


Paper laid  
By Leader Majority  
30/April/2025.  


GOVERNMENT OF NAIROBI CITY COUNTY

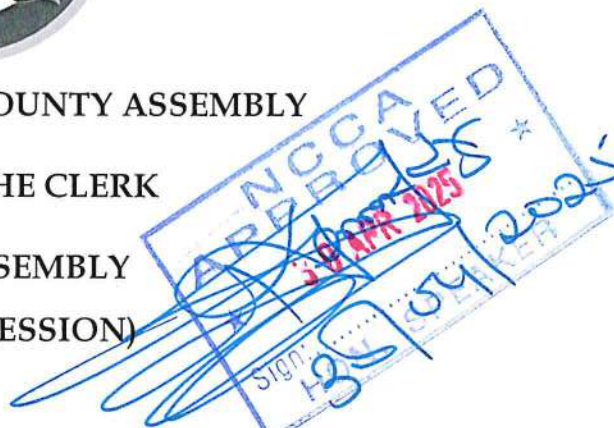


THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(FOURTH SESSION)



NCCA/TJ/PL/2023(46)

30<sup>TH</sup> APRIL 2024

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PAPER LAID

SUBJECT: REPORT OF A COMMITTEE

Pursuant to Article 229 (8) of the Constitution of Kenya, 2010 and Standing Order 196, I beg to lay the following Papers on the Table of this Assembly, today Wednesday 30<sup>th</sup> April 2024:

- **THE REPORT OF SELECT COMMITTEE ON PUBLIC ACCOUNTS ON CONSIDERATION OF THE REPORT OF AUDITOR GENERAL ON FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR 2018/2019; 2019/2020; and 2020/2021.**

*(The Chairperson, Select Committee on Public Accounts)*


Copies to:  
The Speaker  
The Clerk  
Hansard Editor  
Hansard Reporters  
The Press





NCCA/TJ/NTC/2024

GOVERNMENT OF NAIROBI CITY COUNTY

Notice Given  
By Majority leader  
30/April/2025  




THE NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY

(FOURTH SESSION)

30<sup>th</sup> April 2025

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NOTICE OF MOTION

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**Subject: Adoption of report of a Committee**

Hon. Speaker, I beg to give notice of the following motion:-

**THAT,** this Assembly adopts **THE REPORT OF SELECT COMMITTEE ON PUBLIC ACCOUNTS ON CONSIDERATION OF THE REPORT OF AUDITOR GENERAL ON FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR 2018/2019; 2019/2020; and 2020/2021** laid on the Table of the Assembly on 30<sup>th</sup> April 2025.

*(Chairperson, Select Committee on Public Accounts)*



THE NAIROBI CITY COUNTY GOVERNMENT

Paper laid  
By head Majority  
30/April/2025  
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NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY – FOURTH SESSION

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THE REPORT OF THE SELECT COMMITTEE ON PUBLIC ACCOUNTS

ON

THE CONSIDERATION OF THE REPORTS OF THE AUDITOR-GENERAL ON THE  
FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR  
THE FINANCIAL YEARS: - 2018/2019; 2019/2020; & 2020/2021

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Clerks Chambers  
Nairobi City County Assembly  
City Hall Buildings  
NAIROBI

APRIL 2025



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## CHAIRPERSON'S FOREWORD

**Honourable Speaker**, on behalf of the Select Committee on Public Accounts and pursuant to the provisions of Standing Order 196(6), it is my pleasant privilege and honour to present to this Assembly the report of the Public Accounts Committee on the consideration of “**The reports of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Years 2018/2019; 2019/2020 & 2020/2021**”.

**Honourable Speaker**, the County Assembly is responsible for holding accounting officers of the County Government entities accountable in the spending of public funds. Specifically, Article 229 of the Constitution of Kenya 2010 requires the Auditor General to submit annual audit reports to the County Assembly in order for the Assembly to take appropriate action. Once the report is submitted and laid on the Table of the Assembly, it is committed to the PAC for consideration and reporting. This report is therefore a culmination of a rigorous and a long exercise carried out by the Committee in its scrutiny of the report of the Auditor-General and the various responses by the Accounting Officers. In conducting this exercise, the Committee held sittings and a retreat during which it received both written and oral evidence from Accounting Officers and other witnesses on audit queries raised by the Auditor-General. In its scrutiny, the Committee was concerned in determining whether, in the years under review, Accounting Officers upheld key principles of public finance management namely; value for money, efficiency, and effectiveness in public spending.

**Honourable Speaker**, the Committee upon careful examination of the evidences brought before it identified various issues raised by the Auditor-General during the period under review that hamper service delivery. The issues include; an incompetent county treasury, accounting for expenditures, delayed procurement processes, engaging of incompetent service providers, corruption, poor project planning and implementation. To this end, as has become the Committee's norm, the Committee has taken a pragmatic step of 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 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. I wish also to appreciate my 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 and the 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 lay the report of the Select Committee on Public Accounts and urge the Assembly to adopt it and the recommendations therein.

A handwritten signature in blue ink, appearing to read 'for Chege Mwaure', written over a dotted line.

**HON. CHEGE MWAURA, MCA**  
**CHAIRPERSON**

29<sup>th</sup> April 2025



## 1.0. INTRODUCTION

### 1. Mandate of the Public Accounts Committee

The Public Accounts Committee derives its mandate from Standing Order 203 (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 Government 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 based on annual and special audit reports prepared by the Office of the Auditor-General (OAG).

Article 229 (8) of the Constitution of Kenya 2010 provides that within three (3) 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.

#### 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 of the Constitution of Kenya, 2010 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.

### **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.

## **2. Committee Membership**

The Committee comprises of the following members: -

- 1. Hon. Chege Mwaura, MCA - Chairperson**
- 2. Hon. Abel Osumba Atito, MCA - Vice-Chairperson**
3. Hon. Benter Juma Obiero, MCA
4. Hon. Patrick Karani Said, MCA
5. Hon. John Rex Omolleh, MCA
6. Hon. Stazo Omung’ala Ang’ila, MCA
7. Hon. Richardo Nyantika Billy, MCA
8. Hon. John Ndile Musila, MCA
9. Hon. Cyrus Mugo Mubea, MCA
10. Hon. Jane Musangi Muthembwa, MCA
11. Hon. Emmy Khatemeshi Isalambo, MCA
12. Hon. Fuad Hussein Mohamed, MCA
13. Hon. Fatuma Abduwahid Abey, MCA
14. Hon. Eutyclus Mukiri Muriuki, MCA



15. Hon. Fredrick Njoroge Njogu, MCA
16. Hon. Rachel Wanjiru Maina, MCA
17. Hon. Aaron Kangara Wangare, MCA
18. Hon. Carrington Gichunji Heho, MCA
19. Hon. Mark Thiga Ruyi, MCA
20. Hon. Simon Maina Mugo, MCA
21. Hon. Paul Wachira Kariuki, MCA
22. Hon. Martin Mbugua Mwangi, MCA
23. Hon. Mary Wanjiru Kariuki, MCA

The Committee comprises of the following secretariat;

1. Mr. Kevin Wasike – Senior Clerk Assistant
2. Mr. Benedict Ochieng – Second Clerk Assistant

**Honourable Speaker,** The Select Committee on County Public Accounts is the avenue through which the County Assembly under the provisions of Article 96(3) of the Constitution carries out the post scrutiny of County Governments Budgets.

The Committee was constituted at the commencement of the First Session in October, 2022 pursuant to the provisions of Standing Order 203 which requires the County Public Accounts Committee to be constituted after a general election and shall serve for a period of three sessions. It was reconstituted on 23<sup>rd</sup> April, 2024. The Committee was further reconstituted on 1<sup>st</sup> October, 2024. The Committee commenced its business to examine the reports of the Auditor-General on the Financial Statements of the County Executive for the financial years 2018/19; 2019/20; and 2020/21 in the Month of July, 2023 and held several meetings with the County Executive.

The sittings were primarily investigatory and the Committee received evidence from the County Executive Committee Member for Finance and Economic Planning in accordance with Article 183 (3) of the Constitution of Kenya 2010. The main issues for investigation and determination were the various audit queries contained in the reports of the Auditor-General on the financial operations of the County Executive for the financial years 2018/2019; 2019/2020; and 2020/2021.

**Honourable Speaker,** Article 201 of the Constitution outlines the principles of public finance management to be observed at both levels of Government. These include openness, accountability, public participation, prudent and responsible financial management.

This report is issued pursuant to the requirements of Articles 229(8) of the Constitution of Kenya 2010, where any breach of law has an attendant remedy, consequence or penalty in law, recommendations of



this report do not preclude any liability that may arise as a result of any legal action within the breach of the prescribed law.

**Honourable Speaker,** this report contains examination of three (3) reports of the Auditor-General on the Financial Statements of the County Executive for the years 2018/2019, 2019/2020 and 2020/2021; and identified various fiduciary risks that were considered and adopted by the Committee.

During the years under review, the County Executive considered under this report had challenges with submission of documents to the Auditors for verification during the audit exercise. The Committee noted that County Executive did not avail relevant supporting documents to the Auditor-General during the audit exercise, with only some managing to provide them at a later date. The non- provision of documents therefore, left the entities unable to support expenditures of substantial amount of funds.

**Honourable Speaker,** the reports also revealed that County Executive was not able to apply proper accounting practices as stipulated by the Public Sector Accounting Standards Board. Financial Statements presented for audit verification exhibited various weaknesses including failure to do regular reconciliations, variances between financial statements and IFMIS balances; payment details and trial balance among other inconsistencies. This resulted in inadequate reporting and presented an inaccurate position of the financial position of the County Executive.

The reports further showed that County Executive had weaknesses in executing their budgets. The County Executive did not adhere to their approved budget ceilings set for programs, votes and sub-votes. Thus, there was over-utilization or under-utilization of appropriated funds. The Committee noted that the main cause for under-utilization of budgets was delay in exchequer releases from the National Treasury thereby hampering program implementation and budget execution. In some instances, funds were re- allocated to items that were not budgeted for without prior approval by the County Assembly.

The findings of the considered audit reports revealed that the County Executive made payments outside the Integrated Financial Management Information System (IFMIS) platform, contrary to the Public Finance Management Act, 2012. The practice of processing transactions outside the IFMIS platform could be an avenue to bypass financial controls and can lead to misappropriation of funds.

The reports also revealed that the County Executive abused the imprest process, from the request, approval, surrender and recovery. Imprests remained outstanding after their due dates of surrender, contrary to the provisions of Regulation 93 (5) of the Public Finance Management (County Governments) Regulation, 2015 which requires temporary imprest holders to account for or surrender



imprest within seven days upon returning to their duty stations. Further, Management breached Regulations 93(6) by failing to recover the outstanding imprests from the salaries of the defaulters.

**Honourable Speaker**, during the years under review, the Committee noted that majority of the County Executive interrogated had not properly updated their assets registers despite the Inter- Governmental Technical Relations Committee (IGTRC) having handed over their report, hence exposing County assets to risk of loss, waste and misuse. Further, a number of County Executive Sectors had not updated their valuation Roll as required under Section 3 of the Valuation for Rating Act CAP 266. Thus, County was not collecting optimal revenue based on the prevailing land market values.

The Committee further noted that the reports revealed that County Executive had weak internal control systems on own source revenue collection and accounting. This was evidenced by utilization of revenue at source, failure to bank revenue collected on time and failure to maintain separate financial statements for funds established by the County. This exposed the County Executive to revenue leakages and contributed to failure by the County to meet own source revenue collection targets.

Regarding human resource issues, the Audit reports revealed the following: -

- i. that some County staff were earning less than a third of their basic pay;
- ii. Some County Executive Sectors were still processing salaries and other benefits outside the Integrated Payroll and Personnel Database (IPPD); and
- iii. County Executive did not meet the threshold on ethnic inclusivity stipulated under Section 65(1)(e) of the County Governments Act, 2012.

The Committee further observed that the County Executive did not take action on the issues raised in the reports of the Auditor-General for previous financial years. This therefore implied that a number of recommendations proposed by the OAG were not implemented thus some audit queries had recurred for several financial years and remained outstanding.

**Honourable Speaker**, on internal controls, risk management and governance, the Committee noted that County Executive had not established Audit Committees contrary to Paragraph 167 of the PFM (County Government) Regulations, 2015. Further, the entities did not have Risk Management policies, Disaster Recovery Plan, ICT Policy and Business Continuity Plan to help prevent and mitigate against risks. This is contrary to Section 158(1) of the Public Finance Management (County Governments) Regulation 2015 which requires the County Government entities to develop risk management strategies which include fraud prevention mechanisms and a system of risk management and internal control that builds robust business operations.



In addition to the general observations and recommendations on cross cutting issues across the financial years interrogated and captured in the report, this report details further observations and recommendations for specific audit queries for the County Executive.

## **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. The County Treasury**

Section 103 of the Public Finance Management Act, 2012 establishes the County Treasury comprising of County Executive Committee(CEC) Member for Finance, the Chief Officer for Finance and Departments responsible for financial and fiscal matters. The CEC Member for Finance is the head of the County Treasury. Amongst other duties, the County Treasury has a responsibility of ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the County's budgetary resources. However, during the period under review, the Auditor-General's report portrayed a weak and an incompetent County Treasury, which could not undertake this cardinal duty. The Auditor-General reported cases where the Treasury Officials committed glaring and simple errors such as paying to wrong accounts, making incorrect entries, executing payments outside established systems such as the Integrated Financial Management Systems, failure to prepare and keep accounting documents. In addition, the regime kept changing the office holders in the County Treasury making it even impossible to determine who would be held to account.

To this end, the Committee recommends that the CEC Member for Finance should take personal responsibility in the management and operations of the County Treasury and ensure that officers working at the treasury are fully capacitated to enable them perform optimally.

Pursuant to the provisions of Section 203 of the PFM Act, 2012, the Ethics and Anti-Corruption Commission to take up the matter with a view of recommending criminal proceedings should the undermentioned officers are found personally liable for acts of commission and omission that led to the loss of funds: -

- Former C.E.C Member for Finance, Mr. Allan Igambi;
- Former Chief Officer, Mr. Halkano Diida Waqo (FY 2018/2019);
- Former Head of County Treasury Accounts, Mr. Peter Ogomo Ingwe (FY 2018/2019);



- Former Chief Officer Mr. Halkano Diida Waqo (FY 2019/20);
- Head of County Treasury Accounts Mr. Johnson Akong'o Abwori (FY 2019/2020);
- Former Chief Officer Mr. Halkano Waqo (FY 2020/2021); and
- Former Head of County Treasury Accounts Mr. Peter Ogomo Ingwe FY 2020/2021).

## **2. Accounting for Expenditures and dealing with the Auditor General**

Pursuant to the provisions of Section 149 of the PFM Act, 2012, it is the responsibility of each Accounting Officer to account for the finances and resources under his/her custody. The accountability include preparing and keeping accounting records/documents such as payment vouchers, IFMIS reports and Financial Statements. In addition, Section 149 (2) (k) of the said Act requires each Accounting Officer to not later than three months after the end of each financial year, prepare annual financial statements for that financial year and submit them to the Auditor-General for audit, with a copy to the County Treasury. In the years under review, Accounting Officers failed to submit the financial statements and records during the statutory period but later on emerged with the records when the Committee was interrogating the final Audit report. This can only be construed to mean that the officers were trying to either evade being audited or conceal misappropriation of funds. **To this end, the Committee recommends: -**

- That all Accounting Officers should institute measures to ensure that the County Treasury always acts on time when dealing with the Auditor-General to forestall audit queries, failure to which they be sanctioned for breach of Section 149 (2) (k) of the PFM Act, 2012; and
- That the respective County Executive Committee Members should take administrative action against officers who failed to provide relevant documents to the Auditor-General as required by the law and report to the Assembly within ninety (90) days.

## **3. Management of County Assets**

It is a requirement under Section 149 of the PFM Act, 2012 for Accounting Officers to prepare an asset register as part of the accountability mechanism. However, for a long time, the County Government has lacked a comprehensive fixed asset register thus putting the County's assets especially land in a vulnerable position as they become increasingly susceptible to theft through



fraud. The process of updating/preparing a digital asset register has taken far too long and one can conclude that it is a deliberate scheme not to document County assets.

Accordingly, the Committee has recommended that the CEC Member for Finance and Economic Planning takes personal responsibility and leadership on this matter and 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. Project Implementation

As reported in the previous Committee report, the Auditor-General still painted a disjointed project implementation framework for the County leading to abandoning of sites by contractors or delayed implementation thus taxpayers not receiving value for money. Reasons advanced for these occurrences include delayed/prolonged procurement process, delayed payments and generally incapable contractors. To this end the Committee has again recommended that before engaging a service provider especially contractors for capital projects, *the County Accounting officers in each sector undertaking capital projects must at all times conduct due diligence and determine whether the service provider has the requisite financial capacity, technical expertise and demonstrated experience to perform the work.* Similarly, tender documents must be drafted in a way that will weed out any contractors who does not meet the strict conditions during the evaluation stage. In addition, the companies, which underperform, *should be recommended for blacklisting* and never awarded works in the County. Similarly, 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.*

The Committee further recommends that pursuant to PFM Act Section 149 as read together with Public Procurement and Asset Disposal Act, 2015, Section 151 on Responsibility of the accounting officers to form implementation team, the Committee recommend that the accounting officers to form implementation teams on the frameworks of projects and submit to the Assembly within ninety (90) days after adoption of this report.

#### 5. Lack of proper accounting and reconciliations

The reports also revealed that the Executive did not apply proper accounting practices and their financial statements were characterised by lack of regular reconciliations. Similarly, there was misclassification of expenditure items.



This practice resulted to inadequate reporting and did not present the accurate position of their financial operations.

- **The Committee recommends that administrative action be taken against the responsible officers in the County Treasury for professional negligence and misconduct. The Committee further recommends that Accounting Officers should strictly undertake monthly reconciliation and submit bank statements not later than the 10<sup>th</sup> day of every month to the Auditor General and the County treasury pursuant to Regulation 90 of the PFM (County Regulations) 2015.**

#### **6. Budgetary Control and Performance**

The Committee noted that Executive had weaknesses in executing their budgets. County Executive did not adhere to their approved budget ceilings set for programs, votes and sub-votes. The counties either over- utilized or under-utilized appropriated funds. In some instances, funds were re-allocated to items that were not budgeted for and without prior approval by either the Controller of Budget or the County Assembly. In addition, the Executive experienced delays in exchequer releases from the National Treasury thereby hampering program implementation and budget execution. The Committee also observed that the Executive had challenges in meeting targets of their own source revenue collection.

- (i) **The Committee recommends that the (CECM for finance and economic planning liaise with the) National Treasury should ensure timely release of funds to the County Government in line with the cash disbursement schedules approved by the Senate; and**
- (ii) **The County Executive should institute a study to gauge a realistic target for own source revenue and to establish areas of revenue leakage.**

#### **7. Unauthorized re-allocation of Funds**

The Committee observed that there were re-allocations of funds without adherence to Section 154 of the PFM Act, 2012. The Committee also noted the usage of money without regard to budget ceilings set for programs, votes and sub-votes.

**The Committee recommends that**

- i. **County Executives should strictly adhere to the budget ceilings for development and recurrent expenditure as stipulated by the annual County Allocation of Revenue Act (CARA); and**



- ii. **Accounting Officers must strictly adhere to the provisions of Section 154 (1) of the PFM Act, 2012 when re-allocating appropriated funds.**

**8. The non-compliance to relevant laws by the County Executive on issues of the wage bill.**

The County Executive did not comply with the Public Finance Management (County Governments) Regulations, 2015 on Fiscal Discipline. The Committee observed that the County Executive's wage bill during the FY 2018/19 was more than the 35% of the County total receipts. The higher wage bill is a threat to the object of devolution as provided for in Article 174(f) of the Constitution.

**The Committee recommends that the County Executive to strictly adhere to the provision of Regulation 25(1) (b) of the PFM Act (County Government) Regulations 2015, which stipulate that the County wage bill should not exceed 35 per cent of the County total revenue.**

The Committee further observed that there was failure to observe diversity in employment as required by Section 65(1) (e) of County Governments Act, 2012 on ethnic inclusivity.

**The Committee recommends that the County Executive through the County Public Service Board should strictly adhere to the provisions of Section 65(1)(e) of the County Governments Act, 2012 when employing its staff.**

**9. Outstanding Imprests**

The Committee noted that the County Executives held substantial amounts of outstanding unsurrendered imprests beyond the stipulated period.

**The Committee recommends that: -**

- i. **the Accounting Officers should recover the imprest with interest as per provisions of the PFM (County Governments) Regulation, Regulation 93 (6); and**
- ii. **the respective County Executive Committee Members should ensure that administrative action is taken against the imprest holders and the respective Accounting Officers who failed to surrender and recover respectively.**

**10. Lack of an approved staff establishment**

During the financial year 2018/2019, the County Executive did not have an approved Staff Establishment. The Committee noted that a number of County Executive Sectors were still employing a huge number of employees on temporary terms. Further, the Committee noted that a



number of the Sectors did not include all its employees in the Integrated Payroll and Personal Database (IPPD) system.

- i. **The Committee recommends that the process of reviewing the County Staff Establishment and Sectors' Organograms be fast-tracked and submitted to the County Assembly within sixty (60) days after the adoption of this report; and**
- ii. **The Committee further recommends that County Executive through the County Public Service Management should ensure all its staff are in the IPPD system.**

#### **11. Lack of an Updated Fixed Asset Register**

The Committee observed that the County Executive had not updated assets registers exposing the County assets to risk of loss, waste and misuse. The Committee, further, noted that the National Treasury issued Circular No. 5/2020 of 25<sup>th</sup> February 2020 on the preparation of asset registers for County Governments. Accordingly, the County Executive should seize this opportunity to ensure that they have proper updated asset registers both physically and electronically.

**The Committee recommends that the County Executive should have updated fixed assets registers in the format prescribed by the National Treasury and submit the same to the County Assembly and a copy to the Auditor-General for audit within sixty (60) days from the adoption of this report.**

#### **12. Irregular Use of Receipts at source without a Fund**

The Committee noted the use of own source revenue at source without any law allowing the same especially in the County Health Care Centres.

- i. **The Committee recommends that the C.E.C Member for Finance, in line with Section 116 of the Public Finance Management Act, 2012 should establish a fund through an Act of the County Assembly to be the appropriate framework for collection and appropriation of funds in the County Health Care Centres; and**
- ii. **The Committee recommends that the County Executive should have all funds deposited in County Revenue Fund as required in law.**

#### **13. Pending Bills**

The Committee noted that some of the pending bills had not been settled. The Committee further noted that the County Executive incurred further bills without prioritising payment the pending bills as first charge in the subsequent financial year as required by the law.



The Committee recommends that the County Executive should ensure that the pending bills are cleared without further delay and a status report submitted to the County Assembly and a copy to the Auditor-General within sixty (60) days from the adoption of this report.

#### **14. Lack of Risk Management Policy Framework**

The Committee observed that the County lacked risk management policies.

The Committee recommends that County Executive to develop risk management strategies pursuant to the provisions of Regulation 158 of the PFM (County Governments) Regulations 2015 and provide status report to the County Assembly and a copy to the Office of the Auditor-General within ninety (90) days upon the adoption of this report.



### **3.0. CONSIDERATION OF AUDITOR GENERAL REPORT ON FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDING 30<sup>TH</sup> JUNE, 2019**

#### **3.1. Inaccuracies in the Financial Statements**

The financial statements for the year ended 30<sup>th</sup> June, 2019 contained the following errors and omissions:

##### **3.1.1. Balance Brought Forward**

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.7, 169,537,245 and a comparative balance of Kshs.6, 582,013,280 under use of goods and services. However, the comparative balance differs significantly with the balance brought forward of Kshs.6,324,187,486 reflected in the audited financial statements for the year ended 30<sup>th</sup> June, 2018 leading to unexplained difference of Kshs.257,825,794.

In absence of any disclosure on restatement or prior year adjustment, the financial statements are inaccurate.

##### **Management Response**

This was as a result of prior year adjustment where the expenditure in use of goods and services in the financial year 2017-2018 was understated by Kshs. 257,825,794. This anomaly was noted after audit report certificate for the financial year 2018-2019 had already been issued.

##### **Committee's Observation and Recommendation**

The Committee noted the failure of the County Executive to submit documents on time to the Auditor-General.

The Committee therefore recommends that the CEC Member for Finance and Economic Planning to take administrative actions against the officers who failed to provide the documents to the Auditors in accordance with Section 156(1) of the Public Finance Management Act, 2012 and provides a status report to the Committee within sixty (60) days from the adoption of this report.

##### **3.1.2. Variances Between Financial Statements and the Integrated Financial Management Information Systems Balances**

A comparison of balances reflected in the financial statements and figures in IFMIS revealed several anomalies as tabulated below: -



Details	Amounts as per Financial Statements (Kshs.)	Amounts as per IFMIS Reports (Kshs.)	Variance (Kshs.)
Receipts	27,763,873,267	21,978,387,588	5,785,485,679
Payments	26,367,412,637	10,690,865,363	15,676,547,274
Cash and Bank	3,302,211,934	98,633,349,344	(95,331,137,410)
Receivables	21,610,708	1,690,988,530	(1,669,377,822)
Payables	0	101,684,009,015	(101,684,009,015)
Total County Budget	33,344,851,538	32,310,240,815	1,034,610,723

### **Management Response**

#### **Receipts**

The variance of Kshs 5,785,485,679 was because of equitable share and own source revenues having not being captured in IFMIS by close of the financial year 30th June 2019.

#### **Payments**

Similarly, variance in payments is a result of salaries that were processed through IPPD having not been captured in IFMIS by end of the year under review. Transfers to other Government entities are requisitions by the County Assembly on their budget, which are transferred outside IFMIS to the Assembly's Accounts after approval for transfer of funds from County Revenue Fund (CRF) by the Controller of Budget.

#### **Cash and Bank Balances, Receivables and Payables**

The amounts as per IFMIS reports for Cash and Bank balances, Receivables and Payables are uncleared system balances from the financial year 2014 - 2015 when Nairobi City County started using IFMIS for processing of financial transactions.

We have not been able automate preparation of financial statements. This is because there are many processes that are not being performed in IFMIS. This is out of lack of capacity and towards this, we wrote to Director IFMIS on 15<sup>th</sup> December 2022 for capacity building and technical support especially on clearance of the above system balances. We are yet to get a response from the above office but we are following up on the matter. **(Appendix 1.2 a Letter to Director IFMIS)**

#### **Total County Budget**

The amount as per financial statements of Kshs 33,344,851,538 is the final revised budget while Kshs 32,310,240,815 indicated as amount as per IFMIS reports is the original approved budget. **(Appendix 1.2 b Appropriation Act, 2018 and Supplementary Appropriation (No. 3) Act, 2019)**



### **Committee's Observation and Recommendation**

The Committee noted the failure of the County Executive to submit documents on time to the Auditor General.

- The Committee therefore recommends that the CEC Member for Finance and Economic Planning to take administrative actions against the officers who failed to provide the documents to the Auditors in accordance with Section 156(1) of the Public Finance Management Act, 2012 and provides a status report to the Committee within sixty (60) days from the adoption of this report; and
- The Committee further recommends that the CEC Member for Finance and Economic Planning to ensures qualified officers are capacity built on the use of IFMIS.

#### **3.1.3. Difference Between Financial Statements and the Supporting Schedules**

As disclosed under Note 7 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.12, 427,386,130 under compensation of employees. However, the balances reflected in the Note differs with the balances shown in the Integrated Personnel and Payroll Database (IPPD) and the Trial Balance as tabulated below: -

Component	Financial Statement Balance	IPPD	Trial Balance
	Kshs.	Kshs.	Kshs.
Basic Salaries of Permanent Employees	6,225,134,387	6,378,487,610	171,497,446
Basic Salaries Temporary Employees	131,592,680	0	91,866,566
Personal Allowances Paid as Part of Salary	5,051,056,115	5,370,851,653	91,596,236
Compulsory National Social Security Schemes	990,270,602	1,020,192,183	30,600,949

The three sets of records have not been reconciled.

Further, the balances reflected in the summary statement of appropriation differ significantly with the balances reflected in the statement of receipts and payments for the following items as indicated below:



Description	Financial Statements Figure (Kshs.)	Supporting Schedule Figure and Ledger (Kshs.)	Difference (Kshs.)
Own Generated Receipts	10,043,310,059	8,183,886,931	1,849,532,128
Acquisition of Assets	4,951,407,063	3,191,065,487	1,760,341,576
Use of Goods and Services	7,169,537,245	8,468,454,448	(1,298,917,203)
Compensation of Employees	12,427,386,130	12,342,918,784	84,467,346

No reconciliation or explanations were provided for the above discrepancies.

### **Management Response**

IPPD data was used to compute amounts for Compensation to Employees except for Casual labour paid outside IPPD since Casual employees do not have IPPD numbers and un remitted statutory deductions as tabulated below;

<b>Payroll as per IPPD</b>		<b>12,769,531,445</b>
<b>Less: Unremitted</b>		
1. December 2018 PAYE	217,014,663	
2. April 2019 Laptrust	126,200,805	
3. June 2019 Laptrust	130,522,527	<b>(473,737,995)</b>
<b>Add: Casual Labour: Hospitals</b>		
1. Pumwani Maternity	5,291,457	
2. Mama Lucy Kibaki	11,553,893	
3. Mbagathi District	936,000	
3. Mutuini Sub- District	21,914,764	<b>39,696,114</b>
<b>Add: Casual Labour: Sectors</b>		
1. Public Works, Transport and Infrastructure	1,093,892	
2. Agriculture, Livestock Development and Fisheries	764,295	



3. Water, Energy, Forestry and Natural Resources	90,038,379	91,896,566
Total Compensation of Employees as reported In the Financial Statements		12,427,386,130

#### **Committee's Observation and Recommendation**

The Committee noted the failure of the County Executive to submit documents on time to the Auditor General.

The Committee therefore recommends that the CEC Member for Finance and Economic Planning to take administrative actions against the officers who failed to provide the documents to the Auditors in accordance with Section 156(1) of the Public Finance Management Act, 2012 and provides a status report to the Committee within sixty (60) days from the adoption of this report.

The Committee further recommends that the management should ensure that all employees whether permanent or contractual be integrated in the IPPD system and submit a status report to the Assembly within sixty (60) days after the adoption of this Report.

#### **3.1.4. Discrepancies Between Records of County Own Generated Receipts**

As disclosed under Note 4 to the financial statements, the statement of receipts and payments reflects county own generated receipts of Kshs.10, 043,310,059 out of which an amount of Kshs.53, 306,977 related to plot rents. Examination of records maintained by the Building Plans Department revealed that during the year, the Department approved 2,582 building plans with an estimated cost of Kshs.159, 041,282,792 and generated revenue amounting to Kshs.950, 649,524. However, the Finance Department records reflected revenue generated from development plan approvals amount of Kshs.1, 017,621,501 resulting to an unexplained difference of Kshs.66, 971,977.

#### **Management Response**

The variance of Kshs.66, 971,977 between County revenues receipted under LAIFOMS and revenues reported in building departments is due to the department not recognizing some aspects as building related revenues as tabulated below.

ACCOUNT DESCRIPTION	FISCAL YEAR	TOTAL
Plot Transfer Fee	2018/2019	722,000
Plot Subdivision Fee	2018/2019	2,153,000
Document Search Fee	2018/2019	1,154,460



Survey Fee	2018/2019	1,112,860
Buildings Plan Preparation Fee	2018/2019	44,075,720
Change of User Fees & Applications	2018/2019	202,000
Inspections of Works & Electrical Installations	2018/2019	121,800
Court Fines-Planning	2018/2019	620,950
Building Occupation Cert	2018/2019	184,500
Regularization	2018/2019	15,968,687
Plot Subdivision Certificate	2018/2019	275,000
Beacon Certificate Fee	2018/2019	381,000
<b>TOTAL</b>		<b>66,971,977</b>

#### **Committee's Observation and Recommendation**

The Committee noted that the reconciliation of the variance of Kshs. 66,971,977 was provided. Further, the County Executive could not explain reasons for under collection of Revenue (breakdown of building plan occupation certificates, plan approvals, plan).

The Committee therefore recommends that the CEC Member for Finance and Economic Planning to take administrative actions against officers who failed to provide the documents to the Auditors in accordance with Section 156(1) of the Public Finance Management Act, 2012 and provides a status report to the Committee within sixty (60) days from the adoption of this report.

#### **3.1.5. Wrong Classification of Payments**

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.7,169,537,245 under use of goods and services out of which an amount of Kshs.54,773,273 was expensed on items that are ordinarily classified under acquisition of non-financial assets.

In the circumstances, the expenditure on use of goods and services is overstated by Kshs.54, 773,273 while the acquisition of non-financial assets is understated by a similar amount.

#### **Management Response**

This is a budgeting implementation and classification issue in IFMIS where there is a mismatch between Use of Goods/Services and Acquisition of Assets items in the Recurrent and Development vote books. The procured items had budgetary provisions in the recurrent expenditure under use of goods and services.



#### **Committee's Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.1.6. Understated Other Grants and Transfers**

As disclosed under Note 10 to the financial statements, the statement of receipts and payments reflects other grants and transfer of Kshs.509, 459,074. However, examination of documents revealed that the County Executive transferred an amount of Kshs.800, 000,000 to Kenya Urban Roads Authority (KURA) and Kshs.75, 000, 000 to Kenya Medical Supply Agency, KEMSA. These balances have not been disclosed in the financial statements hence the expenditure under other grants and transfer balance is understated by Kshs.875, 000,000.

#### **Management Response**

These transfers were processed through the economic items under which they had been budgeted for in the year under review. Transfers to KEMSA were payments for drugs and non-pharmaceuticals procured from the entity and this expenditure had been budgeted under Specialized Materials and Supplies hence the expenditure was incurred as a recurrent expenditure and this was reported in the overall financial statements under use of goods and services with a cumulative total of Kshs 778,369,128. Delivery to the facilities has been provided.

Transfers to KURA were budgeted under Construction of Roads and this is the budget line that was used to effect the payments and this was reported in the overall financial statements under acquisition of assets with a cumulative total of Kshs 2,073,417,839.

However, payments to KURA and KEMSA are other government entities whose budget estimates and payments should be captured under other grants and transfer. The management will therefore ensure full compliance with Public Sector Accounting Standards Board reporting template as they are issued.

#### **Committee's Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.1.7. Accounts Payables - Undisclosed Deposits and Retentions Balance**

The statement of assets and liabilities reflects a nil balance under accounts payables - deposits and retentions balance as at 30<sup>th</sup> June, 2019. However, examination of IFMIS report reflects an amount of Kshs.101, 684,009,015 under contractors' retentions balance. The amount relates to money owed to



suppliers and contractors withheld as retention money to guard against project defects, which may occur during the defect liability period.

In the circumstances, the accuracy and completeness of the financial statements as at 30<sup>th</sup> June, 2019 could not be confirmed.

#### **Management Response**

The Kshs. 101.684 Million in IFMS related to uncleared system balances and the County has engaged the National treasury to clear them.

The Nil retention balance was due to lack of retentions deposit account. However, a special purpose Account has then been opened in CBK to facilitate retentions deposits. (Letter attached)

The Current pending retentions schedule has been availed to the Auditors

#### **Committee's Observation and Recommendation**

The Committee noted that the Management opened an account.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **2. Irregular Payment of Allowances to Security Officers**

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects use of goods and services balance of Kshs.7, 169,537,245 out of which Kshs.337, 112,059 relates to domestic travel and subsistence. Examination of payment documents revealed that the balance includes an amount of Kshs.4, 092,000 paid thirty-three (33) police officers who were guarding the Governor while in Mombasa for twenty-two (22) days, between 22<sup>nd</sup> July, 2018 to 12<sup>th</sup> August, 2018. However, no documents were availed in support of the payment except an unsigned schedule. In addition, the purpose of the journey and authorization for use of thirty-three (33) Police Officers was not explained.

Consequently, validity of the propriety and validity of the expenditure of Kshs.4, 092,000 could not be confirmed.

#### **Management Response**

We have attached a request for approval memo and list of security officers paid through bank.

#### **Committee's Observation and Recommendation**

The Committee noted that the approval of the high number of officers who accompanied the Governor and their roles were not been stated.

The Committee Recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.



### **3. Unsupported Expenditures**

#### **3.3.1. Goods procured for Vocational Training Centers and Youth Groups**

Examination of records availed for audit revealed that goods amounting to Kshs.59, 560,243 were procured and issued to various vocational training centers, youth groups and other institutions. However, distribution records including schedules showing the names of the institutions and groups, which received the goods, were not provided for audit verification. Further, registration certificates of the beneficiary groups and institutions were not availed for confirmation.

#### **Management Response**

The distribution schedules for the procured goods and the registration certificates of the beneficiary groups are hereby attached the same has been provided to the auditors for verification. See Appendix 3

#### **Committee's Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.3.2. Research Feasibility Study**

Examination of records maintained by the Department of Urban Policy and Research shows expenditure totaling to Kshs.24,518,410 for the year ended 30 June,2019 towards Research and feasibility study for four (4) World Bank Funded Projects implemented through the Ministry of Transport and Infrastructure, Housing & Urban Development under the Nairobi Metropolitan Services Improvement Project (NAMSIP) to offer consultancy services on Railway City Development, Eastland's Urban Renewal Project, SGR Embakasi Area Study and Physical Address for the City.

No contract documents were availed for audit review to establish the role and the responsibilities of the donor and the Implementing Agencies.

#### **Management Response**

The four (4) World Bank Funded Projects implemented through the Ministry of Transport and Infrastructure, Housing & Urban Development under the Nairobi Metropolitan Services Improvement Project (NAMSIP) to offer consultancy services on Railway City Development, Eastland's Urban Renewal Project, SGR Embakasi Area Study and Physical Address for the City. Further, the county in this case was a beneficiary of World Bank funded projects. The implementation of the above project was through the above-mentioned government entities and as such all documents are the custody of Ministry of Transport and Infrastructure, Housing & Urban Development. The projects were completed.



### **Committee's Observation and Recommendation**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **3.3.3. Unsupported Legal Fees**

During the year under review, the County Executive made large payments as legal fee totaling to Kshs.595, 075,247 to various legal firms who offered legal services to the County. However, Management did not avail documents such as nature of disputes, approvals for procurement of professional services records, record of services rendered and contract agreements for audit review.

### **Management Response**

On the issue of approvals for procurement of professional services and contract agreements, their response was as follows:

#### **Procurement of law firms**

On the procurement method used to identify the Law firm, this is done through the normal procurement process by prequalification of Legal Service providers.

However, owing to the unique nature of the legal services, it is impractical to procure the services of an Advocate on case-by-case basis. Advocates or law firms are not allowed to participate in any bidding process relating to public procurement for legal services, especially where price competition is involved. They cannot be selected on the basis of fees to be charged for the legal services sought because the charging of legal fees follows the Advocates Act, the Advocates (Remuneration) Order, the Advocates (Practice) Rules, and the Advocates (Marketing and Advertising) Rules.

The pre-qualification procedure or registration process to obtain a panel of law firms or advocates that can be engaged by a procuring public entity in the provision of the needed legal services would be sufficient, hence no further requirement for a bidding process.

In addition, Section 5(1) of the Public Procurement and Assets Disposals Act of 2015 (PPAD ACT) states, "This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and asset disposal except in cases



where procurement of professional services is governed by an Act of parliament applicable for such services”.

In Civil suit number 499 of 2010, Thiong’o Njiri and 81 others Vs the Municipal Council of Kiambu and 1 other (Kalpana Rawal J.) the judge ruled “in my considered view, the inclusion of service of an Advocate to be procured by advertising and the procurement process could and does involve the breach of the provisions of the Advocates Act, the Advocates Remuneration Order as well as Advocates Practice rules. I do wonder how an advocate could bid to tender for legal service simpliciter. How an advocate could place the economic provision for legal services in the tender without claim, value or nature of claim being specified. The legal charges shall vary according to each case, which the local authorities might file or defend. Inviting a bid for legal services per se goes against the spirit and the purport of the advocates Act which is a specific Act and prior in time”

Therefore, the Office of the County Attorney when seeking legal services choose from a list of pre-selected legal services providers (that is, a list of law firms or advocates) on its panel, paying attention to expertise, fairness, rotation, and professional skills, and not the fees to be charged.

#### **Agreements / valid contracts**

On the question of agreements, the law in Section 46 of the Advocates Act which governs the legal profession forbids advocates from entering into certain agreements with their clients and even goes ahead to invalidate such agreements. However, there are Formal Instruction Letters, which are issued to the legal service providers, and are binding.

It is worth noting that, Section 36 of the Advocates Act prohibits advocates from undercutting (charging remuneration below that which is prescribed) under the order, such undercutting is an offence under the Act.

Advocates Practice rules also forbids advocates from charging fees in contravention of the Advocates remuneration order and from engaging in unfair practices to obtain clients Rule 2 of the rules prohibits touting or advertising to attract business, similarly Rule 3 prohibits advocates from holding out directly or indirectly as being prepared to charge professional fees at less than the Advocates remuneration scales laid down by the Advocates Remuneration Order.

Whether or not there is a written legal services agreement or agreement on fees, the Advocates (Remuneration) Order sets the minimum fees to be charged for the provision of a variety of legal



services by the advocates. Advocates are restricted from charging fees below the minimum fees set out under the Advocates (Remuneration) Order.

Beyond the minimum fees set out under the Advocates (Remuneration) Order, the legal fees charged are determined by the value of the subject matter involved, the complexity of the legal issues involved, the length of litigation, the interest of the parties, the level of the court in which the litigation is taking place, and the expertise and particular skill-set of the advocate.

### **Nature of Disputes and Record of Services Rendered**

The nature of disputes and record of services rendered by the respective advocates who were paid during the period under review are contained and summarized as herein below: -

#### **Legal fees Ksh. 595,075,247**

For the audit query, the auditor is querying the payment of Kshs 595,075,247. The schedule of firms that were paid within the year under review as listed below;

- Munikah & Co. Advocates -250,000,000
- Ataka Kimori & CO. Advocates – 16,733,000
- Abdullahi Gitari & Odhiambo – 34,005,400
- Kwanga Mboya & Advocates- 80,000,000
- J.O Magolo & Co. Advocates-10,000,000
- Miller & Co. Advocates – 92,800,000
- Musyoki Mogaka – 68,000,000
- Koceyo & Co. Advocates – 25,606,000

The following is our responses on the above specific law firms on the payments relating to the above law firms during the period under review.

### **HC MISC CIVIL ADVOCATES -VS- NAIROBI CITY COUNTY**

The law firm of Munikah & Co. Advocates was given instructions by the City council of Nairobi to study a schedule of rates levies and balance due for settlement by the Commissioner of lands from the year 1982 to 2001 and advise the council on the process of recovery.

Through a letter dated 20<sup>th</sup> February 2002, the County instructed the firm of Munikah & Co. Advocates to initiate recovery proceedings for Kshs. 1,473,338,860.00 together with costs and interests. The



council undertook to reimburse all disbursements incurred and pay legal fees per scale. Through a letter dated 2<sup>nd</sup> May 2003 the Council further instructed the said law firm to proceed and prosecute the case filed in Court.

The law firm filed suit no. RMCC 2 of 2003 that was amended regularly to reflect the amount outstanding in every stage. The amendment on records was on 30 July 2015 in which the County then was claiming Kshs 2,089,170,092.05 with interest at 3% and the cost of the suit.

The Council failed to pay legal fees and reimburse the disbursements to the law firm leading to filing of **Misc. Application No. 247 of 2011 Munikah & Co. Advocates vs. City Council of Nairobi**

Owing to the County failure to pay legal fees to the firm of Munikah & Co. Advocates, the firm proceeded to tax the legal fees under Taxation cause number 247 of 2011 issued on 7<sup>th</sup> August 2012 in which the court awarded **Kshs 498,757,315.28** with interests at the court rates.

The payment of Kshs **250,000,000** was part of the payment.

All the relevant supporting documents are as per **Annexure 1** herein.

#### **HC ELC NO 449 OF 2018 JORETH LIMITED VS NAIROBI CITY COUNTY & OTHERS**

The payment was made to the firm of AKO Advocates because of representing the County Government in the case of **ELC 449 of 2018**.

The law firm of AKO Advocates acted in the matter and that the County Government was sued alongside Nairobi City Water and Sewerage Co. Ltd and Athi water Service Board.

The suit was for breach of contract whereby the plaintiff alleged that the County Government had breached a contract between itself and the County Government for the purchase of the suit property being LR Nairobi 12422/3.

AKO advocates were instructed in the matter vide letter Ref LA/J/736/18. The Advocates filed a notice of appointment dated 23<sup>rd</sup> November 2018. They also filed a Memorandum of appearance dated 28<sup>th</sup> November 2018 and filed in court on 30<sup>th</sup> November 2018

On 25<sup>th</sup> March 2019 AKO advocates filed a replying affidavit to the plaintiff's application and a preliminary objection to the entire suit. The hearing of the application and Preliminary Objection proceeded on 21<sup>st</sup> May 2019. On 23<sup>rd</sup> July 2019, the Court upheld the preliminary objection that was filed by the firm of the advocates and the plaintiff's suit was dismissed in favor of the county.



The advocate submitted a fee note of Kshs 41,810,000, which was assessed at Kshs 16,733,000 in accordance with the Advocates Remuneration Order.

All the relevant supporting documents are as per **Annexure 2** herein.

**ELC JR NO.20 OF 2018 GIDJOY INVESTMENTS LTD-VS -NAIROBI CITY COUNTY & OTHERS**

The applicants in this case sued the County, the National Land Commission, and the Chief Land Registrar for unlawfully denying it private possession of its property.

The applicant claims to be the owner of the registered properties/Land namely, Nairobi/Block 82/7813, 82/7816, 82/7817, 82/7818, 82/7819, 82/7820, 82/7821, 82/7822, 82/7823, 82/7824, 82/7825, 82/7826, 82/7827, 82/782, 82/7855

The applicant enjoined the county in the suit and the reliefs sought are against the respondent jointly.

The Firm of Abdullahi Gitari & Odhiambo were instructed to take up the conduct in the matter on 5<sup>th</sup> April 2018 via letter reference LA/DDLA/VAO/326/E/2018. They filed their Notice of Appointment on 9<sup>th</sup> April 2018.

The matter is complex as it involves 15 number of properties. The submitted a fee note on 21<sup>st</sup> June 2018 of 34,005,400 which was assessed, verified and upheld as per as per the Remuneration Order. The matter was dismissed and each party ordered to bear their own costs.

All the relevant supporting documents are as per **Annexure 3** herein.

**CONSTITUTIONAL PETITION NO.218 OF 2018 MUSA YEGO CHELELGO – VS-NAIROBI CITY COUNTY**

The petitioner in this case was seeking a declaration that his rights to the quiet enjoyment of this properties being plot no. C44 and C63 Kariobangi South KCC Village have been violated.

He further claimed for special damages of Kshs 120,000,000 as well as general damages.

The petitioner alleged that on the 17<sup>th</sup> day of November 2017 the County officials unlawfully entered the petitioners plot by use of force and proceeded to demolish the development that the petitioner had erected therein.

Instructions were given to the Firm of Kwanga Mboya & Co. Advocates on 16<sup>th</sup> July 2018 via a letter reference NCC/CA/LK/120/E/18. The matter being a constitutional petition seeking compensation



and damages and considering the nature of the claim, our advocates advised that the county had no chance of success and therefore advised on an out of court settlement.

The County attorney forwarded the legal opinion of our advocates to the County executive member in charge of lands through memo dated 3<sup>rd</sup> June 2019 and the parties recorded a consent that judgement be entered for the petitioner against the respondent in the sum of Kshs. 80,000,000 and the matter be marked as settled.

The payment to Kwanga Mboya & Co. Advocates of Kshs. **80,000,000** was a payment to the petitioners through our Advocates on arrangement with the advocate for the petitioner M/s Okoth & Kiplagat Advocates.

All the relevant supporting documents are as per **Annexure 4** herein.

**ELC MISC NO.134 OF 2018 SCORPION PROPERTY LTD -VS- DIRECTOR PLANNING COMPLIANCE & ENFORCEMENT & NCC**

The applicant in this matter was seeking orders barring the County from demolishing the structures on the parcel of land known as Nairobi/Block 91/56 Gigiri and Orders of certiorari, prohibition and declaratory rights.

The matter involves a parcel of land in which the County is claiming to be public land whereby the county intended to construct a fire substation.

The Firm was instructed to take up the matter on 18<sup>th</sup> October 2018 via a letter reference number LA/S/408/18. The law firm sent in their fee note of Kshs. 18,710,800 on 22<sup>nd</sup> October 2018, which was assessed at Kshs. 12,635,774.24, but only Kshs 10,000,000.00 was paid.

The matter was dismissed in favor of the county on 19<sup>th</sup> November 2020.

All the relevant supporting documents are as per **Annexure 5** herein.

**ELC NO. 514 OF 2018 MOSIARA TRADING COMPANY -VS-NAIROBI CITY COUNTY**

The plaintiff in this matter alleged that it was granted conditional approval to construct on plot no. LR 209/12227 along Ngong Rivers. The County later demolished the plaintiff's property.

The plaintiff sought judgement for a total of **Kshs. 75,317,823,471**

The advocate was instructed to take up the matter on 14<sup>th</sup> December 2018 vide letter ref: LA/M/687/18. The Advocate filed memorandum of appearance, on 17<sup>th</sup> December 2018



They subsequently filed a defense on the 18<sup>th</sup> of January 2019 and the application to amend the defence on 3<sup>rd</sup> April 2019. They kept the County posted on all developments.

The Firm of Miller & Co. raised a fee note of **Kshs. 1,360,367,001.16** which was assessed at **Kshs. 624,990,060.98** via letter referenced LA/M/687/18. The advocates were paid a total of **Kshs. 92,800,000** as part of the assessed legal fees.

All the relevant supporting documents are as per **Annexure 6** herein.

**NAIROBI HIGH COURT JUDICIAL REVIEW CASE NO.234 OF 2017 MUSYOKI MOGAKA CO. ADVOCATES -VS- THE TREASURER NAIROBI CITY COUNTY & 2 OTHERS**

The genesis of these judicial review proceedings began on instructions given on 31/7/14 via the County's letter dated 16/7/14 instructing the firm of Musyoka Mogaka & Co. Advocates to recover rates to the tune of **1,922,187,735.00**.

They wrote demand letters to the defaulters and when they failed to pay the rates, the firm commenced recovery proceedings through **Civil Suit No. 54 of 2014 Nairobi City County vs- Chief Engineer Kenya Railways Corporation and four others**.

On 27/2/18, the County Government entered into a tripartite agreement between Kenya Urban Roads Authority, Kenya Railways Staff Retirement Benefit Scheme and the Nairobi City County Government. The tripartite agreement was for the swapping of the debt with 5.4 acres excised from L.R NO. 209/6502/R Muthurwa Estate valued at one billion Eight hundred million shillings (1,800,000,000.) it was an express term in the said agreement that upon the execution of the agreement the scheme would give possession of the land to the county.

The County failed to pay the Advocates, which led them to file a Bill of costs being ELC Misc. 264 of 2016, Musyoki Mogaka & Co. Advocates Vs Nairobi City County.

By a ruling of Court delivered on 19/1/17, the bill of costs was allowed in the sum of Ksh. **83,767,996.51** together with interests. The final payment of 68,000,000 was part of the decretal amount.

On 15/3/17, Justice Eboso entered judgment against the county together with interest at the rate of 14 % per annum from 19/1/2017.

Since the county did not certify the judgment, they extracted the decree of the court and commenced execution proceedings against the county via Nairobi High Court Judicial review case no. 234 of 2017 Musyoki Mogaka & Co. Advocates Vs. The Treasurer Nairobi City County and two others.



All the relevant supporting documents are as per **Annexure 7** herein.

### **HC ELC APPEAL NO. 22 OF 2017 ELECTRICAL MARKETING LTD -VS- NAIROBI CITY COUNTY & OTHERS**

The appellant claimed to be the owner of property known as LR 209/8325 Situated along Dunga Road Nairobi.

He alleges that the respondents sold the property irregularly. The appellant sought an order of preservation of the suit property. The appellant further sought compensation of the value of the property.

The County appointed the firm of Koceyo & Co. Advocates to defend its interest in the appeal on 29<sup>th</sup> June 2017 via a letter reference number LA/RC/805/2011.

The firm submitted a fee note dated 16<sup>th</sup> August 2017 seeking a total of Kshs, 300,050,000 as final legal fees basing it on the value of the property in which they relied on the applicant's claim of Kshs 1 billion.

Initially the amount had been assessed at Kshs. 35,093,600 which was accepted by the Advocates vide letter dated 25<sup>th</sup> August 2017. It was later negotiated downwards to Kshs. 25,607,000.

The bill was verified in accordance with the Advocates Remuneration Order.

All the relevant supporting documents are as per **Annexure 8**

#### **Committee's Observation and Recommendation**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.3.4. Hire of Labour for Flood Mitigation**

During the year under review, the County Executive paid Kshs.8,264,400 through the Nairobi County Operation Account to Nairobi City County for flood mitigation services as shown below: -

Cadre	No. Hired	Days	Rate Per Day (Kshs.)	Total (Kshs.)
Laborers	200	60	500	6,000,000



Supervisors Grade 1 trade tested	20	60	1,215	1,458,000
Ungraded tradesmen (Artisans)	20	60	672	806,400
<b>Total</b>				<b>8,264,400</b>

Management did not provide duly signed and approved list of beneficiaries and the evidence of recruitment of casuals, artisans and supervisors. The daily attendance registers and a summary of calculated amounts paid to each worker was not availed. Further, no indication of work done in terms of opening up and maintaining drains at sub-county levels as stated in the request to incur expenditure was provided.

In these circumstances, the accuracy, completeness and validity of the expenditure reflected in the statements of receipts and payments for the year ended 30<sup>th</sup> June, 2019 could not be confirmed.

#### **Management Response**

We have attached evidence on recruitment, attendance registers and summary of calculated amounts paid to workers. (appendix10) the same has been provided to the Auditors for verification

#### **Committee's Observation and Recommendation**

The Committee noted that the memo from the Chief Officer to the Ag. County Secretary dated 15/3/2018 requesting for hire of casuals was provided for verification.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **4. Cash and Cash Equivalents**

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.3, 302,211,934 as at 30<sup>th</sup> June, 2019. However, the following anomalies were noted;

##### **3.4.1 Unaccounted for Cash Withdrawals**

As reported in 2017/2018, the County Executive withdrew Kshs.206, 385,752 and Kshs.3, 000,000 from Supreme Business and Current Accounts at Equity Bank Account and Nairobi City County Trust Account at KCB Bank respectively for unspecified payments, which were not supported by appropriate authority, documentation and pre-numbered payment vouchers. Similarly, during the year under review, the Management made further withdrawals amounting to Kshs.249, 798,128 from Cooperative Bank Account but no supporting documents were provided.

#### **Management Response**

The county government operated an imprest system managed by the County chief cashier who withdrew cash, made payments and accounted for funds given before being reimbursed.



It is unfortunate that the County Treasury delayed in providing documentation and payment vouchers in support of the said expenditure. This was occasioned by suspension of Treasury officers responsible for coordinating issuance of requested documents and the fact that some of the documents had been forwarded for scrutiny by investigative agencies.

Approved, serialized supporting documentation for imprests issued to County Cashier been submitted for audit verification.

The Kshs. 3,000,000.00 was withdrawn by County officer who was responsible for managing cash bail refunds for clients who had deposited their cash bail to our Nairobi City County Trust Account at KCB Bank, Account No. 1149229667 and who, after court judgment, were refunded their deposits from cash withdrawn by the said cashier.

Provided are payments vouchers for requesting for refunds with supporting bail receipts, court judgment and court payment summary sheets to the auditors.

The issue was resolved in the report of Nairobi County Assembly Public Accounts Committee on the consideration of the Report of the Auditor General on the Financial Statements of Nairobi City County Executive for the year ended 30<sup>th</sup> June, 2018.

#### **Committee's Observation and Recommendation**

The Committee noted the failure of the County Executive to submit documents on time to the Auditor General.

- The Committee therefore recommends that the accounting officer undertakes administrative actions against the officers who failed to provide the documents to the auditors in accordance with section 156(1) of the Public Finance Management Act and provides a status report to the Committee within 60 days from the adoption of this report.
- The management was in breach of law pursuant to section 198 of the PFM Act 2012 for failure to provide documents required by the auditors, therefore the Committee recommends EACC to do further investigation on the CECM for Finance and Economic Planning and give a report to the Assembly within ninety days after the adoption of the report.

#### **3.4.2 Failure to prepare Bank Reconciliation Statements**

As disclosed in Note 15 to the financial statements, the statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.3, 302,211,934 as at 30<sup>th</sup> June, 2019. However, thirty-four (34) bank accounts balances had not been supported by bank reconciliations, bank certificates and Board of Survey reports. No satisfactory explanation was provided for the omission.



### **Management Response**

The board of Survey / certificate of bank balances and bank reconciliation for active bank accounts has been provided. APPENDIX 4. The same has been provided to the Auditors for verification.

### **Committee's Observation and Recommendation**

The Committee noted that part evidence was provided for only five (5) Bank accounts. The Committee further noted that bank certificates and Board of Survey reports were not provided for verification.

The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **3.4.3 Overdrawn Account**

As previously reported, the County Executive's Current Account held at the Kenya Commercial Bank was overdrawn by Kshs.3, 794,555 on 30 June, 2018. During the year under review, the same account was overdrawn by Kshs.542, 465 as at 30 June, 2019. No documentary evidence has been availed for audit review to confirm prior approval of the overdraft by the County Treasury or Board of the County Government as required under Section 119 (4) of Public Finance Management Act, 2012.

### **Management Response**

The above amounts of Kshs.3, 794,555 on 30 June 2018 and Kshs.542, 465 as at 30 June, 2019 relates to interest accrued on the loan from Kenya Commercial Bank by defunct Nairobi City Council. The loan is still outstanding as a result of financial challenges being experienced by Nairobi City County Government. However, the county government is in the process of coming up with a payment plan to settle all its pending bills.

### **Committee's Observation and Recommendation**

The Committee noted that the Management clarified that it was not an overdraft however, the charges continued to accrue and the documents to support accruals was not provided for audit review.

The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.



#### **3.4.4 Unpresented Cheques**

Bank reconciliation statements presented in respect of the development account held at the Central Bank of Kenya revealed unpresented cheques totaling Kshs.1, 015,111,741. However, the dates when the cheques were drawn were not indicated and therefore it was not possible to confirm the status of the cheques or how many cheques may have become stale as at 30<sup>th</sup> June, 2019.

#### **Management Response**

The issue of unpresented cheques was an error by our bank reconciliation unit. The accounts in Central Bank of Kenya (CBK) does not have cheques books. Receipts and Payments to and from a CBK account are effected electronically through internet banking (IB).

#### **Committee's Observation and Recommendation**

The Committee noted that the Management explained the anomaly.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.4.5 Undisclosed Bank Accounts**

Available information indicates that during the year under review, the County Executive operated forty-one (41) bank accounts. However, one bank account with a closing balance of Kshs.7, 418,793 as at 30<sup>th</sup> June, 2019 was omitted in the financial statements. Another bank account under the name - Waithaka Technical Bank account held at Cooperative Bank had a balance of Kshs.578, 413. However, the list of bank accounts availed for audit reflects a different account number with a balance of Kshs.97, 173. It could not be confirmed if Management was operating a parallel account, which had not been disclosed.

Further, examination of records indicates that the County Executive had operated five bank accounts currently referred to as either closed or dormant at various commercial banks. However, bank confirmation of the status of these accounts as the Management did not availed supporting documents for audit review.

In addition, analysis of the revenue account held at Cooperative Bank revealed cash deposits transactions that had been reversed amounting to Kshs.3, 229,341.

In view of the above, it has not been possible to confirm that the cash and cash equivalents balance of Kshs.3,302,211,934 as at 30<sup>th</sup> June, 2019 is fairly stated.

#### **Management Response**

The omission of the above-mentioned bank accounts was not deliberate but an error, which has been rectified in the subsequent financial statements.



Reversals happen when there is an error with cashier in posting or clients giving the wrong details. The county has developed procedures and approvals to allow reversals and therefore any reversal has to be approved.

#### **Committee's Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **5. Emphasis of matter**

##### **3.5.1. Repayment of Principal on Domestic Lending and on-Lending**

During the year under review, statement of receipts and payments reflects nil balance against a comparative expenditure of Kshs.868, 192,719 being repayment of principal on domestic lending and on-lending facilities. Information available indicates that the bank overdraft was acquired in October 2014. However, the loan agreement and contractual documents detailing terms and conditions of the loan were not provided for audit review.

Available records indicate that, through approval from the Minister of Local Government dated 1<sup>st</sup> April, 2011, the defunct Nairobi City Council had secured a loan of Kshs.5,000,000,000 from Equity Bank of Kenya Limited. By 24<sup>th</sup> March, 2014, the outstanding balance had decreased to Kshs.3,366,696,209 but no loan statements from the bank was provided to confirm the correctness of the balance.

The loan was refinanced by the Kenya Commercial Bank, as per deed of variation of the term of loan facility between Nairobi City County Executive and Kenya Commercial Bank Limited. Based on the loan statement from Kenya Commercial Bank dated 31<sup>st</sup> July 2019, the County Government of Nairobi City has not been servicing the loan, as a result of which the loan has risen to Kshs.4, 310,087,246 due to capitalized penalties and interest charged amounting to Kshs.943, 391,037. It has not been explained why the loan is not being serviced leading to the avoidable interest and penalty charges.

Opinion is not modified in respect of this matter.

#### **Management Response**

The management has provided the following copies of documents: -

- a. Schedules of loan repayments from KCB Bank Ltd.

Deed of assignment between Nairobi City County, Equity Bank and Kenya Commercial Bank dated 10th September 2014. See attached evidence Appendix 5

The loan of Kshs.4, 310,087,246 is due to capitalized penalties and interest charged amounting to Kshs.943, 391,037 is outstanding as a result of financial challenges being experienced by Nairobi County Government towards settling the loan. However, the county government is in the process of coming up with a payment plan.



- b. A loan statement from Equity Bank has been provided in Appendix 5.

#### **Committee's Observation and Recommendation**

The Committee noted that the Loan agreement and contract documents was not provided. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **6. Other Matter**

##### **3.6.1 Budgetary Control and Performance**

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.33,264,851,538 and Kshs.27,859,452,390 respectively resulting to an underfunding of Kshs.5,485,399,148 or 16% of the budget. Similarly, the County Executive expended Kshs.26,462,991,761 against an approved budget of Kshs.33,264,851,538 resulting to an underexpenditure of Kshs.6,801,859,777 or about 21% of the approved budget. The underfunding and underperformance affected the planned activities and may have affected negatively on service delivery to the public.

The County Executive may not have achieved its targeted objectives, as target revenue was not collected.

#### **Management Response**

The under expenditure is correlated with under performance in own source revenue collection. The county is implementing own source revenue enhancement strategies including operationalization of Nairobi Revenue Administration Act, 2021.

#### **Committee's Observation and Recommendation**

The Committee noted that the County Government had carried out poor budgeting and there was weakness in control of budget performance. The Committee also observed that underutilization of the county approved budget was mainly due to not meeting the revenue targets.

The Committee recommends -

- i. that the National Treasury should adhere to the cash disbursement schedule on the release of funds to County Government as approved by the Senate;
- ii. that the County Executive should put in place measures to improve their local revenue collection capacity in order to meet their revenue collections target; and
- iii. The County Government should strictly adhere to the budget ceilings for development and recurrent expenditure as stipulated by CARA.



### **3.6.2 Pending Bills**

As disclosed under other important disclosures to the financial statements, the accounts payables (pending bills) amounting to Kshs.70, 651,898,417 had not been settled as at 30<sup>th</sup> June, 2019. Management has not explained why the bills were not settled during the year. However, age analysis of the bills had not been disclosed in the financial statements.

Further as disclosed at Annex 3 of the financial statements, other pending payables constitutes an amount of Kshs.15,328,285,000 and Kshs.3,815,640,000 for government guaranteed loans and on-lent water loans (foreign loans) respectively. However, original loan agreements and other supporting documents were not availed for audit review.

Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

#### **Management Response**

The Pending Bills have accumulated over a number of years as per attached age analysis schedule. These bills were audited through a special audit by the Office of the Auditor General in the year 2019 and a report produced.

The loan agreement was between Nairobi City Council and World Bank and guaranteed by the National Treasury for development of houses and water infrastructure. The County government has engaged the National Treasury regarding resolving these guaranteed loans.

#### **Committee's Observation and Recommendation**

The Committee observed that the County Executive did not prioritize the payment of the pending bills despite reporting surplus operating balances.

The Committee recommends-

- i. That the County Executive should make adequate efforts to pay the outstanding county pending bills as a first charge; and
- ii. That the Auditor General to closely monitor the status of the county pending bills.

### **3.6.3 Prior year matters**

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, although the Management has indicated that the issues have been responded to, the matters have remained unresolved, as the Senate and the County Assembly have not deliberated on the issues.



### **Management Response**

The previous audit reports are currently being considered by Public Accounts Committees of the County Assembly and the Senate.

### **Committee's Observation and Recommendation**

The Committee noted that the prior year matters have not been resolved.

The Committee recommends that the County Executive should continuously engage the Office of the Auditor-General and other relevant government entities to resolve outstanding audit matters.

## **7. Report On Lawfulness and Effectiveness in Use of Public Resources**

### **3.7.1 Non-compliance with the Public Sector Accounting Standards Board**

The financial statements presented for audit review did not include information as required in the format prescribed by the Public Sector Accounting Standards Board (PSASB) in that the financial statements prepared by the County Executive shows budget execution by programmes and sub-programmes which differs with the format prescribed by the Public Sector Accounting Standards Board and is hence contrary to Regulation 101 (1), (3), and (4) of the Public Finance Management (County Governments) Regulations, 2015.

### **Management Response**

The County Executive is currently preparing financial statements as per the template issued by Public Sector Accounting Standards Board.

### **Committee's Observation and Recommendation**

The Committee noted that the management fail to comply with the Template from the Public Accounts Standards Board

The Committee recommends that the County Executive should continuously engage the Office of the Auditor-General and other relevant government entities to resolve outstanding audit matters.

### **3.7.2 Late Submission of Financial Statements**

The financial statements of the County Executive of Nairobi City were submitted on 1 November, 2019 to the Auditor-General, being one month after the statutory deadline of 30 September, 2019 contrary to Section 84(3) of the Public Finance Management Act, 2012 which requires submission of the financial statements to the Auditor-General not later than three months after the end of the financial year. Consequently, the County Executive Management was in breach of the law.



### **Management Response**

The delay in submission of the financial statements FY 2018-2019 was due to management changes in the County. Whereas the Financial Statements were prepared and signed by the Chief Officer Finance and Head of County Treasury (Accounting) on 27th September 2019, they were received by the Office of Auditor General on 1st November 2019. This late submission was occasioned by the following factors;

1. The suspension of the officer holder (CECM-Finance and Economic planning in September 2019.
2. The Gazettment of the CECM-Finance that was done after 30th September 2019.

The Public Finance Management Act section 164 (4) provides that the Financial Statements for the County Government shall be consolidated and submitted by the County Treasury not later than three months after end of every financial year. The CECM-Finance is the overall Head of County Treasury. The Public Finance Management Act section 102 (2) provides the composition of the County Treasury.

### **Committee's Observation and Recommendation**

The Committee noted that the management failed to submit the Financial Statements.

The Committee recommends that the County Executive should continuously engage the Office of the Auditor-General and other relevant government entities to resolve outstanding audit matters.

#### **3.7.3 Irregular Transfer from County Revenue Collection Accounts**

Examination of the bank statements from Cooperative Bank Account revealed that an amount of Kshs.132,920,916 was withdrawn from the revenue account, but was not credited to the County Revenue Fund Account at Central Bank contrary to Regulation, 63(1) and 109(1), (2) and (6) of the Public Finance Management (County Governments) Regulations, 2015. No explanation was provided why the funds withdrawn from the Revenue Account had no corresponding credit to the County Revenue Fund at Central Bank of Kenya.

In the circumstances, the County Executive was in breach of the law.

### **Management Response**

The transactions noted in the report were credited in the C.R.F account in C.B.K as detailed below and supported by attached extract of the C.B.K Bank Statement: -



Dates debited by Co-operative Bank	Date Credited in C.R.F Account (C.B.K)	Actual Amount debited from Co-op bank	Total Amount credited in C.R.F account
29/06/2019	02/07/2019	2,156,209	2,156,209
28/06/2019	02/07/2019	14,618,704	14,618,704
12/04/2019	-	79,984,925	0
18/02/2019	19/02/2019	36,161,078	31,642,578
TOTAL		132,920,916	48,417,491

The Management has forwarded the supporting schedules to confirm the above transactions and is in the process of following up with C.B.K and reconcile on the above amount debited from Co-operative bank but not shown in C.R.F account. The management will give a comprehensive status upon verification from the Cooperative Bank of Kenya.

#### **Committee's Observation and Recommendation**

The Committee noted that no evidence has been provided for a balance was not transferred, further the money directly withdrawn from the revenue account.

The Committee recommend that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.4 Non-Compliance with Law on Ethnic Composition**

During the year under review, the total number of employees of County Executive was 11,926 members out of which 5,496 employees representing 46% of the total work force were from one ethnic community contrary to Section 7(1) and (2) of the National Cohesion and Integration Act, 2008 which states that, "all public offices shall seek to represent the diversity of the people of Kenya in employment of staff and that no public institution shall have more than one third of its staff establishment from the same ethnic community".

In the circumstances, the County is in breach of the law.

#### **Management Response**

Employees of Nairobi City County are classified into four categories:

- i. Staffs inherited from the Defunct Nairobi City Council
- ii. Staffs devolved from National Government
- iii. Staffs employed by the County Public Service Board
- iv. County Executive Committee members



From the above, the County has no control on composition of staff inherited from former City Council, as these are staff employed over 20 years ago even before the enactment of national Cohesion and Integration Act 2008. This law cannot therefore be applied retrospectively.

#### **Committee's Observation and Recommendation**

The Committee observed that there was no ethnic diversity among the county executive employees.

The Committee recommends that: -

- i. County should work progressively towards attaining the requirement of the provisions of Section 65(1) (e) of County Government Act on ethnic inclusivity.
- ii. The County Executive and CPSB should give a work plan on how they will ensure compliance is achieved, to the Auditor General within sixty (60) days from the adoption of this report.

#### **3.7.5 Non-Compliance with the One Third of Basic Salary Rule**

During the year ended 30<sup>th</sup> June, 2019, seventy-three (73) employees earned a net salary of less than a third ( $1/3$ ) of their basic salary contrary to Section 19(3) of the Employment Act, 2007 and Section C.1 (3) of the Public Service Commission (PSC) Human Resource Policies, 2016. The Management has not given explanation for failure to comply with the policy.

Further, examination of documents provided for audit verification revealed that as at 30 June, 2019, two hundred and ten (210) retirees had not received their terminal dues totalling to Kshs.48,534,805 contrary to Section (5) of the Employment Act of 2011. Reasons for stopping these payments were not provided. In the circumstances, Management is therefore in breach of law.

#### **Management Response**

Employment Act section 19 (3) states: Without prejudice to any right of recovery of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection (1), may be made by an employer from the wages of his employee at any one time shall not exceed two-thirds of such wages or such additional or other amount as may be prescribed by the Minister either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.

From the above clause it does not prevent employer recovering any debt due from an employee and the IPPD system has been programmed in such a such a way it gives priority to recovery of Government debt and statutory deductions under the following circumstances: -

- 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 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 retiring during the month yet their existed deductions that were running.
- Where deduction data are affected under mass updated for instance when effecting increase of share contributions.
- Where an existing earning is stopped without corresponding stoppage of deductions
- Where an officer has been awarded tax exemption status due to disability by Kenya Revenue Authority and that exemption lapses and which is normally issued for a period of five (5) years yet that officer had already committed the savings resulting from being granted tax exemption status.

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 officer earning below a third of basic. However, these are temporary situations and in most cases are one-off occurrences and it is a form of punishment to ensure that staff conducts their duties according to the laid down regulations. Further, a list of 73 staffs and the reason for earning below a third of basic is provided for review.

#### **Committee's Observation and Recommendation**

The Committee noted that a Memo from county treasury dated 18 September 2018 Ref FIN/3/6/2018/IMP gave instructions to recover outstanding imprests for FY 2017/18

The Committee observed that some of the County staff were earning less than a third of their basic pay.

The Committee recommends that the county should configure their IPPD system in a way to lock out commitments beyond the accepted thresholds.

The Committee further recommends that the Auditor General should continue monitoring the issue in subsequent financial years.



### 3.7.6 Procurement of Goods and Services Using Imprest

Examination of records reveal that goods and services valued at Kshs.135, 331,639 were purchased and charged to imprest account No.53100001 for which no explanation was given contrary to Treasury Circular 3/2010 dated 7 May, 2010, Regulation 91 (1) of the Public Finance Management (County Governments) Regulations, 2015 and Regulation 107 (a) and (b) of the Public Finance Management (County Governments) Regulations, 2015.

In the circumstances, County executive was in breach of law

#### **Management Response**

The Nairobi City County issues under three types of imprests:

- a) Temporary imprest (safari) these are mainly issued for travel purposes and includes Air tickets, fueling of vehicles and ground transport
- b) Standing imprest-mainly issued for office tea, newspapers and minor office stationery supplies
- c) Special imprest- occasionally issued when there are emergencies or events, which cannot be handled through the normal procurement procedure.

In all the above cases, the Accounting officers or AIE holders in each sector approve establishment of an imprest facility including the maximum amount for the specific purposes.

Major component of the imprest issued are for travelling and minor office use.

- a. The IFMIS report in the appendix is inaccurate in the sense that there is a lot of duplication. (20%) of the total issued warrants as per the audit report. i.e. Capturing of the double entries, the prepayments and their respective the surrender entries. Note the surrenders amounting to Kshs. 7,627,850 (6%) were used to clear the imprest warrants.
- b. The threshold of khs.30, 000 has been applied in cases where imprest warrants were sought to purchase minor office items amounting to Ksh.4, 778,230 (3.5 %).
- c. There is minimal use of imprest on purchases and only unique or specialized materials for operational works were procured through imprest and due diligence was followed including proper authorization amounting to Ksh.10, 236,952 (7.5 %)

However, during the financial year under review, majority of prequalified suppliers declined to honor local purchase orders due to non-payment of pending bills and as such, few essential commodities like stationery had to be acquired through imprest warrants within the threshold for operation purposes. The following is the analysis of the total expenditure as per the appendix provided about the imprest audit report.



S/No.	Description	Amount	percentage	Remarks
1.	Duplication of entries as per the audit report	26,431,423	20	This does not constitute to actual expenditure rather repetition of similar transactions in the IFMIS report.
2.	Cancelled entries	20,318,374	15	The payments were ordinarily cancelled for various reasons and expenditures were never realized.
3.	Surrendered imprest warrants appearing as expenditures	7,627,850	6	This is the total amount of clearing imprest warrants reflected as actual expenditures in the report.
4.	Airtime costs	10,183,027	7.5	The management resulted to use of imprest warrants on all airtime expenditures. This was the only viable option. Note credit card is cash equivalent.
5.	Travelling costs	19,055,764	14	This is the standard procedure.
6.	Standing imprest	4,331,000	3	This is mainly issued for running normal office operations.
7.	Special events	32,369,019	24	This is occasionally issued when there are state/public functions, emergencies or events, which cannot be handled through the normal procurement procedures due their unique occurrence.
8.	Goods and services	4,778,230	3	The threshold of khs.30, 000 has been applied in this category where imprest warrants were sought to purchase minor office items
9.	Internal printing and repairs	10,236,952	7.5	The County operates a printing unit. The unit produces accountable documents for control purposes.
Total		135,331,639		



### **Committee's Observation and Recommendation**

The Committee observed that Ksh 25m was spent on air tickets, without any supporting documents. Members further noted that the imprest used to procure was goods above the set threshold in breach of procurement laws

The Committee recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.7 Failure to Prepare Fund Financial Statements**

As disclosed under Note 10 to the financial statements, the statement of receipts and payments for the year ended 30 June, 2019 reflects an expenditure of Kshs.509, 459,074 out of which an amount of Kshs.27, 384,680 and Kshs.402, 499,394 is in respect of Emergency Relief and Refugee Assistance Fund, and Scholarship and Other Educational Benefits Fund. Examination of records revealed that during the year, a total of Kshs.397, 656,594 was transferred to Nairobi City County Education Bursary Account in two tranches of Kshs.100, 156,594 and Kshs.297, 500,000. However, disbursement schedules showing beneficiary details and confirmations by bursary recipients were not provided for audit verification. However, the County Executive did not prepare the financial statements for the two funds contrary to Section 115(1) of the Public Finance Management Act, 2012, which recommends that once a Fund has been established, a County Government shall, not later than three months after the end of each financial year prepare and submit to the Auditor-General, financial statements for the Fund. In these circumstances, the County Executive was in breach of the law.

### **Management Response**

Emergency Relief and Refugee Assistance Fund, and Scholarship and Other Educational Benefits Fund have never been funds per se but line items in the budget. The expenditure relating to these two line items was incorporated in the annual financial statements for the county government.

### **Committee's Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.7.8 Unremitted Statutory Deductions**

The financial statements under Annex 3 reflects outstanding pending payables of Kshs.59,014,825,645 out of which Kshs.39,870,900,645 relates to statutory deductions which had not been remitted over a long period of time contrary to Regulation 22 (2) of the Public Finance Management (County Governments) Regulations, 2015. The unpaid statutory deductions continue to attract interest and penalties. No explanation was provided for failure to remit the statutory deductions.

The County Executive was therefore in breach of the law and it may attract more interest and penalties that are avoidable.



### **Management Response**

Nairobi City County Government inherited huge pending bills relating to statutory deductions from the defunct Nairobi City Council. Due to cash flow challenges and punitive penalties and interests, the county is unable to settle pending bills relating to statutory deductions. The county has been remitting all its current statutory deductions as and when they fall due. Attached pension schemes statement.

### **Committee's Observation and Recommendation**

The Committee observed that the Management did not provided status of unremitted statutory deductions.

The Committee recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.9 Compliance with Salaries and Remuneration Commission's Circulars**

Review of payments made to members of the committee on finalization of pending bills revealed that authorized payments was Kshs.5, 641,000. However, the actual amount paid was Kshs.16,483,500 resulting to an excess payment of Kshs.10,842,500 above Salaries and Remuneration Commission's authorized rate vide Ref: SRC/ADM/CIR/1/13/ (122) of 16 April, 2014.

Further, the County Executive paid employee's leave allowance of Kshs.233,079,350 against the actual entitlement of Kshs.23,476,000 resulting to excess payments of Kshs.209,603,350 more than the leave allowance entitlement contrary to SRC Circular Ref No. SRC/TS/TA/3/10(86) dated 19 November 2014. No proper explanation was provided for this anomaly.

In addition, verification of payroll data for the year under review revealed that the County Executive paid emergency call allowance of Kshs.156,184,286 against actual entitlement of Kshs.63,660,000 resulting to excess payments of Kshs.92,434,285 more than their emergency call allowance entitlement contrary to SRC Circular Ref. No. SRC/TS/CGOVT/3/61 Vol.III/ (136) dated 14 September 2015. No proper explanation was given for this anomaly.

In the circumstances, the County Executive was therefore in breach of the law.

### **Management Response**

Payments made to members of the committee on finalization of pending bills.

The Gazzetted member's allowances were reviewed upon examination of the scope of their work, which included -

- 1) The number of meetings held
- 2) Site visits to be undertaken
- 3) Risks involved such as security
- 4) The timelines set and scope of work based on the size of the organization.



These were petitioned to the executive to have their allowances enhanced that resulted in the rates being varied and the payments approved as per to the payment vouchers.

County Executive paid employee's leave allowance of Kshs. 233,079,350-This is paid to former local Authority Employees as per CBA 2012 Clause 22 (a). Copy provided Appendix 7

Emergency Call Allowance-This was paid as per guidelines from Ministry of Health circular Ref MOH/ADM/1/1/2 dated 17<sup>th</sup> March 2017.APPENDIX 7

#### **Committee's Observation and Recommendation**

The Committee observed that there was no approval for extra allowances, further could not explain leave allowance overpaid. No supporting documents were availed.

The Committee recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.10 Compliance with Public Finance Management (County Governments) Regulations 2015 - Wage Bill**

The statements of receipts and payments reflects an expenditure of Kshs.12,427,386,130 on compensation of employees representing 45% of the total receipts of Kshs.27,859,452,390. This is contrary to the provisions of Regulation, 25(1) (a) and (b) of the Public Finance Management (County Governments) Regulations, 2015 which limits a County Executive's expenditure on wages and benefits to not more than 35% of the total revenue for the year.

Further, the County Executive operated without an authorized staff establishment that would ensure efficient, quality and productive services for the people of the County, contrary to Section 55(b) and (c) of the County Government Act, 2012. Under the circumstances, staff were not managed, organized, posted and transferred in accordance with Article 235 of the Constitution of Kenya, 2010. The resultant effect was excess staff that translated to unsustainable huge wage bill.

Consequently, Management is in breach of the law.

#### **Management Response**

Notwithstanding the recommended threshold where compensation of employee should not exceed 35% of total County revenues this ratio has not been achieved due to the following reasons:

The County inherited an existing workforce of 11,303 with a monthly payroll cost of 773,460,017 as at December 2013. The staffs were employed under Defunct City Council and their terms and conditions of service were guided by a registered Collective Bargaining Agreement signed by the Defunct Councils and Kenya Local Government Workers Union. Following the Enactment of Constitution 2010 under schedule IV a further 3,430 staff who were performing the devolved functions were seconded to the County which added an additional payroll cost of Kshs 298,676,779 in January 2014. This therefore



increased the County Payroll cost to Kshs 1,067,662,015. According to County Government Act Section 138 which states: 138 (1) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is serving in a county on the date of the constitution of that county government shall be deemed to be in the service of the county government on secondment from National Government with their terms of service as at that date and—

- a. the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage; and
- b. the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal; and
- c. The officer's terms and conditions of service may be altered to office's advantage.

This therefore meant that the County had to absorb the staff as per their existing terms and conditions of service.

However, both County and National Government in conjunction with EY rolled out capacity assessment and rationalization programme, which 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%

Also in the medium term, the County 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 in the next five years. This will reduce payroll costs to around Kshs 10.5 billion by 2022. This will be within the threshold of 30% considering that revenues are expected to grow to over 37 billion over same period

Summary of cost savings from retirees for the next 3 Years

Year of retirement	No of retirees	Amount saved (Kshs)	Annual salary saved
2019-2020	169	17,725,123.75	212,701,485.00
2020-2021	388	28,779,804.00	345,357,648.00
2021-2022	403	32,014,195.50	384,170,346.00
2022 -2023	615	47,637,169.00	571,646,028.00

II) The County has reviewed the CARPS report and adopted the recommended staffing levels. Each Sector was directed to review their staffing needs and recommend optimal staffing levels by taking into consideration the existing work force, skills and functions and submit the same to County Public Service



Board for consideration. The County Public Service Board Vide their letter NCPSB/HRM/17/1/19 dated 8th November communicated the approved County Establishment for each Sector, which will now be used for future staff recruitment, deployments and budgeting. Attached please find letter from CPSB for your action.

#### **Committee's Observation and Recommendation**

The Committee observed that the County Executive's wage bill stood 45% of the County total receipts higher than 35% legal threshold. The Committee observed with concern high compensation to employees may reduce the fiscal space to undertake development activities for service delivery.

The Committee recommends that: -

- i. The County Executive to strictly adhere to the provision of the PFM Act, 2012 on the fiscal responsibilities on county government expenditure on wages and benefits; and
- ii. The Auditor General and the Controller of Budget to closely monitor the enforcement of the fiscal responsibilities principles by the County Treasury in managing county government finances.

#### **3.7.11 Compliance with the Public Finance Management Act, 2012**

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects payments for use of goods and services totaling Kshs.7, 169,537,245 during the year under review. However, examination of payment documents indicate that the Management made payments amounting to Kshs.273,443,929 through general suspense account contrary to Section 104(1)(i) of the Public Finance Management Act, 2012, which requires the County Treasury to ensure proper management and control of, and accounting for the finances of the County Executive.

Further, the Management made payments totalling Kshs.102, 781,501 in respect of foreign travel and subsistence out of which Kshs.9, 825,124 was irregularly paid to three county officers and two firms. However, payments were not supported by travel documents including visa, air-tickets, boarding passes, hotel bookings, program of the summit, contrary to Regulation 104 of the Public Finance Management (County Governments) Regulations, 2015.

In the circumstances, the County Executive was in breach of the law.

#### **Management Response**

The expenditure of Kshs. 273million related to imprest payments and emergencies in the County

The use of the suspense occurred due to urgent mandatory requirements to mitigate emergencies that occur in the county and cannot wait normal requisition. The County did not exceed the budgetary allocations in the financial year 2018-2019 arising from the entries.



The above payments were done pending the approval of the supplementary budget by the County Assembly, which was approved followed by appropriate act to formalize the same.

#### **Committee's Observation and Recommendation**

The Committee noted that 38.9m was spent on CIC insurance and 71M paid to AMARCO, which were charged directly from suspense account without a supporting document.

The Committee recommend that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.12 County Own Generated Receipts**

As disclosed under Note 4 to the financial statements, the statement of receipts and payments reflects County own generated receipts of Kshs.10, 043,310,059. A review of revenue documents revealed that the County Executive terminated the contract with Jambo Pay. However, a handing over report and information on how the data was handled after handover was not provided for audit verification.

Further, analysis of the revenue collected using Jambo Pay for the period under review revealed that transactions totalling Kshs.193,862,722.67 were posted in Jambo Pay, but were not reflected in LAIFOM System, yet the systems were integrated, contrary to Section 149 (1) and (2(o)) of the Public Finance Management Act, 2012.

After the termination of contract between the County Executive and Jambo Pay on 8 June 2019, the County Government of Nairobi awarded the contract for collection of revenue within Nairobi County to the National Bank of Kenya. However, the contract agreement provided was signed neither by the National Bank nor the Accounting Officer for Nairobi City County Government contrary to Section 44(1) and (2) of the Public Procurement and Asset Disposal Act, 2015. Hence, there were no agreed terms of service to verify and justify performance of the current service provider.

Consequently, it was not possible to ascertain the authenticity of County own generated receipts of Kshs.10, 043,310,059 for the year ended 30 June, 2019.

#### **Management Response**

##### **Handing over of Jambo Pay Data**

The contract between Nairobi City County Government and web tribe was silent on migration and handing over process of the system. As a result, and under the circumstances in which this contract was terminated it was not possible for a formal handing over to take place.

However, all the data regarding revenue collections before, during and after the termination of the Contract between Nairobi City County and Web Tribe Ltd is available in the LAIFOMS platform. LAIFOMS database is available.



### **Collection of Revenue by National Bank of Kenya (NBK)**

Contract document on the Contract between Nairobi City County and the National Bank of Kenya Limited Contract No. NCC/FIN& ECO/G-G/1/2018-2019 for the provision of automated Revenue Collection and value-added Financial Services dated 10<sup>th</sup> June 2019.

- Attached is a signed copy of contract.

#### **Committee's Observation and Recommendation**

The Committee noted that no evidence was provided.

The Committee recommend that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.13 Outstanding Imprest**

The accounts receivables - outstanding imprest reflects a balance of Kshs.21, 610,708 as at 30 June 2019. However, examination of records revealed that the amount includes Kshs.4, 599,166, being multiple imprests issued to staff of the County Executive, contrary to Section 93(4) of the Public Finance Management (County Governments) Regulations, 2015 that requires Accounting Officers to ensure applicants have no outstanding imprests.

Further, an analysis of records availed for audit review indicated that imprests totalling Kshs.3,700,913 were outstanding for more than one year, contrary to Section 93(5), (6) and (7) of the Public Finance Management (County Governments) Regulations, 2015.

Consequently, Management is in breach of the law.

#### **Management Response**

The county has multiple accounting officers, which could result to an officer being issued with multiple imprest due to lack of centralized database where accounting officer, could determine if officer has existing imprest.

Attached find status report of all un-surrendered imprests at the time of audit review (appendix 10).

The surrendered imprest was surrendered or recovered through the payroll system.

#### **Committee's Observation and Recommendation**

The Committee noted that the management provided a schedule of all officers with outstanding imprest and the dates when they were fully surrendered.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



### 3.7.14 Supply and Delivery of Desktops Computers, Laptops and External Portable Drive

Examination of available records revealed that although tender No. NCC/FIN/RT/313/2017-2018 was advertised, some anomalies were however, noted as follows: -

- (i) Evidence of advertisement in accordance with Section 96(2) of the Public Procurement and Asset Disposal Act, 2015 that stipulates that the procuring entity shall advertise in the dedicated Government tenders' portals or in its own website, or a notice in at least two daily newspapers of nationwide circulation, was not availed for audit review.
- (ii) The tender had two sets of signed tender opening minutes purportedly held on 25 June, 2018 at 10.00 am with the results as tabulated below: -

Firm Name	Address	Copies	Tender Amount (Kshs.)
Albe Enterprises Ltd	73098-00200 Nairobi	1	8,739,900
Skip Bo Enterprises	5046-00200 Nairobi	1	8,300,000
Conference Rentals Ltd	Not provided	1	Not Indicated
Albe Enterprises Ltd	73098-00200 Nairobi	1	8,739,900
Skip Bo Enterprises	61431-00200 Nairobi	1	11,400,000
Talaa One Enterprises	5046-00200 Nairobi	1	Not indicated

- (iii) Examination of postal addresses for two (2) firms, M/s. Skip Bo Enterprises and Talaa One Enterprise reveals that they are related as they share the same postal address number 5046-00200 Nairobi.
- (iv) There is indication of attempted forgery as the same company; M/s Skip Bo Enterprise submitted two (2) different bids of Kshs.11, 400,000 and Kshs.8, 300,000 for the same tender at the same time.

In view of the above observations, it was not possible to confirm that there was value for money in the award of contracts and whether the contracts were sourced competitively in accordance with the Public Procurement and Asset Disposal Act, 2015.

### Management Response

The items were procured as follows: -

- i. The procurement of the items was done through restricted tendering process in accordance with section 102 of Public Procurement and Disposal Act. 2015 regulations. This was within the threshold matrix as provided by the Act.



- ii. The process of invitation for the tender (advertisement) was done through the county portal website.
- iii. The shared address by more than one tenderer was an error during the tender opening committee meeting recording. The correct address is available in the original tender documents at Procurement Department.
- iv. The acceptance letter does not apply to the above tender taking into consideration that the tender was not a contract rather a local purchase order (LPO) was issued. The supplier responded by honoring the order as per the specifications.

All the relevant documents including copy of memo appointing the tender opening members, tender opening record, tender opening and evaluation minutes and professional opinion, payment voucher and other supporting documents are attached as per Appendix 9.

#### **Committee's Observation and Recommendation**

The Committee noted that an invitation to tender through restricted tendering, tender opening minutes and an extract of the portal was provided and the committee was satisfied.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.7.15 Projects Status**

Note 12 to the financial statements reflects acquisition of assets of Kshs.4, 951,407,063 for the year ending 30 June 2019. However, a number of unsatisfactory findings were noted as tabulated in Appendix I

Further, examination of various projects status reports revealed that the following projects with a combined contract sum of Kshs.1,893,756,957 have stalled or delayed as shown below: -

<b>Description</b>	<b>Combined Contract Sum (Kshs.)</b>
Roads, Transport and Public Works	471,389,643
Bridges	96,669,532
Delayed Roads and Bridges Projects	1,035,207,948
Delayed Ward Development Projects (Roads and Drainage)	238,699,198
Delayed WDF Electrical Projects	51,790,636
<b>Total</b>	<b>1,893,756,957</b>

Management has not achieved the intended objectives and value for money in these projects had not been achieved in accordance with Section 149(2) (m) of the Public Finance Management Act, 2012.

In the circumstances, it has not been possible to confirm that the public has obtained value for money.



## **Management Responses**

### **Construction of Academy Road in Karen**

The following is the response to the pending issues regarding the above-mentioned project.

- i. The works are ongoing at 79%. The contractor undertook all the other activities except laying of concrete blocks on carriageway and walkways
- ii. The works are ongoing at 79%. The contractor has done all other activities except laying of concrete blocks on carriageway and walkways.
- iii. The design of road is 6m wide carriageway with drainage on one side and walkway on the other side to fit within available road reserve of 11m.

### **Construction of Plainsview Likoni link Road**

The executive wish to state that:

- The project delayed due to none payment but is on going
- The road alignment for section “B” is designed for 6M carriageway as per the available road reserve
- The following objectives of the project will be achieved on completion.
  - 680 meters of AC complete
  - 1000 meters of walkways complete
  - 620 meters drainage complete
  - 60% of street lighting complete
  - Motorable bridge complete

### **Rehabilitation of Ndwaru Rd. Contract sum Kshs. 98,811,394.92**

- i. The project was projected to have completed by 16th October 2019 as per the Interim Extension of Time but delays were occasioned by delays in payment, as was the case in the past. However, the Contractor is determined to finishing the project.
- ii. There are no structures on the carriageway or footpath.
- iii. The Contractor is using Lateritic Gravel of which a material test result of the Grading Curve and Atterberg Limits has been conducted. Channels restraining the footpath are unnecessary and further were not provided for in the quantities. Calculations can be done noting the catchment area indicating the adequacy of a 375mm diameter pipe. ^00 mm pipes were constructed to minimize the effects of siltation. There are two No 600 mm pipes. Usage of a 900 mm pipe which is much more expensive would have led to problems in attaining correct levels of the carriageway.



- iv. There are two No 600 mm Twin Culverts that lead to the main outflow at the seasonal river. Drain clearing remains a continuous process during Contract and Defects Maintenance Period due to the accumulation of silt and debris.
- v. There are two No 600 mm Twin Culverts that lead to the main outflow at the seasonal river. Drain clearing remains a continuous process during Contract and Defects Maintenance Period due to the accumulation of silt and debris.
- vi. Many Access culverts have already been done. Some that lead to plots that comprise of accesses to informal settlements were left out as vehicles cannot access and cost considerations.
- vii. The Electricity poles were on the road reserve before the project commenced and they do not need to be removed as pedestrians can maneuver around them and further Kenya Power Company takes very long to relocate power posts and they charge for the relocation.
- viii. Fire Hydrants are going to be installed before the end of the project.
- ix. The Contractor intends to clear the site upon completion of the project and plant trees to augment the efforts of the County in the area for Landscaping and environmental mitigations.

The following documents are attached.

- a. laboratory test for murram
- b. advertisement for the contract tender
- c. technical and financial evaluation minutes and reports
- d. professional opinion and letter of acceptance



S/No.	QUERIES	RESPONSE
i)	The road is not complete	The road is Substantially Complete and the project is under Defects Maintenance Period. (Copy of Minutes at Substantial Completion is attached).
ii)	Site clearance not fully done as there are structures in the road reserve	Site Clearance was done to clear the road in readiness for the construction of carriageway, drainage and walkways. The contract did not allow for clearing of the entire right of way.
iii)	Walkways were not done,	Footpaths as part of the project and have been done and completed. See attachments
iv)	Relocation of services such as electricity poles not done.	The electricity poles were not a hindrance to the construction of carriageway, drainage and walkways.
v)	Road Furniture not complete. No road signs	Road Signs as part of the project have been done.
vi)	Very high bumps, which are affecting the efficient movements of motor vehicles.	The existing bumps are substandard and were constructed by the residents for safety reasons. Standard bumps to specifications will be installed by the contractor during defects liability period. (Copy of Minutes at Substantial Completion is attached.)
	In the circumstance, the Contractor has not achieved the intended objective and that the value for money provided for this project has not been achieved in accordance with Section 149 (2m) of the Public Finance Management Act (2012)	<p>The road has been completed and has been in use since December 2018. There was no road in existence before and the area was prone to flooding. The following has been achieved:</p> <ul style="list-style-type: none"> <li>• Excavations completed.</li> <li>• Backfilling completed.</li> <li>• Hand packing completed.</li> <li>• Laying of asphaltic concrete completed.</li> <li>• Drainage works completed.</li> <li>• Footpaths completed.</li> </ul> <p>Completion of 1.2 Kilometres of road complete with walkways and drainage.</p>



**Construction of Muthiora Road Contract sum Kshs. 74,884,887,843**

**Completion of Muthiora Road Contract sum Kshs. 138,761,962.60**

S/No.	Queries	Response
i)	The road is not complete	These are works in progress
ii)	Site clearance not fully done as there are many structures in the road reserve	Site Clearance was done to enable the construction of carriageway, drains and footpaths. The contract did not allow for clearance of the entire Right of way.
iii)	Walkways were not done,	These are works in progress
iv)	Hand parking partly done	These are works in progress.
v)	Bitumen not done	These are works in progress
vi)	Many Electric posts still in the middle of the road.	There are street light poles on the edge of the carriageway that will be relocated as required.
vii)	Road Furniture not done	This will be done upon completion of the main works.

**The following documents were provided during the audit review exercise**

- i. advertisement
- ii. technical and financial evaluation
- iii. professional opinion and letter of acceptance



### Construction of Salim Road

S/No.	QUERIES	RESPONSE
i.	The road is not complete and work is ongoing though slowly	Works are in progress. Contractor expediting works.
ii.	Site clearing not well done as there are structures on the road reserve which is hindering construction of walk ways	Site Clearance was done to enable the construction of carriageway, drains and footpaths.  The contract did not allow for clearance of the entire Right of way.
iii.	Hand packing done but not complete.	These are works in progress.
iv.	Drainage works not done.	Drainage works are ongoing.
v.	Relocation of services not done. Many Electricity Poles are in the middle of the road.	That is true especially on the Kabiro Ward side; we have liaised with Kenya Power Company without much success of this issue and hope to resolve it before very long.  Attached is copy of letter to KPLC
vi.	Bitumen not done	Asphaltic Concrete laying is part of the works; it will be done after the completion of backfilling, hand packing and compaction to specifications.
vii.	Road Furniture not done.	Road furniture will be installed upon completion of the main works.
viii.	In the circumstance, the Contractor has not achieved the intended objective and that the value for money provided for this project has not been achieved in accordance with Section 149 (2m) of the Public Finance Management Act (2012)	The following have been achieved:  Excavation, backfilling and compaction  Major drainage works have been done and there are no flooding issues  The area has been accessible and the road is now in use.  The residents are happy

The following documents are attached.

- i. advertisement
- ii. technical and financial evaluation
- iii. professional opinion and letter of acceptance



### Construction of Public transport facility at Riruta

S/N o.	Queries	Response
	The Transport Facility was not completed and no work was ongoing.	Contractor abandoned site due to non-payment. However, he has indicated willingness to finish works if paid the remaining certificate
	The Contractor abandoned the site.	Contractor abandoned site due to non-payment
	One part of the plot was grabbed and a Commercial building was put up by a private developer.	On commercial building is a toilet which is necessary
	Another section of the plot was grabbed and fenced off and is now used for private hire by an undisclosed private developer.	The part has been taken as a site yard by a contractor doing sewerage works. This was done with the blessings of the community and area MCA
	The remaining part of the plot is used for parking by residents	That was the intended purpose
	Hand packing was not complete.	True
	Drainage works not done.	Done but not complete
	Road furniture not done	Done but not complete
	In the circumstance, the Contractor has not achieved the intended objective and that the value for money provided for this project has not been achieved in accordance with Section 149 (2m) of the Public Finance Management Act 2012	This will only be achieved when the contract is completed

The following documents are attached.

- i. advertisement
- ii. technical and financial evaluation
- iii. professional opinion and letter of acceptance



### Construction of Captain Mungai Road (Eastleigh)

S/No.	Queries	Response
1.	The road is not complete and no work is ongoing. The Resident Engineer said that it has already exhausted the money allocated for this road	The works on drainage, excavation and backfilling exceeded the quantities in the BQ  This has necessitated the request for variation.
2.	Site clearing not well done as there are structures on the road reserve which is hindering construction of walk ways	Eastleigh being a commercial district has a lot of informal traders. We are liaising with county administration to have them evicted.
3.	Hand packing done but not complete.	This was the stone pitching on the sides of the drain but not the hand packing. Hand packing is complete and binder layer of asphalt has been laid
4.	Drainage works not complete	This will be completed
5.	Bitumen not done. Only a section which has been done binder course	The whole project binder course is laid. Only the wearing course is to be laid
6.	Road Furniture not done	Done but not completed. The road signs and road marking



## Two (2) Contract for construction and rehabilitation of Thiongo Road in Westlands

S/No.	Queries	Response
	<p>Construction and Completion of Thiongo Road Contract Number NCC/RPWT/T/301/2016-17 at a Contract Sum of Ksh 128,208,957 on 16 December 2015 for 12 months.</p> <p>Rehabilitation of Thiong'o Road NCC/T/RPT/243/2014-2015 at a Contract Sum of Ksh 65,557,313 on 6 May 2015 for 12 months.</p> <p>The audit was unable to establish whether these contracts were awarded in accordance to Article 227 (1) of the constitution because the County Government has not availed the following: -</p>	<p>Copy of Tender evaluation of both projects attached in the appendices herewith.</p> <p>Both tenders were advertised and open to contractors who bid and the lowest evaluated bidder was awarded the respective contracts.</p> <p>It is one road and the Rehabilitation of Thiongo road had a budget that could not be exceeded. The Completion of Thiongo Road was to complete the road.</p>
	<p>Both contracts are running concurrently and none is complete.</p> <p>It is not clear how the same Company won both tenders in the same year.</p> <p>Explanation from the Sector Heads on above Coincidence was not forthcoming.</p>	<p>Copy of Tender evaluation of both projects attached in the appendices herewith.</p>
Specific observations on Contract Number NCC/RPWT/T/301/2016-17, Thiongo Road Completion.		
i.	The above contract was extended to 13 May 2019 without revised program of works.	A copy of revised programme of works is attached herewith. Contract has now been granted an interim time extension up to 21st May 2020.
ii.	The Projects' delay was a matter at PAC meeting held on 22 April 2019 on slow implementation and stalled projects in the AGs report for the year ended 30 June 2017.	The Delay was due to delays in payment
iii.	Status report as at 24 May 2019 indicate that the project is at 30% level since 2015.	This has now been improved to about 70 %.



**Construction of a road from DO to Nyando Road/Thawatu in Kayole Contract No. NCC/RPWT/115/2015-16**

	Query	Response
	i. Contract was awarded on 14.6.2016 at a sum of Ksh 67,234,992. It has been extended twice. November 2018 and now to 6 March 2019. The letters of extension were not attached to the payment voucher.	Copies of the letters are herewith attached
	ii. No revised programs of work were submitted after the extensions and there is no written confirmation by The Contractor to agree on the interim extensions and to abide by them as per clause 44.3 of the contract.	Copies of the revised works program are attached
	iii. The current extension expired on 6 <sup>th</sup> March and no revised extension time has been approved although the project is ongoing.	Copies of the letters are herewith attached
	iv. In status report of 28.2.2019, work done was at 50% since 2016, 100% time had elapsed and no amount of work was certified and paid.	Latest Status Report is attached
	v. As at 30th June amount certified (This Voucher) was Ksh 27,662,740, translating to 40% certified works done in three years. i.e., since 2016.	There were a lot of disruptions and particularly during the elections campaign period. However, the contractor has now done more than 90% as shown in the latest status report
	vi. The contractor cites financial constraints on their part, therefore raising doubt of his ability to execute such a contract.	Since the contractor has done over 90% of the work, we believe he will finish.
	Audit Inspection findings	
	i. Large amounts of soil and waste were left heaped up on outside the constructed road	These will be addressed since the contractor has not finished



ii.	There were unfinished and blocked drains	
iii.	There is no adequate space for footpath due to encroachment	Most of the encroachments are permanent buildings and we worked within the available space. Long-term solutions will have to be done on this issue.
iv.	Unfinished culverts and storm water drains	These will be addressed since the contractor has not finished
v.	Large piles of debris left on side of tarmac especial at the parking area	These will be addressed since the contractor has not finished
vi.	Uncovered drain boxes (Manholes) which are unsafe to pedestrians	Contractor has been instructed to remedy this
vii.	There are no speed limit bumps installed	This will be done when laying the second asphaltic concrete layer.
viii.	Poor workmanship on the drains i.e., drains not properly excavated	This will be remedied when the contractor will be finishing the remaining works.
ix.	Culverts made above the road surface and not well covered by concrete	The culvert will be removed and replaced appropriately
x.	Only binding Course of tarmac was done at the time of inspection and it was a very thin layer of 1 inch.	The contract document specified a binding layer of 25mm. The second layer will be done when the contractor resumes work.
xi.	A verandah of one commercial building has protruded to the center of the road and that portion was not done.	The Sub County administration have been notified to remove the encroachments



The following documents were provided to the auditors.

- i. technical and financial evaluation
- ii. professional opinion and letter of acceptance
- iii. notification of unsuccessful bidder

#### Construction of Kangemi bus route and terminus

S/No.	Query	Response
1.	The contract time	Contract was extended a second time to 15 <sup>th</sup> December 2019
2.	<p>The contract time and practicality given that the status quo remains unresolved on the following:</p> <ul style="list-style-type: none"> <li>• Lack of cooperation from settled residents on encroached land</li> <li>• Hostilities from residents and</li> <li>• Delay In relocation of utilities such as power lines and sewer system</li> </ul>	<p>The contract team has engaged the area leadership and the Kangemi Residence Association and they have agreed to lead a guide in Removal of all structures obstructing works.</p> <p>Two Termini were cleared on by County Commissioners office on 11/10/19 and base and sub base works ongoing</p> <ul style="list-style-type: none"> <li>• Residents are now cooperating and moving out of proposed termini</li> <li>• Relocation of utilities is ongoing.</li> </ul>
3.	Program of Works	Provided in line with new project time extension
4	There is no certificate of approval of quarry and materials for use as road construction materials (gravel and quarry chips to base quality) from Nairobi University's Civil Engineering Department	Certificate of material tests before possession of site possession. Confirmatory test will be undertaken as work progresses



	or Ministry of roads materials section as per clause 36.1 of the conditions of contract on quality of materials. And compliance tests	
5	The payment certificate dated 7 April 2019 is not supported by a summary of certified work done amounting to Ksh 14,030,656.	Payment of works done is as per measured works captured in measurement sheets duly signed. The payment summary has its quantities captured in the measurement sheet and the two are read together will bill item being the reference.
6.	Work status	Works Ongoing at 55%

#### Installation of Lights at pelican crossing point on selected roads within CBD

S/No.	Query	Response
1.	There are no detailed work plans and locations where the Pelican Lights are to be situated in the CBD	<p>Project locations are provided for in the contract document.</p> <p>And they include;</p> <ul style="list-style-type: none"> <li>i. Agha Khan walk crossing along Harambee avenue</li> <li>ii. Treasury- Jogoo House crossing along Harambee avenue</li> <li>iii. City Hall-Kicc Crossing along City Hall way</li> <li>iv. City hall way-Uhuru Park Crossing along Uhuru highway</li> </ul>
2.	There is no proof of purchase and installation of centralized software valued at Ksh 1,200,000. Which is included in certificate 1	<p>The software was provided, installed, and configured in the traffic controllers to bring the installations to work.</p> <p>All functionalities of software including system logs, monitoring, Acknowledgement and clearing of faults plus access to configuration files can be performed.</p>



		<p>The controllers intended for external access including remote monitoring and traffic remote control are manufactured with expanded CPU memory and must be imported with a factory installed softwares. These softwares include;</p> <ol style="list-style-type: none"> <li>1. EC-x Generic Environment,</li> <li>2. EC-x Communicator,</li> <li>3. EC-x Control Stimulator,</li> </ol> <p>Accordingly, the controllers are already set to external monitoring and remote control once other external components are fixed. These will include fiber connection to the installation and control room equipment</p> <p>These are the functionalities for the software components:</p> <ol style="list-style-type: none"> <li>1. The EC-x Generic Environment is the software component that is allows for remote monitoring and evaluation for an installation.</li> <li>2. EC-x Communicator is the component that ensures communication between the controllers and equipment fixed at the control centre.</li> <li>3. The EC-x Control Stimulator allows for remote controlling an installation. This means a person can overrule the system while seated at their office by only pressing a button</li> </ol>
7.	Audit confirmed that one pelican light was working near City Hall at Governor's office overlooking KICC.	All crossings are now functional
8.	There was no public participation before electing the	It's part of pilot innovation to improve safety of pedestrians by eliminating pedestrians-vehicles conflict



	lights and therefore few Nairobi residents are aware of their existence.	at crossings. The concept being new, we have engaged traffic Marshals on crossings to educate and assist members of the Public on how to go about using the installation. The public response and comments are very encouraging.
9.	The pelican lights are situated together with pedestrian crossings therefore making no difference to the public	Ideally that is the only location it is to be installed. The difference it brings at the crossing is that the county government can now enforce red-light violations at the pedestrian crossings. The pedestrian are now safer to cross the roads at these locations. Vehicles are also spending less time at the crossings as the lights have reduced incidences of jay-walking of pedestrians.
10.	There is no control over their use therefore are subject to misuse by public.	The software installed is able to counter misuse as each traffic group is accorded its specific timings. There are no incidences of misuse encountered for the six months the pilot installation has been running.
11	There is no publicity/notice to motorists and therefore can cause confusion to road users.	There are publicity signs/ notices placed overhead at the cantilevers poles, which are visible to motorists from afar. Red-light violation signs are also fixed so as to inform motorists of the need to observe the red-light rule in order to give way to pedestrians to cross the road
10.	Work status	Project at 95% and Substantially complete)

#### Ward development Fund

#### 3.13(i) Re-Grading and Gravelling of Unique Transami /Kwamaingi Road and Construction of Drainage within Kware Ward; Contract Sum Kshs. 15,292,918

- a) The delay in the project amounting to Kshs. 15,292,918.00 was as result of the issue that arose from the Controller of Budget Treasury with the Ward Development Fund account during FY 2018/19. It was resolved that the WDF funds to be transferred to the Roads and Public Works Department this transfer of Funds led to the cancellation of documents from WDF account to RPW&T Vote in IFMIS. This led to delay in payment of payment of the first and second certificates and time constraints.



- b) The gravel material used on the road was tested and approved by the Chief Engineer (Materials) in the Ministry of Transport, Infrastructure, and Housing and Urban Development. (See attached Laboratory Test report). However due to incompatible roadside activities e.g., carpentry, cooking etc. (one year later) a once well-compacted Murram road starts to wear out.
- c) The outfall of the newly constructed drain is at Catherine Dereva Road. Due to rampant illegal garbage dumping and water pipes connection, the main drain along Catherine Dereva Road is constantly clogged and requires weekly clean-up for the water to flow freely. This issue is being addressed by the Sub County administration in the weekly clean-up
- d) The Contractor had just started the drainage works projecting timely payment of the second certificates to complete the works. This did not happen and he was unable to incur extra expenses of completing the remaining drainage works especially laying of the side slabs to the drain, which were partially done. This will be repaired at no cost to the county.
- e) Proper hunching was done to the installed culverts; however, the Contractor is yet to lay a layer of gravel in certain sections to attain the final finished Road levels. Works will be completed.
- f) The leaking underground pipe belongs to Nairobi Water and Sewerage Company, who have the mandate of repairing /relocating it. A communication was done to them to undertake the works (see attached Letter). Constant follow up is being done for NW&SC personnel to attend to the problem and other similar cases.

For the illegal structures/containers coming up on the road reserve, Communication to the area MCA and Inspectorate department has been done to facilitate and ensure removal of these structures/containers on the road reserve.

#### **1.1 (ii) Rehabilitation of selected road in Ngandu ward Contract No. CC/WDF/RPWT/T/075/16-17**

**Ksh.17, 041,342.50**

A status report is available for audit review from the unit

#### **Committee's Observation and Recommendation**

The Committee observed that the projects have since been completed.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.7.16 Delayed Construction of Four (4) Stadia in Nairobi City County**

A contract no. NCC/ED/T/193/2017-2018 was awarded to M/s Scanjet Contractors for the construction of the four (4) stadia for a combined contract sum of Kshs.1, 036,551,255. An audit review of the program for the execution of works is summarized as follows: -



S/No.	Location	Financial Year	Contract Sum (Kshs.)	Completion Period	Status
1	Dandora Stadium	2017/2018	350,000,000	18 months	On going
2	Kawangware Stadium	2017/2018	250,000,000	18 months	Not started
3	Kihumbuini Stadium	2018/2019	250,000,000	18 months	Not started
4	Ziwani Stadium	2019/2020	186,551,255	18 months	Not started
<b>Total</b>			<b>1,036,551,255</b>		

The certificate of site possession signed by the Architect on 30<sup>th</sup> May 2018 shows that the contract period was eighteen (18) months ending 4 December 2019. However, it has not been possible to establish whether this contract was awarded in accordance with the Public Procurement and Asset Disposal Act, 2015 due to failure by the County Executive to avail the advertisement of the tender, the tender opening register, tender minutes, the Technical and financial evaluation report, professional opinion and notification to unsuccessful bidders. This is contrary to the provision of Section 96(1), 78(1), 78(10), 80(1), 84(1) and 87 of the Public Procurement and Asset Disposal Act, 2015 respectively.

Further, payment records availed for audit review revealed that Kshs.123, 773,682 had been paid in respect of the construction of Dandora Stadium while the construction of the other three (3) stadia had not commenced, despite the fact that more than 50% of the contract time had elapsed. There were changes of the earlier approved material for construction from concrete to steel structures. However, justification for the change, its implication on the Bill of Quantities, budget and eventual approval process were not availed for audit review contrary to Section 9(1) (e) of the Public Audit Act, 2015. There were also sizeable outstanding works.

In addition, a site inspection of Dandora stadium revealed that no construction work was going on although there was a tractor and a concrete mixer on site and the contractor or his agent was not on site. The fixing of gates for entry and exit to the stadium and cabro works were not completed and no documentation was availed to show the status of work done.

In view of the foregoing, it has not been possible to confirm that the public may have obtained value for money on the construction costs incurred.

#### **Management Response**

The project is currently under the investigation following the change of design.

The following documents have been attached for auditors review and consideration:-



- 1) Advertisements
- 2) Technical and financial evaluation report
- 3) justification for change of materials
- 4) Letter from EACC requesting for documents.
- 5) List of documents availed to EACC

#### **Committee's Observation and Recommendation**

The Committee observed that only Dandora Stadium have since been completed. Further noted that Kihumbuini, Ziwani and Kawangware Stadia the projects is yet to commence.

The Committee recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **3.7.17 Trade Sector Projects-Supply, Delivery and Installation of Network for Sectorial Office at Nyayo House**

Examination of records maintained by the Trade Sector show that tender no. NCC/TRADE/RT/546/2016-2017 for supply, delivery and installation of network for sectoral offices in Nyayo House was awarded to a consultancy firm for a contract sum of Kshs.2, 679,370. The contract period was from 30 May 2017 to 31 July 2017. However, the company was paid Kshs.3, 108,069, an amount which is in excess of the contract sum by Kshs.428, 699 that has not been explained.

In the circumstances, the validity of expenditure of Kshs.428, 699 for the year ending 30 June 2019 could not be confirmed.

#### **Management Response**

The excess payment of Ksh.428, 699 relates to the Value added tax component, which was deducted and remitted to the relevant authority.

#### **Committee's Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **3.7.18 Procurement of Overpriced of Sports Items**

Examination of records availed for audit revealed that the County Government entered into a contract with a firm to supply and deliver sportswear items at a cost of Kshs.7,710,000 against the approved budget of Kshs.5,300,000 as per the Department's request. The prevailing market price of the equipment was Kshs.4, 400,000 thereby resulting to Kshs.3, 310,000 above the market price contrary to Section 54 (2) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, the County Executive was in breach of law.



### **Management Response**

The price was based on market forces such as inflation, transport, delayed payment process, and the supplier's margin.

### **Committee's Observation and Recommendation**

The Committee noted that no evidence has been provided, the management could not explain why the items were overpriced and there was no market survey that was done. Documents were not availed.

The Committee recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **3.7.19 Irregular Contracts on Solid Waste Management**

During the year under review, the County Executive contracted and paid thirty-five (35) firms for collection, transportation and disposal of solid waste. However, it was noted that the County Executive did not have standard rates for the collection, transportation and disposal of solid waste for each zone contrary to Section 151 (2) of the Public Procurement and Asset Disposal Act, 2015. The contracts for collection, transportation and disposal of solid waste in the same zones were awarded to different firms at different rates. The difference in rates to different firms for the collection, transportation and disposal of solid waste from the same collection zone was not explained or supported, as the County did not provide procurement documents to support the awarding of the contracts.

Further, examination of payment vouchers revealed that Management made payments amounting to Kshs.105, 426,062 to eleven (11) firms for collecting solid waste in Zones that they were not prequalified to operate, contrary to Section 151(2) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, the County Executive is in breach of the law.

### **Management Response**

This was an open tender where bidders were awarded as per their quoted bid price in that zone. Prices were within users estimated cost however the county has since come up with uniform rate for each geographical area.

Contracts whose Clauses IV.16 & Clauses IV .33 (ii) & (iii) mandated the Director of Environment to call upon any contractor to provide services in other zones beside the awarded zone, where the contractor is temporarily unable to handle the waste. This stop - gap measure is initiated by the Environment Officer in charge of the affected zone through a Standard Request Form duly filled and submitted to the Director of Environment for consideration. If the request merits approval, the Director writes to the contractor who at that moment:



- (i) Is providing the required level of service in his zone of Award.
- (ii) Demonstrates possession of extra capacity that can be utilized elsewhere for specified duration without compromising performance in his zone of Award.

The Management therefore confirms that it engaged all the contractors mentioned to provide Solid Waste Management services in all the zones they worked and the services paid for were executed strictly as per the terms of the respective contracts.

#### **Committee's Observation and Recommendation**

The Committee noted that no evidences have been provided.

The Committee recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.



#### **4.0. CONSIDERATION OF AUDITOR GENERAL REPORT ON FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDING 30<sup>TH</sup> JUNE, 2020**

##### **Comparative Balances Brought Forward**

The statement of receipts and payments does not reflect comparative balances for repayments of principal on domestic and foreign borrowing totalling Kshs.868,192,719 reflected in the audited 2018/2019 financial statements. As a result, the statement does not conform to IPSAS No.1.

In view of the discrepancy, the accuracy and completeness of the financial statements could not be confirmed.

##### **Management Response**

This was an overdraft facility at Cooperative bank, which was repaid in full in December 2018 therefore, the comparative amount in the financial year 2019 - 2020 was nil. The Kshs 868,192, 719 appeared as a comparative figure in the financial year 2017/2018 that ended on 30th June 2018.

##### **Committee Observation(s) and Recommendation(s)**

The Management has explained as verified by the Auditors

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

##### **Variance between Financial Statements and Revenue Records**

Accounting records in the Local Authorities Integrated Financial Operations Management (LAIFOMS) system used by the County Executive reflect County own-generated receipts totalling Kshs.6,069,025,224 against Kshs.8,819,040,246 reflected in the statement of receipts and payments resulting to an unreconciled variance of Kshs.2,750,015,022.

As a result, the accuracy and completeness of the County own-generated receipts balance totalling Kshs.8, 819,040,246 reflected in the statement of receipts and payments could not be confirmed.

##### **Management Response**

The County uses two different systems for revenue collection which are LAIFOMS and NBK system (Revenue sure). The two systems are not integrated and thus not all revenue collected via NBK system are reflected in LAIFOMs. Financial statements are prepared using CRF data, which includes revenues collected by both systems. The difference is revenues collected through NBK systems that are not uploaded LAIFOMs. The amount collected through Revenue Sure system was Kshs. 3,837,651,642.00 and only transactions amounting to Kshs. 1,087,636,621.00 were uploaded into LAIFOMs resulting in the reported variance.



However, the County Government of Nairobi has introduced a new collection system the Nairobi pay where all ratepayers will be reminded via a text message to pay their dues on time. The system also allows our client to self-register, invoice and pay from comfort of their homes/ workplace.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Revenue from Outdoor Advertisements**

Records on outdoor advertisement, license applications and approvals for advertising activations that included billboards, wall wraps and sky signs were not provided for audit verification. As a result, it was not possible to confirm whether all revenues due from the activations were received and properly accounted for.

Further, the revised budget framework for 2019/2020 indicated that the County Executive had estimated to collect revenue-totalling Kshs.1, 425,000,000 from billboards and advertisements.

However, records in the Finance Department indicated that only Kshs.753, 996,503 was collected resulting to a revenue shortfall of Kshs.671, 003,497 or 48% of the budget. Management attributed the shortfall to unsatisfactory economic conditions.

However, in view of lack of sufficient records, Management's explanation as well as the accuracy, completeness and propriety of the reported receipts could not be confirmed.

#### **Management Response**

The underperformance is attributed to a decrease in display activities due to the corona pandemic.

All revenues are received after going through all the laid down procedures from Invoicing by the Outdoor Advertisement Officers, billing at the cash office, banking in the authorized County banks and issuance of receipts at the cash office.

The documents for invoices are domiciled in the Outdoor Advertisement department and available for Audit scrutiny while the billing and receipting are the LAIFOMS system

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the soft copy evidence was provided on revenue of Kshs.753, 996,503 from outdoor advertisement.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Revenues from Buildings Department**

Review of records maintained by the Building Plans Department indicated that during the year under review, the Department approved 1,969 building plans with an estimated value of Kshs.117, 785,052,603. Records in the Department reflected revenues totalling Kshs.425, 589,758 against



Kshs.456, 718,816 reflected in records maintained by the Finance Department resulting to an unexplained difference of Kshs.31, 129,058 between the two sets of records.

In addition, electronic records on all approved and rejected applications and building inspection and enforcement reports and registers, were not provided for audit verification. As a result, it was not possible to establish the total number of applications received and approved, or rejected in the year under review, and to match the revenue reported in the financial statements to the application. In addition, as similarly reported in the previous year, records maintained by the County Executive's E-Construction System used for approval of building plans were not integrated with LAIFOMS. The E-construction system only generates invoices but the respective payments are made through LAIFOMS. As a result, reliable means to confirm that all invoices generated by the system are paid and receipted were lacking.

In view of insufficient records and disclosures, the accuracy, completeness and propriety of the revenue receipts totalling Kshs.425, 589,758 reported by the Building Plans Department could not be confirmed.

#### **Management Response**

The building approval plan are automated through E-construction system where application, approval, rejection and payments are done online as per summarized report.

The minutes and inspection reports are held in the Planning Sector and are available for Audit scrutiny. The difference between the Department records and Finance record is as a result of the Building plans schedules in LAIFOMs related to building plans approval and they include Building Occupation Certificate, building plan approvals, Building plans preparation and Construction boards. Therefore, the cumulative (difference) figure of Kshs 31,129,058 resulted from the above.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the complete minutes and inspection reports were not provided for audit. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Rental Income**

Rent collection schedules maintained on County Houses in various parts of the City other than Eastlands District revealed annual debts totalling Kshs.575, 787,242 as at 30 June 2020 owed by the respective tenants. Further, in the year under review, records at the Finance Department reflected rental income totalling Kshs.495, 274,463 against Kshs.615, 000,000 budgeted for, resulting in a shortfall of



Kshs.119, 725,537. No satisfactory reasons were provided for the failure to collect the debts, and for the revenue shortfall recorded in the year under review.

In addition, Eastland's District annual collectable rent schedules and actual collections in the year under review were not provided for audit review.

In view of these issues, the accuracy and completeness of the rental debts totalling 575,787,242 as at 30 June 2020 and rental revenue totalling Kshs.495, 274,463 for the financial year then ended could not be confirmed.

#### **Management Response**

The debts of kshs, 575,787,242 is as per the respective estates and individual houses as per the LAIFOMS data. The under collection is because of some tenants being in arrears and lack of enforcement action due to the Covid-19 restriction measures.

The target of kshs. 615,000,000 included the annual debt of 575,787,242 and kshs. 39,212,758 being amount of accrued arrears expected to be recovered.

The house rent valuation report is not applicable as the rent payable are as per the Finance Act 2018.

The LAIFOMS Rent collection module combines both Estate Other Than Eastlands and Eastlands, a breakdown of collections per estate for the period is available for Audit scrutiny where kshs. 232,710,001 and kshs. 262,564,462 was collected respectively.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the collection schedules was not provided for verification. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Trade and Other Revenues**

Examination of revenue records indicated that the trade, industrialization, cooperative development and tourism sector collected Kshs.2, 076,990,059 against Kshs.4, 666,880 reported by the Weights and Measures Unit. The resulting variance totalling Kshs.2, 072,323,179 was not explained.

#### **Management Response**

In the year under review the Department and the County at large was not able to collect revenues as per set Targets. This was largely caused by lack of enforcement during the peak period caused by Government regulations due to corona pandemic.

Additionally, many businesses were closed from March 2020 and economic activities slowed down resulting in under collection of revenues.



#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Unbanked Revenue from Mama Lucy Kibaki Hospital**

Examination of records maintained by Mama Lucy Kibaki Hospital indicated that revenue collected by the Hospital in the year under review totaled Kshs.111, 376,968 whereas cash banked totaled Kshs.104, 647,354. The resulting bank receipts shortfall amounting to Kshs.6, 729,614 was not explained.

In view of insufficient records and disclosures, as well as omissions and discrepancies, the accuracy, completeness and propriety of the own-generated revenue balance totalling Kshs.8, 819,040,246 reflected in the statement of receipts and payments could not be confirmed.

#### **Management Response**

Unexplained difference of Kshs 6,729,614 being difference between monies receipted by check health information system amounting to ksh111,376,968 for the period July 2019 to June 2020 and banking for the same period amounting Kshs 104,647,354 is as a result of patients refund ,double receipting from the check health information system producing more than one receipt for the same transaction yet in the mpesa its recorded as a single transaction and auto settlement in the bank by mpesa platform. This issue has been raised on several occasions to both vendor's safaricom (mpesa) and Afridigital systems (check health information systems) with a view to understanding how the differences arise. Emails have been sent to both parties but no conclusive responses have been reached.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Unsupported Expenditures**

The statement of receipts and payments reflects payments totalling Kshs.24, 387,087,663 for the year ended 30 June 2020. However, the following anomalies were noted in respect to the balance:

#### **Miscellaneous Payments**

Examination of payment vouchers and other records indicated that payments totalling Kshs.109, 310,436 incurred on various items were not accompanied by relevant supporting documents. As a result, the occurrence, validity, accuracy and completeness of the payments could not be confirmed.

#### **Management Response**

The relevant supporting documents were provided during audit review.



### Committee Recommendation(s)

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### Other Operating Expenses

The statement of receipts and payments reflects other operating expenses totalling Kshs.1, 690,007,666 that include payments for legal fees totalling Kshs.179, 493,341. However, vital records on the expenditures including, approvals for the procurement of the legal services, records on the services rendered thereof - including the court cases or other proceedings in which the payees had acted for the County Executive - and the legal fees charged, were not provided for audit. As a result, the propriety, regularity and value for money on the payments totalling Kshs.179, 493,341 reported to have been spent on legal services could not be confirmed.

### Management Response

The following are details of cases that comprised the payments of Ksh 179,493,341.

#### **HC ELC APPEAL NO 22 OF 2017 ELECTRICAL MARKETING LTD VS NAIROBI CITY COUNTY & OTHERS PAYMENT OF KSH 37,183,000 TO KOCEYO AND CO**

The law firm of Koceyo & Company Advocates was duly instructed to defend the County in the appeal. The matter relates to sale of LR No 209/8323 by the County pursuant to proceedings at the first Class Magistrate's Court. Orders were made in favor of the County to sell the subject property to recover outstanding rates. The property which is the subject matter of the appeal is located along Dunga Road, Industrial Area. According to the Advocate, the value of the property at the time of prosecuting the appeal is approximately Kshs 1,000,000,000.00 (Kshs 1 Billion).

Based on the approximate value, the Advocates submitted a fee note date 1 October 2019 seeking a total of Kshs 170,000,000.00.

The Advocate Remuneration Order provides that the value of the subject matter can be determined from the pleadings, judgment of settlement between the parties. The value is not therefore depended on an actual valuation report.

Therefore fees for Kshs 1 Billion can be calculated as follows:

a) 1st 1 million Kshs	120,000.00
b) 1st 20 million Kshs	380,000.00
c) The balance at 1.5% Kshs	14,700,000.00
d) Raised by ½ Kshs	7,600,000.00
e) Add getting up fees 1/3 Kshs	4,560,000.00
f) Add attendance and disbursements Kshs	50,000.00
g) Add VAT 16% of the total Kshs	4,385,600.00



**TOTAL**

**Kshs 31,795,600.00**

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The Order does not stipulate the maximum but the minimum. The other factors to be considered include the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, the complexity of the matter and the time expended by the Advocate.

For this particular case, taking into account all the relevant factors, the amount of Kshs 62,790,000.00 is reasonable and within the scale and therefore, the amount paid of Kshs 37,183,000 as part payment is justified.

The matter proceeded to the Court of Appeal and the Advocates were retained, therefore the fees of Kshs 62,000,000.00 caters for both the High Court and Court of Appeal.

**HC JR APPLICATION NO 433 OF 2009 REPUBLIC VS NAIROBI CITY COUNTY EXP IRIS PROPERTY & ANOTHER PAYMENT OF KSHS 14,000,000 TO MUSYOKI MOGAKA**

The amount of Kshs 14,000,000.00 paid to the firm of Musyoki Mogaka & Company Advocates was not legal fees.

The amount was deposited to the Advocate-Client Bank account for onward transmission to the Court in compliance with the Court direction for avoidance to civil jail of County officers for disobeying orders of mandamus.

The Court directed that the County deposit a sum of Kshs 14,000,000.00 failure to which warrants of arrest be executed against the said officers.

The firm of Musyoki Mogaka & Company Advocates received the money on behalf of the Court. The amount emanates from decretal amount, which the County failed to pay hence the Judicial Review for orders of mandamus to compel the County to pay. Attached is the Court direction issued on 27 April 2020 for your records.

**HC PETITION NO 11 OF 2018**

**NAIROBI CITY COUNTY & OTHER VS THE ATTORNEY GENERAL & OTHERS**

Payment of Kshs 8,503,380 to Kwanga Mboya & Company Advocates and Kshs 10,000,000.00 to Letangule & Company Advocates

The County gave instruction to the two firms to file a Constitutional Reference on its behalf, seeking for debt moratorium of suspension of payment of debts to its creditors for a limited period of time to enable the County Government verify and authenticate the pending bills inherited from the previous Administration in excess of Kshs 56,000,000,000.00 (Kshs 56 Billion).

**HC JR APPLICATION NO 433 OF 2009 REPUBLIC VS NAIROBI CITY COUNTY EXP IRIS PROPERTY & ANOTHER PAYMENT OF KSHS 14,000,000 TO MUSYOKI MOGAKA**



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**HC PETITION NO 11 OF 2018 NAIROBI CITY COUNTY & ANOTHER VS THE ATTORNEY GENERAL & OTHERS**

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The firm of Letangule & Company Advocates was the lead Counsel while Kwanga Mboya & Company Advocates was the assisting Counsel.

Taking into account the Complexity of the matter, the subject matter and importance of the suit, the firm of Kwanga Mboya & Company Advocates submitted a fee note of Kshs 25,000,000.00 while the firm of Letangule & Company Advocates made a deposit request. The fees for Kwanga Mboya was agreed in line with schedule 5 of the Advocates Remuneration Order 2014 at Kshs 8,503,380 which amount was paid while Letangule & Company Advocates was paid Kshs 10,000,000.00.

The amount involved if the scale is applied is significantly high and therefore a negotiated amount suffices and complies with the constitutional principle of prudence and responsible use of Public Finance under article 201 (d) of the Constitution.

**HC ELC NO 1002 OF 2015 EMBAKASI JUA KALI HOUSING VS NAIROBI CITY COUNTY & ANOTHER KSHS 80,000,000 PAID TO KOCEYO AND CO**

This a case filed by the Plaintiff against the Defendants seeking orders of injunction and adverse possession of the suit premises as they claim to have been in occupation for more than 12 years. The



suit property is in excess of 38 acres and approximate value of more than Kshs 2,000,000,000.00 (Kshs Two Billion).

The County duly instructed the firm of Koceyo & Company Advocates to represent it in defending the suit. They submitted a fee note of Kshs 93,380,000.00, which was verified and assessed at Kshs 89,230,800.00.

The calculation is in line with the Advocate Remuneration Order 2014. The attached ruling confirms the work done by the Advocates. Therefore, the amount of Kshs 80,000,000.00 paid as part payment was properly done.

**HC JR NO 81 OF 2018 GIDJOY INVESTMENT LTD VS NAIROBI CITY COUNTY & OTHERS KSHS 52,962,700 TO ABDULAH, GITARI AND ODHIAMBO ADVOCATES**

The County duly appointed the firm of Abdullahi Gitari & Odhiambo Advocates to defend this suit. The letter of instructions dated 29th November 2018 gave instructions to the firm to take up the aforementioned matter with a view of defending the County's interest therein.

The said law firm was then still on our panel of Advocates duly procured to provide legal services.

The matter was withdrawn on 12th March 2019. The subject matter of the suit consisted of 35 parcels of land with a minimum approximate value of Kshs 1,000,000,000.00.

The calculation of fees in this case took into consideration the approximate value of the subject matter, the care and labor required, the number and length of the paper work, the complexity of the matter and all other circumstances fair and reasonable to arrive at the figure of Kshs 52,962,700.00.

The Advocate Remuneration Order allows agreement on fees between the Client and Advocate. On the issue of non-attendance, the Advocates firmed that they attended Court on the material day before Justice Bor. The matter was coming up for consideration with ELC No 301 of 2018, ELC No 79 of 2018 and ELC No 20 of 2018.

The Legal Advisor was therefore mistaken in his assertion that there was no attendance on that day.

**ELC NO 6898 OF 1991 KAMUTHI FARMERS CO-OP SOCIETY LTD VS NAIROBI CITY COUNTY GOVERNMENT KSHS 50, 000, 000 PAID TO WANJIKU MAINA ADVOCATES**

Assessment of legal fees is based on the Advocate Remuneration Order. Schedule of the Order provides for the criteria for assessment based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised the amount or value of the subject matter and the time expended by the Advocate. The suit involves a huge tract of land measuring approximately 154.5 acres. As per the witness statement of one Isaac Nyoike, the value of the property is approximately Kshs 10, 000,000,000.00. (Kshs 10 Billion).

The nature of the suit also involves quite bulky pleadings as confirmed by the Advocate in the letter dated 19th June 2019 addressed to the County Attorney. The assessment therefore of Kshs 313,969,450



as per attached letter dated 17th June 2020 is in order with the Advocate Remuneration Order and therefore the part payment of Kshs 50,000,000.00 is in order.

Owing to the unique nature of the legal cases, the normal procurement procedure is not practical. Advocates are procured through prequalification for suppliers and once in the panel, briefs are assigned through instruction letters as some cases come under Certificate of Urgency and might require attendance to Court immediately. The long procurement procedure is therefore impossible.

In this particular case, the file is a 1991 matter, which means the procurement procedures applicable today, was not applicable at that time.

**HC ELC NO. 52 OF 2018 SAMORA MACHEL -VS- NAIROBI CITY COUNTY KSHS 25,754,641 PAID TO MURIMI MURANGO ADVOCATES**

The County was sued in this case for being responsible on ensuring that all constructions of buildings in Nairobi comply with all relevant laws. The Petitioner alleged that the 3rd Respondent were constructing office blocks and apartments on LR No. 3586/400 and 29713/4 along Hillcrests Road without EIA license and not in compliance with the Nairobi County laws.

Considering the public interest, the nature and importance of the suit and the value of the subject matter estimated at approximately 1billion, the Advocates submitted a fee note of Kshs. 31,492,516.80 dated 24th June, 2019. The fee note was verified according to the Advocates Remuneration Order 2014 and an amount of Kshs. 25,754,641.36 was proposed to the Advocates. The above proposal was accepted by the Advocate through the letter dated 27th June, 2019.

**INDUSTRIAL COURT CASE NO 814 OF 2013 BENAYO M I NYAMWEYA VS NAIROBI CITY COUNTY & OTHERS KSHS 9,593,000 PAID TO KABAKA ADVOCATES**

The law firm was duly instructed to represent the County in this matter vide letter of instructions dated 29th August 2013 and they accepted the same vide letter to the Deputy Director Legal dated 29th August 2013.

The law firm diligently defended the County and attended several hearings and mentions. They kept us posted on every step. They submitted a fee note dated 8th February 2019 seeking a total of Kshs 69,623,200.00. The County assessed the fee note and proposed a figure of Kshs 9,593,000.00.

The fees was assessed in accordance with the Advocate Remuneration Order 2014 based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised, the general conduct of the proceedings and the time expended by the Advocates.

All the considerations above justify the amount agreed as per schedule 5 and 6 of the Advocate Remuneration Order.

On the procurement method, the law firm was on the panel of Advocates as per the list of prequalified suppliers for provision of legal services for financial year 2013 – 2014.



**ELRC MISC APPL NO 5 OF 2019 KENYA NATIONAL UNION OF NURSES VS NAIROBI CITY COUNTY & OTHERS. KSHS 13,259,936 PAID TO MORARA ONSONGO ADVOCATES**

The law firm was duly instructed to represent the County in this matter vide letter of instructions dated 21st March 2019.

The law firm diligently defended the County and attended several hearings and mentions. They kept us posted on every step. They submitted a fee note dated 2 May 2020 seeking a total of Kshs 13,259,936.00. The County assessed the fee note and proposed a figure of Kshs 5,130,500.00.

The fees was assessed in accordance with the Advocate Remuneration Order 2014 based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised, the general conduct of the proceedings and the time expended by the Advocates.

All the considerations above justify the amount agreed as per schedule 5 and 6 of the Advocate Remuneration Order.

On the procurement method, the law firm was on the panel of Advocates as per the list of prequalified suppliers for provision of legal services for financial year 2018 – 2019.

**HC ELC CASE NO 192 OF 2017 HUDSON WANGUHU & OTHERS VS NAIROBI CITY COUNTY & OTHERS KSHS 2,287,639 PAID TO MAANZO AND CO ADVOCATES**

The law firm was duly instructed to represent the County in this matter vide letter of instructions dated 29 August 2013 and they accepted the same vide letter to the Deputy Director Legal dated 29 August 2013.

The law firm diligently defended the County and attended several hearings and mentions. They kept us posted on every step. They submitted a fee note dated 8 February 2019 seeking a total of Kshs. The County assessed the fee note and proposed a figure of Kshs 2,287,639.00.

The fees was assessed in accordance with the Advocate Remuneration Order 2014 based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised, the general conduct of the proceedings and the time expended by the Advocates.

All the considerations above justify the amount agreed as per schedule 5 and 6 of the Advocate Remuneration Order.

On the procurement method, the law firm was on the panel of Advocates as per the list of prequalified suppliers for provision of legal services for financial year 2016 – 2018.

**ELC APPEAL NO 259 OF 2018 ANNE LOKIDOR VS NAIROBI CITY COUNTY & OTHERS KSHS 7,238,400 TO MURIMI MURANGO ADVOCATES**

The law firm was duly instructed to represent the County in this matter vide letter of instructions dated 20 June 2018.



The law firm diligently defended the County and attended several hearings and mentions. They kept us posted on every step. They submitted a fee note dated 17 May 2019 seeking a total of Kshs 10,474,800.00. The County assessed the fee note and proposed a figure of Kshs 7,238,400.00.

The fees was assessed in accordance with the Advocate Remuneration Order 2014 based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised, the general conduct of the proceedings and the time expended by the Advocates.

All the considerations above justify the amount agreed as per schedule 5 and 6 of the Advocate Remuneration Order.

On the procurement method, the law firm was on the panel of Advocates as per the list of prequalified suppliers for provision of legal services for financial year 2018 – 2019.

**HC ELC 61 OF 2018 MILIMANI SPLENDOUR MANAGEMENT LTD VS NAIROBI CITY COUNTY KSHS 6000,000 PAID TO GITAU & KABURU ADVOCATES**

The law firm was duly instructed to represent the County in this matter vide letter of instructions dated 18 October 2018.

The law firm diligently defended the County and attended several hearings and mentions. They kept us posted on every step. They submitted a fee note dated 5 February 2019 seeking a total of Kshs 10,695,200.00. The County assessed the fee note confirmed the same amount.

The fees was assessed in accordance with the Advocate Remuneration Order 2014 based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised, the general conduct of the proceedings and the time expended by the Advocates.

All the considerations above justify the amount agreed as per schedule 5 and 6 of the Advocate Remuneration Order.

On the procurement method, the law firm was on the panel of Advocates as per the list of prequalified suppliers for provision of legal services for financial year 2018 – 2019.

**ELC NO 69 OF 2018 SCORPION PROPERTIES LTD VS NAIROBI CITY COUNTY KSHS 11,515,000 PAID TO J.O MAGOLO ADVOCATES**

The law firm was duly instructed to represent the County in this matter vide letter of instructions dated 21 March 2019.

The law firm diligently defended the County and attended several hearings and mentions. They kept us posted on every step. They submitted a fee note dated 6 December 2018 seeking a total of Kshs 11,634,800.00. The County assessed the fee note and proposed a figure of Kshs 7,515,000.00.

The fees was assessed in accordance with the Advocate Remuneration Order 2014 based on the nature and importance of the case, the complexity of the matter, difficult or novelty of the questions raised, the general conduct of the proceedings and the time expended by the Advocates.



All the considerations above justify the amount agreed as per schedule 5 and 6 of the Advocate Remuneration Order.

On the procurement method, the law firm was on the panel of Advocates as per the list of prequalified suppliers for provision of legal services for financial year 2018 – 2019.

#### **Committee Observation(s) and Recommendation(s)**

**The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.**

#### **Other Grants and Transfers**

The statement of receipts and payments reflects payments for other grants and transfers totalling Kshs.43, 103,000, as further, disclosed in Note 9 to the financial statements. The payments are denoted as emergency relief and refugee assistance - civil contingency reserves. However, a record of the authority granted for the transfers by the County Executive Committee Member for Finance was not provided for audit review. Further, bank statements and acknowledgments from the reported beneficiaries were not provided for audit review.

In the absence of relevant records, the occurrence and propriety of the transfers totalling Kshs.43, 103,000 for the year ended 30 June 2020 could not be confirmed.

#### **Management Response**

The above amount was not a transfer but a normal expenditure since the Emergency fund has never been operationalized.

#### **Committee Observation(s) and Recommendation(s)**

**The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.**

#### **Cash and Cash Equivalents**

The statement of financial assets and liabilities reflects a cash equivalents balance totalling Kshs.920, 449,033 as at 30 June 2020, as further reflected in Note 13 to the financial statements. However, the following anomalies were noted in respect to the balance:

#### **Failure to Provide Board of Survey Report and Bank Certificates**

The cash and cash equivalents balance totalling Kshs.920,449,033 reflected in the statement of assets and liabilities as at 30 June, 2020 was not supported by a Board of Survey report and bank certificates for the forty-five bank accounts attributed to the balance. As a result, the accuracy and validity of the balance could not be confirmed.

In addition, bank reconciliation statements for all the 45 accounts, and confirmation certificates and bank statements for (11) eleven accounts were not provided for audit verification.



Further, thirteen (13) of the accounts had nil balances as at 30 June 2020. In addition, balances for six (6) accounts were unchanged from those reflected at the end of the previous financial year. Five bank accounts in various commercial banks were not active. Management did not provide confirmation on the status of these accounts.

#### **Management Response**

Board of survey reports, Certificates of balances and Bank reconciliation statements for active accounts have been submitted for audit review. Appendix 2.0.3.1

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Incomplete Cashbook**

The cashbook provided for audit did not reflect details of the payments on record. Further, contrary to Regulation 100 of the Public Finance Management (County Governments) Regulations, 2015, no cut-off was applied between the year under review and subsequent year.

In addition, the County Executive's Current Account operated at a commercial bank was overdrawn in the year under review by Kshs.542, 465. The County Treasury as required under Section 119(4) of Public Finance Management Act, 2012, provided no records to confirm prior approval of the overdraft.

#### **Management Response**

The current Account at Kenya Commercial Bank is an interest on loan account. The loan has not been serviced for a number of years. Monthly interest on the loan is charged to this account hence the negative amount.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Incorrect Bank Reconciliations**

Bank reconciliation statements as at 30 June 2020 reflected reconciling items carried forward totalling Kshs.2, 157,680 from previous months. However, these were not analyzed. Similarly, reconciling items in bank statements not in cashbook were not analyzed and dishonored cheques were not reversed in the cashbook. In addition, balances totalling Kshs.461,400 shown in the bank reconciliation statement as at 30<sup>th</sup> June, 2019 as payments in the cashbook not yet recorded in the bank statements were in the subsequent statement for July, 2019 reflected as payments in bank statement not yet recorded in the cashbook.

#### **Management Response**

The bank reconciliation statements were corrected in the subsequent year 2020/2021.



#### **Committee Observation(s) and Recommendation(s)**

The committee noted that the subsequent years the error was still there

The Committee therefore recommends that all Accounting Officers should institute measures to ensure that the County Treasury always acts in time when dealing with the Auditor General to forestall audit queries and failure to which they be sanction for breach of Section 149 (2) (k) of the PFM Act, 2012.

#### **Failure to Maintain Cashbook**

Examination of accounting records maintained by Waithaka Technical Training College indicated that although the College received income and paid expenses in cash, it did not maintain an independent cashbook for the transactions. As a result, the cash transactions were not sufficiently accounted for.

#### **Management Response**

Observation was noted and correctional measures taken to address the issue.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Account Payables - Deposits and Retention**

The statement of assets and liabilities as at 30 June 2020 reflects a nil accounts payables - deposits and retentions balance. However, examination of records on sampled projects implemented by the County Executive disclosed that Management deducted retention monies on payments made to contractors, as provided for in the terms and conditions of the respective contracts. However, no explanation was provided on how the deductions were accounted for and why they were not disclosed in the financial statements.

#### **Management Response**

A deposits and retention Account had not been opened in the year under review. However, an account has since been opened where deposits and retentions money will be banked for refunding contractors on fulfilling terms set out in the contract agreements.

#### **Committee Observation(s) and Recommendation(s)**

The management provided the details of the account opened.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Government Guaranteed Loans and On-Lent Water Loans**

Annex 4, to the financial statements reflects other pending payables totalling Kshs.19,143,925,000 comprised of Kshs.15,328,285,000 and Kshs.3,815,640,000 government guaranteed loans and on-lent water (foreign) loans respectively. However, the respective loan agreements and other supporting



documents were not provided for audit review. Further, the outstanding loan balances in the financial statements were not supported with documentary evidence. As a result, the accuracy and validity of the other payables totalling Kshs.19, 143,925,000 as at 30 June 2020 could not be confirmed.

#### **Management Response**

These loans are owed to the National government and relates to historical on-lent water loans taken loans taken to finance water infrastructure in the 1970's and a guaranty (government guaranteed loans) taken in the 1980's to finance construction of Umoja II housing project. The loans have been held constant in the books of accounts awaiting recommendations of the Intergovernmental Relations Technical Committee(IGRTC)that took over the residual functions of the Transition Authority (now defunct) pursuant to section 12 (b) of the Intergovernmental Relations Act ,2012.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Fund Accounts Balances**

Note 13 to the financial statements reflects three Fund Accounts, namely, Bursary Fund, Trust Fund and Emergency Fund that received grant transfers totalling Kshs.57,355,069 in the year under review. However, the Funds were not established by the County Assembly as required in Regulation197 (1) of the Public Finance Management (County Governments) Regulations, 2015 and Section 167(1) of Public Finance Management Act of 2012. Further, contrary to Section 9(1) of the Public Audit Act, 2015, Management did not submit the financial statements, bank statements, and other records on the Funds to the Auditor-General for audit.

As a result, the propriety of the remittances totalling Kshs.57, 355,069 shown as having been advanced to the Funds could not be confirmed.

#### **Management Response**

The amount referred to above relates to total bank balances for four bank accounts as at 30 June 2020.Trust fund account is used to bank cash bails, which are either refunded or utilized as penalties or fines upon determination of a case by City court based at City Hall.

Emergency fund was created in 2015 under the Nairobi city county Disaster Management Act 2015; Disaster management act establishes a Nairobi City Disaster and Emergency Management Council. The council consist of a Deputy Governor who shall be the chairperson and others members. The fund was not operationalized since Nairobi City County did not have a Deputy Governor in office from February 2018 to Aug 2022. However, we are in the process of operationalizing the fund since we have a substantive Deputy Governor in office.



#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Fixed Assets**

The statement of receipts and payments reflects acquisition of assets balance totalling Kshs.1, 435,028,590 for the year ended 30 June, 2020. However, the expenditure ledger reflected purchases totalling Kshs.1, 425,579,636 resulting to an unexplained difference of Kshs.9, 448,954.

Further, the Note indicates that payments totalling Kshs.490, 050,785 out of Kshs.1, 435,028,590 relate to construction of roads. However, expenditure records provided for audit indicated that payments totalling Kshs.745, 651,770 were made in respect of roads works projects in the year under review. The difference totalling Kshs.255, 600,985 between the balances reflected in the two sets of records was not explained by Management.

#### **Management Response**

The difference of Kshs. 9,448,954 is because of expenditure that was development in nature that was budgeted for under recurrent expenditure.

The total of Kshs. 745,651,770 relates to payments invoiced on construction of roads out of which Ksh 490,050,785 was paid in the financial year.

#### **Committee Observation(s) and Recommendation(s)**

The committee noted that the matter was explained.

Accordingly, the Committee has recommended that the CEC Member for Finance and Economic Planning takes a personal responsibility on this matter and 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.

#### **Lack of Ownership Documents for Hospital Land**

Ownership documents for the land on which Mutuini Sub-County Hospital is located were not provided for audit. In addition, particulars on owners of the buildings located in the facility's jurisdiction were not provided for audit review. Unconfirmed reports suggested that the facility's land had been encroached upon by private parties. As a result, it was not possible to confirm valuation and ownership by the County Executive of the Mutuini Hospital's land and buildings.

#### **Management Response**

The hospital is in the process of acquiring the ownership documents.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



### **Repayment of Principal on Domestic Lending and On Lending**

Note 7.9 on other important disclosures, reflects pending accounts payable totalling Kshs.72, 941,555,674 that include an outstanding loan totalling Kshs.4, 449,656,189 provided by Kenya Commercial Bank.

Records on the loan indicated that it was acquired in October 2014. However, the loan agreement and contractual documents detailing the terms and conditions of the loan were not provided for audit review. Available records indicated that, the original loan amounting to Kshs.5, 000,000,000 was secured from Equity Bank Kenya Limited by the defunct Nairobi City Council. Repayments made decreased the outstanding balance to Kshs.3, 366,696,209 as at 24 March 2014. However, records on the actual loan issued by the bank were not provided for audit and as a result, the accuracy and validity of the data could not be confirmed.

Management thereafter sought and obtained refinancing of the loan from the Kenya Commercial Bank. The loan statement issued by the bank indicated that County Executive was not repaying the loan, and as a result, the outstanding balance had risen to Kshs.4, 449,656,189 as at 30 June 2020. Management has not explained why repayments for the loan were halted.

### **Management Response**

We have provided loan statements from Equity bank from the time loan was taken to the time the loan was taken over by Kenya commercial bank.

The repayment of loan taken over by Kenya commercial bank has not been up to date due to cash flow challenges. The loan is recognized as accounts payable.

### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Budgetary Control and Performance**

#### **Under-expenditure**

The summary statement of appropriation - recurrent and development combined reflects a final expenditure budget totalling Kshs.36,981,390,888 and actual expenditure totalling Kshs.24,387,087,663 resulting in under-expenditure of Kshs.12,594,303,225 or 34% of the budget.



The significant under-absorption of the budget implied that execution of planned programmes, activities, and service delivery to the residents of Nairobi in the year under review may have been constrained.

### Management Response

The Under expenditure was because of not meeting own source revenue targets due to various challenges and bottlenecks. However various revenue enhancement strategies are currently being implemented to address these challenges,

- Implementation of the new valuation roll based on the current property values to replace the 1982 valuation roll
- Digitalization of all the collections and approval process for all revenue streams
- Operationalization of the Nairobi City County Revenue Administration Act, 2021 that provides for a proper revenue management structures and legal framework for enforcement
- Setting of targets for all revenue streams and cascade the same to sub counties, wards and individual collectors

### Committee Observation(s) and Recommendation(s)

The Committee also observed that the Executive had challenges in meeting targets of their own source revenues collection.

The Committee recommends that the CECM for Finance and Economic Planning liaise with the National Treasury should ensure timely release of funds to the County Government in line with the cash disbursement schedules approved by the Senate. The Committee further recommends that the Executives should map revenue streams and automate revenue collections points.

### Delayed Exchequer Receipts

Examination of revenue records indicated that Recurrent Exchequer, Development Exchequer and Conditional Grants totalling Kshs.2,396,431,233 for the financial year under review were delayed and only released in the months of June, July and August, 2020 as indicated in the following table:

Value Date	Equitable Share (Kshs.)	Compensation for User Fees Foregone (Kshs.)	KDSP (Level 1 Grant Allocation) (Kshs.)	Universal Healthcare in Devolved Governments (DANIDA) (Kshs.)	Conditional Grant for Development of Youth Polytechnics (Kshs.)	Total (Kshs.)
4 June, 2020					22,998,292	22,998,292



4 June, 2020		79,423,251				79,423,251
30 June, 2020				17,605,000		17,605,000
30 June, 2020	1,273,596,000					1,273,596,000
2 July, 2020			30,000,000			30,000,000
5 Aug, 2020	972,808,690					972,808,690
	2,246,404,690	79,423,251	30,000,000	17,605,000	22,998,292	2,396,431,233

Delay in release of the budgeted funds by The National Treasury in turn delayed execution of planned programmes and activities valued at Kshs.2, 396,431,233 that had been expected to benefit the residents of Nairobi City.

#### Management Response

We agree that delay in the release of budgeted funds from The National Treasury affected execution of programs including development activities. The County through the Council of Governors has engaged the National treasury on need to release the funds in a timely manner.

#### Committee Observation(s) and Recommendation(s)

The Committee therefore recommends that the National Treasury should strictly adhere to the cash disbursement schedule on the release of funds to the County Government as approved by the Senate and the Assembly.

#### Unsatisfactory Implementation of Projects

Records on implementation of projects indicated numerous unsatisfactory matters in relation to the projects under implementation by the County Executive. Among the matters noted were delays in completion, poor quality works, irregular procurements and variation of contracts.

Examination of projects status reports issued by Management revealed that several roads, public works and Ward development projects with a combined contract sum of Kshs.6, 920,635,357 spread over several years had delayed, stalled or were terminated, as summarized in the following table:

Description		Aggregate Contract Sum (Kshs.)
1	Delayed Roads, Transport and Public Works	4,676,032,701
2	Delayed Ward Development Projects (Roads and Drainage)	418,682,716
3	Stalled Roads, Transport and Public Works Projects Stalled, Abandoned, Suspended Terminated	1,825,919,940
	<b>Total</b>	<b>6,920,635,357</b>

Management provided no plausible explanations for the unsatisfactory implementation of the projects.



In their incomplete state, the projects have not yielded the benefits expected of them in spite public funds totalling Kshs.6, 263,765,252 spent on their execution.

#### **Management Response**

The delayed and stalled projects were because of contractors abandoning the projects due to non-payment. The county was experiencing financial challenges due delayed exchequer releases and low collection of targeted own source revenue.

#### **Committee Observation(s) and Recommendation(s)**

The Committee observed there was non-implementation of budgeted projects by the County Executive during the year. The Committee is concerned that the delay in projects implementation would deny the county residents the required service delivery accruing from those projects. The Committee further noted that failure to implement the projects by the County Executive is mainly attributed to late exchequer releases by the National Treasury.

The Committee therefore recommends that the National Treasury should strictly adhere to the cash disbursement schedule on the release of funds to County Government as approved by the Senate.

The Committee further recommends the Auditor General should undertake the verification of those projects within sixty (60) days from the adoption of this report.

#### **Use of Goods and Services**

Examination of expenditure records on use of goods and services revealed the following anomalies:

##### **Irregular Procurement and Delivery of Ten (10) Motor Cycles**

Procurement records indicated that Management awarded a tender for supply of ten (10) motor cycles on 3 August 2018 at a contract sum of Kshs.3, 600,000. However, the same set of officers comprised the Tender Opening Committee, Tender Evaluation Committee and the Inspection and Acceptance Committee, contrary to Section 78(1) b of the Public Procurement and Asset Disposal Act, 2015.

Because of the irregularity, the procurement process lacked adequate internal check and control.

Further, the lowest bidder at Kshs.1, 950,000 was disqualified for, reportedly, not submitting tender security valid for 120 days. However, no records were provided to support the assertion. In addition, the motor vehicles were not presented for audit verification and, as a result, their supply could not be confirmed.

#### **Management Response**

The members of the opening and evaluation committees were appointed on a rotational basis comprising of heads of user department and carried their duties diligently.



As per the PPADA 2015 section 46 (4) (d) states that the committee shall complete the procurement process for which it was appointed and no new committee shall be appointed on the same issue unless the one handling the issue has been procedurally been disbanded.

One of the requirements of the evaluation criteria at the preliminary stage was a tender security where the said lowest bidder at Kshs 1,950,000 did not provide hence disqualified as per the PPADA 2015 section 79(1) which states that a tender is confirms to all the eligibility and other mandatory requirements in the tender documents.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Irrational Costing of Solid Waste Management Contracts**

Expenditure records indicated that the County Executive made payments totalling Kshs.248, 893,590 to various firms for collection, transportation and disposal of solid waste in the year under review. However, examination of the records indicated that contracts for the same tasks in the same geographical zones were awarded to different firms at different payment rates. Records on procurement of the contracts were not provided for audit and as a result, the reasons for the variances could not be confirmed.

In view of the apparent lack of objectivity in pricing the contracts, value for money may not have been obtained on the expenditure totalling Kshs.248, 893,590 spent on collection and transportation of solid waste.

#### **Management Response**

This was an open tender where bidders were awarded as per their quoted bid prices in the same zone. The prices were also within the users estimated costs.

The county has come up with uniform rate for each geographical area and has resulted to come with more stringent actions to curb contractors from the pulling down once they have not being paid

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.



The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Irregular purchase of balls and laptops**

Examination of payments made on purchase of balls and laptops for the education sector indicated that local purchase orders totalling Kshs.15,318,000 were issued, whereas Authority-to-Incur-Expenditure(AIE) amounted to Kshs.9,250,000 resulting to unauthorized over-expenditure of Kshs.6,068,000. The over-expenditure was contrary to Regulation 51(1)(a) of the Public Finance Management (County Governments) Regulations, 2015 which prohibits spending or commitment of any public funds without a matching AIE.

#### **Management Response**

There was no management response on the matter.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review.

The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Irregular Procurement of Medical Oxygen Supplies**

Records on expenditure by the Health Department indicated that during the year under review, Mbagathi Hospital and Mama Lucy Kibaki Hospital procured medical oxygen valued at Kshs.5, 436,300 and Kshs.23, 770,000 respectively. The procurement was initiated through a memo from the Acting Chief Officer Health sent to all medical officers in February 2018. However, no records were provided for audit to confirm whether the purchase was done in a lawful, transparent, economic and effective way as required by Section 149(1) of the Public Finance Management Act, 2012.

As a result, it was not possible to confirm that the supply contracts were regular and value for money was obtained on the funds totalling Kshs.29, 206,300 spent in the process.

#### **Management Response**

There is normally quarterly consumption rate that is captured by the user department in this case the nursing department who raises a requisition.

The requisition goes through the accounts office for funds allocation then to the Medical superintendent who is the AIE holder for approval.



The approved requisition is then marked to procurement where an L.P.O is raised. After commitment of LPO, it is issued to the supplier in this case Hewa Tele.

Hewa tele acts on weekly requisitions from the user sin the ward as specified. The issued cylinders goes through Bio-med department who asses the quantity and safety before they are issued to the users.

NB; the oxygen is connected to the man fold/ store.

There exist a project agreement between NAIROBI CITY COUNTY,MAMA LUCY KIBAKI HOSPITAL, UNITED NATIONS CHILDREN'S EMEGENCY FUND,CENTER FOR PUBLIC HEALTH AND DEVELOPMENT AND HEWA TELE dated 23 OCTOBER 2017 that directs/authorizes the facility to buy oxygen from the company (Hewa Tele) with the agreed prices as attached.

During the financial year 2018-2019 the following L.P.O.s were paid against the invoice numbers indicated.

Please note copies of delivery notes receipt book (s11) and invoices can be provided if called upon to.

S/NO	LPO NUMBER	INVOICE NO	AMOUNTS	DATE
1.	0009546		1,172,800	1/11/2018
2.	0009550	1725	2,082,400	4/3/2019
3.	0009891	1792	2,037,700	30/4/2019
4.	0009892	2624	1,901,500	5/5/2019
5.	0009893	2728	2,097,900	1/6/2019
<b>TOTAL</b>			<b>9,292,300</b>	

During the financial year 2019-2020 the following L.P.Os were paid against the invoice numbers indicated.

Please note copies of delivery notes receipt book (s11) and invoices can be provided if called upon to.

This were the pending bills as at this time

S/NO	LPO NUMBER	INVOICE NO	AMOUNTS	DATE
1.	0009141		2,240,900	1/7/2019
2.	0009144	2045	2,035,000	1/8/2019
3.	0009183	2087	1,548,300	25/09/2019
4.	0009502	1496	2,264,800	3/10/2019
5.	0009535	2225	1,751,300	2/12/2019
6.	0009897	2301	1,970,300	1/1/2020
7.	0010651	2503	2,010,700	1/2/2020
<b>TOTAL</b>			<b>13,821,300</b>	

The amount paid at city call is kshs 21,102,900

Amount paid at MAMA LUCY KIBAKI HOSPITAL kshs 2,010,700



- The requisition are available it is only that during audit some were not availed.
- The trail of requesting and issuing are also available find the attached copies from supplies to user department.
- Re-order level was determined, through the change from time to time due to influx or flow of the patients and captured by the user department through requisitions.
- All requisition were done from the user department (nursing manager) and copies are availed.
- Electricity and water bills are paid by the county government and they are the one who engaged the. Agreement available

#### **BENEFITS**

- Accessibility of oxygen when urgent need arises.
- Cut transportation time and cost.
- After five years the plant is to be surrendered to the hospital as per the agreement, the plant is to become the property of Mama Lucy kibaki hospital. Cited in the agreement

#### **Committee's Observation and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Irregular Payments made After Transfer of Services to National Government**

Expenditure records indicated that the County Executive made payments totalling Kshs.498, 202,795 to various suppliers of goods and services from 25 March 2020 to 30 June 2020. The items paid for related to functions that were transferred to the National Government-Nairobi Metropolitan Services- in accordance with Article 3 of the Deed of Transfer of Functions published in the Kenya Gazette Notice No. 1609 of 25 February 2020.

Consequently, the payments totalling Kshs.498, 202,795 were irregular.

#### **Management Response**

The payments were made during the transition period on transfer of functions from Nairobi City County to Nairobi Metropolitan Services. The expenditures was incurred before the functions were transferred.

#### **Committee Observation and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Irregularities in Staff Management**

Examination of records on compensation of employees revealed the following irregularities:



## High Wage Bill

The compensation of employees expenditure totalling Kshs.12, 590,337,786 reflected in the financial statements was equivalent to 57% of the total revenue of the County Government for the year under review totalling Kshs.22, 022,326,802. The exceedingly high rate was contrary to Regulation 25(1) of Public Financial Management Act (County Governments) Regulations, 2015 that sets the threshold for the item at 35%.

Therefore, Management breached the law by overspending on personnel emoluments. Further, overuse of limited resources in payment of personnel emoluments constrained the capacity of the County Executive to fund services and development projects beneficial to the majority of residents of the County.

## Management Response

“The PFM Act Section 107 (2b) states (b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure; (c) 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. In the medium term, the County has not been able to meet the set limits of 35% of total revenue due to the following reasons:

I. The County inherited a huge workforce from the defunct City Council who were already enjoying a negotiated Terms and Conditions of Service which is protected under County Government Act Section 138 (1) states that: -

“Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before this Act was effected and is serving in a county on the date of the constitution of that county government shall be deemed to be in the service of the county government on Secondment from National Government with their terms of service as at that date.”

- The officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage; and;
- The officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal.
- The officer's terms and conditions of service may be altered to the Officer's advantage.

II. The County also received staff from National Government who were performing devolved functions and who were enjoying very different salary structures compared to those staff seconded from the former Local Authorities.



III. In this regard, the Government in conjunction with Ernest & Young rolled out Capacity Assessment and Rationalization Programme to establish 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 35% from the current 57.22%.

Also in the medium term, the County is expected to retire over two thousand five hundred 2,500 employees under normal mandatory retirement, which will bring down the payroll costs by about 2.9 billion per annum. This will reduce payroll costs to around 10,445,698,040 by 2022 to be within the threshold of 35% considering that revenues are expected to grow to over 30 billion over the same period.

In financial year 2019/2020, revenue collection declined compared from previous year 2018/2019 by 6 billion shillings (26,276,416,586 to 20,692,624,824) which further pushed the percentage of wage bill from 49.4% to 57.22%. The Nairobi City County Government has put mitigation measures in place to improve on revenue collection as it was from the previous years. This will reduce the percent of wage bill to around 12% if well collected.

In the short term, the CECM Finance has submitted County budget proposal to County Assembly with the existing levels and the Assembly approval subject to amendments. The Nairobi City County Government and County Public Service Board plan to implement voluntary early retirement scheme expected to be rolled out in FY2021-2022.

#### **Committee Observation(s) and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Undisclosed County Public Service Board Operations**

The audit could not confirm the nature and scope of operations carried out by the County Public Service Board in the year under review as Minutes of its Meetings and other activities were not provided for review.

In addition, it was not possible to confirm whether the Board was validly constituted and whether it had carried out its mandate as provided for in the Constitution and relevant laws.

#### **Management Response**

For the year under review, the Nairobi County Public Service Board operated within its mandate as provided for under Section 59 of the County Governments Act, 2012. A sample of minutes of meetings held in the year under review is hereby provided as Appendix 3.0.2. We confirm that the Board was properly constituted under provisions of Section 58.



### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Over-Expenditure on Board Expenses and Casual Workers at Pumwani Maternity Hospital**

Examination of expenditure records indicated that expenditure on the Board and casual employees at Pumwani Maternity Hospital totalled Kshs.3,473,600 and Kshs.12,735,262 against budgetary allocations totalling Kshs.600,000 and Kshs.10,000,000 resulting in over-expenditure of Kshs.2,873,600 or 478% and Kshs.2,735,262 or 27% respectively. The over-expenditures contravened Regulation 53(1) of the Public Finance Management (County Governments) Regulations, 2015 that prohibits unauthorized use of funds other than for the purposes specified in the approved budget.

In addition, Gazette notices and appointment letters for the Board Members were not provided for audit review. As a result, it was not possible to confirm whether the appointments, and the board expenses totalling Kshs.3, 473,600 were incurred in a lawful way.

Staffing records further indicated that the Hospital hired one hundred and twenty-three (123) casual employees in the year under review and paid them emoluments totalling Kshs.12, 735,262. However, contrary to Section 37 of the Employment Act, 2007, some of the casuals were retained for continuous periods lasting for more than three months without contracts. Further, there were no records showing that needs assessments were carried out to identify understaffed units before the appointments were made.

### **Management Response**

During the period under review, Pumwani Maternity Hospital experienced challenges, which included dilapidated state of the facility, frequent strikes and understaffing. This occasionally led to unforeseen extraordinary board meeting /sittings to address the crisis. Board members also invited Heads of departments in those meetings to clear the air on some pressing issues in their area of operations.

There are also various Committees meetings including Audit committee, Quality of Health committee, Finance and General purpose, which occasionally meet and are paid allowances from the board vote.

The hospital experienced understaffing due to retirement and natural attrition. This necessitated the need to employ casuals to cover the gaps for smooth continuity in operations. All casuals have running contracts.

It has not been possible to rotate the casuals every three months as the hospital has specialized areas, which require training, and as such changing the workers every other time would lead to a lot of inefficiency and loss to the hospital and compromise the quality of Healthcare. However, the cleaning and upkeep of the hospital has since been awarded to a private company leading to reduction of casuals.



#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Staff Shortage at Mbagathi Hospital**

Records at Mbagathi Hospital indicated that the authorized establishment was five hundred and fifty (550) members of staff against four hundred and thirty-four (434) in position in the year under review. Therefore, the Hospital had a shortage of one hundred and sixteen (116) employees. The understaffing may have hindered the Hospital from providing health services in an efficient and effective way.

No plausible explanation was provided for the failure of the County Public Service Board to fill the vacancies to aid provision of efficient, high quality services to patients as required of the Board by Section 55(b) of the County Governments Act, 2012.

Further, review of records on casual workers indicated that the workers had worked as temporary employees for long periods with some having held their temporary positions for over 20 years. Minutes of a meeting of the Hospital's Management Committee held on 20 February 2018 indicated that the Committee had asked Management to consider hiring the workers on permanent service.

Similarly, the Deputy Medical Superintendent at the Hospital had in November 2018 written to the County Director of Health requesting employment of the casual workers on permanent terms, following interviews carried out one year before in July 2017, but their status remained unchanged.

Failure to absorb the workers on permanent terms may adversely affect their morale and lower the quality of services offered at the Hospital.

#### **Management Response**

The hospital gets all its personnel from NMS and Nairobi City County. The Hospital continues to lobby for absorption of Casual workers.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Irregular Hire of Medical Staff at Mama Lucy Kibaki Hospital**

Examination of employment records maintained at Mama Lucy Kibaki Hospital revealed an approved staff establishment of eight hundred and eight (808) staff members against five hundred nineteen (519) permanent staff resulting to a deficit of two hundred and eighty-nine (289) staff.

The shortage appeared to have hindered efficient and effective services as Management had resorted to hiring temporary workers in various departments. In the year under review, wages for casual employees totalled Kshs.49, 100,736.



The wages were paid to a hundred and one (101) casuals at Kshs.16,484,266, fifty-seven (57) locum nurses at Kshs.16,482,000, eight (8) clinicians at Kshs.4,818,300, seven (7) anesthetists at Kshs.2,662,470, fifteen (15) officers for Covid-19 mitigation at Kshs.709,500 and various other medical officers at Kshs.7,944,200.

However, requisitions from the user departments and approvals for hire of the staff were not provided for audit review. As a result, the regularity of the recruitment, and suitability for the jobs assigned to staff could not be confirmed.

No plausible explanation was provided by Management for preferring casual over permanent or term workers.

### Management Response

In our letters addressed to the Chief Officer of Health, Ref No MLKH/SR/24/1/64 of 9 August 2016 and MLKH/ADM/24/1/64 of 20 December 2016 we highlighted some of the challenges that justify the retaining of the casuals.

Namely;

1. Increased workload, due to the increased number of in and outpatients attended in Mama Lucy Kibaki Hospital.
2. Lack of skilled staff in some of the department due to delays in recruitment of officers by County Public Service Board.
3. The hospital being the main County Referral hospital serving low, socio-economic status population in Eastland and surrounding counties of Kiambu and Machakos.

Kindly note that in order to address some of the challenges above, some skilled casual workers as indicated are held against substantive positions. If Public Service Board recruit and post skilled workers, the hospital will require less general casual workers to support the work of technical officers.

A letter Ref No MLKH/ADM/24/1/74 of 22nd February 2019 to CPSB requesting for consideration to absorb casual workers to county staff establishment was done and we are still waiting for their response.

As for engagement of health workers on Locum basis in cadres like Clinical officers, clinical anesthetist, medical officers, Nurses and Radiographers, and covid-19 emergency medical team (EMTs) It was noted that the departments lack adequate staff due to:

1. Transfers without replacements
2. Failure to report back on completion of studies leaves
3. Resignations
4. Non-renewal of contracts for Radiographers by the sponsors of the programme ie (MSF)



5. Emergencies like outbreak of cholera and covid-19 in the country and surrounding area, which call for additional staff to cover the area.
6. Retirements and deaths

The hospital has addressed letters to The County Director of Health, The Chief officer of Health and The Nairobi County Public Service board requesting them to consider absorbing casual staff in the facility into county staff establishment.

Facilities of equal undertakings like Mbagathi Hospital have outsourced most of the services e.g. Laundry, compound maintenance and general duties hence the less number of casuals in comparison to Mama Lucy Kibaki Hospital.

In November 2020, Nairobi metropolitan services have hired clinicians, nurses, clinical anesthetist, doctor and radiographer. This will go a long way in reducing locum expenditure.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the management did not provide an approval from the Board. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Unremitted Statutory Deductions**

Included in other pending payables totalling Kshs.62,417,338,886 as at 30 June, 2020 are statutory deductions totalling Kshs.1,532,263,571, as analyzed in Annex 4 of the financial statements. The payables denote failure by Management to remit the deductions in due time as required in Regulation 22 (2) of the Public Finance Management (County Governments) Regulations, 2015.

The delays may have caused the County Executive to incur liability for fines and penalties and is detrimental to the welfare of its workers

#### **Management Response**

These statutory deductions are historical balances brought forward from previous administrations of the county including defunct Nairobi City Council. In the year under review, we paid current deductions and arrears to Kenya Revenue Authority amounting to Kshs. 3 billion from a balance Kshs. 4.1 Billion. Currently we are paying statutory deductions on a monthly basis as they fall due.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



### **Inadequate Maintenance of Records by Enforcement Department**

The Compliance and Enforcement Department of the County Executive serves enforcement notices and undertakes any other enforcement action in respect to physical development. However, examination of the Department's records indicated that they were kept in registers some of which were old, mutilated, and lacked backup copies. The records included; reports on arrests, court cases, notices, demolitions and complaints.

Therefore, the information contained in the registers, though critical to the operations of the Department, was not maintained in a secure and efficient way.

By failing to maintain the records well, Management contravened Section 149(2) (c) of the Public Finance Management Act, 2012 that requires Accounting Officers to protect and back-up all financial and accounting records in their respective entities.

### **Management Response**

The Department of Planning Compliance and Enforcement has created a Master Roll Book for recording all Court cases, which is safely and neatly kept at the Departmental registry. We have opened Counter Books for recording all the renovation permits payments. Currently all the payments are being invoiced through the global billing and back up is provided by the ICT Department.

Enforcement notices accountability has been enhanced through monthly Enforcement Books Auditing and reporting by various Sub –County Planning Compliance and Enforcement officers. The filled up Enforcement books are safely kept at Director's offices.

Complaints are registered in the Counter Books and are safely kept in our offices.

### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Lack of Fixed Assets Register at Mama Lucy Kibaki Hospital**

Examination of records at Mama Lucy Kibaki Hospital revealed that the hospital procured assets totalling Kshs.4, 786,181 in the year under review. However, Management did not maintain a fixed assets register on assets owned by the Hospital. Further, the assets were not coded or tagged and therefore their location and custody could not be tracked from records.

Failure to maintain the assets register contravened Section 159(2) of the Public Procurement and Asset Disposal Act, 2015 that requires each Accounting Officer of a procuring entity to keep record of goods,



works and services received in an inventory of the entity. In addition, the assets were at risk of misplacement or loss.

#### **Management Response**

Fixed asset register has been updated for the period 2019/2020 as advised by the audit team.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the Asset Register was verified during audit of financial year 2021-2022.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



## **5.0. CONSIDERATION OF AUDITOR GENERAL REPORT ON FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDING 30<sup>TH</sup> JUNE, 2021**

### **Variances between the Financial Statements, Payment Details and the Ledger**

The statement of receipts and payments reflects total payments amounting to Kshs. 29,582,031,455. However, the general ledger and payments summaries provided for audit reflected expenditure totaling to Kshs.17,006,826,853 and Kshs.21,078,392,025 respectively resulting in variances amounting to Kshs.12,575,204,602 and Kshs.8,503,639,430. The difference between the three sets of records was not reconciled or explained.

### **Management Response**

The variances between Financial Statements and Appropriation Accounts, General Ledger and Payment details is a result of;

- a) Salaries, which are processed through Integrated Payroll and Personnel Database platform (IPPD) but not recorded in IFMIS. The amount paid as salaries in the year under review was Ksh. 6,430,283,158.
- b) Transfers to other government agencies i.e. County Assembly and Nairobi Metropolitan Services.

These entities process their expenditure using their respective budgets then the county executive requisitions for transfer of funds from County Revenue Fund to their Bank Accounts held at Central Bank of Kenya. These transactions do not appear in IFMIS reports for the County Executive. Transfers to Nairobi City County Assembly and Nairobi Metropolitan Services (NMS), in the year under review were Ksh. 1,822,585,639 and 10,080,865,859 respectively.

### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Incomplete Payment Entries in the Ledger**

The statement of receipts and payments reflects total payments amounting to Kshs.29, 582,031,455. Review of integrated Finance Management Information System (IFMIS) ledger entries revealed three hundred and forty-nine (349) payments to vendors for payments amounting to Kshs. 1,937,357,693, which did not have corresponding invoice details. Management did not provide reasons for failure to capture invoice details for the payments.



### **Management Response**

The County lacked a standard template of capturing invoices in IFMIS; this led to omission of details by the responsible accountants while uploading invoices. We are currently developing a template to ensure uniform capture of invoices.

The IFMIS system does not have a slot for capturing supplier/merchant invoice number at invoicing stage, only Payment Voucher Number is captured at this stage.

### **Committee Observation and Recommendation**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Payments not processed in IFMIS and Unreconciled Suspense Accounts**

Analysis of payments made through internet banking revealed 348 entries amounting to Kshs.2, 172,065,824 that were paid without being processed through IFMIS. Further, a payment analysis report generated from IFMIS reflected 3,825 transactions amounting to Kshs.287, 485,876 processed through suspense accounts comprising of prepayments, special imprests and temporary imprests, which were yet to be cleared. However, the amount differed with an amount of Kshs.33, 247,428 reflected in the statement of assets and liabilities under accounts receivables – outstanding imprests, resulting in a variance of Kshs.254, 238,448 which was not reconciled or explained.

### **Management Response**

All payments made through internet banking (IB) are pulled from IFMIS through an activity called payment process and therefore it is impossible for payments to be made having not passed through IFMIS. The appendix provided by the Auditor of 3,825 transactions included 3,543 transactions amounting to Ksh 239,477,767.65 belonging to Nairobi City County Assembly. The Imprests processed by the county executive in the year under review were 282 transactions amounting to Ksh 48,008,109.65 out of which Ksh 33,247,428 had not been surrendered by the year-end. The variance of Ksh 254,238,448 comprised Ksh 239,477,767.65 Imprests processed by the county assembly and Ksh 14,760,681.65 surrendered from the county executive wing.

Appendix 971.3

### **Committee's Observation and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Accounts Payables - Deposits and Retentions**

The statement of assets and liabilities reflect a nil balance in respect of accounts payables - deposits and retentions as at 30 June 2021. Review of payments made during the year revealed an amount of Kshs. 1,097,460,707 paid to contractors in respect of various works including construction of buildings,



refurbishment of buildings and construction and civil works under acquisition of assets expenditure items. The payments required Management to retain an amount for defects liabilities under the works contracts. However, it was not possible to confirm whether any retention money was deducted before the payments were made, as the same was not disclosed in the financial statements.

#### **Management Response**

The Nil balance was due to lack of deposits and retentions account where the money deducted would be deposited. The retention money was deducted while processing contractors' payments in IFMIS and contractors' paid net.

A deposit and Retentions Account has since been opened at Central Bank of Kenya where all deductions are currently being deposited to. Attached below is a letter from CBK confirming opening of the account.

Confirmation letter from CBK)

#### **Committee's Observation and Recommendations**

The Committee noted that a deposit and retention account was opened at CBK.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Unreconciled Bank Balances**

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs. 897,688,736 as at 30<sup>th</sup> June 2021. The amount relates to balances held in forty-nine (49) bank accounts operated by City County Executive during the year under review, including one bank account, which was overdrawn. However, certificates of bank balances for the forty-nine (49) bank accounts reflect a cumulative balance amounting to Kshs. 11,196,922,393 resulting to a variance of Kshs. 10,299,233,657, which was not reconciled.

Further, an amount of Kshs. 429,813,424 held in various bank accounts related to balances for County Fund accounts, which were required to prepare separate financial statements. Inclusion of the funds balances misstated the cash and cash equivalents balance as at 30 June 2021.

In the circumstances, the accuracy and completeness of the balances could not be confirmed.

#### **Management Response**

Certificate of bank balances were for closing balances at year-end on 30<sup>th</sup> June 2021. On this date, the county received Ksh 6.6 Billion equitable share from the National Treasury. Again, on 2<sup>nd</sup> July 2021 the last equitable share of Ksh 1.3 Billion was received by the County. (The National treasury PFM Act) allows for a financial year to remain open for some time to enable transactions, which were processed within the financial year to be paid for after the closure of a financial year.



### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Receipts**

The statement of receipts and payments reflects total receipts amounting to Kshs. 29,553,905,838. Review of records and supporting documents provided for audit in respect of the receipts revealed the following anomalies;

### **Unaccounted for Receipts**

The statement reflects County own generated receipts amounting to Kshs. 9,711,076,181 comprising of Kshs. 7,469,415,819 collected through the Local Authorities Integrated Financial Operations Management System (LAIFOMS) and an amount of Kshs. 2,241,660,362 collected through a revenue account held at NBK. However, schedules in support of receipts collected through the bank were not provided for audit. Further, review of bank statements for the bank collection account revealed that an amount of Kshs. 3,814,038,549 in revenue was collected through the bank during the year under review, resulting in a variance of Kshs. 1,572,378,187 which was not reconciled

In addition, a deed of transfer of functions to the National Government from the Nairobi City County Government signed on 25 February 2020 and contained in the gazette notice No.1609, bestowed the responsibility of collecting and remitting all revenue accruing from the transferred functions to the National Government. Because of the deed, Kenya Revenue Authority (KRA) was appointed the principal agent for overall revenue collection. Review of an account held at Equity Bank operated by KRA where revenue collected was deposited revealed that as at the closure of the financial year, an amount of Kshs. 827,104 was held at the account. However, details of the total revenue collected and remitted by KRA as provided for in the deed of transfer of functions, during the year under review were not provided for audit.

### **Management Response**

The County used two different systems for revenue collection which are LAIFOMS and NBK system (Revenue sure).

The two systems were not integrated and thus not all revenue collected via NBK system are reflected in LAIFOMs.

Financial statements are prepared using County Revenue Fund data, which includes revenues collected by both systems.

The difference is revenues collected through NBK systems that are not uploaded in LAIFOMs.



However, the County Government of Nairobi has introduced a new collection system the Nairobi pay where all ratepayers will be reminded via a text message to pay their dues on time. The system also allows our client to self-register, invoice and pay from comfort of their homes/ workplace.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Unremitted Receipts**

The statement of receipts and payments reflects county own generated receipts amounting to Kshs.9, 711,076,181. However, the receipts excluded Kshs.369, 429,434 (2020 - Kshs.427, 267,499) collected by the Nairobi City County Alcoholic Drinks and Licensing Board. According to Regulation 80 of Public Finance Management (County Governments) Regulations, 2015 the receipts comprise revenue of the County Government and ought to have been remitted to the County Revenue Fund (CRF) and disclosed in the financial statements.

#### **Management Response**

Nairobi city County Alcoholic Drinks and Licensing Board is established pursuant to the provision of Nairobi City County Alcoholic Drinks and Licensing Act, 2014. The Act establishes a fund to which all funds appropriated and collected by the board are to be retained. The Provisions of PFM Act section 109 (2) (a) provide that funds can be excluded from payment into the CRF because of a provision of the PFM Act or another Act of parliament, and is payable into another county public fund established for a specific purpose.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Proceeds from Domestic and Foreign Grants**

Note 2 to the financial statements reflects proceeds from domestic and foreign grants amounting to Kshs. 74,527,819 comprising of Youth Polytechnic Support, Kenya Devolution Support Programme and World Bank funded Agriculture Sector Development Support Programme Phase Two (ASDSP II). However, the grants and donations were not disbursed through the revenue mode of disbursement or



supply of goods and services as required by Regulation 72(4) of the Public Finance Management (County Governments) Regulations, 2015.

Further, expenditure returns were not provided for audit review.

In addition, contrary to Regulation 77, Accounting Officers of the respective projects did not compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of the projects and sub-projects including monthly interim financial returns, quarterly financial management returns and a summary of the records for each quarter and year to the division responsible for external resources in the County Treasury not later than fifteen (15) days after the end of every quarter.

In the circumstances, the accuracy and regularity of County own generated receipts of Kshs. 9,711,076,181 and proceeds from domestic and foreign grants received through exchequer amounting to Kshs. 74,527,819 could not be confirmed.

#### **Management Response**

The receipts amounting to Ksh 74,527,819 were conditional grants, which were first received in County Revenue Fund account at central bank and transferred to Special Purpose Accounts in the same bank for purposes of ring fencing. The funds are only spent for activities specified by the donors in the terms and conditions for the grants. Accounting officers for the projects submit monthly, quarterly and annual returns to the donors.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Unsupported Payments**

The statement of receipts and payments reflects total payments amounting to Kshs. 29,582,031,455. However, supporting documents for the expenditure such as payment vouchers, invoices, contracts, disbursement details for payments amounting to Kshs. 9,773,905,233 were not provided for audit.

In the circumstances, the accuracy and regularity of expenditure amounting to Kshs. 9,773,095,233 could not be confirmed.

#### **Management Response**

All Vouchers relating to NCCG were forwarded to auditors, however those relating to transferred functions were not available for submission.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



### Unsupported Use of Goods and Services

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects expenditure amounting to Kshs.9, 165,422,362 in respect of use of goods and services. Review of the supporting documents revealed the following:

### Unsupported Legal Expenses

The amount includes other operating expenses amounting to Kshs.2, 477,851,520 that includes an amount of Kshs.836, 627,660 in respect of legal expenses paid to various firms during the year under review. However, the payments to the firms were not supported by formal instructions for representation, details of cases in which the firms represented the County Executive and certified copies of the judgments for the respective cases as stipulated in the civil procedure rules. Further, the services were directly procured contrary to the provisions of Section 103 of the Public Procurement and Asset Disposal Act, 2015.

In addition, review of payments and documents revealed that the County Executive procured the legal services without valid contracts contrary to Section 135 of Public Procurement and Asset Disposal Act, 2015.

### Management Response

#### Procurement of law firms

On the procurement method used to identify the Law firm, it is our submission that this is done by the Procurement Department through prequalification of suppliers of Legal Services generally.

However, owing to the unique nature of the legal services, it is impractical to procure the services of an Advocate on case-by-case basis. Advocates or law firms are not allowed to participate in any bidding process relating to public procurement for legal services, especially where price competition is involved. They cannot be selected on the basis of fees to be charged for the legal services sought because the charging of legal fees follows the Advocates Act, the Advocates (Remuneration) Order, the Advocates (Practice) Rules, and the Advocates (Marketing and Advertising) Rules.

The pre-qualification procedure or registration process to obtain a panel of law firms or advocates that can be engaged by a procuring public entity in the provision of the needed legal services would be sufficient in itself, hence no further requirement for a bidding process.

Therefore, the Office of the County Attorney when seeking legal services choose from a list of pre-selected legal services providers (that is, a list of law firms or advocates) on its panel, paying attention to expertise, fairness, rotation, and professional skills, and not the fees to be charged.

#### Agreements / valid contracts

On the question of agreements, the law is clear. Whether or not there is a written legal services agreement or agreement on fees, the Advocates (Remuneration) Order sets the minimum fees to be



charged for the provision of a variety of legal services by the advocates. Advocates are restricted from charging fees below the minimum fees set out under the Advocates (Remuneration) Order.

Beyond the minimum fees set out under the Advocates (Remuneration) Order, the legal fees charged are determined by the value of the subject matter involved, the complexity of the legal issues involved, the length of litigation, the interest of the parties, the level of the court in which the litigation is taking place, and the expertise and particular skill-set of the advocate.

#### Judgements to justify payment

It is important to note that full instruction fees to defend or prosecute a suit is payable on instruction and is not affected or determined by the stage the suit has reached (see attached copy of judgement in Joreth Ltd vs Kigano & Associates Advocates (2002) EA 99.

Section 46 of the Advocates Act forbids advocates from entering into certain agreements with their clients and even goes ahead to invalidate such agreements. Such invalid agreements include any agreement where an advocate states that payment or remuneration rates for legal services rendered will be dependent on the success or failure of the underlying suit or proceedings, or that remuneration will be less than that prescribed in the Advocates (Remuneration) Order. Therefore, the requirement for judgements before payment is not applicable.

#### Details of cases and formal instructions

Concerning the details of the cases in which the firms represented the county and the formal instructions, the list below shows the case details, the parties involved, the Advocate/ law firm and the amount paid. Further to the above, there is annexed supporting documents including copies of the formal instruction letters, the fee notes, the assessment/ verification, the acceptance and in some cases decrees as evidence that the payments were made in accordance with the law.

PAID LEGAL FILES FOR THE FY 2020/2021			
S/NO.	NAME OF LAW FIRM	PARTICULARS OF THE MATTER	GROSS AMOUNT
1	AKIDE AND COMPANY ADVOCATES	NAIROBI HCC MISC APPL NO. 625 OF 2014 - AKIDE & COMPANY ADVOCATES VS NCC	5,000,000.00
2	ATAKA KIMORI And OKOTH ADVOCATES	HC MISC NO. 15 OF 2017 PROF. TOM OJIENDA & ASSOCIATES ADVOCATES VS NCC	4,449,303.95
3	CM MITEMA AND CO ADVOCATES	CASE ELC NO 303 OF 2017 SAMMY NDEGWA WA MUREITHI VS NAIROBI CITY COUNTY	1,047,760.00



4	CM MITEMA AND CO ADVOCATES	ELRC NO. 118 OF 2017 - PETER MBOGO ABUSO VS NAIROBI CITY COUNTY	1,053,521.30
5	D.NJOGU AND COMPANY ADVOCATES	CASE HIGH COURT MISC APPLICATION NO 1226 OF 2007 REPUBLIC VS TOWN CLERK, CITY COUNCIL OF NAIROBI	3,850,329.85
6	E K MUTUA AND COMPANY ADVOCATES	HC ELC NO. 466 OF 2018 - TAJ MALL LTD VS NAIROBI CITY COUNTY AND OTHERS	24,000,000.00
7	E.A.O OYARO and Company ADVOCATES	HCCC NO. 1885 OF1992- MWANGI STEPHEN VS CITY COUNCIL OF NAIROBI	40,000,000.00
8	K MACHARIA AND COMPANY ADVOCATES	ELC NO. 63 OF 2018: IDOW TRADING CO. LTD VS. NAIROBI CITY COUNTY	17,420,600.00
9	KITHI AND COMPANY ADVOCATES	HCCC NO E140 OF 2020 BEING HARDI ENTREPRISE LTD VS NCC	10,000,000.00
10	KITHI AND COMPANY ADVOCATES	ELC NO 56 OF 2019 BEING REPUBLIC VS NCC AND OTHERS	10,123,000.00
11	KITHI AND COMPANY ADVOCATES	CASE ELC PETITION NO. 67 OF 2019: CHRISTOPHER NGANGA AND OTHERS VS. NCC AND OTHERS	10,643,333.00
12	KOCEYO AND COMPANY ADVOCATES	ELC NO. 730 OF 2014 - ANN KAIMURIKIRIIKAA AND OTHERS VS NCC AND OTHERS	10,915,600.00
13	KOCEYO AND COMPANY ADVOCATES	ELC CASE NO. 516 OF 2019 - KENYA POWER AND LIGHTING COMPANY VS NAIROBI CITY COUNTY	10,915,600.00
14	KOCEYO AND COMPANY ADVOCATES	CASE ELC NO 774 OF 2012: BONDENI PROPERTIES CO. LTD VS. NCC AND OTHERS	16,356,000.00
15	KOCEYO AND COMPANY ADVOCATES	HC LEC NO. 193 OF 2011 - KAFEY TRADING COMPANY LIMITED VS NCC	16,437,960.00
16	KOCEYO AND COMPANY ADVOCATES	HCCC NO 157 OF 2017 BEING LAVINGTON GREEN SHOPPING LTD VS NCC	18,050,000.00
17	KOCEYO AND COMPANY ADVOCATES	ELC NO. 83 OF 2016 - SUDCUP ENTERPRISES LTD VS NCC AND OTHERS	23,118,800.00



18	KOCEYO AND COMPANY ADVOCATES	HCC NO. 502V OF 2011 - (CONSOLIDATED WITH ELC NO. 603 OF 2011)	34,115,600.00
19	KOCEYO AND COMPANY ADVOCATES	HC ELC 486 OF 2014 : ABERDARE INVESTMENTS VS NAIROBI CITY COUNTY AND OTHERS	37,080,800.00
20	KWANGA MBOYA AND COMPANY ADVOCATES	ELC CASE NO 88 OF 2018- KIBAGARE SLUMS ASSOCIATION VS NCC	19,378,800.00
21	KWANGA MBOYA AND COMPANY ADVOCATES	CASE NO HCC ELC NO 88 OF 2018 INVOLVING KIBAGARE SLUMS ASSOCIATION VS NCC & OTHERS	20,000,000.00
22	MILLER AND COMPANY ADVOCATES	HC JR MISC APPLICATION NO 322 OF 2019 - REPUBLIC VS KRA AND OTHERS EXP. NAIROBI CITY COUNTY	30,000,000.00
23	MILLER AND COMPANY ADVOCATES	NBI ELC NO 364 OF 2019 - JOSEPHINE GATHONI GATABAKI VS MUGA PROPERTIES LTD & OTHERS	34,200,000.00
24	MILLER AND COMPANY ADVOCATES	ELC PET NO. 78 OF 2018 AFRISON EXPORT IMPORT LIMITED AND ANOTHER VS NCC AND OTHERS	77,439,450.00
25	MORARA ONSONGO AND COMPANY ADVOCATES	HCC NO 279 OF 2018 NAIROBI MARKET TRADERS SOCIETY VS NCC	2,543,000.00
26	NYABERI AND COMPANY ADVOCATES	CASE HC PETITION NO 199 OF 2018 INVOLVING HON. BENSON MUTURA VS NCC & OTHERS	68,405,200.00
27	OSUNDWA AND COMPANY ADVOCATES	HC MISC NO. 86 OF 2019 - PROF TOM OJIENDA & ASSOCIATES VS NAIROBI CITY COUNTY & ANOR	25,000,000.00
28	WAMBUGU AND MURIUKI ADVOCATES	HCC PET NOO.29 OF 2019 -SHAKE TRADING COMPANY LTD VS- NAIROBI CITY COUNTY & OTHERS	50,000,000.00
29	WAMBUGU AND MURIUKI ADVOCATES	HCC PET NOO.29 OF 2019 -SHAKE TRADING COMPANY LTD VS- NAIROBI CITY COUNTY & OTHERS	53,243,720.00
			<b>674,788,378.10</b>



#### **Committee Observation(s) and Recommendation(s)**

The Committee observed that the authenticity of the supporting documents that were submitted to the Auditors could not be verified.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Payments of Subsistence Allowance**

The amount further includes expenditure amounting to Kshs.323, 281,087 on domestic travel and subsistence, which includes an amount of Kshs.13, 074,060 paid as subsistence allowances to staff members without evidence confirming that they participated in the events for which the allowances were paid.

#### **Management Response**

Attendance registers for events have since been provided to auditors for verification.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that all attendance registers for events were provided for verification by auditors.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Payments of Foreign Travel and Subsistence**

The amount also includes foreign travel and subsistence expenditure of Kshs.166, 768,849 which constitute an amount of Kshs.11, 422,273 whose supporting documents such as attendance registers, reports of work performed or program by staff members, invitation to various overseas trainings and workshops, imprest requisitions and applications, and proof of travel documents like boarding passes, stamped passports to various destinations were not provided for audit.

#### **Management Response**

The documents have been provided to the auditors for verification.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that documents were provided.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Training Expenses**

Further, training expenses amounting to Kshs.164, 645,324 includes an amount of Kshs.13, 292,580 paid in respect of various training programs. However, support documents such as need assessment



reports, training programs from training institutions, invitations to the trainings and authentic travel documents among other information were not provided for audit.

#### Management Responses.

Out of the sixty-four (64) officers indicated in the audit report, five (5) are officers from the Public Service Management who attended the 2020/2021 midterm assessment workshop in Mombasa between 15-19th February 2021

S/No	V/No	Description	Amount	Audit findings	Management remarks
1.	V/No.14608 of 13 April 2021	Being payment per diem and transport allowances to attend the 2020-2021 performance contract mid-term assessment from 15th Feb to 19 march 2021 paid to James Njeru-19990004405	87,200.00	The voucher is only supported by the s budget and a schedule of officers and an authority letter but no programme of the activity and location of where it took place in Mombasa, also no evidence of travel to and back to Mombasa.	The workshop programme, and evidence of attendance register is hereby attached
2.	V/No.14549 of 13 April 2021	Being payment per diem and transport allowances to attend the 2020-2021 performance contract mid-term assessment	87,200.00	„	The workshop programme, and evidence of attendance register is hereby attached



		from 15th Feb to 19 march 2021 paid to Joseph Wambua-19890011604			
3.	V/No.14611 of 14611	Being payment per diem and transport allowances to attend the 2020-2021 performance contract mid-term assessment from 15th Feb to 19 march 2021 paid to Charles Ndirangu-19980013081	87,200.00	„	The workshop programme, and evidence of attendance register is hereby attached
4.	V/No.14610 of 13 April 2021	Being payment per diem and transport allowances to attend the 2020-2021 performance contract mid-term assessment from 15th Feb	87,200.00	„	The workshop programme, and evidence of attendance register is hereby attached



		to 19 march 2021 paid to George K. Gotonga- 19990003131			
5.	V/No.14604 of 13 April 2021	Being payment per diem and transport allowances to attend the 2020-2021 performance contract mid- term assessment from 15th Feb to 19 march 2021 paid to Terence Chazima 19920002437	87,200.00	„	The workshop programme, and evidence of attendance register is hereby attached
	V/No.14555 of 13 April 2021	Being payment per diem and transport allowances to attend the 2020-2021 performance contract mid- term assessment from 15th Feb to 19 march	87,200.00	„	The workshop programme, and evidence of attendance register is hereby attached



		2021 paid to Festus Macharia- 19910006932			
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1. The supporting documents are hereby resubmitted for review, Appendix 974,4

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that all supporting documents were provided for verification by auditors. The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Utilities, Supplies and Services**

The amount also includes payments amounting to Kshs.200, 000,000 in respect of utilities, supplies and services. The amount was paid to Kenya Power and Lighting Company (KPLC) in two payments of Kshs.100, 000,000 each. However, the payments were not supported by statement of account, invoices, and electricity bills.

#### **Management Response**

We have attached demand letters from KPLC for the bill, pending bills, KPLC ledger correspondences and contract to settle the same.

#### **Committee's Observation and Recommendations**

The Committee noted that demand letter from KPLC were provided for verification by auditors. The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Unsupported Hospitality Supplies and Services**

The amount also includes hospitality supplies and services expenditure amount of Kshs.174, 474,979. However, review of expenditure documents for the amount revealed that payments amounting to Kshs.38, 777,482 were made as meals allowances to staff engaged beyond normal working hours. However, the rates applied differed with approved rates by the Salaries and Remuneration Commission as stipulated in circular of 16 April 2014. In addition, the expenditure was not justified as no basis or reasons were provided for the payments. Therefore, the expenditure did not constitute a proper charge to public funds.

Further, the expenditure includes allowance of Kshs.7, 762,000 paid to various task force members. However, the allowances did not meet the eligibility criteria for payment set out in the Ministry of



Devolution and Planning dated 2 August 2013, which spells out conditions under which taskforces should be formed and compensated including eligibility criteria for such payments.

#### **Management Response**

The management paid Kshs.27, 718,838 in form of breakfast and lunch allowances to various officers for performing tasks beyond normal working hours and for provision of security.

A total of Kshs.1, 458,204 was paid as lunches and breakfast allowances to security team guarding premises.

Further, Kshs.1, 360,920 was paid in form of breakfast and lunch allowances to officers training new recruits during the financial year.

In addition, Kshs.1,199,520 was paid in form of breakfast and lunch allowances to officers working in the Governor's office whose basis of payment

These allowances were as per the CBA

An amount of Kshs.1, 470,000 was paid in form of task force allowances to forty-six (46) members of a taskforce on recruitment of firefighters and women.

Further, Kshs.1, 432,000 was paid to thirty (30) members of a taskforce on new recruits.

In addition, the county executive paid a total of Kshs.1, 380,000 to members of a taskforce on historical injustices who worked for a total of thirty-four (34) days.

A task force of fifty-one (51) persons was formed to spearhead the exercise of recruitment of two eighty-five (285) firemen/women and seven eighty-seven (787) County Constables. The task force was to take a period of 20 days at various rates whose basis was not disclosed. Towards this end, Kshs. 2,180,000 was paid to this team as task force allowances.

Another Kshs.740, 000 was paid to a team of nine (9) members of staff drawn from the county attorney's office who participated in the training of section heads on job evaluation.

In addition, Kshs.560, 000 was paid to fourteen (14) members of staff as appraisal allowance for disposing of current and non-current records in the legal department at a rate of Kshs.2000 for a period of 20 days.

The task force allowances were as per the Src circular. In addition, where the number of days were exceeded justification and authority was sought from the accounting officer.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Unaccounted for Fuel Oil and Lubricants**

The use of goods and services amount of Kshs.9, 165,422,362 reflected in the statement of receipts and payments includes an amount of Kshs.65, 015,000 incurred on fuel, oil, and lubricants. However,



records of fuel consumption in respect of the expenditure such as fuel registers and consumption statements from service providers were not provided for audit.

#### Management Response

Fuel consumption.

Payments done for Fuel for FY 2020/2021.

S/NO	SYSTEM VOUCHER NO.	SUPPLIER	AMOUNT	DATE OF PAYMENT
1	22787	National Oil Corporation	9,000,000	04/09/2020
2	23220	National Oil Corporation	9,000,000	12/10/2020
3	24129	National Oil Corporation	9,000,000	16/11/1010
4	25040	National Oil Corporation	9,000,000	06/01/2021
5	26337	National Oil Corporation	9,000,000	03/02/2021
6	29668	National Oil Corporation	9,000,000	19/03/2021
7	31604	Jojes Oil Dealers Limited	11,000,000	03/05/2021
8	34054	Vivo Energy Kenya Ltd	10,999,993	21/06/2021

The fuel consumption record for the month of March 2021 has been tabulated as per the attached document.

Other records for the months of July 2020 through May 2021 are all available.

Appendix 974.7

#### Committee Observation(s) and Recommendation(s)

The Committee noted that all records were provided for verification by auditors.

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### Other Operating Expenses

Other operating expenses amounting to Kshs.2,477,851,520 includes a payment of Kshs.4,864,960 for the supply and delivery of assorted office equipment which constituted six (6) laptops and eight (8) mobile iPhones at a unit price of Kshs.296,760 and Kshs.261,300 respectively totalling to Kshs.3,870,960. However, serial numbers for the equipment were not indicated on the delivery notes and the list of beneficiaries issued with the laptops and phones was not provided for verification.



### **Management Response**

The serial numbers and list of distribution has been attached for verification

Appendices 974.8

### **Committee's Observation and Recommendations**

The Committee noted that all supporting documents were provided for verification by auditors. The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Payments on Other Creditors**

Included in use of goods and services payments are other creditors of Kshs. 4,016,865,337 as reflected in Note 7 to the financial statements. However, documents and particulars of the creditors to whom the payments were made were not provided for audit. Further, it was not clear why the amount was included as expenditure in the statement of receipts and payments instead of a liabilities balance in the statement of assets and liabilities.

In the circumstances, the accuracy, regularity and completeness of the balances in the respective items of expenditure under the use of good and services could not be ascertained.

### **Management Response**

The reason why the payments were reflected as other creditors in the statement of Receipts and Payments is because these were payments of pending bills which were budgeted for under the economic item of "other creditors" as per the Standard Chart of Accounts (SCOA) issued by Public Sector Accounting Standards Board (PSASB) of Kenya

### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Irregular Payments of Allowances to Members of the County Assembly**

During the year under review, an amount of Kshs.4, 361,828 was paid as allowances to Members of the County Assembly (MCAs) by the County Executive. However, the nature and purpose for the payment was not stated. The County Assembly has an independent budget to support its operations. Further, such payments may pose a risk of double payments for the same services, as the applicable controls are independent.

In the circumstances, the regularity of payments to MCAs amounting to Kshs.4, 361,828 could not be confirmed.



### **Management Response**

The allowances relate to joint activities between the County Assembly and the County Executive in which the executive had undertaken to sponsor the activities. However, upon issuance of circular 15 by the controller of budget such payments have been stopped.

### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Unrelated Rental Expenses**

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 5,599,283 in respect of rentals of produced assets. Review of the ledger analysis provided for audit revealed that an amount of Kshs. 1,800,000 was incurred because of the County Assembly Speaker's official residence rent. However, no supporting documents were provided for audit to support the payment. Further, no explanations were provided as to why County Assembly related the County Executive paid costs.

In the circumstances, the validity of rental payments amounting to Kshs. 1,800,000 could not be confirmed.

### **Management Response**

Account Analysis Reports from IFMIS includes data for both County Executive and County Assembly for each expenditure item. In this case; Rental of Produced assets expenditure was incurred from County Assembly's Budget.

(Appendix 976)

### **Committee's Observation and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### **Unconfirmed Grants and Payments**

As disclosed in Note 9 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.936, 521,551 in respect of other grants and payments. Review of expenditure records revealed transfers to County Schools totalling to Kshs.431, 521,551. However, the payments were not supported by documentary evidence such as acknowledgement letters and expenditure returns detailing how the funds were utilized.

In the circumstances, the regularity of Kshs.431, 521,551 transferred to schools could not be confirmed.



## Management Response

Description	Kshs
Scholarships and other educational benefits	505,000,000
Capitation(transfer to ECDE)	131,026,491
Emergency relief and refugee assistance	300,495,060
	936,495,551

## Committee's Observation and Recommendations

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

## Unsupported Cash Payments

Analysis of the payment details for expenditure incurred during the year revealed twelve (12) cash payments amounting to Kshs. 523,082,932 comprising of an amount Kshs. 478,399,092 and Kshs. 44,683,840 paid from Finance and Economic Planning and Agriculture, Livestock Development and Fisheries departments respectively. However, the supporting documents and the reasons for the huge cash payments were not provided for audit.

In the circumstances, the regularity of the payment of Kshs. 523,082,932 could not be confirmed.

## Management Response

The Kshs.478,399,092 were below the line item that were regularized through journals and supplementary budget

On the transfer made from Agriculture, Livestock Development and Fisheries these were transfers of Donor, GOK and County contribution funds from Nairobi County Agriculture Sector Development Support Program (ASDSP) Account to operational account.

## Committee Observation(s) and Recommendation(s)

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

## Outstanding Imprests

The statement of assets and liabilities reflects accounts receivables – outstanding imprests amounting. Kshs. 33,247,428. The outstanding imprest amount was due and ought to have been surrendered on or before 30 June 2021. However, no explanation was provided for the non- surrender on the due dates or recovery measures taken against holders of the outstanding imprests. In addition, accounting documents for issued imprests such as memorandum cash books were not provided for audit.

Further, imprests totalling to Kshs. 14,930,000 were issued to persons who held other uncleared imprests contrary to Regulation 93(8) of the Public Finance Management (County Governments)



Regulations, 2015 that provide that no second imprest is to be issued to any officer before the first imprest is surrendered or recovered in full from his or her salary.

In addition, Note 15 to the financial statements reflects other accounts receivables amounting to Kshs. 1,161,493,708,846, which is an increase of Kshs.331, 901,122,687 from Kshs.829, 592,586,159, recorded in the previous year. However, supporting documents and details of persons and entities from whom the amount was outstanding from including an aging analysis was not provided for audit.

In the circumstances, the irregularity of the other accounts receivables amounting to Kshs. 1,161,493,708,846 reflected in the financial statements could not be ascertained.

#### Management Response

After a proper reconciliation of the list of standing imprests, totaling Kshs. 33,247,428 was done to eliminate any unpaid or stopped entries a recovery memo from Head of County treasury Ref.NCC/FIN/DFM/2020 dated 24 September 2020 was done and submitted to Chief Officer public service management for recovery as per the attached IPPD statement. All surrendered imprests were surrendered or recovered through the payroll.

The standing imprests totaling ksh. 14,930,000 from various county sectors and departments are determined by the number of offices and their locations and are approved by the various chief officers in those areas who are the accounting officers. This is in line with the provisions of sec 92 of PFM regulations. Further, the issue of multiple imprests arises because there is a delay in the completion of payment process and in many cases; the type of imprest advanced is different.

REVENUE STREAM	2020 – 2021
	Ksh
Sundry Debtors	592,165,564
Rental Houses-Other than Eastlands	91,588,684
Rental Houses-Eastlands	254,129,096
Rental Market Stalls/Tenant Purchase Scheme	94,782,336
Land Rates	1,157,787,656,964
Loading Zones-Private	-
Loading Zones-Government of Kenya	449,960,000
Outside Advertising & Billboards	333,667,701
Single Business Permits	806,519,500
Way Leaves	226,893,711
Kenya Power	856,345,290
<b>TOTAL</b>	<b>1,161,493,708,846</b>

Appendix 979.4



### **Committee Observation(s) and Recommendation(s)**

The Committee observed that the authenticity of the supporting documents that were submitted to the Auditors could not be verified.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Outstanding Electricity Bills**

Annex 2 to the financial statements reflects pending bills to the Kenya Power and Lighting Company (KPLC) amounting to Kshs.477, 771,272. However, the outstanding payments were not supported by a statement of account from KPLC or electricity consumption bills. In addition, the other accounts receivables amounting to Kshs.1,161,493,708,846 includes, Kshs.1,083,239,001 owing from KPLC in respect of unpaid way leaves. However, the County Executive did not maintain an account with the Company for purposes of netting off payable amounts against receivable amount. Additionally, a breakdown of the receivable amount from the company was not provided for audit.

In the circumstances, the regularity of pending bills of Kshs. 477,771,272 could not be confirmed.

### **Management Response**

The Kenya power and lighting company served the county a demand notice at the risk of disconnection without an electricity bill. To avoid disruption to county services it has been forced to service the bill under duress. Since engagements have been made with, the electricity company, which have, reveal huge inconsistencies including out of the county meters and nonexistence meters.

Further, the power company remains undermant that as a National company they are not required to pay wayleaves and the county cannot collect the debt. Correspondences' on the same is attached.

### **Committee's Observation and Recommendations**

The Committee observed that the authenticity of the supporting documents that were submitted to the Auditors could not be verified.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Pending Bills**

Annex 5 to the financial statements reflect outstanding KCB bank for an outstanding loan amounting to Kshs. 4,449,656,189. According to the Annex, no repayments were made during the year. Management did provide reasons for defaulting on the loan, which may risk the assets pledged as



collateral against the loaned amount. In addition, measures put in place to clear the outstanding loan amount including accrued interest was not outlined.

Further, other important disclosures to the financial statements reflect a summary of pending accounts payables totaling to Kshs.7,484,134,430 while Annex 2 to the financial statements reflects pending accounts payable amounting to Kshs.5,901,206,837 resulting in an unexplained and unreconciled difference of Kshs.1,582,927,593.

In the circumstances, the accuracy of the pending accounts payable disclosed in the financial statements could not be confirmed.

#### **Management Response**

The loan of Kshs. 4,449,656,189 due to capitalized penalties and interest charged amounting to Kshs. 943,391,037 is outstanding because of financial challenges being experienced by Nairobi County Government. However, the county government is in the process of coming up with a payment plan.

Appendix 981

#### **Committee Observation(s) and Recommendation(s)**

The Committee observed that the County Executive did not prioritize the payment of the pending bills despite reporting surplus operating balances.

The Committee recommends-

- i. That the County Executive should make adequate efforts to pay the outstanding County pending bills as a first charge; and
- ii. That the Auditor General to closely monitor the status of the county pending bills.

#### **Voided Transactions**

Review of expenditure analysis obtained from the Integrated Financial Management Information Systems, (IFMIS) revealed 1,192 payment transactions with a total expenditure of Kshs. 4,066,735,905, which were invalidated during the year under review. However, there was no documentary evidence provided to support authorization and reasons for invalidation of the transactions, which had been presented, to the Controller of Budget (CoB) for approval. In addition, it was not confirmed whether there were unauthorized payments made in place of those that were invalidated.

In the circumstances, the validity, completeness, and approval of payments made during the year could not be ascertained.

#### **Management Response**

Transactions are voided from IB at the end of the financial year to clear the transactions that had been invoiced during the financial year but were not funded due to budgetary constraints. At the close of the financial year not all requisitioned approved by COB are voided with the authority of the Chief Officer Finance. This also is intended not to distort the following year's budget.



### **Committee Observation(s) and Recommendation(s)**

The Committee observed that the authenticity of the supporting documents that were submitted to the Auditors could not be verified.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Budgetary Control and Performance**

The summary statement of appropriation – recurrent and development combined reflects final receipts budget and actual on comparable basis amounting to Kshs. 37,881,734,935 and Kshs. 29,553,905,838 respectively resulting to an under-funding of Kshs. 8,327,829,097 or 22% of the budget. Similarly, the County Executive spent an amount of Kshs. 29,582,031,455 against an approved budget of Kshs. 37,881,734,935 resulting to an under-expenditure amounting to Kshs. 8,299,703,480 or 22% of the budget.

The underfunding and underperformance affected the planned activities and may have affected negatively on service delivery to the public.

### **Management Response**

The Under expenditure was because of not meeting own source revenue targets due to various challenges and on set of global covid-19 outbreak. However various revenue enhancement strategies are currently being implemented to address these challenges,

- i. Implementation of the new valuation roll based on the current property values to replace the 1982 valuation roll
- ii. Digitalization of all the collections and approval process for all revenue streams
- iii. Operationalization of the Nairobi City County Revenue Administration Act, 2021 that provides for a proper revenue management structures and legal framework for enforcement
- iv. Setting of targets for all revenue streams and cascade the same to sub counties, wards and individual collectors

### **Committee Observation(s) and Recommendation(s)**

The Committee also observed that the Counties had challenges in meeting targets of their own source revenues collection.

The Committee recommends that the National Treasury should ensure timely release of funds to county governments in line with the cash disbursement schedules approved by the Senate and Assembly. The Committee further recommends that the County Executives should map revenue streams and automate revenue collections points.



### **Late Exchequer Releases**

During the year under review, the County Executive received a total of Kshs.19, 500,070,511 from exchequer. However, review of records revealed that The National Treasury received an amount of Kshs.12, 893,291,261 or 66% of the exchequer issues during the months of June and July 2021, an indication of delayed disbursements of funds.

Failure to remit Exchequer funds by The National Treasury may have affected negatively on delivery of services to the public and other County Executive operations.

### **Management Response**

The delay in the release of budgeted funds from The National Treasury affected execution of programs including development activities. The County through the Council of Governors has engaged the National treasury on need to release the funds in a timely manner.

### **Committee Observation(s) and Recommendation(s)**

The Committee observed that delays in release of funds from the National Treasury affected most of the County projects.

The Committee recommends that the National Treasury should adhere to the cash disbursement schedule on the release of funds to county governments as approved by the Senate and Assembly.

### **Irregular Recruitment and Retention of Staff**

During the year under review, the County Executive engaged one hundred and eight (108) casual workers on temporary basis. However, no documentation on the recruitment process including the advertisement, list of applicants, short list and the minutes of the interviews were provided for audit review. Further, the County Executive employed one thousand six hundred and twenty-three (1,623) new employees during the year. However, the human resource plan, approval for recruitment, advertisements and records of the recruitment process were not provided for audit review.

Review of biodata of new employees revealed that a hundred and one (101) recruits had just turned 18 years old and had not been issued with identity cards at the time of recruitment and thus they may not have attained the majority age by the time the recruitment process began. Another twenty-seven (27) recruits were above the entry-level age of forty-five as specified by the PSC manual on Human Resource practices.

In addition, the County Executive had in its payroll several employees who had attained the mandatory retirement age of 60. This was against Section L.5 (1) of the Public Service Commission of Kenya (County Public Service Human Resource Manual) which states that all officers will be required to retire from the service on attaining the mandatory retirement age of 60 years.

In the circumstances, Management was in breach of the law.



#### **Management response**

IPPD system is programmed in such a way that once an employee reaches mandatory retirement age of sixty (60) for normal the system stops salary stops automatically, except under the following circumstances:

- where an employee is employed on contract terms then the date of retirement is the end date of the contract irrespective the age of such an employee;
- Officers living with disabilities (PLWD) retire at the age of 65 years as per circular from MSPS Ref No. MSPS/HRM/2/2/2 VOL. II (21) Dated 29th May 2012 (copy attached).
- Attached please see appendix 12 with remarks on each employee for your review.
- Appendix 985

#### **Committee's Observation and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

#### **Duplicate Names and Account Numbers**

Review of payroll data revealed that salaries for several employees were disbursed to accounts whose details were shared between two or more persons. Management did not provide an explanation for the staff sharing bank accounts contrary to the PSC Human Resource Policies, 2016.

In the circumstances, Management was in breach of the law.

#### **Management response**

The officers sharing similar bank accounts is usually noted with Saccos that operates front office services especially Shirika and Nacico FOSAs whereby the saccos use to issue their customers with their main commercial bank account since FOSAs do not operate a clearing account with the Central Bank of Kenya. Once the FOSAs receive the funds from the County they process the salaries using unique identifiers especially national identity cards and not account numbers unlike commercial banks who use account numbers as unique identifiers to process salaries.

However, the County wrote to the Saccos to provide clients with bank similar account numbers with correct bank account numbers, which has been provided, and same updated in the payroll. Attached please find Letter from Shirika Deposit Co-operative Society communicating the same for review.

Appendix 986

#### **Committee's Observation and Recommendations**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



### Unremitted Statutory and Other Deductions

Review of records relating to statutory deductions and remittances revealed that an amount of Kshs. 470,116,640 was deducted from employees' salaries in respect of pension schemes but was to be remitted to the respective institutions and schemes. The County Executive was therefore, in breach of Section 19 (4) of the Employment Act, 2007 which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1) (a), (f), (g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement, court order or arbitration as the case may be.

In the circumstances, Management was in breach of the law.

### Management Response

The Non-remittance was due to bad management practices where deductions were diverted. This has since been put to a stop and all deductions are submitted to the respective bodies as the salaries are been paid.

### Committee's Observation and Recommendations

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.

### Irregular Procurement of Specialized Materials and Services

Expenditure amounting to Kshs. 140,341,451 on specialized materials and services reflected in Note 7 to the financial statements includes an amount of Kshs. 29,748,016 incurred on procurement of Information Communications Technology (ICT) equipment. Review of procurement process and documents revealed instances where tenders were split contrary to Section 54(1) of the Public Procurement and Asset Disposal Act, 2015.

Further, firms awarded the contracts were not in the register of prequalified suppliers for the supply of computers and communications equipment in the year under review, and the process of identifying them was not disclosed.

In addition, inspection and acceptance reports for supplied equipment were not provided for audit, and thus no evidence that the items were supplied as indicated.

### Management Response

The table below shows the list of telecommunication equipment procured under specialized materials and services: -

Tender no.	Item	Supplier	Amount (Kshs)
NCC/ICT/010/2020-2021	Laptops and Computers	Ms Conez Technologies	4,859,777
NCC/ICT/&E-GOV/076/2020-2023	Laptops and Smartphones	Ms Edge Technologies	2,950,400



NCC/ICT//Q/077/2020-2021	Tablets	Ms Edge Technologies	2,800,000
NCC/ICT/Q/034/2019-2019	Smart phones	Ms Edge Technologies	2,850,000
NCC/ICT/Q/092/2018-2019	Smartphones	Ms Rahaim General Supplies ltd	480,000
NCC/ICT/DP/467/2018-2019	Smartphones	Ms Copycat	3,634,119
NCC/ICT/Q/074/2020-2021	Computers and Printers	Ms Samkyo Investments ltd	2,982,290
NCC/ICT/Q/115/2020-2021	PCE Switch 3650 services	Cedarcrest Ltd	3,600,000
NCC/ICT/Q/182/2019-2020	UPS Batteries	Ms Zolt Solution Ltd	1,945,862
NCC/ICT/INFR/RT/009/2020-2021	Laptops and Computers	Ms Office Movers ltd	2,045,568
NCC/ICT/Q/114/2020-2021	A tablet, smart phone, 3 Laptops and 15 USB adaptors	Ms Markan Co. ltd	<u>1,600,000</u>
<b>Total</b>			<b><u>29,748,016</u></b>

- i. The list of registered suppliers, Inspection and acceptance report are attached
- ii. The contracts under review are for different financial years i.e. 2018/2019, 2019/2020, 2020/2021 and 2020-2023. Matter relating to splitting of contracts is applicable only with in a particular financial year and does not include framework contracts.
- iii. Some procurement methods do not need prequalification except those, which are initiated through Expression of Interest (EOI), and Request for Proposal (RFP) hence prequalification is not applicable in this case.
- iv. The bidders who participated in the procurement under consideration were identified from the register of suppliers kept and updated in the county

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Irregular Procurement of Office and General Supplies and Services**

Included in office general supplies and services expenditure amounting to Kshs.115, 881,450 under use of goods and services are payments totalling to Kshs.75, 048,155 towards purchase of office equipment



through restricted tendering procurement method. However, use of the restricted tendering process did not meet the conditions set in Section 102 (1) of the Public Procurement and Asset Disposal Act, 2015. In addition, the membership of the opening, evaluation, and the inspection committee were same while a professional opinion was not provided on the bidders by the head of the procurement function to the accounting officer as required by the Act.

#### **Management Response**

No specific contract number has been provided for this Query but it is a general statement of General supplies and service expenditure

Restricted tender is a method of procurement provided in Section 102 (1) of the Public Procurement and Asset Disposal Act, 2015, however no contract information to enable the County deal with the query and give accurate response.

A Professional opinion is given by Head of Supply Chain on each and every specific procurement contract and is based on allocated tender number in absence of contract number the County may not give an accurate response.

#### **Committee's Observation and Recommendations**

The Committee noted that the documents were not provided for audit review. The County Executive was in breach of law pursuant to Section 62 of the Public Audit Act for failure to reveal information (documents) to auditors.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Irregular Extension of Medical Insurance Contract**

During the year under review, an amount of Kshs. 230,000,000 was paid to an insurance provider for provision of medical cover to the County Executive employees for the months of July 2020 and August 2020. Review of procurement of the services revealed that the Management extended an existing medical insurance contract by fifty-four (54) days effective 1 July 2020 to end of August 2020 due to non-responsiveness by bidders in a tender for the services. However, no documents were provided for audit to support Management claim that a tender had been advertised for which bidders failed to respond to leading to extension of the existing provider. Further, there were no minutes of the decision and approval by the accounting officer for the extension.

In the circumstances, Management was in breach of the law.



### Management response

Public Service Management Sector is the user department in relation to staff medical insurance scheme since it implements and operationalizes the County medical scheme by ensuring members have access to uninterrupted healthcare services.

We confirm that the extension of the medical insurance contract for 54 days with effect 1st July 2020 complied with the relevant procurement laws and regulations and the supporting documents which included: advertisement to tender, re-advertisement for the tender and minutes for extension of medical cover, professional opinion and approval by the accounting officer were submitted to the auditor for review.

The documents are hereby re-submitted for review.

APPENDIX 985

### Committee's Observation and Recommendations

The Committee observed that the authenticity of the supporting documents that were submitted to the Auditors could not be verified.

The Committee therefore recommends that EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### Lack of Staff Establishment

During the year under review, the County Executive did not provide evidence of existence of an approved staff establishment for audit review. Consequently, it was not established whether the Management adhered to Section 5 of the delegation of Public Service Commission Human Resource functions to the Cabinet Secretary (Revised August, 2015) on staff establishment which states that Ministries and State Departments shall rationalize staffing levels in line with their current Ministerial mandates and approved budgets and proposals on the staff establishment shall be approved by the Public Service Commission before implementation.

In the circumstances, Management was in breach of the law.

### Management Response

The County Executive Committee members (CECM) met on 16th February 2018 where the County structure was submitted, discussed and approved.

As stated earlier, the county staff was either inherited or devolved. Budgetary allocation for staff costs was based on the actual in-posts of inherited or devolved officers distributed by the functions that they perform.



We have shared with the auditor's minutes of CECM meeting, which approved the County Structure and itemized annual staff costs for each officer employed by the County. Currently the county has an approved staff establish attached is approved County Structure.

#### **Committee Observation(s) and Recommendation(s)**

The Committee noted that the county did not have an approved staff establishment.

The Committee however, acknowledged that there was work in progress on the same and encouraged the management to finalize on this and submit a status report to the Auditor General within sixty (60) days.

#### **Inadequate Maintenance of Records by Enforcement Department**

The Compliance and Enforcement Department of the County Executive serves enforcement notices and undertakes any other enforcement action in respect to physical development. However, examination of the Department's records revealed that some of the registers were old, mutilated, and lacked backup copies. The records included; reports on arrests, court cases, notices, demolitions and complaints. Therefore, the information contained in the registers, though critical to the operations of the Department, was not maintained in a secure and efficient way.

Failure to maintain proper and up to date records by Management contravened Section 149(2) (c) of the Public Finance Management Act, 2012 that requires Accounting Officers to protect and back-up all financial and accounting records in their respective entities.

In the circumstances, existence of an effective recording system by the County Executive could not be confirmed.

#### **Management Response**

The Department of Planning Compliance and Enforcement has created a Master Roll Book for recording all Court cases, which is safely and neatly kept at the Departmental registry. We have opened Counter Books for recording all the renovation permits payments. Currently all the payments are being invoiced through the global billing and back up is provided by the ICT Department.

Enforcement notices accountability has been enhanced through monthly Enforcement Books Auditing and reporting by various Sub –County Planning Compliance and Enforcement officers. The filled up Enforcement books are safely kept at Director's offices.

Complaints are registered in the Counter Books and are safely kept in County offices.

#### **Committee's Observation and Recommendation(s)**

The Committee noted that the matter has since been addressed. The Committee recommends that the matter be marked as resolved.



## **SUMMARY OF ALL RECOMMENDATIONS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30<sup>TH</sup> JUNE 2019**

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 30<sup>th</sup> June 2019" and having considered responses from the Accounting Officer, the Committee urges the County Assembly to resolve as follows: -

### **1.1. Inaccuracies in the Financial Statements**

#### **1.1.1. Balance Brought Forward**

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.7, 169,537,245 and a comparative balance of Kshs.6, 582,013,280 under use of goods and services. However, the comparative balance differs significantly with the balance brought forward of Kshs.6,324,187,486 reflected in the audited financial statements for the year ended 30<sup>th</sup> June, 2018 leading to unexplained difference of Kshs.257,825,794.

In absence of any disclosure on restatement or prior year adjustment, the financial statements are inaccurate.

The Committee recommends that:

- that the accounting officer undertakes administrative actions against the officers who failed to provide the documents to the auditors in accordance with section 156(1) of the Public Finance Management Act and provides a status report to the Committee within 60 days from the adoption of this report.

#### **1.1.2. Variances Between Financial Statements and the Integrated Financial Management Information Systems Balances**

A comparison of balances reflected in the financial statements and figures in IFMIS revealed several anomalies as tabulated below:-

<b>Details</b>	<b>Amounts as per Financial Statements (Kshs.)</b>	<b>Amounts as per IFMIS Reports (Kshs.)</b>	<b>Variance (Kshs.)</b>
Receipts	27,763,873,267	21,978,387,588	5,785,485,679
Payments	26,367,412,637	10,690,865,363	15,676,547,274
Cash and Bank	3,302,211,934	98,633,349,344	(95,331,137,410)
Receivables	21,610,708	1,690,988,530	(1,669,377,822)



Payables	0	101,684,009,015	(101,684,009,015)
Total County Budget	33,344,851,538	32,310,240,815	1,034,610,723

The Committee recommends that:

- that the accounting officer undertakes administrative actions against the officers who failed to provide the documents to the auditors in accordance with section 156(1) of the Public Finance Management Act and provides a status report to the Committee within 60 days from the adoption of this report.

### 1.1.3. Difference Between Financial Statements and the Supporting Schedules

As disclosed under Note 7 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.12, 427,386,130 under compensation of employees. However, the balances reflected in the Note differs with the balances shown in the Integrated Personnel and Payroll Database (IPPD) and the Trial Balance as tabulated below: -

Component	Financial Statement Balance	IPPD	Trial Balance
	Kshs.	Kshs.	Kshs.
Basic Salaries of Permanent Employees	6,225,134,387	6,378,487,610	171,497,446
Basic Salaries Temporary Employees	131,592,680	0	91,866,566
Personal Allowances Paid as Part of Salary	5,051,056,115	5,370,851,653	91,596,236
Compulsory National Social Security Schemes	990,270,602	1,020,192,183	30,600,949

The three sets of records have not been reconciled.

Further, the balances reflected in the summary statement of appropriation differ significantly with the balances reflected in the statement of receipts and payments for the following items as indicated below:

Description	Financial Statements Figure (Kshs.)	Supporting Schedule Figure and Ledger (Kshs.)	Difference (Kshs.)
Own Generated Receipts	10,043,310,059	8,183,886,931	1,849,532,128
Acquisition of Assets	4,951,407,063	3,191,065,487	1,760,341,576
Use of Goods and Services	7,169,537,245	8,468,454,448	(1,298,917,203)



Description	Financial Statements Figure (Kshs.)	Supporting Schedule Figure and Ledger (Kshs.)	Difference (Kshs.)
Compensation of Employees	12,427,386,130	12,342,918,784	84,467,346

No reconciliation or explanations were provided for the above discrepancies.

The Committee recommends that:

- that the accounting officer undertakes administrative actions against the officers who failed to provide the documents to the auditors in accordance with section 156(1) of the Public Finance Management Act and provides a status report to the Committee within 60 days from the adoption of this report.
- that the management should ensure that all employees whether permanent or contractual be integrated in the IPPD system

### 3.1.1. Discrepancies Between Records of County Own Generated Receipts

As disclosed under Note 4 to the financial statements, the statement of receipts and payments reflects county own generated receipts of Kshs.10, 043,310,059 out of which an amount of Kshs.53, 306,977 related to plot rents. Examination of records maintained by the Building Plans Department revealed that during the year, the Department approved 2,582 building plans with an estimated cost of Kshs.159, 041,282,792 and generated revenue amounting to Kshs.950, 649,524. However, the Finance Department records reflected revenue generated from development plan approvals amount of Kshs.1, 017,621,501 resulting to an unexplained difference of Kshs.66, 971,977.

The Committee recommends that:

- That the accounting officer undertakes administrative actions against the officers who failed to provide the documents to the auditors in accordance with section 156(1) of the Public Finance Management Act and provides a status report to the Committee within 60 days from the adoption of this report; and
- That all Accounting Officers should institute measures to ensure that the County Treasury always acts in time when dealing with the Auditor-General to forestall audit queries and failure to which they be sanction for breach of Section 149 (2) (k) of the PFM Act, 2012.



### 3.1.2. Wrong Classification of Payments

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.7,169,537,245 under use of goods and services out of which an amount of Kshs.54,773,273 was expensed on items that are ordinarily classified under acquisition of non-financial assets.

In the circumstances, the expenditure on use of goods and services is overstated by Kshs.54, 773,273 while the acquisition of non-financial assets is understated by a similar amount.

The Committee recommends that:

- That the matter be marked as resolved.

### 3.1.3. Understated Other Grants and Transfers

As disclosed under Note 10 to the financial statements, the statement of receipts and payments reflects other grants and transfer of Kshs.509, 459,074. However, examination of documents revealed that the County Executive transferred an amount of Kshs.800, 000,000 to Kenya Urban Roads Authority (KURA) and Kshs.75, 000, 000 to Kenya Medical Supply Agency, KEMSA. These balances have not been disclosed in the financial statements hence the expenditure under other grants and transfer balance is understated by Kshs.875, 000,000.

The Committee recommends that:

- That the matter be marked as resolved.

### 3.1.4. Accounts Payables - Undisclosed Deposits and Retentions Balance

The statement of assets and liabilities reflects a nil balance under accounts payables - deposits and retentions balance as at 30<sup>th</sup> June, 2019. However, examination of IFMIS report reflects an amount of Kshs.101, 684,009,015 under contractors' retentions balance. The amount relates to money owed to suppliers and contractors withheld as retention money to guard against project defects, which may occur during the defect liability period.

In the circumstances, the accuracy and completeness of the financial statements as at 30<sup>th</sup> June, 2019

The Committee recommends that:

- That the matter be marked as resolved.

## 2. Irregular Payment of Allowances to Security Officers

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects use of goods and services balance of Kshs.7, 169,537,245 out of which Kshs.337, 112,059 relates to domestic travel and subsistence. Examination of payment documents revealed that the balance includes



an amount of Kshs.4, 092,000 paid thirty-three (33) police officers who were guarding the Governor while in Mombasa for twenty-two (22) days, between 22<sup>nd</sup> July, 2018 to 12<sup>th</sup> August, 2018. However, no documents were availed in support of the payment except an unsigned schedule. In addition, the purpose of the journey and authorization for use of thirty-three (33) Police Officers was not explained. Consequently, validity of the propriety and the expenditure of Kshs.4, 092,000 could not be confirmed. During the examination of the report of the Auditor-General, the Committee requested for supporting documents from the C.E.C Member for Finance on the above matter. However, the C.E.C Member could not avail the requested documents.

The Committee recommends that:

- That Ethics and Anti-Corruption Commission to undertake further investigations on validity of the propriety and the expenditure of Kshs.4, 092,000 on officers guarding the then Governor and furnish the Assembly with a report within ninety days (90) days after the adoption of this report.

### **3.2. Unsupported Expenditures**

#### **3.2.1. Goods procured for Vocational Training Centers and Youth Groups**

Examination of records availed for audit revealed that goods amounting to Kshs.59, 560,243 were procured and issued to various vocational training centers, youth groups and other institutions. However, distribution records including schedules showing the names of the institutions and groups, which received the goods, were not provided for audit verification. Further, registration certificates of the beneficiary groups and institutions were not availed for confirmation.

The Committee recommends that:

- That the matter be marked as resolved.

#### **3.2.2. Research Feasibility Study**

Examination of records maintained by the Department of Urban Policy and Research shows expenditure totaling to Kshs.24,518,410 for the year ended 30 June,2019 towards Research and feasibility study for four (4) World Bank Funded Projects implemented through the Ministry of Transport and Infrastructure, Housing & Urban Development under the Nairobi Metropolitan Services Improvement Project (NAMSIP) to offer consultancy services on Railway City Development, Eastland's Urban Renewal Project, SGR Embakasi Area Study and Physical Address for the City.

No contract documents were availed for audit review to establish the role and the responsibilities of the donor and the Implementing Agencies.



The Committee recommends that:

- That EACC undertake further investigation on the research and feasibility study on Railway City Development, Eastland's Urban Renewal Project, SGR Embakasi Area Study and Physical Address that showed a total expenditure of Kshs. 24,518,410.

### 3.2.3. Unsupported Legal Fees

During the year under review, the County Executive made large payments as legal fee totaling to Kshs.595, 075,247 to various legal firms who offered legal services to the County. However, Management did not avail documents such as nature of disputes, approvals for procurement of professional services records, record of services rendered and contract agreements for audit review.

The Committee recommends that:

- Ethics and Anti-Corruption Commission to do further investigation on payment of legal fees totaling to Kshs. 595,075,247 to various legal firms without proper document on nature of the disputes, approval of procurement of professional service records, records of services rendered and contract agreements and report to the County Assembly within ninety (90) days after adoption of this report.

### 3.2.4. Hire of Labor for Flood Mitigation

During the year under review, the County Executive paid Kshs.8,264,400 through the Nairobi County Operation Account to Nairobi City County for flood mitigation services as shown below: -

Cadre	No. Hired	Days	Rate Per Day (Kshs.)	Total (Kshs.)
Laborers	200	60	500	6,000,000
Supervisors Grade 1 trade tested	20	60	1,215	1,458,000
Ungraded tradesmen (Artisans)	20	60	672	806,400
<b>Total</b>				<b>8,264,400</b>

Management did not provide duly signed and approved list of beneficiaries and the evidence of recruitment of casuals, artisans and supervisors. The daily attendance registers and a summary of calculated amounts paid to each worker was not availed. Further, no indication of work done in terms of opening up and maintaining drains at sub-county levels as stated in the request to incur expenditure was provided.



In these circumstances, the accuracy, completeness and validity of the expenditure reflected in the statements of receipts and payments for the year ended 30<sup>th</sup> June, 2019 could not be confirmed.

The Committee recommends that:

- That the matter be marked as resolved.

### **1.3 Cash and Cash Equivalents**

#### **1.3.1. Unaccounted for Cash Withdrawals**

As reported in 2017/2018, the County Executive withdrew Kshs.206, 385,752 and Kshs.3, 000,000 from Supreme Business and Current Accounts at Equity Bank Account and Nairobi City County Trust Account at KCB Bank respectively for unspecified payments, which were not supported by appropriate authority, documentation and pre-numbered payment vouchers. Similarly, during the year under review, the Management made further withdrawals amounting to Kshs.249, 798,128 from Cooperative Bank Account but no supporting documents were provided.

The Committee recommends that:

**That the accounting officer undertakes administrative actions against the officers who failed to provide the documents to the auditors in accordance with section 156(1) of the Public Finance Management Act and provides a status report to the Committee within 60 days from the adoption of this report.**

#### **1.3.2. Failure to prepare Bank Reconciliation Statements**

As disclosed in Note 15 to the financial statements, the statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.3, 302,211,934 as at 30<sup>th</sup> June, 2019. However, bank reconciliations, bank certificates and Board of Survey reports had not supported thirty-four (34) bank accounts balances. No satisfactory explanation was provided for the omission.

The Committee recommends that:

- Administrative action be taken against the responsible officers in the County Treasury for professional negligence and misconduct.
- The County Treasury should strictly undertake monthly reconciliation and submit to the Auditor General as stipulated under the PFM Act, 2012.

#### **1.3.3. Overdrawn Account**

As previously reported, the County Executive's Current Account held at the Kenya Commercial Bank was overdrawn by Kshs.3, 794,555 on 30 June 2018. During the year under review, the same account



was overdrawn by Kshs.542, 465 as at 30 June 2019. No documentary evidence has been availed for audit review to confirm prior approval of the overdraft by the County Treasury or Board of the County Government as required under Section 119 (4) of Public Finance Management Act, 2012.

The Committee recommends that:

- **The County Treasury should strictly adhere to the provisions of Section 119(4) of the Public Finance Management Act, 2012 for the Accounting Officers not to have bank overdraft beyond the limits authorized by the County Treasury.**

#### **1.3.4.Unpresented Cheques**

Bank reconciliation statements presented in respect of the development account held at the Central Bank of Kenya revealed unpresented cheques totaling Kshs.1, 015,111,741. However, the dates when the cheques were drawn were not indicated and therefore it was not possible to confirm the status of the cheques or how many cheques may have become stale as at 30<sup>th</sup>June, 2019.

The Committee recommends that:

- **That the matter be marked as resolved.**

#### **1.3.5.Undisclosed Bank Accounts**

Available information indicates that during the year under review, the County Executive operated forty-one (41) bank accounts. However, one bank account with a closing balance of Kshs.7, 418,793 as at 30<sup>th</sup>June, 2019 was omitted in the financial statements. Another bank account under the name - Waithaka Technical Bank account held at Cooperative Bank had a balance of Kshs.578, 413. However, the list of bank accounts availed for audit reflects a different account number with a balance of Kshs.97, 173. It could not be confirmed if Management was operating a parallel account, which had not been disclosed.

Further, examination of records indicates that the County Executive had operated five bank accounts currently referred to as either closed or dormant at various commercial banks. However, bank confirmation of the status of these accounts as the Management did not availed supporting documents for audit review.

In addition, analysis of the revenue account held at Cooperative Bank revealed cash deposits transactions that had been reversed amounting to Kshs.3, 229,341.

In view of the above, it has not been possible to confirm that the cash and cash equivalents balance of Kshs.3,302,211,934 as at 30<sup>th</sup>June, 2019 is fairly stated.



The Committee recommends that:

- That the matter be marked as resolved.

#### 1.4 Emphasis of matter

##### 1.4.1. Repayment of Principal on Domestic Lending and on-Lending

During the year under review, statement of receipts and payments reflects nil balance against a comparative expenditure of Kshs.868, 192,719 being repayment of principal on domestic lending and on-lending facilities. Information available indicates that the bank overdraft was acquired in October 2014. However, the loan agreement and contractual documents detailing terms and conditions of the loan were not provided for audit review.

Available records indicate that, through approval from the Minister of Local Government dated 1<sup>st</sup> April, 2011, the defunct Nairobi City Council had secured a loan of Kshs.5,000,000,000 from Equity Bank of Kenya Limited. By 24<sup>th</sup> March, 2014, the outstanding balance had decreased to Kshs.3,366,696,209 but no loan statements from the bank was provided to confirm the correctness of the balance.

The loan was refinanced by the Kenya Commercial Bank, as per deed of variation of the term of loan facility between Nairobi City County Executive and Kenya Commercial Bank Limited. Based on the loan statement from Kenya Commercial Bank dated 31<sup>st</sup> July 2019, the County Government of Nairobi City has not been servicing the loan, of which the loan has risen to Kshs.4, 310,087,246 due to capitalized penalties and interest charged amounting to Kshs.943, 391,037. It has not been explained why the loan is not being serviced leading to the avoidable interest and penalty charges.

Opinion is not modified in respect of this matter.

The Committee recommends that:

- That County Executive Committee Member responsible for Finance and Economic Planning should take personal responsibility to develop strategies to service all pending loans within the provisions of the Law and report to the County Assembly within sixty (60) days after the adoption of this report.

#### 1.5 Other Matter

##### 1.5.1. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.33,264,851,538 and Kshs.27,859,452,390 respectively resulting to an under-funding of Kshs.5,485,399,148 or 16% of the budget. Similarly, the County Executive expended



Kshs.26,462,991,761 against an approved budget of Kshs.33,264,851,538 resulting to an under-expenditure of Kshs.6,801,859,777 or about 21% of the approved budget. The underfunding and underperformance affected the planned activities and may have affected negatively on service delivery to the public.

The County Executive may not have achieved its targeted objectives, as target revenue was not collected.

The Committee recommends that:

- that the National Treasury should adhere to the cash disbursement schedule on the release of funds to County Government as approved by the Senate;
- that the County Executive should put in place measures to improve their local revenue collection capacity in order to meet their revenue collections target; and
- The County Government should strictly adhere to the budget ceilings for development and recurrent expenditure as stipulated by CARA.

#### **1.5.2. Pending Bills**

As disclosed under other important disclosures to the financial statements, the accounts payables (pending bills) amounting to Kshs.70, 651,898,417 had not been settled as at 30<sup>th</sup> June, 2019. Management has not explained why the bills were not settled during the year. However, age analysis of the bills had not been disclosed in the financial statements.

Further as disclosed at Annex 3 of the financial statements, other pending payables constitutes an amount of Kshs.15,328,285,000 and Kshs.3,815,640,000 for government guaranteed loans and on-lent water loans (foreign loans) respectively. However, original loan agreements and other supporting documents were not availed for audit review.

Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

The Committee recommends that:

- That the County Executive should make adequate efforts to pay the outstanding County pending bills as a first charge; and
- That the Auditor General to closely monitor the status of the County pending bills.

#### **1.5.3. Prior year matters**

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, although the



Management has indicated that the issues have been responded to, the matters have remained unresolved, as the Senate and the County Assembly have not deliberated on the issues.

The Committee recommends that:

- That the County Executive should continuously engage, the Office of the Auditor-General and other relevant government entities to resolve outstanding audit matters.

## **1.6 REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

### **1.6.1. Non-compliance with the Public Sector Accounting Standards Board**

The financial statements presented for audit review did not include information as required in the format prescribed by the Public Sector Accounting Standards Board (PSASB) in that the financial statements prepared by the County Executive shows budget execution by programmes and sub-programmes which differs with the format prescribed by the Public Sector Accounting Standards Board and is hence contrary to Regulation 101 (1), (3), and (4) of the Public Finance Management (County Governments) Regulations, 2015.

The Committee recommends that:

- That the County Executive should continuously engage, the Office of the Auditor-General and other relevant government entities to resolve outstanding audit matters.

### **1.6.2. Late Submission of Financial Statements**

The financial statements of the County Executive of Nairobi City were submitted on 1 November, 2019 to the Auditor-General, being one month after the statutory deadline of 30 September, 2019 contrary to Section 84(3) of the Public Finance Management Act, 2012 which requires submission of the financial statements to the Auditor-General not later than three months after the end of the financial year.

Consequently, the County Executive Management was in breach of the law.

The Committee recommends that:

- That the County Executive should continuously engage, the Office of the Auditor-General and other relevant government entities to resolve outstanding audit matters.

### **1.6.3. Irregular Transfer from County Revenue Collection Accounts**

Examination of the bank statements from Cooperative Bank Account revealed that an amount of Kshs.132,920,916 was withdrawn from the revenue account, but was not credited to the County Revenue Fund Account at Central Bank contrary to Regulation, 63(1) and 109(1), (2) and (6) of the



Public Finance Management (County Governments) Regulations, 2015. No explanation was provided why the funds withdrawn from the Revenue Account had no corresponding credit to the County Revenue Fund at Central Bank of Kenya.

In the circumstances, the County Executive was in breach of the law.

The Committee recommends that:

- That EACC undertake further investigations on the withdrawal of Kshs. 132,920,926 from the County Revenue Fund without the amount being credited to the County Revenue Fund at the Central Bank contrary to the provisions of Regulations 63(1) and 109(1), (2) and (6) of the Public Finance Management (County Governments) Regulations, 2015.

#### **1.6.4. Non-Compliance with Law on Ethnic Composition**

During the year under review, the total number of employees of County Executive was 11,926 members out of which 5,496 employees representing 46% of the total work force were from one ethnic community contrary to Section 7(1) and (2) of the National Cohesion and Integration Act, 2008 which states that, “all public offices shall seek to represent the diversity of the people of Kenya in employment of staff and that no public institution shall have more than one third of its staff establishment from the same ethnic community”.

In the circumstances, the County is in breach of the law.

The Committee recommends that:

- County should work progressively towards attaining the requirement of the provisions of Section 65(1) (e) of County Government Act on ethnic inclusivity.
- The County Executive and CPSB should give a work plan on how they will ensure compliance is achieved, to the Auditor General within sixty (60) days from the adoption of this report.

#### **1.6.5. Non-Compliance with the One Third of Basic Salary Rule**

During the year ended 30<sup>th</sup> June, 2019, seventy-three (73) employees earned a net salary of less than a third (1/3) of their basic salary contrary to Section 19(3) of the Employment Act, 2007 and Section C.1 (3) of the Public Service Commission (PSC) Human Resource Policies, 2016. The Management has not given explanation for failure to comply with the policy.

Further, examination of documents provided for audit verification revealed that as at 30 June, 2019, two hundred and ten (210) retirees had not received their terminal dues totalling to Kshs. 48,534,805 contrary to Section (5) of the Employment Act of 2011. Reasons for stopping these payments were not provided. In the circumstances, Management is therefore in breach of law.



The Committee recommends that:

- That the county should configure their IPPD system in a way to lock out commitments beyond the accepted thresholds.
- that the Auditor General should continue monitoring the issue in subsequent financial years.

#### **1.6.6. Procurement of Goods and Services Using Imprest**

Examination of records reveal that goods and services valued at Kshs.135, 331,639 were purchased and charged to imprest account No.53100001 for which no explanation was given contrary to Treasury Circular 3/2010 dated 7 May, 2010, Regulation 91 (1) of the Public Finance Management (County Governments) Regulations, 2015 and Regulation 107 (a) and (b) of the Public Finance Management (County Governments) Regulations, 2015.

In the circumstances, the County Executive was in breach of law

The Committee recommends that:

- That EACC undertake further investigation on purchase of goods and services valued at Kshs. 135,331,639 charged to imprest account No. 53100001 without proper documentations by the then CECM for Finance and Economic Planning and Chief Officer for Finance.

#### **1.6.7. Failure to Prepare Fund Financial Statements**

As disclosed under Note 10 to the financial statements, the statement of receipts and payments for the year ended 30 June, 2019 reflects an expenditure of Kshs.509, 459,074 out of which an amount of Kshs.27, 384,680 and Kshs.402, 499,394 is in respect of Emergency Relief and Refugee Assistance Fund, and Scholarship and Other Educational Benefits Fund. Examination of records revealed that during the year, a total of Kshs.397, 656,594 was transferred to Nairobi City County Education Bursary Account in two tranches of Kshs.100, 156,594 and Kshs.297, 500,000. However, disbursement schedules showing beneficiary details and confirmations by bursary recipients were not provided for audit verification. However, the County Executive did not prepare the financial statements for the two funds contrary to Section 115(1) of the Public Finance Management Act, 2012, which recommends that once a Fund has been established, a County Government shall, not later than three months after the end of each financial year prepare and submit to the Auditor-General, financial statements for the Fund. In these circumstances, the County Executive was in breach of the law.



The Committee recommends that:

- That the matter be marked as resolved.

#### 1.6.8. Unremitted Statutory Deductions

As disclosed under Note 10 to the financial statements, the statement of receipts and payments for the year ended 30 June, 2019 reflects an expenditure of Kshs.509, 459,074 out of which an amount of Kshs.27, 384,680 and Kshs.402, 499,394 is in respect of Emergency Relief and Refugee Assistance Fund, and Scholarship and Other Educational Benefits Fund. Examination of records revealed that during the year, a total of Kshs.397, 656,594 was transferred to Nairobi City County Education Bursary Account in two tranches of Kshs.100, 156,594 and Kshs.297, 500,000. However, disbursement schedules showing beneficiary details and confirmations by bursary recipients were not provided for audit verification. However, the County Executive did not prepare the financial statements for the two funds contrary to Section 115(1) of the Public Finance Management Act, 2012, which recommends that once a Fund has been established, a County Government shall, not later than three months after the end of each financial year prepare and submit to the Auditor-General, financial statements for the Fund. In these circumstances, the County Executive was in breach of the law.

The Committee recommends that:

- All the Accounting Officers to strictly adhere to the provisions of the law on preparation and submission of all relevant financial statements for a Fund to the office of the Auditor-General within the stipulated timelines failure which necessary action must be taken.

#### 1.6.9. Compliance with Salaries and Remuneration Commission's Circulars

Review of payments made to members of the Committee on finalization of pending bills revealed that authorized payments was Kshs.5, 641,000. However, the actual amount paid was Kshs.16,483,500 resulting to an excess payment of Kshs.10,842,500 above Salaries and Remuneration Commission's authorized rate vide Ref: SRC/ADM/CIR/1/13/ (122) of 16 April, 2014.

Further, the County Executive paid employees' leave allowance of Kshs.233,079,350 against the actual entitlement of Kshs.23,476,000 resulting to excess payments of Kshs.209,603,350 more than the leave allowance entitlement contrary to SRC Circular Ref No. SRC/TS/TA/3/10(86) dated 19<sup>th</sup> November 2014. No proper explanation was provided for this anomaly.

In addition, verification of payroll data for the year under review revealed that the County Executive paid emergency call allowance of Kshs.156,184,286 against actual entitlement of Kshs.63,660,000



resulting to excess payments of Kshs.92,434,285 more than their emergency call allowance entitlement contrary to SRC Circular Ref. No. SRC/TS/CGOVT/3/61 Vol.III/ (136) dated 14 September 2015. No proper explanation was given for this anomaly.

In the circumstances, the County Executive was therefore in breach of the law.

The Committee recommends that:

- That Ethic and Anti-Corruption Commission undertake further investigations on the excessive payments of members of the Committee on finalization of pending bills, employees' leave allowances and emergency calls during the period under review.

#### **1.6.10.Compliance with Public Finance Management (County Governments) Regulations 2015 - Wage Bill**

The statements of receipts and payments reflects an expenditure of Kshs.12,427,386,130 on compensation of employees representing 45% of the total receipts of Kshs.27,859,452,390. This is contrary to the provisions of Regulation, 25(1) (a) and (b) of the Public Finance Management (County Governments) Regulations, 2015 which limits a County Executive's expenditure on wages and benefits to not more than 35% of the total revenue for the year.

Further, the County Executive operated without an authorized staff establishment that would ensure efficient, quality and productive services for the people of the County, contrary to Section 55(b) and (c) of the County Government Act, 2012. Under the circumstances, staff were not managed, organized, posted and transferred in accordance with Article 235 of the Constitution of Kenya, 2010. The resultant effect was excess staff that translated to unsustainable huge wage bill.

Consequently, Management is in breach of the law.

The Committee recommends that:

- The County Executive to strictly adhere to the provision of the PFM Act, 2012 on the fiscal responsibilities on county government expenditure on wages and benefits; and
- The Auditor General and the Controller of Budget to closely monitor the enforcement of the fiscal responsibilities principles by the County Treasury in managing county government finances.

#### **1.6.12.Compliance with the Public Finance Management Act, 2012**

As disclosed under Note 8 to the financial statements, the statement of receipts and payments reflects payments for use of goods and services totaling Kshs.7, 169,537,245 during the year under review. However, examination of payment documents indicate that the Management made payments amounting



to Kshs.273,443,929 through general suspense account contrary to Section 104(1)(i) of the Public Finance Management Act, 2012, which requires the County Treasury to ensure proper management and control of, and accounting for the finances of the County Executive.

Further, the Management made payments totaling Kshs.102, 781,501 in respect of foreign travel and subsistence allowances out of which Kshs.9, 825,124 was irregularly paid to three County officers and two firms. However, payments were not supported by travel documents including visa, air-tickets, boarding passes, hotel bookings, program of the summit, contrary to Regulation 104 of the Public Finance Management (County Governments) Regulations, 2015.

In the circumstances, the County Executive was in breach of the law.

The Committee recommends that:

- **That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.**

#### **1.6.13. County Own Generated Receipts**

As disclosed under Note 4 to the financial statements, the statement of receipts and payments reflects County own generated receipts of Kshs.10, 043,310,059. A review of revenue documents revealed that the County Executive terminated the contract with JamboPay. However, a handing over report and information on how the data was handled after handover was not provided for audit verification.

Further, analysis of the revenue collected using JamboPay for the period under review revealed that transactions totalling Kshs.193,862,722.67 were posted in JamboPay, but were not reflected in LAIFOM System, yet the systems were integrated, contrary to Section 149 (1) and (2(o)) of the Public Finance Management Act, 2012.

After the termination of contract between the County Executive and JamboPay on 8<sup>th</sup> June 2019, the County Government of Nairobi awarded the contract for collection of revenue within Nairobi County to the National Bank of Kenya. However, the contract agreement provided was signed by neither the National Bank nor the Accounting Officer for Nairobi City County Government contrary to Section 44(1) and (2) of the Public Procurement and Asset Disposal Act, 2015. Hence, there were no agreed terms of service to verify and justify performance of the current service provider.

Consequently, it was not possible to ascertain the authenticity of County own generated receipts of Kshs.10, 043,310,059 for the year ended 30 June 2019.

The Committee recommends that:

- **That That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.**



#### 1.6.14.Outstanding Imprest

The accounts receivables - outstanding imprest reflects a balance of Kshs.21, 610,708 as at 30 June 2019. However, examination of records revealed that the amount includes Kshs.4, 599,166, being multiple imprests issued to staff of the County Executive, contrary to Section 93(4) of the Public Finance Management (County Governments) Regulations, 2015 that requires Accounting Officers to ensure applicants have no outstanding imprests.

Further, an analysis of records availed for audit review indicated that imprests totalling Kshs.3,700,913 were outstanding for more than one year, contrary to Section 93(5), (6) and (7) of the Public Finance Management (County Governments) Regulations, 2015.

Consequently, Management is in breach of the law.

The Committee recommends that:

- That the matter be marked as resolved.

#### 1.6.15.Supply and Delivery of Desktops Computers, Laptops and External Portable Drive

Examination of available records revealed that although tender No. NCC/FIN/RT/313/2017-2018 was advertised, some anomalies were however, noted as follows: -

- Evidence of advertisement in accordance with Section 96(2) of the Public Procurement and Asset Disposal Act, 2015 that stipulates that the procuring entity shall advertise in the dedicated Government tenders' portals or in its own website, or a notice in at least two daily newspapers of nationwide circulation, was not availed for audit review.
- The tender had two sets of signed tender opening minutes purportedly held on 25 June, 2018 at 10.00 am with the results as tabulated below: -

Firm Name	Address	Copies	Tender Amount (Kshs.)
Albe Enterprises Ltd	73098-00200 Nairobi	1	8,739,900
Skip Bo Enterprises	5046-00200 Nairobi	1	8,300,000
Conference Rentals Ltd	Not provided	1	Not Indicated
Albe Enterprises Ltd	73098-00200 Nairobi	1	8,739,900
Skip Bo Enterprises	61431-00200 Nairobi	1	11,400,000
Talaa One Enterprises	5046-00200 Nairobi	1	Not indicated



- (iii) Examination of postal addresses for two (2) firms, M/s. Skip Bo Enterprises and Talaa One Enterprise reveals that they are related as they share the same postal address number 5046-00200 Nairobi.
- (iv) There is indication of attempted forgery as the same company; M/s Skip Bo Enterprise submitted two (2) different bids of Kshs.11, 400,000 and Kshs.8, 300,000 for the same tender at the same time.

In view of the above observations, it was not possible to confirm that there was value for money in the award of contracts and whether the contracts were sourced competitively in accordance with the Public Procurement and Asset Disposal Act, 2015.

The Committee recommends that:

- That the matter be marked as resolved.

#### 1.6.16. Projects Status

Note 12 to the financial statements reflects acquisition of assets of Kshs.4, 951,407,063 for the year ending 30 June 2019. However, a number of unsatisfactory findings were noted as tabulated in **Appendix I**

Further, examination of various projects status reports revealed that the following projects with a combined contract sum of Kshs.1,893,756,957 have stalled or delayed as shown below: -

<b>Description</b>	<b>Combined Contract Sum (Kshs.)</b>
Roads, Transport and Public Works	471,389,643
Bridges	96,669,532
Delayed Roads and Bridges Projects	1,035,207,948
Delayed Ward Development Projects (Roads and Drainage)	238,699,198
Delayed WDF Electrical Projects	51,790,636
<b>Total</b>	<b>1,893,756,957</b>

Management has not achieved the intended objectives and value for money in these projects had not been achieved in accordance with Section 149(2) (m) of the Public Finance Management Act, 2012.

In the circumstances, it has not been possible to confirm that the public has obtained value for money. The Committee recommends that:

- That the matter be marked as resolved.



#### 1.6.17.Delayed Construction of Four (4) Stadia in Nairobi City County

A contract no. NCC/ED/T/193/2017-2018 was awarded to M/s Scanjet Contractors for the construction of the four (4) stadia for a combined contract sum of Kshs.1, 036,551,255. An audit review of the program for the execution of works is summarized as follows: -

S/N	Location	Financial Year	Contract Sum (Kshs.)	Completion Period	Status
1	Dandora Stadium	2017/2018	350,000,000	18 months	On going
2	Kawangware Stadium	2017/2018	250,000,000	18 months	Not started
3	Kihumbuini Stadium	2018/2019	250,000,000	18 months	Not started
4	Ziwani Stadium	2019/2020	186,551,255	18 months	Not started
Total			1,036,551,255		

The certificate of site possession signed by the Architect on 30<sup>th</sup> May 2018 shows that the contract period was eighteen (18) months ending 4<sup>th</sup> December 2019. However, it has not been possible to establish whether this contract was awarded in accordance with the Public Procurement and Asset Disposal Act, 2015 due to failure by the County Executive to avail the advertisement of the tender, the tender opening register, tender minutes, the Technical and financial evaluation report, professional opinion and notification to unsuccessful bidders. This is contrary to the provision of Section 96(1), 78(1), 78(10), 80(1), 84(1) and 87 of the Public Procurement and Asset Disposal Act, 2015 respectively. Further, payment records availed for audit review revealed that Kshs.123, 773,682 had been paid in respect of the construction of Dandora Stadium while the construction of the other three (3) stadia had not commenced, despite the fact that more than 50% of the contract time had elapsed. There were changes of the earlier approved material for construction from concrete to steel structures. However, justification for the change, its implication on the Bill of Quantities, budget and eventual approval process were not availed for audit review contrary to Section 9(1) (e) of the Public Audit Act, 2015. There were also sizeable outstanding works.

In addition, a site inspection of Dandora stadium revealed that no construction work was going on although there was a tractor and a concrete mixer on site and the contractor or his agent was not on site. The fixing of gates for entry and exit to the stadium and cabro works were not completed and no documentation was availed to show the status of work done.

In view of the foregoing, it has not been possible to confirm that the public may have obtained value for money on the construction costs incurred.



The Committee recommends that:

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **1.6.18.Trade Sector Projects-Supply, Delivery and Installation of Network for Sectorial Office at Nyayo House**

Examination of records maintained by the Trade Sector show that tender no. NCC/TRADE/RT/546/2016-2017 for supply, delivery and installation of network for sectoral offices in Nyayo House was awarded to a consultancy firm for a contract sum of Kshs.2, 679,370. The contract period was from 30 May 2017 to 31 July 2017. However, the company was paid Kshs.3, 108,069, an amount which is in excess of the contract sum by Kshs.428, 699 that has not been explained.

In the circumstances, the validity of expenditure of Kshs.428, 699 for the year ending 30 June 2019 could not be confirmed.

The Committee recommends that:

- That the matter be marked as resolved.

#### **1.6.19.Procurement of Overpriced of Sports Items**

Examination of records availed for audit revealed that the County Government entered into a contract with a firm to supply and deliver sportswear items at a cost of Kshs.7,710,000 against the approved budget of Kshs.5,300,000 as per the Department's request. The prevailing market price of the equipment was Kshs.4, 400,000 thereby resulting to Kshs.3, 310,000 above the market price contrary to Section 54 (2) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, the County Executive was in breach of law.

The Committee recommends that:

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **1.6.20.Irregular Contracts on Solid Waste Management**

During the year under review, the County Executive contracted and paid thirty-five (35) firms for collection, transportation and disposal of solid waste. However, it was noted that the County Executive did not have standard rates for the collection, transportation and disposal of solid waste for each zone contrary to Section 151 (2) of the Public Procurement and Asset Disposal Act, 2015. The contracts for collection, transportation and disposal of solid waste in the same zones were awarded to different firms



at different rates. The difference in rates to different firms for the collection, transportation and disposal of solid waste from the same collection zone was not explained or supported, as the County did not provide procurement documents to support the awarding of the contracts.

Further, examination of payment vouchers revealed that Management made payments amounting to Kshs.105, 426,062 to eleven (11) firms for collecting solid waste in Zones that they were not prequalified to operate, contrary to Section 151(2) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, the County Executive is in breach of the law.

The Committee recommends that:

- That That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.



## **SUMMARY OF ALL RECOMMENDATIONS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30<sup>TH</sup> JUNE 2020**

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 30<sup>th</sup> June 2020" and having considered responses from the Accounting Officer, the Committee urges the County Assembly to resolve as follows: -

### **Comparative Balances Brought Forward**

The statement of receipts and payments does not reflect comparative balances for repayments of principal on domestic and foreign borrowing totalling Kshs.868,192,719 reflected in the audited 2018/2019 financial statements. As a result, the statement does not conform to IPSAS No.1.

In view of the discrepancy, the accuracy and completeness of the financial statements could not be confirmed.

### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Variance between Financial Statements and Revenue Records**

Accounting records in the Local Authorities Integrated Financial Operations Management (LAIFOMS) system used by the County Executive reflect County own-generated receipts totalling Kshs.6,069,025,224 against Kshs.8,819,040,246 reflected in the statement of receipts and payments resulting to an unreconciled variance of Kshs.2,750,015,022.

As a result, the accuracy and completeness of the County own-generated receipts balance-totalling Kshs.8, 819,040,246 reflected in the statement of receipts and payments could not be confirmed.

### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Revenue from Outdoor Advertisements**

Records on outdoor advertisement, licence applications and approvals for advertising activations that included billboards, wall wraps and sky signs were not provided for audit verification. As a result, it was not possible to confirm whether all revenues due from the activations were received and properly accounted for.

Further, the revised budget framework for 2019/2020 indicated that the County Executive had estimated to collect revenue-totalling Kshs.1, 425,000,000 from billboards and advertisements. However, records in the Finance Department indicated that only Kshs.753, 996,503 was collected



resulting to a revenue shortfall of Kshs.671, 003,497 or 48% of the budget. Management attributed the shortfall to unsatisfactory economic conditions.

However, in view of lack of sufficient records, Management's explanation as well as the accuracy, completeness and propriety of the reported receipts could not be confirmed.

**The Committee Recommends that**

- That the matter be marked as resolved.

#### **Revenues from Buildings Department**

Review of records maintained by the Building Plans Department indicated that during the year under review, the Department approved 1,969 building plans with an estimated value of Kshs.117, 785,052,603. Records in the Department reflected revenues totalling Kshs.425, 589,758 against Kshs.456, 718,816 reflected in records maintained by the Finance Department resulting to an unexplained difference of Kshs.31, 129,058 between the two sets of records.

In addition, electronic records on all approved and rejected applications and building inspection and enforcement reports and registers, were not provided for audit verification. As a result, it was not possible to establish the total number of applications received and approved, or rejected in the year under review, and to match the revenue reported in the financial statements to the application. In addition, as similarly reported in the previous year, records maintained by the County Executive's E-Construction System used for approval of building plans were not integrated with LAIFOMS. The E-construction system only generates invoices but the respective payments are made through LAIFOMS. As a result, reliable means to confirm that all invoices generated by the system are paid and receipted were lacking.

In view of insufficient records and disclosures, the accuracy, completeness and propriety of the revenue receipts totalling Kshs.425, 589,758 reported by the Building Plans Department could not be confirmed.

**The Committee Recommends that**

- That That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Rental Income**

Rent collection schedules maintained on County Houses in various parts of the City other than Eastland's District revealed annual debts totalling Kshs.575, 787,242 as at 30 June 2020 owed by the respective tenants. Further, in the year under review, records at the Finance Department reflected rental income totalling Kshs.495, 274,463 against Kshs.615, 000,000 budgeted for, resulting in a shortfall of



Kshs.119, 725,537. No satisfactory reasons were provided for the failure to collect the debts, and for the revenue shortfall recorded in the year under review.

In addition, Eastland's District annual collectable rent schedules and actual collections in the year under review were not provided for audit review.

In view of these issues, the accuracy and completeness of the rental debts totalling 575,787,242 as at 30 June 2020 and rental revenue totalling Kshs.495, 274,463 for the financial year then ended could not be confirmed.

**The Committee Recommends that**

- That The EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Trade and Other Revenues**

Examination of revenue records indicated that the trade, industrialization, cooperative development and tourism sector collected Kshs.2, 076,990,059 against Kshs.4, 666,880 reported by the Weights and Measures Unit. The resulting variance totalling Kshs.2, 072,323,179 was not explained.

**The Committee Recommends that**

- That the matter be marked as resolved.

### **Unbanked Revenue from Mama Lucy Kibaki Hospital**

Examination of records maintained by Mama Lucy Kibaki Hospital indicated that revenue collected by the Hospital in the year under review totalled Kshs.111, 376,968 whereas cash banked totalled Kshs.104, 647,354. The resulting bank receipts shortfall amounting to Kshs.6, 729,614 was not explained.

In view of insufficient records and disclosures, as well as omissions and discrepancies, the accuracy, completeness and propriety of the own-generated revenue balance totalling Kshs.8, 819,040,246 reflected in the statement of receipts and payments could not be confirmed.

**The Committee Recommends that**

- That the matter be marked as resolved.

### **Unsupported Expenditures**

The statement of receipts and payments reflects payments totalling Kshs.24, 387,087,663 for the year ended 30 June 2020. However, the following anomalies were noted in respect to the balance:



### **Miscellaneous Payments**

Examination of payment vouchers and other records indicated that payments totalling Kshs.109,310,436 incurred on various items were not accompanied by relevant supporting documents. As a result, the occurrence, validity, accuracy and completeness of the payments could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Other Grants and Transfers**

The statement of receipts and payments reflects payments for other grants and transfers totalling Kshs.43,103,000, as further, disclosed in Note 9 to the financial statements. The payments are denoted as emergency relief and refugee assistance - civil contingency reserves. However, a record of the authority granted for the transfers by the County Executive Committee Member for Finance was not provided for audit review. Further, bank statements and acknowledgments from the reported beneficiaries were not provided for audit review.

In the absence of relevant records, the occurrence and propriety of the transfers totalling Kshs.43,103,000 for the year ended 30 June 2020 could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Cash and Cash Equivalents**

The statement of financial assets and liabilities reflects a cash equivalents balance totalling Kshs.920,449,033 as at 30 June 2020, as further reflected in Note 13 to the financial statements. However, the following anomalies were noted in respect to the balance:

#### **Failure to Provide Board of Survey Report and Bank Certificates**

The cash and cash equivalents balance totalling Kshs.920,449,033 reflected in the statement of assets and liabilities as at 30 June, 2020 was not supported by a Board of Survey report and bank certificates for the forty-five bank accounts attributed to the balance. As a result, the accuracy and validity of the balance could not be confirmed.

In addition, bank reconciliation statements for all the 45 accounts, and confirmation certificates and bank statements for (11) eleven accounts were not provided for audit verification.

Further, thirteen (13) of the accounts had nil balances as at 30 June 2020. In addition, balances for six (6) accounts were unchanged from those reflected at the end of the previous financial year. Five bank accounts in various commercial banks were not active. Management did not provide confirmation on the status of these accounts.



### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Incomplete Cashbook**

The cashbook provided for audit did not reflect details of the payments on record. Further, contrary to Regulation 100 of the Public Finance Management (County Governments) Regulations, 2015, no cut-off was applied between the year under review and subsequent year.

In addition, the County Executive's Current Account operated at a commercial bank was overdrawn in the year under review by Kshs.542, 465. No records were provided to confirm prior approval of the overdraft by the County Treasury as required under Section 119(4) of Public Finance Management Act, 2012.

### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Incorrect Bank Reconciliations**

Bank reconciliation statements as at 30 June 2020 reflected reconciling items carried forward totalling Kshs.2, 157,680 from previous months. However, these were not analyzed. Similarly, reconciling items in bank statements not in cashbook were not analyzed and dishonored cheques were not reversed in the cashbook. In addition, balances totalling Kshs.461,400 shown in the bank reconciliation statement as at 30 June, 2019 as payments in the cashbook not yet recorded in the bank statements were in the subsequent statement for July, 2019 reflected as payments in bank statement not yet recorded in the cashbook.

### **The Committee Recommends that**

- that all Accounting Officers should institute measures to ensure that the County Treasury always acts in time when dealing with the Auditor General to forestall audit queries and failure to which they be sanction for breach of Section 149 (2) (k) of the PFM Act, 2012.

#### **Failure to Maintain Cashbook**

Examination of accounting records maintained by Waithaka Technical Training College indicated that although the College received income and paid expenses in cash, it did not maintain an independent cashbook for the transactions. As a result, the cash transactions were not sufficiently accounted for.

### **The Committee Recommends that**

- That the matter be marked as resolved.



### **Account Payables - Deposits and Retention**

The statement of assets and liabilities as at 30 June 2020 reflects a nil accounts payables - deposits and retentions balance. However, examination of records on sampled projects implemented by the County Executive disclosed that Management deducted retention monies on payments made to contractors, as provided for in the terms and conditions of the respective contracts. However, no explanation was provided on how the deductions were accounted for and why they were not disclosed in the financial statements.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Government Guaranteed Loans and On-Lent Water Loans**

Annex 4, to the financial statements reflects other pending payables totalling Kshs.19,143,925,000 comprised of Kshs.15,328,285,000 and Kshs.3,815,640,000 government guaranteed loans and on-lent water (foreign) loans respectively. However, the respective loan agreements and other supporting documents were not provided for audit review. Further, the outstanding loan balances in the financial statements were not supported with documentary evidence. As a result, the accuracy and validity of the other payables totalling Kshs.19, 143,925,000 as at 30 June 2020 could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Fund Accounts Balances**

Note 13 to the financial statements reflects three Fund Accounts, namely, Bursary Fund, Trust Fund and Emergency Fund that received grant transfers totalling Kshs.57,355,069 in the year under review. However, the Funds were not established by the County Assembly as required in Regulation 197 (1) of the Public Finance Management (County Governments) Regulations, 2015 and Section 167(1) of Public Finance Management Act of 2012. Further, contrary to Section 9(1) of the Public Audit Act, 2015, Management did not submit the financial statements, bank statements, and other records on the Funds to the Auditor-General for audit.

As a result, the propriety of the remittances totalling Kshs.57, 355,069 shown as having been advanced to the Funds could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.



## **Fixed Assets**

The statement of receipts and payments reflects acquisition of assets balance totalling Kshs.1, 435,028,590 for the year ended 30 June 2020. However, the expenditure ledger reflected purchases totalling Kshs.1, 425,579,636 resulting to an unexplained difference of Kshs.9, 448,954.

Further, the Note indicates that payments totalling Kshs.490, 050,785 out of Kshs.1, 435,028,590 relate to construction of roads. However, expenditure records provided for audit indicated that payments totalling Kshs.745, 651,770 were made in respect of roads works projects in the year under review. The difference totalling Kshs.255, 600,985 between the balances reflected in the two sets of records was not explained by Management.

### **The Committee Recommends that**

- That the CEC Member for Finance and Economic Planning takes a personal interest into this matter and ensure that the County Government prepares 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.

## **Lack of Ownership Documents for Hospital Land**

Ownership documents for the land on which Mutuini Sub-County Hospital is located were not provided for audit. In addition, particulars on owners of the buildings located in the facility's jurisdiction were not provided for audit review. Unconfirmed reports suggested that the facility's land had been encroached upon by private parties. As a result, it was not possible to confirm valuation and ownership by the County Executive of the Mutuini Hospital's land and buildings.

### **The Committee Recommends that**

- That the matter be marked as resolved.

## **Repayment of Principal on Domestic Lending and On Lending**

Note 7.9 on other important disclosures, reflects pending accounts payable totalling Kshs.72, 941,555,674 that include an outstanding loan totalling Kshs.4, 449,656,189 provided by Kenya Commercial Bank.

Records on the loan indicated that it was acquired in October 2014. However, the loan agreement and contractual documents detailing the terms and conditions of the loan were not provided for audit review. Available records indicated that, the original loan amounting to Kshs.5, 000,000,000 was secured from Equity Bank Kenya Limited by the defunct Nairobi City Council. Repayments made decreased the outstanding balance to Kshs.3, 366,696,209 as at 24 March 2014. However, records on the actual loan issued by the bank were not provided for audit and as a result, the accuracy and validity of the data could not be confirmed.



Management thereafter sought and obtained refinancing of the loan from the Kenya Commercial Bank. The loan statement issued by the bank indicated that County Executive was not repaying the loan, and as a result, the outstanding balance had risen to Kshs.4, 449,656,189 as at 30 June 2020. Management has not explained why repayments for the loan were halted.

**The Committee Recommends that**

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

**Budgetary Control and Performance**

**Under-expenditure**

The summary statement of appropriation - recurrent and development combined reflects a final expenditure budget totalling Kshs.36,981,390,888 and actual expenditure totalling Kshs.24,387,087,663 resulting in under-expenditure of Kshs.12,594,303,225 or 34% of the budget.

The significant under-absorption of the budget implied that execution of planned programmes, activities, and service delivery to the residents of Nairobi in the year under review may have been constrained.

**The Committee Recommends that**

- That the (CECM for finance and economic planning liaise with the) National Treasury should ensure timely release of funds to the County Government in line with the cash disbursement schedules approved by the Senate. The Committee further recommends that the Executives should map revenue streams and automate revenue collections points.

**Delayed Exchequer Receipts**

Examination of revenue records indicated that Recurrent Exchequer, Development Exchequer and Conditional Grants totalling Kshs.2,396,431,233 for the financial year under review were delayed and only released in the months of June, July and August, 2020 as indicated in the following table:

Value Date	Equitable Share (Kshs.)	Compensation for User Fees Foregone (Kshs.)	KDSP (Level 1 Grant Allocation) (Kshs.)	Universal Healthcare in Devolved Governments (DANIDA) (Kshs.)	Conditional Grant for Development of Youth Polytechnics (Kshs.)	Total (Kshs.)
4 June, 2020					22,998,292	22,998,292
4 June, 2020		79,423,251				79,423,251



30 June, 2020				17,605,000		17,605,000
30 June, 2020	1,273,596,000					1,273,596,000
2 July, 2020			30,000,000			30,000,000
5 Aug, 2020	972,808,690					972,808,690
	2,246,404,690	79,423,251	30,000,000	17,605,000	22,998,292	2,396,431,233

Delay in release of the budgeted funds by The National Treasury in turn delayed execution of planned programmes and activities valued at Kshs.2, 396,431,233 that had been expected to benefit the residents of Nairobi City.

The committee recommends that:

- The Committee therefore recommends that the National Treasury should strictly adhere to the cash disbursement schedule on the release of funds to the County Government as approved by the Senate and the Assembly.

#### Unsatisfactory Implementation of Projects

Records on implementation of projects indicated numerous unsatisfactory matters in relation to the projects under implementation by the County Executive. Among the matters noted were delays in completion, poor quality works, irregular procurements and variation of contracts.

Examination of projects status reports issued by Management revealed that several roads, public works and Ward development projects with a combined contract sum of Kshs.6, 920,635,357 spread over several years had delayed, stalled or were terminated, as summarized in the following table:

Description	Aggregate Contract Sum (Kshs.)
Delayed Roads, Transport and Public Works	4,676,032,701
Delayed Ward Development Projects (Roads and Drainage)	418,682,716
Stalled Roads, Transport and Public Works Projects Stalled, Abandoned, Suspended Terminated	1,825,919,940
<b>Total</b>	<b>6,920,635,357</b>

No plausible explanations were provided by Management for the unsatisfactory implementation of the projects.

In their incomplete state, the projects have not yielded the benefits expected of them in spite public funds totalling Kshs.6, 263,765,252 spent on their execution.



#### **The Committee Recommends that**

- That the National Treasury should strictly adhere to the cash disbursement schedule on the release of funds to County Government as approved by the Senate.
- That the Auditor General should undertake the verification of those projects within sixty (60) days from the adoption of this report

#### **Use of Goods and Services**

Examination of expenditure records on use of goods and services revealed the following anomalies:

#### **Irregular Procurement and Delivery of Ten (10) Motor Cycles**

Procurement records indicated that Management awarded a tender for supply of ten (10) motor cycles on 3 August 2018 at a contract sum of Kshs.3, 600,000. However, the same set of officers comprised the Tender Opening Committee, Tender Evaluation Committee and the Inspection and Acceptance Committee, contrary to Section 78(1) b of the Public Procurement and Asset Disposal Act, 2015.

Because of the irregularity, the procurement process lacked adequate internal check and control.

Further, the lowest bidder at Kshs.1, 950,000 was disqualified for, reportedly, not submitting tender security valid for 120 days. However, no records were provided to support the assertion.

In addition, the motor vehicles were not presented for audit verification and, as a result, their supply could not be confirmed.

#### **The Committee Recommends that**

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Irrational Costing of Solid Waste Management Contracts**

Expenditure records indicated that the County Executive made payments totaling Kshs.248, 893,590 to various firms for collection, transportation and disposal of solid waste in the year under review. However, examination of the records indicated that contracts for the same tasks in the same geographical zones were awarded to different firms at different payment rates. Records on procurement of the contracts were not provided for audit and as a result, the reasons for the variances could not be confirmed.

In view of the apparent lack of objectivity in pricing the contracts, value for money may not have been obtained on the expenditure totaling Kshs.248, 893,590 spent on collection and transportation of solid waste.

#### **The Committee Recommends that: -**

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.



### **Unapproved Over-Expenditure on Balls and Laptops**

Examination of payments made on purchase of balls and laptops for the education sector indicated that local purchase orders totaling Kshs.15,318,000 were issued, whereas Authority-to-Incur-Expenditure(AIE) amounted to Kshs.9,250,000 resulting to unauthorized over-expenditure of Kshs.6,068,000. The over-expenditure was contrary to Regulation 51(1)(a) of the Public Finance Management (County Governments) Regulations, 2015 which prohibits spending or commitment of any public funds without a matching AIE.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Undisclosed County Public Service Board Operations**

The audit could not confirm the nature and scope of operations carried out by the County Public Service Board in the year under review as Minutes of its Meetings and other activities were not provided for review.

In addition, it was not possible to confirm whether the Board was validly constituted and whether it had carried out its mandate as provided for in the Constitution and relevant laws.

#### **The Committee Recommends that: -**

- That the matter be marked as resolved.

### **Over-Expenditure on Board Expenses and Casual Workers at Pumwani Maternity Hospital**

Examination of expenditure records indicated that expenditure on the Board and casual employees at Pumwani Maternity Hospital totalled Kshs.3,473,600 and Kshs.12,735,262 against budgetary allocations totalling Kshs.600,000 and Kshs.10,000,000 resulting in over-expenditure of Kshs.2,873,600 or 478% and Kshs.2,735,262 or 27% respectively. The over-expenditures contravened Regulation 53(1) of the Public Finance Management (County Governments) Regulations, 2015 that prohibits unauthorized use of funds other than for the purposes specified in the approved budget.

In addition, Gazette notices and appointment letters for the Board Members were not provided for audit review. As a result, it was not possible to confirm whether the appointments, and the board expenses totalling Kshs.3, 473,600 were incurred in a lawful way.

Staffing records further indicated that the Hospital hired one hundred and twenty-three (123) casual employees in the year under review and paid those emoluments totalling Kshs.12, 735,262. However, contrary to Section 37 of the Employment Act, 2007, some of the casuals were retained for continuous periods lasting for more than three months without contracts. Further, there were no records showing that needs assessments were carried out to identify understaffed units before the appointments were made.



**The Committee Recommends that: -**

- That the matter be marked as resolved.

**Staff Shortage at Mbagathi Hospital**

Records at Mbagathi Hospital indicated that the authorized establishment was five hundred and fifty (550) members of staff against four hundred and thirty-four (434) in position in the year under review. Therefore, the Hospital had a shortage of one hundred and sixteen (116) employees. The understaffing may have hindered the Hospital from providing health services in an efficient and effective way.

No plausible explanation was provided for the failure of the County Public Service Board to fill the vacancies to aid provision of efficient, high quality services to patients as required of the Board by Section 55(b) of the County Governments Act, 2012.

Further, review of records on casual workers indicated that the workers had worked as temporary employees for long periods with some having held their temporary positions for over 20 years. Minutes of a meeting of the Hospital's Management Committee held on 20 February 2018 indicated that the Committee had asked Management to consider hiring the workers on permanent service.

Similarly, the Deputy Medical Superintendent at the Hospital had in November 2018 written to the County Director of Health requesting employment of the casual workers on permanent terms, following interviews carried out one year before in July 2017, but their status remained unchanged.

Failure to absorb the workers on permanent terms may adversely affect their morale and lower the quality of services offered at the Hospital.

**The Committee Recommends that: -**

- That the matter be marked as resolved.

**Irregular Hire of Medial Staff at Mama Lucy Kibaki Hospital**

Examination of employment records maintained at Mama Lucy Kibaki Hospital revealed an approved staff establishment of eight hundred and eight (808) staff members against five hundred nineteen (519) permanent staff resulting to a deficit of two hundred and eighty-nine (289) staff.

The shortage appeared to have hindered efficient and effective services as Management had resorted to hiring temporary workers in various departments. In the year under review, wages for casual employees totaled Kshs.49, 100,736.

The wages were paid to a hundred and one (101) casuals at Kshs.16,484,266, fifty-seven (57) locum nurses at Kshs.16,482,000, eight (8) clinicians at Kshs.4,818,300, seven (7) anesthetists at Kshs.2,662,470, fifteen (15) officers for Covid-19 mitigation at Kshs.709,500 and various other medical officers at Kshs.7,944,200.



However, requisitions from the user departments and approvals for hire of the staff were not provided for audit review. As a result, the regularity of the recruitment, and suitability for the jobs assigned to staff could not be confirmed.

No plausible explanation was provided by Management for preferring casual over permanent or term workers.

**The Committee Recommends that: -**

- That the EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Unremitted Statutory Deductions**

Included in other pending payables totalling Kshs.62,417,338,886 as at 30 June, 2020 are statutory deductions totalling Kshs.1,532,263,571, as analyzed in Annex 4 of the financial statements. The payables denote failure by Management to remit the deductions in due time as required in Regulation 22 (2) of the Public Finance Management (County Governments) Regulations, 2015.

The delays may have caused the County Executive to incur liability for fines and penalties and is detrimental to the welfare of its workers

**The Committee Recommends that: -**

- That the matter be marked as resolved.

#### **Inadequate Maintenance of Records by Enforcement Department**

The Compliance and Enforcement Department of the County Executive serves enforcement notices and undertakes any other enforcement action in respect to physical development. However, examination of the Department's records indicated that they were kept in registers some of which were old, mutilated, and lacked backup copies. The records included; reports on arrests, court cases, notices, demolitions and complaints.

Therefore, the information contained in the registers, though critical to the operations of the Department, was not maintained in a secure and efficient way.

By failing to maintain the records well, Management contravened Section 149(2) (c) of the Public Finance Management Act, 2012 that requires Accounting Officers to protect and back-up all financial and accounting records in their respective entities.

**The Committee Recommends that: -**

- That the County Executive to develop Regulations for proper management of all County records both in electronic and physical forms.



### **Lack of Fixed Assets Register at Mama Lucy Kibaki Hospital**

Examination of records at Mama Lucy Kibaki Hospital revealed that the hospital procured assets totalling Kshs.4, 786,181 in the year under review. However, Management did not maintain a fixed assets register on assets owned by the Hospital. Further, the assets were not coded or tagged and therefore their location and custody could not be tracked from records.

Failure to maintain the assets register contravened Section 159(2) of the Public Procurement, Asset Disposal Act, 2015 that requires each Accounting Officer of a procuring entity to keep record of goods, works, and services received in an inventory of the entity. In addition, the assets were at risk of misplacement or loss.

#### **The Committee Recommends that**

- That the matter be marked as resolved.



## **SUMMARY OF ALL RECOMMENDATIONS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30<sup>TH</sup> JUNE 2021**

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 30<sup>th</sup> June 2019" and having considered responses from the Accounting Officer, the Committee urges the County Assembly to resolve as follows: -

### **Between the Financial Statements, Payment Details and the Ledger**

The statement of receipts and payments reflects total payments amounting to Kshs. 29,582,031,455. However, the general ledger and payments summaries provided for audit reflected expenditure totaling to Kshs.17,006,826,853 and Kshs.21,078,392,025 respectively resulting in variances amounting to Kshs.12,575,204,602 and Kshs.8,503,639,430. The difference between the three sets of records was not reconciled or explained.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Incomplete Payment Entries in the Ledger**

The statement of receipts and payments reflects total payments amounting to Kshs.29, 582,031,455. Review of integrated Finance Management Information System (IFMIS) ledger entries revealed three hundred and forty-nine (349) payments to vendors for payments amounting to Kshs. 1,937,357,693, which did not have corresponding invoice details. Management did not provide reasons for failure to capture invoice details for the payments.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Payments not processed in IFMIS and Unreconciled Suspense Accounts**

Analysis of payments made through internet banking revealed 348 entries amounting to Kshs.2, 172,065,824 that were paid without being processed through IFMIS. Further, a payment analysis report generated from IFMIS reflected 3,825 transactions amounting to Kshs.287, 485,876 processed through suspense accounts comprising of prepayments, special imprests and temporary imprests, which were yet to be cleared. However, the amount differed with an amount of Kshs.33, 247,428 reflected in the statement of assets and liabilities under accounts receivables – outstanding imprests, resulting in a variance of Kshs.254, 238,448 which was not reconciled or explained.



### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Accounts Payables - Deposits and Retentions**

The statement of assets and liabilities reflect a nil balance in respect of accounts payables - deposits and retentions as at 30 June 2021. Review of payments made during the year revealed an amount of Kshs. 1,097,460,707 paid to contractors in respect of various works including construction of buildings, refurbishment of buildings and construction and civil works under acquisition of assets expenditure items. The payments required Management to retain an amount for defects liabilities under the works contracts. However, it was not possible to confirm whether any retention money was deducted before the payments were made, as the same was not disclosed in the financial statements.

### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Unreconciled Bank Balances**

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs. 897,688,736 as at 30 June 2021. The amount relates to balances held in forty-nine (49) bank accounts operated by City County Executive during the year under review, including one bank account, which was overdrawn. However, certificates of bank balances for the forty-nine (49) bank accounts reflect a cumulative balance amounting to Kshs. 11,196,922,393 resulting to a variance of Kshs. 10,299,233,657, which was not reconciled.

Further, an amount of Kshs. 429,813,424 held in various bank accounts related to balances for County Fund accounts, which were required to prepare separate financial statements. Inclusion of the funds balances misstated the cash and cash equivalents balance as at 30 June 2021.

In the circumstances, the accuracy and completeness of the balances could not be confirmed.

### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Unremitted Receipts**

The statement of receipts and payments reflects county own generated receipts amounting to Kshs. 9,711,076,181. However, the receipts excluded Kshs. 369,429,434 (2020 - Kshs. 427,267,499) collected by the Nairobi City County Alcoholic Drinks and Licensing Board. According to Regulation 80 of Public Finance Management (County Governments) Regulations, 2015 the receipts comprise revenue of the County Government and ought to have been remitted to the County Revenue Fund (CRF) and disclosed in the financial statements.



#### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Proceeds from Domestic and Foreign Grants**

Note 2 to the financial statements reflects proceeds from domestic and foreign grants amounting to Kshs. 74,527,819 comprising of Youth Polytechnic Support, Kenya Devolution Support Programmed and World Bank funded Agriculture Sector Development Support Programmed Phase Two (ASDSP II). However, the grants and donations were not disbursed through the revenue mode of disbursement or supply of goods and services as required by Regulation 72(4) of the Public Finance Management (County Governments) Regulations, 2015.

Further, expenditure returns were not provided for audit review.

In addition, contrary to Regulation 77, Accounting Officers of the respective projects did not compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of the projects and sub-projects including monthly interim financial returns, quarterly financial management returns and a summary of the records for each quarter and year to the division responsible for external resources in the County Treasury not later than fifteen (15) days after the end of every quarter.

In the circumstances, the accuracy and regularity of County own generated receipts of Kshs. 9,711,076,181 and proceeds from domestic and foreign grants received through exchequer amounting to Kshs. 74,527,819 could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Unsupported Payments**

The statement of receipts and payments reflects total payments amounting to Kshs. 29,582,031,455. However, supporting documents for the expenditure such as payment vouchers, invoices, contracts, disbursement details for payments amounting to Kshs. 9,773,905,233 were not provided for audit.

In the circumstances, the accuracy and regularity of expenditure amounting to Kshs. 9,773,095,233 could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Unsupported Use of Goods and Services**

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects expenditure amounting to Kshs. 9,165,422,362 in respect of use of goods and services. Review of the supporting documents revealed the following:



### **Unsupported Legal Expenses**

The amount includes other operating expenses amounting to Kshs.2, 477,851,520 that includes an amount of Kshs.836, 627,660 in respect of legal expenses paid to various firms during the year under review. However, the payments to the firms were not supported by formal instructions for representation, details of cases in which the firms represented the County Executive and certified copies of the judgments for the respective cases as stipulated in the civil procedure rules. Further, the services were directly procured contrary to the provisions of Section 103 of the Public Procurement and Asset Disposal Act, 2015.

In addition, review of payments and documents revealed that the County Executive procured the legal services without valid contracts contrary to Section 135 of Public Procurement and Asset Disposal Act, 2015.

#### **The Committee Recommends that**

- That the EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

### **Payments of Subsistence Allowance**

The amount further includes expenditure amounting to Kshs.323, 281,087 on domestic travel and subsistence, which includes an amount of Kshs.13, 074,060 paid as subsistence allowances to staff members without evidence confirming that they participated in the events for which the allowances were paid.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Payments of Foreign Travel and Subsistence**

The amount also includes foreign travel and subsistence expenditure of Kshs.166, 768,849 which constitute an amount of Kshs.11, 422,273 whose supporting documents such as attendance registers, reports of work performed or program by staff members, invitation to various overseas trainings and workshops, imprest requisitions and applications, and proof of travel documents like boarding passes, stamped passports to various destinations were not provided for audit.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Training Expenses**

Further, training expenses amounting to Kshs.164, 645,324 includes an amount of Kshs.13, 292,580 paid in respect of various training programs. However, support documents such as need assessment



reports, training programs from training institutions, invitations to the trainings and authentic travel documents among other information were not provided for audit.

**The Committee Recommends that**

- That the matter be marked as resolved.

**Utilities, Supplies and Services**

The amount also includes payments amounting to Kshs.200, 000,000 in respect of utilities, supplies and services. The amount was paid to Kenya Power and Lighting Company (KPLC) in two payments of Kshs.100, 000,000 each. However, the payments were not supported by statement of account, invoices, and electricity bills.

**The Committee Recommends that**

- That the matter be marked as resolved.

**Unsupported Hospitality Supplies and Services**

The amount also includes hospitality supplies and services expenditure amount of Kshs.174, 474,979. However, review of expenditure documents for the amount revealed that payments amounting to Kshs.38, 777,482 were made as meals allowances to staff engaged beyond normal working hours. However, the rates applied differed with approved rates by the Salaries and Remuneration Commission as stipulated in circular of 16 April 2014. In addition, the expenditure was not justified as no basis or reasons were provided for the payments. Therefore, the expenditure did not constitute a proper charge to public funds.

Further, the expenditure includes allowance of Kshs.7, 762,000 paid to various task force members. However, the allowances did not meet the eligibility criteria for payment set out in the Ministry of Devolution and Planning dated 2 August 2013, which spells out conditions under which taskforces should be formed and compensated including eligibility criteria for such payments.

**The Committee Recommends that**

- That the matter be marked as resolved.

**Unaccounted for Fuel Oil and Lubricants**

The use of goods and services amount of Kshs.9, 165,422,362 reflected in the statement of receipts and payments includes an amount of Kshs.65, 015,000 incurred on fuel, oil, and lubricants. However, records of fuel consumption in respect of the expenditure such as fuel registers and consumption statements from service providers were not provided for audit.

**The Committee Recommends that**

- That the matter be marked as resolved.



### **Other Operating Expenses**

Other operating expenses amounting to Kshs.2,477,851,520 includes a payment of Kshs.4,864,960 for the supply and delivery of assorted office equipment which constituted six (6) laptops and eight (8) mobile iPhones at a unit price of Kshs.296,760 and Kshs.261,300 respectively totalling to Kshs.3,870,960. However, serial numbers for the equipment were not indicated on the delivery notes and the list of beneficiaries issued with the laptops and phones was not provided for verification.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Payments on Other Creditors**

Included in use of goods and services payments are other creditors of Kshs. 4,016,865,337 as reflected in Note 7 to the financial statements. However, documents and particulars of the creditors to whom the payments were made were not provided for audit. Further, it was not clear why the amount was included as expenditure in the statement of receipts and payments instead of a liabilities balance in the statement of assets and liabilities.

In the circumstances, the accuracy, regularity and completeness of the balances in the respective items of expenditure under the use of good and services could not be ascertained.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Irregular Payments of Allowances to Members of the County Assembly**

During the year under review, an amount of Kshs.4, 361,828 was paid as allowances to Members of the County Assembly (MCAs) by the County Executive. However, the nature and purpose for the payment was not stated. The County Assembly has an independent budget to support its operations. Further, such payments may pose a risk of double payments for the same services, as the applicable controls are independent.

In the circumstances, the regularity of payments to MCAs amounting to Kshs.4, 361,828 could not be confirmed.

#### **The Committee Recommends that**

- That the matter be marked as resolved.

### **Unrelated Rental Expenses**

As disclosed in Note 7 to the financial statements, the statement of receipts and payments reflects a balance of Kshs. 5,599,283 in respect of rentals of produced assets. Review of the ledger analysis provided for audit revealed that an amount of Kshs. 1,800,000 was incurred because of the County



Assembly Speaker's official residence rent. However, no supporting documents were provided for audit to support the payment. Further, no explanations were provided as to why County Assembly related costs were paid by the County Executive.

In the circumstances, the validity of rental payments amounting to Kshs. 1,800,000 could not be confirmed.

**The Committee Recommends that**

- That the matter be marked as resolved.

**Unconfirmed Grants and Payments**

As disclosed in Note 9 to the financial statements, the statement of receipts and payments reflects an amount of Kshs.936, 521,551 in respect of other grants and payments. Review of expenditure records revealed transfers to County Schools totalling to Kshs.431, 521,551. However, the payments were not supported by documentary evidence such as acknowledgement letters and expenditure returns detailing how the funds were utilized.

In the circumstances, the regularity of Kshs.431, 521,551 transferred to schools could not be confirmed.

**The Committee Recommends that**

- That the matter be marked as resolved.

**Unsupported Cash Payments**

Analysis of the payment details for expenditure incurred during the year revealed twelve (12) cash payments amounting to Kshs. 523,082,932 comprising of an amount Kshs. 478,399,092 and Kshs. 44,683,840 paid from Finance and Economic Planning and Agriculture, Livestock Development and Fisheries departments respectively. However, the supporting documents and the reasons for the huge cash payments were not provided for audit.

In the circumstances, the regularity of the payment of Kshs. 523,082,932 could not be confirmed.

**The Committee Recommends that**

- That the matter be marked as resolved.

**Accounts Receivables**

**Outstanding Imprests**

The statement of assets and liabilities reflects accounts receivables – outstanding imprests amounting to Kshs. 33,247,428. The outstanding imprest amount was due and ought to have been surrendered on or before 30 June 2021. However, no explanation was provided for the non- surrender on the due dates



or recovery measures taken against holders of the outstanding imprests. In addition, accounting documents for issued imprests such as memorandum cash books were not provided for audit.

Further, imprests totalling to Kshs. 14,930,000 were issued to persons who held other uncleared imprests contrary to Regulation 93(8) of the Public Finance Management (County Governments) Regulations, 2015 that provide that no second imprest is to be issued to any officer before the first imprest is surrendered or recovered in full from his or her salary.

In addition, Note 15 to the financial statements reflects other accounts receivables amounting to Kshs. 1,161,493,708,846, which is an increase of Kshs.331, 901,122,687 from Kshs.829, 592,586,159, recorded in the previous year. However, supporting documents and details of persons and entities from whom the amount was outstanding from including an aging analysis was not provided for audit.

In the circumstances, the irregularity of the other accounts receivables amounting to Kshs. 1,161,493,708,846 reflected in the financial statements could not be ascertained.

#### **The Committee Recommends that**

- That the EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Outstanding Electricity Bills**

Annex 2 to the financial statements reflects pending bills to the Kenya Power and Lighting Company (KPLC) amounting to Kshs.477, 771,272. However, the outstanding payments were not supported by a statement of account from KPLC or electricity consumption bills. In addition, the other accounts receivables amounting to Kshs.1,161,493,708,846 includes, Kshs.1,083,239,001 owing from KPLC in respect of unpaid way leaves. However, the County Executive did not maintain an account with the Company for purposes of netting off payable amounts against receivable amount. Additionally, a breakdown of the receivable amount from the company was not provided for audit.

In the circumstances, the regularity of pending bills of Kshs. 477,771,272 could not be confirmed.

#### **The Committee Recommends that**

- That the EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

#### **Pending Bills**

Annex 5 to the financial statements reflect outstanding KCB bank for an outstanding loan amounting to Kshs. 4,449,656,189. According to the Annex, no repayments were made during the year. Management did provide reasons for defaulting on the loan, which may risk the assets pledged as



collateral against the loaned amount. In addition, measures put in place to clear the outstanding loan amount including accrued interest was not outlined.

Further, other important disclosures to the financial statements reflect a summary of pending accounts payables totaling to Kshs.7,484,134,430 while Annex 2 to the financial statements reflects pending accounts payable amounting to Kshs.5,901,206,837 resulting in an unexplained and unreconciled difference of Kshs.1,582,927,593.

In the circumstances, the accuracy of the pending accounts payable disclosed in the financial statements could not be confirmed.

**The Committee Recommends that**

- That the County Executive should make adequate efforts to pay the outstanding County pending bills as a first charge; and
- That the Auditor General to closely monitor the status of the county pending bills.

**Voided Transactions**

Review of expenditure analysis obtained from the Integrated Financial Management Information Systems, (IFMIS) revealed 1,192 payment transactions with a total expenditure of Kshs. 4,066,735,905, which were invalidated during the year under review. However, there was no documentary evidence provided to support authorization and reasons for invalidation of the transactions, which had been presented, to the Controller of Budget (CoB) for approval. In addition, it was not confirmed whether there were unauthorized payments made in place of those that were invalidated.

In the circumstances, the validity, completeness, and approval of payments made during the year could not be ascertained.

**The Committee Recommends that:-**

- The EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

**Budgetary Control and Performance**

The summary statement of appropriation – recurrent and development combined reflects final receipts budget and actual on comparable basis amounting to Kshs. 37,881,734,935 and Kshs. 29,553,905,838 respectively resulting to an under-funding of Kshs. 8,327,829,097 or 22% of the budget. Similarly, the County Executive spent an amount of Kshs. 29,582,031,455 against an approved budget of Kshs. 37,881,734,935 resulting to an under-expenditure amounting to Kshs. 8,299,703,480 or 22% of the budget.

The underfunding and underperformance affected the planned activities and may have affected negatively on service delivery to the public.



### **The Committee Recommends that**

- That the National Treasury should ensure timely release of funds to county governments in line with the cash disbursement schedules approved by the Senate and Assembly.
- that the County Executive should map revenue streams and automate revenue collections points

### **Late Exchequer Releases**

During the year under review, the County Executive received a total of Kshs.19, 500,070,511 from exchequer. However, review of records revealed that an amount of Kshs.12, 893,291,261 or 66% of the exchequer issues were received during the months of June and July 2021, an indication of delayed disbursements of funds by The National Treasury.

Failure to remit Exchequer funds by The National Treasury may have affected negatively on delivery of services to the public and other County Executive operations.

### **The Committee Recommends that**

- That the National Treasury should adhere to the cash disbursement schedule on the release of funds to county governments as approved by the Senate and Assembly.

### **Irregular Recruitment and Retention of Staff**

During the year under review, the County Executive engaged one hundred and eight (108) casual workers on temporary basis. However, no documentation on the recruitment process including the advertisement, list of applicants, short list and the minutes of the interviews were provided for audit review. Further, the County Executive employed one thousand six hundred and twenty-three (1,623) new employees during the year. However, the human resource plan, approval for recruitment, advertisements and records of the recruitment process were not provided for audit review.

Review of biodata of new employees revealed that a hundred and one (101) recruits had just turned 18 years old and had not been issued with identity cards at the time of recruitment and thus they may not have attained the majority age by the time the recruitment process began. Another twenty-seven (27) recruits were above the entry-level age of forty-five as specified by the PSC manual on Human Resource practices.

In addition, the County Executive had in its payroll several employees who had attained the mandatory retirement age of 60. This was against Section L.5 (1) of the Public Service Commission of Kenya (County Public Service Human Resource Manual) which states that all officers will be required to retire from the service on attaining the mandatory retirement age of 60 years.

In the circumstances, Management was in breach of the law.



### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Duplicate Names and Account Numbers**

Review of payroll data revealed that salaries for several employees were disbursed to accounts whose details were shared between two or more persons. Management did not provide an explanation for the staff sharing bank accounts contrary to the PSC Human Resource Policies, 2016.

In the circumstances, Management was in breach of the law.

### **The Committee Recommends that**

- That the matter be marked as resolved.

#### **Unremitted Statutory and Other Deductions**

Review of records relating to statutory deductions and remittances revealed that an amount of Kshs. 470,116,640 was deducted from employees' salaries in respect of pension schemes but was to be remitted to the respective institutions and schemes. The County Executive was therefore, in breach of Section 19 (4) of the Employment Act, 2007 which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1) (a), (f), (g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement, court order or arbitration as the case may be.

In the circumstances, Management was in breach of the law.

### **The Committee Recommends that**

- that the matter be marked as resolved.

#### **Procurement of Goods and Services**

##### **Irregular Procurement of Specialized Materials and Services**

Expenditure amounting to Kshs. 140,341,451 on specialized materials and services reflected in Note 7 to the financial statements includes an amount of Kshs. 29,748,016 incurred on procurement of Information Communications Technology (ICT) equipment. Review of procurement process and documents revealed instances where tenders were split contrary to Section 54(1) of the Public Procurement and Asset Disposal Act, 2015.

Further, firms awarded the contracts were not in the register of prequalified suppliers for the supply of computers and communications equipment in the year under review, and the process of identifying them was not disclosed.



In addition, inspection and acceptance reports for supplied equipment were not provided for audit, and thus no evidence that the items were supplied as indicated.

**The Committee Recommends that**

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

**Irregular Procurement of Office and General Supplies and Services**

Included in office general supplies and services expenditure amounting to Kshs.115, 881,450 under use of goods and services are payments totaling to Kshs.75, 048,155 towards purchase of office equipment through restricted tendering procurement method. However, use of the restricted tendering process did not meet the conditions set in Section 102 (1) of the Public Procurement and Asset Disposal Act, 2015. In addition, the membership of the Opening, Evaluation, and Inspection Committees were same while a professional opinion was not provided on the bidders by the head of the procurement function to the accounting officer as required by the Act.

**The Committee Recommends that: -**

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

**Irregular Extension of Medical Insurance Contract**

During the year under review, an amount of Kshs. 230,000,000 was paid to an insurance provider for provision of medical cover to the County Executive employees for the months of July 2020 and August 2020. Review of procurement of the services revealed that the Management extended an existing medical insurance contract by fifty-four (54) days effective 1 July 2020 to end of August 2020 due to non-responsiveness by bidders in a tender for the services. However, no documents were provided for audit to support Management claim that a tender had been advertised for which bidders failed to respond to leading to extension of the existing provider. Further, there were no minutes of the decision and approval by the accounting officer for the extension.

In the circumstances, Management was in breach of the law.

**The Committee Recommends that**

- That EACC undertake further investigation on the matter for possible prosecution of responsible officers during the period under review.

**Lack of Staff Establishment**

During the year under review, the County Executive did not provide evidence of existence of an approved staff establishment for audit review. Consequently, it was not established whether the



Management adhered to Section 5 of the delegation of Public Service Commission Human Resource functions to the Cabinet Secretary (Revised August, 2015) on staff establishment which states that Ministries and State Departments shall rationalize staffing levels in line with their current Ministerial mandates and approved budgets and proposals on the staff establishment shall be approved by the Public Service Commission before implementation.

In the circumstances, Management was in breach of the law.

**The Committee Recommends that**

- Acknowledged that there was work in progress on the same and encouraged the management to finalize on this and submit a status report to the Auditor General within sixty (60) days.

**Inadequate Maintenance of Records by Enforcement Department**

The Compliance and Enforcement Department of the County Executive serves enforcement notices and undertakes any other enforcement action in respect to physical development. However, examination of the Department's records revealed that some of the registers were old, mutilated, and lacked backup copies. The records included; reports on arrests, court cases, notices, demolitions and complaints. Therefore, the information contained in the registers, though critical to the operations of the Department, was not maintained in a secure and efficient way.

Failure to maintain proper and up to date records by Management contravened Section 149(2) (c) of the Public Finance Management Act, 2012 that requires Accounting Officers to protect and back-up all financial and accounting records in their respective entities.

In the circumstances, existence of an effective recording system by the County Executive could not be confirmed.

**The Committee Recommends that**

- That the matter be marked as resolved.



## CONCLUSION

The Committee having considered both the **“Report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the financial years 2018/2019, 2019/2020 & 2020/2021”** 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. The recommendations are aimed at deterring future misappropriation of public funds.



## ANNEXURES

Annex	Title
Annex 1	Minutes Sittings
Annex 2	Management Responses
Annex 3	Supporting Documents







MINUTES OF THE 22<sup>ND</sup> SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY SELECT COMMITTEE ON COUNTY PUBLIC ACCOUNTS HELD ON FRIDAY, 23<sup>RD</sup> AUGUST, 2024 AT 9.30 A.M. AT LAKE NAIVASHA RESORT, NAKURU COUNTY.

MEMBERS PRESENT:

1. Hon. Chege Mwaura, MCA – Chairman
2. Hon. Abel Osumba Atito, MCA – Vice-Chairman
3. Hon. Mark Thiga Ruyi, MCA
4. Hon. Emmy Khatemeshi Isalambo, MCA
5. Hon. Jane Musangi Muthembwa, MCA
6. Hon. Rachel Wanjiru Maina, MCA
7. Hon. Eutychus Mukiri Muriuki, MCA
8. Hon. Paul Wachira Kariuki, MCA
9. Hon. Cyrus Mugo Mubea, MCA
10. Hon. Stazo Elijah Omung'ala Ang'ila, MCA
11. Hon. Fredrick Njoroge Njogu, MCA
12. Hon. Martin Mbugua Mwangi, MCA
13. Hon. Mary Wanjiru Kariuki, MCA
14. Hon. Aaron Kangara Wangare, MCA
15. Hon. Carrington Gichunji Heho, MCA
16. Hon. Simon Maina Mugo, MCA
17. Hon. Billy Richardo Nyantika, MCA
18. Hon. Benta Juma Obiero, MCA
19. Hon. John Ndile Musila, MCA
20. Hon. John Rex Omolleh, MCA
21. Hon. Patrick Karani Said, MCA
22. Hon. Fatuma Abduwahid Abey, MCA
23. Hon. Fuad Hussein Mohamed, MCA

IN-ATTENDANCE

1. Mr. Patrick Muriuki – Office of the Auditor-General

SECRETARIAT

- |                          |                                   |
|--------------------------|-----------------------------------|
| 1. Mr. Kevin Wasike      | - Senior Clerk Assistant          |
| 2. Mr. Bendict Ochieng   | - 2 <sup>nd</sup> Clerk Assistant |
| 3. Mr. Klinsman Munase   | - Legal Counsel                   |
| 4. Mr. Anthony Nyandiere | - Hansard Officer                 |
| 5. Mr. Melvin Wachira    | - Research Officer                |

MIN.086/NCCA/PAC/AUGUST/2024 – PRELIMINARIES

The Chairman called the meeting to order at Twelve O'clock and said the opening prayers. He then welcomed Members present, the Auditors and the Secretariat to the meeting and took them through the agenda which was adopted for consideration as proposed by Hon. Emmy Khatemeshi, MCA and seconded by Hon. Eutychus Mukiri, MCA.

MIN.087/NCCA/PAC/AUGUST/2024 – CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE CONSIDERATION OF THE REPORTS OF THE AUDITOR-



GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEARS ENDED 30<sup>TH</sup> JUNE 2019, 2020 AND 2021 RESPECTIVELY.

The Secretariat tabled and took the Committee through the draft report on the consideration of the report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the years ended 30<sup>th</sup> June, 2019, 2020 and 2021 respectively. The Committee deliberated on the report and adopted the same for tabling in the Assembly as proposed by Hon. Mark Thiga, MCA and seconded by Hon. Paul Wachira, MCA.

MIN.088/NCCA/PAC/AUGUST/2024 – CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE CONSIDERATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR-GENERAL ON COVID-19 VACCINE ROLL OUT FOR THE NAIROBI CITY COUNTY GOVERNMENT FOR THE YEAR 31<sup>ST</sup> MARCH, 2022.

The Secretariat tabled and took the Committee through the draft report on the consideration of the special audit report of the Auditor-General on Covid-19 Vaccine Roll out for the Nairobi City County Government for the year 31<sup>st</sup> March, 2022. The Committee deliberated on the report and adopted the same for tabling in the Assembly as proposed by Hon. Jane Musangi, MCA and seconded by Hon. Eutyclus Mukiri, MCA.

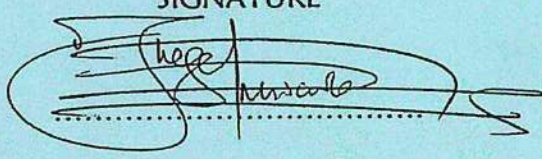
MIN.089/NCCA/PAC/AUGUST/2024 – CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE CONSIDERATION OF THE SPECIAL REPORT OF THE AUDITOR-GENERAL ON PUBLIC PARTICIPATION IN NAIROBI CITY COUNTY BUDGET MAKING PROCESS FOR THE FINANCIAL YEAR 2021/2022.

The Secretariat tabled and took the Committee through the draft report on the consideration of the Special Report of the Auditor-General on Public Participation in Nairobi City County Budget Making Process for the Financial Year 2021/2022. The Committee deliberated on the report and adopted the same for tabling in the Assembly as proposed by Hon. Cyrus Mugo, MCA and seconded by Hon. Paul Wachira, MCA.

MIN.090/NCCA/PAC/AUGUST/2024 – A.o.B & ADJOURNMENT

The being no other business and the time being fifteen minutes past One O'clock, the Chairman adjourned the meeting. The next meeting was scheduled to be held the Friday, 23<sup>rd</sup> August, 2024 at 2.30 p.m.

CONFIRMED AS A TRUE RECORD OF THE PROCEEDINGS

SIGNATURE  
CHAIRPERSON 

DATE  
18/Sep/2024