Project -Construction of Perimeter wall at Mji wa Huruma

A contract for construction of a perimeter wall at Mji wa Huruma was awarded on 4 May 2015 at contract sum of Kshs.16, 884,600 through restricted tendering procurement method. However, no reasons have been given for using restricted tendering method contrary to the requirements of Section 29(3) of the Public Procurement and Disposal Act 2005, then applicable. Physical verification of the project indicated that no notable works had been done since last year. Reason cited for the stalling of the projects was non-payment of certified works causing the contractors to suspend the works. The home requires a perimeter wall urgently for purposes of security and safeguarding the County property and the aged living in the home. The home is located near a slum and residents have created shortcuts in the home which poses as a risk since anyone can get into the home at any given time. The current support staff who are residing in the home live in condemned houses which needs to be refurbished.

Submissions by the Accounting Officer

i) The Contract was awarded to M/s Cykka Works Ltd in July, 2015. However, the construction works stalled due to non-payment of first certificate for works done of Kshs. 4.8 Million.

ii) The Sector is in Liaison with Finance and Economic planning sector to have the funds released to enable the Contractor resume site.

iii) The Sector has proposed to ensure all the stalled projects are given priority in the subsequent financial years to facilitate their completion and ensure service delivery to the residents. This shall be achieved in collaboration with the relevant sectors/Departments.

Committee observations and findings

i) The County Government failed to honour its obligation leading to the abandoning of the site by the contractor.

ii) The Accounting Officer by opting to use restricted tendering method without giving reasons for the same was in breach of section 102 of the Public Procurement and Disposal Act, 2015.

iii) Mji Wa Huruma Centre is one of the centres that provide comfort to the elderly hence it requires securing considering that it is located in an informal settlement area.

Committee recommendations

i) **The County Treasury should immediately release funds and pay the contractor for the works already certified. The contractor should then be engaged and requested** to resume work immediately. If the contractor fails to resume, the contract should be terminated and another contractor be engaged competitively.

ii) The County Government should execute contracts within the financial year they relate to.

iii) The CEC Member for Finance and Economic Planning should sanction the Head of Procurement during the period under review for flouting procurement laws and procedures.

4.7.2.4. Nairobi Integrated Urban Development Master Plan (NIUPLAN)

The Nairobi City County Executive contracted the services of the University of Nairobi Enterprises and Services Limited (UNES) to formulate the development control guidelines within the Nairobi Integrated Urban Development Master Plan (NIUPLAN). Non-payment of the contract by Nairobi City County Executive has delayed completion of the process. Documents relating to the contract were not presented for audit review. Consequently, it has not been possible to ascertain if the public got value for money as regards the contract.

Submissions by the Accounting Officer

The Accounting Officer submitted that the documents relating to the contract have been presented to the external auditors for verification and review. This includes but not limited to correspondences between the Urban Planning Sector and the University of Nairobi Enterprises and Services Limited outlining the outputs in support of the project and the contract document.

Committee observations

Had the Accounting Officer provided the information to the Auditor General during the audit period, this matter would not have been an audit query.

Committee recommendations

i) The CEC Member, Finance and Economic Planning should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.

ii) The Committee marked the matter as resolved.

4.8. Procurement of goods and services

4.8.1. Failure to Produce Procurement Records and project documents

Procurement records and documents in respect of goods and services costing Kshs.40, 109,701 as summarized below were not provided for audit verification:

Sector	Amount(Kshs.)
Health	30,369,141
Trade, Commerce, Tourism and Cooperative	9,740,560
Total	40,109,701

Details of the specific documents per sector are as follows: -

4.8.2. Health Sector

The Health Sector incurred expenditure totalling Kshs.30, 369,141 mainly on supply of binding certificates, fixing of curtain blinds, rheumatoid factor test kits, staff uniforms, cleaning materials and rehabilitation of Plains View dispensary. The payment vouchers lacked supporting documents including delivery notes, distribution lists, invoices and inspection certificates. Further, procurements of the goods were not done through IFMIS.

Submissions by the Accounting Officer

The Ag. Chief Officer, Health Services and Ag. Chief Officer, Finance submitted that payment vouchers and supporting documents relating to the said payments have been availed to the auditors for review. Further photos of the completed works at Plains view dispensary are attached to the payment voucher.

Committee observations and findings.

The Committee made the following observations and findings: -

i) The explanation by the Accounting Officer that the payment vouchers and supporting documents were availed to the Auditor General for verification after the audit report had been tabled was not satisfactory in so far as it did not explain why the Accounting Officer failed to provide the said vouchers during the audit period. The Accounting Officer may have intended to conceal information for personal interest.

ii) By failing to provide the documents during the audit period, the Accounting Officer committed an offence under Section 61(c) of the Public Audit Act, 2015.

iii) Failure by the Accounting Officer to spend through IFMIS is not only a breach of National Treasury regulations but also a recipe for loss of public funds and a way of evading accountability.

Committee recommendations.

i) **The Accounting Officer must at all times ensure that the required documents are submitted to the Auditor General when requested by the Auditor General as obligated by law.**

ii) **The CEC Member for Finance and Economic Planning should take appropriate action against officers who failed to provide the documents to the Auditor General.**

iii) **The Chief Officer, PSM should take administrative action against the Chief Finance Officer at the time of audit for failing to comply with National Treasury Regulations on the use of IFMIS.**

4.8.3. Trade, Commerce, Tourism and Cooperative sector

The Trade, Commerce, Tourism and Cooperative Sector incurred expenditure totalling Kshs.9, 740,560 mainly on payments for purchase of office equipment, supply of public address system for weights and measures operations and supply of fireworks to usher in New Year 2016. The payment vouchers lacked contract documents. No reasons were given also for applying restricted tender instead of open tender.

In the absence of the supporting procurement documents for above transactions, the propriety of expenditure of the Kshs.40, 109,701 cannot be confirmed. Further, it is not possible under the circumstances to confirm whether the sector followed the provisions of the Public Procurement and Asset Disposal Act, 2015.

Submissions by the Accounting Officer

The Accounting Officer admitted the audit finding and submitted that the expenditure was incurred mainly on payment of purchase of office equipment, supply of public address system for weights and measures operations, supply of fireworks to usher in New Year 2016.

Supporting documents i.e. LPO, Delivery note and invoices are now available for review. Details of the tenders were as follows: -

a) Mooncake Construction Ltd (Kshs 3,440,560.00)
   - This was supply and delivery of office equipment for Chief Officer Trade through restricted tender.
   - The tender was for youth, women and persons with disabilities

b) Tononoka Fireworks Ltd
   - The tender was a restricted tender for the supply of fireworks during the eve of the New Year.

Submissions by procuring officers.

The Officers involved in the procurement of fireworks submitted as follows:-

i) **The former County Executive Committee Member, Trade, Cooperatives and Tourism Ms. Anna Othoro** noted that as a CEC Member, her role was to provide policy advise and not involved in the actual procurement exercise. To the best of her knowledge, the County Government resolved to usher in a new year and use of fireworks was to be involved. However, she could not table a policy on the same.

ii) **The former, Chief Officer, Trade, Eng. Judah Abeka** confirmed that he initiated the procurement process and his interest was to ensure that the fireworks were delivered and utilized during the ceremony to usher in a new year, 2017. He could not explain why restricted tender method was preferred. Further, he informed that he was not aware whether apart from Tononoka Ltd; there were other companies which could provide a similar service at a lower price. In addition, he confirmed that original documents relating to the exercise were missing prompting him to inquire from the Chief Officer, Finance.

iii) **The former, Head of Supply Chain, Mr. Patrick Mwangangi,** observed that the procurement process was above board although he could not deny or confirm whether there were other companies that could offer the same service at a lower price. He could not adequately explain why restricted tender method was preferred.

iv) **Members of the procurement Committees** noted that they were guided by the procurement laws and advise of procurement officers when facilitating the process.

Committee observations and findings.

i) Despite strict non-adherence to procurement rules and processes during the procurement of the items queried by the Auditor General, there was no loss of public funds and the County Government received value for money.

ii) Despite the County Government lacking a policy for ushering in of the New Year during the year under review, the event which included use of fireworks as practiced in major cities across the world, contributed in uplifting the image of the City of Nairobi thus elevating the city as a top tourist attraction.

iii) The Committee heard from the Auditor General that the Chief Officer Finance had now provided the supporting documents relating to the procurement exercise of the queried items for audit review hence the matter had been resolved.

Committee recommendations.

i) Accounting Officers and the Head of Procurement should ensure that procurement laws and procedures are strictly adhered to when initiating and conducting a procurement exercise in order to forestall audit queries and to safeguard public resources.

ii) Accounting Officers should prepare and strictly adhere to procurement plans guided by approved policies and budget estimates.

iii) The Chief Officer, Finance should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General by providing necessary documentation and explanations required at the time of audit in order to forestall audit queries.

iv) **The CEC Member for Finance should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.**

4.9. Human Resources

4.9.1. Non-Adherence to Third Pay Rule

It was observed that one hundred and ninety-seven members of staff were earning less than the minimum net pay allowed contrary to the third pay rule and Public Officers Ethics Act 2003. The data extracted from the month of June 2017 payroll indicated that the trend was the same during and after the period under review. In the circumstances, the affected workers risk pecuniary embarrassment which is contrary to Public Officer Ethics Act, 2003.

Submissions by the Accounting Officer

The Chief Officer, PSM submitted that: -

i) Public service Management acknowledges that some officers have over-committed salaries beyond the 'third basic rule' due to the following reasons:

- Where a staff fails to report on duty without valid reason or authorization by his/her supervisor, such an officer is deducted salary equivalent to the number of days reported absent up to a maximum of 14 days thereafter salary is stopped on account of unauthorized absence
- Where an officer is recovered salary due to due the following reasons:
    a) Failure to account for imprest
    b) Fines and surcharges resulting from performance of his duties
    c) Overpayments as a result of erroneous earnings
    d) Recovery of County debts especially house rents for officers residing in County

- Where statutory deductions are adjusted upwards especially PAYE, NSSF, NHIF etc. and an officer was already at the statutory limit of 1/3 rule will result in an officer earning less than 1/3 of basic salary.
- Where an officer is interdicted and paid half basic salary instead of full basic salary yet there were deductions already being made

ii) In the above circumstances, the IPPD system is programmed in such a way that it gives priority in deducting amounts due to the County which leads to an officers earning below a third of basic. However, these are temporary situations and in most cases are one-off occurrences and it's a form of punishment to ensure that staff conducts their duties according to the laid down regulations

iii) Below is a detailed summary as to the reasons why some officers earned below 1/3

- Fifty Two (52) Officers salary was recovered due to unauthorized absence.
- Four (4) Officers was due to their salaries being attached by a court of law especially for child maintenance.
- Nineteen (19) Officers earned below a third due to debts owed to the County especially house rent.
- Two (2) Officers was due to failure to account for imprest hence the recovery.
- Fourteen (14) Officers were placed on interdiction yet they had already committed their salaries.
- Ten (10) Officers were previously earning less than a third salary when the County was using the LAIFOMS system. The LAIFOMS had been programmed to accept deductions up to a minimum of 1000. These were therefore migrated to IPPD as a default until the already existing deductions are fully paid off
- Eighty Two (82) Officers earned below a third due to recent increases of NHIF deductions from a minimum of Kshs 320 to a maximum of Kshs 1700 without any corresponding increase in earnings.
- Three (3) Officers as a result of increase in NSSF voluntary deductions which the system treats as pension contribution as statutory.
- Three (3) Officers as a result of overpayment recovery.
- Three (3) Officers as a result of PAYE arrears recovery which is a statutory deduction.
- One (1) Officer due to recovery of provident fund voluntary contributions which the IPPD system treats as a statutory pension hence given a priority in recovery.

- Three (3) Officers who retired during the month of June 2017 yet they had running deductions and they were paid only for the days worked e.g. 2 days or 6 days.

Committee findings and observations

The Committee observed that over commitment of staff salaries tempts officers to engage in financial malpractices in order to meet their personal financial obligations. Further, such officers tend to use official working hours on private engagements in order to supplement their income.

Committee recommendations

The Committee recommends that Accounting Officer must strictly ensure that officers when committing part of their salaries always retain a third of their basic pay.

4.9.2. Lack of Authorized Establishment

The Nairobi City County Executive operated without an authorized staff establishment in place. There were no policies to manage staffing, posting and transfers of employees. The transition from the City Council to Nairobi City County Government was not accompanied by the necessary structural and human resources changes and therefore there is no human resource policy in place. Consequently, non-core departments are over-staffed with cadres such as labourers, cleaners and inspectorate while technical departments are understaffed.

Submissions by the Accounting Officer

The Chief Officer, Public Service Management (PSM) submitted that: -

i) Section 46 of the County Governments Act, 2012 provides that the County Executive Committee shall determine the organization of the County and its various departments. The County Executive from time to time approves the County organization which forms part of the County establishment. The County Executive Committee approved high level cadres in the CEC meeting held on 16th February 2018. This was to be followed by cascading the structure by all County Chief Officers to the lowest structure possible, recommend optimum staff establishment in line with Sectors mandates, and use the CARPS report as a starting point. The County Secretary through memo HRM/3/1/2018 dated 4th July 2018 submitted the structure and proposed establishment to all sectors for their perusal and give recommendations.

ii) The County Public Service Board vide letter NCPSB/ADM/43/43 dated 14th August 2018 assigned board members to each sector/Departments to discuss and review the cascaded structure and the recommended staff establishment.

iii) It is expected at the end of this exercise the County Public service board will publish an approved optimal staff establishment that will form as basis of all future human resource plan.

iv) The County has a human resource policy in place and is awaiting official launch after subjecting it to all stakeholder for comments.

Committee observations and findings

i) Lack of a human resource establishment explains the confusion that has continued to engulf the County Executive with almost all positions being held in acting capacity. This reduces accountability and ultimate out-put of employees.

ii) The process of developing of an institutional structure and a human resource policy has taken far too long and consumed a lot of tax payer's money through engagement of various consultants with no output.

iii) The County Public Service Board (CPSB) has failed on its mandate to advise the County Executive on critical human resource issues including the staff establishment and any recruitment exercise it has engaged in has never been successful.

Committee recommendations

i) The CEC Member, PSM should take a personal interest in this matter and liaise with the CPSB ensure that a staff establishment is put in place within a period of three (3) months of adoption of this report and report the same to the County Assembly.

ii) H.E. the Governor should reconstitute the current CPSB since it has failed to deliver on its mandate. The new CPSB once approved should immediately revamp the functions of the board.

4.9.3. High Percentage Wage Bill

The total County Executive expenditure on compensation of employees during the year under review amounted to Kshs. 12,729,646,976 as disclosed under Note 5 to the financial statements, compared to total revenue of Kshs. 25,784,240,036 representing 52% of the total

County revenue. Further, information available indicate that the County management was yet to set thresholds on employees' compensation against total revenue as stipulated in the Public Finance Management Act, 2012. The current expenditure levels of 52% of the total County revenue is indicative of over establishment which impacts negatively on development sectors of the County. The County Government has, therefore, contravened Section 107(2) of the Public Finance Management Act 2012.

Submissions by the Accounting Officer

The Chief Officer, PSM Accounting Officer submitted that: -

i) It is true that Section 107 of the PFM Act provides that over the medium term, a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure. It also provides that the County Government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the County Government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly. However, in the medium term the County Executive has not been able to meet the set limits of 30% of total revenue since the County inherited a huge workforce from the defunct City Council who were already enjoying negotiated terms and conditions of service and which is protected under Section 138 County Government Act.

ii) The Government rolled out a capacity assessment and rationalization programme, which would have established optimal staffing levels for the County. This report is in the final phase of implementation and therefore is expected to rationalize the staffing levels in the County through redeployment and voluntary early retirement. These measures are expected to bring down the personnel ratios to around 30% from the current 38%.

iii) In the medium term, the County Government is expected to retire over 3000 staff in the next 5 years under normal mandatory retirement, which will bring down the payroll costs by approximately 2.9 billion per annum. This will reduce payroll costs to around 10,445,698,040 by 2022. This will be within the threshold of 30% considering that revenues are expected to grow to over 30 billion over same period. In the meantime, the CECM Finance normally submits budget proposals to the County Assembly with the existing levels and the Assembly approves them subject to amendments.

iv) The County Public Service Board has also developed policy guidelines that will address voluntary early retirement scheme, which is expected to be rolled-out in 2019-2020 financial year.

Committee observations and findings

i) The County Executive has no clear figures in its possession on the exact number of employees it has. During the interrogation of the Chief Officer, the PSM Sector could not table a conclusive figure of the number of employees on the payroll and the same is likely to be abused with the inclusion of the infamous ghost workers.

ii) The County Government wage Bill has run out of control and almost 50% of the annual county revenues are spent on employee wages thus compromising service delivery. The plans to rationalize the service, which have been under implementation, have taken far too long with no results. This cast aspersion on the competency of the CPSB together with the PSM Sector to address the matter.

iii) A majority of the workers who contribute towards a huge wage bill are the unskilled officers yet the County government require technical officers who can provide specialised skills that the County is in need of such as engineers, architects, urban planners, land surveyors, doctors, nurses, lawyers, accountants amongst others.

Committee recommendations

i) The PSM Sector should immediately review, update and fully digitise its staff register/payroll so that the same cannot be abused.

ii) The CPSB should fast track and finalize its policy on voluntary early retirement so that surplus officers especially the unskilled should be encouraged to retire. Those who have reached the legal retirement age across the entire County Government should be made to retire.

4.9.4. Casual workers at Mama Lucy Kibaki Hospital

Casual wage payments at Mama Lucy Kibaki Hospital during the year amounted to Kshs.11, 094,599. As noted in the previous year, the number of casuals remained high at around ninety casuals in contrast to other similar facilities such as Mbagathi District Hospital with around twenty-five casual workers. High number of casuals, some being deployed as cashiers poses risk and strains to the facility's financial obligations.

Submissions by the Accounting Officer

The Chief Officer Health submitted that:-

i) One of the main challenge the Hospital suffers from is inadequate skilled and unskilled staff for effective and efficient service delivery. A request for additional staff has been previously forwarded to County Human Resource department for recruitment and postings.

ii) Currently the hospital has 93 casual workers and their emoluments are always approved in the quarterly budgets by the HMB as per the FIF guidelines.

Committee observations and findings

i) Lack of skilled staff, employed on permanent terms, at such a critical health facility compromises service delivery.

ii) Over-reliance on casual employees is expensive in the long run and pose a risk both the hospital's property and the patients since they lack the sense of accountability.

Committee recommendations

i) **The CPSB should ensure that all hospitals endeavour to employ skilled officers on permanent terms given the critical services they offer.**

ii) **Casual labourers should only be engaged for non-core functions/services such as cleaning to reduce the risk they pose to the institution.**

iii) **The PSM should within two (2) months of adoption of this report develop a policy on employment of casual labourers.**

4.10. Solid Waste Management

4.10.1. Irregular Collection of garbage in non-contracted zones/areas

Water, Energy, Environment, Forestry and Natural Resources Sector, made payments totalling Kshs.344, 820,778 to nineteen firms for collecting and disposing of solid waste in Dandora dumpsite. However, it was noted that the firms operated in zones/areas in which they were not prequalified to operate. A review of payment vouchers revealed that the firms irregularly collected 98,118 tonnes of garbage from such zones translating to Kshs.184, 563,784. Consequently, payments amounting to Kshs.184, 563,784 were made contrary to the binding contracts.

Submissions by the Accounting Officer (Chief Officer, Environment)

i) Various contractors were engaged to work in other zones based on clauses IV(16) &(33) of the garbage collection service agreement which provides that the Director of Environment or duly authorized representative shall be at liberty to call upon the Contractor to urgently attend to any emergency or unforeseen occurrence. Further, Clause IV.33 (ii) & (iii) on special conditions of contract provide that the scheduling of the machine operations will be at the discretion of the Director of Environment and Machine operations will be executed as and when necessary in the any Zone as required by the Director of Environment.

ii) On contractors collecting garbage in unauthorized zones, it is the director of environment who authorizes as at when needed, the supervisors requested the Director Environment, through a standardized Machine Operations Request Form to approve the schedule of operations under the following circumstances: withdrawal of services by contractors operating in some zones due to cash flow problems. This led to accumulation of waste, which was then collected under operations.

iii) On the statements that payments made without following contracts may expose the County Government to possible frauds and loss of funds, as explained, the works were carried out within the provisions of tender document and payments processed were as per the contract agreement.

Committee observations

i) While the garbage collection contracts allow collection of garbage by contractors in non-contracted zones under special circumstances as alluded to by the Chief Officer, the Committee held the view that is was not normal that 19 firms were allowed to operate under this provision. The Chief Officer could not demonstrate to the Committee the special conditions during the year under review that necessitated the invoking of this provision. In addition, the Chief Officer failed to provide complete copies of the garbage collection contracts to the Committee for review as requested.

ii) There was a likelihood that the firms colluded with County Government Officials in order to benefit from the loopholes of the contract since their payment is begged on the garbage collected.

Committee recommendations

i) **The Accounting Officer should ensure that contractors of garbage collection adhere to the terms and conditions of the contracts and that they are paid in accordance to the terms and conditions in their contracts. In the event of invoking special conditions, the same should be done in writing and the reasons for such action should be included. The appointing authority should sanction any officer who fails to adhere to this.**

ii) **The appointing authority should take administrative action against officers who unilaterally invoked the special conditions provisions and allowed contractors to collect garbage in non-contracted zones without providing reasons for the same.**

4.10.2. Irregularity in Hire of Garbage collection Works.

i) Creative Consolidated Systems under contract number NCC/WEFE&N/T/004-2015-2016 was paid Kshs.10, 304,740 vide Cheque Nos.16032 and 16031. The payment was for street sweeping, litter bin emptying, solid waste collection, transportation and disposal services and provision of insurance for April 2017. It was noted that backhoe registration number KHMA 412E had odometer time sheet indicating the machine operated for 29 hours on 16 April 2017 which was not possible. In certain instances, the equipment operated for 23 hours per day nonstop for a whole month as per odometer reading analysis. This may not be possible taking into account repairs and maintenance schedules of such machines.

ii) Further, Puka Investment was paid Kshs.7, 164,113 on 24 August 2016 vide payment voucher 14468 for collection of garbage from CBD. On 18 July 2016 vehicle registration KBT 006S as per weigh return summary and documents attached was weighed twice in a span of 4 minutes on 18 July 2016. The first delivery had 11.75 tonnes at 01.08 am and the second delivery had 13.65 tonnes at 01.12am, a difference of 4 minutes. Consequently, the County Government may have paid for fictitious machine hours' claim.

Submissions by the Accounting Officer

i) Regarding KHMA 412 E operating for over 24 hours, the Sector acknowledged that during the data entry there was an anomaly when entering in hours worked with the start being indicated as 21549 instead of 21541 resulting to a higher value of 8 hours. The Sector has initiated the recovery of the overpayment from the contractor and to deter future recurrence of the same, stringent measures to supervise the works and data entry have been put into place.

ii) Before engagement of contract of hire of heavy equipment, the County Government ensures compliance with the procurement statute and other related laws in acquisition process and execution of assigned task. In case where there exist gaps, the County is able to seek for additional information from the national government. In this case, the ministry of transport and infrastructure provided applicable rates for hire of backhoe with bucket registration KHMA 412E vie letter ref. ME/HQ/42/VOL.V/109 dated 30th May 2014. The payment process is supported by supervision report and before payment is recommended the management verifies and to the best of the available information. This ensures that the payment claim reflects what was done during day and night as per the equipment hour meter reading.

iii) The sector ensures the following support documents are used for payment processing:-

- Award letter
- Contract agreement
- Supervisory records
- Tally of actual machine hours worked
- Weigh bridge ticket for collection and transportation service

Committee observations and findings

i) By admitting that there was indeed anomalies in the records relating to the operations of the machines owned by Creative Consolidated and PUKA Investments leading to loss of funds through irregular payments, only after the Auditor General had flagged the matter, the Director in charge of Environment and the Officers supervising the machines and the weighbridge at Dandora Dumpsite during the period under review are responsible for causing loss of public funds hence they are liable for punishment prescribed under Article 226(5) of the Constitution which provides that: - *"If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not"* and Section 203(1) of the PFM Act, 2012 which provides that: - *"a public Officer is personally liable for any loss sustained by a county government that is attributable to-*

*(e) the **fraudulent** or **corrupt conduct**, or **negligence**, of the officer"*

ii) There is likelihood that the County Government may have lost more funds due to either negligence of County Government staff or collusion between contracted garbage collectors and the County Government Officers.

Committee recommendations

i) **The Chief Officer, Environment should ensure that all expenditure records on waste management are properly maintained for full accountability of public funds. In addition, contracted garbage collectors should be closely supervised to ensure** that they deliver on their mandate. Monitoring of their work should be aided by modern technology.

ii) The Accounting Officer should only incur garbage collection expenditure as authorised and in accordance with PFM, Act, 2012.

4.11. Health

4.11.1. Unaccounted drugs, overstocking of non-pharmaceutical items and expired drugs

(i) Examination and analysis of different stock cards at Mama Lucy Kibaki Hospital pharmacy stores revealed that drugs worth Kshs.148, 890could not be accounted for. The stock control cards had no matching entry with physical stock count. In the circumstances, it has not been possible to confirm that the drugs were received at the intended pharmacies and applied for the intended purposes.

(ii) Further, Mbagathi County hospital was holding too much non-pharmaceutical items with most of them nearing expiry period. Sampled stock cards and physical verification revealed that the facility had Kshs.3,055,944 worth of non-pharmaceutical items that were almost expiring as detailed below:

S3 CARD NO.	ITEMS	STOCK BAL.	UNIT PRICE	VALUE(Kshs.)
362550	NGT/Feeding tubes	20615	48	989,520
415002	Crepe Bandage	158	28	4,424
362544	Oxygen Masks	4868	250	1,217,000
362593	2CC Syringes	8700	30	261,000
306479	G22 BLUE	7150	70	500,50
301171	CORDCLAMPS	2000	12	24,000
464499	HAND GEL	170	350	59,500
	Total			3,055,944

It was not clear whether the items were acquired following user requests and procurement plans. The hospital's pharmaceutical department and stores also had expired drugs and pharmaceutical items amounting to Kshs.1, 410,826 as detailed below:

Name of drug	Batch No	Expiry date	Qty Expired	Total Cost (Kshs.)
Paracetamol 1g	14A4053	Nov-16	780	179,400
Levothyroxine 100mcg		Dec-16	400	2,760
Bisacodyl 5mg		Jan-17	2600	1,092
Bupivacaine heavy	F0114-1	Jan-17	500	172,000
Rocephine 1g		Mar-17	440	176,000
10% dextrose	2062	Mar-17	105	4,725
x-pen 5mu	140555	May-17	7200	165,600
Gabapentin 300mg	5121471	Jun-17	27900	186,000
Amlodipine 5mg	SFSIF401E	Jun-17	10000	20,000
Amitryptilline 25mg	62080	Jun-17	21000	8,505
Darrows		Apr-17	889	57,785
Water for injection	15019	Jun-17	17090	68,360
Phenytoin injection	5L25021	Aug-17	31	10,902
Lignocaine		Sep-17	53	2,279
Heavy Bupivacaine		May-17	30	1,410
Promethazine 50mg		Aug-17	90	810
Furosemide inj		Jun-17	1996	15,968
Ceftazidime	4120848	May-17	9	1,350
Suxamethonium		Sep-17	5	180
dental catridges		Sep-16	10500	315,000
Hydrogen peroxide 200ml		Jun-17	100	7,500
Antacids	63232/63227	Mar-17	20000	4,200
Ranitidine injection		Mar-17	1000	9,000
Total Cost				**1,410,826**

Most of the drugs were supplied by the Kenya Medical Supplies Agency (KEMSA). The hospital management did not explain the reasons for the expiry of the drugs. In the circumstances, the hospital incurred increased carrying costs and failed to get value for money for the expired drugs.

Submissions by the Accounting Officer

i) On unaccounted drugs: - An attachment detailing the issues raised amounting to Kshs.148, 890 is provided for the Committee to consider.

ii) On overstocking of non-pharmaceutical items and expired Drugs in Mbagathi County hospital:-

- For item no 1, (NGT/FEEDING TUBES) The deliveries were done by KEMSA and due to the doctors strike the items were slow moving since there was no admissions.
- For item no 2 ;(CREPE BANDAGE) the items were not overstocked since the monthly consumption is 24 dozens find attached Bin card no 415002 and S11 issue to the user.
- For item no 3 ;(OXYGEN MASK) the items were not overstocked since the monthly consumption is 400 pieces find attached Bin card no 362544 and S11 issue to the user.
- For item no 4 ;(2CC SYRINGES) the items were not overstocked since the monthly consumption is 14,000 pieces find attached Bin card no 362593 and S11 issue to the user.
- For item no 5 (G22 BLUE); the items were not overstocked since the monthly consumption is 4,000 pieces find attached Bin card no 346949 and S11 issue to the user.
- For item no 6 ;(CORD CLAMPS) the items were not overstocked since the monthly consumption is 800 pieces find attached Bin card no 301171 and S11 issue to the user.
- For item no 7 ;(HANDGEL) the items were not overstocked since the monthly consumption is 100bottles find attached Bin card no a 464499 and S11 issue to the user

iii) On expired drugs and non-pharmaceuticals:- Due to prolonged strikes, doctor's strike from December 2016 to March 2017 and nurse's strike from June 2017 to November 2017, the consumption of medication and pharmaceutical items was very low because most of drugs and pharmaceutical items that expired are normally utilized in the in-Patients and at that time we didn't have patients admitted in the wards.

Committee observations and findings

i) Procurement of drugs that are likely to expire in a short while leads to loss of public resources and in some instances if used exposes risks to patients in public hospitals.

ii) The County Hospitals do not have a structured and predictable way of procuring drugs. The fact that they rely on the parent sector to supply the drugs rather than needs of the hospital, explains why they are oversupplied with almost expiring drugs.

Committee recommendations

i) **The Chief Officer, Health Services should within three(3) months of adoption of this report develop a policy on how to procure and supply drugs to the County hospitals to eliminate ambiguities that lead to supply of unnecessary and expired drugs. The policy should demand that procurement of drugs should be initiated by the individual hospital based on its needs analysis.**

ii) **The Hospitals before accepting drugs from either KEMSA or any other agency/supplier must first determine that they are not likely to expire in a short-while.**

4.11.2. Manual Collection of Revenue at the Inoculation Centre

Despite the automation of the County Executive, it was noted that the revenue collection at the Inoculation Centre was done manually. During the year under review, the manual revenue receipts amounted to Kshs.73, 993,740 against a budget of Kshs.60, 000,000 translating to over collection of Kshs.13, 993,740. Manual systems by their nature are prone to human manipulation. No explanation has been provided for the continued use of manual systems to collect and account for revenue at the Centre. Further, the inventory register for received, used and spoilt vaccines was not presented for audit review. Consequently, it was not possible to confirm the revenue collected I relation to the vaccines received.

Submissions by the Accounting Officer

i.) The collection was done manually but all receipts accounted for through paying in slip (PIS) issued with a LAIFOMS receipts.

ii.) The County has engaged the Revenue collection service provider to come up with the stream module for the source, meanwhile the director ICT is doing the cabling to enable automated collection at the centre.

iii.) Currently customers are paying using the LIPA-NA-MPESA module (Nairobi County Health – Inoculation Till No.561625) and no cash collections are received at the Centre.

Committee observations and findings

The Committee noted that manual collection of revenue at the inoculation centre reduces accountability and puts public funds at risk of misappropriation.

Committee recommendations

The Committee recommends that all payments at the inoculation centre should immediately be automated.

4.11.3. Failure to manage and account for patients through the Check Health Information Systems (CHIS)

The Check Health Information Systems (CHIS) was installed at Mama Lucy Kibaki Hospital in 2015 at a cost of Kshs.3, 000,000. The system was to be rolled out in two phases. Phase one was to cover outpatient department and phase two to cover inpatient department and other areas such as procurement, pharmacy stores and morgue. Audit of the system revealed that during the year ended 30 June 2017, patients who registered at the casualty were 181,029. However, only 48,555 or (27%) were seen by the doctors through the CHIS system. The other patients totalling 132,474 or (73%) were not accounted for in the system. Further data of patients who were served at the pharmacy and laboratory by the Check Health Information Systems (CHIS) was not presented for audit review. This is an indication that the management was not ready to use the system to manage patients.

Submissions by the Accounting Officer

The Accounting Officer submitted that:-

i.) This can be attributed mainly to patients who are referred to the facility from neighbouring clinics and hospitals (especially county clinics and dispensaries). Once they are referred, they only pay Kshs. 100/-(one hundred) as registration fees and access the other services free. It has also been noted that the system takes little time (systematic problem) leading to patients ending up seeking services elsewhere. This essentially means the patients have been captured at registration point end but not seen anywhere else in the system.

ii.) Some clinicians have not embraced the usage of the system fully but management has increased supervision and surveillance. IT staff have been acquired in order to train users of the system.

Committee observations and findings

i) The Check Health Information Systems (CHIS) is a remedy to many accountability challenges that affect County Hospitals such negligence of medical officers and loss of revenue

ii) Following the Committee site visit, the hospital was embracing the system although there were some services that were not covered.

Committee recommendations

i) **The CEC Member, Health Services should ensure that the CHIS system is embraced in all hospitals to increase accountability. Adequate budget measures should be put in place during the next financial year to cater for the same. The CEC Member, Health Services should also develop a policy to guide the same.**

ii) **The system should cover all stages of treatment (service provision).**

4.12. Education and Social Services

4.12.1. Under funding of Waithaka Technical Training College

Waithaka Technical Training College was founded in 1984 as an entity of the defunct City Council of Nairobi with a vision to be a centre of excellence in technical training and human resource development. Its mission being to produce artisan graduates who are knowledgeable, skilled, equipped and with positive attitudes that enables them to cope with challenges of the fast-changing world. Further, the institute aspired to offer technical skills to youths within a healthy environment and nurturing their talents through life support skills during their development stages. A visit to the institution in the year under review revealed deplorable condition in terms of its operations and infrastructure. For the past five years, the students' enrolment has gradually declined as shown below:

Year	2017	2016	2015	2014	2013
Enrolment	64	82	86	90	95

The institution operates entirely on revenue collected through fees payment by the students despite its expenditure being budgeted for by the County Executive. The tuition component of the fees paid by the students is banked in the Nairobi City County bank account. The institute has a shortage of both teaching and non-teaching staff. Further, site visit showed that the buildings are in a deplorable state, with all having asbestos roofing that have already been condemned. The institution's basic amenities like toilets are in very bad condition exposing the staff and students to health hazards. This has led to decline in student's enrolment resulting in under realization of the institution's potential. Further, the institution has not been fenced thus exposing it to security risk and land encroachment.

Submissions by the Accounting Officer

The Chief Officer Education submitted that:-

i.) Towards the renovation of Waithaka Vocational Training Centre, the sector intends to prioritize the refurbishment in the F/Y 2018/2019

ii.) To address the issue of understaffing, the sector prepared a draft cabinet memorandum requesting for employment of staff in various cadres in all the Vocational Training Centres.

iii.) The sector will prioritize the construction of a perimeter wall in the F/Y 2018/2019 to secure Waithaka Technical Training Centres.

Committee observations and findings

i) Waithaka Technical Training Centre is critical in empowering the youth with life skills for future economic independence.

ii) The mismanagement of the institution would lead to killing the hope of the youth who depend on it to secure their future.

iii) There are no clear policy guidelines on the management of vocational centers.

Committee recommendations

i) The Chief Officer, Education fully implements the interventions alluded to in the response.

ii) **The CEC Member, Education should develop a policy on management of vocational centers. The same should be submitted to the Assembly for approval.**

4.12.2. Long Term Loan – MG1424500930

Disclosed at Annex 4 to the financial statements is an outstanding loan of Kshs.4, 081,270,388as at 30 June 2017 representing an increase of Kshs.680, 902,543 from the previous year balance of Kshs.3, 400,367,845 relating to KCB Loan MG 1424500930. Bank statements from 1 July 2016 to 12 August 2016 and 9 November 2016 to 30 June 2017 for the loan were not provided for audit review. The loan balance as at 9th November, 2016 was Kshs. 3,024,502,732. Examination of the statements provided revealed unexplained capture bill, penalty interest, principal repayments and repayments of dues as follows:

Details	Amount(Kshs.)
Capture Bill:	135,585,169
Penalty Interest:	50,512,952
Principal Interest	351,267,201
Repayment of Dues	24,976,238.65

Further, the repayments of dues of Kshs. 24,976,239 was not reflected in the statement of receipts and payments. Loan amortization schedule/control accounts and bank confirmation certificates were not provided for audit review. No explanation was provided as to why the County has continued to default on the loan repayment leading to penalties and capitalization of interest. Consequently, the accuracy of the loan balance reflected as at 30 June 2017 cannot be confirmed.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that:-

i) This loan was given to the defunct Nairobi City Council by the Equity Bank of Kenya and inherited by the Nairobi City County Government which renegotiated the loan re-purchase by Kenya commercial Bank on 10th September, 2014. Requests for bank statement from the bank for the period of its existence is yet to be responded due to system upgrade of the bank, available statements are for 13th Aug 2016 and 9th November 2016. Statements shows only 3 columns principal column ,interest column and principal outstanding column , capture bill is a description and does not have a figure as per statement .

ii) Explanation from the bank indicates that the principal and interest were accumulated previous months before system upgrade; however, this can only be confirmed after the statements requested are received from the bank.

Committee observations and findings

The Committee still holds the view as observed in the previous report that the takeover of the loan by KCB was procedural and was at the disadvantage to the County Government based on the following grounds:-

i) Whereas the buy-off of equity bank loan by KCB was a deal aimed at saving County funds and ease the County in repayment of the loan at an exorbitant interest rate, the end result was further loss of public funds as demonstrated by the overpriced payoff demand of Kshs.198,358,812, high interest rates on both the loan and the bank-overdraft.

ii) The process on how the County Government settled on KCB was not clear, one cannot tell whether other lenders would have offered a better deal were the process competitive.

iii) The process of acquisition of the loan was irregular since it was not in compliance with Article 212 of the Constitution and Section 142 of the Public Finance Management Act, 2012 on approval of borrowing by the County Assembly since the buy-out was under new terms. In addition, the subsequent loan of Kshs 700 million was neither guaranteed by the National Treasury nor approved by the County Assembly.

iv) KCB failed to conduct due diligence on its part on whether relevant approvals especially approval by the County Assembly before buying out the loan from Equity bank and offering a subsequent loan and must have colluded with corrupt County Officials who were signatories to the agreement to break the law on borrowing namely; the former Governor H.E. Evans Kidero, former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu.

Committee recommendations

i) The CEC Member for Finance should review the County Government engagement on this matter by particularly invoking the termination clause of the loan agreement and only pay the principal amount borrowed and immediately suspend servicing of the interest accrued on the KCB loan due to the irregularities committed during its acquisition;

ii) The DPP should take necessary legal actions against all persons involved in the irregular acquisition of the loan namely: the former Governor H.E. Evans Kidero, former County Treasury Officials (i.e. former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu) and Mr. John Oringo on behalf of KCB for contravening Article 212 of the Constitution and Section 142 of the Public Finance Management Act, 2012 when instituting the buy-out of the loan facility; and

iii) The County Executive should always follow due process as provided for in the PFM Act, 2012 and attendant regulations when applying for loans and bank-overdrafts.

4.13. Noncurrent Assets

4.13.1. Un-supported Fixed Assets Summary Balances

As disclosed at Annex 5 to the financial statements, the County Government had assets with a total historical cost of Kshs. 18,368,880,107 as at 30 June 2017. A review of the assets register provided for audit verification indicated that the register was incomplete. Details about acquisition cost of assets and date of acquisition were not updated. It was further noted that the register in place is a draft and has been maintained in an excel worksheet exposing it to unauthorized amendments. Further, assets acquired during the year amounting to 1,762,711,478 were not recorded in the register. Consequently, the completeness, accuracy and existence of assets totalling Kshs.18, 368,880,107 disclosed cannot be confirmed.

Submissions by the Accounting Officer

i) The draft fixed assets register is incomplete due to the following factors;

- On land buildings no valuation has been done given that most properties have not been identified and surveyed.
- Proper cost records for furniture and fittings, computers and electronics equipment, work in progress and old motor vehicles have not been maintained.

ii) On the issues of acquired assets during the year under review not captured in draft register, a comprehensive exercise is under way to identify all omissions made during the exercise.

iii) On the issue of secure maintenance of the asset register plan are under way to acquire on Enterprise Resource Planning (ERP) with an asset management system module with all the required security features.

iv) It should also be noted that the County Assets and liabilities Committee has made recommendations, in its final report, to the IGRTC on the way forward to address all the outstanding issues to enable formulation of a proper and complete register of assets.

Committee observations and findings

i) The absence of a comprehensive fixed asset register was putting the County's assets in a vulnerable position as they became increasingly susceptible to theft through fraud.

ii) The process of updating the asset register has taken far too long than expected and as rightly observed by the Auditor General, the state of the current asset register in an excel sheet can promptly lady to manipulation.

Committee recommendations:-

The CEC Member for Finance and Economic Planning should ensure that the County Government prepares a comprehensive digitized fixed assets register and table a report on the same in the County Assembly within three (3) months of adoption of this report.

4.13.2. Encroachment of City Park Land by private developers and business enterprises.

Site visit revealed that, several sections of the City Park land have been encroached by private developers and business enterprises. The areas encroached include seedlings area, habitats for wild animals and trees in the park. The areas affected most are as follows:

(i) Bowling Green Safari.

(ii) Unknown people have encroached a section of City Park adjacent to Joseph Murrumba Memorial Park.

(iii) Eden House Rehabilitation Centre.

Evidence of action taken by the County Government to reclaim the land and prevent further interference with the park have so far not been provided for audit review.

Submissions by the Accounting Officer (Chief Officer Lands)

i) Regarding Bowling; the Chief Valuer in liaison with the legal department prepare the lease documents and does the allocation. The legal department has been requested to provide lease documents to verify the actual lessee to the property.

ii) Regarding unknown people encroaching on a section of City Park adjacent to Joseph Murrumba Memorial Park; the officer lands has been requested to provide the deed plan and identify the beacons for the park to ascertain if there are any encroachment.

iii) Eden House Rehabilitation Center had expressed interest to be allocated City Park House No 5 but was never allocated since it is a duty house. The House is currently allocated to a senior environment officer who resides there.

Committee observations and findings

i.) The proprietors of Bowling Green Safari Club must colluded with County Officials and fraudulently leased part of city park, which is a public park, to operate a club/restaurant contrary to existing regulations in management of parks. The Chief Officer Lands and the Ag. County Attorney could not avail lease documents for review. The Committee was informed that the owner of the facility is the former Chief of Staff to the former Governor H.E. Evans Kidero one Mr. George Wainaina.

ii.) Arising from the Committee site visit, there were several encroachers on the property. The Chief Officer, Lands declined to reveal the identities of the persons although he alleged that one of the encroachers was the slain business man Mr. Jacob Juma. The Chief Officer, Lands also failed to provide the original title deed of the park and the survey report of the exact size of the land.

iii.) County Government Officials Park's land may see the County lose one of its treasured natural resource.

Committee recommendations

i) **The Chief Officer, Lands and the Chief Officer responsible for county parks in collaboration with state agencies should immediately institute measures aimed at evicting all encroachers on the park's land who include Bowling Green Safari Club and the unidentified persons.**

ii) **The DCI should investigate how one Mr. George Wainaina acquired the lease regarding his operation of Bowling Green Safari Club at the park and institute criminal proceedings against all persons involved in its fraudulent acquisition, if found culpable.**

iii) **The Chief Officer, Lands should spearhead the process of surveying, demarcate and ensure that park's title deed is safely kept.**

iv) **The County Executive should restore the Park to its natural state.**

4.13.3. Roads damaged by Kenya Urban Roads Authority (KURA)

Sections of the roads within the City Park were destroyed by vehicles belonging to KURA during road construction works adjacent to the facility. It is not clear why KURA failed to repair the roads after completion of the work. Management did not produce for audit review demand letters and correspondences between the County Government and KURA on the repairs.

Submissions by the Accounting Officer

i) The Environment Sector has written to Kenya Urban Roads Authority on the matter of reinstating the roads to motor-able conditions.

ii) The City Park is a public park and easily accessible by all. It is thus difficult to identify the culprit responsible for damaging the walkways. Since there are several facilities in the park that may be responsible for the damage including traders within the City Park Market, Administrative Camp, Hotel and the County Officials all of whom are located within and inside the newly constructed walkway.

Committee observations and findings

i) The County Executive through the responsible Department has neglected to protect the park from encroachment and general destruction. The park if it is not preserved will extinct.

ii) It is the responsibility of the County Government to maintain the park and protect its destruction from entities such as KURA. Arising from the Committee site visit, it was clear that the roads had been destroyed.

Committee recommendations

i) The CEC Member for Environment should take personal interest in this matter and demand the rehabilitation of the damaged roads by KURA.

ii) The Chief Officer responsible for Environment should ensure that adequate surveillance officers are deployed at the park to deter any destruction of the park.

4.14. Legal Costs

Note 6 to the financial statements on use of goods and services includes other operating expenses totalling Kshs.1, 995,161,686. The other operating expenses further include legal costs amounting to Kshs.645, 260,542. It was however noted that legal costs amounting to Kshs.592, 437,994 were paid outside the Integrated Financial Management Information System (IFMIS) contrary to the National Treasury directives. Further, the actual expenditure on legal services of Kshs. 645,260,543 exceeded the approved budgetary allocation of Kshs.105, 000,000 resulting in an over-expenditure of Kshs.540, 260,543 or 515%. No authority for the supplementary expenditure was sought from the County Assembly contrary to Section 196 (1) of the Public Finance Management Act, 2012. In addition, a review of sample case files revealed that twelve files with payments to lawyers totalling Kshs.318, 418,310were not adequately supported with information and documentary evidence as shown below:

Legal Firm		Amount (Kshs)	Case File No./Details	Deficiency
1	Achola Jaoko & Co. Advocates	7,000,000	HC.PET No. 285 of 2013 Council of Nairobi retirees' welfare vs Nairobi City County	Why did the County/City Council of Nairobi stop investing and declaring interest from the year 2003?Why did the County/City Council of Nairobi fail to register the provident fund with RBA as required by the RBA Act in 1997?
2	Koceyo and Company Advocates	5,000,000	HC ELC No. 781 of 2015 Nairobi City County vs National Lands Commission & 3 others	The value of the dispute is not supported. Where is the valuation report to confirm the value of the contested property, what is the status of the case?
3	Koceyo & Co. Advocates	15,947,363	HCCC ELC NO. 1152 of 2015 Philip Munywoki Kilonzo & 2 others vs Nairobi City Council	Allotment letters by the defunct City Council of Nairobi not in the case file
4	Wachira, Mburu, Mwangi & Co. Advocates	32,374,347	HCCC NO. 874 of 2010 Josmass Enterprises vs City Council of Nairobi	How could the plaintiff sue for damages and yet evaluation for tenders was not over yet. The correspondences between Josmas Enterprises and the Israel firm not presented for review to confirm the allegations.
5	Munikah & Co. Advocates	12,500,000	HC Msc.Appl. Number 247 of 2011. Munikah & Co. Advocates City Council of Nairobi	Why did the advocate take over three years to do a fee note to the CCN? Counter claim not attached in the case file, how much did the advocate collect on behalf of CCN since this was the initial objective? What is the current status of the case?

6	Prof.Tom Ojienda and Associates	20,000,000	Misc. Appl.No 2 of 2016 Prof Tom Ojienda and Associates Vs NCC. The applicant filed the bill of costs in respect of H.C Judicial Review Application No.274 of 2014(Karen - Langata vs Nairobi City County)	County officials were instructed to make arrangements for a meeting to negotiate on the issues of reduction of the judgement and mode of settlement. Did the team negotiate with Prof Tom Ojienda and Associates on the revision of fees downwards, please attach the minutes of the deliberations and agreed sum.
7	Wachira Nderitu Ngugi and Co. Advocates	9,000,000	HC JR MISC. Number 431 of 2012.Wachira Nderitu and Company Advocates Vs Town Clerk, City Council of Nairobi ,Civil application number 221 of 2012	What was the basis of the decretal sum? The case file very scanty and cannot give proper details.
8	Momanyi Associates and Co. Advocates	8,170,000	HC JR APP. Number 32 of 2011 Kenya Shell Ltd Vs the Registrar of Titles and City Council of Nairobi	Was the letter from DCI responded to and if yes where are the certified copies of the stated /requested nine letters in the case file
9	Kithi and Company Advocates	20,426,600	Halima Dafara Gole Vs David Kamari, Pinnacle Properties and Nairobi City County ELC Civil case Number 558 of 2014	How did the County arrive at the fee payable to the advocate of Kshs.20,426,600.00 taking into account it had very little to lose and in all material facts this was a forgery?
10	Rachier and Amollo Advocates	20,000,000	High Court Civil Suit Number 731 of 2008 North End Trading Company Ltd and Kenya Refuse Handlers Vs City Council of Nairobi	Kshs.95, 372,160 was paid instead of judgement amount of Kshs.70, 372,160. Please provide reasons for the differences.

11	Momanyi & Associates	85,000,000	PET. NO. 127 of 2011- Edward Ruraya & 2 Others vs NCC	Why did the City Planning Department issue titles against Court order wrongfully and illegally to non-members of the Komarock Bridge Jua Kali?
12	Koceyo & Co. Advocates	83,000,000		File not produced for audit review, status not confirmed.
	TOTAL	**318,418,310**		

Consequently, the validity and propriety of legal fees for the year as disclosed in the financial statements cannot be confirmed.

Submissions by the Accounting Officer

The Ag. County Attorney submitted that:-

i) The recurrent expenditure through contracted technical services vote of Kshs. 105,000,000 was allocated for the payment of legal fees and decretal sums expenditures. But the actual expenditure on the recurrent in the same FY 2016/2017 had an over expenditure of Kshs. 592,437,994 necessitated by the orders for warrants to arrest county officers garnishee orders and cost for defending the county.

ii) Part of Legal costs payment, Kshs. 321,972,705 were paid under court orders issued in form of Warrant of Arrests against County Officers and Garnishee orders against County Bank accounts.

iii) The County Government had no option other than to make the payments. Judgmental costs are uncertain to budget for but when they arise, normally Pending Bills Vote is used for payment purposes.

iv) The following among others were the reasons why the County Government incurred the over expenditure:-

a) *Court orders, warrants and garnishee orders.*

No.	Case no	Parties	Advocate	Amount paid	Sector
1	Employee and Labor relations Cause No. 561 of 2009	Nairobi City Council Retirees Welfare Association Vs City Council of Nairobi & 2 others	Achola Jaoko & Co. Advocates	12,000,000	PSM-Human Resource
2	HC PET No. 166 of 2009	Janet Njoki Mwangi vs City Council of Nairobi & Keziah Waithera	Henry Oduor & Co. Advocates	2,000,000	Urban Planning Land
3	HC MSC APP. No. 247 of 2011	Munikah & Co. Advocates Vs City Council of Nairobi	Munikah & Co. Advocates	4,500,000	Finance-Rate
4	ELC. No. 731 of 2008	Northend Trading Company Vs CCN	Rachier &Amollo Advocates	10,000,000	Environment
5	HC MISC. No 164 of 2015	Willesden Investment Ltd Vs County Secretary NCC	Oyatta& Associates Advocates	10,000,000	PSM-HRM
6	HC MISC. No. 433 of 2009	Proland Ltd Iris Properties Vs CCN	Proland Ltd	46,583,794	Public Health
7	JR MISC NO. 141 OF 2014	Kagwimi Kang'ethe &Co. Advocates vs NCC	Kagwimi Kang'ethe &Co. Advocates	594,747	Finance
8	HCCC NO. 446 OF 2012	NguyoNgibuini T/A Ngibuini Associates Consulting	Gikandi& Co. Advocates	5,000,000	City engineer

		Architects vs NCC			
9	HCC JR MISC NO. 431 OF 2012	Wachira Nderitu, Ngugi & Co. Advocates vs Town Clerk NCC	Wachira Nderitu, Ngugi & Co. Advocates	36,752,298	
10	HCC NO. 609 OF 1997	Mereka & Co. Advocates vs NCC	Mereka & Co. Advocates	13,000,000	
11	CMCC NO 11027 OF 2005	Kenneth Gagai vs NCC	Ashiruma& Co. Advocates	1,304,196	
12	JR MISC NO 366 OF 2014	Gateway Insurance LTD vs NCC	M. N. Kamau & Co. Advocates	60,000,000	FINANCE ASSET MGT
13	CMCC NO 484 OF 2013	Akkad Systems LTD vs NCC	F. N. Kimani & Co. Advocates	3,510,000	
14	HCCC NO. 385 OF 2016	Baylum LTD vs NCC	Rachier &Amollo Advocates	10,000,000	
15	HC JR NO. 207 OF 2015	DANSON KIMWARA CS NCC	J. Makumi& Co Advocates	2,618,016	
16	HC JR NO. 151/2/3 OFF 2014	Republic vs CS NCC. Ex parte Cadillac Enterprises ltd	Wanjao&Wanjau Advocates	1,232,674	
17	ROK/ARB/012	Arbitration between Illuminator Ltd vs NCC	Justice R.O Kwach Advocates	300,000	
18	CMCC NO. 4305 OF 2013	Sheila Scio T/A AlmasyRestaurant vs NCC	Rabala& Co. Advocates	1,147,041	Lands
19	HCCC NO. 874 OF 2010	Wachira Mburu Mwangi & Co. Advocates vs NCC	Wachira Mburu Mwangi & Co. Advocates	5,000,000	

20	NRB MISC APPL NO. 216 OF 2016	MwanikiGachoka& Co. Advocates	MwanikiGachoka& Co. Advocates	169,050	
21	HC JR NO. 29 OF 2017	Republic vs CS NCC and Samuel Gichuhi	Gitau J. H & Co. Advocates	1,245,950	
22			GitobuImanyara& Co. Advocates	1,320,000	
23	HCC MISC. APPL NO. 625 O 2014	Debt repayment agreement between Lap Trust and NCC	Akide& Co. Advocates	34,253,657	
24	JR NO.39 OF 2016/HC JR NO.4 OF 2016	Ondieki&Ondieki Advocates vs ncc,governerkidero	Ondieki&Ondieki Advocates	3,080,000	
25	HCC NO 622 OF 2017	John Kenneth Musambi vs NCC	D.P Kinyanjui& Co. Advocates	1,600,000	
26	HC JR MISC NO 605 OF 2016	NjagiWanjeru & Co. Advocates vs CS & City Treasurer NCC	NjagiWanjeru & Co. Advocates	1,576,282	
27	CONTRACT NO. NCC/PPP/378/201 4-2015 TRANSACTION ADVISORY SERVICES	capital projects under public private partnership	S.S.Malonza & company advocates	65,185,000	Contract urban planning ai housing but this was n part of leg cost for tl department.
	Total			**321,972,705**	

b) Pending Bills.

- Twenty percent (20%) of county pending bills vote was allocated to Legal Department on Payment of legal fees and court decretal sums. Part of these expenditures were carried down from previous Financial Years 2013/14/15 bills that were not paid.
- The over expenditure of Kshs. 592,437,994 less the Kshs. 321,972,705 payments was made to avoid Warrants of arrest of County officers and Garnishee orders on Bank accounts, the balance of Kshs. 270,765,289 after deducting what was budgeted for in FY 2016/17 of ksh.105,000,000 the payments were done through the Pending Bills Vote.
- The department undertakes legal suits / cases on behalf of other sectors of the county yet no budget allocations are transferred. This consumes the department budget resources but plans are underway to charge respective sector budgets on payment of legal fees and decretal sum.
- The legal debt/cost for the county at the moment stands at ksh.4 billion being inclusive of both court judgmental sums and cost incurred to defend the county. It is prudent that the county recognizes the debt as existing and adequate funding allocation done on the subsequent financial years.
- Judgmental costs does attracts an incremental interest cost of 12% annually compounded on the principal amount and majority of these debts run as far 1990s unconcluded matters of the defunct Nairobi city council. On historical cost the county has an average expenditure on legal cost at Kshs. 500M yearly.
- Payment of legal costs have always been done through Pending Bills and the payments that were made above Legal Department's approved budget were through the Pending Bills Vote.
- Even though the Budget for Legal costs was exceeded by Kshs. 540,260,543, the overall effect of the same was within the County's approved budget and the same was regularized through the Supplementary Budget on pending bills.

v) The following are the specific details and responses to each queried case:-

(a) *Achola Jaoko& Co. Advocates - Kshs.7, 000,000.00* (HC PET NO.285 OF 2013 - NCC –VS- NCC RETIREES WELFARE)

- The audit query was why the County/City Council of Nairobi stopped investing and declaring interest from 2003 and why the County/ City Council of Nairobi failed to register the provident fund with Retirement Benefits Authority as required by the RBA in 1997.
- According to the Judgment of the Court delivered in court on 5th may 2014 page 12, the claimants were covered by the Local Authorities Provident Fund Act which creates the Local Authorities Provident Fund (LAPFUND) an internal organ of the City Council of Nairobi. Under the LAPFA sections, 8 and 9 provides payment by members as long as he/she remains in the employment of the sponsor to the Trust by way of monthly deduction equal to twelve per cent (12%) of his/her salary while the sponsor shall make its own contribution of fifteen percent (15%) of the member's salary. The Council hence did not stop investing and declaring interest from the year 2003 but only was making delayed payments
- On the issue of why the Council did not register the Provident Fund with RBA in 1997 is that LAPFUND (Provident fund) is a legal entity distinct from the County (Council) registered under the local Authorities Provident Fund Act (Cap 272) and carries its operations within the law and is regulated by the Retirement Benefits Authority.

(b) *Koceyo & co. Advocates – Kshs. 5,000,000.00*(HC ELC NO.781 OF 2015- NAIROBI CITY COUNTY –VS- NATIONAL LANDS COMMISSION & 3 OTHERS)

- The query was that the value of the dispute is not supported, the valuation report to confirm value of the contested property and the status of the case.
- Advocates charge their fees in accordance with the Advocates Remuneration Order and not on valuation report. The Act is very specific

on how fees are to be charged and it expressly states that where the value of a property has been pleaded in the documents filed in court, then the advocate uses that amount to calculate his fees.

- In this case, the affidavit filed by the 3rd applicant (Mr. Gregory Mwakanongo) stated the County claimed from the Government a sum of Kshs. 2,502,914,500.00 being compensation due and payable in respect of the land acquired for construction of the Standard Gauge Railway.

(a) *Koceyo & co. Advocates – KSHS.15, 947,363.00* (HC ELC NO.1152 OF 2015 – PHILIP MUSYOKI KILONZO & OTHERS –VS- NCC)

- The query was that the allotment letters by the defunct City Council of Nairobi were not in the case file.
- The plaintiffs did not provide the alleged allotment letters and at paragraph, 7 of the County's defence it is stated that if the county was in the process of formalizing reallocation or reallocated, it is because there was no existing allotment between the plaintiffs and the defendant.

(b) *Wachira Mburu Mwangi & Co. Advocates*(HCCC NO. 874 OF 2010 JOSMAS ENTERPRISES VERSUS CCN)

- The query was how could the plaintiff sue for damages and yet evaluation for tenders was not over yet. Secondly, the correspondence between Josmas Enterprises and the Israeli firm were not presented for review to confirm allegations.
- Josmas Enterprises sued the Council now the County on its decision to award the tender for the decommissioning of Dandora Waste Disposal Site to another entity other than itself on what it alleged to be a breach of the Public Procurement and Disposal Act 2005.
- That the reason for the plaintiff to sue the County was because of its failure to win the tender, which suit the County successfully defended culminating in its dismissal as the plaintiff could not prove any wrongdoing on the part of the Council.

- On the issue of the correspondences, the plaintiff failed to produce any and that contributed to the dismissal of the case. In law, the party that alleges must prove the allegation; which Josmas Enterprises did not.

(c) *Munikah & Co. Advocates – Kshs.12, 500,000.00*– (HC MISC 247 OF 2011 - MUNIKAH & CO ADVOCATES –VS- CITY COUNCIL OF NAIROBI.)

- The query was why the advocate took over three years to do a fee note and that the Counter-claim was not attached in the case file and further the amount the Advocate collected on behalf of the City Council of Nairobi and the status of the case.
- First, the time within which an advocate can submit a fee note is not restricted therefore a fee note can be done anytime during the pendency of a case. The advocate in this matter taxed his fees after the Government filed a counter-claim of Kshs.498,757,315.25 therefore the amount collected was not in question.
- The Council sued the Attorney General (Commissioner of Lands) vide RMCC NO. 2 of 2003 for rates owing to it which rates were owed by the National Government amounting to Kshs. 1,473,338,860.00. The Attorney General counter sued the Council for Kshs. 13,299,015,074 claiming that this was the amount the Council owed the Government by way of grants given to the Council at its request for its own projects.
- Secondly, provided is a copy of the amended Defence and Counter-claim by the Attorney General.

(d) *Prof Tom Ojienda and Associates* – KSHS. 20,000,000.00(NRB HC MISC APP NO. 2/2016 – PROF TOM OJIENDA & ASSOCIATES –VS- NAIROBI CITY COUNTY)

- The query was whether the County Officials negotiated with the firm of Prof. Tom Ojienda on the issues of reduction of Legal fees downwards and mode of settlement as had been instructed.
- Nairobi City County instructed the firm of Messrs Tom Ojienda & Associates with a view of defending its interests in this matter where Karen and Langata

District Association sought a declaration that County's decision contained in the Nairobi City County Finance Act 2013 enhancing land rates to 34% of the unimproved site value together with monthly interest of 3% in so far as it applied to members of the Association was null and void.

- The law firm of Prof. Tom Ojienda & Associates sent a fee note of Kshs. 45,490,000.00 and the county made a counter offer of Kshs. 34,820,000.00, which the firm refused and proceeded to Court to tax.

(e) *Wachira Nderitu, Ngugi & co. Advocates- Kshs. 9,000,000.00 -* (<u>HC JR MISC 431/2012 WACHIRA NDERITU NGUGI & CO ADVOCATES –VS- THE TOWN CLERK & CITY COUNCIL OF NAIROBI</u>)

- The query was to give the basis of the decretal since the file was very scanty.
- Messrs Wachira Nderitu Ngugi & Co Advocates filed High Court Misc Application Number JR 431 of 2012 to enforce the judgments in High Court Misc 221 of 2012 and High Court Misc 145 of 2012 in which they were awarded the sum of Kshs. 867,768.00 and Kshs. 10,516,557.08 respectively as per the court decrees attached to the High Court Misc Appl. 431 of 2012.
- In High Court Misc Appl. 221 of 2012 Messrs Wachira Nderitu & Company Advocates had applied for Judgment for Kshs. 867,768.00 being taxed costs as per Certificate of Taxation dated 13th July 2012.
- In High Court Misc Appl. No. 145 of 2012 Messrs Wachira Nderitu & Company Advocates had applied for judgment of Kshs. 10,516,557.08 being taxed costs as per the Certificate of Taxation dated 13th July 2012.
- The latter High Court Misc Appl. No. JR 431 of 2012 was an application to the court to issue an order of mandamus to compel the Town Clerk City Council of Nairobi to pay the said advocates the sum of Kshs. 11,384,325.08 being cumulative sum of judgment in Misc Application No. 221 of 2012 and Misc Application 145 of 2012.

(f) *Momanyi & Company Associates Advocates*– KSHS. 8,170,000 HC JR APP NO.32 OF 2011 - KENYA SHELL LTD –VS- THE REGISTRAR OF TITLES & CITY COUNCIL OFNAIROBI

- The audit query was that the letter from DCI responded to and if yes where are the certified copies of the stated/requested nine letters in the case file.
- As at the time of this audit query, the particular case file was not available as it had been since forwarded to accounts section for payment and efforts are being made to trace the same as to answer the audit query.

(g) *Kithi & Company Advocates- KSHS. 20,426,600.00* (HC ELC NO.558/2004 - HALIMA DAFARA GOLF –VS- NAIROBI CITY COUNTY & OTHERS)

- The query was how the County arrived at the fee payable to the advocate of Kshs. 20,000,000.00 taking into account that it had little to lose and small material facts this was a forgery.
- The fee of Kshs. 20,000,000.00 paid to the lawyer was calculated based on the Advocates Remuneration Order as well as the complexity of the issue of law and facts etc.
- Further if we failed defend this claim despite the allegation of fraud; the plaintiff would have obtained judgment leading to the County losing a colossal sum.

(h) *Rachier and Amollo Advocates – Kshs.20,000,000.00* (HCELC 731 OF 2008 NORTH END TRADING CO. LTD AND KENYA REFUSE HANDLERS –VS- NAIROBI CITY COUNTY)

- The audit query was that the County Government provide the reasons for the difference in the amount paid of Kshs. 95,372,160.00 and Kshs. 70,372,160.00 being the decretal sum.
- The court by a partial decree given on 20th May 2011 entered Judgement for the plaintiff in the sum of Kshs. 70,362,160.00.
- Upon an application filed in court on 16th November 2011 which was heard on 27th March 2012, the court issued an order of mandamus in HCJR Misc

Appl. 256 of 2011 that the County (City Council of Nairobi) pay the applicant the sum of Kshs. 72,374,610.00 being partial decretal sum plus costs.

- According to records in the case file, voucher amounting to Kshs. 75,372,160.00 were raised towards payment of the partial decretal sum. By memo dated 6th May 2015, the Director Legal Affairs wrote to the Chief Officer Finance to confirm whether the payment vouchers as raised by the Legal Department had been paid. The said memo was returned to the Legal Affairs with an amount in the sum of Kshs. 40,372,160.00 ticked as having been paid and instructions to raise a voucher for Kshs. 20,000,000.00 on 22nd May 2015.
- A further payment voucher for Kshs. 25,372,160.00 was raised on 1st July 2015, which was never paid. The voucher for Kshs. 20,000,000.00 indicates that a sum of Kshs.10, 000,000.00 was paid by two instalments of Kshs. 5 million each on 7th March 2017 and 24th March 2017 respectively. Therefore, the total amount paid according to our records is Kshs. 52,372,160.00.

(i) <u>Momanyi & Associates Advocates – Kshs. 85,000,000.00 (HIGH COURT PET NO.127 OF 2011 – EDWARD RURAYA & 2 OTHERS (Suing on their behalf and on behalf of the Komarock Bridge Jua kali Traders) –VS- CITY COUNCIL OF NAIROBI)</u>

- The audit query was the reason why the City Planning Department issued titles against the Court order wrongfully and illegally to non-members of the Komarock Bridge Jua Kali Association.
- According to the affidavit of Mr. Tom Odongo, Director City Planning Department Sworn on 30th November 2011 and filed in Court on 1st December 2011, the allocation of the suit premises (L.R 11344/R) to non-members of Komarock Bridge Jua Kali Association was not illegal and contrary to the Court Order since the members of the said Jua kali Association were only holding Temporary Occupation Licenses which had expired. It is on these grounds that the petitioner's petition could not succeed and hence was dismissed by the Court.

Submissions by mentioned Advocates

The Committee invited all the Advocates mentioned in the report of the Auditor General. The following advocates honoured Committee invitations and submitted as follows:

i) *Wachira Nderitu Ngugi and Co. Advocates*

- The law firm was paid cumulatively a total sum of Kshs 19,641,123.09 being decretal fees in respect of two suits where the firm acted for the then Nairobi City Council namely: - HCCC No. 504 of 2002(Christine W Gachege vs NCC) and HCC No. 15 of 2003 (George Gikubu Mbuthia vs City Council of Nairobi).
- When the firm ceased acting for the defunct council in the two said cases, appropriate applications to withdraw from acting were made and advocate/client bills of costs drawn and taxed.
- It is the two certificates of taxation and ensuing decrees that were executed through judicial review Misc. App. No. 431 of 2012, the subject of audit.

ii) *Koceyo and Company Advocates*

- The firm acted on behalf of the County Government with respect to HC ELC NO. 781 of 2015(Nairobi City County vs National Lands Commission and 3 others). The Assistant Director, Legal Services was responsible for the negotiations between the firm and the County Government where the County Government agreed to pay Kshs 87,677,024.60 as evidenced in the letter Ref. LA/N/282/15 dated 3rd December 2015.
- Initially, the firm had demanded Kshs 348,050,000. Legal fees agreed between the County Government and the law firm was guided by the Advocates Remuneration Order and based on the value of the suit property that was declared by then Ag. County Secretary acting on behalf of the County Government through a sworn affidavit dated 5th August 2015.

iii) *Rachier and Amollo Advocates*

- The law firm represented North End Trading Co. Ltd and not the County Government in the matter i.e. HCELC 731 of 2008 (North End Trading CO. LTD and Kenya Refuse Handlers –VS- Nairobi City County). Instead, Moronge & Co. Advocates represented the County Government. As such, no legal fees was paid to Rachier and Amollo Advocates by the County Government.

- In the course of the proceedings, the plaintiff and the County Government entered into a consent judgement 18th May 2011. for Kshs 70,732,160 plus cost. Despite the consent, the County Government refused to pay the decretal amounts. This compelled the plaintiff to institute Judicial Review Proceedings to compel the defendant to pay the decretal amount contained in the consent judgement and which amount stood at Kshs 72,374,610 including the legal fees.
- Out of the decretal amount, the defendant paid Kshs 50,000,000 as at 24th March 2017 thereby leaving an unpaid amount of Kshs 22,374, 610. The final judgement was delivered on 24th January 2019 for:-
    - The full decretal sum of Kshs 124,953, 468.75 as per the plaint les Kshs 70,732,160 as per the consent of 18th May, 2011.
    - Interest on the above at the prevailing commercial bank rates from 1st March, 20014 the payment in full
    - Kshs 500,000 being general damages; and
    - Costs of the suit.

iv) *Achola Jaoko & Co. Advocates*

- It is not true that the firm was paid Kshs 7,000,000 as legal fees by the County Government. The firm is not on the panel of County Advocates. In the Employment and Labour Relations Cause Number 561(N) of 2009(Not HC Petition 285 of 2013) the firm acted for the Claimants (City Council of Nairobi Retirees). Case Number HC Petition 285 of 2013 is unknown to the firm.
- Therefore the monies paid to the firm were not received to defray the Decretal Sum, Costs of the suit and interest pursuant to Lady Justice Maureen Onyango' s Judgement delivered on 5th May, 2014 and the Decree in ELR Cause No. 561 (N) of 2009.

v) *Prof.Tom Ojienda and Associates*

- The firm acted for the Nairobi City County in Petition No. 274 of 2014, Karen & Langata District Association Vs the Nairobi City County. However, despite successfully representing the County, it deliberately failed and/or refused to pay the legal fees as requested in the fee notes. The firm has never been paid Kshs 20,000,000 with respect to this matter.

- Following the failure by the County Government to pay, the firm filed a Bill of Costs being Misc. Application No. 2 of 2016 (Prof. Tom Ojienda & Associates vs Nairobi City County. Contrary to what is claimed in the Auditor General's Report, the Bill was taxed at Kshs 75,000,000 through the ruling date 5th July, 2016. The firm subsequently applied for the ruling to be adopted as a judgement of the Court.
- Through the Judgement dated 30th January, 2017, the Court entered judgement in the firms favour for Kshs 75,000,000. This judgement was reaffirmed through a ruling dated 10th July 2018 and an Order of mandamus was issued compelling the County Secretary and Chief Officer, Finance to pay the firm Kshs 75,000,000 with interest from the date of the judgement. The Nairobi City County was represented in the entire proceedings culminating into the judgement. However, to date, it has not attempted to pay even a shilling to fulfil the judgement.
- The County Government has not approached the firm in any way whatsoever seeking to agree on the payment plan rather than tarnishing the firms name in social media. The PAC is requested to intervene so that the firm can be paid.

vi) *Munikah & Co. Advocates*

- The firm was instructed by the defunct NCC to recover outstanding rates levied against parcels of lands owned by various Government ministries from the Commission of lands amounting to 1,473,338,880. The firm filed a case RMCC No. 2 of 2003- City Council of Nairobi vs Attorney General (on behalf of the Commissioner of Lands as Trustee for various Government Ministries).
- The firm was thereafter instructed to amend the plaint to enhance the claim to Kshs 2,089,179,092. The Attorney General amended the defence to include a counter-claim brought against the council, for a sum of Kshs 13, 299, 05,074. The firm challenged the counter claim and the Court delivered a ruling dismissing the counter claim, with costs, in favour of the Council. There is a decree in favour of the Council dated 2nd

December 2008 and a certificate of Oder against the Government commanding the Government to pay the sum of Kshs 332,544,876.

- Having had the counter-claim successfully defended and disposed, the firm became entitled (on the counter claim) to Advocate and Client fees and disbursements as provided for under the Advocates (Remunerations) (Amended) Order, 2006; to scale. The firm served upon the Council a draft fee note amounting to Kshs 498,815, 246.25 demanding approval and or comments and or payment of the said sum.
- The firm having not been paid, filed in Court the Advocate/Client Bill of Costs under the High Court Miscellaneous Application No. 247 of 2011. The court taxed the bill of cost and allowed in favour of the firm Kshs 498,757,315. The firm has never been paid and has severally written to the County Government but has always been informed that there are insufficient funds. The firm has demanded the settlement of the said amount of now Kshs 986,755,137 inclusive of interest thereon at 14% p.a. from 31st December 2018 until payment in full. Now the case rests at the order of mandamus delivered by Hon. Justice Mativo on 25th February 2019.
- Regarding the status of the cases; on HC Misc. Application No. 247 of 2011(in the matter of taxation of Advocate and Client Bill of Costs), the case is disposed of by the judgement in favour of the firm against the County Government. On RMCC No. of 2 of 2003, the sum claimed by the County Government from the Government of the Republic of Kenya was enhanced to Kshs 2,089,170,192. It has been difficult to prosecute the case expeditiously for inter alia, want of witnesses and accurate documents to support the case. In addition, there have been efforts to settle the matter out of court but the firm has not been adequately briefed on the same. The firm is still pursuing the hearing and determination of the case and its waiting the court to allocate a hearing date.
- If payment of Kshs 12,500,000 was actually made in Misc. Application No. 247 of 2011, then the same was on account of a genuine decretal sum and part payment.

Committee observations and findings

i) As observed in the previous Committee report, the continued procurement of legal services at extremely high rates yet the County Government has a Legal Department is unjustifiable. In addition, over expenditure on payment of legal services is extremely high yet the County Government still loses some of the cases thus there is no value for money spent.

ii) The then Director, Legal Services Mr. Karisa Iha and later the Ag. Director Legal Services Mr. Erick Abwao both of whom were not Accounting Officers as per the provisions of Section 148 of the PFM Act, 2012 unilaterally negotiated with the law firms and agreed legal fees to be charged by the said law firms based on non-existence valuation reports of the properties in question. Equally, Mr. Gad Awuonda, the then County Attorney failed to offer professional guidance with regards to this matter and went ahead to give approval for the expenditure.

iii) The Legal Department does not keep proper records of the cases in court and there is a possibility of collusion with advocates with the intention to defraud the County Government through fictitious legal fees. In some instances, due to lack of proper records, the Auditor General had to query unnecessarily matters handled by the law firms of Achola Jaoko & Co. Advocates and Rachier & Amollo Advocates.

iv) The Legal Department exhibited lethargy and unprofessionalism when handling cases leading to the County Government incurring a huge legal fees bill.

v) The County Government in certain instances failed to undertake the following:-

(a) Provide support to the contracted law firms in terms of information to enable the law firms fully prosecute the cases. This was the situation with the case involving Munikah & Co. Advocates with respect to RMCC No. 2 of 2003- City Council of Nairobi vs Attorney General (on behalf of the Commissioner of Lands as Trustee for various Government Ministries). In the end, the County Government did not achieve its goal to obtain the outstanding land rates it is owed by the National Government. Instead, the County Government has incurred a huge legal fees bill which it is unable to pay and still it continues to accrue interest.

(b) Failed to undertake negotiations with law firms in order to settle at reasonable legal fees with the law firms. This led to advocates to quote legal fees they desired which, even though it was in accordance with the Advocates Remuneration Order, in some cases the fees was unreasonable. In situations where the advocates applied miscellaneous applications for determination of bill of costs, the courts granted unreasonable figures to the disadvantage of the County Government.

(c) Failed to honour its obligation to pay deserving advocates and instead has opted to act with impunity. This is the case with how the County Government has handled the payment owed to Prof. Tom Ojienda and Associates & Munikah & Co. Advocates.

Committee recommendations

i) **The Chief Officer, PSM and the County Public Service Board should immediately establish a functioning Legal Department with the capacity to address the myriad legal demands of the County Government. In addition, the Legal Department so established should be well incentivized with a performance management system for its staff put in place. In this regard, the Chief Officer PSM and the Secretary CPSB should within three (3) months of adoption of this report brief the Assembly on the actions undertaken.**

ii) **The Legal Department should update all the court case files and endeavour to keep proper records for all the cases involving the County Government.**

iii) **In the event there is need for outsourcing of legal services, a competitive procurement process should be instituted in line with the Public Procurement and Disposal Act, 2015. The law firms contracted should be monitored and given adequate support in order to prosecute their cases to the advantage of the County Government. In addition, the Accounting Officer should at all times negotiate with the firms so that reasonable legal fees are settled on.**

iv) The County Treasury, in consideration of the recommendations of the pending bills task force, should proceed and pay genuine legal fees claims. Of emphasis, the County Government should settle legal fees owed to the law firms of Prof. Tom Ojienda and Associates and Munikah and Company Advocates.

v) The Committee marked the queries regarding the law firms of Achola Jaoko & Co. Advocates, Koceyo and Company Advocates, Momanyi Associates and Co. Advocates, Wachira Nderitu Ngugi and Co. Advocates and Rachier & Amollo Advocates resolved following production of proper records and information by the County Executive and the Law firms.

vi) The County Treasury should spend legal fees and decretal sums from the individual Sectors/Departments the cases in question relate to. Adequate budgetary allocation should be put in place to cater for the same.

vii) The Director of Public Prosecution (DPP) should consider instituting charges against Mr. Gregory Mwakanongo (former CEC Member, Finance & Economic Planning, Mr. Luke Gatimu (Former Chief Finance Officer) and Mr. Maurice Okere (Former Head of Treasury Accounting) for breach of Section 196 of the PFM Act, 2012.

viii) The Director of Public Prosecutions should institute charges against Mr. Karisa Iha (Former, Director, Legal Services), Mr. Erick Abwao (Former, Assistant Director, Legal Services) for breaching the provisions of the Public Finance Management, Act, 2012, colluding with law firms and providing wrong professional advise thus occasioning loss of public funds.

ix) The DCI and EACC should conduct further investigations with respect to the legal fees paid or owed to Kithi and Company Advocates regarding the queried cases with a view of instituting criminal charges against persons within the County Government and the law firms in question for colluding to defraud the County Government if found culpable. Meanwhile the County Government should stop any further payments to the law firm until the investigations are completed.

4.15. Budgets and Budgetary Controls

4.15.1. Under and Over Expenditure on the Approved Budget

During the year under review, Nairobi City County Executive budgeted to spend Kshs.33, 553,115,033 according to the combined statement of appropriation. However, the actual expenditure as reported in the statement of receipts and payments was Kshs.24,962,045,715 or (75%) resulting into a net under- expenditure of Kshs.8,591,069,318. Budget execution per sector reveals that Finance & Economic Planning Sector budgeted to spend Kshs.2,923,316,824 on recurrent expenditure but spent Kshs.3,786,229,979 resulting to over expenditure of Kshs.862,913,155. The County Government did not provide reasons for the under/over expenditures. Consequently, it has not been possible to confirm whether the budget and the budgetary controls were adhered to.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that:

i) The over expenditure of budgeted funds in Finance Sector is attributable to the following reason; Kenya Revenue Authority in the financial year in question forcefully took away from the County's Accounts in CBK on account of non-payment of various taxes Kshs. 1.017B. The County tried to engage the authority to return the funds to no avail.

ii) The low absorption of budgeted funds is attributable to the following reasons;

   a) Inadequate technical capacity - The Public Works, Roads and Transport Sector is responsible for design and supervision of projects. The department has been complaining of inadequate technical capacity in in drawing of bills of quantities thereby affecting implementation of projects and therefore the absorption of budgeted programmes. Discussions are on-going on improving capacity within the sector.

   b) Poor project Conceptualization - In this regard the Finance and Economic sector has embarked on training of the sector working groups in order to improve the budget process.

c) Late Procurement by sectors due to lack of clear programme implementation plans by the sectors means that the projects are poorly implemented. The finance and Economic Planning Sector through the budget circulars and the end of year Financial Reporting Circular by National Treasury has communicated to the various sectors to ensure that the procurement processes are undertaken by May of each year.

d) Inadequate revenue/shortfalls - Over the years the county has been recording budget deficits and therefore affecting implementation due do delayed payments .

e) Inadequacies in the budget process at the Sector level; The law requires sectors to prepare programme based budgets with proper costing of programmes. This observation however implies that the costing of various programmes by sectors is inaccurate and hence resulting to under spending.

Committee recommendations

i) **The County Treasury must at all times meet its obligations including remitting of statutory deductions to relevant entities such as KRA to avoid interruption of service delivery and risking County finances as was in this case.**

ii) **The County Executive must at all times implement the budget as approved.**

iii) **The Accounting Officers should ensure that each Sector/Department prepares a procurement plan at the commencement of the Financial Year and the said plans should strictly be adhered to. Each Department should be allowed financial independence to be able to implement its programs.**

iv) **The Accounting Officer of the County Treasury must at all times provide complete financial statements/records and disclose all financial information to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229(4)(h) of the Constitution and section 81(4)(a) of the Public Finance Management(PFM) Act, 2012.**

v) **The Accounting Officer must at all times discharge his or her responsibilities in management of public finances as provided for in Section 68 of the Public Finance Management Act, 2012.**

4.15.2. Inconsistencies Financial Statement and Budget

(i) Budget execution by sector/program reflects total programmes and sub-programmes expenditure totalling Kshs.22, 192,208,965 while the statement of receipts and payments reflects total expenditure totalling Kshs.24, 962,045,715, resulting to unexplained /unreconciled difference of Kshs.2, 769,836,750. No explanation was provided for the inconsistencies.

(ii) In addition, summary statement of appropriation-recurrent reflects a budget of Kshs.22, 438,115,020 and actual expenditure at Kshs.23, 240,266,115. However, the budget execution per program reveals a budget figure of Kshs.21,967,802,019 and actual expenditure of Kshs.18,771,082,483 resulting to unexplained difference of Kshs.470,313,001 and Kshs.4,469,183,632 between the two set of records.

(iii) Further, the summary statement of appropriation-development reflects budget of Kshs.11, 115,000,013 and actual expenditure of Kshs.1, 721,779,600. However, budget execution by programmes and sub-programmes reflects actual expenditure of Kshs.3, 585,299,675 resulting to unexplained difference of Kshs.1, 863,520,075.

Submissions by the Accounting Officer

The Ag. Chief Officer, Finance submitted that:

i) The budget execution report was prepared as at 30th June 2017 based on the vote books to measure budget performance. The report is prepared based on the vote books In IFMIS as at 30th June 2017. The statement of receipts and payments are prepared in accordance with the Government of Kenya (GOK) appropriation accounts after making various amendments after the year end and hence the differences.

ii) The financial statements have been restated to ensure the budget execution conforms to the financial statements.

Committee observations

The Committee noted that had the Chief Officer, Finance ensured timely action on the Auditor General's management letter, and kept proper accounting records this matter would not have been audit query.

Committee recommendations

i) **The CEC Member for Finance should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.**

ii) **The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.**

4.15.3. Un-budgeted Expenditure Incurred off IFMIS

It was observed that payments totalling Kshs.2,254,414,285 on other payments and loan repayments were paid off IFMIS and were not budgeted thereby contravening the National Treasury regulations on use of IFMIS. The expenditure incurred outside IFMIS are as detailed below;

	Other Payments	**Actuals (Kshs.)**
1	Other Expenses bank charges	147,628,039
2	Other Expenses - Debt Repayment-Other Creditors	768,428,163
3	Other expenses-Debt repayment KRA agency notice	1,308,358,083
4	Loan repayments	30,000,000
	TOTAL	**2,254,414,285**

No approval from the county assembly was provided for the expenditure. The management explained the difference to have arisen out of transactions processed manually and outside the IFMIS. No reason has been given for the failure to use IFMIS in processing the payments contrary to the National Treasury requirements.

Submissions by the Accounting Officer

The Accounting Officer submitted that:

i) Section 12 (1) (e) provides that the National Treasury shall prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution; provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government. The Integrated Financial Management System was in use by the National Government prior to the promulgation of the new constitution. Pursuant to these provisions of Section 12(1) (e) of PFMA 2012 and PFM regulations 4(d), 30(3) and 109, the National Treasury required that all county governments use for IFMIS for efficient financial management. The National Treasury rolled out the system in 2014/2015 and embarked on an extensive capacity building of all counties in readiness of the implementation. The National Treasury has been very supportive to all counties on IFMIS implementation through training and equipment's. However, IFMIS just like any other system IFMIS has had its own share of challenges ranging from connectivity and technical challenges and therefore frequent outages therefore affecting operations. In view of the above, various sectors resorted to manual systems due to IFMIS related challenges.

ii) The total approved budget was Kshs 33,082,802,032 and the total reported expenditure in IFMIS was Kshs 20,021,857,852 and therefore showing an overall under expenditure of over Kshs 13billion. It's is true that due to IFMIS related challenges several payments were done outside IFMIS. In the presentation of the financial statements the payments done off the IFMIS System were reflected separately. The payments totalling to Kshs 2,254,414,285 relates to various sectors but in the preparation of the financial statements, the amounts were shown separately without the requisite budgets from the sectors. In particular, the amount paid to KRA relates to the amount of Kshs. 1,017,393,280 taken by KRA from our Central Bank Account through an agency notice issued.

Other Payments	Actuals	Amount Taken by KRA	Net
Other Expenses bank charges	147,628,039		147,628,039
Other Expenses - Debt Repayment- Other Creditors	768,428,163		768,428,163
Other-expenses- Debt repayment KRA agency notice	1,308,358,083	1,017,393,280	290,964,803
Loan repayments	30,000,000		30,000,000
Total	**2,254,414,285**	**1,017,393,280**	**1,237,021,005**

Committee observations

i) The County Treasury deliberately refused to use IFMIS for reasons only known to them since IFMIS had already been rolled out by the National Treasury.

ii) Spending off- IFMIS leads to accountability challenges and it is a potential cause of loss of funds through misappropriations. Worse of, the expenditure was on unbudgeted items.

iii) The CEC Member for Finance and Economic Planning during the period under review failed to regularize the unbudgeted expenditure in compliance with Section 135 of the Public Finance Management Act, 2012.

Committee Recommendations

i) **The CEC Member Finance and the Chief Officer, Finance should ensure that funds are only spend on the intended purpose and/or as approved by the County Legislation.**

ii) **The CEC Member, Finance should ensure that the County Treasury fully adopts IFMIS in its transactions.**

iii) **The CEC Member Finance and the CFO in office during the period under review should be held to account for breach of Section 196 of the PFM, Act, 2012.**

4.16. IT Controls

i) System Security Management

The county executive does not have an approved IT security policy to ensure that data stored in its systems does not lose its integrity and is readily available when required. The entity has not installed antivirus programs in its systems and has not put up mechanisms to ensure that there is up-to-date security on all systems software.

ii) Program Change Management

The county executive does not document and approve processes to manage upgrades made to all financial / performance information system. This implies that changes to the financial system might occur without the completion formal change request documentation.

iii) IT Service Continuity

The county executive does not have a disaster recovery plan and has not implemented a backup and retention strategy. The county executive also does not have backups stored in a secure offsite storage facility.

iv) Logical Access Control

The county executive does not have a formally documented and approved user management standards and procedures.

Consequently, the IT security and disaster recovery plan of the County Executive cannot be confirmed.

Submissions by the Accounting Officer

The Accounting Officer submitted that:

i) The ICT Department intends to procure the services of a consultant to develop the IT Security policy for approval in the FY 2018-2019. However, the department applies the Government ICT Standards approved by the Kenya ICT Authority. The ICT Department installed Kaspersky antivirus in April, 2016 which expired in May, 2017 (Annex 2). The Department will be installing a new anti-virus upon completion of the configurations of Data Centre servers and storage in the FY 2018-2019.

ii) The ICT department has put in place a change request form for the Ejijipay system, however not all changes are documented fully. The department intends to ensure full adherence to the requirements of change request form.

iii) The ICT department intends to procure the services of a consultant to develop a disaster recovery plan which will also outline the backup and retention strategy in the FY 2019/2020. This will ensure that we have in place a secure offsite storage facility.

iv) The ICT department currently uses user management standards and procedures as provided by the Kenya ICT Authority. However, the department intends to procure the services of a consultant to come up with the user management standards and procedure in the FY 2018/2019.

Committee findings and observations

i) Following a report of the Committee on its consideration of the report of the Auditor General on the financial Statements of Nairobi City County Executive for the year ended 30th June, 2016 and approval of the same by the County Assembly on Thursday 3rd May, 2018, the Committee noted that despite recommending that the ICT Department develops internal fool proof automated revenue collection system, the Sector has never attempted to develop one and never reported on why the same was no possible. As such, the Committee found both the CEC Member for, ICT and the Chief Officer in breach of Section 53 of the Public Audit Act, 2015.

ii) The ICT environment within the County Government is wanting and the IT centre launched by H.E the President is moribund and may turn out to be one of the failed projects where public money was sunk.

Committee recommendations.

i) The Appointing authority sanctions the CEC Member for ICT and the Chief Officer, ICT in accordance with Section 53 of the Public Audit Act, 2015.

ii) The Accounting Officer should fully implement the remedies proposed and a report on the implementation status of the same be tabled in the Assembly within 3 (three) months of adoption of this report.

4.17. Un-resolved Prior year Audit Issues

The following prior-year audit issues remained unresolved as at the time of the audit of the financial statements for the year ended 30 June 2017:-

4.17.1. Assets and Liabilities Inherited from the Defunct City Council of Nairobi

The statement of receipts and payments reflects an amount of Kshs.1, 762,711,478 (2015/2016 - Kshs.2, 428,223,605) under acquisition of assets for the year ended 30 June 2017. However, as similarly reported in the previous years, the County's statement of receipts and payments acquisition of assets figure of Kshs.1, 762,711,478 for 2016/2017 and the summary of fixed asset register figure of Kshs. 18,368,880,107 as at 30 June 2017 reflected in Annex 5 to the financial statements do not include the assets and liabilities of the defunct City Council of Nairobi despite the County management having taken possession of the assets. In addition, the Inter-Governmental Relations Technical Committee which took over the Transition Authority is yet to formally hand over the assets and liabilities of the Local Authorities to the County Government. It is not known when these assets and liabilities will be handed over to the County Government.

Submissions by the Accounting Officer

The Accounting Officer submitted that:

i) Prior the devolved system of government management of county assets was done at departmental level in the former of city council of Nairobi, and the assets were not being managed centrally. After the formation of Nairobi City County, the Department of Asset Management was formed by H.E The Governor on April 2015 whose mandate was to manage all county assets. Prior to this, the Transition Authority (TA) was in place and whose mandate was to prepare and validate the inventory of all existing assets and liabilities of Local Authorities as was provided in section 7 (2) of the County Governments Act 2012.

ii) A pilot study was carried in selected Counties so as collect missing information on assets and liabilities that existed as at 27th March 2013. The exercise was carried out between October to December 2014 by the task force and TA was to oversee completion of the exercise. The exercise was completed and an interim Asset Register of unaudited assets and liabilities was handed over to the Governor on the 20th January 2015. The Inter Government Relations Technical Committee took over the residual functions of the Transition Authority (now defunct) pursuant to Section 12 (b) of the Intergovernmental Relations Act, 2012 one of its functions is to validate, verify and transfer all assets that belonged to the defunct local authorities.

iii) The intergovernmental relations Technical Committee (IGRTC) established the process to be followed vide a legal notice no. 858 published in the Kenya Gazette of 27th January, 2017. Through the gazette notice they indicated that all assets belonging to defunct local authorities as on 27th March, 2013 be transferred to, and shall vest in, the respective county government on an "as is, where is" basis. Under clause no 7 the notice provided for the formation of a temporary taskforce of the County Assets and Liabilities Committee (CALC) to undertake the validation, verification, transfer process and to develop a County Asset Register. The process was undertaken and an asset listing prepared in readiness for the actual validation of the assets and transfer of the assets on as is where basis in conformity with the gazette notice. Thereafter, the County intends to procure an asset management system which will facilitate prudent management of asset Database.

iv) The County is in the process of constituting a County Asset and Liabilities Committee (CALC) to streamline the management of Assets in the County. It will also be handling issues of disputed assets including sharing of assets among Nairobi County department/sectors. The formation of the CALC has also been recommended by IBEC through the Council of Governors. The committee members proposed are the County Secretary, all the Chief Officers and the CEC - Finance sourced from key sectors and departments.

Committee observations:-

The Committee while appreciating measures being taken by the County Executive observed that it has taken far too long to transfer assets of the defunct City Council to the County Government. In these circumstances, many assets have fraudulently been acquired by private entities/individuals.

Committee recommendations

i) **The CEC Member for Finance and Economic Planning should ensure that the County Assets and Liabilities Management Committee is established within one (1) month of adoption of this report and prepares a comprehensive fixed assets register and table a report on its work in the Assembly within six (6) months of adoption of this report.**

ii) **The Accounting officer should liaise with the National Government and other state agencies through the inter-governmental relations framework and ensure that assets and liabilities owned by the defunct City Council of Nairobi that are yet to be transferred to the County Government are immediately transferred.**

4.17.2. Land and Buildings – Encroachment of County Government Properties

(i) Encroachment on the Komarock Ward Offices -Embakasi Central Sub-county- the land in which the Komarock Ward offices are located has been claimed by private developers.

(ii) Encroachment of Mutuini Hospital - the hospital land is not fenced and has been invaded by squatters.

(iii)Komarock Playing ground, Komarock Ward-Embakasi Central Sub-county, lacks a perimeter fence and is susceptible to encroachment by private developers.

Submissions by the Accounting Officer

The Accounting Officer submitted that:

i) Encroachment on Komarock Ward Offices, Embakasi Central Sub-County:

- Information available shows that there is a claimant who purports to have the following:-
    - (a) Letter of allotment from the Housing Development Department, which has been found to be fake.
    - (b) A beacon Certificate issued by the same Department, based on the fake letter mentioned above.
- The claimant also found a way of making payments through the HDD offices. The HDD has no Part Development Plan for this area and so, they could not have issued any allotments.

ii) Perimeter wall at the Komarock playing ground-Komarock Ward-Embakasi Central Sub County:

- Information available indicates that the land is already surveyed and registered as Nairobi Block 121/245, 246 and 247.
- However, the ownership of this land is disputed and the matter is in court. This is a case number, HC ELC No. 1147 of 2015, where the parties are; Emrose Academy Limited vs. Nairobi City County and three others. The applicant has a lease issued by the City Council of Nairobi, which lease is disputed and yet the Council has also made commitment to another party – Humamo Self Help Group. The matter was set to come up in court on 26th November, 2015, but this did not happen. We are waiting for the Court determination of the same.

iii) Encroachment of Mutuini Hospital

- Mutuini Hospital land is not fenced and has been invaded by squatters. Further the hospital Building has visible cracks and has been condemned by Public Works.
- The land is surveyed and the boundary beacons shown to the hospital administration. Letter has been done to Public Works Sector to look into issue of cracks and do the necessary.

Committee observations and findings

(i) Komarock Ward Office is built on a parcel of land which is rightfully owned by the County Government although the registration number of the plot is not indicated on the survey plan submitted to the Committee. There are overt actions by private developers to encroach on the parcel of land as evidenced by temporary structures constructed on the land.

(ii) Mutuini hospital is one of the critical health facility owned by the County Government serving city residents yet County Officials are treating the matter of protecting its land casually. The Chief Officers responsible for Health Services, Lands and Urban Planning ought to have issued eviction notices to all the trespassers and secured funds for fencing of the hospital.

(iii) Information provided by the Chief Officer, Lands was not true and was meant to mislead the Committee since the playing ground is still and should be owned by the County Government. No developments had been commenced on the property and it was being used by residents as a playing field. Non-fencing of the property makes it susceptible for grabbing by greedy private developers and it is and indictment on the responsible County Departments i.e. Social Services and Lands.

iv.) County Government officials do not exhibit the zeal to protect County properties from greedy private developers. The Lands Department has consistently declined to implement previous Committee recommendations.

Committee recommendations

i) **The Chief Officer, Lands should immediately institute measures aimed at repossessing the County Government properties that have been grabbed or are on the verge of being grabbed yet they have proper ownership documents. Eviction orders should be issued to all trespassers. Special emphasis should be put on the queried properties namely: Land hosting Komarock Ward Offices, Komarock playing ground, and Land hosting Mutuini Hospital.**

ii) **The Chief Officer, Lands and the Chief Valuer should ensure that the properties are properly registered and safely keep the title deeds of the properties. The Chief Valuer should be the only designated officer responsible for keeping of County Government Property titles for accountability reasons.**

iii) **The CEC Member for Finance and Economic Planning to make adequate budgetary allocation for fencing of the properties mentioned/queried since they are susceptible for grabbing.**

4.17.3. Allocation of County Land to Private Developers

The then defunct City Council of Nairobi allocated various parcels of land to private developers. Some of the developers have since demolished properties previously owned by the defunct Council. The process of allocating the land to the private developers cannot be confirmed to have been transparent given that no records have been provided so far to confirm the process. Some of the land issued to private developers included:

(a) **High Ridge Health Centre; where the health centre was demolished and the parcel of land allocated to private developers.**

Submissions by the Accounting Officer

The Chief Officer Lands submitted that the land was allocated to a private developer by the defunct City Council of Nairobi. The allocation was contested in court by the defunct City Council of Nairobi and the County lost the case in court. The matter has been referred to the National Land Commission for review.

Committee observations and findings

i) The land in question belongs to the County Government of Nairobi having been allocated to the defunct City Council of Nairobi for a term of 99 years with effect from 1st January, 1952. As a matter of fact, there are no records to show that the land was allocated to a private developer and therefore any person who may claim to have the properties' title must have fraudulently acquired it having colluded with County and state Officials.

ii) When the Committee previously visited the land, a private bus company had converted part of the land as its garage and parking lot.

iii) Area residents continue to suffer due to lack of a health centre or a nursery school yet that land lie idle. The Chief Officer, Lands has shown no effort to evict the illegal occupiers of the land raising a question of whether he colludes with the said occupiers.

Committee recommendations

i) **The Chief Officer Lands and the County Attorney should immediately follow-up with the National Lands Commission (NLC) to ensure that the fraudulently acquired titles are revoked.**

ii) **The CEC Member and the Chief Officer for Lands should take personal interest in this matter and ensure that within three (3) months of adoption of this report they survey, demarcate and fence the property and put it to the original intended use. In addition, all encroachers on the parcel of land should immediately be evicted.**

iii) **The Ethics and Anti-Corruption Commission (EACC) and the National Land Commission (NLC) should immediately commence investigations in dealings involving this property and all other County properties with a view of prosecuting persons involved in their grabbing.**

(b) Nanyuki Roads Store and Depots

The land was reserved for road maintenance materials. It was demarcated and 1.227Ha hived off and allocated to M/S Hass Petroleum Ltd. It was further noted that the depot lost materials estimated to be worth Kshs.22 million.

Submissions by the Accounting Officer

The Accounting Officer submitted that the land was leased to Hass Petroleum ltd by the defunct City Council of Nairobi as a rental lease and the title remains in the custody of the Nairobi City County Government.

Committee observations and findings

i) The entire parcel of land belongs to the County Government of Nairobi having been allocated to the defunct City Council by the Commissioner of Lands until 2047.

ii) M/S Hass Petroleum Ltd was legally leased part of the land by the then defunct City Council of Nairobi. The lease was further regularised under the new dispensation and therefore the company has all the legal rights to operate on the land until the lease expires or until the Company decides to terminate the lease. The Committee could not establish whether County materials at the depot were destroyed.

iii) The County Government lacks a clear policy on allocation or leasing of County land.

Committee recommendations

i) **M/S Hass Petroleum Ltd should be allowed to operate on the part of the land it was leased until such a time the lease expires or the Company decides to terminate the lease agreement. In the event, the lease expires and the Company still needs to operate on the land, it should be given preference.**

ii) **The Lands department should develop a more transparent policy/legislation on allocating of County land to private citizens including renewal of leases.**

4.17.4. Karen Health Centre Land Dispute

A neighbouring PCEA Church according to the management of the facility had encroached the Karen Health Centre land.

Submissions by the Accounting Officer

The Accounting Officer submitted that:

i) The original Karen Health Centre Land is L.R. No. 1159/70. The land was allocated to the defunct City Council of Nairobi in the year 1969. The PCEA church was allocated part of the land by the defunct City Council of Nairobi in the year 2002 and was surveyed in the year 2005.

ii) The Nairobi County Government gave a contract for the fencing of the original land L.R. No. 1159/70 however the PCEA church contested the contracting for fencing filed a case in court, got a court order stopping the fencing and were awarded approval to construct on the said piece of land.

iii) The Nairobi County Government has appealed against the decision under Case No. JR/195 of 2014 which is still pending in court. The County Government has communicated with EACC and the National Land Commission in respect to the portion of land being claimed by the PCEA church.

Committee observations and findings

i) As per the documents submitted, the land is owned by the County Government and was meant for construction of a health facility which was a noble idea since it would serve Nairobians. Indeed, a health centre that requires further expansion was constructed on the property.

ii) That whereas PCEA church was allocated part of the original land LR. No. 1159/70 in 2002, the transfer was irregular since there are no documents to back the transfer. As such, the defunct Council rightfully revoked the transfer.

iii) That whereas PCEA church has a right to seek Court redress, the Court process is a detriment to public good.

Committee recommendations

i) **The County Government proceeds to survey, demarcate and fence the part of the land LR No 1159/70 that is not contested pending determination of the Court case No. JR/195 of 2014.**

ii) **In the event of unfavourable outcome of the County Government appeal i.e. Court case No. JR/195 of 2014 the County Government should further appeal the case and vigorously defend against acquisition of the Land by PCEA and seek intervention of the NLC since the parcel of land is ideally located for expansion of the health facility.**

4.17.5. Irregular Allocation and Disposal of County Land LR. NO 209/2531/1

The above land measuring 20.5 acres, now occupied by Highways Stores was originally allocated to the then Municipal Council of Nairobi title NO IR 4786, LR No.209/2531 for a term of 99 years from 1 October, 1929 to 1 October, 2028. On 18 June 1952 the Kenya Meat Commission was allocated part of the land measuring 2.5 acres. On 10 October, 1969, 9.5 acres was allocated to St Peter Claviers' and Muthurwa Primary Schools. A visit to the site showed that portion of the remainders of the land 8.5 acres has been allocated to unknown private developers as follows:

i) Part of Country Bus Station Phase 2.

ii) Part of the Nairobi City County Department.

No documentation has so far been presented to show how the private developers were allocated the land.

Submissions by the Accounting Officer

The Accounting Officer submitted that:

i) This land originally, L.R. No. 209/2531 was allocated to Municipal Council of Nairobi in the year 1929. Part of the land was earlier allocated to the Kenya Meat Commission, Stage Market, the Kenya Cold Storage and Muthurwa Primary School.

ii) Various plots have been exercised from the above land measuring 20.5 acres (8.2945Ha) as reflected in FR 79/24 (dated February, 1957) as follows:-

- Nairobi County Highway Electrical YARD -2.0791Ha (Not registered) dated June, 1962 by min12 of 12.02.1969.

- Kenya Meat Commission L.R. No. 209/2531/5 – FR 101/16 – 0.7751 Ha. This was compulsory acquired in 1950.
- Kenya Cold – LR. No. 209/5586 (FR79/199) LR. No. 209/2530 – 0.2883Ha dated October, 1957 initially it was LR. No. 209/2530 (FR79/240) and later changed to 209/5586.
- BP Shell Petrol Station – LR No. 209/6366 FR 101/16 – 0.2024 Ha dated June, 1962.

Committee observations and findings

i) The mere fact that the Lands Department could not provide documents supporting the allocation of the 8.5ha, which is part of the land, confirmed that the transfer may have been irregular.

ii) Private developers always collude with rogue County staff and other state agencies to grab County land.

Committee recommendations

i) The County Government proceeds to survey, demarcate and process proper ownership documents for the part of the land LR. No. 209/2531 that it still owns.

ii) The Ethics and Anti- Corruption Commission (EACC) and the National Land Commission (NLC) immediately institute investigations on all transactions on the land especially the transfer to private entities to determine whether the transfers were irregular and if so, those involved prosecuted while the transfers revoked.

4.17.6. Malfunctioning of the Integrated Urban Surveillance System for Nairobi Metropolitan Area - Nairobi Central Business District

As similarly reported in the previous year, the installation, testing and commissioning of an integrated urban surveillance system for Nairobi Metropolitan Area (Nairobi Central Business District) was implemented by Ministry of Nairobi Metropolitan at a contract sum of Kshs.437, 405,895.36. The contract was awarded to M/S Nanjing Les Information Technology Limited on 14 September 2012. The project entailed installation of surveillance cameras, installation of new traffic management system, construction of a control Centre and installation of associated software. No information has been provided so far on action taken to obtain the requisite equipment, previously reported as lacking to enable communication between the control Centre and several surveillance points. In addition, no new information has been provided on the twenty six (26) out of the forty two (42) cameras that were not functional. Further, it has not been clarified whether the cameras are now capable of detecting motor vehicle number plates. In the circumstances, the surveillance system and security installations may still not be relied upon to enhance security for the County's residents.

Submissions by the Accounting Officer (Chief Officer, Public Works)

i) In September 2012, the Ministry of Nairobi Metropolitan Development currently a Directorate under the Ministry of Transport, Infrastructure, Housing and Urban development awarded a contract to M/s Nanjing LES Information Technology Ltd, from the People's Republic of China for supply, installation, testing, commissioning and handing over of an Integrated Urban Surveillance System for Nairobi Metropolitan Area – Nairobi CBD. The contract was signed on 20th November, 2012. The City Council of Nairobi now County Government was not a signatory to this agreement.

ii) The project was conceptualised as a security project thus it involved installation of security cameras, vehicle number plate recognition cameras, rehabilitation of signalized junctions and construction of one main control centre at Nairobi area police headquarters at Milimani and the redundant control centre at City Hall Annex

iii) The project was multisectoral with key stakeholders being the Ministry of Nairobi Metropolitan Development (Client), Ministry of information through ICT Authority and Telkom Kenya (service provider), Kenya police (beneficiary), Ministry of Public Works, and CCN.

iv) The project has not been handed over to the County Government and thus the County is not responsible for its management. The County wrote to the ministry requesting for the repair and subsequent handover of the project to the County on 27th March, 2018. The ministry responded and requested the county to clear an outstanding bill owed to the contractor USD 72, 321.13 or Kshs 7,232,113 that was occasioned by damages to the IUSS system by University Students at University way round about and by another contractor licenced by the County to carryout landscaping works at Lusaka round about and which the county had undertaken to pay the IUSS contractor. This payment was to be made before the IUSS contractor could resume maintenance works and subsequent hand over of the project to the County. The County is yet to settle this bill and thus the IUSS contractor has not resumed for project maintenance

Submissions by Metropolitan Development Directorate officers

i) The project was a national project and was handed over to the national police. The County Government was only a partner.

ii) The County Government should be blamed for approving contractors who interfere with the fibre network and therefore the County Government should bear the cost of repair.

Submissions by the Director, M/S Nanjing LES Information Technology Ltd, from the People's Republic of China

i) The Company delivered on its part as per the service agreement and handed over the project to the National Government.

ii) The Company is still owed by the National Government part of the contract sum.

iii) The Company is willing to repair the system if called upon.

Committee observations and findings

i) Whereas the National Government through the defunct Ministry of Nairobi Metropolitan was responsible for the project, the ultimate beneficiary is the County Government the successor of the defunct Nairobi City Council.

ii) The project was a noble initiative that would have aided the County Government in controlling traffic. However as observed by the Auditor General, the project has been a total failure despite a colossal sum of public money having been spent.

iii) The casual manner in which the Officers of the National Government and the County Government have handled the matter is disturbing considering that taxpayers money was invested in the project and have not received any benefits. It is likely that the project may as well turn out to be a white elephant used to swindle public funds.

iv) Some of the project's assets are languishing at City Hall Annex while some cables have been vandalised.

v) Even though the officials from the Directorate of Metropolitan Development Directorate claimed that the project was handed over to the national government (National Police Service), there was no evidence to confirm the same.

Committee recommendations

i) **The DCI and the EACC should take up this matter and conduct further investigations with a view of determining whether there was a deliberate attempt to siphon public funds and institute criminal and civil proceeding against all officers and persons involved in the matter if it is found that there was loss of public funds.**

ii) **CEC Member Finance and Economic Planning, the Chief Officer, Transport and the Chief Officer Security and Compliance should take personal interest in this matter and engage the National Government and find a way on how to revamp the project so that the noble objectives of the project can be realized and save public funds that were invested in the project.**

4.17.7. Irregular transfer of Mariakani Estate

Information available indicates that the defunct Nairobi City Council (NCC) and Local Authorities Provident Fund (Lapfund) management during its meeting of 7 August, 2012 resolved and subject to board approval to waive 50% interest amounting Kshs.958, 696,388.75 owed to the latter. Consequently, the amount owed to the Fund by the defunct NCC reduced from the then balance of Kshs.2, 218,488,958.50 to Kshs.1, 259,792,569.75. Further and to clear the outstanding debt, the following properties were to be relinquished by the Council to the Fund subject to adoption and approval by the full Council: Jamhuri Estate in Dagoreti, Ring Road Estate in Westlands and Jevanjee Estate in Kariokor. This was approved on 10 August 2012, by the defunct NCC through a special Finance Committee meeting. However, the following gaps were noted in the Minutes of the meeting that authorized the transfers:

i) Count of the members who supported and those who voted against the transfer was not recorded in the Minutes;

ii) There is no mention of Mariakani Estate title number 209/6612 in the Minutes as one of the properties that was to be transferred to the Fund, although it was subsequently transferred;

iii) There is no minute on confirmation of the defunct NCC indebtedness as having been audited and agreed to prior transfers as stipulated; and

iv) Due diligence on transfer of public property requires that both the Ministry of Lands and at least two independent valuers undertake valuations prior to transfer.

However, it is not clear how the valuation for Mariakani Estate was undertaken. In Addition, the memorandum of registration of transfer of land dated 18 March 2013 indicates the transferor of the property as the defunct NCC but by that date, the Council was non-existent in law.

Submissions by the Accounting Officer

The Chief Officer Lands submitted that:

i) The County used to operate an internal provident Fund Scheme whereby staff were deducted pension amounts at rate of 12% of basic and house allowance and the Council contributed 15% of the same. This amounts used to be invested in fixed deposit account and interest earned distributed to members as per the Fund balances.

ii) In October 2008 LAPUND wrote to the Council proposing to take over the approximately 1700 internal provident fund scheme members. This was implemented in January 2009 and monthly contributions remitted. A team of officers from Council and LAPFUND was constituted to negotiate the amounts to be transferred to LAPFUND being the balances of the internal scheme as at December 2008. The principal amount agreed as at 31st December 2008 was Kshs.701, 016,573.74 and the issue of interest was never agreed upon.

iii) On 7th April 2011 officers from the City Council and LAPFUND held a meeting in which it was greed the that the total amount outstanding is Kshs.1,511,806.221.54 made up of Kshs.701,016,574 as the principal amount and Kshs.810,789,647,.80 being interest accrued on internal scheme transferred from 2003 to 2011. At the same meeting, it was resolved that LAPFUND will grant interest waiver of 50% and that interest would no longer accrued thereafter. In April 2011 the County made a lump sum payment of Kshs.700, 000,000 to settle off the principal amount

iv) The balance being interest accrued on the internal scheme, which had accumulated to over 1.5billion be settled through a property swap. Due to the issues raised on the Lap-fund account the County has initiated meetings with the stakeholder to reconcile the account and deal with the issue of the transfer of Mariakani estate, which has continually been subject to audit queries. The details of the land, developments thereof and valuation are as follows:-

- LR. NO: 209/6612
- Area:- 10.13 Acres (4.0995 Hectares)
- Location:- The property is located along Mariakani Krishna and shiraz road, South B next to Mater Hospital.
- Improvements:- The land is developed with blocks of flats comprising 240 No. 3 bed roomed residential units.
- Valuation:- The property was valued at a market value of Kshs. 1,450,000,000.00 as at February 2012.
- Transfer to Lapfund:Special Finance Meeting held on 10th August 2012 recommended and approved Asset swop as a way of sorting out statutory debts owed to Lapfund and Lap Trust.

v) The County Executive has partly implemented the previous Committee recommendations regarding the matter. However, valuation of the property as recommended by the Committee in its previous report adopted by the Assembly is costly and would require a budgetary allocation.

Submissions by the CEO, Lapfund

i) LAPFUND fully concurs with the recommendations of the Committee in its previous report and urges the County Executive to fully implement the recommendations.

ii) There are illegal encroachers at the entrance of the estate and some within the estate. The County Government should assist in their eviction.

iii) The County Government has again stopped/delayed in remitting employees monthly contributions to the fund. This has attracted a heavy penalty including criminal sanctions as provided for under section 53(A) of the RBA, Act, 1997. It also puts at risk employee benefits upon retirement.

Committee observations and findings

i) The Committee still holds the view that as observed in its previous report, the property was properly transferred to LAPFUND as part of the debt swap to secure County workers benefits based on the following grounds:-

a) A debt swap is a legally and acceptable means of settling debts between two entities and therefore the transfer of Mariakani estate to Lapfund through a debt swap was in all means well intended since it helped in reducing the outstanding balance the defunct City Council of Nairobi and its successor the County Government owes Lapfund. Notably, the debt was due to the failure of the defunct City Council of Nairobi to remit employee deductions to LAPFUND;

b) The debt swap, which is an acceptable form of settling debts, was approved by the Ministry of Local Government vide a letter Ref. No. MLG/2310/V (32) and dated 1st November 2012 as required. In addition, based on the documents submitted to the Committee, the process of transfer had been commenced well before the moratorium order stopping such transfer had been issued by the then Transition Authority;

c) The process of the transfer was executed by authorized officers of the Council namely: the Town Clerk, the Mayor and the Chairperson of the Finance Committee were the ones who executed the transfer documents following a resolution of a Special Finance Committee and ratified by the full Council at their meetings held on 10th August, 2012 at 0800hrs and 1000hrs respectively. This was the only avenue where such decisions could be made and thereafter with the approval of the parent Ministry.

ii) The Committee agrees with the Chief Officer responsible for Lands as stated in a letter **Ref VAL. 151/SG/1/192/NNI/lgm** and **dated 20th March 2019** that valuation of the property by three independent valuers as previously recommended by the Committee is costly and would require a huge budgetary allocation. This may lead to taxpayers incurring an unreasonable expenditure that would otherwise have been incurred on other developmental activities.

iii) The County Treasury has again stopped or delayed remitting employee contributions to Lapfund. This will lead to a further accumulation of interest that will be demanded by Lapfund and even risk the benefits of County employees during their retirement.

Committee recommendations:-

i) The County Government should not lay any claim against Mariakani Estate and should instead allow full possession of the property by LAPFUND since the property was properly transferred to the LAPFUND as part of the settlement of the debt owed to the pension fund to safeguard employee benefits. The Chief Officer for Lands, the County Attorney and Chief Officer for Security and Compliance should ensure that any illegal encroachers of the property are evicted.

ii) In future, the County Government should desist from selling/swapping residential properties as it affects the livelihoods of city residents.

iii) The valuation done during the time of swapping of the property should still be the basis of the debt swap and the same should therefore be factored in the financial statements of both Lapfund and the County Executive.

iv) The County Government should immediately stop collecting rent from Mariakani Estate tenants and instead allow LAPFUND to collect the rent in order to forestall unnecessary litigation and to safeguard the retirement benefits of County Government employees. The Chief Officer for Housing should inform the tenants on the same.

v) LAPFUND should not evict the current residents of the estate especially those who were clients of the County Government. Both parties should enter into a normal tenancy agreement. In the event LAPFUND opts to sell the houses, they should give priority to the current tenants.

vi) The County Treasury should immediately release all employee contributions owed to Lapfund and other pension schemes. A report on the same should be tabled before the County Assembly within one (1) month of adoption of this report.

CONCLUSION

The Committee having considered both the **"Report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the year ended 30th June 2017"** and oral/written responses by witnesses it invited, has made various recommendations that require implementation by the CEC Member, Finance and Economic Planning, Accounting Officers and state agencies such as the **Ethics and Anti-Corruption Commission (EACC), the National Land Commission, the Director of Criminal Investigations and the Office of the Director of Public Prosecutions.** The recommendations are aimed at deterring future misappropriation of public funds.

SUMMARY OF ALL RECOMMENDATIONS

Following the Committee's consideration of the **"Report of the Auditor-General on the Financial Statements of Nairobi City County Assembly for the year ended 30th June 2017"**and having considered responses from the Accounting Officer, the Committee urges the County Assembly to resolve as follows: -

1. Inaccuracies in the Financial Statements

1.1. Discrepancy between Ledger and Financial Statements

i) The County Treasury must at all times meet its obligations including remitting of statutory deductions to relevant entities such as KRA and payment of electricity bills to avoid interruption of service delivery and risking County finances as was in this case.

ii) The County Treasury should spend legal fees and decretal sums from the individual Sectors/Departments the cases in question relate to. Adequate budgetary allocation should be put in place to cater for the same.

iii) The Accounting Officer of the County Treasury must at all times provide complete financial statements/records and disclose all financial information to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229(4)(h), and section 149(2)(k) of the Public Finance Management(PFM) Act, 2012.

iv) The Accounting Officer must at all times discharge his or her responsibilities in management of public finances as provided for in Section 68 of the Public Finance Management Act, 2012.

1.2. Variations between Balances in the Statement of Receipts and Payments and the Actual Payments - Acquisition of assets

i) Accounting Officers must at all times provide complete financial records and corresponding payment records to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229(4)(h), and section 149(2)(k) of the Public Finance Management(PFM) Act, 2012.

ii) The CEC Member for Finance and Economic Planning should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

iii) The Chief Officer, Public Service Management (PSM) should take administrative action against the Chief Finance Officer at the time of audit for negligence of duty and report him to the relevant professional body for professional misconduct.

iv) The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.

v) The Accounting Officer must at all times discharge his or her responsibilities in management of public finances as provided for in Section 68 of the Public Finance Management Act, 2012.

1.3. Unauthorized Budgetary Reallocation

i) Accounting Officers must at all times implement the budget as approved by the County Assembly. In the event of any reallocations, the County Treasury must submit a supplementary budget to the Assembly for approval in compliance with Section 135 of the PFM Act, 2012.

ii) The County Executive should strive to prepare re-alistic budgets

iii) The Director of Public Prosecution should consider instituting criminal proceedings against the CEC Member for Finance and Economic Planning during the year under review for breach of Section 135 of the PFM Act, 2012.

1.4. Unsupported Balances for Acquisition of Assets

i) The CEC Member for Finance and Economic Planning should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

ii) Accounting Officers should prepare work plans detailing which programs/activities would be undertaken during a particular financial year consistent with the approved estimates.

2. Pending Accounts Receivables

i) The CEC Member Finance and Economic Planning should spearhead in the development of a policy/mechanism on how to manage/collect all accounts receivables.

ii) The Chief Officer, Finance should prepare schedules showing the County debtors, the amount and supporting evidence of all accounts receivables.

iii) The CEC Member Finance and Economic Planning should formally engage the national government through the existing intergovernmental relations mechanism with a view of demanding the pending receivables from the National Government.

2.1. Outstanding Rates

i) The CEC Member, Finance and Economic Planning should take a personal interest in this matter and ensure that all rates defaulters pay the outstanding amounts. Meanwhile all those persons and companies with outstanding rates should immediately be stopped from transacting business within the County until they clear their dues.

ii) The CEC Member for Finance should enlist the services of investigatory state agencies such as the DCI and EACC to unravel any possible collusion between County Government Officers (officers in the rates and city planning departments) and companies/persons that fail to pay their rates.

iii) The CEC Finance and Economic Planning should develop a policy on rates collection and develop strategies on how to re-engineer the rates collection section for maximum collection. The policy should propose severe penalties for those who default on their rates while providing incentives for those who pay.

2.2. Outstanding imprests

i) All Accounting Officers should institute measures to ensure that County Government staff adhere to government regulations and procedures on imprests to guard against malpractices.

ii) Accounting Officers must at all times provide complete financial records, corresponding imprests records to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229 (4) (h) of the Constitution and section 149(2)(k) of the Public Finance Management Act, 2012.

2.3. Loading Zones

i) The Chief Officer, Finance and the Head of Revenue/Parking should within 1 (one) month of adoption of this report reposes and convert all loading zones with outstanding balances to on street parking.

ii) The Chief Officer, Finance and the Chief Officer Transport and Public Works should within three (3) months of adopting of this report spearhead the process of identifying and marking all the loading zones within the City and identify their designated users.

3. Cash and Cash equivalents

3.1. In Accurate Balances

i) Accounting officers must at all times ensure that all documentation relating to financial statements are submitted to the Auditor General pursuant to the provisions of section 149(2)(k) of the Public Finance Management Act, 2012.

ii) Accounting officer must at all times keep accurate financial and accounting records in compliance with section 149 (2) (b) of the Public Finance Management Act, 2012.

iii) The CEC Member for Finance and Economic Planning should sanction the Chief Officer, Finance during the period under review for negligence of duty.

3.2. Non-Disclosure of Nairobi Ward Fund Account Balances

The Committee recommends that Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.

3.3. Weak Controls on Bank Reconciliation

i) Chief Officer Finance should institute proper accounting mechanisms within the County Treasury and effectively perform his duties in accordance with Section 149 of the PFM, Act, 2012.

ii) Accounting officer must at all times keep accurate financial and accounting records in compliance with section 149 (2) (b) of the Public Finance Management Act, 2012.

iii) The CEC Member for Finance and Economic Planning should sanction the Chief Officer, Finance during the period under review for negligence of duty and report him to the relevant professional body for professional misconduct.

3.4. Overdrawn Accounts

i) The CEC Member for Finance and Economic Planning should hold the Chief Officer, Finance during the year under review liable for breach of Section 119(4) and ensure that the officer incurs the full cost of the overdrawn amount in accordance with Section 119(6) of the PFM Act, 2012.

ii) The Chief Officer, Finance must ensure that the County Executive adheres to the provisions of the PFM Act, 2012 in all financial transactions.

3.5. Non Maintenance of Cashbook and Bank Reconciliation Statements

i) The CEC Member, Finance & Planning should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

ii) Accounting officer must at all times keep accurate financial and accounting records in compliance with section 149 (2) (b) of the Public Finance Management Act, 2012.

iii) The CEC Member for Finance and Economic Planning should sanction the Chief Officer, Finance during the period under review for negligence of duty.

4. Pending Accounts Payables

i) The County Treasury should immediately prioritize remittance of employee deductions to the relevant entities to save the County Government from incurring unnecessary cost in terms of penalties and to secure employee retirement benefits.

ii) The CEC Member for Finance and Economic Planning should submit to the County Assembly the report of the task-force appointed by H.E. the Governor to scrutinize pending bills. All genuine pending bills as determined by the task-force should be budgeted for in the next financial year and fast-tracked for payment.

iii) The CEC Finance and CFO at the time of the audit should be held to account for occasioning loss of funds by the County Government for failing on their responsibility of remitting employee deductions thus making the County Government to be slapped with huge penalties.

iv) The Accounting Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

5 Revenue Management

5.1. Revenue to the County Revenue Fund

i) The CEC Member Finance & Economic Planning and the Chief Officer, Finance must take necessary steps and ensure that all funds raised or collected on behalf of the County Government are deposited in the County Revenue Fund.

ii) The County Treasury should always keep up-to-date records of all the revenue collected locally.

iii) The Director of Public Prosecution should institute prosecution proceedings against the CEC Member Finance and the Chief Officer, Finance at the time of the audit for breach of Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012.

5.2. Compliant and Non-Compliant Vehicles On-Street Parking

i) The County Treasury should fully automate all parking fee collection within four (4) months of adoption of this report and disciplinary action must be taken against parking attendants who fail to comply. A new fool-proof and internal electronic platform proposed by the Accounting Officer must be developed in compliance with the previous Committee report.

ii) The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of non-payment by motorists personally liable for the loss of revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that:-*

'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).

5.3. Unaccounted for Clamps

i) The Officer in Charge of Parking must take necessary steps and ensure that any clamped vehicle must pay the requisite penalties prior to their release and proper documentation kept;

ii) The County Government should immediately procure an automated system to monitor the clamping and unclamping of vehicles; and

iii) The County Government should immediately develop a legislation on parking for introduction in the County Assembly within three (3) months of adoption of this report.

5.4. Loss of Revenue Due to System Downtime in Off Street Parking

i) The County Government should review its existing automated revenue collection system with a view of ensuring that it is free from manipulation, transparent and has back-up in case of system down-time; and

ii) The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of audit personally liable for the loss of Kshs. 12, 857,290 in revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that: -'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).*

5.5. Compensation for System Down Time- Jambo pay system

i) The CEC Member for Finance implements the previous resolution of the Committee on Jambopay system which was; ***"the County Government should invoke the provisions of Clause 17 of its agreement with Webtribe Ltd and terminate the*** *agreement following the breach of Clauses 24 and 25 by Webtribe Ltd of the said agreement"* and "*the County Government should within five (5) months of adoption of this report develop its own internal and fool proof automated revenue collection system".*

ii) Pursuant to Article 226(5) of the Constitution and Section 203(1) of the PFM Act, 2012, the CEC Member for Finance and Economic Planning should liaise with state agencies and cause to recover all monies that may have been lost whenever system down town occurred within Jambopay from all County Government signatories in the contract between the County Government and Webtribe ltd for occasioning loss of public funds through irregular expenditure.

5.6. Spending at Source by Jambopay of 4.5% of Revenue Collected

i) Pursuant to Article 226(5) of the Constitution and Section 203(1) of the PFM Act, 2012, the CEC Member for Finance and Economic Planning should liaise with state agencies and cause to recover all monies that may have been lost due to inflated Webtribe service fee from all the signatories representing the County Government in the contract between the County Government and Webtribe ltd.

ii) The DPP should consider instituting charges against the Chief Officer, Finance during the period under review for committing an offence under Section 62(1) (a) (b) of the Public Audit Act, 2015.

5.7. Revenue Recognition, Basis of Retention and Payment of Transaction Fee to Webtribe

i) The DPP to consider instituting criminal proceedings against the Chief Officer and the CEC Member for Finance and Economic Planning during the period under review and the Directors of Jambopay for conspiring to defraud the County Government through the illegal service charge.

ii) The CEC Member for Finance and Economic Planning and the Chief Officer, Finance during the period under review be sanction for breach of Section 62(1) (b) of the Public Audit Act, 2015.

5.8. Reduction in Revenue Collection

i) The CEC Member for Finance and Economic Planning should ensure that all revenue collected is deposited in the CRF Account. Alternatively, the CEC Member for Finance and Economic Planning should develop a legislation/policy to guide instances and how hospitals may spend at source.

ii) The CEC Member for Finance and Economic Planning should within four (4) months of adoption of this report automate all revenue collection in hospitals

iii) The Chief Officer, PSM and the Secretary to the board should develop a policy that will provide a framework on how to deal with industrial action by County employees, especially health workers, to avert interruption of service delivery.

6 Non-Disbursement of Capitation and Free Maternity Funds

6.1. Pumwani Maternity

i) The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs.168, 453,193 in order for the hospital to supplement its already over-stretched resources. The CEC Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.

ii) In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.

iii) The hospital with the support of the parent Sector should put in place a digital system for reconciling daily deliveries with the NHIF reimbursements.

iv) The CEC Member for Finance should sanction the Hospital Administrator and the hospital accountant for operating an illegal savings account.

6.2. Dagoretti Sub - district Hospital

i) The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs. 3,309,084. in order for the hospital to supplement its already over-stretched resources. The CEC Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.

ii) In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.

iii) The hospital with the support of the parent Sector should put in place a digital system for reconciling daily deliveries with the NHIF reimbursements.

6.3. Mama Lucy Kibaki County Hospital

i) The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs.81, 483,765 in order for the hospital to supplement its already over-stretched resources. The CEC Member for Finance and Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.

ii) In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.

6.4. Mbagathi Hospital

i) The National Government should honour its obligation by disbursing the maternity fees owed to the hospital amounting to Kshs. 21,405,000order for the hospital to supplement its already over-stretched resources. The CEC Member for Finance and

Economic Planning and the CEC Member for Health Services should take personal interest in this matter and ensure that the National Government honor its pledge.

ii) In future, before the County Government commits itself with an external entity/party, including the National Government, there must be adequate commitment from the external party with both parties entering into duly executed contracts so that the County Government can be able to seek for remedies whenever there is breach of contract.

7. Development Projects

7.1. Slow Rate of Implementation of Development Projects

i) M/S Elite ITS Ltd responsible for construction of Plains View Likoni link road in South B Ward and rehabilitation of Academy Road in Karen Ward should be blacklisted and never be a warded service contracts by the County Government due to its proven inefficiency.

ii) The County Treasury should fast-track payments due to the following contractors so that they can conclude their works: -

a) M/S Solid Waste Collectors
b) M/S Mon Cons General Contractors
c) M/S Buldel Enterprise Ltd
d) M/S Suntech Construction Ltd
e) M/S Uba Construction Ltd
f) M/S Rhino (EA) Ltd
g) Quanta Frontier technologies
h) M/S Platinum Ltd.

iii) Before engaging a service provider especially contractors for capital projects, the County Executive must at all times undertake due diligence and determine whether the service provider has the requisite financial capacity, technical expertise and demonstrated experience to perform the work. In future, the CEC Member for Finance and Economic Planning should hold liable officers who award tenders to incapacitated companies.

iv) The County Executive should ensure that it executes contracts within the Financial Year they relate to through proper planning and realistic budgeting to avoid accumulation of huge interest demanded by contractors for breach of contract.

v) The CEC Member for Finance and Economic Planning should establish project management teams in Sectors whose mandate should include conceptualization of viable projects with definite completion timelines and adhere to the tenets of project management.

7.2. Stalled Key Projects

7.2.1. Construction of Ruai Street Children Rehabilitation Centre

i) The County Treasury should within 1 (one) month of adoption of this report release funds owed to Tecina General Contractors Ltd inclusive of interest accrued on delayed payments based on the current market rates to enable the contractor finalize the project.

ii) The Procurement Department should consider invoking the relevant provisions of the Public Procurement and Disposal Act, 2015 and allow the contractor to fence the centre once completed and construct the access roads to the centre. This will secure the project and ease access to the centre.

7.2.2. Construction of Joseph Kang'ethe Social Hall

i) The County Treasury should immediately release funds owed to Derrow Brothers Construction Ltd, if any, since the same was budgeted for.

ii) The Chief Officer, Education and responsible resident engineer should inform the said contractor to resume works immediately, if the contractor fails to resume within a period of one (1) month from the date of adoption of this report, the contract should be terminated and another contractor engaged.

iii) The County Government should execute contracts within the financial year they relate to.

iv) The Auditor General should undertake a special audit on the Private Public Agreement between the County Government and the private party regarding Eastleigh Social Hall and report in the next Financial Year in order for the Committee to take appropriate action.

7.2.3. Construction of Perimeter wall at Mji wa Huruma

i) The County Treasury should immediately release funds and pay the contractor for the works already certified. The contractor should then be engaged and requested to resume work immediately. If the contractor fails to resume, the contract should be terminated and another contractor be engaged competitively.

ii) The County Government should execute contracts within the financial year they relate to.

iii) The CEC Member for Finance and Economic Planning should sanction the Head of Procurement during the period under review for flouting procurement laws and procedures.

7.2.4. Nairobi Integrated Urban Development Master Plan (NIUPLAN)

i) The CEC Member, Finance and Economic Planning should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.

ii) The Committee marked the matter as resolved.

8 Procurement of goods and services

8.1. Failure to Produce Procurement Records and project documents

8.1.1. Health Sector

i) The Accounting Officer must at all times ensure that the required documents are submitted to the Auditor General when requested by the Auditor General as obligated by law.

ii) The CEC Member for Finance and Economic Planning should take administrative action against officers who failed to provide the documents to the Auditor General.

iii) The Chief Officer, PSM should take administrative action against the Chief Finance Officer at the time of audit for failing to comply with National Treasury Regulations on the use of IFMIS.

8.1.2. Trade, Commerce, Tourism and Cooperative sector

i) Accounting Officers and the Head of Procurement should ensure that procurement laws and procedures are strictly adhered to when initiating and conducing a procurement exercise.

ii) Accounting Officers should prepare procurement plans guided by policies and approved budget estimates and ensure tax payers receive value for money.

9. Human Resources

9.1. Non-Adherence to Third Pay Rule

Accounting Officers must strictly ensure that officers when committing part of their salaries always retain a third of their basic pay.

9.2. Lack of Authorized Establishment

i) The CEC Member, PSM should take a personal interest in this matter and liaise with the CPSB ensure that a staff establishment is put in place within a period of three (3) months of adoption of this report and report the same to the County Assembly.

ii) H.E. the Governor should reconstitute the current CPSB since it has failed to deliver on its mandate. The new CPSB once approved should immediately revamp the functions of the board.

9.3. High Percentage Wage Bill

i) The PSM Sector should immediately review, update and fully digitise its staff register/payroll so that the same cannot be abused.

ii) The CPSB should fast track and finalize its policy on voluntary early retirement so that surplus officers especially the unskilled should be encouraged to retire. Those who have reached the legal retirement age across the entire County Government should be made to retire.

9.4. Casual workers at Mama Lucy Kibaki Hospital

i) The CPSB should ensure that all hospitals endeavour to employ skilled officers on permanent terms given the critical services they offer.

ii) Casual labourers should only be engaged for non-core functions/services such as cleaning to reduce the risk they pose to the institution.

iii) The PSM should within two (2) months of adoption of this report develop a policy on employment of casual labourers.

10. Solid Waste Management

10.1. Irregular Collection of garbage in non-contracted zones/areas

i) The Accounting Officer should ensure that contractors of garbage collection adhere to the terms and conditions of the contracts and that they are paid in accordance to the terms and conditions in their contracts. In the event of invoking special conditions, the same should be done in writing and the reasons for such action should be included. The appointing authority should sanction any officer who fails to adhere to this.

ii) The appointing authority should take administrative action against officers who unilaterally invoked the special conditions provisions and allowed contractors to collect garbage in non-contracted zones without providing reasons for the same.

10.2. Irregularity in Hire of Garbage collection Works.

The Chief Officer, Environment should ensure that all expenditure records on waste management are properly maintained for full accountability of public funds. In addition, contracted garbage collectors should be closely supervised to ensure that they deliver on their mandate. Monitoring of their work should be aided by modern technology.

11. Health

11.1. Unaccounted drugs, overstocking of non-pharmaceutical items and expired drugs

i) The Chief Officer, Health Services should within three(3) months of adoption of this report develop a policy on how to procure and supply drugs to the County hospitals to eliminate ambiguities that lead to supply of unnecessary and expired drugs. The policy should demand that procurement of drugs should be initiated by the individual hospital based on its needs analysis.

ii) The Hospitals before accepting drugs from either KEMSA or any other agency/supplier must first determine that they are not likely to expire in a short-while.

11.2. Manual Collection of Revenue at the Inoculation Centre

All payments at the inoculation centre should immediately be automated.

11.3. Failure to manage and account for patients through the Check Health Information Systems (CHIS)

i) The CEC Member, Health Services should ensure that the CHIS system is embraced in all hospitals to increase accountability. Adequate budget measures should be put in place during the next financial year to cater for the same. The CEC Member, Health Services should also develop a policy to guide the same.

ii) The system should cover all stages of treatment (service provision).

12. Education and Social Services

12.1. Under funding of Waithaka Technical Training College

i) The Chief Officer, Education fully implements the interventions alluded to in the response.

ii) The CEC Member, Education should develop a policy on management of vocational centers. The same should be submitted to the Assembly for approval.

12.2. Long Term Loan – MG1424500930

i) The CEC Member for Finance should review the County Government engagement on this matter by particularly invoking the termination clause of the loan agreement and only pay the principal amount borrowed and immediately suspend servicing of the interest accrued on the KCB loan due to the irregularities committed during its acquisition.

ii) The DPP should take necessary legal actions against all persons involved in the irregular acquisition of the loan namely: the former Governor H.E. Evans Kidero, former County Treasury Officials (i.e. former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu) and responsible KCB officials for law firms in question for colluding to defraud the County Government if found culpable. Meanwhile the County Government should stop any further payments to the law firm until the investigations are completed.

15. Budgets and Budgetary Controls

15.1. Under and Over Expenditure on the Approved Budget

i) The County Treasury must at all times meet its obligations including remitting of statutory deductions to relevant entities such as KRA to avoid interruption of service delivery and risking County finances as was in this case.

ii) The County Executive must at all times implement the budget as approved.

iii) The Accounting Officers should ensure that each Sector/Department prepares a procurement plan at the commencement of the Financial Year and the said plans should strictly be adhered to. Each Department should be allowed financial independence to be able to implement its programs.

iv) The Accounting Officer of the County Treasury must at all times provide complete financial statements/records and disclose all financial information to the Auditor General within the stipulated period of three months after close of the Financial Year as provided for in Article 229(4) of the Constitution and section 81(4)(a) of the Public Finance Management(PFM) Act, 2012.

v) The Accounting Officer must at all times discharge his or her responsibilities in management of public finances as provided for in Section 68 of the Public Finance Management Act, 2012.

15.2. Inconsistencies Financial Statement and Budget

i) The CEC Member for Finance should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.

ii) The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries.

15.3. Un-budgeted Expenditure Incurred off IFMIS

i) The CEC Member Finance and the Chief Officer, Finance should ensure that funds are only spend on the intended purpose and/or as approved by the County Legislation.

ii) The CEC Member, Finance should ensure that the County Treasury fully adopts IFMIS in its transactions.

iii) The CEC Member Finance and the CFO in office during the period under review should be held to account for breach of Section 196 of the PFM, Act, 2012.

16. IT Controls

i) The Appointing authority sanctions the CEC Member for ICT and the Chief Officer, ICT in accordance with Section 53 of the Public Audit Act, 2015.

ii) The Accounting Officer should fully implement the remedies proposed and a report on the implementation status of the same be tabled in the Assembly within three (3) months of adoption of this report.

17. Un-resolved Prior year Audit Issues

17.1. Assets and Liabilities Inherited from the Defunct City Council of Nairobi

i) The CEC Member for Finance and Economic Planning should ensure that the County Assets and Liabilities Management Committee is established within one (1) month of adoption of this report and prepares a comprehensive fixed assets register and table a report on its work in the Assembly within six (6) months of adoption of this report.

ii) The Accounting officer should liaise with the National Government and other state agencies through the inter-governmental relations framework and ensure that assets and liabilities owned by the defunct City Council of Nairobi that are yet to be transferred to the County Government are immediately transferred.

17.2. Land and Buildings – Encroachment of County Government Properties

i) The Chief Officer, Lands should immediately institute measures aimed at repossessing the County Government properties that have been grabbed or are on the verge of being grabbed yet they have proper ownership documents. Eviction orders should be issued to all trespassers. Special emphasis should be put on the queried properties namely: Land hosting Komarock Ward Offices, Komarock playing ground, and Land hosting Mutuini Hospital.

ii) The Chief Officer, Lands and the Chief Valuer should ensure that the properties are properly registered and safely keep the title deeds of the properties. The Chief Valuer should be the only designated officer responsible for keeping of County Government Property titles for accountability reasons.

iii) The CEC Member for Finance and Economic Planning to make adequate budgetary allocation for fencing of the properties mentioned/queried since they are susceptible for grabbing.

17.3. Allocation of County Land to Private Developers

a) **High Ridge Health Centre; where the health centre was demolished and the parcel of land allocated to private developers.**

i) The Chief Officer Lands and the County Attorney should immediately follow-up with the National Lands Commission (NLC) to ensure that the fraudulently acquired titles are revoked.

ii) The CEC Member and the Chief Officer for Lands should take personal interest in this matter and ensure that within three (3) months of adoption of this report they survey, demarcate and fence the property and put it to the original intended use. In addition, all encroachers on the parcel of land should immediately be evicted.

iii) The Ethics and Anti-Corruption Commission (EACC) and the National Land Commission (NLC) should immediately commence investigations in dealings involving this property and all other County properties with a view of prosecuting persons involved in their grabbing.

b) **Nanyuki Roads Store and Depots; the land was reserved for road maintenance materials. It was demarcated and 1.227Ha hived off and allocated to M/S Hass Petroleum Ltd. It was further noted that the depot lost materials estimated to be worth Kshs.22 million.**

i) M/S Hass Petroleum Ltd should be allowed to operate on the part of the land it was leased until such a time the lease expires or the Company decides to terminate the lease agreement. In the event, the lease expires and the Company still needs to operate on the land, it should be given preference.

ii) The Lands department should develop a more transparent policy/legislation on allocating of County land to private citizens including renewal of leases.

17.4. Karen Health Centre Land Dispute

i) The County Government proceeds to survey, demarcate and fence the part of the land LR No 1159/70 that is not contested pending determination of the Court case No. JR/195 of 2014.

ii) In the event of unfavourable outcome of the Court case No. JR/195 of 2014 the County Government should appeal and vigorously defend against acquisition of the Land by PCEA and seek intervention of the NLC since the parcel of land is ideally located for expansion of the health facility.

17.5. Irregular Allocation and Disposal of County Land LR. NO 209/2531/1

i) The Chief Officer, Lands proceeds to survey, demarcate and process proper ownership documents for the part of the land LR. No. 209/2531 that it still owns.

ii) The Ethics and Anti- Corruption Commission (EACC) and the National Land Commission (NLC) immediately institute investigations on all transactions on the land especially the transfer to private entities to determine whether the transfers were irregular and if so, those involved prosecuted while the transfers revoked.

17.6. Malfunctioning of the Integrated Urban Surveillance System for Nairobi Metropolitan Area - Nairobi Central Business District

i) The DCI and the EACC should take up this matter and conduct further investigations with a view of determining whether there was a deliberate attempt to siphon public funds and institute criminal and civil proceeding against all officers and persons involved in the matter if it is found that there was loss of public funds.

ii) CEC Member Finance and Economic Planning, the Chief Officer, Transport and the Chief Officer Security and Compliance should take personal interest in this matter and engage the National Government and find a way on how to revamp the project so that the noble objectives of the project can be realized and save public funds that were invested in the project.

17.7. Irregular transfer of Mariakani Estate

i) The County Government should not lay any claim against Mariakani Estate and should instead allow full possession of the property by LAPFUND since the property was properly transferred to the LAPFUND as part of the settlement of the debt owed to the pension fund to safeguard employee benefits. The Chief Officer for Lands, the County Attorney and Chief Officer for Security and Compliance should ensure that any illegal encroachers of the property are evicted.

ii) In future, the County Government should desist from selling/swapping residential properties as it affects the livelihoods of city residents.

iii) The valuation done during the time of swapping of the property should still be the basis of the debt swap and the same should therefore be factored in the financial statements of both Lapfund and the County Executive.

iv) The County Government should immediately stop collecting rent from Mariakani Estate tenants and instead allow LAPFUND to collect the rent in order to forestall unnecessary litigation and to safeguard the retirement benefits of County Government employees. The Chief Officer for Housing should inform the tenants on the same.

v) LAPFUND should not evict the current residents of the estate especially those who were clients of the County Government. Both parties should enter into a normal tenancy agreement. In the event LAPFUND opts to sell the houses, they should give priority to the current tenants.

vi) The County Treasury should immediately release all employee contributions owed to Lapfund and other pension schemes. A report on the same should be tabled before the County Assembly within one (1) month of adoption of this report.

ANNEXURES

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