

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(FOURTH SESSION)

NCCA/TJ/PL/2025(76)

18TH NOVEMBER 2025

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 Paper on the Table of this Assembly, today Tuesday 18th November 2025:

- **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 ENDED 30TH JUNE 2022.**

(The Chairperson, Select Committee on Public Accounts)

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

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(FOURTH SESSION)



NCCA/TJ/PL/2025(76)

12TH NOVEMBER 2025

PAPER LAID

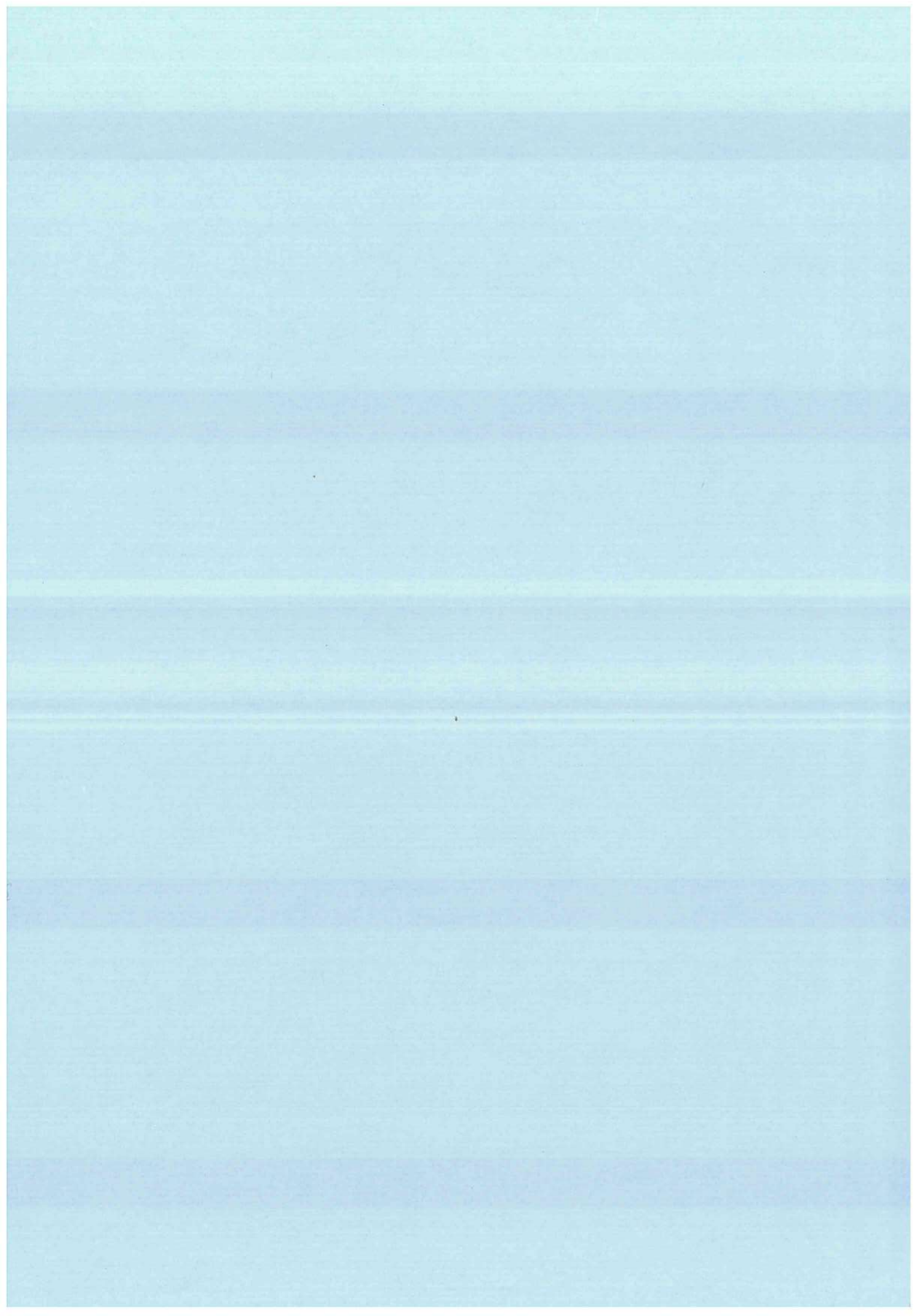
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(The Chairperson, Select Committee on Public Accounts)

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NCCA/TJ/NTC/2025

GOVERNMENT OF NAIROBI CITY COUNTY



*Notice
Hon. degree March
18/11/25
Blunt*

THE NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY

(FOURTH SESSION)

18th November 2025

NOTICE OF MOTION

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 ENDED 30TH JUNE 2022** laid on the Table of the Assembly on 18th November 2025.

(Chairperson, Select Committee on Public Accounts)

NCCA/TJ/NTC/2025

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY
(FOURTH SESSION)

12th November 2025

NOTICE OF MOTION

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 ENDED 30TH JUNE 2022** laid on the Table of the Assembly on 12th November 2025.

(Chairperson, Select Committee on Public Accounts)

Nairobi City County Government



Nairobi City County Assembly

Third Assembly – Fourth Session

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 Year Ended 30th June, 2023

Clerks Chambers
Nairobi City County Assembly
City Hall Buildings
NAIROBI

November, 2025

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CHAIRPERSONS 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 year ended 30th June, 2023**”.

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 year under review, Accounting Officers upheld key principles of public finance management namely; value for money, efficiency, and effectiveness in public spending.

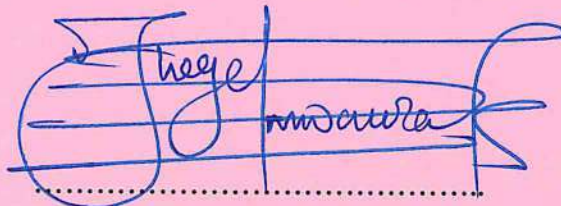
Honourable Speaker, the Committee upon careful examination of the evidences brought before it identified various issues raised by the Auditor-General during the period under review that hamper service delivery. The issues include; an incompetent county treasury, accounting for expenditures, delayed procurement 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

Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.

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 'Chege Mwaure', is written over a set of horizontal lines. The signature is stylized and fluid.

HON. CHEGE MWAURA, MCA
CHAIRPERSON

10/11/2025

DATE

1.0 INTRODUCTION

1.1 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.

1.2 Guiding principles

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

(a) Constitutional Principles on Public Finance

Article 201 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.

1.3 Obligations of the Accounting Officer

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

(a) lawful and authorized; and

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

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

1.4 Committee Membership

The Committee comprises of the following members: -

- | | |
|--|---------------------------|
| 1. Hon. Chege Mwaura, MCA | - Chairperson |
| 2. Hon. Abel Osumba Atito, MCA | - Vice-Chairperson |
| 3. Hon. Benter Juma Obiero, MCA | |
| 4. Hon. Redson Onyango Otieno, 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 Khatemesi Isalambo, MCA | |
| 12. Hon. Fuad Hussein Mohamed, MCA | |

13. Hon. Fatuma Abduwahid Abey, MCA
14. Hon. Eutychus 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
3. Mr. Klinsman Munase – Legal Counsel
4. Mr. Anthony Nyandiere – Hansard

Honourable Speaker, The Select Committee on County Public Accounts is the avenue through which the County Assembly carries out the post scrutiny of County Government Budgets. Following the tabling of the Report of the Auditor-General on the Financial Statements of the Nairobi City County Executive for the year ended 30th June, 2023, the Committee held various meetings with the County Executive Committee Member for Finance and Economic Planning with a view of addressing the issues raised in the Report. 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 year 2022/2023.

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 the Auditor-General on the Financial Statements of the County Executive for the year ended 30th June, 2023; and identified various fiduciary risks that were considered and adopted by the Committee.

During the year under review, the County Executive 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 report 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 Integrated Financial Management Information System (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 report further showed that County Executive had weaknesses in executing its budget. The County Executive did not adhere to the approved budget ceilings set for programs, votes and sub-votes. Thus, there was over-utilization or/ and 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 report 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 report 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 imprests 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 year under review, the Committee noted that majority of the County Executive Sectors had not properly updated their assets registers despite the Inter- Governmental Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.

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, the County was not collecting optimal revenue based on the prevailing land market values.

The Committee further noted that the report 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 report 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 report 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.

This report details further observations and recommendations for specific audit queries as raised for the County Executive.

3.0 CONSIDERATION OF THE REPORT OF THE AUDITOR-GENERAL ON FINANCIAL STATEMENTS OF THE NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDING 30TH JUNE, 2023.

The Report of the Auditor-General on the Financial Statements of the Nairobi City County Executive for the year ended 30th June, 2023 raised audit queries which the Management responded to. The Committee scrutinised the queries vis-à-vis the management responses to each query, made observations and recommendations as follows:-

3.1 Variances between the Financial Statements and the Trial Balance

Review of the IFMIS trial balance and the financial statements balances provided for audit revealed totals of financial statements items totalling Kshs. 129,378,258,740 and totals as per trial balance of the same items totalling Kshs.262,711,937,121 resulting to unexplained variance of Kshs.133,073,077,288. In the circumstances, the accuracy and completeness of the balances reflected in the financial statements could not be confirmed.

Management Response

The Management response to the audit query on Variances between the Financial Statements and the Trial Balance was as follows: -

	Item	Financial statement Amount	Trial balance Amount	Variance	Remarks
		Kshs.	Kshs.	Kshs.	
	Basic Salaries - Permanent Employees	5,688,485,313.00	3,214,209,184	2,474,276,129.00	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2

Basic Wages - Temporary Employees	161,007,644.00	259,745,711	-98,738,066.90	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Personal Allowances paid as part of Salary	4,343,403,955.00	1,871,132,115	2,472,271,840.00	
Personal Allowances provided in Kind	92,798,635.00	135,954,240	-3,155,605.40	
Employer Contributions to Compulsory National Social Security Schemes	899,780,104.00	604,612,880	295,167,224.00	
Utilities, Supplies and Services	403,963,357.00	404,094,783	-131,426.00	
Communication, Supplies and Services	51,235,438.00	23,243,967	27,991,470.80	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Domestic Travel and Subsistence, and Other Transportation Costs	436,110,047.00	391,715,545	44,394,502	
Foreign Travel and Subsistence, and other transportation costs	306,896,007.00	436,515,891	-129,751,405.50	
Printing, Advertising and Information Supplies and Services	68,685,067.00	72,957,937	-4,272,869.70	
Rentals of Produced Assets	41,669,625.00	40,600,000	-1,069,625	
Training Expenses	141,418,272.00	178,669,705	-37,251,433	

Hospitality Supplies and Services	139,531,289.00	126,654,508	12,876,781.00	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Insurance Costs	1,777,187,604.00	1,860,940,097	-83,752,493.00	
Specialized Materials and Supp	510,570,883.00	531,159,585	-20,588,702	
Office and General Supplies and Services	101,447,506.00	44,332,143	57,115,363.00	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Fuel Oil and Lubricants	252,307,165.00	230,201,113	22,106,052.00	
Other Operating Expenses	1,752,556,404.00	2,080,282,732	-327,726,328	
Routine Maintenance – Vehicles	29,414,721.00	30,174,766	-760,045.00	
Routine Maintenance - Other Assets	12,950,059.00	100,000	12,850,059	
Other Creditors	1,464,849,686.00	1,624,552,258	-259,702,571.80	
Current Grants to Government Agencies and other Levels of Government	5,474,876,838.00	71,671,000		
			5,403,205,838.00	
Scholarships and other Educational Benefits	690,871,605.00	1,025,000,000		The variances have been adjusted in IFMIS through journals and amended
			-34,128,395.00	

Other Current Transfers, Grants and Subsidies	130,251,793.00	-	130,251,793.00	ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Government Pension and Retirement Benefits	18,287,282.00	18,775,464	-488,182.00	
Civil Contingency Reserves	522,427,565.00	544,428,549	-22,000,984.00	
Other creditors	523,731,168	0	523,731,168	
Construction of Building	31,419,104.00	-	31,419,104	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Refurbishment of Buildings	165,841,435.00	187,892,824	-22,051,389	
Construction of Roads	814,603,066.00	910,973,940	-96,370,874	
Construction and Civil Works	1,327,216,310.00	1,580,078,537	-252,862,227	
Overhaul and Refurbishment of Construction and Civil Works	13,948,932.00	4,708,930	9,240,002.00	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Purchase of Vehicles and Other Transport Equipment	100,000,000.00	105,539,800	-5,539,800.00	
Purchase of Office Furniture and General Equipment	147,781,155.00	41,666,858	106,114,297	

Purchase of Specialized Plant, Equipment and Machinery	928,255,284.00	1,030,119,979	-101,864,695	The variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled the variances have been adjusted in IFMIS through journals and amended ledgers shared in a flash disk labelled Appendix 2
Rehabilitation and renovation of plant, machinery and equipment			15,095,172	
	15,095,172	-		
Purchase of Certified Seeds, Breeding Stock and Live Animals	3,439,655.00	3,500,000	-60,345.00	
Research, Feasibility Studies, Project Preparation and Design, Project Supervision	182,143,194.00	146,375,362		These are uncleared balances in IFMIS which have accumulated over the years. We have sought technical assistance from Director IFMIS in clearing these system balances. Vide Appendix 3.1 (b)
			35,767,832.00	
Purchase of Specialized Plant		40,579,377	-40,579,377.00	
Recurrent Bank Accounts		3,437,700	-3,437,700.00	
Cash in Hand	-	87,482,955,973	-87,482,955,973.45	
Debtors & Advances - Employees	22,871,865.00	33,518	22,838,347.00	
Other Debtors & Pre-payments		3,770,142,480	-3,770,142,480.35	
Imprests	22,871,865	556,660,331	-533,788,466	
Other Liabilities	26,270,995,418.00	19,383,570,790	6,887,424,628.05	
Salary Deductions	222,411,928.00	20,218,036,738	-19,995,624,809.95	

Other Liabilities	General	72,878,965,573.00	-	72,878,965,573.00	
Opening reserves	balance	216,555,617.00	111,423,939,811	-	111,207,384,194.45
Totals		129,401,130,605.00	262,711,937,121.00	-	133,073,077,288.65

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the information on the variances were submitted.
- That adjustments have been done and ledgers shared.

Committee Recommendation

The Committee recommends that;

- That the County Treasury to submit to the County Assembly a full reconciliation schedule explaining each variance, backed by journal entries and source documents within sixty days after the adoption of this report. This is pursuant to Section 163 of the Public Finance Management Act, 2012 requires accurate and complete financial statements and Article 201 of the Constitution demands accountability and transparency in financial reporting;
- That the County Executive should engage the Office of the Auditor-General or an independent audit firm to conduct a special systems audit of IFMIS, focusing on the reliability of data and systemic weaknesses. This is in line with Section 9 of the Public Audit Act, 2015 which gives the Auditor-General power to conduct system-based audits and also Article 229 of the Constitution empowers Parliament to act on reports from such audits. The integrity of financial systems determines the credibility of public accounts. A systems audit will help restore trust in IFMIS outputs;
- That the County Treasury institute a monthly reconciliation protocol and submit quarterly reports to the County Assembly pursuant to the provisions of Section 166(1) of the PFM Act, 2012 which provides for regular reporting to oversight authorities and PFM (County Governments) Regulations, 2015 call for periodic reconciliations and financial accuracy. Regular checks will prevent errors from piling up and improve financial management discipline;
- that the Accounting Officer ensures all finance staff are retrained on IFMIS operations, financial reporting, and journal processing as per section 104(1)(h) of the PFM Act requires

the County Treasury to build capacity for financial management, since many of the discrepancies could stem from human error. Equipping staff with the right skills reduces misstatements;

- That the County Treasury should prepare a detailed, time-bound plan to resolve long-standing balances such as “Cash in Hand,” “Salary Deductions,” and “Other Debtors,” and submit a report to the County Assembly within 60 days after adoption of this report pursuant to PFM Act Section 102(c) which tasks the Treasury with managing cash resources and clearing suspense accounts and Article 226(1) of the Constitution requires each public entity to maintain proper records. Uncleared balances distort financial reality and may point to misuse or neglect of public funds;
- That the County Executive should enhance its internal audit unit’s mandate and resources, ensuring they review IFMIS entries and reconciliations quarterly in line with section 73(2)(b) of the PFM Act requires internal audits to monitor and evaluate financial performance and Section 155(5) of the PFM Act empowers the internal audit committee to advise on internal controls. A strong internal audit function can catch errors early and support accountability from within; and
- That all supporting documents especially those referenced as being on flash disks (e.g., Appendix 2 and 3.1(b)) be officially submitted to the County Assembly Clerk and Auditor-General in hard and soft copies in line with Section 147 of the PFM Act outlines the County Assembly’s right to full disclosure and Public Audit Act, Section 10(1) obligates public entities to provide all relevant information for audit.

3.2. Variances between the Financial Statements and the Ledger

The statement of receipts and payments reflects total payments amounting to Kshs.29,245,339,097. However, review of the ledger balances in comparison with the reported amounts in the financial statements revealed variances between the two sets of information.

In the circumstances, the accuracy and completeness of the payments reflected in the statement of receipts and payments could not be confirmed.

Management Response

The Management response to the audit query on Variances between the Financial Statements and the Ledger was as follows: -

- Management provided the response in flash disk labeled **Appendix 2**

Committee Observation

The Committee while interrogating the management response made the following observation: -

Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.

- That the information shared in soft copy was verified.
- That adjustments have been done and ledgers shared.

Committee Recommendation

The Committee recommends that;

- The Committee urges the County Treasury to enhance internal checks and balances through routine reconciliations between financial statements and ledgers as guided by Section 104(1)(i) of the PFM Act, 2012 which provides the County Treasury to be responsible for ensuring that internal controls are effective and operating as intended. This will foster accuracy, transparency, and real-time resolution of discrepancies.
- To promote accountability under Article 201(d) of the Constitution of Kenya, which emphasizes transparency and accountability in financial matters, The County Treasury must ensure that all adjustments made are supported by an auditable trail. All entries should be traceable, showing approval levels, dates, and relevant documentation. This audit trail should be available for future scrutiny by the Office of the Auditor-General and the Committee.
- By recognizing that human resource capacity is vital for sound public financial management, and in line with Section 147 of the PFM Act, 2012, The Committee recommends that staff in the finance and accounting departments be trained regularly on IPSAS standards, ledger maintenance, and financial reconciliation to enhance compliance and accuracy in reporting.
- In accordance with Section 166 of the PFM Act, 2012, which requires timely and accurate financial reporting, The Committee calls upon all accounting officers to ensure that future audit responses are submitted promptly, complete with all necessary supporting documents both in hard and soft copy formats for effective and efficient verification.
- Where negligence or failure to observe financial procedures contributed to the variances, The Committee recommends that the Nairobi County Public Service Board and relevant oversight organs institute appropriate administrative or disciplinary measures in accordance with Section 102 of the County Governments Act, 2012 and Section 72 of the PFM Act, 2012.

3.3. Inaccuracies in Pending Accounts Payables

Note 15 to the financial statement reflects pending accounts payables balance of Kshs.98,267,457,303, with Kshs.18,975,058,162 being paid or adjustments during the year under review. However, note 3 and Note 7 to the financial statements reflects other creditors balances of Kshs 1,364,849,686 and Kshs 523,731,168 respectively all totalling to Kshs 1,888,580,854 resulting to unexplained variance of Kshs

Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.

17,086,477,308. Further, the amount is supported by a summary of pending bills listing totalling Kshs 107,255,718,046 resulting to unexplained variance of Kshs 8,988,260,743.

In the circumstances, the accuracy and completeness of pending accounts payables balance of Kshs.98,267,457,303 could not be confirmed.

Management Response

The Management response to the audit query on Inaccuracies in Pending Accounts Payables was as follows: -

- The following is a summary schedule on the unexplained variance of Kshs. 8,988,260,743 in the period under review.
- The County Executive intends to constitute the Pending Bill Verification Committee in the F/Y 2023/2024. The gazettelement of the Committee and the subsequent review and verification of all County Pending Bills will in turn provide the accurate status of the total amount of the County Payables.
- The County Executive payables as at 30th June 2023 amounted to ksh. **107,333,377,994.26** as highlighted here below and not ksh. **107,255,718,046.00** as reported in the audit report.

S/No	Description	Summary of C.O.B. Report	Summary of O.A.G Report	Variance
1	KENYA REVENUE AUTHORITY	286,734,337.00	873,611,892.00	(586,877,555.00)
2	LAPFUND	24,991,527,302.00	16,756,222,582.00	8,235,304,720.00
3	KPLC	495,102,247.65	495,102,248.00	(0.35)
4	NSSF	282,821,839.00	285,195,464.00	(2,373,625.00)
5	LAPTRUST	23,620,990,798.61	23,620,990,799.00	(0.39)
6	DSA	620,663,804.80	-	620,663,804.80
7	SUPPLIES	30,258,848,094.50	29,510,436,632.00	670,751,513.73
8	RETIREEES	269,195,513.00	218,403,618.00	50,791,895.00
9	WATER BILLS	234,997,059.00	234,997,059.00	-
10	KCB Long-term loan	4,504,199,425.70	4,504,199,425.70	-
11	LAPTRUST (acturial deficit & Interest)	2,624,372,573.00	2,624,372,573.00	-
12	Government guaranteed loans	5,328,285,000.00	15,328,285,000.00	-
13	Onlent Water (Foreign Loans)	3,815,640,000.00	3,815,640,000.00	-
	TOTAL	107,333,377,994.26	98,267,457,292.70	8,988,260,752.79

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the management comments pending bills total Kshs. 107,733,377,994 but only disclosed Kshs.98,267,457,303 in financial statements.
- That reconciliation and verification of the pending bills amounts and a report of the same should have been provided.

Committee Recommendation

The Committee recommends that:

- The County Treasury must strengthen its financial systems by digitizing the accounts payable process, training staff on financial reporting standards, and instituting robust internal controls for verification, approval, and recording of liabilities. Section 131(1) of the PFMA requires counties to prepare realistic and comprehensive budget documents, which include credible liabilities. Internal control systems are a cornerstone for this obligation.
- The County Public Service Board and the County Executive must take disciplinary action against officers found culpable of submitting inaccurate financial data or failing to account for pending liabilities as per the law. Section 102(c) of the PFMA outlines the need for accountability and transparency in county financial management. Misreporting or concealment of liabilities constitutes gross misconduct under the Leadership and Integrity Act.
- The County Assembly to request the Office of the Auditor General to conduct an independent forensic audit into the reported pending bills particularly those with material variances (e.g., LAPFUND, KRA) to determine their authenticity and to safeguard public funds. Article 229(4) of the Constitution mandates the Auditor-General to confirm whether public money has been applied lawfully and in an effective way.
- A detailed report accounting for each pending bill its origin, supporting documentation, and current status should be submitted to the County Assembly through the Public Accounts Committee within 60 days after adoption of this report. In line with Section 149(2)(a) of the PFMA, the accounting officer is obligated to respond to audit queries and provide all necessary documentation to the County Assembly or its committees.
- The County Executive to expedite the gazettelement and operationalization of the Pending Bills Verification Committee as committed, with a mandate to authenticate all claims. The Committee should include representation from the Office of the Auditor General, County Treasury, and relevant stakeholders. Section 36 of the County Governments Act vests the

County Executive Committee Member for Finance with the responsibility to manage County resources and ensure accountability in financial administration.

3.4. Misclassification of Expenditure

Review of the ledgers for various expenditures items in respect of use of goods and services, other grants and transfers and acquisition of assets revealed that the Management charged items to account codes which were not approved under the chart of accounts resulting to misclassification of expenditure totalling Kshs.319,547,787.

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

Management Response

The Management response to the audit query on Misclassification of Expenditure was as follows: -

- The Misclassification was in the following items where items were charged in alternative votes when funds ran out in the relevant votes. This is pursuant to provisions section 135 of the PFM, Act 2012 on preparation of supplementary budget where the accounting officer is allowed to reappropriate. All reappropriations were subsequently regularized through a supplementary budget.

Description	Ledger (Kshs.)	Misclassification (Kshs.)
Use of Goods and Services		
Utilities Supplies and Services	408,357,329	27,072,881
Communication Supplies and Services	29,770,025	490,458
Domestic Travel and Subsistence	463,925,288	31,859,543
Foreign Travel and Subsistence	510,910,162	27,550,320
Printing, Advertising and Information Services	96,934,495	6,024,907
Hospitality Supplies and Services	141,250,691	90,119,752
Specialised Materials and Services	531,839,284	4,682,019
Office and General Expenses	53,380,755	17,356,510
Other Operating Expenses	2,178,554,986	1,005,613,099
Routine Maintenance – Vehicles and Other Transport Equipment	34,699,192	2,189,687
Routine Maintenance – Other Assets	7,558,941	264,760
Research, Studies, Project Preparation, Design & Supervision	145,459,362	149,981,762
Other Grants and Transfers		
Emergency Relief and Refugee Assistance – Civil Contingency Reserves	544,428,549	99,077,664

Acquisition of Assets		
Refurbishment of Buildings	200,053,452	12,727,500
Construction Of Roads	910,973,940	179,665,898
Construction and Civil Works	1,576,378,536	92,795,830
Overhaul and Refurbishment of Construction and Civil Works	4,708,930	4,708,930
Purchase of Vehicles and Other Transport Equipment	105,539,800	5,539,800
Purchase of Office Furniture and General Equipment	49,891,502	14,379,452
Purchase of Specialised Plant, Equipment and Machinery	40,579,377	9,730,377
Total	2,888,125,237	319,547,787

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the approved supplementary budget was not provided for verification.

Committee Recommendation

The Committee recommends that:

- **The County Executive should submit a copy of the approved supplementary budget and the re-appropriation schedule to the County Assembly within 30 days after adoption of this report.**
- **The County Executive should ensure all expenditure are aligned strictly to the approved chart of accounts, and non-compliance must attract disciplinary action in line with the Public Finance Management Act, 2012.**

3.5. Inaccuracies in Cash and Cash Equivalents

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.1,441,968,898 as disclosed in Note 9A to the financial statements. Review of records provided for review in respect to the bank balances revealed the following anomalies:

- The revenue bank account had a variance between the reported Nil balance and the recalculated balance of Kshs.1,939,022,373. The Nil opening balance also differed with prior year audited balance of Kshs.1,272,610,648.
- The reported bank balances for the various bank accounts held in forty-three (43) commercial banks as disclosed in Note 9A with a total balance of Kshs.561,016,196 were not supported by cash books, bank reconciliation statements, certificates of bank balance and board of survey reports.

- The KRB-RMLF bank account with a balance of Kshs.818,197,395 had inaccurate opening balance leading to a variance of Kshs.147,074,329

Management Response

The Management response to the audit query on Inaccuracies in Cash and Cash Equivalents was as follows: -

- The Kshs 147,074,329 was accounted for in the financial year 2021-2022 and related to payments made after 30th June 2022. The closure of IFMIS on year end is normally extended to allow settlement of transactions that had not gone through. These were payments towards construction of roads. The bank balance as at 30th June 2022 was Kshs. 154,432,659.40 but after payment of the above stated amount the reconciled cash book balance Kshs. 7,358,321 was reported in the financial statements under Cash and Bank balances
- The recurrent bank account had inaccuracies in the bank reconciliation statements leading to a calculated closing negative balance of Kshs. 364,816,676 which differs with the reported Nil balance.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the Certificate of bank balance and cashbook extract was not provided.

Management Response

- Provided below is a reconciliation statement for the bank account.

CBK RECURRENT BANK ACCOUNT	
Account number: 1000171502	
Bank Reconciliation Statement	
Balance as per bank statement on 30th June 2023	165,409,738.85
Add: Receipts in Cash Book not yet recorded in Bank Statement	2,333,236,884.00
(Uncredited Cheques)	
Less: Payments in Cash Book not yet recorded in Bank Statement	2,498,646,623.25
(Unpresented Cheques)	
Balance as per reconciled Cash Book as at 30 th June 2023	(0)

- There were payments from and transfers into this account that were made after the closure of the financial year which had to be reconciled with the closing cash book balance of Zero.
- The revenue bank account had a variance between the reported Nil balance and the recalculated balance of Kshs. 1,939,022,373. The Nil opening balance also differed with prior year audited balance of Kshs. 1,272,610,648.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was reconciliation in the management response but no supporting documents, e.g., bank statement and cashbook.

Management Response

The financial reporting template was revised during the year by **Public Sector Accounting Standards Board (PSASB)**. This affected the way receipts are disclosed in the statement of receipts and payments. In the year under review, the statement had transfers (cash outflows) from County Revenue Fund (CRF) whereas in the previous reporting template we had receipts into the CRF (cash inflows) in form of equitable share, own source revenues, donor funds etc. Meaning therefore that closing balances in the County Revenue Fund bank account were included in the old reporting template as part of receipts and had to be disclosed in the note for bank balances. With the new reporting template, these closing balances are not part of transfers from the County Revenue Fund and thus they ought not be included in the bank balances. Separate County Revenue Fund financial statements were prepared and submitted to the Office of the Auditor General. The closing balance for this account was disclosed in the statement of Receipts and Payments in the CRF financial statements as Closing Fund balance for the period **395,404,941** (2022/2023) and **1,272,610,649** (2021/2022) in note 9

iv. The Youth Poly PRJ Grant account with a balance of Kshs. 31,313,192 had been dormant for the last two years.

Committee Observation-

The Committee while interrogating the management response made the following observation: -

- That the financial reporting templates changed. However, the movement of the balances should reconcile.

Management Response

There was a technical hitch experienced while transferring funds to youth polytechnics bank accounts. The process of transferring the balance has been reinitiated this financial year. The reported bank balances for the various bank accounts held in forty-three (43) commercial banks as disclosed in Note

9A with a total balance of Kshs. 561,016,196 were not supported by cash books, bank reconciliation statements, certificates of bank balance and board of survey reports.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence of recipient polytechnics

Management Response

Certificates of bank balance and board of survey reports for the 43 bank accounts are available for review by the auditors (**Appendix 5**).

In addition, review of certificates of bank balances revealed that the County Executive operated an account in a local bank with a closing balance of Kshs. 3,482,618 as at 30 June, 2023. However, the bank account and the corresponding cash balance had not been reported in the financial statements while the cash book, bank reconciliation statements and the board of survey reports were not provided for audit review.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs. 1,441,968,898 could not be confirmed.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That only 11 bank confirmation certificates and board of survey provided. No cashbooks and bank reconciliations were attached

Management Response

The Management response to the audit query on Variances Between the Financial Statements and the Bank Statement was as follows: -

- This account by the name Nairobi City County and Centre for Diseases Control was opened on 30th June 2022 for banking donor funding to support control of diseases. The non-inclusion of the bank account was an oversight. A prior year adjustment will be made when preparing financial statements for the current financial year 2023/2024.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence of inclusion of the account in year 2023/2024.

Committee Recommendation

The Committee recommends that:

- **In accordance with Section 116(2)(b) of the Public Finance Management Act, 2012, the County Treasury must ensure complete and accurate reconciliation of all county bank**

accounts. Supporting documents cashbooks, bank statements, reconciliation reports, and certificates of balances must accompany future financial statements.

- That the Youth Poly PRJ Grant account that has been dormant for over two years, contravenes sound financial management and that such accounts be closed and remaining funds rechanneled to active youth empowerment programs. Evidence of fund transfer and updated beneficiary lists must be submitted within the next audit cycle.
- That an account operated jointly with the Centers for Disease Control (CDC) was omitted from the financial statements which is contrary to Section 107(1)(e) of the PFMA, which requires full disclosure of all county funds. This account must be retrospectively included in the subsequent financial statements going forward.
- While the Committee acknowledges the revised financial reporting format by the Public Sector Accounting Standards Board (PSASB), management must ensure clear reconciliation between old and new templates. This must be presented as a supplementary note in the financial statements to maintain consistency and comparability as per IPSAS guidelines.
- That officers responsible for failing to provide statutory records such as board of survey reports and bank reconciliation statements contrary to Regulation 89 of the PFM (County Governments) Regulations, 2015 and should face disciplinary action in line with the County Public Service Human Resource Manual.

3.6. Unsupported Payments for Nairobi Metropolitan Services Contracts

The statement of receipts and payments reflects payments amounting to Kshs.3,547,600,112 in respect of acquisition of assets as disclosed in Note 7 to the financial statements which includes payments in respect of expenditure incurred by the Nairobi Metropolitan Services (NMS) in respect of civil works and construction of roads amounting to Kshs.424,747,460 and Kshs.195,865,298 respectively all totalling Kshs.620,612,758. However, no documentation was provided for audit to confirm regularity of the expenditure.

In the circumstances, the accuracy and completeness of acquisition of assets payments amounting to Kshs.620,612,758 could not be confirmed.

Management Response

The Management response to the audit query on Unsupported Payments for Nairobi Metropolitan Services Contracts was as follows: -

- The Transition committee is in the process of completing deed of novation. However critical Contracts have been taking over by County.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That deed of Novation was not provided for verification.

Committee Recommendation

The Committee recommends that:

- In line with Article 226(1)(b) of the Constitution, which places the responsibility for maintaining proper records on the accounting officer, the Committee directs that the County Executive provides all relevant documentation to support the payments made, including but not limited to: Signed contracts, Payment vouchers, Bills of quantities, Site inspection reports and completion certificates. These documents must be submitted to both the Office of the Auditor-General and this Committee within 90 days from the date of adoption of this report by the Assembly.
- Pursuant to the Public Finance Management (PFM) Act, 2012, Section 149, which holds accounting officers responsible for ensuring that resources are used lawfully and effectively, the Committee requires that the Transition Committee and the County Executive finalize and table the Deed of Novation covering all transitioned NMS contracts. This should be done within 90 days after adoption of this report days, failing which the responsible officers may be subjected to administrative action.
- To uphold transparency and public trust as espoused under Chapter Six of the Constitution on Leadership and Integrity, the Committee recommends that the County Internal Audit Unit undertakes a detailed investigation into the unsupported payments. The findings should be submitted within 90 days after adoption of this report and must include specific recommendations for administrative or legal action against any officer found culpable of approving irregular payments.
- Citing Section 68(1)(c) of the PFM Act, the Committee recommends that the County Executive puts in place a comprehensive framework for contract management, particularly during transitions such as the transfer of functions. This should include the establishment of a contract handover protocol, due diligence checks, and real-time documentation of all expenditures.
- In accordance with Article 229(6) of the Constitution, which empowers the Auditor-General to conduct audits on the use of public resources, the Committee recommends a special audit of all NMS-related expenditures under the asset acquisition vote. This should assess not only

the validity of the payments but also the existence, status, and value for-money implications of the purported works and assets.

3.7. Unsupported Utilities, Supplies and Services

The statement of receipts and payments as disclosed in Note 3 to the financial statements reflects use of goods and services amount of Kshs.7,672,936,323 which includes an amount of Kshs.403,963,357 in respect of utilities, supplies and services. However, review of the ledger and the bank statements revealed transactions amounting to

Kshs.31,663,334 recorded as paid during the financial year but were not traced to the bank statements. Further, review of sampled payment vouchers totalling Kshs.163,693,995 revealed that the payments were not supported with a register/ ledger for the account numbers being billed and subsequently paid for nor were they supported with invoices and bills to confirm the propriety of the expenditure.

In the circumstances, the accuracy and completeness of the payments in respect of utilities amounting to Kshs. 163,693,995 could not be confirmed.

Management Response

The Management response to the audit query on Unsupported Utilities, Supplies and Services was as follows: -

- Support schedules in form of Kenya power bills are attached in **appendix 6**

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the attached documents as annexed in appendix 6 was not provided.

Committee Recommendation

The Committee recommends that:

- **The Accounting Officer must, within fourteen (14) days, submit to the Committee all relevant supporting documentation for the utility's expenditure in question. This includes but is not limited to: Kenya Power and Lighting Company (KPLC) bills, Invoices and billing statements, Payment vouchers, and Account registers or ledgers used to process these payments. This is in accordance with Article 226(2) of the Constitution of Kenya, 2010 which holds accounting officers personally accountable for public funds under their control, and Section 149(1) of the Public Finance Management (PFM) Act, 2012, which requires proper maintenance of financial records.**
- **The County Treasury must carry out a thorough reconciliation of the Kshs.31,663,334 that was reportedly paid but not reflected in the bank statements. A detailed reconciliation report should be submitted to the Committee within thirty (60) days after adoption of this report.**

This action is guided by Section 131(2)(e) of the PFM Act, which emphasizes transparency and accountability in the management of public resources.

- The Committee urges the County Executive to review and strengthen its internal control systems around utility payments. Moving forward, no payments should be processed without complete and verifiable documentation. These systems should be compliant with Regulation 103 of the Public Finance Management (County Governments) Regulations, 2015, which provides for proper recording and verification of expenditure.
- The Committee requests the Office of the Auditor-General to conduct a special follow-up audit on the payments flagged in this query in the next audit cycle, in line with Article 229(6) of the Constitution and Section 48 of the PFM Act, to confirm whether the anomalies have been rectified.
- Where officers are found to have failed in their duties or acted negligently by not maintaining proper records or authorizing unsupported payments, the Committee recommends that the County Public Service Board take appropriate disciplinary action. This should include consideration for surcharge under Section 203 of the PFM Act, which allows recovery of funds from officers whose actions result in financial loss to the government.

3.8. Unsupported Payments for Goods and Services

Review of bank statements reflects that various suppliers were paid Kshs. 60,866,140 for the supply and delivery of goods which included flood lights and drainage materials.

However, these payments were not traced to the ledgers while the payment vouchers were not provided for review. Further, deliveries could not be traced to the store's records.

In addition, Management did not provide requisite procurement records and AIE approvals for the said expenditure.

In the circumstances, the accuracy, completeness and regularity of the use of goods and services payments amounting to Kshs.60,866,140 could not be confirmed.

Management Response

The Management response to the audit query on Unsupported Payments for Goods and Services was as follows: -

Documents not submitted.

Committee Observation

The Committee while interrogating the management response made the following observation: -

There was no response submitted on the query.

Committee Recommendation

The Committee recommends that:

- The Committee recommends the suspension of payments to suppliers without proper procurement records and delivery confirmations. The County Executive to table the missing payment vouchers, procurement records, AIEs, and stores receipts within sixty (60) days after adoption of this report.

3.9. Inaccuracies in Compensation of Employees

The statement of receipts and payments and as disclosed in Note 2 to the financial statements reflects compensation of employee expenditure for the year totalling Kshs.11,185,475,652. Review of the IPPD payrolls for the twelve (12) months revealed that the County Executive paid a total of Kshs.8,769,711,062 being basic wages of permanent employees and personal allowances paid as part of salary. However, the amount differs with the reported amounts in Note 2 to the financial statements of Kshs.10,031,889,268 resulting to an unexplained variance of Kshs.1,262,178,205.

Further, the amount of compensation of employees' expense for the year totalling Kshs.11,185,475,652 differs with the total payments traced to the salaries bank statement amount of Kshs.9,793,541,055 resulting in an unreconciled variance of Kshs.1,391,934,597.

In addition, compensation of employee includes Kshs.161,007,644 and Kshs.92,798,635 relating to basic wages of temporary employees and personal allowances paid in kind respectively. However, Management did not provide documents in support of the reported expenditure.

In the circumstances, the accuracy and completeness of the expenditure on compensation of employees amounting to Kshs.11,185,475,652 could not be confirmed.

Management Response

The Management response to the audit query on. Inaccuracies in Compensation of Employees was as follows: -

- The stated figure of Kshs 10,031,889,268 is a combination of Basic Wages Permanent Employees Kshs 5,688,485,313 and Personnel allowances paid as part of Salary Kshs 4,343,403,955. The amount includes payment of deductions made for previous financial period and payment of dues to employees previously under Nairobi Metropolitan Services as provided in the schedule below.

DATE	REF	DESCRIPTION	AMOUNT
08-Dec-22	FT2234234LPS	NMS OCT 2022 STATUTORY AND 3RD PARTY DEDUCTIONS	303,957,531

08-Dec-22	FT223423ZDGF	NMS OCT 2022 STATUTORY AND 3RD PARTY DEDUCTIONS	367,400,597
03-Jan-23	FT23003BBTGY	NMS NOV 2022 SALARIES	326,515,204
28-Feb-23	FT23059Z8DCJ	NMS DEC 2022 THIRD PARTY SALARY DEDUCTIONS	185,931,933
23-Nov-22	FT22327QHQS	OCT 2021 CHECK OFF	22,992,753
23-Nov-22	FT223272HJLK	MAY 2022 CHECK OFF	23,030,487
23-Nov-22	FT22327V5TGR	DEC 2021 CHECK OFF	23,337,358
24-Jan-23	FT23024KJQPS	DEC 2021 NHIF	684,350
24-Jan-23	FT23024DZ7SH	DEC 2021 CHECK OFF	2,084,142
		TOTAL	1,255,934,354

- Basic wages to temporary employees relate to payment of wages to Casual employees engaged by the County. Personnel allowances paid in kind relate to payment of dues to retired County employees. The payment vouchers, supporting documents and bank transfer details have been provided for review by Auditors.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the figures do not tally with those in the management response.
- That support documents were not provided for verification.

Committee Recommendation

The Committee recommends that:

- With variances exceeding Kshs. 1.3 billion, the Committee recommends that the County Executive to conduct a comprehensive payroll audit, including NMS legacy liabilities. This is in line with Section 149(1)(b) of the PFM Act, which emphasizes the accuracy and completeness of government records and submit a report to the County Assembly within sixty days after the adoption of this report;
- The Committee further recommends a joint audit with the Salaries and Remuneration Commission (SRC) and Auditor-General, to be completed within 90 days after adoption of this report. Officers responsible administrative action be taken.

3.10. Return to Drawer and Cash Transactions

Analysis of the payment details provided for audit shows that transactions totalling Kshs. 578,800,554 were categorised as “R/D Cheques” during the financial year. Further, transactions totalling Kshs. 763,120,311 were categorised as “Cash” during the financial year.

Management has explained that R/D cheques are as a result payment not honoured due to wrong account number or payee while cash relates to payments in respect to R/D cheques. However, it's not clear how the errors in bank details arise given that the documents and details relating to the bank accounts are provided by the respective payees and documented in IFMIS. Further, based on the explanation given it is expected that the R/D Cheques should equal to the cash transactions in the payment process thus the resultant in an explained variance of Kshs. 184,319,757.

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

Management Response

The Management response to the audit query on Return to Drawer and Cash Transactions was as follows:

- The R/D cheques as earlier explained are as a result of payment not honoured due to wrong account number or payee. Due to system configurations few sectors could not process payment using R/D cheques vote on payments not honoured at the bank and opted to using “cash” payment vote to avoid double consumption of budget.
- The management has advised all accounting officers to ensure suppliers fill bank details form before initiating payment in order to avoid payments not being honoured after payment.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That plausible justification not given on replacing cheques with cash payments.

Committee Recommendation

The Committee recommends that;

- The use of the Cash vote instead of reprocessing failed payments is a serious breach of internal controls. Under Regulation 39(2) of the PFM Regulations, every vote must reflect actual expenditure with supporting documentation.
- The Committee recommends that the County Treasury to stop use cash vote;
- The County Treasury should submit to the County Assembly a reconciliation report on all R/D and cash transactions within 14 days after the adoption of this report. Any officers found to have authorized the irregular use of funds should be held to account under Section 196(1)(g) of the PFM Act.

3.11. Unsupported Payments from the Salary Account

Review of transactions in respect to payments made from the salary account revealed that the County Executive paid Kshs.226,033,110 through forty-six (46) transactions to institutions and individuals in the form of imprests and other payments whose nature, purpose and relationship with compensation of employees could not be ascertained.

In the circumstances, the accuracy and completeness of the compensation of employee's expenditure could not be confirmed.

Management Response

The Management response to the audit query on Unsupported Payments from the Salary Account was as follows: -

- The non-salary payments charged to salary account are due to clerical errors during invoicing that were not rectified in the payments process. Management will strengthen the internal controls in the payment process to ensure such errors do not recur.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That errors were not corrected.
- The payment of Kshs. 226 million from the salary account to unknown recipients is a clear misuse of funds under Section 201 of the PFM Act.

Committee Recommendation

The Committee recommends that:

- **The Committee recommends that the Ethics and Anti-Corruption Commission to investigate the matter in detail for necessary action.**

3.12. Budgetary Control and Performance

Review of statement of comparison of budget and actual amounts revealed a final expenditure budget amount of Kshs. 39,613,916,280 against actual expenditure of Kshs. 29,245,339,097 resulting to budget underutilization of Kshs. 10,268,577,183 or 16% of the budget. Further, note 15 on other important disclosures shows that the County committed an additional Kshs. 17,870,142,546 which translates to total expenditure and commitments for the year of Kshs. 47,115,481,643. This implies that the County overspent / committed Kshs 7,501,569,363 over and above the approved budget.

In addition, review of the IFMIS payment details in relation to domestic travel and subsistence shows that the County over committed/incurred expenditure in excess of the approved budget provision amounting to 154,574,102.

The over expenditure contravenes Regulation 42 of the Public Finance Management (County Government) Regulations, 2015 under (1) requires that the accounting officer ensure that public funds entrusted to their care are properly safeguarded and are applied for purpose for only which they were intended and appropriated by the County Assembly.

Management Response

The Management response to the audit query on Budgetary Control and Performance was as follows: -

- The budget for domestic travel and subsistence as approved in supplementary II budget was Kshs. 474,739,729 and the account analysis report had a ledger total of Kshs. 463,925,288.60, which was within the approved budget.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- **That under-utilization not responded to adequately.**
- **That over-spending by Kshs.7.5B not responded to adequately.**

Committee Recommendation

The Committee recommends that:

- **That the County Treasury to submit to the County Assembly a full budget absorption and variance analysis report within sixty (60) days after adoption of this report.**
- **That the County Government to review and reform the County's budget execution controls.**

3.13. Pending Bills Relating to Legal Expenses

Analysis of the revenue against the legal fees revealed that eleven (11) advocates out of a legal list of eight hundred and thirty-two (832) cases, are owed a total of Kshs.10,741,451,631 which is more than the total County own source revenue collected of Kshs.10,561,592,492. The eleven (11) lawyers also represent 50% of the legal pending bills.

A further one hundred and twenty-one (121) lawyers out of the of eight hundred and thirty-two (832) cases, equivalent to 14% of the total legal cases, are owed by the County Executive a total amount of Kshs.10,216,529,826.

In the circumstances, for the County to pay the 132 advocates, it would mean that the County will need to collect own source revenue for a period of two years without providing any services to the public.

Management Response

The Management response to the audit query on Pending Bills Relating to Legal Expenses was as follows: -

- The County acknowledges that legal fees pending bill for a substantial portion of its pending bills. The senate in previous engagement guided that NCCG should table before the County

Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.

Public Accounts Committee the report of the committee on legal pending bills. NCCG is in the process of polishing up the report for tabling.

- Further the Kshs. 10,741,451,631 reported by the auditors is based on the fee notes issued by the law firms. The County further does assessment of all fee notes and usually the outstanding bill is always much lower.
- Some of the pending bills under the legal bills are based on old cases dating back to defunct city council days and have accumulated a very huge interest.
- In addition, the law firms charge the county based on the value of property they are defending. County physical properties have very high market value and the fee note is usually unrealistic. In one case a legal firm calculated its fee based on the Counties outstanding landing rates.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That pending legal fees is still high.
- The County Executive formed a taskforce to review the pending bills on legal issues.

Committee Recommendation

The Committee recommends that:

- The County Treasury and County Attorney develop a fee assessment framework in consultation with the Office of the Attorney General, Law Society of Kenya, and Council of Governors to standardize and cap legal fees; and
- The County Executive to submit to the County Assembly the report of the Taskforce on pending bills on legal issues within sixty (60) days after the adoption of this report.

3.14. Unresolved 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, the Management has not resolved the issues and no explanation for the failure was provided to adhere to the reporting format prescribed by the Public Sector Accounting Standards Board.

Management Response

The Management response to the audit query on Unresolved Prior Year Matters was as follows: -

- The current administration started considering Auditor general's reports from the FY2016/2017 to Date. For a period of five years (one administration) the reports were never considered, to cure this the administration has come up with an audit recommendation implementation framework

Appendix attached.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- Prior year issues not resolved.

Committee Recommendation

The Committee recommends that:

- That the Accounting officers must ensure implementation of audit findings as per Section 68(2)(f) of the PFM Act, 2012. The Committee appreciates the development of a framework to track implementation of audit recommendations;
- That the Accounting officers to submit quarterly audit implementation progress report to the County Assembly and the office of the Auditor-General; and
- That all unresolved issues from FY 2016/2017 to date be categorized and prioritized for action within ninety (90) days after the adoption of this report.

4.0 REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

4.1. Failure to Prepare and Submit Separate Fund Financial Statements

During the 2022/2023 financial year, Management did not prepare and submit financial statements for the Funds whose enabling legislation requires that they prepare books of accounts for audit. The funds include; Disaster and Emergency Fund, Nairobi City County Betting, Lotteries and Gaming Control Board and Ward Development Fund. However, the Fund's operations were combined together with the County Executive's financial statements.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Failure to Prepare and Submit Separate Fund Financial Statements was as follows: -

- Emergency relief, refugee assistance fund and Bursary scholarship and other educational fund have never been funds but line items in the budget. The expenditure relating to these items was incorporated in the annual financial statement for the County Government.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That financial statements were not prepared.

Committee Recommendation

The Committee recommends that:

- That the County Treasury to prepare and submit to the County Assembly separate audited financial statement for all County funds such as Disaster Management Fund in line with Section 167(1) of the PFM Act, 2012 within three months after the adoption of this report.

4.2. Non-Submission of Budgetary Reports

Note 1 to the financial statement reflects withdrawal of Kshs.30,485,249,863 from the County Revenue Fund during the financial year 2022-2023. However, the County Treasury did not submit monthly financial and non-financial budgetary reports to the Auditor General as required under Regulation 54 (1) of the Public Finance Management (County Governments) Regulations, 2015.

Further, no projection of expected expenditure and revenue collection with necessary explanation of material variances on expenditures and respective steps taken to ensure that the projected expenditure and revenue remain within budget has been provided for audit.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Non-Submission of Budgetary Reports was as follows:

- Regulation 54 (1) requires that the Cabinet Secretary in charge of devolution affairs to issue the monthly reporting format for monthly reporting by all Accounting Officers. The reporting format has not been issued for compliance by county entities. Further the Public Sector Accounting Standards Board (PASB) issued the Quarterly reporting format for County Entities pursuant to Section 166 of the PFMA 2012. Additionally, the Controller of Budget issued the Quarterly Reporting Format to track budget implementation which has been fully complied with. The County Treasury is committed to ensure full compliance by the Accounting Officers upon issuance of the reporting format by the Cabinet Secretary.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the monthly and non-financial budgetary reports were not submitted.

Committee Recommendation

The Committee recommends that:

- The County Treasury should coordinate with the Office of the Controller of Budget and Public Sector Accounting Standards Board (PSASB) to submit both monthly and quarterly reports and to present an implementation status in line with requirement under Regulation

54(1) of the PFM (County Governments) Regulations, 2015 for monthly financial reporting within 30 days after adoption of this report.

4.3. Nairobi Pay Vendor Operating without a Valid Contract

During the year ended 30 June, 2023, the County Executive operated a revenue management system named Nairobi Pay. The system automated the entire revenue streams in the County and held all information on critical matters such as land details, customer records, unpaid debts and all matters related to revenue. However, no records were provided for review to show how the Management engaged the vendor and the terms of service delivery which exposed the County Executive to possible information confidentiality breach, integrity and availability of the system for service delivery. In particular, the County did not have a valid contract with the vendor nor did they have any service level agreement (SLA) defining the terms of support of the revenue system contrary to Section 68 (2)(d) of the Public Finance Act of 2012 which requires that the accounting officer ensure that all contracts entered into by the entity are lawful and are complied with.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Nairobi Pay Vendor Operating without a Valid Contract was as follows: -

- Nairobi pay was developed through the efforts NMS, NCCG and National government as the revenue management system for the County during the Tenure of NMS. Given that NMS was an entity of the National Government it could not enter into a contract with itself. Upon expiring of the term of NMS the County adopted the system as its principal collection system which is supported and hosted by the National Government through the IDE ministry as per the provisions of Article 6(2) of the constitution that the governments at National level and County level shall conduct their mutual relations on the basis of consultation and cooperation and section 32 of part 1 of the fourth schedule to the constitution to include building and technical assistance to Counties. NCCG is still studying the system as a memorandum of understanding is developed to address all grey areas.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no valid contract and service level agreement.
- That hand-over report should be provided.

Committee Recommendation

The Committee recommends that:

- The County Executive must provide a formal handover report from Nairobi Metropolitan Services and conclude a Memorandum of Understanding with the National Government Pursuant to Section 149(2)(d) of the PFM Act 2012. A status update should be submitted before Public Accounts Committee within 90 days after adoption of this report. The Committee finds the use of a critical county system (Nairobi Pay) without a valid contract or SLA highly irregular and risky.

4.4. Irregularities in Acquisition of Assets

The statement of receipts and payments reflects total expenditure of Kshs. 29,245,339,097 for the year. Included in the expenditure is Kshs. 3,547,600,112 in respect to acquisition of assets. Review of payment vouchers in respect of construction of roads and civil works totalling Kshs. 566,973,601 provided for audit review revealed various gaps which include noncompliance with procurement law, unsupported / failure to attach relevant documents in supports of payments, delayed and stalled projects as shown in **Appendix IV**.

In the circumstances the value for money on the funds used in the projects could not be confirmed.

Management Response

The Management response to the audit query on Irregularities in Acquisition of Assets was as follows:

-

- Response in annexure labelled WDF.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That only Kshs.96,635,66 had some support documents, i.e.,
 - Cheers lane of Kayole rd Kshs.8,854,881
 - Kariuki Ngololo rd kshs.7,254,716
 - Tarmacking various roads in Embakasi ward Kshs.12,347,662
 - Mt Kenya rd in Ngei ward kshs.12,883,966
 - Jamaica rd in viwandani ward kshs.13,260,000
 - Roads in dandora ward kshs.13,146,786
 - Zambaraulane in pangani ward Kshs.13,216,105
 - Kamande junior rd kshs.15,671,550

Committee Recommendation

The Committee recommends that:

- The County Executive to submit to the County Assembly a comprehensive status report on all road and civil works projects within sixty (60) days after adoption of this report, including contracts, payment vouchers, and site inspection reports. Projects found non-compliant under Section 139 of the PFM Act should be subjected to forensic audit and officers involved held personally liable.

4.5. Irregularities in Projects Implementation

Review of construction projects undertaken by the County Executive of Nairobi City revealed that projects costing a total of Kshs.1,365,490,591 in respect of construction of various hospitals, were incomplete, not started and land on which the projects were to be placed was encroached. Further, review of documents provided for review in respect of construction of health facilities revealed that a contractor was engaged to construct three (3) health facilities at a contract sum of Kshs.869,400,000 during the 2020/2021 financial year. The projects included construction and equipping of Pumwani Lucky Summer Dispensary, construction and equipping of Pumwani Majengo Health Centre and construction and equipping of Gumba/Mabatini Dispensary. Physical inspection on these projects carried out on 28 and 29 September, 2023 revealed the projects were not complete and labelled, perimeter wall was not done for Pumwani Majengo Healthy Centre and the Lucky Summer Dispensary barely started and there was evidence of materials on site but the buildings were dilapidated.

Further, despite the failure to complete the projects, the same contractor was awarded another contract for the construction works at Mama Lucy Kibaki Hospital Phase II at a contract sum of Kshs.344,100,000. The project had also stalled after payment of Kshs.165,099,105.

In the circumstances, the value for money on the funds used in the projects could not be confirmed.

Management Response

The Management response to the audit query on Irregularities in Projects Implementation was as follows:

-

- The documents have since been submitted.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence of completion of stalled projects.

Committee Recommendation

The Committee recommends that:

- **The County Executive should prepare and submit to the County Assembly a completion plan and status report on all stalled health projects within sixty days after the adoption of this report; and**
- **That no new contracts should be awarded to defaulting contractors. This is in line with the principle of value for money under Article 201(d) of the Constitution.**

4.6. Irregular Procurement of Repairs and Maintenance

The County Executive paid a service provider Kshs.4,043,816 for repairs and maintenance of motor vehicles during the year. Review of the payment voucher and supporting documents revealed anomalies as follows;

- Management did not provide a consolidated procurement plan for the financial year 2022/2023, neither was there evidence of approval of the same by the CEC member finance.
- The payment was not supported by a requisition from the user department for approval by the Head of Procurement Unit.
- The payment was not supported by requisite procurement documents which include, the advertisement, tender opening minutes and register, tender evaluation committee reports, letters appointing both opening and evaluation committee and evidence of regret letters sent to the unsuccessful bidders were not provided for audit, contrary to Section 68(2)(d)(iii) of the Public Procurement and Asset Disposal Act, 2015 requires the accounting officer for each tender, proposal or quotation that was submitted to maintain a summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed;
- The contract agreement in place binding the supplier with the procuring entity was not provided.
- Inspections and acceptance committee was not formed to inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.
- There were no quarterly reports detailing analysis of items procured through framework agreement.
- The County Executive paid maintenance costs for motor vehicles belonging to Nairobi Metropolitan Services. However, the transfer deed and the agreement for maintenance of the motor vehicles was not provided for audit.

In the circumstances, value for money on the expenditure of Kshs.4,043,816 used on repairs and maintenance of motor vehicles could not be confirmed.

Management Response

- Management did not provide a consolidated procurement plan for the financial year 2022/2023, neither was there evidence of approval of the same by the C.E.C member for finance.

Management Response

- Consolidated procurement plan for the Financial Year 2022/2023 attached herewith.
- The payment was not supported by a requisition from the user department for approval by the Head of Procurement Unit.

Management Response

Copy of approved Requisition for Local Purchasing Order attached herewith

- The payment was not supported by requisite procurement documents which include, the advertisement, tender opening minutes and register, tender evaluation committee reports, letters appointing both opening and evaluation committee and evidence of regret letters sent to the unsuccessful bidders were not availed for audit verification contrary to Section 68(2)(d)(iii) of the Public Procurement and Assets Disposal Act, 2015 requires the accounting officer for each tender, proposal or quotation that was submitted to maintain a summary of the proceedings of the opening of tenders, evaluation and comparison of the tenders, proposals or quotations, including the evaluation criteria used as prescribed;

Management Response

This was a framework agreement; -

- Copy of the Framework contract for repair and maintenance of County vehicles attached.
- Tender advert published on the PPIP on 20th May, 2020 as per attached printout and Nairobi City County Portals
- Procurement file containing tender opening minutes and register, tender evaluation committee reports, letters appointing both opening and evaluation committee and evidence of regret letters hereby attached.
- The contract agreement in place binding the suppliers with the procuring entity not provided.

Management Response

Copy of the Framework contract for repair and maintenance of County vehicles attached

- Inspections and acceptance committee was not formed to inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.

Management Response

Post repair inspection report from the Chief Mechanical Engineer (CME) serves to confirm satisfactory completion of works. The works are ascertained by the motor vehicle examiner, user representative and confirmed by the CME.

- Quarterly reports detailing analysis of items procured through framework agreement

Management Response

Motor vehicle files containing detailed information of items procured through framework agreement available for audit review. It was further noted that the County paid maintenance costs for motor vehicles belonging to Nairobi Metropolitan Services, however, the transfer deed and the agreement for maintenance of the motor vehicles has not been provided for audit review.

Management Response

- Upon expiry of the deed of transfer, four functions transferred to the National Government reverted back to the County Government of Nairobi. Plant, Equipment and Vehicles (PEVs) acquired during NMS Tenure were handed over to the County awaiting finalization of transition and final transfer. The PEVs continue being utilized by the County. It is therefore logical that the vehicle must be maintained to the manufacturer's standards.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That procurement plan was provided. However, no evidence to show that it was approved.
- That other documents for paragraphs ii to vii were not provided. The Committee noted that critical procurement documentation was still missing.

Committee Recommendation

The Committee recommends that;

- **The County Executive should furnish the County Assembly with a consolidated procurement audit file for all motor vehicle repairs within 60 days after adoption of this report. Future procurements must comply fully with Sections 47–53 of the Public Procurement and Asset Disposal Act, 2015. Where NMS assets are involved, signed transfer deeds must be attached.**

4.7. Irregular Procurement of Fire Fighting Motor Vehicle Tyres

The County Executive paid a supplier Kshs.7,502,000 for supply and delivery of fire fighting vehicle tyres during the year. Review of the payment voucher and the supporting documents revealed the following anomalies;

- The payment was not supported by a requisition form user department for approval by the Head of Procurement Unit.
- The payment was not supported by requisite procurement documents which include, the advertisement, tender opening minutes and register, tender evaluation committee reports, letters appointing both opening and evaluation committee and evidence of regret letters sent to the unsuccessful bidders were not provided for audit review.
- The contract agreement in place binding the supplier with the procuring entity was not provided for audit review.
- Inspections and acceptance committee was not formed to inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.
- There was change of procurement method from open tender to restricted and approval for the change was not provided for audit review.

In the circumstances, the regularity and value for money of Kshs.7,502,000 used on firefighting motor vehicle tyres could not be confirmed.

- The payment was not supported by a requisition form user department for approval by the Head of Procurement Unit

Management Response

Requisition from the user attached for Audit review

- The payment was not supported by requisite procurement documents which include, the advertisement, tender opening minutes and register, tender evaluation committee reports, letters appointing both opening and evaluation committee and evidence of regret letters sent to the unsuccessful bidders were not availed for audit verification.

Management Response

Copies attached.

- The contract agreement in place binding the suppliers with the procuring entity not provided.

Management Response

Copy attached

- Inspections and acceptance committee was not formed to inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.

Management Response

Referring to Observation vi (below) it is evident that an Inspection and Acceptance committee was formed inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.

- There was change of procurement method from open tender to restricted and approval for the change was not provided for audit review.
- The tyres were delivered 7 January 2022 and the inspection and acceptance committee certificate was issued on 9 March 2022 and indication that goods were taken on charge before inspection.

Management Response

Goods are delivered at the County Transport Depot (Garage) to the Chief Mechanical Engineer awaiting constitution of Inspection and acceptance committee. Goods were therefore first delivered on 7th January, 2022 and later inspected.

- Quarterly reports detailing analysis of items procured through framework agreement.

Management Response

Reports from individual Motor vehicle files available for audit review.

- It was further noted that the County paid maintenance costs for motor vehicles belonging to Nairobi Metropolitan Services, however, the transfer deed and the agreement for maintenance of the motor vehicles has not been provided for audit review.

Management Response

- Upon expiry of the deed of transfer, four functions transferred to the National Government reverted back to the County Government of Nairobi. Plant, Equipment and Vehicles (PEVs) acquired during NMS Tenure were handed over to the County awaiting finalization of transition and final transfer. The PEVs continue being utilized by the County. It is therefore logical that the vehicle must be maintained to the manufacturer's standards.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- Several documents provided. However, the following was not provided;
 - Contract agreement not provided
 - Quarterly reports detailing analysis of items procured through framework agreement not provided

Committee Recommendation

The Committee recommends that;

- **The County Executive to submit to the County Assembly key documents including contract agreements and quarterly procurement reports for the period under review within sixty (60) days after adoption of this report.**

- The procurement units must adhere to Section 54(2) of the Public Procurement and Disposal Act of 2015, which governs the change of procurement method.

4.8. Irregular Procurement of Oils and Lubricants

The County Executive paid a supplier Kshs.7,376,998 for supply and delivery of oils and lubricants during the year under review. The following anomalies were however noted;

- The payment was not supported by a requisition form from the user department for approval by the Head of Procurement Unit.
- The payment was not supported by requisite procurement documents which include, the advertisement, tender opening minutes and register, tender evaluation committee reports, letters appointing both opening and evaluation committee and evidence of regret letters sent to the unsuccessful bidders were not provided for audit.
- The contract agreement in place binding the supplier with the procuring entity was not provided for audit review.
- Inspections and acceptance committee was not formed to inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.
- There was change of procurement method from open tender to restricted while the approval for the change was not provided for audit review.

In addition, Management did not maintain supporting documents such as an updated fuel register and fuel statements from service providers indicating the type of vehicle fuelled, period and quantity consumed contrary to Regulation 4(d) of the Public Finance Management (County Governments) Regulations, 2015 provides that the object and purpose of the regulations shall be to set out a standardized financial managements system for use in Government service which can produce accurate and reliable accounts free from errors, fraud and which will be useful in management decisions and statutory reporting.

In the circumstances, Management was in breach of the law.

Management Response

- The payment was not supported by a requisition form user department for approval by the Head of Procurement Unit

Management Response

Copy of the approved requisition dated 22nd November, 2021 attached for audit review.

- The payment is not supported by requisite procurement documents which include, the advertisement, tender opening minutes and register, tender evaluation committee reports, letters

appointing both opening and evaluation committee and evidence of regret letters sent to the unsuccessful bidders were not availed for audit verification.

Management Response

Procurement file containing tender opening minutes and register, tender evaluation committee reports, letters appointing both opening minutes and evaluation committee reports hereby attached.

- The contract agreement in place binding the suppliers with the procuring entity not provided.

Management Response

Copy of Local Purchasing Order attached

- Inspections and acceptance committee was not formed to inspect, review, accept or reject goods received and services to ensure compliance with the terms and specifications of the contract.

Management Response

Copy of appointment letter for Inspection and acceptance committee dated 11th May, 2022 attached for audit review.

- There was change of procurement method from open tender to restricted and approval for the change was not provided for audit review.

Management Response

Copy of letter Ref: NCC/SCM/JK/FM/2021 dated 26th January, 2022 granting approval to procure through alternative method attached.

- The goods were delivered 4th May 2022 and the inspection and acceptance committee certificate were issued on 17th May 2022 and indication that goods were taken on charge before inspection.

Management Response

Goods are delivered at the County Transport Depot (Garage) to the Chief Mechanical Engineer awaiting constitution of Inspection and acceptance committee.

- Quarterly reports detailing analysis of items procured through framework agreement

Management Response

Reports available and hereby attached

- It was further noted that the County paid maintenance costs for motor vehicles belonging to Nairobi Metropolitan Services, however, the transfer deed and the agreement for maintenance of the motor vehicles has not been provided for audit review.

Management Response

Upon expiry of the deed of transfer, four functions transferred to the National Government reverted back to the County Government of Nairobi. Plant, Equipment and Vehicles (PEVs) acquired during NMS Tenure were handed over to the County awaiting finalization of transition and final transfer. The PEVs

continue being utilized by the County. It is therefore logical that the vehicle must be maintained to the manufacturer's standards.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That supporting documents were not provided.

Committee Recommendation

The Committee recommends that;

- **The County Executive to submit to the County Assembly an updated fuel registers and consumption reports for the period under review within sixty (60) day after the adoption of this report as required by Regulation 4(d) of the PFM (County Governments) Regulations, 2015; and**
- **The County Executive to ensure that no goods are taken on charge before inspection.**

4.9. Irregularities in Management of Executive Scholarships and Ward Bursaries

Note 5 to the financial statements reflects other grants and transfers expenditure of Kshs.1,343,550,963. Included in the expenditure is Kshs.690,871,605 incurred in respect to scholarships and other educational benefits. Review of documents supporting issuance of scholarship and ward bursary revealed that forty-seven (47) beneficiaries with a disbursement total of Kshs.2,504,313 came from Counties other than County Executive of Nairobi City while twenty-five (25) beneficiaries with a total disbursement of Kshs.1,165,465 came from private primary schools.

Further, analysis of data provided in support of disbursements indicated cases of issuance of both scholarships and ward bursaries to six hundred and eighty-three (683) beneficiaries totalling Kshs.32,030,110.

In the circumstances, the regularity and proper management of the scholarships and bursaries could not be confirmed.

Management Response

The Management response to the audit query on Irregularities in Management of Executive Scholarships and Ward Bursaries was as follows: -

- The sector receives direct bursary applications from needy parents through churches and mosques within Nairobi City County. In an event that such cases are evaluated and approved by the Executive Scholarship Committee, the respective applicants are issued with bursary application forms to fill and submit for processing.
- Such cases may attract students whose parents reside in Nairobi but may have studied in primary schools outside Nairobi County.

- Attached are samples of such application letters Marked Appendix 3(1A).
- The sector receives some direct bursary applications from needy parents through churches and mosques within Nairobi City County. In an event that such cases are evaluated and approved by the Executive Scholarship Committee, the respective applicants are issued with bursary application forms to fill and submit for processing.
- The Sector also receives applications from students attending Alternative Providers of Basic Education and Training (APBET) schools. These are community initiated and supported schools as well as religious supported schools usually in slum areas.
- That the Ministry of Education has only 2 categories of school: Public and Private school, therefore APBET schools automatically fall under the Private schools' categories despite the fact that they are community-based slum schools with little or no Teaching and learning resources.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no clear explanation on why both bursaries and scholarships were issued to same students.

Committee Recommendation

The Committee recommends that;

- **The County Executive should to immediately stop the issuance of both bursary and scholarship to the same beneficiaries to ensure fairness and transparency in bursary allocation, the Committee directs;**
- **The County Executive to align the disbursement of bursary and Executive scholarships with Section 117 of the County Governments Act, 2012 on equitable distribution of resources;**
- **The County Executive to develop and submit to the County Assembly a comprehensive table Bursary and Executive Scholarship Policy Framework and guidelines that sets eligibility, selection criteria and audit guidelines of the programme.**

4.10. Irregular Procurement of Construction Materials

Note 3 to the financial statements reflects use of goods and services amount of Kshs.7,672,936,323, included in the amount is other operating expenses of Kshs.1,752,556,404. The County Executive paid a contractor an amount of Kshs.14,750,000 for supply and delivery of quarry chips/hardcore during the year under review. Review of contract documents revealed that the County Executive used a contract between the Ministry of

Transport, Infrastructure, Housing and the contractor to procure the materials. However, there was no evidence that the County Executive obtained the whole list of relevant categories from the state organ and subjected it to the provisions of

the Public Procurement and Asset Disposal Act, 2015.

Further, no evidence was provided for review on how the contract was adopted for use by the County Executive contrary to Section 52(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that the Authority shall have powers to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent

in the event of delay or in such other circumstances as may be prescribed.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Irregular Procurement of Construction Materials was as follows: -

- There was a request from the Head of Supply Chain to the County Secretary for authority to Procure Building Construction and electrical materials using the Supplies Branch contract vide MEMO NCC/SCM/JK/lo/163/2022/2023 dated 5th December 2022. Approval was granted.
- The list was obtained from the Ministry portal and several firms were listed but not everyone would respond positively to deliver at Nairobi County because of reasons beyond our understanding.
- The function of the Roads, Public Works and Transport had just been transferred back to Nairobi City County in September 2022 and therefore no running contracts were available other than the ones previously used by the defunct NMS. Due to the short period available, no contracts could be procured fast enough to provide goods and services and therefore necessitated the need to request for use of the Supply Branch contracts.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That approvals were provided for review.

Committee Recommendation

The Committee recommends that;

- **Although emergency use of state contracts may be accepted, the County must obtain formal delegation under Section 52(1) of the PPAD Act and demonstrate value for money. The County Executive should document and justify all future use of external procurement**

frameworks and submit such documentation to the County Assembly on quarterly basis to enhance accountability and transparency.

4.11. Procurement of Vehicles and Other Transport Equipment

Note 7 to the financial statements reflects acquisition of assets amount of Kshs.3,547,600,112 which includes an amount of Kshs.100,000,000 incurred in respect to purchase of vehicles and other transport equipment. However, the amount differs with amounts paid to various motor vehicle dealers during the year of Kshs.771,589,099. The resulting variance of Kshs.671,589,099 was not explained. Further, the procurement documents and supporting payment vouchers together with the log books for motor vehicles were not provided for audit review.

In the circumstances, the accuracy and value for money on the payments of Kshs.100,000,000 in respect of procurement of vehicles and other transport equipment could not be confirmed.

Management Response

The Management response to the audit query on Procurement of Vehicles and Other Transport Equipment was as follows: -

- The variance of Kshs Kshs 671,589,099 was reported under Purchase of Specialized Plant and Equipment. The expenditure was budgeted for under this economic item. The table gives details of the above amounts.

Date	Reference No.	Payee	Amount Kshs	Remarks
28 April 2023	FT23118W6GD3	Isuzu East Africa Ltd	98,275,862.10	This was payment towards procurement of 18 Double Cabins, net of Withholding Tax. Gross amount was Kshs 100 million and this was reported under Purchase of Vehicles
3 May 2023	FT23123GQCXQ	Trans Africa Motors Ltd	11,498,275.85	Being payment for supply, delivery and commissioning of 1 no pneumatic drum roller. This expenditure was reported under Purchase of Specialized Plant and Equipment where it was budgeted for
13 July 2023	FT23194XM8M1	Isuzu East Africa Ltd	212,865,517.30	Being payment for supply and delivery of heavy equipment's machines, trucks and skippers. This expenditure was reported under Purchase of Specialized Plant and Equipment where it was budgeted for

13 July 2023	FT23194JSSSM	Simba Corporation Ltd	448,949,444.10	Being payment for the supply and delivery of heavy equipment's ((large tipper truck and skip loaders). This expenditure was reported under Purchase of Specialized Plant and Equipment where it was budgeted for
Total			771,589,099.35	

Attached are vote books showing the budget lines. **Appendix 10**

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That supporting documents were not provided.

Committee Recommendation

The Committee recommends that;

- The County Executive to submit to the County Assembly all supporting documents, including logbooks and payment vouchers within 90 days after adoption of this report to correct the inconsistency in how vehicle related purchases were reported.
- The Finance Department must ensure consistent classification and reporting as per PSASB standards and Section 166 of the PFM Act.

4.12. Anomalies on Compensation of Employees

4.12.1 Non-Compliance with Fiscal Responsibility Principles

Note 2 to the financial statements for the year under review reflects compensation of employee's expenditure of Kshs.11,185,475,652. The amount represents approximately 37% of the total revenue of Kshs.30,485,249,863 being 2% over and above the maximum allowed ceiling contrary to Regulation 25 (1)(b) of the Public Finance Management (County Governments) Regulations, 2015 which requires the expenditure set should not exceed thirty-five (35) percent of the county government's total revenue.

Management Response

The Management response to the audit query on Non-Compliance with Fiscal Responsibility Principles was as follows: -

- 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. These staff were employed under Defunct City Council and their terms and conditions of service was 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.
- d) This therefore meant that the County had to absorb the staff as per their existing terms and conditions of service.

— The inherited staff and those Devolved from National Government were not adequate to perform the expanded mandate of the County Government since some of the critical skills were lacking and the inherited Defunct staff majority whom were aging workforce and therefore the County Public Service Board had to conduct new recruitments.

— In addition, in 2020 the Nairobi County signed a Deed of Transfer of Functions in which the County transferred four functions to National Government whereby 6604 staffs were seconded to National Government. The National Government through the Public Service Commission unilaterally went ahead and recruited an additional two thousand five hundred and twenty-one staff (2521) on contract terms and who were to be absorbed by NCCG upon end of term of NMS without an additional funding from National Government. The total monthly payroll for the seconded staff at the time of transfer of functions to National Government was Kshs. 716,563,709. For 6604 employees compared to Kshs 747,609,222. 90 for 7,577 employees at the time of end of Deed of Transfer in December 2022. This shows an increase of Kshs. 31,045,513.90 per month

— Mitigation measures to ensure noncompliance with fiscal responsibility principles.

1. Implementation of an approved establishment that sets the optimum staff establishment for all County Sectors and Departments;
2. Development and implementation of Voluntary Early Retirement Policy where the County will provide an inducement for certain cadre of staff to take up voluntary early retirement without loss of benefits;
3. Adoption of SRC grading structures for all new recruitments which is lower than the ones earned by the Defunct City Council Collective Bargaining Agreement (CBA)
4. Savings from retiree savings as tabulated below:

RETIREES SAVINGS 2023-2024				
JOB GROUP	CADRES	NO OF STAFF	MONTHLY SAVINGS	Annual Savings
JOB GROUP A-C	SUPPORT STAFF	103	6,432,229.00	77,186,748.00
JOB GROUP D-E	Clerical/Artisans/security staff/Messengers	346	23,882,710.90	286,592,530.80
JOB GROUP F-L	Technical staff - Nurses/accountants/planners/engineers	279	25,647,405.85	307,768,870.20
JOB GROUP M AND ABOVE	Unit heads/ section heads/Assistant, Deputy/Directors	65	9,347,894.45	112,174,733.40
		793	65,310,240.20	783,722,882.40
RETIREE 2024-2025	CADRES			
JOB GROUP A-D	SUPPORT STAFF	44	2,795,880.00	33,550,560.00
JOB GROUP D-E	Clerical/Artisans/security staff/Messengers	226	17,557,829.00	210,693,948.00
JOB GROUP F-L	Technical staff - Nurses/accountants/planners/engineers	205	20,788,000.55	249,456,006.60

JOB GROUP M AND ABOVE	Unit heads/ heads/Assistant, Deputy/Directors	46	7,176,491.00	86,117,892.00
		521	48,318,200.55	579,818,406.60
RETIREE2025- 2026				
JOB GROUP	CADRES	NO OF STAFF	MONTHLY SAVINGS	Annual Savings
JOB GROUP A-C	SUPPORT STAFF	44	931,580.50	11,178,966.00
JOB GROUP D-E	Clerical/Artisans/security staff/Messengers	192	13,245,405.00	158,944,860.00
JOB GROUP F-L	Technical staff - Nurses/accountants/planners/en gineers	207	18,688,818.00	224,265,816.00
JOB GROUP M AND ABOVE	Unit heads/ heads/Assistant, Deputy/Directors	49	7,867,398.00	94,408,776.00
		492		488,798,418.00
RETIREE2026- 2027				
JOB GROUP	CADRES	NO OF STAFF	MONTHLY SAVINGS	Annual Savings
JOB GROUP A-C	SUPPORT STAFF	40	2,660,048.00	106,401,920.00
JOB GROUP D-E	Clerical/Artisans/security staff/Messengers	201	14,300,653.00	171,607,836.00
JOB GROUP F-L	Technical staff - Nurses/accountants/planners/en gineers	243	21,718,378.50	260,620,542.00
JOB GROUP M AND ABOVE	Unit heads/ heads/Assistant, Deputy/Directors	46	6,958,690.00	83,504,280.00

		530		622,134,578.00
TOTAL SAVINGS FOR RETIREES FOR NEXT 4 YEARS		2,336.00	113,628,440.75	2,474,474,285.00

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That mitigation measures were provided.

Committee Recommendation

The Committee recommends that;

- The County Executive should enforce adherence to the 35% wage ceiling by fast-tracking the implementation of the approved staff establishment and the Voluntary Early Retirement Scheme;
- The County Executive should conduct a comprehensive audit to confirm payroll rationalization outcomes and ensure all new recruitments align with the SRC grading structure.
- The County Executive should institute controls to prevent unbudgeted absorption of externally recruited staff, as seen during the NMS transition.

4.12.2 Employees Sharing Bank Accounts

Review of the payroll for the year under review revealed that three (3) employees shared one bank account.

Management Response

The Management response to the audit query on Employees Sharing Bank Accounts was as follows: -

- The sharing of bank accounts normally affects officers receiving salaries through Saccos whereby they don't use bank accounts while processing salaries but rather national identity card numbers. However, from our records as at June 2023 the three officers do not share bank details as IPPD bank account Reference Data sheets.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence provided to back up the response.

Committee Recommendation

The Committee recommends that;

- **The County Human Resource and payroll department to submit to the County Assembly certified evidence (e.g., IPPD Reference Data Sheets) to confirm correction of shared bank accounts within sixty days after the adoption of this report.**
- **The County Executive to initiate payroll audits to eliminate loopholes that may enable ghost workers or irregular transactions.**

4.12.3 Officers Employed on Permanent and Pensionable Terms While Over the Age of 50 Years

Review of the payroll entry dates for employees revealed that two (2) officers were employed on permanent and pensionable terms while their age was over and above fifty years (50).

Management Response

The Management response to the audit query on Officers Employed on Permanent and Pensionable Terms While Over the Age of 50 Years was as follows: -

- Officer payroll no 20140029652 was previously employed by the Teachers Service Commission TSC No 249266. The County therefore deemed his appointment as continuation of service.
- Officer payroll No 20150093164 was officer devolved from National Government in 2013 and had been employed on contract terms by Ministry of Health under USAID Capacity Project with an agreement that the County will absorb these officers under permanent terms. Her first date of appointment was 30th October 2009 by that time she was 46 years.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the abovementioned officers offered continuation of service

Committee Recommendation

The Committee recommends that;

- **The County Executive should develop clear guidelines on age limits for permanent employment, including exceptions like continuity of service, and ensure documentation is maintained.**

4.12.4 Officers Active in the Payroll with No Pay

Further, analysis of the payroll showed that there were four (4) officers active in the payroll without salaries.

Management Response

The Management response to the audit query on Officers Employed on Permanent and Pensionable Terms While Over the Age of 50 Years was as follows: -

- The four officers in the payroll with no Pay are officers under suspension as provisions of Human Resource Policies and Procedures Manual for the Public Service 2016 Section K.7 (2)
- An officer may be suspended from duty under the following circumstances:
 - i. when disciplinary proceedings have been instituted against the officer as a result of which, the Authorized Officer considers that the officer ought to be dismissed;
 - ii. when he has been convicted of a serious criminal offence where a prison sentence may be imposed other than in default of payment of a fine; or
 - iii. any other offence which in the opinion of the Authorized Officer, constitutes gross misconduct.
- **Where an officer is suspended from the exercise of the functions of his public office, he shall be entitled to full house allowance, medical benefits and no basic salary.**
- An officer on suspension will be required to report to his supervisor at agreed intervals, if necessary.

Attached documents are IPPD data sheets

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence of any pay, e.g., house allowance.

Committee Recommendation

The Committee recommends that;

- **The County Executive should submit to the County Assembly full documentation showing allowances (e.g., house allowances) being paid to suspended officers as per HR policy during the period under review within sixty days after the adoption of this report.**
- **The County Executive should review IPPD flags and ensure periodic review of suspension cases.**

4.12.5 Officers Paid Leave Allowance Twice

Review of the payroll revealed one hundred and seventy-eight (178) officers were paid leave allowances twice amounting to Kshs.15,423,116.

Management Response

The Management response to the audit query on Officers Paid Leave Allowance Twice was as follows:

-

- a) Leave will be granted annually to the staff subject to the exigencies of service on the following scale and subject to the following conditions, and provided that those officers currently enjoying more favorable leave days will not have their leave days reduced:

JOB GRADE	NUMBER OF WORKING DAYS
1-14	30
15-17	28
18	26

- b) An officer shall not be entitled to leave until he shall first have completed six months' services.
- c) Leave may be taken with approval of the Head of Department after certification by the Establishment Officer that such leave is due.
- d) The leave shall be the calendar year.
- e) Leave may be accumulated in excess of 60 working days provided that half of the annual leave entitlement is take in each year or otherwise forfeited and that any leave accumulated in excess of the 60 working days stated above shall be forfeited unless in specific cases, the council otherwise resolves. Officers who have already accumulated more than 60 days shall not forfeit the leave so far accumulated, which excess leave shall be taken within the period of 2 years.
- f) In the event of an officer having leave to his credit at the time of his ceasing to be employed by the council he shall receive pay in lieu of such leave based on the following:
- g) Annual Salary X Number of Working Days Leave Accumulated
- h) Number of working days in the year.
- i) An officer shall be paid the amount indicated below as leave allowance once a year when proceeding on his/her leave provided the officer takes not less than half of the annual leave. Where any officer has been enjoying a higher leave allowance than the amount provided herein below, the said leave shall not be reduced. Provided further that any unspent balance of leave allowance shall be paid to the officer when next proceeding on leave regardless of the number of leave days the officer is taking.

Job Grades	Percentage Annual Salary
1-10	5.0%
11-18	6.0%

- j) Study leave will be granted in accordance with resolutions approved by the Council from time to time.
- k) Leave for officers participating in sporting events will be granted in accordance with the resolutions approved by the council from time to time.
- l) No officer on leave of absence may accept any paid employment without previously obtaining the sanction of the council in writing under the hand of the Clerk.

- m) An officer may be granted unpaid leave exceeding 50 working days at the discretion of the Head of Department and with the consent of the Clerk. No unpaid leave may be taken unless all accumulated leave is exhausted.
- n) If an officer has not accrued leave to his credit and Head of Department and the Clerk are satisfied that leave should be granted on compassionate grounds, such leave up to a maximum of thirty days may be off-set against paid leave accruing in the future. No compassionate leave may be taken unless accrued leave entitlement is exhausted.
- o) Where an officer is not allowed by the council to proceed on leave due to the exigencies of work, he shall be allowed to commute his leave into cash. This provision shall not however apply where leave is postponed provided the postponement is no longer than six months.
- p) Where an officer retires, he shall be entitled to payment 'of full leave allowance. No leave allowance shall be paid to an officer who resigns or is terminated or dismissed.
- q) All applications for leave must be made in writing to the Head of Department.

From the above clause leave for Defunct staff leave is paid on application within a calendar year and not financial year as is the case for officers devolved from National Government and those employed by the County Public Service Board where there leaves allowance is not tied to application but paid every December of each year. This therefore brings about a budget timing issue whereby an officer can apply leave that may cut across two financial years but does not amount to double payment of leave allowance but is within the provisions of CBA.

Attached please find detail of each staff paid and the year the leave allowance relates to as per provisions of CBA.

4.12.6 Irregular Payment of Allowances while Under Consolidated Pay

Analysis of payroll earnings revealed that twenty-six (26) officers on monthly gross pay were also paid other allowances totalling Kshs.17,584,187. The allowances included basic pay, rental, house supplementation and service gratuity.

Management Response

The Management response to the audit query on Irregular Payment of Allowances while Under Consolidated Pay was as follows: -

- The officers indicated in Appendix 7 were paid the afore mentioned allowances; telephone, Salary Market Adjustment as per the SRC Circular Ref No. SRC/TS/CGOVT/3/61 Vol.IV(49) dated 8th December, 2017, The Kenya Gazette Vol.CXXV-No.177 dated 9th August 2023. The Service Gratuity was paid to the County Public Service Board Members, the Members of the

County Public Service Board who requested their gratuity to be remitted to Lap fund and CPF on a quarterly basis so as to earn interest (*Authority letters attached*).

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the Kenya Gazette Vol. CXXV No. 177 was to take effect 1.7.2023

Committee Recommendation

The Committee recommends that;

- **The County Executive should reconcile payment systems for defunct council staff and current county employees to ensure uniformity.**

4.12.7 Payment of Special Pay and Basic Salary

Review of the payroll revealed that Thirty- four (34) officers on special salary were also paid basic salary.

Management Response

The Management response to the audit query on Payment of Special Pay and Basic Salary was as follows: -

- The officers who have been paid special salary are all former NMS officers employed local agreement terms. The officers are classified as follows
 1. Twenty Ex-KDF officers were recruited by Public Service Commission on two-year contracts at consolidated salaries of Kshs 70,000 per month and whose contracts ended with the term of NMS that is November 2022. However, since their services were still required by the County, the Mobility and Works Sector requested the County Public Board to grant them one-year contracts under the same terms as they enjoyed under NMS. The CPSB granted approval with effect January 2023 and 9 were paid in march plus three months' arrears of 210,000 while 11 were put in County payroll in April with resultant arrears of 280,000. One of the officers continued earning commuter allowance of 4000 per month which he was not entitled to and same was recovered effective August 2023
 2. Eight (8) Medical Officers recruited by Public Service Commission at Job Group M, however since salary structure M-N for National Government was merged into N, their salaries could not be processed by the NMS payroll since the payroll was hived off from County payroll. In order to resolve the merging, NMS paid their basic salaries as special salary without affecting their gross pay. This seem to work well until after one year where these officers were to earn annual increments which was due in march of preceding year. This had to be done manually but since the IPPD system could not automatically award annual increments. This manual intervention

resulted in some risks as the payroll clerk awarding the increments manually adjusted the basic salary instead of special salary. This was immediately noted during routine payroll audit and stoppage was immediately affected and resultant overpayment was recovered for four officers. Two officers continued earning both basic and special salary up to August 2023 when the same was detected during a further routine verification and recoveries were immediately affected as per attached pay slips. The remaining two were validly paid salary arrears of Kshs 107,440 being two months' basic salary not processed and 5100 being arrears for two months' basic annual increments.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That explanation for all the 34 officers not provided

Committee Recommendation

The Committee recommends that;

- The County Executive should submit to the County Assembly a report detailing the status of all 34 cases cited, including recovery status.
- The County Executive Human Resource should enhance internal audit functions to promptly flag out such anomalies.

4.12.8 Non-compliance with Statutory Deductions

Analysis of payroll revealed a total of three hundred and ninety three (393) officers whose PAYE deductions were not recovered from their salaries as required under the Income Tax Act. The employees were not defined under the category of People with Disabilities hence the officers earned a total of Kshs.52,580,701 from which no taxes were recovered.

Management Response

The Management response to the audit query on Non-compliance with Statutory Deductions was as follows: -

- Findings of Analysis of the 393 officers exempted from tax is as follows:
 - 12 officers have valid KRA tax exemption certificates numbers indicated against their names
 - One officer Millicent Njeri Githinji P/No 20210032920 was erroneously awarded tax exemption in April 2022 while at NMS. Corrective action already taken and PAYE recovery initiated in November 2023 while PAYE tax arrears from April 2022 to October 2023 calculated for immediate recovery.
 - The remaining 380 officers are newly recruited officers employed in 2022 whose salary is below the tax bracket of Kshs 24,000. The amount paid was for lumpsum payments being arrears for

period they started working up to date they were put in IPPD payroll and therefore not subjected to tax.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- Taxes not deducted.

Committee Recommendation

The Committee recommends that;

- **The County Executive should recover unpaid taxes immediately and provide a detailed plan for future compliance.**
- **The County Executive Committee Member for Finance should penalize responsible officers for violating the Income Tax Act.**

4.12.9 Unclear Payment of Salary Arrears on Monthly Basis

Analysis of the payroll reflects that three hundred and ninety-five (395) officers were paid salary arrears for a duration between seven (7) and twelve (12) months during the year under review. Further, sixty-four (64) officers were paid arrears ranging between Kshs.300,000 and Kshs.6,779,220 all totalling Kshs.82,340,479 during the financial year. The nature of the allowances totalling Kshs.100,104,975 was not explained.

Management Response

The Management response to the audit query on Unclear Payment of Salary Arrears on Monthly Basis was as follows: -

- Basic Salary, House allowance, commuter allowance among other allowances paid in arrears were paid to officers upon reinstatement back to the payroll after finalization of disciplinary processes or whereby an officer was dismissed but sought appeal from Public Service Commission of Employment and Labor Relations Court. The officers paid arrears with more than one-monthly installments is in circumstances where the amount of arrears to be paid is substantial and likely to affect the prior submitted cashflow projection and therefore is spread in reasonable instalments (copies attached).
- Some allowances e.g. Overtime & Extraneous allowances are paid as arrears since it accrues at the end of the month and therefore paid in the preceding month. **(Copies of approvals attached).**

Committee Observation

The Committee while interrogating the management response made the following observation: -

- Analysis for all the officers not provided.

Committee Recommendation

The Committee recommends that;

- The County Executive should submit to the County Assembly detailed breakdowns for all officers paid salary arrears, including reasons and approvals.
- The County Executive to ensure future salary arrears must be approved with budget alignment and documented payment plans.

4.12.10 Irregular Payment of Overtime Allowance

Review of the payroll revealed that a total of thirty-four (34) employees whose job group were above Job Group received a total of Kshs.2,728,003 in form of overtime allowances contrary to Section C.19 (1) of the Human Resource Policies and Procedures Manual for the Public Service, 2016.

Management Response

The Management response to the audit query on Irregular Payment of Overtime Allowance was as follows: -

- (a) The overtime allowance paid under the year f review was as per provisions of CBA 2012 clause 12 which states
 - Payment for overtime in accordance with arrangements approved by the Head of Department, after normal working hours for officers in Job grades 10-20 shall be paid as overtime provided that such overtime has been specifically authorized in writing by the officer's Head of Department.
 - For overtime worked doctors will be paid a fixed allowance determined by the Council.
- (b) Overtime shall be calculated by dividing the basic salary plus house allowance.
 - In the case of watchman by 260 hours
 - In the case of members of the Fire Ambulance service by 260 hours
 - In the case of officers working 45 hours per week, by 195 hours
 - In the case of all other officers, calculated daily on a prorata basis.
- c. Overtime shall be at the following rates:
 - For time worked in excess of the normal number of hours per week at one and a half times the normal hourly rate.
 - For time worked on the employee's normal rest day or gazetted public holiday at twice the normal hourly rate. Provided that an officer who qualifies for overtime in (a), (b) and (c) above may be granted equivalent time off in lieu of the overtime payment. (copy of approvals attached)

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That payment of the overtime allowances explained and supported

Committee Recommendation

The Committee recommends that;

- The County Executive Management to ensure that only eligible cadres receive overtime as per approved CBA/SRC guidance.
- The County Executive should develop an automated system for tracking approved overtime to prevent abuse.

4.12.11 Officers Earning Less Than a Third of Basic Pay

Analysis of the payroll data provided for audit revealed that two hundred and fifty-two (252) employees were earning net salaries that were less than a third ($\frac{1}{3}$) of their basic pay contrary to the provisions of Part C.1 (3) of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which provides that public officers shall not over-commit their salaries beyond two thirds ($\frac{2}{3}$) of their basic salaries.

Management Response

The Management response to the audit query on Officers Earning Less Than a Third of Basic Pay was as follows: -

- 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:
 - Failure to account for imprest
 - Fines and surcharges resulting from performance of his duties
 - Overpayments as a result of erroneous earnings
 - Recovery of County debts especially house rents for officers residing in County houses
- Where statutory deductions are adjusted upwards especially PAYE, NSSF, NHIF etc and an officer was already at the statutory limit of $\frac{1}{3}$ rule will result in an officer earning less than $\frac{1}{3}$ of basic salary. A good example is the Covid 19 tax relief of 2020 to cushion tax payers against the adverse effects of Covid 19 Pandemic where the government adjusted tax rates as follows with effect 1st April 2020

Monthly Bands of Taxable Income (KES) as at April 2020	Tax Rate
0 – 24,000	10%
On the next 16,666.67	15%
On the next 16,666.67	20%
Remaining amount over 57,333.33	25%
Personal Relief: KES 2,400.00 per month	
Minimum Taxable Income: KES 24,001.00 per month	

This was later re-adjusted in January 2021 as below:

Tax Bands	Annual	Monthly	Rates
On the first	Shs. 288,000	Shs. 24,000	10%
On the next	Shs.100,000	Shs. 8,333	25%
On all income in excess of	Shs. 388,000	Shs. 32,332	30%
Personal relief of Kshs. 28,800 per annum (Kshs. 2,400 per month)			

- Where an officer is retiring during the month yet their existed deductions that were running and the payroll system prorates the earnings to the date of retirement while deductions are recovered in full;
- Where deduction data are affected under mass update 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.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the reasons for earnings below a third provided. However, no evidence of measures put in place to prevent the same from happening

Committee Recommendation

The Committee recommends that;

- The County Executive should enforce the one-third salary rule by instituting real-time monitoring in payroll systems.
- The County Executive should train officers on the financial impact of deductions and manage over-commitment of their payslips.

4.12.12 Non-Compliance with the Persons with Disabilities Act, 2003

Review of the payroll records revealed that only one hundred and sixty-seven (167) employees out of thirteen thousand three hundred and fifty-four (13,354) were categorized as persons with disabilities. This constitute 1.25% of the total employees which was below the recommended level of 5% under Section 13 of the Persons with Disabilities Act, 2013 which provides that the Council shall endeavour to secure the reservation of five 5% of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities.

Management Response

The Management response to the audit query on Non-Compliance with the Persons with Disabilities Act, 2003 was as follows: -

- The recruitment within the County Public service is a competitive process processed purely on selection of a qualified applicants fit for the job and Board has no control of the types of applicants that will apply for the job being advertised, however where qualified disabled applicants apply for any vacancies, they are normally given priority.
- Similarly, the nature of the job usually describes the requirements of the job. For instance, some job may require physical fitness as mandatory requirement for the applicants e.g. fire fighters, enforcement officers e.tc

Committee Observation

The Committee while interrogating the management response made the following observation:

- That the percentage was not achieved as required by law.

Committee Recommendation

The Committee recommends that;

- **The County Executive should set specific hiring targets for Persons with disabilities in each recruitment cycle.**
- **The County Executive should collaborate with disability organizations for outreach during job advertisements.**

4.12.13 Non-compliance with National Cohesion and Integration Act, 2008 on Ethnic Diversity

Review of employee's documents revealed that the County Executive had thirteen thousand three hundred and fifty-four (13,354) members of staff out of whom five thousand three hundred and sixty-eight (5,368) representing 40% of the total staff were from one ethnic group contrary to Section 7(1) of National Cohesion and Integration Act, 2008 which requires that all public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff.

Management Response

The Management response to the audit query on Non-compliance with National Cohesion and Integration Act, 2008 on Ethnic Diversity was as follows: -

- The recruitment within the County Public service is a competitive process processed purely on selection of a qualified applicants who meets the job requirements and Board has no control of the ethnicity of applicants that will apply for the job being advertised.
- However, the County Public Service Board has strived to ensure that the current recruitments meet the provision of the Act.
- This position is supported by reports released by the National Cohesion Commission which has shown a reduction in numbers with respect to dominant ethnic group within the County. This can be illustrated in the table below;

Recruitment by CPSB for period 1st July 2022 to 30th June 2023

Ethnic code	No of staff	% of ethnic group
2	5	1.1
3	62	13.2
4	149	31.8
6	14	3.0
11	52	11.1
13	2	0.4
14	49	10.4
17	1	0.2
19	3	0.6
21	1	0.2
22	99	21.1
23	14	3.0
24	1	0.2
25	3	0.6
28	5	1.1
29	1	0.2
31	1	0.2
40	1	0.2
44	6	1.3

TOTALS	469	100
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Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the recruitment in 2022/2023 complied with law.

Committee Recommendation

The Committee recommends that;

- **The County Executive should implement ethnicity audit during recruitment and require justifications when diversity thresholds are not met.**

4.12.14 Irregular Recruitment of Staff by Nairobi Metropolitan Services (NMS)

After execution of Deed of Transfer on 25 February, 2020, the County Executive seconded six thousand six hundred and four (6,604) staff to Nairobi Metropolitan Services for a period of two (2) years. At the end of the Deed of Transfer tenure, Nairobi Metropolitan services handed back seven thousand five hundred and twenty-six (7,526) staff to City County. Out of the seven thousand five hundred and twenty-six (7,526) staff, one thousand seven hundred (1,700) were not part of the staff seconded to NMS in the year 2020, which implies that they were recruited by NMS contrary to the Section 5.6 and 5.7 of the Gazette Notice No. 1609 dated 25 February, 2020 on Deed of Transfer.

Management Response

The Management response to the audit query on Irregular Recruitment of Staff by Nairobi Metropolitan Services (NMS) was as follows: -

- The Nairobi County has not absorbed the staff recruited by NMS through Public Service Commission but rather allowed them continue to serve the remainder of the respective contracts. Former NMS officers will be given opportunity like any other Kenyan to apply for any vacancies that the County may declare from time to time.
- This is as per Nairobi City County Assembly resolution which adopted the report of the sectoral Committee on labor and social welfare on the enquiry regarding the absorption of Inspectorate officers employed by the Defunct Nairobi Metropolitan Services (NMS)

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the explanation was not provided on the status of the 1,700 officers handed back by NMS.

Committee Recommendation

The Committee recommends that;

- **The County Executive should submit to the County Assembly a full list and status report of the 1,700 irregular staff within sixty days after the adoption of this report.**

- That the County Executive should ensure no absorption occurs without competitive recruitment in accordance with the County Public Service Board mandates.

4.12.15 Non-Remittance of Statutory Dues

Analysis of the payroll data provided for audit revealed that the County Executive deducted staff PAYE, NSSF and NHIF statutory dues totalling Kshs.1,715,817,035. However, no evidence was provided for audit to show that the deductions were remitted to relevant authorities as required. Further, failure to remit statutory deductions on time contravenes The Income Tax Act, National Hospital Insurance Fund Act and National Social Security Fund Act which may result in fines and penalties.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Non-Remittance of Statutory Dues was as follows: -

- The attached bank statements for the financial year under review was attached. Transfers to statutory institutions are included

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence provided to show statutory deductions have been paid.

Committee Recommendation

The Committee recommends that;

- **The County Executive Management should provide verified remittance receipts for the financial year and submit the report to the County Assembly within sixty days after adoption of this report.**

4.13. Failure to Maintain Imprest Register

Review of imprest surrenders provided for audit totalling Kshs.55,062,866 revealed that Management did not maintain an imprest register but used as a record of imprest warrants. Management contravened Regulation 93(4) of the Public Finance Management (County Governments) Regulations, 2015 which requires that before issuing imprests, applicants must not have any outstanding imprest, should be recorded in an imprest register and confirmation of availability of funds and Regulation 93(1) of the Public Finance Management (County Governments) Regulations, 2015 which requires that imprests shall be used for a specific purpose as stated in the imprest warrant.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Failure to Maintain Imprest Register was as follows: -

- Imprest warrants originate from various sectors of the county but are processed, verified and validated at one point-Imprest control.
- Due to the volume and frequency of imprest issuance in the County the imprest management unit maintains soft copy and hard copy records of all warrants issued, surrendered and cancelled.
- This is done through a locally developed imprest management system that summarizes all payments in form of imprest and generates required reports for management purposes ranging from outstanding imprest to departmental reports. The aim is to ensure that no imprest remain unaccounted for. In addition, the manual imprest register is also maintained for all imprest warrants processed.
- Those who fail to surrender are deducted from their salaries through the IPPD system in accordance to imprest regulations.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no evidence provided to show imprest register and warrants are maintained.

Committee Recommendation

The Committee recommends that;

- **The County Executive should prepare and maintain both digital and manual imprest registers, and submit copies quarterly to the County Assembly.**
- **The County Executive Committee Member for Finance should takes administrative action on officers who issue imprests without proper documentation.**

4.14. Irregular Procurement of Yellow Fever Vaccines

Review of procurement documents revealed that the County Executive paid a supplier a total of Kshs.11,445,000 for supply and delivery of yellow fever vaccines on 22 March, 2023. The County Executive received a total of seven thousand six hundred and thirty (7,630) vaccines in respect to the procurement. However, the following observations were made;

- The vaccines were procured through restricted tendering without justification for the use of restricted tendering in line with the requirements under Section 102 of the Public Procurement and Asset Disposal Act, 2015.
- The tender opening and evaluation committee members were appointed on 3 August, 2018 to perform both the functions of the tender opening and evaluation committee contrary to the requirements of Section 78 of the Public Procurement and Assets Disposal Act, 2015.

- The tender was opened on 6 August, 2018 by four (4) members of the tender opening committee who signed the tender opening register. However, the tender opening minutes attached in support of the payment were signed by the
- chairperson only as opposed to all members and were not initialized on each page as required in Section 78 of the Public Procurement and Asset Disposal Act, 2015.
- The vaccines were requisitioned by the officer in-charge Inoculation Centre on 18 July, 2018 through a requisition which shows that the quantity required by the user department was one thousand two hundred (1,200) (10 dose vial) at an indicative price of Kshs.10,450 resulting to a total expenditure of Kshs.12,540,000. However, the awarded cost of Kshs.18,000,000 significantly differs with the market price quoted on the requisition by 44% (Kshs.5,460,000) which may be an indicator that Management did not conduct due diligence to ensure value for money on the procurement of vaccines resulting to possible loss of public funds contrary to the requirements of Section 54 (2) of the Public Procurement and Asset Disposal Act, 2015.
- Members of the inspection and acceptance team were appointed on 1 November, 2018 three (3) months after the vaccines had been received in the store's contrary to Section 44 (2) (d) of the Public Procurement and Asset Disposal Act, 2015.
- The contracted supplier delivered vaccines partially by 10 January, 2019 and issued a credit note and an invoice dated 8 April, 2020 and 14 April, 2020. No explanation was provided for failure to deliver in full as contracted or action taken by Management for non-performance by the supplier. No approval was attached for the credit note approximately two (2) years after the award contrary to Section 150 of the Public Procurement and Asset Disposal Act, 2015.
- Inspection and acceptance report revealed that the committee conducted its function on 24 April, 2020 being twenty (20) months after delivery of the vaccine's contrary to Section 48 of the Public Procurement and Asset Disposal Act, 2015.
- Physical inspection of the stores carried out on 4 October, 2023 revealed that the vaccines were received at various dates and dispatched for use before the products were inspected and accepted thus posing a risk of using medicines that have not been verified hence exposing the citizens to unwarranted dangers.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Irregular Procurement of Yellow Fever Vaccines was as follows: -

- Documents have since been submitted to auditors for examination.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the documents were not provided.
- That there was no information on how the audit queries were addressed.

Committee Recommendation

The Committee recommends that;

- **The County Executive should blacklist suppliers involved in the delayed and unverified vaccine delivery.**
- **The County Executive Committee Member for Finance should take administrative actions against officers involved in the delayed and unverified vaccine delivery.**

4.15. Irregular Use of Restricted Tendering for Proposed Construction at Mama Lucy Kibaki Hospital – Phase II

Review of procurement records revealed that a contractor was awarded a contract for the proposed construction and completion works including associated mechanical, electrical and sewer works at Mama Lucy Kibaki Hospital – Phase II in 2021 at a contract sum of Kshs.344,100,000 through restricted tendering. The Accounting Officer approved use of restricted tendering on 12 March, 2021 which contained ten (10) firms proposed for invitation to bid using Section 102 (1) (a) and (b) of the Public Procurement and Asset Disposal Act, 2015 to justify the use of restricted tendering. However, Management did not demonstrate how the construction works were of specialized nature or the time and cost required to evaluate would be disproportionate to the contract price. By the time of audit in November, 2023, the contractor had been paid a total of Kshs.165,099,105. Physical inspection in November, 2023 revealed that the works had not been completed and the contractor was not on site.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Irregular Use of Restricted Tendering for Proposed Construction at Mama Lucy Kibaki Hospital – Phase II was as follows: -

- The procurement process for this project was undertaken by Nairobi Metropolitan Services (NMS) that had a fully-fledged Supply Chain Management directorate.
- The construction works were carried out in an NCCG-owned health facility.
- Upon the expiry of the term of NMS and restoration of the health functions to NCCG, NCCG budgeted for the completion of the remaining works of this project. However, the handing over process from NMS to NCCG has been slow resulting in re-allocation of the funds during Supplementary budgeting.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no justification given on the use of restricted tendering

Committee Recommendation

The Committee recommends that;

- **The County Executive to audit entire project, determine reasons for stalled works, and recover funds if contractor abandoned work.**

4.16. Irregular Procurement of Bitumen

The County Executive paid a supplier Kshs.33,000,000 and Kshs.14,730,000 respectively for supply and delivery of one thousand (1,000) drums of 200kg of bitumen. The units were supplied at a cost of Kshs.33,000 and Kshs.32,000 respectively all totalling Kshs.47,730,000. The contracts were executed through frame work agreement

which was signed on 22 June, 2023.

However, the following anomalies were noted;

- Although the supplies were made during the same duration, the prices were varied by Kshs.1,000 per drum resulting to a possible loss of Kshs.1,000,000.
- Physical inspection conducted on 5 October, 2023 revealed that the store keepers did not maintain a store received statement which is the official document for taking on charge supplies in the County Executive.
- Goods were inspected more than ten (10) days after they were delivered. The inspection and acceptance committee were appointed seven (7) days after the deliveries were made.
- The procurement method did not meet the conditions for the frame work agreement because there was no proof of competition as provided by Regulation 101(3) and 103(1) and (2) of the Public Procurement and Asset Disposal Regulations, 2020. It was therefore not clear how the company was selected from the two hundred and sixty-seven (267) bidders who were evaluated and recommended for consideration as per the professional opinion.
- Tender documents, tender opening minutes and attendance register, tender evaluation minutes and award were not provided for audit.
- Evaluation of the tender according to the professional opinion had nine (8) members instead of a maximum of five (5) as per Section 46(4)(b) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, Management was in breach of the law, and value for money on the expenditure of Kshs.47,730,000 could not be confirmed.

Management Response

The Management response to the audit query on Irregular Procurement of Bitumen was as follows: -

No management response submitted for review.

Committee Observation

The Committee made the following observation: -

- The Committee is deeply concerned that essential documents such as tender advertisements, opening and evaluation minutes, attendance registers, and contract award notices were not availed for audit scrutiny. This undermines transparency and accountability.
- The Committee notes that 1,000 drums of bitumen were procured at two different unit costs Kshs.33,000 and Kshs.32,000 during the same delivery period, resulting in a Kshs.1,000,000 discrepancy. No explanation or supporting approval was provided for this variation.

Committee Recommendation

The Committee recommends that;

- The County Executive must, within 60 days after adoption of this report, provide the missing procurement documentation. This is in line with Section 68(2)(e) of the Public Finance Management Act, 2012, which mandates accounting officers to maintain proper records for all financial transactions. Failure to comply shall prompt the Committee to recommend further investigation by the relevant oversight bodies.
- The County Executive to comply strictly with the legal requirements governing framework agreements. Officers responsible for bypassing competitive procedures should be investigated for possible breach of procurement laws.
- The County Executive should ensure inspection committees are formed before delivery, and that inspections happen immediately upon receipt of goods. Disciplinary action should be considered for those who failed to uphold these standards.
- Immediate administrative action should be taken against the responsible officers, and all store personnel should undergo refresher training on inventory management and record keeping in line with Section 68(2)(b) of the PFMA.
- The County Executive must adhere to the composition limits for evaluation committees. Any officer responsible for this irregularity should be held accountable to prevent future non-compliance.

- Mandatory capacity-building sessions should be organized for procurement officers and user departments on the provisions of the Public Procurement and Asset Disposal Act, 2015, and the PFMA, 2012.
- The County Executive is directed to submit an annual procurement compliance report to the Assembly detailing all framework agreement procurements, supported by full documentation and compliance certifications.

4.17. Irregular Procurement of Fresh Milk

The contract for supply and delivery of fresh milk was procured through framework agreement for supply of three hundred and thirty-three thousand three hundred and thirty-three (333,333) cartons of fresh Milk 200ml to the Early Childhood Centre's at a unit price of Kshs.36. However, the following were noted;

- The professional opinion was issued on 11 November, 2022 indicating that the tender attracted 2 bidders contrary to Section 14(c) of the Public Procurement and Asset Disposal Act, 2015 which states that a minimum of seven alternative vendors is included for each category.
- The contract agreement was entered into between the Company and the County Executive on 21 June, 2022 before the professional opinion was issued and approved.
- The goods were received in the stores, taken on charge and issued for use before inspection and acceptance committee report.
- The lowest bidder quoted a unit price per packet of milk at Kshs.23.50 and the County Executive could have saved Kshs.4,089,501 had the lowest bidder been awarded the contract.
- Minutes of the tender opening and attendance register and distribution schedules showing where the milk was issued to were not provided for audit.

In the circumstances, Management was in breach of the law.

Management Responses

- This was an open tender that was published in www.tenders.go.ke on 12th October 2021 copy attached and marked as appendix 8A and only two bidders responded as evidenced in the opening and evaluation minutes copy attached and marked as appendix 8B
- The contract agreement was entered into between the company and the county on 21st June 2022 before the professional opinion was issued and approved

Management Response

- Professional opinion was signed on 11th November 2021 as per attached copy marked as Appendix 8 B.

- The goods were received in the stores, taken on charge and issued for use before inspection and acceptance

Management Responses

- Milk was delivered directly to the schools and inspected at the school level between 9th and 15th of November 2022 as evidenced by photographic evidence marked as Appendix 9A. This is because milk is perishable and the department lacked capacity to distribute to different schools' due enormity of the goods hence the supplier eased the distribution burden. Therefore, after confirmation of suitability of the milk at the schools' level, a certificate of inspection was raised on 29th November 2022 a copy of which is attached and marked as Appendix 9B and that of Store Issue Voucher (SIV) Marked as Appendix 9C
- The two bidders Brookside Dairy Ltd and Corporate Transfer Solutions at a unit price per packet of milk at kes 23.5 and 36. The county could have saved kes 4,081,509 had Brookside company been awarded the tender.

Management Responses

- Brookside were given an LPO but declined the offer Vide letter dated May 11th 2022 which is attached and **marked Appendix 10**
- Minutes of the tender opening and attendance register were not provided. Tender evaluation and award minutes were also not available for audit review

Management Responses

Attached as Appendix 8B are the Minutes of the tender opening, Tender evaluation and award committee as well as attendance registers

- Examination of stores records at the general stores shows that the milk was received and entered in the stores received statement, however, no stores issue voucher in relation to dispatch which is a deviation from stores procedures and processes. As such we could not confirm whether the food staff was requisitioned from the stores and that the products were delivered to the stores

Management Responses

Attached are the Store Issue Voucher SIV Marked as Appendix 9C and Store Received Statement Marked as Appendix 11

- Further, there was no distribution schedule showing where the milk was issued and consumed.

Management Responses

The Milk Distribution list is Attached as Appendix 12

Committee Observation

The Committee while interrogating the management response made the following observation: -

Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.

- That in Appendix 8B to support open tender was not provided
- That in Appendix 8B to support Professional opinion was not provided
- That in Appendix 9A on inspection was not provided

Committee Recommendation

The Committee recommends that;

- **The County Executive should enforce procurement reforms to prevent premature contracting and ensure proper recordkeeping.**
- **The County Executive Committee Member for Finance should investigate and recover losses from non-compliance with competitive pricing.**

4.18. Anomalies in Provision of Legal Services

Review of payment vouchers totalling Kshs.375,941,154 relating to legal services and paid during the year revealed various anomalies as follows;

1032.1 High Court Civil Case NO. 1581 of 2014 Between a Limited Company Versus City Council of Nairobi

Review of payment voucher in respect to a law firm for case no. HCCC No. 1581 of 2014 between a limited Company versus Nairobi City County amounting to Kshs.34,115,600. However, the contract between the advocate and the County Executive was not provided for review. On 18 December, 2014 the legal affairs department issued a demand for rates

and interest on land Account amounting to Kshs.5,374,751. The plaintiff went to court to contest the demand for the rates and interest. The lawyer through the defendant (Nairobi City County) was asked to defend the case and they claimed that the plaintiff was there illegally on that parcel of land and forwarded the case to the Criminal of Investigation Directorate. The fee notes of Kshs.80,000,000 charged by the advocate representing the case was not clear as the subject matter rate and interest was of Kshs.5,374,751.

Further, the advocate raised a fee note of Kshs.80,000,000, in 2015 but the County Executive Attorney revised the fee note to Kshs.34,115,600. However, this note was not supported with an itemized fee note, an assessment of the fee notes by a council appointed by the County Attorney, a memo or report to the County Attorney from the appointed Council on the fee note raised, communication to the advocate of the revised fee note, acceptance of the revised fee notes by the Advocate.

In addition, the County Executive changed the case from demand notice for fees and interest to a case of illegal ownership of property. It was also not clear how the County Executive demanded for fees and interest on land that they claimed belonged to the County Executive and not the plaintiff. The current

status of the legal case is unclear as the lawyer was paid based on records dated 22 December, 2014 to 6 March, 2015.

4.18.1 Environment and Land Court No. 248 of 2021

Review of payment voucher in respect to Advocates firm for case no. ELC No. 248 of 2021 between an individual versus Nairobi City County and Others amounting to Kshs.47,000,000 had the following observations;

- The procurement process of contracting the advocate was not provided for audit review.
- Although Management explained they obtained their legal service from the prequalified list of suppliers, the list of approved prequalified supplier in the financial year 2021/2022 was not provided for audit review.
- The contract between the advocate and the County was not provided for audit review.
- The Advocates firm were instructed to act without the instructions being itemized.
- On 15 March, 2022, the advocate raised a fee note of Kshs.77,871,500, on 22 March, 2022 the County Executive Attorney revised the fee note to Kshs.47,000,000, which was not supported by itemized fee note, an assessment of the fee note by a council appointed by the County Attorney, a memo or report to the County Attorney from the appointed Council on the fee note raised, acceptance of the revised fee note by the advocate. A handwritten piece of paper that was not signed in the file purports that the advocate accepted the revised fee note but a letter from the advocate was not provided for audit review.
- On 5 July, 2021 the plaintiff took the City County Executive of Nairobi as the first defendant and an individual as the second defendant. The plaintiff claimed to have purchased the property plot in Kayole Nairobi then the 1st defendant repossessed it and issued it to the County Executive 2nd defendant. A fee notes of Kshs.77,871,500 was raised by the advocate representing the County Executive. However, no evidence was provided to show how the fee note was arrived at as the subject matter is the land, the subject matter valuation report was not provided for audit and it is not clear how the County Executive issued one parcel of land to two separate individuals thus leading to a lawsuit.

The current status of the legal case was not provided for audit review.

4.18.2 Environment and Land Court No. 018 of 2022

Review of payment voucher in respect to a law firm for case no. Environment and Land Court No. 018 of 2022 between an individual and others versus National Land Commission and Nairobi City County amounting to Kshs.57,777,554 had the following observations;

- The procurement process for contracting the Advocate was not provided for review.
- Although Management explained they obtained their legal service from the prequalified list of suppliers, the list of approved prequalified supplier in the financial year 2021/2022 was not provided for review.
- The contract between the Advocate and the County Executive was not provided for review.
- The ruling provided for review was not certified.
- Sometime in 1989 the Commissioner of Lands (now National Lands Commission) acquired land for construction of Ndaka-ini dam to provide water to Nairobi City and its environs. The following was however noted;
- The fee notes of Kshs.57,777,554 was charged by the advocate representing, the County Executive. However, no evidence was provided for review to establish how the fee note was arrived.
- The matter on hand is compensation of Ndakaini petitioners who were displaced during construction of the dam. A letter written on 8 December, 2022 from the petitioner's lawyer, claimed that the Commissioner of Lands now National Lands Commission came up with a compensation scheme. It is therefore not clear how the Nairobi City Council Now Council Executive of Nairobi City was enjoined in the agreements with the petitioners.
- Further, a gazette notices 3593 of 12 August, 1988 gave notice for acquisition of land for Third Nairobi Water Project and listed the registered owners, plot no, sub location and approximate acreage to be acquired. The same gazette states that plan for the affected land may be inspected during office hours at the Commissioner of Lands. It is not clear how County Executive is a respondent and paid Kshs.57,777,554 in legal fees. Further, the agreements were not provided for review.
- A letter from Ministry of Lands, Housing and Urban Development indicated that the Commissioner of Lands issued an award to the interested persons in the land which they rejected. The letter further indicates that there was a decree issued on 18 March, 2010 and the letter instructed the County Executive to pay compensation to the affected land owners. However, the decree mentioned above was not provided for review.
- The land appeals attached dated 1989 indicated the appellant and the respondent was Commissioner of Lands. However, the current status of the legal case was not provided for review.

4.18.3 Environment and Land Court No. 176 of 2021

Review of payment voucher in respect to an Advocate Company for case no. Environment and Land Court No. 176 of 2021 between an individual versus Nairobi City County Executive amounting to Kshs.67,048,000 had the following observations;

- The procurement process for contracting the advocate was not provided for review.
- Although Management explained they obtained their legal service from the prequalified list of suppliers, the list of approved prequalified supplier in the financial year 2021/2022 was not used.
- The contract between the advocate and the County Executive was also not provided for review.
- The Advocates Company were instructed vide letter was dated 12 November, 2021, however, the instructions were not itemized.
- On 12 November, 2021, the same day the advocate was issued with instruction, an interim fee note of Kshs.100,000,000 which was raised on 18 November, 2021 the County Attorney revised the fee note to Kshs.67,048,000 which was however not supported by; an itemized fee note, an assessment of the fee note by a council appointed by the County Attorney. Memo or report to the County Attorney from the appointed Council on the fee note raised. Communication to the advocate of the revised fee note actual acceptance of the revised fee note by the Advocate were not provided for review.
- On 8 November, 2021 an individual filed a suit against the County Executive for not being shortlisted for recruitment as a traffic Marshall. The following unsatisfactory matters were however noted;
- The fee notes of Kshs.100,000,000 charged by the advocate representing the case was calculated based on a general assumption that all the short-listed applicant were conjoined in the suit as opposed to an individual.
- The fee note was based on a subject matter which is the possible loss of an aggrieved individual traffic Marshall salary therefore the basis of payment could be confirmed.
- The detailed service provided by the lawyer upon which the fee note based was not been provided for audit and the current status of the legal case was not provided.

4.18.4 Environment and Land Court No. 379 of 2018

Review of payment voucher in respect to a law firm for case no. Environment and Land Court No. 379 of 2018 between a law firm versus Nairobi City County amounting to Kshs.50,000,000 had the following observations;

- The procurement process for contracting the Advocate was not provided for audit review.

- Although Management explained they obtained their legal service from the prequalified list of suppliers, the list of approved prequalified supplier in the financial year 2018/2019 financial year was not used.
- The contract between the Advocate and the County Executive was not provided for review.
- The law firm were instructed vide letter dated 5 November, 2019, however, the instructions were not itemized but the law firm claimed that they had been handling the case without formal instructions in October, 2018 and November, 2019.
- On 19 February, 2020, the law firm raised a fee note of Kshs.129,072,834, on 19 February, 2021 the Acting County Solicitor revised a fee note to Kshs.111,050,000, and the lawyer accepted on 22 February, 2021 a revised amount of Kshs.114,859,000 thus the adjustment was not supported by an itemized fee note, an assessment of the fee notes by a council appointed by the County Attorney. Memo or report to the County Attorney from the appointed Council on the fee note raised. Further, there was a variance between the County Executive's revised fee note of Kshs.111,050,000 and the acceptance of the fee note by the Advocate of Kshs.114,859,000.
- The current status of the legal case was not provided for review.

4.18.5 Petition No. E047 of 2021

Review of payment voucher in respect of an individual and an Advocates firm for case no. Civil Appeal No.563 of 2019 Kenya County Government Workers versus Nairobi City County Executive amounting to Kshs.70,000,000 had the following observations;

- The procurement process for contracting the Advocate was not provided for audit.
- Although Management explained that they obtained their legal service from the prequalified list of suppliers, the list of approved prequalified suppliers in the financial
- year 2018/2019 was used.
- The contract between the Advocate and the County Executive was not provided for review.
- The advocates were instructed vide letter dated 21 December, 2019, however, the instructions were not itemized.
- On 19 December 2019, the advocate raised a fee note of Kshs.145,000,000, on 25 January, 2022 while the Acting County Solicitor revised the fee note to Kshs.70,000,000, and the lawyer accepted on 25 January, 2022 to the revised amount of Kshs.70,000,000. However, this revision was not supported by an itemized fee note, an assessment of the fee notes by a council appointed by the County Attorney and a memo or report to the County Attorney from the appointed Council on the fee note raised.

- On 27 May, 2019 an appeal was made by Kenya County Government workers Union against the County Executive. The same lawyer had represented the County
- Executive in the suit and won, however, the Petitioner appealed the case. The same lawyer who represented the County Executive in the suit was instructed to represent the County Executive in the appeal. However, the fee notes of Kshs.145,000,000 was not based on a subject matter, rather on an opinion that since the advocate won the suit, the County Executive should consider his service at a fee note. The detailed service provided by the lawyer upon which the fee note is based was not provided for audit.
- The current status of the legal case was not provided for review.

4.18.6 Civil Appeal No.563 of 2019

Review of payment voucher in respect to a law firm for Petition No. E047 of 2021 on an individual versus the Council of Governors and fifty-two (52) Others amounting to Kshs.30,000,000 had the following observations;

- The procurement process of contracting the Advocate was not provided for audit.
- Although Management explained they obtained their legal service from the prequalified list of suppliers, the list of approved prequalified supplier in the financial year 2021/2022 was not used.
- The contract between the Advocate and the County Executive was not provided for review.
- The legal firm was instructed vide letter dated 20 April, 2021, however, the instructions were not itemized.
- On 21 October, 2021, the advocate raised a fee note of Kshs.116,100,000 on 11 February, 2022 while the Acting County Solicitor revised the fee note to Kshs.63,850,000. However, this revision was not supported by an itemized fee note, an assessment of the fee notes by a council appointed by the County Attorney and a memo or report to the County Attorney from the appointed Council on the fee note raised.
- A case was filed by a petitioner in the matter of public interest litigation, alleged threats, and securing some of Kshs.120 billion of County Government Workers' Pension funds and implementation of the County Government Retirement Scheme. A fee notes of Kshs.116,100,000 was charged by the Advocate, however, it was not clear how the fee was arrived at. The detailed service provided by the lawyer upon which the fee note is based was not provided for review.
- The current status of the legal case was not provided for review.

4.18.7 High Court MISC Application No.123 of 2017

Review of payment voucher in respect of an Advocate's firm for case No. High Court MISC No.123 of 2017 amounting to Kshs.20,000,000 as part of decretal fees. However, the certified decree and the *Report of the Public Accounts Committee on the consideration of the report of the Auditor General on the Financial Statements of the Nairobi City County Executive for the Financial Year 2022/2023.*

current status of the legal case was not provided for audit. This was contrary to Revised Edition (2012) of the Civil Procedure Act Chapter 21 Section 1B which states that the Duty of Court (1) For the purpose of furthering the overriding objective specified in Section 1A, the Court shall handle all matters presented before it for the purpose of attaining the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative . In the circumstances, Management was in breach of the law and value for money in respect of legal services could not be confirmed.

Management Response

1. PENDING BILLS RELATING TO LEGAL EXPENSES

For the period under review, the listed files were queried;

- 1. HC CONST PET NO E299 OF 2020; OFFSHORE TRADING COMPANY LIMITED -VS- NCC & OTHERS**
- 2. HC CONST & HR PETITION NO 343 OF 2019; AFRISON EXPORT IMPORT LIMITED & ANOTHER -VS- NCCG & 2 OTHERS**
- 3. NRB HC PETITION NO 1874 OF 1998; GEORGE GIKUBI MBUTHIA -VS- CITY COUNCIL OF NAIROBI**
- 4. HCCC NO E212 OF 2021; STEPHEN MURAI MBUGUA -VS- NCC & OTHERS**
- 5. PETITION NO E348 OF 2020; NAIROBI CITY COUNTY -VS- NMS & OTHERS**
- 6. HC PETITION NO 421 OF 2016: NCCG -VS- KPLC LIMITED**
- 7. NRB HC COMM NO E140 OF 2020; HARDI ENTERPRISES LTD -VS- NCCG**
- 8. JR NO 2010 OF 2018: LORDSHIP AFRICA LTD VS NCC**
- 9. Milimani ELC NO 514 OF 2018; MOSIARA TRADING CO. LTD -VS- NAIROBI CITY COUNTY & OTHERS**

The following are the responses to the specific issues raised by the Auditor General in the sampled files for the period under review:

a. HC CONST PET NO E299 OF 2020; OFFSHORE TRADING COMPANY LIMITED - VS- NCC & OTHERS

- The petitioner claims ownership of LR NO 12979/3 measuring approximately 404.58ha situated in Ruai Area, Nairobi County where it claims it has a leasehold of 99years whereas Nairobi County was claiming it was part of the Dandora Estate Waste management plant. The said property is located within Nairobi County. The Petitioner was seeking to recover the land or on the alternative, compensation for Kshs. 15.7 billion being the cost of the disputed land and consultancy fees incurred in respect of the suit property. The county instructed the Firm of Oyaro

& Company Advocates to defend its interests in this matter. The Advocates raised a fee note of Kshs. 232,058,000 which was assessed at Kshs. 136,764,000. So far, the firm has not been paid any amount. The judgement will be rendered on 25th of April 2024.

— Relevant documents are as per **Annexure 1:**

- a) Pleadings in form of an amended Petition and submissions;
- b) The instruction letter;
- c) The Advocates fee note;
- d) The minutes of the assessment committee;
- e) The Assessed fee note;
- f) The acceptance of the assessed amount

b. HC CONST & HR PETITION NO 343 OF 2019; AFRISON EXPORT IMPORT LIMITED & ANOTHER -VS- NCCG & 2 OTHERS

— This case involves land registration No. LR NO 7879/4 situated in Ruaraka and measuring 96 acres.

— The Petitioner claims to be the Proprietor of the said land and allege to have borrowed money to facilitate development of the property from Continental Credit Finance Limited (Chargor). It further averred to have entered into a second charge with Kenya

— Post Telecommunication Corporation (KPTC) to construct 1200 mansionates. That only 196 units were completed when the County Officers forcibly entered and assumed occupation of the land illegally demarcating and allocating portions of the land to themselves and other private developers thereby violating the proprietors' constitutional rights to property.

— The petitioners sought several orders amongst them general damages, compensation of Kshs.13,600,000,000 being loss of rental income and interests thereon, compensation of 22.3billion being market value of the property and costs. The total claim being Kshs. 35.9Billion.

— The county appointed the firm of Musyoki Mogaka Company Advocates to defend it in the matter. The firm brought a fee note of Kshs 1,571,168,766 which was assessed at Kshs 1,546,186,666.

— Only Kshs 50,000,000 was paid in 2020. However, the fee note has been recommended for re-assessment.

— Relevant documents are as per **Annexure 2:**

- a) Pleadings in form of a Petition;
- b) Fee note
- c) Assessed fee note

d) Voucher of Kshs 50,000,000.

c. NRB HC PETITION NO 1874 OF 1998; GEORGE GIKUBI MBUTHIA -VS- CITY COUNCIL OF NAIROBI

- The matter emanates from alleged demolitions of the Plaintiff's structures by the council in a plot known as 36/11/1 situated in Eastleigh Area in Nairobi. The court found that the Plaintiffs structures were illegally demolished and judgment was entered against the county and Orders for compensation issued.
- Several payments have been made over the years which amount could not reduce the decretal amount as the interest kept on accumulating. In the year 2018, the county
- established a taskforce to scrutinize the pending bills. The decree holder submitted a claim for the same seeking a total of Kshs 9,650,166,141.
- The Prof P.L.O Lumumba Committee examined the claim and informed the same to be genuine and payable. The decree holder and his advocates negotiated on the amount that could be paid in order to bring the matter to a conclusion. The parties agreed on Kshs 1,352,657,967 which was to be paid for the whole dispute to be marked as settled. From the records, only Kshs 30,000,000 was paid on 20th of April 2022 leaving a balance of Kshs 1,322,657,967. This was not a fee owed to a firm of Advocates but a decretal amount.
- Relevant documents are as per **Annexure 3**:
 - a) Letter from P.L.O Lumumba dated 13th November 2018;
 - b) Letter from CECM Finance to COB;
 - c) Payment voucher for 30,000,000

d. HCCC NO E212 OF 2021; STEPHEN MURAI MBUGUA -VS- NCC & OTHERS

- The suit is concerning alleged negligence of the county over the various fires that has gutted Gikomba Market on diverse dates and in which the Plaintiffs sought a compensation in the sum of Kshs. 20,000,000,000. Due to the complexity and the number of Plaintiffs involved, the county appointed four firms of Advocates; i.e.
 - i. Wambugu Advocates
 - ii. Mugoye Advocates
 - iii. Modi & Company
 - iv. Umi Bashir Advocates
- The firm of Modi & Company Advocates was appointed as the lead Counsel to defend it in the matter. The firm sent a fee note of Kshs 1,044,348,000 which was subsequently verified at the same amount but it has however been recommended for re-assessment. Kshs 40,000,000 has

however been paid to the Firm of Umi Bashir and company Advocates. The entire file has been recommended for re-assessment.

— Relevant documents are as per **Annexure 4:**

- a) Pleading in form of a Plaintiff;
- b) Letter of instruction to Modi;
- c) Letter of instruction
- d) Fee notes from Modi
- e) Payment voucher

e. PETITION NO E348 OF 2020; NAIROBI CITY COUNTY -VS- NMS & OTHERS

- The matter was filed as a petition where the County sought for nullification/revocation of the Nairobi City County Appropriation Act 2020/2021 providing for a budget of Ksh 37,704,976,281/= the issue at hand was on the allocation of money to Nairobi City County, Nairobi Metropolitan Service and the County assembly.
- The firm of Kwanga Mboya and Company Advocates was instructed to prosecute the matter and protect the interest of the county via a letter of instruction dated 22nd December 2020. They raised a fee note of Kshs 1,250,485,000/= however the county assessed the fee to Kshs 983,571,780.57/= as per our letter dated 7th November 2022.
- The assessed fee has since been partly paid to the sum of kshs 55,000,000/=, the said was paid via a raised payment voucher No. 0045528 leaving a balance of Ksh 928,571,780.57/= which is yet to be paid.
- Relevant documents are as per **Annexure 5:**

- a) Fee Note
- b) Assessed fee note
- c) Instruction letter
- d) Payment voucher

f. HC PETITION NO 421 OF 2016: NCCG -VS- KPLC LIMITED

- The County Government of Nairobi instructed the firm of OTIENO Ogola & Co advocates to institute the petition to challenge the demand of Kshs 732,017,002.20 by Kenya power on outstanding electricity bill and to prohibit them from disconnecting electricity and demanding payment of the said amount
- The fee raised by the Advocate was Kshs. 38,895,960 which was assessed at Kshs 25,767,722.00 out of which Kshs. 13,000,000 has been paid. After payment of the 13 million, the file was

recommended for re-assessment and the same amount deemed to be sufficient and communicated to the Advocate.

— Relevant documents are as per **Annexure 6:**

- a) Fee note
- b) Assessed fee note
- c) Letter of re-assessment
- d) Letter disputing the re-assessment
- e) Reconciliation indicating that 13Million was paid
- f) Letter of instruction

g. NRB HC COMM NO E140 OF 2020; HARDI ENTERPRISES LTD -VS- NCCG

- The Plaintiff sued NCCG with regards to Contract No NCC/WEFE and NR/DP/276/2017-2018 for Hire of Heavy Equipment and Vehicles.
- It contends that NCCG has breached the said contract by failing to perform their obligation to pay the Plaintiff a sum of Kshs 358,844,975.58 for contractual services rendered.
- The contractual services were valued at Kshs. 948,986,822.13 and the county settled Kshs 590,141,916.55 leaving an outstanding balance of Kshs 358,844,975.88 which is the subject matter of the suit.
- The advocate raised a fee note of Kshs 52,200,000 out of which Kshs 10,000,000 has been paid.
- Relevant documents are as per **Annexure 7:**
 - a) Raised fee note
 - b) Payment voucher
 - c) Decree and taxation Notice
 - d) Ruling to pay Kshs 358,844,975.88

h. JR NO 2010 OF 2018: LORDSHIP AFRICA LTD -VS- NCC

- The suit relates to alleged breach of contract where the applicant contends that the County failed to execute the Joint Venture agreement after successfully bidding for the redevelopment of the old housing estates within Nairobi.
- The Firm of Okundi & Advocates was instructed to take conduct of the matter, filed a Notice of Change of Advocates and thereafter served a fee note in the sum of Kshs. 1,480,081,093 which was subsequently assessed at Kshs 505,069,139.60.
- The said fee note shall be subjected to re-assessment.
- Relevant documents are as per **Annexure 8:**

- i. Raised fee note

ii. Assessed fee note

i. Milimani ELC NO 514 OF 2018; MOSIARA TRADING CO. LTD -VS- NAIROBI CITY COUNTY & OTHERS

- The plaintiff in this matter alleged that it was granted conditional approval to construct mansionates 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. 45,227,643,474, together with the general damages for wrongful destruction of property. The firm of Miler & CO. Advocates was instructed to represent the county in this matter on 14th December 2018 vide letter ref: LA/M/687/18. The Advocate filed memorandum of appearance, on 17th December 2018
- They subsequently filed a defence on the 18th of January 2019 and the application to amend the defence on 3rd April 2019. They kept the County posted on all developments.
- It 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.
- Relevant documents are as per **Annexure 9**:
 - a. Letter of instructions
 - b. Acceptance of instructions
 - c. Fee note raised dated 16th October 2019
 - d. Assessed fee note

17.1 IRREGULAR PROCUREMENT OF LEGAL SERVICES

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

- 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 and every 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”
- In the same matter, the Honourable Judge observed that Advocates occupy a special position amongst professionals and are strictly guided by the very elaborate provisions of the Advocates Act, Orders and Rules and are restricted to advertise or compete with other co – Advocates. In excluding the Public Procurement of Legal services from the general Public Procurement process for consultancy services under the Public Procurement and Asset Disposal Act, the Honourable Judge elaborated that the inclusion of service of an Advocate to be procured by advertising and the procurement process involves the breach of the provisions of the Advocates Remuneration Order as well as the Advocates (Practice Rules).
- In essence, legal professions i.e. Advocates, should not participate in a bidding process and the price competition that comes with it. Legal service providers should not be selected on the basis of the fees to be charged for the legal services to be rendered as the charging of legal fees and the provision of legal services by Advocates, follows the Advocates Act, the Advocates Remuneration Order, the Advocates Practice (Rules) and the Advocates (Marketing and Advertising) Rules. Otherwise, participating law firms may be subjected to or even find

themselves engaging in illegality and professional misconduct by undercutting legal fees and soliciting and touting in order to win in the tender bidding process.

- The legal framework for the public procurement of consultancy services in Kenya, under PPADA 2015, PPADA 2020 and the procuring public entities should therefore be aware of and take into consideration the tenets of the legal profession that demand special exception in the public procurement of the legal services. As a result, it is imperative that express exemptions of legal service providers from the normal tender bidding process, that is done on cost basis and promises and actions that go against the Advocate Act, the Advocates Remuneration Order, the Advocates Practice (Rules) and the Advocates (Marketing and Advertising) Rules are put in place and adhered to.
- 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's 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 forbid 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.

- All the relevant prequalification lists for the Advocates are attached as **Annexure 38.1**.

17.2 PAYMENT FOR LEGAL SERVICES

Review of payment vouchers totalling **Kshs.375,941,154** paid during the year and provided for audit review revealed various anomalies.

RESPONSE.

The files queried for the financial year under review were:

10. HCCC 1581 OF 2014;

YELLOW HORSE INN LTD-VS-NAIROBI CITY COUNTY

- The brief facts of this case are that the County served rates demand notice dated 18/2/2014 upon the plaintiff claiming rates arrears of Kshs. 5,374,751. The plaintiff moved to court challenging the amount and seeking Orders that the County render proper accounts for rates payable by the plaintiff in respect of L.R. NO 209/11803/2.
- However, as the matter was still pending in court, new evidence arose that the Plaintiff was not the owner of the property and the same was subject to investigations as the Plaintiff was alleged to have forged ownership documents of the subject property. The subject land had been allotted to Nduachi Company Ltd which company also made an application to be enjoined as an interested party.
- Therefore, as the matter progressed, the subject matter changed from defending the compensation of rates payable to issue of ownership and therefore value of the subject matter was relevant in determining the Advocate's fees.
- The County instructed the firm of Momanyi and Associates to defend the matter in court vide an instruction letter dated 5th January 2015.
- The instruction letter forwards the Pleadings, instructs the advocates to take the conduct of the matter and defend the County's interest, and specifically provides that the fees shall be paid in accordance with the Advocate's remuneration Order.
- The Advocates were on the prequalified list and the same as evidenced by the provided list and the letter of award.
- The revised fees were communicated to Advocates on 16th July 2015 and the same is itemized.
- The matter began as a demand for rates but later progressed to ownership disputes when the investigations of forgery arose and also the emergence of an interested party claiming the same property.

— Relevant documents are as per **Annexure 10**:

- 1) Instruction letter.
- 2) Fee Note dated 9th July 2015.
- 3) Assessment of fees letter dated 16th July 2015.
- 4) Acceptance letter dated 5th July 2017.
- 5) Prequalification letter of appointment dated 13th August 2013
- 6) Acceptance of prequalification dated 3rd September.
- 7) Investigation report dated 1st October 2012.
- 8) Pleadings in the form of Application for enjoinder of 3rd Party
- 9) Affidavit of Newton Mung'ala
- 10) Affidavit of Karisa Iha

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the contract documents were not provided
- That the basis for the fee note charged of Kshs.80m was not provided
- That the basis for the revised fee note of Kshs.34,115,600 was not provided
- That there was no explanation on why the County could demand fees and interest on land it claims ownership
- That the current status report was not provided

11. ELC No E 248 OF 2021

JOHN PETER MAINA KAMAU VS NAIROBI CITY COUNTY AND ANOTHER

- The matter relates to allocation and alleged repossession of Plot No. 306 Kayole by the county whereby the Plaintiff claiming to be the beneficial proprietor sued the county seeking several reliefs from the County among them a declaration that the property belongs to him and damages.
- The firm of JAMAL BAKE and Associates Advocates was instructed to defend the interest of the county in this matter through an instruction letter dated 10th February 2022.
- The firm requested for a legal fee of Ksh 77,871,500/- via a fee note letter dated 15th March 2022. However, on review the same was assessed at Ksh 47,000,000/= via a letter dated 22nd March 2022 and received on the same date. The firm of Advocates accepted the same via their letter dated 22nd March 2022.
- The matter is still alive in court and the Advocate is ably representing the interest of the county. The matter is still pending in court.
- Relevant documents are as per **Annexure 11**:

- a) Instruction letter
- b) The itemized fee notes raised by the Firm
- c) The assessed fee notes
- d) Acceptance of the assessed fee note

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no information on how the advocate was identified. List of pre-qualified suppliers was also not provided.
- That the contract documents were not provided
- That the instructions were not itemized
- That the basis for the revised fee of Kshs.47m was not provided
- That the subject matter valuation report was not provided

12. ELC PETITION NO. E018 OF 2022:

HUMPHREY CHRISPUS MWANI AND OTHERS – VERSUS - NATIONAL AND COMMISSION AND NAIROBI CITY COUNTY.

- The matter relates to compulsory acquisition of land within Ndakaini area in Murang'a for the purposes of construction of the Third Nairobi Water Project to provide water to Nairobi and its Environs. This was initiated by the City Council of Nairobi through the Commissioner for Lands in 1989. The land owners however rejected the awards as outlined by the Commissioner and appealed via High Court Land Acquisition Appeals No. 1-89. The appeals were settled by consent but were never paid.
- In the current petition ELC PETITION E018 OF 2022; the petitioners sought a cumulative compensation of **Kshs 113,659,911** together with interests at the rate of 12% per annum from 1989 which brings the amount to **Kshs. 450,093,247.56**.
- The audit query in this matter relates to a payment of KShs. **57,777,554** paid to J. W. Wachira and Co. Advocates on **17th July, 2023**.
- The said firm of Advocates was instructed vide a letter dated **27th May, 2022** which basically asked them to defend the interests of the county in the said matter.
- The correct position is that the firm of J. w. Wachira and Co. Advocates raised a fee note of Kshs. **123,577,600** dated **2nd June, 2022**. On **7th June, 2022**, the fees were assessed at **Kshs.57,777,554.66**. Vide a letter dated **15th June 2022**, the Advocates accepted the assessed legal fees.

- The Advocate's fees were assessed in compliance with the provisions of the Advocates Remuneration order, 2014 in consideration of the orders sought in the petition.
- The matter is now scheduled for delivery of judgement on 28th February, 2024.
- Relevant documents are as per **Annexure 12**:
 - a) Letter of instructions
 - b) Itemised fee notes from the Advocate
 - c) Assessed itemized fee note
 - d) Acceptance of assessed legal fees
 - e) Decree in Misc App 443 of 2017.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no information on how the advocate was identified. List of pre-qualified suppliers were also not provided.
- That the contract documents were not provided
- That the instructions were not itemized
- That the basis for the revised fee of Kshs.57,777,554 was not provided
- That there was no evidence whether the County was enjoined in the agreements
- That the current status was not provided

13. ELRC NO. E176 OF 2021

NELSON MWENDWA PAUL – VS- NAIROBI CITY COUNTY & 3 OTHERS

- On 12th November, 2021, Nairobi City County instructed Gikunda Miriti & Co. Advocates to act on its behalf. The suit was instituted vide a Petition alleging that the Nairobi City County Public Service Board (NCPSB) had embraced malpractices and bribery in short-listing candidates for advertised vacant positions such as Traffic Marshalls.
- The interim fee note raised by the Advocate was Kenya Shillings One Hundred Million (Kshs. 100,000,000/=) which was then assessed by the County Attorney's office and an amount of Kenya Shillings Sixty-Seven Million (Kshs. 67,000,000/=) was offered which the Advocate accepted. The County generated a payment voucher of 67,000,000 and the same was approved on 20th June, 2023 and subsequently paid to the Advocate.
- The matter has been concluded in favor of the county.
- Relevant documents are as per **Annexure 13**:
 - a) Instructions Letter dated 12th November, 2021.
 - b) Acceptance letter to defend the matter by the Advocate dated 12th November, 2021.

- c) An itemized fee note dated 12th November, 2021.
- d) An assessment of the fee note dated 18th November, 2021.
- e) Acceptance of the fee note by the Advocate dated 18th November, 2021.
- f) Payment voucher.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no information on how the advocate was identified. List of pre-qualified suppliers were also not provided.
- That the contract documents were not provided
- That the instructions were not itemized
- That the basis for the revised fee note of Kshs.67,048,000 was not provided
- That there was no report from County Attorney appointed council
- That Current status was not provided

14. CIVIL APPEAL NO. 379 OF 2018

MOMANYI & ASSOCIATES ADVOCATES – VERSUS – NAIROBI CITY COUNTY

- This appeal arose out of a decision delivered on 11th July, 2017 dismissing Momanyi & Associates Advocates' application to file a reference out of time.
- The said firm had filed a Bill of costs dated 17th March, 2016 seeking a sum of Kenya Shillings One Billion, One Hundred and Thirty Million, Five Hundred and Fifty Thousand, Two Hundred and Eighty-Eight and Fifty Cents Only (Kshs.1,130,550,288.50) after the County objected to settling the same.
- The firm (Momanyi) had defended the County in the High Court **Petition Number 315 of 2012 between Hon. Ferdinard Ndungu Waititu and City County of Nairobi and Attorney General.**
- In the course of the proceedings the firm raised an interim fee note of Kenya Shillings Nine Hundred and Sixty-Eight Million (Kshs.968,000,000)
- The firm of Mugoye and Associates successfully represented the County and on 3rd November 2016, a ruling was delivered taxing the Appellants, Bill of cost at Kenya Shillings One Million, three Hundred and Forty-Eight Thousand, Seven Hundred and Sixty-Eight Shillings (Kshs.1,348,768.03 from Kshs.1,130,550,288.50/=) saving the county a whopping Kshs.1,129,201,520/=.
- The appeal herein was a result of the dissatisfaction by the appellant and the firm of Mugoye and Associates, having been on record handling the matter, was served by the appeal and continued

to act awaiting formal instructions which were later proffered on 5th December, 2019 (letter attached).

- The procurement process of contracting the firm was vide a prequalification where the firm was picked from.
- The variance between the County's revised fee note and acceptance of the same was an error and has since been corrected.
- The fee note was based on the remuneration order that guides the fee payable to Advocates.
- The firm filed submissions, appeared in court several times and successfully tremendously reduced the same to 1M.
- Relevant documents are as per **Annexure 14**:
 - a) Instruction letter
 - b) The itemized fee note raised by the Firm
 - c) The assessed itemized fee note
 - d) Respondents written submissions

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no information on how the advocate was identified. List of pre-qualified suppliers were not provided
- That the contract documents were not provided
- That the instructions were not itemized
- That the basis for the revised fee note of Kshs.111,050,000 was not provided
- That there was no report from County Attorney appointed council
- That the current status was not provided

15. ELC PETITION N. E047 OF 2021

JANE WANJIRU MACHARIA – VS – COUNCIL OF GOVERNORS & 52 OTHERS.

- On 18th January, 2021, the Council of Governors through its Chair of Human Relation, Labour and Social Welfare Committee issued a circular in the daily newspaper outlining that the County Governments had resolved that in line with a letter dated 18/1/21, a resolution directing pensions for County Government employees LAPTRUST (DB) and LAPFUND Schemes to remit contributions to the County pension fund and/or not to remit contributions at the current rates to LAPFUND and as a consequence the County Government will not make remittances of their workers retirement benefit savings to LAPFUND in accordance to the law.

- The Petitioner prays for conservatory order restraining the Council of Governors from purporting to pass resolutions on the operations, remittances, contributions and/or rates of the existing pension and provident schemes at the Local Authorities etc.
- The instructions to Okubasu Munene & Kazungu Advcoates LLP were to defend the **48th Respondent** – Nairobi City County in a matter where the Petitioner sought to secure **Kshs.120Billion** of the County Government Pension Fund and implementation of the County Government Revenue Schemes Act, 2019.
- The Petition was dismissed on 28th February, 2023 in favour of the County.
- Relevant documents are as per **Annexure 15**:
 1. Instructions letter dated 20/4/21
 2. An itemized fee note dated 21/10/21
 3. An assessment of the fee note dated 11/2/22
 4. An acceptance of the revised fee note 18/1/22
 5. Ruling dismissing the matter in favour of the County dated 8th Day of November 2021

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no information on how the advocate was identified. List of pre-qualified suppliers were also not provided.
- That the contract documents were not provided
- That the instructions were not itemized
- That the basis for the revised fee note of Kshs.70m were not provided
- That there was no report from County Attorney appointed council
- That the current status was not provided

16. CIVIL APPEAL NO 563 OF 2019;

KENYA COUNTY GOVERNMENT WORKERS UNION & SALARIES AND REMUNERATION COMMISSION -VS- NAIROBI CITY COUNTY GOVERNMENT.

- The appeal arose from the County Government Workers Union seeking to enforce the collective bargaining agreement dated 5th May 2017 entered between itself and the Nairobi County where the collective bargaining agreement provided for an increment of county workers' salaries at between 8% - 50% translating to total sum of annual increment of 1.4Billion. The claimant was claiming this amount on behalf of the members.

- The firm of Kwanga Mboya & Company Advocates was instructed to defend them in respect to the claim. The firm had successfully defended the county in the High Court. The Appeal is still pending in court.
- Relevant documents are as per **Annexure 16**:
 - a) Pleading in the form of Memorandum of Appeal
 - b) Instruction letter
 - c) The itemized fee note raised by the Firm
 - d) The assessed fee note
 - e) Acceptance of the assessed fee note

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That there was no information on how the advocate was identified. List of pre-qualified suppliers was also not provided.
- That the contract documents were not provided.
- That the instructions were not itemized
- That the basis for the revised fee note of Kshs.63,850,000 was not provided
- That the detailed service provided by the advocate upon which the fee note is based was not provided
- That the current status was not provided.

17. MISC NO. 123 OF 2019:

PROF. TOM OJIENDA & ASSOCIATES -VS- NAIROBI COUNTY GOVERNMENT (Arising from MISC No. 3 of 2017, 123 of 2017, PET JR 109 of 2014 Hon. Gideon Mbuvi Alias Sonko Vs NCC)

- The originating file in this matter was **JR NO. 109 OF 2014: Hon Gideon Mbuvi Alias Sonko vs Nairobi City County & 3 Others.**
- When the firm of Prof. Tom Ojienda & Associates was not paid legal fees, they filed the bill of costs dated 13th December 2015 being Misc. App No 3 of 2016 Prof Tom Ojienda & Associates vs Nairobi City County. The decree awarded on the 17th of October 2017 in the amount of **Kshs. 75,000,000/= and interests at the rate of 9% pursuant to rule 7 of Advocates (Remuneration) Order** from the date of judgment till payment in full. It is out of this amount that Kshs. 20,000,000 was paid to settle part of the decretal amount.
- There still stands a balance of Kshs. 55,000,000 of the principal amount and interests that have accrued over time since the decree was not appealed. The appeal in this matter would have been

costlier to the county with very little chances of success since the County Government owed the Advocate.

— Relevant documents are as per **Annexure 17**:

a) The certified decree dated 17th of October 2017.

Committee Observation

The Committee while interrogating the management response made the following observation: -

— That the current status was not provided

Committee Recommendation

The Committee recommends that;

- The County Executive should mandatorily issue formal contracts or engagement letters for all legal services, clearly outlining scope, responsibilities, and expected deliverables.
- The County Executive should develop a standard operating procedure (SOP) for legal services engagement, including a checklist of documents that must be available for audit.
- The Office of the County Attorney should ensure that the panel of prequalified law firms is updated annually, and a rotation system for selecting legal service providers from this panel is implemented.
- An audit of the prequalification process should be done to confirm its compliance with relevant laws and the Advocates Act exemptions.
- The County Attorney's office must establish a Legal Fees Review Board internally (comprising independent legal experts and finance officers) to assess and justify all legal fee revisions and that Itemized fee notes and subject matter valuation reports must be submitted for all legal claims and payments.
- The County Executive should establish a central legal case management system to track all county litigation, costs, and case outcomes.
- The County Executive should submit to the County Assembly quarterly reports from the County Attorney summarizing ongoing cases, expenditure to date, and legal outcomes.
- The County Executive should consider alternative dispute resolution mechanisms (ADR) to minimize litigation costs.
- That future engagements must include a cost-benefit analysis and value-for-money justification for proceeding with external legal representation.

4.19. Irregular Procurement and Management of Security Services

The County Executive entered into a contract with a service provider for provision of security services to Early Childhood Development Education (ECDE) and other County Executive public centres during 2018/2019 financial year. Review of procurement documents revealed that there were no letters appointing the tender opening and evaluation committee. Tender opening minutes, tender opening attendance register and tender evaluation committee minutes were also not provided for audit. Further, the service provider was paid Kshs.16,800,000 on 13 March, 2023 for services rendered in the months of July and August, 2020. Another payment voucher of Kshs.42,000,000 paid to the same service provider indicating that the earlier payment related to services rendered for the months of April, May, June, July and August, 2020. The two payments include the months of July and August, 2020 an indication that the service provider was paid twice for the same services resulting possible loss of public funds totalling Kshs.16,800,000.

In the circumstances, value for money on the security expenditure incurred could not be confirmed.

Management Response

The Management response to the audit query on Irregular Procurement and Management of Security Services was as follows: -

- Magic Group of Companies was contracted to Supply Security Services to County Public ECDE Centers for two years from September 2018 to August 2020. The payment for the service rendered were not fully settled in the contract period hence generating a pending bill of kes 42,000,000.
- The Sector was able to raise a payment voucher No. 10461 for the balance of Kes 42M in the financial year 2020/21 which was not paid. **(See the attached Central Bank IB Stoppage Report Marked appendix 1).**
- In the FY 2021/2022, the sector was allocated a lesser budget to cover the outstanding balance hence only raised a payment voucher No. of Kshs.16,800,000 which was payment in relation to services rendered in the months of July and August 2020. The remaining balance will be settled in due course.
- This is therefore not a double payment but a partial payment based on the available resources.
- Procurement documents and muster rolls from the users are available and hereby attached for audit review. **(Appendix).**

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That letter appointing tender opening and evaluation committees was not provided.

- That the tender opening minutes, register and evaluation Committees' minutes were not provided.
- That a reconciliation of the amounts paid and the balance, if any, were not been provided.

Committee Recommendation

The Committee recommends that;

- **The County Executive should submit to the County Assembly a detailed reconciliation schedule of all payments made to Magic Group of Companies with supporting documentation (muster rolls, payment vouchers, attendance records) within sixty days after the adoption of this report.**
- **The Chief Officer responsible should be held accountable for oversight failures leading to potential double payment.**
- **The County Executive should ensure future payments adhere strictly to the provisions of Section 46(1) of the Public Procurement and Asset Disposal Act, 2015.**

4.20. Irregularities in Procurement for Consultancy Services

The Management entered into a contract with a service provider for consultancy services to develop a five-year strategic plan 2022-2026 and service charter for the Nairobi City Public Service Board on 6 April, 2022 at a cost of Kshs.20,000,000 for a period of two (2) months. However, no evidence was provided to confirm the scope of services contracted and rendered. Further, the same officers who opened the tenders also performed the functions of tender evaluation contrary to Section 46(1) of the Public Procurement and Asset Disposal Act, 2015. The Management did not provide evidence of expression of interest on the above consultancy.

In addition, no letters of notification to unsuccessful bidders were provided for audit contrary to Section 87(3) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Irregularities in Procurement for Consultancy Services was not received.

Committee Observation

The Committee while interrogating the management response made the following observation: -

There was no management response on the query.

Committee Recommendation

The Committee recommends that;

- **The County Executive should provide evidence of the scope of work, deliverables, and documentation for all procurement steps.**

- That officers who acted as both tender openers and evaluators should be sanctioned for a possible breach of procurement laws.
- That the procurement process should be undertaken transparently, and contracts awarded irregularly should be reviewed for legal redress.

4.21. Irregularities in Procurement of Garbage Collection Services

Review of procurement records revealed that the County Executive of Nairobi made payment for garbage collection totalling Kshs.145,872,655 without supporting documents including; requisitions, advertisements for the services, tender opening details, tender evaluation details and awards thus casting doubt as to whether the procurements were done in a manner consistency with Regulation 114. (1) of the Public Finance Management (County Governments) Regulations, 2015 which provides that all purchases of goods, works and services from Goods, works and suppliers, including capital investments, shall comply with the services to be procured according to provisions prescribed in the Public Procurement and Asset Disposal Act, 2015, and the Regulations made thereunder and shall have the prior procurement plan and approval of the Accounting Officer.

In addition, although the County Executive of Nairobi has a weighbridge in Dandora dumpsite which is capable of printing weighbridge tickets, Management resorted to using handwritten tickets for payments. In the circumstances, Management was in breach of the law.

Management Response

The Management response to the audit query on Irregularities in Procurement of Garbage Collection Services was not received.

Committee Observation

The Committee while interrogating the management response made the following observation: -

There was no management response to the query.

Committee Recommendation

The Committee recommends that;

- The County Executive should abolish a handwritten weighbridge tickets and all payments to be supported by automated weighbridge documentation.
- The County Executive Committee responsible of the Sector should take an administrative action on officers responsible for non-compliance.

4.22. Management of Motor Vehicles

4.22.1 Ratio of Vehicles Operated Against the Number of Drivers

Motor vehicle records provided for audit revealed that the County Executive has four hundred and seventy-three (473) operational County vehicles and one hundred and six (176) operational vehicles handed over from Nairobi Metropolitan Services, totalling six hundred and forty-nine (649) vehicles. Review of the County's payroll as at 30 June, 2023 revealed that Management had a total of three hundred and twenty-five (325) drivers. Management further indicated that some vehicles and equipment are operated by more than one driver, such as ambulance, fire engines and some heavy equipment. This is an indication that three hundred and twenty-four (324) County vehicles are not in operation, even though they are listed as in service.

Further, review of the bank statement and records provided by Management indicate that Management purchased additional twenty-seven (27) tippers and one electric motorcycle during the financial year under review at a cost of Kshs.771,589,099. However, the advertisements, user requisition, tender opening, tender evaluation, professional opinion, contract award, notification of tender, acceptance of award, and signed contract agreement were not provided for audit.

In addition, the distribution lists for the new vehicles and motorcycle and the ownership documents of the twenty-seven (27) new vehicles and one motorcycle were not provided for audit.

Management Response

The Management response to the audit query on Ratio of Vehicles Operated Against the Number of Drivers was as follows: -

- Not all vehicles operate at any given time due to reasons such as repair and maintenance. The Management has embarked on instituting measures to ensure 100% fleet availability by having framework agreements that ensure prompt supply of vehicle service parts and lubricants.
- Additionally, the County through the County Public Service Board (CPSB) recruited 213 drivers and plant operators in November, 2023.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- There were no supporting documents submitted by the management for verification.

Committee Recommendation

The Committee recommends that;

- **That the County Executive should conduct an audit of all 649 operational vehicles and validate their usage, a report on the same to be submitted to the County Assembly within 90 days after adoption of this report.**

- The County Executive should conduct headcount verification of drivers and assign responsibility to specific fleet officers for each vehicle.
- The County Executive should submit to the County Assembly a report on missing procurement documentation for new vehicles and motorcycle within sixty days after the adoption of this report.

4.22.2 Grounded Motor Vehicles

Documents provided by Management reveal that the County has a total fleet of one thousand and thirty (1030) vehicles out of which two hundred and forty (240) vehicles are grounded with two hundred and fifteen (215) vehicles being grounded at central garage and twenty-five (25) at Highways depot. Physical inspection carried out on 19 October, 2023 at Nairobi City County garage and Highways depot revealed the following unsatisfactory matters;

- The updated list of current grounded vehicles was not provided for audit hence the numbers of vehicles could not be ascertained.
- There was poor maintenance and storage of the assets and this has led to deterioration of assets. Further, the vehicles were vandalized and parts have been removed, however, the records for the parts removed and where they had been taken has not been provided for audit.
- One water bowser was vandalized and documentation supporting the removing of the parts and where they were to be taken was not provided for audit.
- Records provides by Management indicate that seventeen (17) motor vehicles were involved in accidents. However, the details of the dates of the accidents, evidence of the action taken to recover from the insurance companies and correspondences between the County Executive and insurance companies were not provided for audit.
- The updated list of current grounded vehicles was not provided hence the numbers could not be ascertained.

Management Response

The Management response to the audit query on Grounded Motor Vehicles was as follows: -

- The Chief Mechanical Engineer maintains a list of all grounded vehicles. List of grounded and operational vehicles attached for audit review
- There was poor maintenance and storage of the assets and this has led to deterioration of assets and it was observed that the vehicles were vandalized and parts have been removed, however, the records for the parts removed and where they have been taken has not been provided for audit review.

Management Response

One water bowser was taken apart and documentation supporting the removing of the parts and where they were to be taken have not been provided for audit review.

- A disposal committee has been constituted and the disposal process ongoing in line with Public Procurement and Disposal Act (2015)

Management Response

Records provided by Management indicate that seventeen (17) motor vehicles were involved in an accident. However, the details of the date of the accident, evidence of the action taken to recover from insurance companies and correspondences between the County and insurance companies were not provided for audit review.

- A suspected case of vandalism in one of the contracted private garage MS Janico Ltd had been reported. Matter pending at Makadara Law Court.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That several vehicles were not in operation.
- That advertisements, user requisition, tender opening, evaluation, professional opinion, contract award, notification of tender, acceptance of award and signed contract agreement were not provided.
- That distribution lists and ownership documents were not provided (logbooks provided show registration date of May 2015) for verification.

Committee Recommendation

The Committee recommends that;

- **The relevant officer of County Executive should submit to the County Assembly an updated report on grounded vehicles and disposal plan within sixty days after adoption of this report.**
- **The County Executive to investigate the vandalism cases and prosecute those responsible.**
- **The County Executive to fast-track repairs or disposal in accordance with the PPAD Act, 2015.**

4.22.3 Motor Vehicles held in Private Garages

Physical inspection of motor vehicles held in external garages carried out on 19 October, 2023, revealed the following;

- Job cards, Local service orders with details on which repairs were to be done on the vehicle, Inspections reports, contracts between the County Executive and the suppliers were not provided for audit.

- Management of the External garages revealed that they are holding the County Executive vehicles due to non-payment, however, the processed payment vouchers, the invoices, details of work done were not provided for audit.
- There was poor maintenance and storage of the assets and this has led to deterioration of assets and motor vehicle appear vandalized and parts removed from the vehicle, however, the records for the parts removed and where they have been taken was not provided for audit.

In the circumstances, value for money on the expenditure incurred in the procurement and maintenance of the fleet of motor vehicles could not be confirmed.

Management Response

The Management response to the audit query on Motor Vehicles held in Private Garages was as follows:

- Job cards, Local Service Order with details on which repairs were to be done on the vehicle, Inspections reports, contracts between the County and the Suppliers attached for audit review
- Staff at the visited external garages indicated that they are holding the County vehicles due to non-payment, however, the processed payment vouchers, the invoices, details of work done have not been provided for audit review.

Management Response

Pre- and post-repair inspection reports hereby attached for audit review.

- There was poor maintenance and storage of the assets and this has led to deterioration of assets and motor vehicle appear vandalized and parts removed from the vehicle, however, the records for the parts removed and where they have been taken has not been provided for audit review.

Management Response

Copies of letters demanding for unconditional release of the vehicles hereby attached for your reference.

Non -Payment for the outstanding bills has been the biggest impediment to making progress.

Copy of memo Ref NCC/MOB/441/COM/jwm dated 15th March, 2023 to Chief officer – finance forwarding a list of obsolete and unserviceable vehicles and equipment attached

Job cards, Local Service Order with details on which repairs were to be done on the vehicle, Inspections reports, contracts between the County and the Suppliers attached for audit review

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That job cards, LSOs on repairs to be done were not provided
- That pre- and post-repair inspection reports were not provided
- That letters demanding release of the vehicles were also not provided

Committee Recommendation

The Committee recommends that;

- That County Executive should submit to the County Assembly a full documentation for repairs and payments within sixty days after adoption of this report.
- That all County vehicles should be withdrawn from private garages within sixty days after adoption of this report.
- The County Executive should develop a centralized repair framework and avoid using private garages without contract documentation and pre-inspection reports.

5.0 REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

5.1. Lack of Ownership Documents for Dandora Dumpsite

Documents provided by Management revealed that the Dandora dumpsite, Nairobi is approximately fifty (50) hectares. However, Management has ownership documents for land measuring only fifteen (15) hectares while thirty-five (35) hectares have no ownership documents. In the circumstances, failure to secure the County Executive assets may expose them to loss or misappropriation besides limiting the ability of the County Executive to offer service to the public.

Management Response

The Management response to the audit query on Lack of Ownership Documents for Dandora Dumpsite was as follows: -

- To ensure custody of our assets especially at Dandora Dumpsite, the sector has constructed a perimeter wall on approximately 950M stretch during phase one; phase two construction of 930M stretch is ongoing and once done we shall continue to other sections of the dumpsite that have not been fenced off in phase three and four as shall be provided

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the ownership documents was not provided.

Committee Recommendation

The Committee recommends that;

- The County Executive should expedite the process of acquiring title deeds for the remaining 35 hectares and the County Chief Officer for Lands should submit a progress report within 60 days after adoption of this report.

5.2. Poor Waste Management System

Review of tender documents and contracts attached in support of garbage collection and disposal payments revealed that bidders were required to provide information on equipment that will be used to collect garbage for approval. However, the County Executive paid contractors whose equipment were handling capacity beyond their contracted limits.

In the circumstances, the effectiveness of the waste management systems could not be confirmed.

Management Response

The Management response to the audit query on Poor Waste Management System was as follows: -

- The County only give a minimum weight limit for trucks to be provided by every contractor for solid waste collection and transportation (Attached is an extract from the tender document on truck capacity). It is of importance to note that at the point of collection/loading of trucks from various sub counties, the sector does not have weighbridges to determine the tonnage of each vehicle loaded. However, the sector runs a functional weighbridge at Dandora dumpsite where each truck is weighed.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the extract for tender document on truck capacity were not provided

Committee Recommendation

The Committee recommends that;

- **The County Executive should establish a reliable monitoring and verification system using functional weighbridges.**
- **That only contractors with appropriate equipment should be engaged, and any excesses paid without justification should be recovered.**

5.3. Poor Records Management at County Stores

Review of bin cards during field inspection on 5 October, 2023 revealed that goods worth Kshs 486,426,860 were purchased and delivered to the stores. However, as at the time of the inspection, the items had not been issued. Some of these supplies have been in the stores for a duration of more than six (6) months thus raising doubt on their need and if the public will receive value for money on the procurements.

Further, physical inspection carried out on 5 October, 2023 revealed that the stores for the pharmaceutical and non-pharmaceuticals were crowded and not arranged in a systematic manner. Some parts of the store had no proper lighting with broken windows.

In addition, disinfectants were stored in poor conditions and could have expired resulting to health hazards.

In the circumstances, the effectiveness of internal controls in stores management systems could not be confirmed.

Management Response

The Management response to the audit query on Poor Records Management at County Stores was as follows: -

No.	Supplier Name	LPO Number	Amount (Kshs.)
1	Ankey Ventures	7182	31,132,830.00
2	Brighton Pharmaceuticals	7184	18,500,000.00
3	Bioquest Kenya Ltd	4251	12,793,750.00
4	Barpharm Ltd	7186	4,860,000.00
5	Cloriti Pharmaceuticals (EA) Ltd	7151	1,885,051.00
6	Churi Agencies	16147	15,060,520.00
7	Cloriti Pharmaceuticals (EA) Ltd	7152	661,221.40
8	Churi Agencies	16150	1,043,500.00
9	Crown Health Care Ltd	7185	7,140,000.00
10	Dre Consortium Ltd	7180	305,000.00
11	Deruso Logistics Ltd	15798	7,192,500.00
12	Daymanhill Holdings Ltd	7197	13,680,000.00
13	Fami Investment Ltd	4606	31,100,000.00
14	Fami Investment Ltd	4607	2,427,000.00
15	Hascon Pharmaceuticals (K)Ltd	7156	3,050,327.00
16	Hascon Pharmaceuticals (K)Ltd	7155	1,749,537.00
17	Idrali construction co. Ltd	4608	751,530.00
18	Kompowers Investments	4605	10,815,000.00
19	Lizol Chem Company	7190	329,939.78
20	Medafrica Safety Agencies	4617	2,998,200.00
21	Nutra Gain East Africa (EA)	7177	2,895,600.00
22	Optgrow Enterprises Ltd	16143	23,987,000.00
23	Prodesher General Supplies	7161	2,404,000.00
24	Quincy Medical Solutions Ltd	4612	2,484,450.00
25	Quincy Medical Solutions Ltd	7176	11,965,000.00

26	Quincy Medical Solutions Ltd	7162	4,865,000.00
27	Reliant Pharmaceuticals	7153	1,631,900.00
28	Reliant Pharmaceuticals	7154	4,383,950.00
29	Westrift Holdings Ltd	4615	1,381,280.00
30	Zank Enterprises Ltd	4611	1,598,700.00
31	Zank Enterprises Ltd	7163	2,958,000.00
	Total		228,030,786.18

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the management provided a list of suppliers, their LPO numbers and amounts all totaling Kshs.228,030,786, however there was no evidence of any relation to the audit query.
- That the value for money on procurements was not addressed.
- That poor storing of pharmaceuticals, non-pharmaceuticals and disinfectants was not addressed.

Committee Recommendation

The Committee recommends that

- That all idle stock should be audited and redistributed or disposed of per regulations.
- That administrative action be taken on officers responsible for poor pharmaceutical storage.
- The County Executive to initiate Construct modern, ventilated, and secure store facilities.

5.4. Poor Management of Bitumen Stores Records

Review of stores records revealed that Management received a total of 600,000 kilograms of bitumen which was issued to the Ashpalt Kangundo road plant for precast concrete production. Field inspection carried out on 6 October, 2023 at the production plant revealed that a total of two thousand seven hundred and nineteen (2,719) tons of precast concrete output was produced during the period. Based on the production and engineer's explanation that it takes between 55 to 56 kilograms of bitumen to produce one (1) ton of precast concrete, the expected output of precast concrete was six thousand three hundred and ninety-three (6,393) tonnes. The resultant variance of three thousand six hundred and seventy-four (3,674) tonnes consuming a total of 205,744 kilograms of bitumen valued at Kshs.33,957,000 was not reconciled. Further, the materials used to produce the precast concrete which includes ballast and stone dust have not been quantified implying that the potential loss could be higher.

In addition, the stores records in relation to bitumen revealed variances between quantities requisitioned and quantities supplied. The poor records maintenance and nonadherence to the requested quantities

results to unreliable records and may have resulted in possible irregular activities hence loss of public funds. Also, it was established that the

Asphalt plant at Kangundo road was not fenced posing security risks.

In the circumstances, the effectiveness of the stores management systems could not be confirmed.

Management Response

The Management response to the audit query on Poor Management of Bitumen Stores Records was as follows: -

- During the period under review that is, 14th February, 2023 to 27th June, 2023, Asphalt Plant along Kangundo road received 1,470 drums of bitumen equivalent to 294,000kgs from Manuka Road stores contrary to the report that we received 600,000 kgs which is equivalent to 3,000 drums. This has been supported by attached copies of gate passes from the stores.
- During this period, we have produced 4,427.82 tonnes of Asphaltic Concrete (AC) contrary to the report that we have only produced 2,719 tonnes. This has been supported by attached copies of Material Issue Vouchers serial no.1,2,3 and duly signed by user.
- By 27th June, 2023, out of 1,470 drums received from the stores, 225 drums (45,000kgs) were still inside the boilers whereas 1,245 drums (249,000kgs) had been utilized to produce the 4,427.82 tonnes of AC as earlier indicated.
- Based on ideal AC production recipe, 1 tonne of AC constitutes 56.1kgs of Bitumen hence theoretically 1,245 drums (249,000kgs) of bitumen is projected to produce about 4,438.5 tonnes of AC whereas the actual tonnage produced was 4,427.7 tonnes which has a variance of 10.8 tonnes of AC. This discrepancy can be attributed to machine inefficiencies, AC produced during repairs, machine test runs and some wastages incurred during production process.
- Aggregate consumed during this production is 2,166.8 tonnes of size 0-6mm (Stone dust+1/8”), 826.1 tonnes for Size 6-10mm (3/8”) and 915.51 tonnes for Size 10-14mm (1/2”).

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That copies of gate passes from the stores were not provided
- That the material issue vouchers were not provided
- That a variance of 10.8 tonnes was noted

Committee Recommendation

The Committee recommends that;

- **That the County Executive relevant sector should reconcile bitumen usage variances within 60 days after adoption of this report and submit all missing documents to the County Assembly.**

- **The County Executive through the relevant sector secure the Kangundo Asphalt plant with perimeter fencing.**

5.5. Ineffective Revenue Collection Systems

Review of revenue collection system revealed that Management did not provide information on steps taken to recover receivables yet they have accumulated pending bills amounting to Kshs.98,267,457,303 including decretal sums on late settlement of obligations. Failure to recover the receivables may plunge Management into more debt and litigations which may threaten the County Executive's ability to deliver services efficiently to the public.

Further, the laxity by Management to enforce collection of revenue has resulted in pending bills for some departments equating to over and above annual revenue.

In the circumstances, the effectiveness and reliability of the revenue collection systems could not be confirmed.

Management Response

The Management response to the audit query on Ineffective Revenue Collection Systems was as follows:

- The County has formed the Nairobi City County Revenue Authority to be in charge of revenue administration, started to issue unified business permits and automated all revenue services. These triple strategies are expected to lead to better performance of own source revenues.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- A report on the operationalization of the Authority was not provided.

Committee Recommendation

The Committee recommends that;

- **The County Executive should operationalize the Nairobi County Revenue Authority with documented proof and timelines.**
- **The County Executive should develop and enforce a debt recovery strategy to reduce the Kshs.98B pending bills.**
- **The Nairobi Revenue Authority should put in place measures to ensure effective revenue collection measures.**

5.6. Incomplete Asset Register

Review of documents provided by Management revealed that the County Executive had a total fleet of one thousand and thirty (1,030) vehicles comprising of eight hundred and forty-nine (849) County Executive vehicles and one hundred and eighty-one (181)

vehicles procured under the Nairobi Metropolitan Services. However, four hundred and eighty-four (484) County Executive vehicles ownership documents were not provided for review. Information provided by Management indicates that Nairobi Metropolitan Services procured one hundred and eighty-one (181) vehicles. However, only one hundred and seventy-seven (177) vehicles were handed over to the County resulting to a variance of four (4) vehicles.

Further, the ownership documents for the vehicles were not provided for review the total value of the one thousand and thirty (1,030) vehicles could not be determined as Management did not provide an asset register.

In the circumstances, the effectiveness of the management and safe custody of the fixed assets could not be confirmed.

Management Response

The Management response to the audit query on Incomplete Asset Register was as follows: -

- Logbooks of vehicle under the custodian of the County have been attached for review (**appendix 9**), we are in advanced stages of engaging National government entities that transferred vehicles to the County after devolution to avail their logbooks. Further, all logbooks for vehicles procured under NMS are still under the custodian of Office of President pending deed of Novation.
- The County has completed updating its asset register and has attached a copy for Audit review in Flash Disk labeled 2.

Committee Observation

The Committee while interrogating the management response made the following observation: -

- That the logbooks for all the county vehicles and NMS was not provided
- That the variance of 4 vehicles was not explained.
- That the value of the vehicles was not been determined.
- That the soft copy of assets register was not provided

Committee Recommendation

The Committee recommends that;

- The County Executive should submit to the County Assembly a comprehensive, updated fixed assets register (soft and hard copy) within 30 days after adoption of this report.

- The County Executive through the relevant sector should reconcile the variance of 4 NMS vehicles and provide ownership documentation for all assets within sixty days after the adoption of this report.
- The County Executive should institute a digital asset tracking system integrated with procurement and accounts departments.

6.0 SUMMARY OF ALL RECOMMENDATIONS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30TH JUNE 2023

Following the Committee's consideration of the **"Report of the Auditor-General on the Financial Statements of Nairobi City County Assembly for the year ended 30th June 2023"** and having considered responses from the Accounting Officer, the Committee urges the County Assembly to resolve as follows: -

Variances Between the Financial Statements and the Trial Balance

The Committee Recommends that: -

- That the County Treasury to submit to the County Assembly a full reconciliation schedule explaining each variance, backed by journal entries and source documents within sixty days after the adoption of this report. This is pursuant to Section 163 of the Public Finance Management Act, 2012 requires accurate and complete financial statements and Article 201 of the Constitution demands accountability and transparency in financial reporting;
- That the County Executive should engage the Office of the Auditor-General or an independent audit firm to conduct a special systems audit of IFMIS, focusing on the reliability of data and systemic weaknesses. This is in line with Section 9 of the Public Audit Act, 2015 which gives the Auditor-General power to conduct system-based audits and also Article 229 of the Constitution empowers Parliament to act on reports from such audits. The integrity of financial systems determines the credibility of public accounts. A systems audit will help restore trust in IFMIS outputs;
- That the County Treasury institute a monthly reconciliation protocol and submit quarterly reports to the County Assembly pursuant to the provisions of Section 166(1) of the PFM Act, 2012 which provides for regular reporting to oversight authorities and PFM (County Governments) Regulations, 2015 call for periodic reconciliations and financial accuracy. Regular checks will prevent errors from piling up and improve financial management discipline;
- that the Accounting Officer ensures all finance staff are retrained on IFMIS operations, financial reporting, and journal processing as per section 104(1)(h) of the PFM Act requires the County Treasury to build capacity for financial management, since many of the discrepancies could stem from human error. Equipping staff with the right skills reduces misstatements;
- That the County Treasury should prepare a detailed, time-bound plan to resolve long-standing balances such as "Cash in Hand," "Salary Deductions," and "Other Debtors," and submit a report to the County Assembly within 60 days after adoption of this report pursuant to PFM Act Section

102(c) which tasks the Treasury with managing cash resources and clearing suspense accounts and Article 226(1) of the Constitution requires each public entity to maintain proper records. Uncleared balances distort financial reality and may point to misuse or neglect of public funds;

- That the County Executive should enhance its internal audit unit's mandate and resources, ensuring they review IFMIS entries and reconciliations quarterly in line with section 73(2)(b) of the PFM Act requires internal audits to monitor and evaluate financial performance and Section 155(5) of the PFM Act empowers the internal audit committee to advise on internal controls. A strong internal audit function can catch errors early and support accountability from within; and
- That all supporting documents especially those referenced as being on flash disks (e.g., Appendix 2 and 3.1(b)) be officially submitted to the County Assembly Clerk and Auditor-General in hard and soft copies in line with Section 147 of the PFM Act outlines the County Assembly's right to full disclosure and Public Audit Act, Section 10(1) obligates public entities to provide all relevant information for audit.

Variances between the Financial Statements and the Ledger

The Committee Recommends that: -

- The Committee urges the County Treasury to enhance internal checks and balances through routine reconciliations between financial statements and ledgers as guided by Section 104(1)(i) of the PFM Act, 2012 which provides the County Treasury to be responsible for ensuring that internal controls are effective and operating as intended. This will foster accuracy, transparency, and real-time resolution of discrepancies.
- To promote accountability under Article 201(d) of the Constitution of Kenya, which emphasizes transparency and accountability in financial matters, The County Treasury must ensure that all adjustments made are supported by an auditable trail. All entries should be traceable, showing approval levels, dates, and relevant documentation. This audit trail should be available for future scrutiny by the Office of the Auditor-General and the Committee.
- By recognizing that human resource capacity is vital for sound public financial management, and in line with Section 147 of the PFM Act, 2012, The Committee recommends that staff in the finance and accounting departments be trained regularly on IPSAS standards, ledger maintenance, and financial reconciliation to enhance compliance and accuracy in reporting.
- In accordance with Section 166 of the PFM Act, 2012, which requires timely and accurate financial reporting, The Committee calls upon all accounting officers to ensure that future audit responses are submitted promptly, complete with all necessary supporting documents both in hard and soft copy formats for effective and efficient verification.

- Where negligence or failure to observe financial procedures contributed to the variances, The Committee recommends that the Nairobi County Public Service Board and relevant oversight organs institute appropriate administrative or disciplinary measures in accordance with Section 102 of the County Governments Act, 2012 and Section 72 of the PFM Act, 2012.

Inaccuracies in Pending Accounts Payables

The Committee Recommends that: -

- The County Treasury must strengthen its financial systems by digitizing the accounts payable process, training staff on financial reporting standards, and instituting robust internal controls for verification, approval, and recording of liabilities. Section 131(1) of the PFMA requires counties to prepare realistic and comprehensive budget documents, which include credible liabilities. Internal control systems are a cornerstone for this obligation.
- The County Public Service Board and the County Executive must take disciplinary action against officers found culpable of submitting inaccurate financial data or failing to account for pending liabilities as per the law. Section 102(c) of the PFMA outlines the need for accountability and transparency in county financial management. Misreporting or concealment of liabilities constitutes gross misconduct under the Leadership and Integrity Act.
- The County Assembly to request the Office of the Auditor General to conduct an independent forensic audit into the reported pending bills particularly those with material variances (e.g., LAPFUND, KRA) to determine their authenticity and to safeguard public funds. Article 229(4) of the Constitution mandates the Auditor-General to confirm whether public money has been applied lawfully and in an effective way.
- A detailed report accounting for each pending bill its origin, supporting documentation, and current status should be submitted to the County Assembly through the Public Accounts Committee within 60 days after adoption of this report. In line with Section 149(2)(a) of the PFMA, the accounting officer is obligated to respond to audit queries and provide all necessary documentation to the County Assembly or its committees.
- The County Executive to expedite the gazettelement and operationalization of the Pending Bills Verification Committee as committed, with a mandate to authenticate all claims. The Committee should include representation from the Office of the Auditor General, County Treasury, and relevant stakeholders. Section 36 of the County Governments Act vests the County Executive Committee Member for Finance with the responsibility to manage County resources and ensure accountability in financial administration.

Misclassification of Expenditure

The Committee Recommends that: -

- The County Executive should submit a copy of the approved supplementary budget and the re-appropriation schedule to the County Assembly within 30 days after adoption of this report.
- The County Executive should ensure all expenditure are aligned strictly to the approved chart of accounts, and non-compliance must attract disciplinary action in line with the Public Finance Management Act, 2012.

Inaccuracies in Cash and Cash Equivalents

The Committee Recommends that: -

- In accordance with Section 116(2)(b) of the Public Finance Management Act, 2012, the County Treasury must ensure complete and accurate reconciliation of all county bank accounts. Supporting documents cashbooks, bank statements, reconciliation reports, and certificates of balances must accompany future financial statements.
- That the Youth Poly PRJ Grant account that has been dormant for over two years, contravenes sound financial management and that such accounts be closed and remaining funds rechanneled to active youth empowerment programs. Evidence of fund transfer and updated beneficiary lists must be submitted within the next audit cycle.
- That an account operated jointly with the Centers for Disease Control (CDC) was omitted from the financial statements which is contrary to Section 107(1)(e) of the PFMA, which requires full disclosure of all county funds. This account must be retrospectively included in the subsequent financial statements going forward.
- While the Committee acknowledges the revised financial reporting format by the Public Sector Accounting Standards Board (PSASB), management must ensure clear reconciliation between old and new templates. This must be presented as a supplementary note in the financial statements to maintain consistency and comparability as per IPSAS guidelines.
- That officers responsible for failing to provide statutory records such as board of survey reports and bank reconciliation statements contrary to Regulation 89 of the PFM (County Governments) Regulations, 2015 and should face disciplinary action in line with the County Public Service Human Resource Manual.

Unsupported Payments for Nairobi Metropolitan Services Contracts

The Committee Recommends that: -

- In line with Article 226(1)(b) of the Constitution, which places the responsibility for maintaining proper records on the accounting officer, the Committee directs that the County Executive

provides all relevant documentation to support the payments made, including but not limited to: Signed contracts, Payment vouchers, Bills of quantities, Site inspection reports and completion certificates. These documents must be submitted to both the Office of the Auditor-General and this Committee within 90 days from the date of adoption of this report by the Assembly.

- Pursuant to the Public Finance Management (PFM) Act, 2012, Section 149, which holds accounting officers responsible for ensuring that resources are used lawfully and effectively, the Committee requires that the Transition Committee and the County Executive finalize and table the Deed of Novation covering all transitioned NMS contracts. This should be done within 90 days after adoption of this report days, failing which the responsible officers may be subjected to administrative action.
- To uphold transparency and public trust as espoused under Chapter Six of the Constitution on Leadership and Integrity, the Committee recommends that the County Internal Audit Unit undertakes a detailed investigation into the unsupported payments. The findings should be submitted within 90 days after adoption of this report and must include specific recommendations for administrative or legal action against any officer found culpable of approving irregular payments.
- Citing Section 68(1)(c) of the PFM Act, the Committee recommends that the County Executive puts in place a comprehensive framework for contract management, particularly during transitions such as the transfer of functions. This should include the establishment of a contract handover protocol, due diligence checks, and real-time documentation of all expenditures.
- In accordance with Article 229(6) of the Constitution, which empowers the Auditor-General to conduct audits on the use of public resources, the Committee recommends a special audit of all NMS-related expenditures under the asset acquisition vote. This should assess not only the validity of the payments but also the existence, status, and value for-money implications of the purported works and assets.

Unsupported Utilities, Supplies and Services

The Committee Recommends that: -

- The Accounting Officer must, within fourteen (14) days, submit to the Committee all relevant supporting documentation for the utility's expenditure in question. This includes but is not limited to: Kenya Power and Lighting Company (KPLC) bills, Invoices and billing statements, Payment vouchers, and Account registers or ledgers used to process these payments. This is in accordance with Article 226(2) of the Constitution of Kenya, 2010 which holds accounting officers personally

accountable for public funds under their control, and Section 149(1) of the Public Finance Management (PFM) Act, 2012, which requires proper maintenance of financial records.

- The County Treasury must carry out a thorough reconciliation of the Kshs.31,663,334 that was reportedly paid but not reflected in the bank statements. A detailed reconciliation report should be submitted to the Committee within thirty (60) days after adoption of this report. This action is guided by Section 131(2)(e) of the PFM Act, which emphasizes transparency and accountability in the management of public resources.
- The Committee urges the County Executive to review and strengthen its internal control systems around utility payments. Moving forward, no payments should be processed without complete and verifiable documentation. These systems should be compliant with Regulation 103 of the Public Finance Management (County Governments) Regulations, 2015, which provides for proper recording and verification of expenditure.
- The Committee requests the Office of the Auditor-General to conduct a special follow-up audit on the payments flagged in this query in the next audit cycle, in line with Article 229(6) of the Constitution and Section 48 of the PFM Act, to confirm whether the anomalies have been rectified.
- Where officers are found to have failed in their duties or acted negligently by not maintaining proper records or authorizing unsupported payments, the Committee recommends that the County Public Service Board take appropriate disciplinary action. This should include consideration for surcharge under Section 203 of the PFM Act, which allows recovery of funds from officers whose actions result in financial loss to the government.

Unsupported Payments for Goods and Services

The Committee Recommends that: -

- The Committee recommends the suspension of payments to suppliers without proper procurement records and delivery confirmations. The County Executive to table the missing payment vouchers, procurement records, AIEs, and stores receipts within sixty (60) days after adoption of this report.

Inaccuracies in Compensation of Employees

The Committee Recommends that: -

- With variances exceeding Kshs. 1.3 billion, the Committee recommends that the County Executive to conduct a comprehensive payroll audit, including NMS legacy liabilities. This is in line with Section 149(1)(b) of the PFM Act, which emphasizes the accuracy and completeness of government records and submit a report to the County Assembly within sixty days after the adoption of this report;

- The Committee further recommends a joint audit with the Salaries and Remuneration Commission (SRC) and Auditor-General, to be completed within 90 days after adoption of this report. Officers responsible administrative action be taken.

Return to Drawer and Cash Transactions

The Committee Recommends that: -

- The use of the Cash vote instead of reprocessing failed payments is a serious breach of internal controls. Under Regulation 39(2) of the PFM Regulations, every vote must reflect actual expenditure with supporting documentation.
- The Committee recommends that the County Treasury to stop use cash vote;
- The County Treasury should submit to the County Assembly a reconciliation report on all R/D and cash transactions within 14 days after the adoption of this report. Any officers found to have authorized the irregular use of funds should be held to account under Section 196(1)(g) of the PFM Act.

Unsupported Payments from the Salary Account

The Committee Recommends that: -

- The Committee recommends that the Ethics and Anti-Corruption Commission to investigate the matter in detail for necessary action.

Budgetary Control and Performance

The Committee Recommends that: -

- That the County Treasury to submit to the County Assembly a full budget absorption and variance analysis report within sixty (60) days after adoption of this report.
- That the County Government to review and reform the County's budget execution controls.

Pending Bills Relating to Legal Expenses

The Committee Recommends that: -

- The County Treasury and County Attorney develop a fee assessment framework in consultation with the Office of the Attorney General, Law Society of Kenya, and Council of Governors to standardize and cap legal fees; and
- The County Executive to submit to the County Assembly the report of the Taskforce on pending bills on legal issues within sixty (60) days after the adoption of this report.

Unresolved Prior Year Matters

The Committee Recommends that: -

- That the Accounting officers must ensure implementation of audit findings as per Section 68(2)(f) of the PFM Act, 2012. The Committee appreciates the development of a framework to track implementation of audit recommendations;
- That the Accounting officers to submit quarterly audit implementation progress report to the County Assembly and the office of the Auditor-General; and
- That all unresolved issues from FY 2016/2017 to date be categorized and prioritized for action within ninety (90) days after the adoption of this report.

Failure to Prepare and Submit Separate Fund Financial Statements

The Committee Recommends that: -

- That the County Treasury to prepare and submit to the County Assembly separate audited financial statement for all County funds such as Disaster Management Fund in line with Section 167(1) of the PFM Act, 2012 within three months after the adoption of this report.

Non-Submission of Budgetary Reports

The Committee Recommends that: -

- The County Treasury should coordinate with the Office of the Controller of Budget and Public Sector Accounting Standards Board (PSASB) to submit both monthly and quarterly reports and to present an implementation status in line with requirement under Regulation 54(1) of the PFM (County Governments) Regulations, 2015 for monthly financial reporting within 30 days after adoption of this report.

Nairobi Pay Vendor Operating without a Valid Contract

The Committee Recommends that: -

- The County Executive must provide a formal handover report from Nairobi Metropolitan Services and conclude a Memorandum of Understanding with the National Government Pursuant to Section 149(2)(d) of the PFM Act 2012. A status update should be submitted before Public Accounts Committee within 90 days after adoption of this report. The Committee finds the use of a critical county system (Nairobi Pay) without a valid contract or SLA highly irregular and risky.

Irregularities in Acquisition of Assets

The Committee Recommends that: -

- The County Executive to submit to the County Assembly a comprehensive status report on all road and civil works projects within sixty (60) days after adoption of this report, including contracts,

payment vouchers, and site inspection reports. Projects found non-compliant under Section 139 of the PFM Act should be subjected to forensic audit and officers involved held personally liable.

Irregularities in Projects Implementation

The Committee Recommends that: -

- The County Executive should prepare and submit to the County Assembly a completion plan and status report on all stalled health projects within sixty days after the adoption of this report; and
- That no new contracts should be awarded to defaulting contractors. This is in line with the principle of value for money under Article 201(d) of the Constitution.

Irregular Procurement of Repairs and Maintenance

The Committee Recommends that: -

- The County Executive should furnish the County Assembly with a consolidated procurement audit file for all motor vehicle repairs within 60 days after adoption of this report. Future procurements must comply fully with Sections 47–53 of the Public Procurement and Asset Disposal Act, 2015. Where NMS assets are involved, signed transfer deeds must be attached.

Irregular Procurement of Fire Fighting Motor Vehicle Tyres

The Committee Recommends that: -

- The County Executive to submit to the County Assembly key documents including contract agreements and quarterly procurement reports for the period under review within sixty (60) days after adoption of this report.
- The procurement units must adhere to Section 54(2) of the Public Procurement and Disposal Act of 2015, which governs the change of procurement method.

Irregular Procurement of Oils and Lubricants

The Committee Recommends that: -

- The County Executive to submit to the County Assembly an updated fuel registers and consumption reports for the period under review within sixty (60) day after the adoption of this report as required by Regulation 4(d) of the PFM (County Governments) Regulations, 2015; and
- The County Executive to ensure that no goods are taken on charge before inspection.

Irregularities in Management of Executive Scholarships and Ward Bursaries

The Committee Recommends that: -

- The County Executive should to immediately stop the issuance of both bursary and scholarship to the same beneficiaries to ensure fairness and transparency in bursary allocation, the Committee directs;

- The County Executive to align the disbursement of bursary and Executive scholarships with Section 117 of the County Governments Act, 2012 on equitable distribution of resources;
- The County Executive to develop and submit to the County Assembly a comprehensive table Bursary and Executive Scholarship Policy Framework and guidelines that sets eligibility, selection criteria and audit guidelines of the programme.

Irregular Procurement of Construction Materials

The Committee Recommends that: -

- Although emergency use of state contracts may be accepted, the County must obtain formal delegation under Section 52(1) of the PPAD Act and demonstrate value for money. The County Executive should document and justify all future use of external procurement frameworks and submit such documentation to the County Assembly on quarterly basis to enhance accountability and transparency.

Procurement of Vehicles and Other Transport Equipment

The Committee Recommends that: -

- The County Executive to submit to the County Assembly all supporting documents, including logbooks and payment vouchers within 90 days after adoption of this report to correct the inconsistency in how vehicle related purchases were reported.
- The Finance Department must ensure consistent classification and reporting as per PSASB standards and Section 166 of the PFM Act.

Non-Compliance with Fiscal Responsibility Principles

The Committee Recommends that: -

- The County Executive should enforce adherence to the 35% wage ceiling by fast-tracking the implementation of the approved staff establishment and the Voluntary Early Retirement Scheme;
- The County Executive should conduct a comprehensive audit to confirm payroll rationalization outcomes and ensure all new recruitments align with the SRC grading structure.
- The County Executive should institute controls to prevent unbudgeted absorption of externally recruited staff, as seen during the NMS transition.

Employees Sharing Bank Accounts

The Committee Recommends that: -

- The County Human Resource and payroll department to submit to the County Assembly certified evidence (e.g., IPPD Reference Data Sheets) to confirm correction of shared bank accounts within sixty days after the adoption of this report.

- The County Executive to initiate payroll audits to eliminate loopholes that may enable ghost workers or irregular transactions.

Officers Employed on Permanent and Pensionable Terms While Over the Age of 50 Years

The Committee Recommends that: -

- The County Executive should develop clear guidelines on age limits for permanent employment, including exceptions like continuity of service, and ensure documentation is maintained.

Officers Active in the Payroll with No Pay

The Committee Recommends that: -

- The County Executive should submit to the County Assembly full documentation showing allowances (e.g., house allowances) being paid to suspended officers as per HR policy during the period under review within sixty days after the adoption of this report.
- The County Executive should review IPPD flags and ensure periodic review of suspension cases.

Officers Paid Leave Allowance Twice

The Committee Recommends that: -

- The County Executive should reconcile payment systems for defunct council staff and current County employees to ensure uniformity.

Payment of Special Pay and Basic Salary

The Committee Recommends that: -

- The County Executive should submit to the County Assembly a report detailing the status of all 34 cases cited, including recovery status.
- The County Executive Human Resource should enhance internal audit functions to promptly flag out such anomalies.

Non-compliance with Statutory Deductions

The Committee Recommends that: -

- The County Executive should recover unpaid taxes immediately and provide a detailed plan for future compliance.
- The County Executive Committee Member for Finance should penalize responsible officers for violating the Income Tax Act.

Unclear Payment of Salary Arrears on Monthly Basis

The Committee Recommends that: -

- The County Executive should submit to the County Assembly detailed breakdowns for all officers paid salary arrears, including reasons and approvals.

- The County Executive to ensure future salary arrears must be approved with budget alignment and documented payment plans.

Irregular Payment of Overtime Allowance

The Committee Recommends that: -

- The County Executive Management to ensure that only eligible cadres receive overtime as per approved CBA/SRC guidance.
- The County Executive should develop an automated system for tracking approved overtime to prevent abuse.

Officers Earning Less Than a Third of Basic Pay

The Committee Recommends that: -

- The County Executive should enforce the one-third salary rule by instituting real-time monitoring in payroll systems.
- The County Executive should train officers on the financial impact of deductions and manage over-commitment of their payslips.

Non-Compliance with the Persons with Disabilities Act, 2003

The Committee Recommends that: -

- The County Executive should set specific hiring targets for Persons with disabilities in each recruitment cycle.
- The County Executive should collaborate with disability organizations for outreach during job advertisements.

Non-compliance with National Cohesion and Integration Act, 2008 on Ethnic Diversity

The Committee Recommends that: -

- The County Executive should implement ethnicity audit during recruitment and require justifications when diversity thresholds are not met.

Irregular Recruitment of Staff by Nairobi Metropolitan Services (NMS)

The Committee Recommends that: -

- The County Executive should submit to the County Assembly a full list and status report of the 1,700 irregular staff within sixty days after the adoption of this report.
- That the County Executive should ensure no absorption occurs without competitive recruitment in accordance with the County Public Service Board mandates.

Non-Remittance of Statutory Dues

The Committee Recommends that: -

- The County Executive Management should provide verified remittance receipts for the financial year and submit the report to the County Assembly within sixty days after adoption of this report.

Failure to Maintain Imprest Register

The Committee Recommends that: -

- The County Executive should prepare and maintain both digital and manual imprest registers, and submit copies quarterly to the County Assembly.
- The County Executive Committee Member for Finance should take administrative action on officers who issue imprests without proper documentation.

Irregular Procurement of Yellow Fever Vaccines

The Committee Recommends that: -

- The County Executive should blacklist suppliers involved in the delayed and unverified vaccine delivery.
- The County Executive Committee Member for Finance should take administrative actions against officers involved in the delayed and unverified vaccine delivery.

Irregular Use of Restricted Tendering for Proposed Construction at Mama Lucy Kibaki Hospital – Phase II

The Committee Recommends that: -

- The County Executive to audit entire project, determine reasons for stalled works, and recover funds if contractor abandoned work.

Irregular Procurement of Bitumen

The Committee Recommends that: -

- The County Executive must, within 60 days after adoption of this report, provide the missing procurement documentation. This is in line with Section 68(2)(e) of the Public Finance Management Act, 2012, which mandates accounting officers to maintain proper records for all financial transactions. Failure to comply shall prompt the Committee to recommend further investigation by the relevant oversight bodies.
- The County Executive to comply strictly with the legal requirements governing framework agreements. Officers responsible for bypassing competitive procedures should be investigated for possible breach of procurement laws.

- The County Executive should ensure inspection committees are formed before delivery, and that inspections happen immediately upon receipt of goods. Disciplinary action should be considered for those who failed to uphold these standards.
- Immediate administrative action should be taken against the responsible officers, and all store personnel should undergo refresher training on inventory management and record keeping in line with Section 68(2)(b) of the PFMA.
- The County Executive must adhere to the composition limits for evaluation committees. Any officer responsible for this irregularity should be held accountable to prevent future non-compliance.
- Mandatory capacity-building sessions should be organized for procurement officers and user departments on the provisions of the Public Procurement and Asset Disposal Act, 2015, and the PFMA, 2012.
- The County Executive is directed to submit an annual procurement compliance report to the Assembly detailing all framework agreement procurements, supported by full documentation and compliance certifications.

Irregular Procurement of Fresh Milk

The Committee Recommends that: -

- The County Executive should enforce procurement reforms to prevent premature contracting and ensure proper recordkeeping.
- The County Executive Committee Member for Finance should investigate and recover losses from non-compliance with competitive pricing.

Anomalies in Provision of Legal Services

The Committee Recommends that: -

- The County Executive should mandatorily issue formal contracts or engagement letters for all legal services, clearly outlining scope, responsibilities, and expected deliverables.
- The County Executive should develop a standard operating procedure (SOP) for legal services engagement, including a checklist of documents that must be available for audit.
- The Office of the County Attorney should ensure that the panel of prequalified law firms is updated annually, and a rotation system for selecting legal service providers from this panel is implemented.
- An audit of the prequalification process should be done to confirm its compliance with relevant laws and the Advocates Act exemptions.

- The County Attorney’s office must establish a Legal Fees Review Board internally (comprising independent legal experts and finance officers) to assess and justify all legal fee revisions and that Itemized fee notes and subject matter valuation reports must be submitted for all legal claims and payments.
- The County Executive should establish a central legal case management system to track all county litigation, costs, and case outcomes.
- The County Executive should submit to the County Assembly quarterly reports from the County Attorney summarizing ongoing cases, expenditure to date, and legal outcomes.
- The County Executive should consider alternative dispute resolution mechanisms (ADR) to minimize litigation costs.
- That future engagements must include a cost-benefit analysis and value-for-money justification for proceeding with external legal representation.

Irregular Procurement and Management of Security Services

The Committee recommends that;

- The County Executive should submit to the County Assembly a detailed reconciliation schedule of all payments made to Magic Group of Companies with supporting documentation (muster rolls, payment vouchers, attendance records) within sixty days after the adoption of this report.
- The Chief Officer responsible should be held accountable for oversight failures leading to potential double payment.
- The County Executive should ensure future payments adhere strictly to the provisions of Section 46(1) of the Public Procurement and Asset Disposal Act, 2015.

Irregularities in Procurement for Consultancy Services

The Committee Recommends that: -

- The County Executive should provide evidence of the scope of work, deliverables, and documentation for all procurement steps.
- That officers who acted as both tender openers and evaluators should be sanctioned for a possible breach of procurement laws.
- That the procurement process should be undertaken transparently, and contracts awarded irregularly should be reviewed for legal redress.

Irregularities in Procurement of Garbage Collection Services

The Committee Recommends that: -

- The County Executive should abolish a handwritten weighbridge tickets and all payments to be supported by automated weighbridge documentation.

- The County Executive Committee responsible of the Sector should take an administrative action on officers responsible for non-compliance.

Ratio of Vehicles Operated Against the Number of Drivers

The Committee Recommends that: -

- That the County Executive should conduct an audit of all 649 operational vehicles and validate their usage, a report on the same to be submitted to the County Assembly within 90 days after adoption of this report.
- The County Executive should conduct headcount verification of drivers and assign responsibility to specific fleet officers for each vehicle.
- The County Executive should submit to the County Assembly a report on missing procurement documentation for new vehicles and motorcycle within sixty days after the adoption of this report.

Grounded Motor Vehicles

The Committee Recommends that: -

- The relevant officer of County Executive should submit to the County Assembly an updated report on grounded vehicles and disposal plan within sixty days after adoption of this report.
- The County Executive to investigate the vandalism cases and prosecute those responsible.
- The County Executive to fast-track repairs or disposal in accordance with the PPAD Act, 2015.

Motor Vehicles held in Private Garages

The Committee Recommends that: -

- That County Executive should submit to the County Assembly a full documentation for repairs and payments within sixty days after adoption of this report.
- That all County vehicles should be withdrawn from private garages within sixty days after adoption of this report.
- The County Executive should develop a centralized repair framework and avoid using private garages without contract documentation and pre-inspection reports.

Lack of Ownership Documents for Dandora Dumpsite

The Committee Recommends that: -

- The County Executive should expedite the process of acquiring title deeds for the remaining 35 hectares and the County Chief Officer for Lands should submit a progress report within 60 days after adoption of this report.

Poor Waste Management System

The Committee Recommends that: -

- The County Executive should establish a reliable monitoring and verification system using functional weighbridges.

- That only contractors with appropriate equipment should be engaged, and any excesses paid without justification should be recovered.

Poor Records Management at County Stores

The Committee Recommends that: -

- That all idle stock should be audited and redistributed or disposed of per regulations.
- That administrative action be taken on officers responsible for poor pharmaceutical storage.
- The County Executive to initiate Construct modern, ventilated, and secure store facilities.

Poor Management of Bitumen Stores Records

The Committee Recommends that: -

- That the County Executive relevant sector should reconcile bitumen usage variances within 60 days after adoption of this report and submit all missing documents to the County Assembly.
- The County Executive through the relevant sector secure the Kangundo Asphalt plant with perimeter fencing.

Ineffective Revenue Collection Systems

The Committee Recommends that: -

- The County Executive should operationalize the Nairobi County Revenue Authority with documented proof and timelines.
- The County Executive should develop and enforce a debt recovery strategy to reduce the Kshs.98B pending bills.
- The Nairobi Revenue Authority should put in place measures to ensure effective revenue collection measures.

Incomplete Asset Register

The Committee Recommends that: -

- The County Executive should submit to the County Assembly a comprehensive, updated fixed assets register (soft and hard copy) within 30 days after adoption of this report.
- The County Executive through the relevant sector should reconcile the variance of 4 NMS vehicles and provide ownership documentation for all assets within sixty days after the adoption of this report.
- The County Executive should institute a digital asset tracking system integrated with procurement and accounts departments.

7.0 CONCLUSION

The Committee having considered both the “**Report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the year ended 30th June, 2023**” and oral/written responses by witnesses it invited, has made various recommendations that require implementation by the County Executive Committee Member for Finance and Economic Affairs, Accounting Officers and state agencies. The recommendations are aimed at deterring future misappropriation of public funds.

8.0 ANNEXURES

Annex		Title
Annex 1		Minutes Sittings
Annex 2		Management Responses
Annex 3		Supporting Documents

MINUTES OF THE 55TH SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY SELECT COMMITTEE ON COUNTY PUBLIC ACCOUNTS HELD ON SATURDAY, 4TH OCTOBER, 2025 AT 10:00 A.M. AT SERENA HOTEL, MOMBASA COUNTY.

MEMBERS PRESENT:

1. Hon. Chege Mwaura, MCA – Chairman
2. Hon. Abel Osumba Atito, MCA – Vice-Chairman
3. Hon. Emmy Khatemeshi Isalambo, MCA
4. Hon. Rachel Wanjiru Maina, MCA
5. Hon. Paul Wachira Kariuki, MCA
6. Hon. Eutychus Mukiri Muriuki, MCA
7. Hon. Cyrus Mugo Mubea, MCA
8. Hon. Mary Wanjiru Kariuki, MCA
9. Hon. Mark Thiga Ruyi, MCA
10. Hon. Jane Musangi Muthembwa, MCA
11. Hon. Martin Mbugua Mwangi, MCA
12. Hon. Billy Richardo Nyantika, MCA
13. Hon. Carrington Gichunji Heho, MCA
14. Hon. Redson Otieno Onyango, MCA
15. Hon. Fredrick Njoroge Njogu, MCA
16. Hon. Fatuma Abduwahid Abey, MCA
17. Hon. Benter Juma Obiero, MCA
18. Hon. Simon Maina Mugo, MCA
19. Hon. Stazo Elijah Omung'ala Ang'ila, MCA
20. Hon. John Ndile Musila, MCA
21. Hon. Aaron Kangara Wangare, MCA

MEMBERS ABSENT:

1. Hon. Hussein Fuad Mohammed, MCA
2. Hon. John Rex Omolleh, MCA

IN-ATTENDANCE – OAG

1. Mr. Jeff Otieno

SECRETARIAT

1. Mr. Kevin Wasike – Senior Clerk Assistant
2. Mr. Benedict Ouma – Clerk Assistant
3. Mr. Klinsman Munase – Legal Counsel
4. Mr. Anthony Nyandiere – Hansard Officer

MIN.231/NCCA/PAC/OCTOBER/2025 – PRELIMINARIES

The Chairman called the meeting to order at thirty minutes past Ten O'clock and the opening prayers were said by Hon. Fredrick Njogu, MCA. The Chairman then welcomed Members present to the meeting and took them through the agenda which was adopted for consideration as proposed by Hon. Aaron Kangara, MCA and seconded by Hon. Mark Thiga, MCA as follows: -

1. Preliminaries (prayers and adoption of the agenda),

2. Consideration and adoption the draft report on the Reports of the Auditor-General on the Financial Statements of the County Executive for the years ended 30th June, 2022;
3. Consideration and adoption the draft report on the Reports of the Auditor-General on the Financial Statements of the County Executive for the years ended 30th June, 2023; and
4. Consideration and adoption the draft report on the Reports of the Auditor-General on the Financial Statements of the County Executive for the years ended 30th June, 2024.
5. Any Other Business, and
6. Adjournment.

MIN.232/NCCA/PAC/OCTOBER/2025 – CONSIDERATION AND ADOPTION THE DRAFT REPORT ON THE REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF THE COUNTY EXECUTIVE FOR THE YEARS ENDED 30TH JUNE, 2022.

The Secretariat tabled and took the Committee through the draft report on the consideration on the Report of the Auditor-General on the Financial Statements of the County Executive for the years ended 30th June, 2022. The Committee deliberated on the report and adopted the same for tabling in the Assembly as proposed by Hon. Wanjiru Kariuki, MCA and seconded by Hon. Martin Mbugua, MCA.

MIN.233/NCCA/PAC/OCTOBER/2025 – CONSIDERATION AND ADOPTION THE DRAFT REPORT ON THE REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF THE COUNTY EXECUTIVE FOR THE YEARS ENDED 30TH JUNE, 2023.

The Secretariat tabled and took the Committee through the draft report on the consideration on the Report of the Auditor-General on the Financial Statements of the County Executive for the years ended 30th June, 2023. The Committee deliberated on the report and adopted the same for tabling in the Assembly as proposed by Hon. John Ndile, MCA and seconded by Hon. Fredrick Njogu, MCA.

MIN.234/NCCA/PAC/OCTOBER/2025 – CONSIDERATION AND ADOPTION THE DRAFT REPORT ON THE REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF THE COUNTY EXECUTIVE FOR THE YEARS ENDED 30TH JUNE, 2024.

The Secretariat tabled and took the Committee through the draft report on the consideration on the Report of the Auditor-General on the Financial Statements of the County Executive for the years ended 30th June, 2024. The Committee deliberated on the report and noted that some issues were pending for further deliberations with the County Executive. The Committee was to meet the County Executive Members for Health and Environment to finalise the deliberations. After further deliberations, the Committee adopted the report for tabling in the Assembly as proposed by Hon. Fatuma Abey, MCA and seconded by Hon. Stazo Elijah Omung'ala, MCA subject to conclusion on pending issues.

MIN.235/NCCA/PAC/OCTOBER/2025 – A.o.B & ADJOURNMENT

The being no other business and the time being twenty minutes past One O'clock, the Chairman adjourned the meeting. The next meeting was scheduled to be by a way of notice.

CONFIRMED AS A TRUE RECORD OF THE PROCEEDINGS

CHAIRPERSON

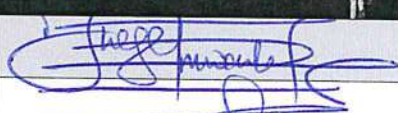






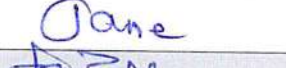
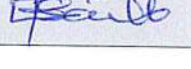


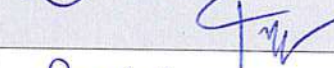
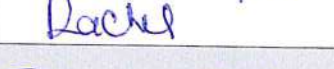
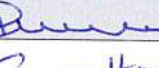


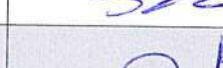
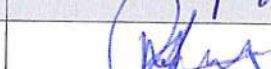
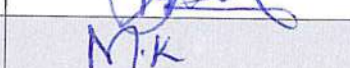

SIGNATURE

[Handwritten signature]

DATE

15/10/2025

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

S/N	Honourable Member	Signature
1.	Hon. Chege Mwaura, MCA - Chairperson	
2.	Hon. Abel Osumba Atito, MCA - Vice - Chairperson	
3.	Hon. Benter Juma Obiero, MCA	
4.	Hon. Redson Otieno Onyango, 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. Eutychus 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	