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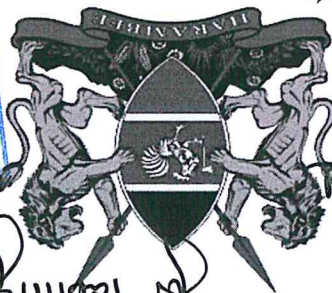
APPROVED  
VOLUME VI  
25/05/2017

|     |                                                   |                 |
|-----|---------------------------------------------------|-----------------|
| 9.  | NITHI WATER AND SANITATION COMPANY LIMITED        | NITHI THARAKA   |
| 8.  | NANYUKI WATER AND SANITATION COMPANY LIMITED      | LAIKIPIA        |
| 7.  | MOMBASA WATER AND SANITATION COMPANY LIMITED      | MOMBASA         |
| 6.  | MIGORI WATER AND SANITATION COMPANY LIMITED       | MIGORI          |
| 5.  | MANDERA WATER AND SEWERAGE COMPANY LIMITED        | MANDERA         |
| 4.  | MALINDI WATER AND SEWERAGE COMPANY LIMITED        | KILIFI          |
| 3.  | KIRINYAGA WATER AND SANITATION COMPANY LIMITED    | KIRINYAGA       |
| 2.  | ITEN-TAMBACH WATER AND SEWERAGE COMPANY LIMITED   | ELGEYO-MARAKWET |
| 1.  | BUSIA WATER AND SEWERAGE SERVICES COMPANY LIMITED | BUSIA           |
| NO. | WATER COMPANY                                     | COUNTY          |

REPORT OF THE SELECT COMMITTEE ON COUNTY PUBLIC INVESTMENTS  
AND SPECIAL FUNDS ON THE CONSIDERATION OF THE AUDIT REPORTS OF  
THE FOLLOWING COUNTY WATER SERVICE PROVIDERS FOR THE  
FINANCIAL YEAR 2020/2021 (1<sup>st</sup> JULY, 2020 TO 30<sup>th</sup> JUNE, 2021):

THIRTEENTH PARLIAMENT - THIRD SESSION

## THE SENATE

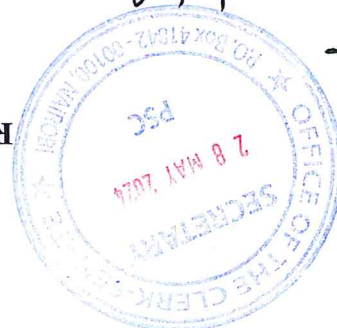


REPUBLIC OF KENYA

Recommended for approval

Ref. Hon. Speaker

for tabling.  
Recommended for approval.  
28/05/2014



DEPUTY CLERK

28 MAY 2024

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## ACRONYMS/ABBREVIATIONS

|        |                                                      |
|--------|------------------------------------------------------|
| CBK    | - Central Bank of Kenya                              |
| COB    | - Controller of Budget                               |
| COG    | - Council of Governors                               |
| DPP    | - Director of Public Prosecution                     |
| EACC   | - Ethics and Anti-Corruption Commission              |
| GAP    | - Generally Accepted Accounting Principles           |
| IFMIS  | - Integrated Financial Management Information System |
| KRA    | - Kenya Revenue Authority                            |
| IGRTC  | - Intergovernmental Relation Technical Committee     |
| NHIF   | - National Health Insurance Fund                     |
| NRW    | - Non-Revenue Water                                  |
| NSSF   | - National Social Security Fund                      |
| OAG    | - Office of the Auditor-General                      |
| PAA    | - Public Audit Act                                   |
| PFM    | - Public Finance Management                          |
| PSASB  | - Public Sector Accounting Standards Board           |
| RWDA   | - Regional Water Works Development Agency            |
| SO     | - Standing Orders                                    |
| TNT    | - The National Treasury                              |
| WASREB | - Water Services Regulatory Board                    |
| WRA    | - Water Resources Authority                          |
| WSP    | - Water Service Provider                             |

## DEFINITION OF TERMS

1. **Unqualified opinion:** This refers to a clean opinion which is the most desirable in which the auditor states that the financial condition, position, and operations of an organization are fairly presented in the financial statements in accordance with Generally Accepted Accounting Principles (GAAP).
2. **Qualified opinion:** This is an opinion expressed by the auditor if the financial statements appear to contain a small deviation from Generally Accepted Accounting Principles (GAAP) but are otherwise fairly presented. It is also rendered if the management of the organization limits the scope of audit procedures.
3. **Adverse opinion:** This refers to an opinion issued when there are material exceptions to Generally Accepted Accounting Principles (GAAP) that affect the financial statements as a whole and the auditor indicates that the financial statements are not presented fairly.
4. **Disclaimer:** This is an opinion given by the auditor when there is a significant limitation in the access to audit information and documentation and inadequate cooperation by the organizational management in the audit process.
5. **Non-Revenue Water:** Non-Revenue Water refers to the difference between the amount of water put into the distribution system and the amount of water billed/unbilled as authorized consumption. It is usually attributed to by physical losses such as leakages, bursts, and overflows through the existing old and dilapidated water supply network, and commercial losses due to metering anomalies and illegal connections.
6. **Going Concern:** This is an accounting principle used for a company that is financially stable enough to meet its obligations and continue its business for the foreseeable future.
7. **Accountability** – This refers to the assurance that an individual or a group will be held responsible for their actions or inactions.

## PREFACE

Hon. Speaker,

Parliamentary Committees are a creation of the Constitution through Article 124(1) of the Constitution which empowers each House of Parliament to establish Committees and make Standing Orders (SO) for the orderly conduct of its proceedings, including the proceedings of its Committees. The Select Committee on County Public Investments and Special Funds is established pursuant to Standing Order No. 194 of the Senate Standing Orders and is mandated to-

a) Pursuant to Article 96(3) of the Constitution, to exercise oversight over national revenue allocated to the county governments; and

b) examine the reports and accounts of county public investments; and

c) examine the reports, if any, of the Auditor-General on the county public investments; and

d) To exercise oversight over county public investments.



## COMMITTEE MEMBERSHIP

**Hon. Speaker,**

The membership of the Committee comprises of the following Senators-

1. Sen. Godfrey Atieno Osotsi, MP
2. Sen. (Prof.) Tom Odhiambo Ojenda, SC, MP
- **Chairperson**
- **Vice-Chairperson**
3. Sen. William Kipkemoi Kising, MP
4. Sen. Paul Karungo Thangwa, MP
5. Sen. Miraj Abdillahi Abdulrahman, MP
6. Sen. Eddy Gicheru Oketch, MP
7. Sen. Hamida Kibwana Ali, MP
8. Sen. Maureen Tabitha Mutinda, MP

## COMMITTEE SECRETARIAT

1. Mr. Yussuf Shimoy
2. Mr. David Angwenyi
3. Mr. Erick Njogu
4. Mr. Godfrey Nyaga
5. Mr. Kennedy Owuoth
6. Mr. Andrew Nyairo
7. Ms. Lucy Radoli
8. Mr. Sharon Rotino
9. Ms. Linet Aseka
10. Ms. Raisa Mwithi
11. Mr. Martin Mulandi
12. Mr. Josphat Ng'enhoh
13. Ms. Winfred Ocholla
14. Mr. Patrick Ngenoh
15. Mr. Josphat Ng'enhoh
16. Mr. John Pere
- Clerk Assistant I
- Clerk Assistant I
- Clerk Assistant III
- Clerk Assistant III
- Fiscal Analyst
- Legal counsel
- Legal counsel
- Research Officer
- Research Officer III
- Research Officer III
- Research Officer III
- Media Relations officer.
- Audio officer
- Procurement officer
- Media Relations Officer.
- Serjeant-at-arms

## ESTABLISHMENT OF THE COMMITTEE

**Hon. Speaker,**

The Committee was first constituted on 19<sup>th</sup> October, 2022 pursuant to Standing Order No. 194 of the Senate Standing Orders. The County Public Investments and Special Funds Committee (CPISFC) was split from the broad County Public Accounts and Investments Committee (CPAIC) in the 12<sup>th</sup> Parliament for the purpose of clearing audit backlog and to consider many audit thematic areas which had not been subjected to Parliamentary scrutiny since the inception of devolution in the year 2013.

**Hon. Speaker,**

The County Public Investments and Special Funds Committee is one of the financial audit committees through which the Senate under the provisions of Article 96(3) of the Constitution conducts ex-post scrutiny on Public Investments and Special Funds in Counties.

## EXECUTIVE SUMMARY

In the execution of its mandate, the Committee relied on the reports of the Auditor-General on audited Accounts of the water companies for the Financial year 2020/2021 (1<sup>st</sup> July, 2020 to 30<sup>th</sup> June, 2021) as the primary documents for the investigations. The Committee invited the Governors as the Chief Executive Officers of their respective County Governments pursuant to Article 179(4) as witnesses to respond to the audit queries raised in the reports under consideration.

The Committee received both written and oral evidences from the Governors in response to the various audit queries raised by the Auditor-General in the reports under consideration on various dates. The Committee considered and concluded its inquiry onto the reports of the Auditor-General on the Financial Operations of the water companies for the Financial Year 2020/2021.

This report documents the observations and recommendations of the Committee on each audit query as raised by the Auditor-General.

**THE PREFACE DETAILS** the place of Committees in the Constitution, Committee establishment and mandate, Committee membership and formation, the niche of the Committee in the Senate, the executive summary, key observations and recommendations and acknowledgement.

**CHAPTER ONE** is a record of the audit queries raised in the report of the Auditor-General for Busia Water and Sewerage Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER TWO** is a record of the audit queries raised in the report of the Auditor-General for Iten-Tambach Water and Sewerage Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER THREE** is a record of the audit queries raised in the report of the Auditor-General for Kirinyaga Water and Sanitation Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER FOUR** is a record of the audit queries raised in the report of the Auditor-General for Malindi Water and Sewerage Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER FIVE** is a record of the audit queries raised in the report of the Auditor-General for Mandera Water and Sewerage Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER SIX** is a record of the audit queries raised in the report of the Auditor-General for Migori Water and Sanitation Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER SEVEN** is a record of the audit queries raised in the report of the Auditor-General for Mombasa Water and Sanitation Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER EIGHT** is a record of the audit queries raised in the report of the Auditor-General for Nanyuki Water and Sanitation Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.

**CHAPTER NINE** is a record of the audit queries raised in the report of the Auditor-General for Nithi Water and Sanitation Company Limited for the Financial Year 2020/21 and observations and recommendations of the Committee on each audit query.



## GENERAL OBSERVATIONS

1. **Non-Revenue Water (NRW)** – The Committee observed that majority of Water Companies had very high levels of Non-Revenue Water, way above the recommended sector benchmark of 25% as prescribed by the Water Services Regulatory Board (WASREB). This was mostly attributed to dilapidated infrastructure (physical losses) and inaccurate meter reading and billing, and illegal connections (commercial losses). Some companies such as Busia Water and Sewerage Company Limited and Kirinyaga Water and Sanitation Company Limited had levels of Non-Revenue Water as high as 67% and 60% respectively in the Financial Year 2020/21.

2. **Bookkeeping, Preparation & Accuracy of the Financial Statements** - The Committee observed that there were inaccuracies and errors in regards to the preparation and presentation of financial statements in almost all Water Companies. Further, the Accountants, and the Managing Directors faced challenges in submitting supporting documents to the auditors on time contrary to Section 62 of the Public Audit Act, Cap.412B making the accountability and audit process difficult. The delays in preparation of complete financial statements indicating lack of requisite competencies and experiences in the water companies.

3. **Compliance to Reporting Standards and Accuracy of the Financial Statements** - The Committee observed that Accountants experienced challenges in adapting to the International Public Sector Accounting Standards (IPSAS) reporting framework in preparation of financial statements. Additionally, the Committee observed that the Public Sector Accounting Standards Board (PSASB) reviews the IPSAS periodically to take into account emerging issues and conform to best accounting practices. The Committee found that some Water companies experienced challenges in the application of these standards while preparing financial statements as evidenced by the audit queries.

4. **Ethnic Inclusivity** – The Committee observed that many water companies were non-compliant with section 7 (1) and (2) of the National Cohesion and Integration Act, Cap.7N which provides, “all public offices shall seek to represent the diversity of the people of Kenya in employment of staff and that no public institution shall have more than one third of its establishment from the same ethnic community” and Section 65(1) (e) of County Governments Act, Cap.265 which provides, “The need to ensure that at least 30% of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the County”. Some companies such as Iten-Tambach Water and Sewerage Company Limited had all 49 (100%) of their staff originating from the dominant ethnic community.

5. **Material Uncertainty in Relation to Going Concern** – The Committee observed that quite a number of water companies reported negative working capital during the period under review. Therefore, the companies were unable to meet their short-term financial obligations as they fell due and relied on financial support from the County Executive or development partners raising concerns on their sustainability.
6. **Non-remittance of statutory deductions** – The Committee observed that various water companies had continuously failed to remit statutory deductions to various institutions such as Kenya Revenue Authority, National Health Insurance Fund, National Social Security Fund, and pension schemes which is a violation of the law especially the Retirement Benefits Act, Cap.197, the Pensions Act, Cap.189 and the Income Tax Act, Cap.470 which led to continued accrual of interest and penalties.
7. **Budgetary Control and Performance** – The Committee observed that a number of water companies had weaknesses in executing their budgets and did not adhere to the approved budget ceilings set for programs. Water Companies either over-utilized or under-utilized the appropriated funds. In some instances, funds were re-allocated to items that were not budgeted for and without prior approval by the Board of Directors. In addition, water companies experienced high revenue shortfalls and unrealistic budgets.
8. **Non-transfer of assets and liabilities** – The Committee observed that most water companies had not fully transferred all assets and liabilities from the defunct councils and Regional Water Works Development Agencies as is required by the Water Act, Cap.372. In this regard, such water companies did not reflect their correct financial position within their books of account.
9. **Breach of various provisions of the law** – The Committee observed that there was non-compliance with the provisions of the Public Finance Management Act, Cap.412A, Public Audit Act, Public Finance Management (County Government) Regulations, 2015, the Water Act, the Companies Act, Cap.486, the Income Tax Act, the Retirement Benefits Act, the Pensions Act, the County Government Act, the Accountants Act, Cap.531 and Water Service Regulatory Board (WASREB) guidelines.
10. **Unclear ownership of assets** – The Committee observed that most of the water companies had disputes with regard to the ownership of the assets.
11. **Lack of an updated fixed asset register** – The Committee observed that water companies had not updated their asset registers exposing assets of the water company to risk of loss, waste and misuse. The Committee further noted that the National Treasury issued a circular no. 5/2020 of 25th February 2020 on the preparation of asset registers for entities in County Governments.

**12. Multiple Levies –** The Committee observed that County Water Service Providers were subjected to multiple water sector levies including-

- i. A 4% regulatory levy on billed revenue, paid to the Water Services Regulatory Board (WASREB);
- ii. Water User Charges of Kshs. 5 per cubic metre of water consumed exclusive of donation sold, paid to Water Resources Authority (WRA);
- iii. A further 5% of the Water User Charges as Conservation fees paid to WRA; and
- iv. Effluent discharge fees which are 80% of Kshs. 0.3 per cubic metre of water sold, paid to WRA.

These levies negatively affected the Water Companies' financial viability thus, putting them at risk of an inability to continue and operate as a going concern. The Committee further noted that these levies were consequently transferred to the consumers through the increment of water prices.



## GENERAL RECOMMENDATIONS

The Committee recommends that-

1. The Board and the accounting officers of the water companies to put in place comprehensive measures to mitigate Non-Revenue Water (physical and commercial losses) including the application of Geographical Information System (GIS) for receiving real-time data in the detection of bursts and leakages, installation of smart meters for accurate billing, replacement of the dilapidated infrastructure and development of institutional anti-corruption policies and enforcement measures to prevent illegal connections among other measures. In addition, the management should disclose the proportions of both the physical and commercial losses in percentage in their reporting.
2. The Board and the accounting officer to ensure proper record keeping and provide all the supporting documents to the Auditor-General in accordance with section 9(1)(e) of the Public Audit Act, 2015 during the time of audit and adhere to the Accountants Act, 2008, failure to which the committee shall invoke section 62 of the Public Audit Act, 2015.
3. The Board of Directors in consultation with the Public Sector Accounting Standards Board conducts continuous capacity building on financial reporting standards for finance officers in the water companies and the management, to improve the quality of reporting and enhance compliance. The board to ensure that the accountants have requisite competency and experience in financial management as is required by the Accountants Act, 2008. In addition, the accounting officer to ensure compliance with the financial reporting template of the National Treasury. This will strengthen maintenance of books of accounts, preparation of financial statements, and timely submission of the statements and documents to the Auditor-General by the water Companies.
4. The Board and County Government to make deliberate efforts to progressively comply with section 7 (1) and (2) of the National Cohesion and Integration Act, 2008 and Section 65(1) (e) of the County Governments Act, 2012 on diversity, inclusivity. In addition, the Board and the County Governments to establish a diversity policy with the aim of complying with the law. This will be reviewed in the subsequent audit period.
5. The Board, Accounting Officers and the County Governments to put in place strategic and innovative measures for recovery and to boost the financial health of the water companies for self-sustainability. Additionally, they should review and regularize their existing assets indicating the service provider agreements before transition from the defunct councils and have updated assets registers that reflect the current financial position, determine and ascertain their commercial viability as required by the Public Sector Accounting Standards Board (PSASB).



- The Board should indicate if the financial support is a conditional grant or donation in their books of account and it should not be a direct transfer from the County Executive. Further, the County Governors through the County Executive Committee member for water should monitor the financial operations of the water companies pursuant to section 184 of the Public Finance Management Act, 2012.
6. The County Governments, the Board and the accounting officers shall ensure timely remittance of statutory deductions to the relevant institutions to avoid the accrual of interest and penalties that will further increase the companies' liabilities. The accounting officer should comply with the provisions of the Income Tax Act (Cap. 470), 1974, the Retirement Benefits Act, 1997, the Pensions Act, 1942. The Board should provide a plan and commitment for the repayment of the outstanding statutory deductions, failure to which the committee will recommend appropriate enforcement measures to be taken.
  7. The Board and accounting officers should prepare realistic budgets and revenue projections to prevent issues of revenue shortfalls which have negative implications on the companies' service delivery. In the process of preparing the budget, the board should consider the previous budgetary allocation and if the current budget is to increase, it should be reasonable. In addition, the board should seek the necessary approval by forwarding the budget estimates to the County Executive Committee member for water, who shall then forward it to the County Treasury as required by the law. Further, the water companies should automate their billing systems.
  8. The Council of Governors should engage the Ministry of Water, Sanitation and Irrigation, the Water Services Regulatory Board (WASREB), the Regional Water Works Development Agencies and the Inter-Governmental Relations Technical Committee to settle the matter on the transfer of the assets and liabilities as required by the Water Act, 2016.
  9. The Board and accounting officers of the water companies to strictly adhere to the relevant laws such as the Public Finance Management Act, 2012, the Public Audit Act, 2015, the Public Finance Management (County Government) Regulations, 2015, the Water Act, 2016, the Accountants Act, 2008, the Companies Act, 2015, the Income Tax Act, 1974, the Employment Act, 2007, the Pension Act, 1942, the Retirement Benefits Act, 1997 and the Water Services Regulatory Board (WASREB) guidelines, failure to which penalties for non-compliance will be sanctioned.
  10. The Governors should engage the Inter-Governmental Relations Technical Committee (IGRTC) and the relevant Regional Water Works Development Agencies to fast-track on the transfer of the assets and liabilities so that they reflect a true position of the companies in their books of account.

11. The Board of Directors and the managing director should ensure the water companies have updated fixed asset registers pursuant to section 136 (1) of the Public Finance Management (County Government) Regulations, 2015 and in the format prescribed by the National Treasury and submit the same to the Auditor-General within 60 days from the adoption of this report.
12. The Ministry of Water, Sanitation and Irrigation should review the existing policies and regulations related to levies of water companies with the aim of streamlining and harmonizing them.

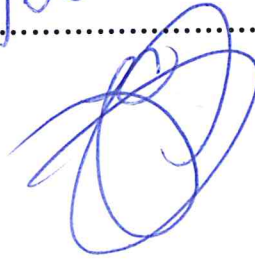
**ACKNOWLEDGEMENTS**

**Hon. Speaker,**

The Committee wishes to acknowledge the support it received from the Office of the Speaker and the Clerk of the Senate in the execution of its mandate. I also take this opportunity to thank the Members of the Committee for their due diligence and commitment in the consideration of the audit reports. The Committee further wishes to express its appreciation to the able secretariat for their support and services in facilitating the Members and the Committee in its operations.

**Hon. Speaker,**

On behalf of the County Public Investments and Special Funds Committee, it is my pleasant duty and privilege to table this report on the floor of the Senate and commend it to the House for debate and adoption pursuant to the provision of Standing Order No. 223 (6) of the Senate Standing Orders.



SIGNED: .....

DATE: .....

29/04/2024

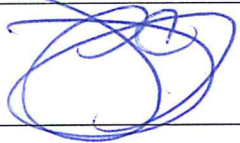
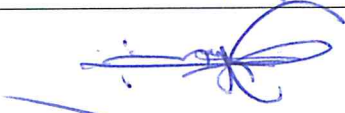
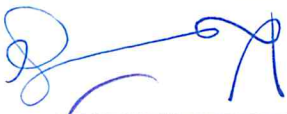
HON. SEN. GODFREY ATIENO OSOTSI, MP  
CHAIRPERSON

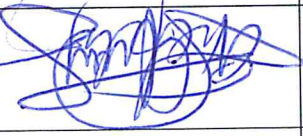


**ADOPTION OF THE REPORT OF THE SENATE SELECT COMMITTEE ON  
COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS ON THE  
CONSIDERATION OF THE AUDIT REPORTS OF SEVEN COUNTY WATER  
SERVICE PROVIDERS FOR THE FINANCIAL YEAR 2020/2021**

| NO. | WATER COMPANY                                     | COUNTY              |
|-----|---------------------------------------------------|---------------------|
| 1.  | BUSIA WATER AND SEWERAGE SERVICES COMPANY LIMITED | BUSIA               |
| 2.  | ITEN-TAMBACH WATER AND SEWERAGE COMPANY LIMITED   | ELGEYO-<br>MARAKWET |
| 3.  | KIRINYAGA WATER AND SANITATION COMPANY LIMITED    | KIRINYAGA           |
| 4.  | MALINDI WATER AND SEWERAGE COMPANY LIMITED        | KILIFI              |
| 5.  | MANDERA WATER AND SEWERAGE COMPANY LIMITED        | MANDERA             |
| 6.  | MIGORI WATER AND SANITATION COMPANY LIMITED       | MIGORI              |
| 7.  | MOMBASA WATER AND SANITATION COMPANY LIMITED      | MOMBASA             |
| 8.  | NANYUKI WATER AND SANITATION COMPANY LIMITED      | LAIKIPIA            |
| 9.  | NITHI WATER AND SANITATION COMPANY LIMITED        | THARAKA<br>NITHI    |

We, the undersigned Members of the Select Committee on County Public Investments and Special Funds, do hereby append our signatures to adopt this report.

| No. | Name                                                                  | Signature                                                                         |
|-----|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1.  | Sen. Godfrey Atieno Osotsi, MP ( <i>Chairperson</i> )                 |  |
| 2.  | Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP ( <i>Vice-Chairperson</i> ) |  |
| 3.  | Sen. William Kipkemoi Kisang, MP                                      |  |
| 4.  | Sen. Paul Karungo Thangwa, MP                                         |  |

|    |                                     |                                                                                     |
|----|-------------------------------------|-------------------------------------------------------------------------------------|
| 5. | Sen. Miraj Abdillahi Abdurahman, MP |                                                                                     |
| 6. | Sen Eddy Gicheru Oketch, MP         |  |
| 7. | Sen. Hamida Kibwana Ali, MP         |  |
| 8. | Sen. Maureen Tabitha Mutinda, MP    |                                                                                     |

## CHAPTER ONE

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR BUSIA WATER AND SEWERAGE COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor of Busia County, Hon. Dr. Paul Nyongesa Otuma E.G.H, appeared before the Committee on Thursday 8<sup>th</sup> June, 2023 to respond (under oath) to audit queries raised in the Report of the Auditor-General on Financial Statement for Busia Water and Sewerage Company Limited for the Financial Year 2020/2021. He was accompanied by-

- |      |                      |                           |
|------|----------------------|---------------------------|
| i.   | Mr. Arthur Odera     | - Deputy Governor         |
| ii.  | Ms. Topister Wanyama | - CECM Finance            |
| iii. | Mr. Erick Nakitari   | - MD BUWASSCO             |
| iv.  | Mr. Gypsum Wajala    | - Chief Officer – Finance |
- The Busia Water and Sewerage Company Limited is wholly owned by the Busia County Government.

### REPORT ON THE FINANCIAL STATEMENTS

The Auditor-General rendered a **qualified opinion** on the financial statements of Busia Water and Sewerage Company Limited for the period under review on the following basis-

#### 1. Lack of fixed asset register.

The statement of financial position as at 30<sup>th</sup> June 2021 reflects property, plant and equipment balance of kshs. 3,528,783 which as disclosed in note 12 to the financial statements includes additions during the year amounting to kshs 3,371,185. However, the company did not maintain a fixed asset register indicating the type and nature of assets, locations and values required by regulation 136 of public finance management (county government) regulation 2015.

In addition, the asset movement schedule in note 12 to the financial statements includes land and buildings of undetermined value which were owned by the company as at 30<sup>th</sup> June 2021.

In the circumstances the accuracy and completeness of the property, plant and equipment balance of kshs. 3,528,783 as at 30<sup>th</sup> June 2021 could not be confirmed.

#### Management Response:

The management agrees with the audit observations on the lack of Asset Register. However, it has since developed a template of asset register and availed for audit



verification. A certified asset register will be developed after valuation has been carried out by a registered valuer in the next financial year.

#### **Committee Observations**

The Committee observed that the query remains unresolved as-

- i. The management failed to provide an updated fixed asset register during the audit period.
- ii. The Company's asset movement schedule in note 12 to the financial statements included land and buildings of undetermined value which were owned by the company as at 30<sup>th</sup> June 2021.

#### **Committee Recommendation**

The Committee recommends that-

- i. the Accounting Officer ensures that the company carries out a valuation of all its assets within 60 days of the adoption of this report;
- ii. the Accounting Officer ensures that the company has an updated fixed asset register as prescribed by the Public Sector Accounting Standards Board (PSASB); and
- iii. the Auditor-General to undertake physical verification of all assets of the water company and provide a status report to the Committee within 60 days from the adoption of this report.

## **2. Unsupported Bank and Cash Balances.**

The statement of financial position as at 30 June, 2021 reflects bank and cash balance of Kshs. 5,914,141. However, bank reconciliation statements, bank statements, bank confirmation certificates and cash books were not provided for audit review. Consequently, the validity, accuracy and completeness of the bank and cash balance of Kshs. 5,914,141 as at 30 June, 2021 could not be confirmed.

#### **Management Response**

The management hereby submits copies of bank reconciliation statements, bank statements and certificate of bank balance for audit verification

#### **Committee Observations**

The Committee observed that the query remains unresolved as-

- i. The management failed to provide bank reconciliation statements, bank statements, bank confirmation certificates and cash books to support a bank and cash balance of Kshs. 5,914,141 to the Auditor-General in contravention of section 9(1)(e) of the Public Audit Act, Cap.412B.

- ii. The management has since availed all the requested documents except the cash books.

#### **Committee Recommendations**

**The Committee recommends that-**

- i. the management to submit the required Cash Books to the Auditor-General for verification, within 60 days of the adoption of this report;
- ii. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act; and
- iii. Director of Public Prosecutions to direct an investigation into the possible contravention of the Public Audit Act, Cap.412B by the Accounting Officer and where in the Director of Public Prosecutions' assessment, criminal culpability arises, to institute criminal proceedings against the Accounting Officer.

### **3. Unsupported Expenditure- Administration Costs**

The statement of profit and loss and other comprehensive income reflects expenditure of kshs. 47,772,580 on administration costs. However, the amount includes payments totaling kshs. 481,000 which were not supported by payment vouchers, invoices/goods received notes among other expenditure documents and therefore could not be reviewed.

In the circumstances, the validity and occurrence of the expenditure of kshs. 481,000 could not be confirmed.

#### **Management Response**

The management hereby resubmits the supporting documents for audit verification.

#### **Committee Observations**

The Committee observed that the query remains unresolved as the management failed to provide payment vouchers, invoices and goods received notes among other expenditure documents, to support payments totaling to Kshs. 481,000 during the audit period.

#### **Committee Recommendations**

**The Committee recommends that-**

- i. the Accounting Officer to submit the requested documents to the Auditor-General for verification, within 60 days of the adoption of this report; and
- ii. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.

#### Other matters

#### Prior Year Audit Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statement, Report on Lawfulness and Effectiveness in use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the issues have not been included in Appendix 1, follow up on prior audit matters. In addition, the Management have not resolved the issues or given any explanation for failure to adhere to the Provision of the Public Sector Accounting Standard Board templates.

#### Management Response:

The management agrees with the audit observations. A Comprehensive audit follow up Report on the recommendations of the Auditor-General has been developed to be included in subsequent audits. The Management has made progress in resolving the audit matters.

#### Committee Observations

The committee observed that the query remains unresolved as-

- i. The management of the water company did not take action in resolving the queries raised in the report of the Auditor-General for the financial year 2018/2019.
- ii. The management gave no explanation for failure to adhere to the Provision of the Public Sector Accounting Standard Board templates.

#### Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should try and resolve any issues resulting from an audit that remains outstanding as required by section 149(2)(i) of the Public Finance Management Act, Cap.412A; and the Auditor-General provides a status update on the progress made on the matter in the subsequent audit cycle upon review of the progress report;



- ii. the Accounting Officer adheres to section 149(2)(b) of the Public Finance Management Act and section 47(2) of the Public Audit Act in the preparation and management of financial and accounting records; and
- iii. The Accounting Officer to ensure that the water Company keeps financial and other records that are accurate, reliable, complete and ensure adherence to accounting standards prescribed by the Public Sector Accounting Standards Board (PSASB).

## REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Pursuant to Article 229(6) of the Constitution, based on the audit procedures performed by the Auditor-General, the following matters formed the basis for conclusion that public resources were not applied lawfully and in an effective way-

### 1. Lack of Legal Instruments

The management did not provide copies of share certificates, Memorandum of Association and Articles of Association for audit review. Therefore, the ownership status of the Company could not be confirmed

### Management Response

The management wishes to state that it agrees with the audit observation the share certificate was not availed as it could not be traced at the time of the Audit. The management has since availed the memorandum of association and articles of association of Busia Water and Sewerage Services Company Limited which has details of shareholding. Currently the management through Chief Executive Committee member convened a meeting with shareholders to revert all the shares which were owned by individual shareholders to ensure that the company is fully owned by the County Government of Busia.

### Committee Observations

The Committee observed that the management failed to provide copies of share certificates, Memorandum of Association and Articles of Association during the audit period, however, all the documents have since been submitted to the Auditor-General for verification. The Committee further observed that the water company was not fully owned by the County Government as there were individual shareholders in the shareholding structure of the water company.

### Committee Recommendations

The Committee recommends that-

- **New billing system and Smart meter reading** - the company through support of Kenya Towns Sustainable Water Supply and Sanitation Program and Lake Victoria North Water Works Agencies is currently implementing an Enterprise Resource

The management has embarked on projects which are expected to significantly reduce non-revenue water to the Water Sector Regulation Board (WASREB) sector benchmark of 25%. These include:

The company's strategy is to invest more in metering its consumers, repair kit and monitoring of its pipeline network so as to reduce the NRW and improve on revenue generation.

- (i) Old and dilapidated water infrastructure which requires a lot of financial investment before they can be efficiently utilized.
  - (ii) Frequent Bursts and leaks which remain a routine challenge on a month-to-month basis.
  - (iii) Stuck and defective water meters which require replacement and frequent meter servicing exercises.
  - (iv) Unmetered, illegal and meter by-passes by some of our customers which increases the volumes of water being lost on a month-to-month basis
- and its ability to sustain services. The high NRW is as a result of:

The management wishes to state that it is in agreement with the Auditor's observation that the non-revenue water (NRW) has a negative impact on the company profitability

**Management response**

Therefore, the Management was inefficient in managing the water resource and was in breach of WASREB Regulation.

Review of the water production records revealed that the company produced 1237009 cubic meters of water but accounted for only 402,028 cubic meters or 33%. The remaining balance of 834,981 cubic meters or 67% which was unaccounted for represents Non-Revenue Water. However, the Loss exceeded 25% allowable limit by Water Service Regulatory Board (WASREB)

**2. Non-Revenue Water**

- i. the Governor of Busia County takes immediate measures to ensure that Busia Water and Sewerage Services Company Limited is fully owned by the Busia County Government and is registered in line with the law; and
- ii. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.



Planning (E.R.P) & Customer Relation Management (CRM) system. This will enhance reduction in commercial non-revenue water since meter reading is going to be done using smart phones which will be GPS enabled.

- **Increase metering ratio-** WASREB requires all Water Service Providers (WSP) to be at 100% metering ratio. The Company has been able to write proposals to partners including Kenya Market Trust (KMT). The partner has come in hand and supported the Company with 300 cold water meters which are already installed and 400 meters have been delivered to the company and are currently being installed. The partner has also trained the Company staff on best practices of NRW management. Metering is key in reduction of commercial NRW for the company to be able to attain the set benchmark of 25%.

- **Smart metering-** The company has also engaged other experts and partners i.e. Liason, Go soft Africa and Pay go team who are currently carrying out pilots on smart metering in a bid to cut down on NRW. This is being realized through trainings, data analysis, and installation of smart metering technologies.

## Committee Observations

The Committee observed that the query remains unresolved as the Non-Revenue water for the company was at 67% which was 42% above the sector benchmark of 25% as set out in WASREB guidelines. However, the water company has made some efforts to reduce the NRW arising from commercial and physical losses.

## Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should put in place comprehensive measures to mitigate on the Non-Revenue Water, that is, both physical and commercial losses. The measures to include replacement of old age dilapidated infrastructure, installation of smart meters for accurate billing and the application of Geographical Information System (GIS) to receive real-time data for the detection of bursts and leakages among other measures. The Auditor-General to review the implementation of the measures put in place to mitigate the Non-Revenue Water and provide a status update on the matter in the subsequent audit cycle; and
- ii. the County Government to collaborate with the Ethics and Anti-Corruption Commission to ensure pre-emptive measures are put place to reduce cases of theft and illegal connections.



## CHAPTER TWO

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR ITEN-TAMBACH WATER AND SEWERAGE COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor of Elgeyo-Marakwet County, Hon. Wisley Rotich, appeared before the Committee on Tuesday, 1<sup>st</sup> August, 2023 to respond (under oath) to audit queries raised in the Report of the Auditor-General on Financial Statements for Iten-Tambach Water and Sewerage Company (ITWASCO) Limited for the Financial Year 2020/2021. He was accompanied by—

- |      |                      |                                      |
|------|----------------------|--------------------------------------|
| i.   | Mr. Jason Lagat      | - CECM Water and Environment         |
| ii.  | Mr. Fredrick Linyewa | - Chairperson ITWASCO                |
| iii. | Mr. Paul Yator       | - Managing director ITWASCO          |
| iv.  | Mr. Jeremiah Kigen   | - CFM, ITWASCO                       |
| v.   | Mr. Alphannus Tanui  | - CECM Finance and Economic Planning |

Iten-Tambach Water and Sewerage Company Limited is wholly owned by the County Government of Elgeyo-Marakwet.

### REPORT ON THE FINANCIAL STATEMENTS.

The Auditor-General rendered a **qualified opinion** on the financial statements of Iten-Tambach Water and Sewerage Company Limited for the financial year 2020/2021 on the following basis -

#### I. Non-Revenue Water

The statement of profit or loss and other comprehensive income for the year ended 30 June, 2021 reflects water sales revenue amount of Kshs. 28,717,440. Review of supporting documents provided for the audit revealed that the Company produced 1,002,600 (2020: 807,091) cubic meters (M<sup>3</sup>) of water. However, only 681,765 (2020: 548,822) cubic meters (M<sup>3</sup>) was billed to customers. The balance of 320,835 (2020: 258,269) cubic meters (M<sup>3</sup>) or approximately 32.0% (2020: 31.9 %) represented non-revenue water (or Unaccounted for Water (UFW)) which is 7% (2020: 6.9%) above the acceptable loss of 25% of the total production as per guidelines published by the Water Services Regulatory Board (WASREB). Management has not justified the high volume of non-revenue water or Unaccounted for Water (UFW)).

In the circumstances, the accuracy and completeness of the water sales revenue amount of Kshs.28, 717,440 could not be confirmed.

## Management Response

Management agrees that during the year ITWASCO produced 1,002,600 cubic meters (m<sup>3</sup>) of water. However, out of this volume, only 681,765 m<sup>3</sup> was billed to customers. The balance of 320,835 m<sup>3</sup> or approximately 32% of total volume represented Non-Revenue Water (NRW) which is 7% over and above the allowable loss of 25% in accordance with the Water Services Regulatory Board guidelines.

The company was established under the license of Rift Valley Water Services Board (RVWSB). The water supply whose jurisdiction was Iten and Tambach towns was being managed by the Ministry of Water was inherited by the company as a whole. One of the targets of the company among others was to reduce the Non-Revenue Water (NRW) to an acceptable rate whereby this was reduced from 42% to 32% in the year under review; this was managed under limited available resources in the year. The company is therefore still committed to reducing this by employing more resources to work on the challenges resulting in such unaccounted-for water and these measures include: -

- i. Proposals to Water Trust Fund to finance purchase of water meters through Urban Project Concept to reduce unmetered connections and replace faulty meters.
- ii. The company in collaboration with the County Government of Elgeyo Marakwet has increased the number of metered connection and is planning to purchase more water meters to reduce NRW.
- iii. The Company has put in place a system through a company managed hotline numbers for the public to report any leakage bursts, illegal connections and self-reconnections.
- iv. In addition to maintaining the line, the patroller team of pipefitter's repairs reported leakages, bursts and assists in eliminating illegal connections and reconnections promptly whenever identified and reported.
- v. The company already had installed 200 No consumer meters which was funded by County Government of Elgeyo Marakwet.
- vi. Also, the county government already has installed master meters in each zone to account for NRW.
- vii. Effective Meter Reading: - Meters are read using a smartphone on site and uploaded automatically into a billing database. The database then runs checks to identify anomalies that would suggest an erroneous reading. The smartphone is also used to take a photograph of the meter when it is read, which enables anomalies to be resolved without a further site visit, but also provides a means to check that the meter has been actually read. This system provides an effective means of monitoring both consumption and meter readers performance.
- viii. Establishment of District Metered Areas (DMAs): - Creating DMAs has been long established as a key tool to manage leakages through reconciling DMA flows by comparing the monthly water balance with the leakage assessment;



and Provision of appropriate incentives to customers and staff who report illegal connection.

## Committee Observations

The Committee observed that query remains unresolved from financial year 2019/2020

- i. The Non-Revenue Water stood at 32%, which is 7% above the sector benchmark of 25% set by the Water Services Regulatory Board (WASREB) guidelines.

- ii. The management of the water company listed measures to address the Non-Revenue Water losses. These measures include, active leak detection, and repair, and termination of cut-off accounts from the mains to curb illegal reconnections among others.

- iii. This high level of Non-Revenue Water has largely contributed to the Company's revenue shortfall as well as the material uncertainty relating to a going concern.

## Committee Recommendations

The Committee recommends that -

- i. The company should put into place comprehensive measures to mitigate the Non-Revenue Water. These measures include the installation of smart meters to ensure accurate billing, the replacement of the old water supply network as well as the introduction of a Geographic Information System (GIS) which will help the company receive real-time data on leaks in pipes and monitor maintenance.
- ii. The Governor should collaborate with EACC to ensure that pre-emptive measures are put into place to reduce the cases of theft and illegal connections.
- iii. The Auditor-General should review the implementation of the measures put in place by the management to mitigate the matter and provide a report on this matter in the subsequent audit cycle.

## 2. Non-Disclosure of Value and Ownership of Land

The statement of financial position reflects property, plant and equipment balance of Kshs. 6,184,955 as disclosed in Note 5 (a) to the financial statements. The balance includes buildings balance of Kshs. 1,314,516. However, the value of land on which the



- i. the Governor ensures that the water company secures full ownership of the queried piece of land and provide status update to the committee within 60 days of the adoption of this report;
- ii. the Accounting Officer ensures that the water company maintains an up-to-date asset register in the format prescribed by the Public Sector Accounting Standards Board (PSASB) and the company to carry out a valuation of all its assets and submit the same to the Auditor-General within 60 days from the adoption of this report;
- iii. the Governor engages the Intergovernmental Relations Technical Committee (IGRTC) to ensure that the process of transfer of all assets and liabilities are completed in a timely manner; and

The Committee recommends that; -

#### Committee Recommendations

The Committee observed that the query remains unresolved from financial year 2019/2020 as the water company had no title deed for the said piece of land and had not included the land measuring 1 acre on which the building stands in its financial statements.

#### Committee Observations

As per the records, the procedure of subdividing of the parcel was in process. The Department of water and Company are making follow-ups on the matter to be resolved. This parcel of Land originally belongs to Sirikwa County Council as the attached searches certificate reserved for Iten primary under parcel No. 404, with other four government institutions.

Management concurs with the findings that the value of land has not been disclosed in the financial statement. This is because the company had no title of ownership of the land. Therefore, the company was not able to proceed with valuation and recognize the same in its books.

#### Management Response

In the circumstance, the ownership, accuracy and completeness of the property, plant and equipment balance of Kshs.6, 184,955 as at 30 June, 2021 could not be confirmed. verification.

buildings are built has not been disclosed in the financial statements. Further, the title deed to confirm ownership of the land by the Company was not provided for audit

- iv. the Auditor-General to undertake physical verification of all assets of the water company and provide a status report to the Committee within 60 days from the adoption of this report.

### **3. Un-Transferred Work in Progress**

The statement of financial position reflects work-in-progress (un-transferred) balance of Kshs. 16,880,122 as disclosed in Note 5 (b) to the financial statements. Review of supporting documentation revealed that the work in progress relates to assets which were financed by the Water Services Trust Fund. According to the financing agreement between Water Services Trust Fund, Rift Valley Water Service Board (RVWSB) and Iten Tambach Water and Sewerage Company Limited (ITWASCO) dated 25 July, 2012, ITWASCO was the implementor of the project while Rift Valley Water Service Board (RVWSB) was to acquire the ownership of the new assets developed. Rift Valley Water Services Board requested for the transfer of the completed work in progress to the Board as per the terms of the financing agreement. However, at the time of the audit the project had not been transferred and therefore the completed assets are wrongly classified in the financial statements as work in progress and are not being depreciated although they are in use.

In the circumstance, the accuracy, completeness and ownership of the work in progress balance could not be confirmed.

### **Management Response**

Management stated that the figure of Kshs 16,880,122 was a funding from Water Sector Trust Fund(WSTF) for Three proposals Namely: 3rd, 5th and 6th Call proposals awarded to ITWASCO, the contracts were signed between Rift Valley Water service Board (on their behalf) and WSTF, however after the completion of projects they were not handed over to Rift Valley Water Service Board during the audit period and as per the queries served, they have since written to Rift Valley Water Service Board for a transfer of the assets to them of which they were unresponsive.

In the wake of Water Act 2016, the company has resolved to address this issue as follows; in the current Financial Year 2022/2023 they have transferred assets from Work in Progress to completed assets.

They passed prior year adjustment to take care of depreciation expenses since completion of the projects (as per the certificate of completion) and necessary adjustment made.



#### **Committee Observations**

Committee observed that the management had resolved to address the issue in Financial Year 2022/2023 by transferring the assets from Work in Progress to completed assets.

#### **Committee Recommendations**

The Committee recommends that the Auditor-General follows up the matter on the 2022/2023 Financial Statements for confirmation of the correct accounting entries and adjustments.

#### **4. Trade Receivables**

The statement of financial position reflects trade receivables balance of Kshs. 27,520,849 as disclosed in Note 6 (a) to the financial statements. However, audit analysis of the supporting documents revealed the trade receivables increased by Kshs. 4,625,822 or 20% from Kshs. 22,895,027 in the 2019/2020 financial year to Kshs. 27,520,849 in 2020/2021 financial year. Further, the ageing analysis revealed that out of trade receivables balance of Kshs. 27,520,849 outstanding as at 30 June, 2021, an amount of Kshs. 19,136,387 or 63 % had been outstanding for more than 180 days. Management has not justified the significant increase in receivables or explained why the debts have not been collected.

In the circumstances, the recoverability of the long outstanding trade receivables and adequacy of the provision for doubtful debts could not be confirmed.

#### **Management Response**

Management agrees that bills totalling to Kshs 19,136,387 or 63% had been outstanding for more than 180 days as reported. Due to economic downturn and post Covid 19 pandemic and a letter to Council of Governors on disconnection of water, Ministry of customer Water, Sanitation and irrigation through circular ref. WD/3/1359VOL.1 which had instructed against disconnection of water supplies to clients. This majorly contributed to the outstanding bills.

Forming a major part of the bills were government (County and National) institutions which had not settled their bills.

Also, debt recovery policy has been finalized and they were implementing.

#### **Committee Observations**

The Committee observed that the query remains unresolved from the financial year 2019/2020 as the company had bills totaling Kshs. 19,136,387 owed to them for more than 180 days.



## Committee Recommendations

The Committee recommends that -

- i. The management performs an aging analysis on the long outstanding receivables and with the Board's approval, write off the irrecoverable debts in line with regulation 150(1) of PFM (County Government) Regulation, 2015.
- ii. The management ensures implementation of the Enterprise Resource Planning (ERP) system and its use in performing periodic debtors aging analysis.
- iii. The management ensures strict compliance with the provisions on losses and write-offs stipulated under regulation 150(1) of PFM (County Governments) Regulations.
- iv. The Accounting Officer ensures that supporting documents are availed to the Auditor during audit as required under section 9(1)(e) Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62(2) of the Public Audit Act.

### 5. Long Outstanding Payables, Provisions and Accruals

The statement of financial position reflects payables, provision and accruals balance of Kshs. 24,548,079 as disclosed in Note 9 to the financial statements. Included in the balance is regulatory levies amounting to Kshs. 16,176,526, out of which Kshs. 15,598,566 relates to 2019/2020 and earlier years.

In the circumstances the Company is exposed to risks of litigations instituted by the creditors due to failure to settle amounts owed to suppliers.

### Management Response

Management concurs with the findings that, the amount in question of Kshs 16,176,526 reflected in the figures of regulatory levies owed to Rift Valley Water Services Board was overstated by Kshs 6,116,678. It came to their realisation that with the operationalization of the Water Act and the transfer of the ownership of Water Service Providers (WSP's) to the County Government necessitated that there would be no more payments to the Water Service Board.

It therefore implies that the company recognized a liability amount of Kshs 6,116,678, which ought not to be reflected in their books and this was correctly done by Rift Valley Water Services Board.

As a corrective measure, the company had passed Journal entries in its records for 2022/2023 Financial year and necessary prior year adjustment would be made in the financial statements.

In order to address the outstanding Kshs. 7,478,483. Which mainly accrued during the formative stages of the company and due to liquidity challenges, the management sought for a write off of the levies from the Agency so as to clear the debts from the company's books as per MIN 270:2022/2023 dated 28th March 2023.

#### **Committee Observations**

The Committee observed that the query remains unresolved as the balance of Kshs. 7,478,483 owed to former Rift Valley Water Services Board remains unsettled though the management has provided correspondences on request for write-off by the Central Rift Valley Water Works Development Agency.

#### **Committee Recommendations**

The Committee recommends that the Governor of Elgeyo-Marakwet County engages the Central Rift Valley Water Works Development Agency to agree on a repayment plan for the trade and other payables balance of Kshs. 7,478,483 and file a report on the same with the Auditor-General for verification within 60 days from the adoption of this report. The Auditor-General to provide a status update on the matter in the subsequent audit cycle.

#### **Other Matters**

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

The statement of comparison of budget and actual amounts for the period ended 30 June, 2021 indicates that actual expenditure exceeded budgeted amounts for publicity and advertising (20%) and provision for regulatory levies (25%). The Management did not provide evidence that the over expenditure was approved.

#### **Management Response**

Management agrees with the findings that actual expenditure exceeded budgeted amount for publicity and advertising, this was caused by under provision in vote during budgeting expenses of which could not be avoided and it exceeded the amount and this was highly regrettable.

It added that regulatory levies paid exceeded the budgeted amount. The levies were accrued and they paid using Conditional Liquidity Support Grant (CLSG) which were not projected in the budget.



Review of human resource data for the year ended 30 June, 2021 revealed that the Company had a total workforce of forty nine (49) employees all of whom were from one ethnic community contrary to Section 7(1) and 7(2) of the National Cohesion and Integration Act, 2008 that requires all public establishments to seek to represent the diversity of the people of Kenya in employment of staff and that no public establishment shall have more than one third of its establishment from the same ethnic community.

## Non-Compliance with Law on Ethnic Composition

### Basis for Conclusion

Pursuant to Article 229(6) of the Constitution, based on the audit procedures performed by the Auditor-General, the following matters formed the basis for conclusion that public resources were not applied lawfully and in an effective way-

### RESOURCE

## REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC

- i. the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures; and
- i. the Board of Directors should institute proper and realistic budget planning as well as measures to enhance its own generated revenue, such as review of tariffs, connection of more customers and automation to address revenue leakages. The Auditor-General to confirm the effectiveness of the mitigating measures put in the water company and report in the subsequent audit cycle.

### Committee Recommendations

- i. there was an over-expenditure relating to advertising and publicity; and
- ii. the accrued regulatory levies were paid using Conditional Liquidity Support Grant (CLSG) and that the Board authorized the utilization of the grant.

The committee observed that—

### Committee Observations

The Board of Directors were aware that the company received the grant which was intended for cautioning Covid-19 pandemic. Therefore, the Board of Directors authorized the utilization of the same and strictly adhered with conditions of the donor as per the minutes of the Board of Directors dated 12th October, 2020 MIN 179:2020/2021 payment of the accrued was one of the eligible in the grant.



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

## Management Response

Management concurs with the findings that one third diversity Rule on staff employment had not been complied in the Company as required by the National Cohesion Integration Act 2008. The seven staff members were employed to permanent terms in the year 2013 and up to date the company had not employed any staff in permanent terms. The company established and developed the company's Human Resource Manual on 16th October 2015 which would be used as a guide on employment. As the management of ITWASCO, they would be contented to have an all-inclusive society at the company as they strive forward to excel. They are also in agreement that one third diversity rule promotes national unity and they assured the Committee that they shall abide by the regulations.

## Committee Observations

Committee observed that the query remains unresolved from financial year 2019/2020 as the Company had a total workforce of 49 employees who were all from the same ethnic community that was dominant in the County.

## Committee Recommendations

The Committee recommends that; -

- i) The County Executive should comply with section 7(1) and 2 of the National Cohesion and Integrity Act which states that (1) All public establishment shall seek to represent the diversity of people of Kenya in employment of staff; (2) No public establishment shall have more than one third of its employees from same ethnic group; and
- ii) The Board and the accounting officer makes deliberate efforts to progressively comply with section 65 of the County Governments Act, 2012 which provides that at least thirty percent 30% of the vacant posts at entry level be filled by candidates who are not from the dominant ethnic community.

### CHAPTER THREE

## REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR KIRINYAGA WATER AND SANITATION COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor for Kirinyaga County, Hon. Anne Waiguru, EGH, OGW appeared before the Committee on Tuesday, 16<sup>th</sup> May, 2023 to respond (under oath) to audit queries raised in the report of the Auditor-General on financial statements for the Kirinyaga Water and Sanitation Company Limited for the financial year 2020/2021. The Governor was accompanied by:

- |      |                       |                                          |
|------|-----------------------|------------------------------------------|
| i.   | Mrs. Jacqueline Njogu | - CECM Finance                           |
| ii.  | Mr. James Kihia       | - Chairman                               |
| iii. | Mrs. Jane Murage      | - Ag. Finance Manager KIRIWASCO          |
| iv.  | CPA Edward Nyaga      | - Chief Officer Finance                  |
| v.   | Mr. Carlins Otieno    | - Chief Officer Planning and Procurement |

The Kirinyaga Water and Sanitation Company is wholly owned by the County Government of Kirinyaga.

### REPORT ON THE FINANCIAL STATEMENTS

The Auditor-General rendered a **qualified opinion** on the financial statements of Kirinyaga Water and Sanitation Company Limited for the period under review.

#### 1. Statement of Changes in Equity

The statement of changes in equity reflects Kshs. 16,627,294 in respect of capital grants, Kshs 308,575 in respect of amortization of capital grant under Capital Grants and Kshs. 129,000 in respect of Prior year adjustments for revenue reserves. However, these balances were not supported with the respective schedule.

#### Management Response

The schedules for amortization of capital grants amounting to Ksh 308,575 and prior year adjustments amounting to Kshs. 129,000 which includes payment to suppliers of kshs. 94,000 to HIT Transporters and Kshs. 35,000 paid to Tangerine Auto Hardware.

#### Committee Observations

The management submitted the schedules to support the balances Kshs. 16,627, 294, Kshs 308,575 and Kshs. 129,000 in respect of capital grants, amortization of capital

grant and Prior year adjustments for revenue reserves respectively to the Auditor-General for verification thus the matter was resolved.

#### Committee Recommendations

The Committee recommends that the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.

#### 2: Statement of Comparison of Budget and Actual Amounts

The Statement of comparison of budget and actual amounts revealed the following variances;

| Item                       | Budget Amount Kshs | Actual On Comparable Basis Kshs | Performance Difference Kshs | Re-Calculated Performance Difference Kshs | Variance Kshs |
|----------------------------|--------------------|---------------------------------|-----------------------------|-------------------------------------------|---------------|
| Administration             | 26,031,301         | 23,145,056                      | 2,836,142                   | 2,886,245                                 | (50,103)      |
| Expenditure                |                    |                                 |                             |                                           |               |
| Operations and Maintenance | 67,775,715         | 41,907,027                      | 27,046,623                  | 25,868,688                                | 1,177,935     |
| Provision for depreciation | 4,000,000          | 4,225,271                       | -316,988                    | -225,271                                  | (91,717)      |
| Minor Investments          | 9,340,800          | 2,713,198                       | 5,918,987                   | 6,627,602                                 | (708,615)     |
| Total                      | 107,147,816        | 71,990,552                      | 35,484,764                  | 35,157,264                                | 327,500       |

Further, Note 2 to the financial statements reflects Kshs. 15,241,716 in respect of property plant and equipment additions for the year. However, the statement of comparison of budget and actual amounts excludes the property plant and equipment/capital expenditures budgeted and actual analysis and is therefore incomplete. Additionally, the approved budget supporting the above-budgeted figures was not provided for audit review and verification.

In the circumstances, the validity, accuracy and completeness of the respective financial statements balances for the year ended 30 June 2021 could not be ascertained.

#### Management Response



- Committee Recommendations**
- The Committee recommends that-
- i. the Accounting Officer to take administrative action on the officers within the Accounts and Finance department who fails to keep complete financial records in accordance with their terms and conditions of appointment or employment and as required by the Accountants Act, 2008;
  - ii. The Auditor-General follows up the matter to confirm if the correct accounting adjustments were made in the Post Audit Financial Statements;
  - iii. the Accounting Officer should comply with section 68(2) of the Public Finance Management Act, 2012 with regard to preparation and management of financial and accounting records; and

**Committee Observations**

The Committee observed that the query has been resolved as the variance between the performance difference and recalculated performance difference was due to arithmetical error which was corrected within the Post-Audit financial statement however, the same was yet to be reviewed by the Auditor-General.

Assets totaling to Kshs. 2,713,198 were in the budget for FY 2020/2021 under minor investment. The work in progress totaling to Kshs. 12,528,518 was included in the prior year budget

| No. | Particulars                      | Amounts Kshs.     |
|-----|----------------------------------|-------------------|
|     | <b>Assets</b>                    |                   |
| 1.  | Computer & mobile phones         | 871,000.          |
| 2.  | Water Meters                     | 1,842,198         |
|     | <b>Subtotal</b>                  | <b>2,713,198</b>  |
|     | <b>Work In progress</b>          |                   |
| 1.  | Kirinyaga House Hold             | 4,768,595         |
| 2.  | Decentralized Treatment Facility | 6,360,801         |
| 3.  | Sage                             | 1,399,121         |
|     | <b>Subtotal</b>                  | <b>12,528,518</b> |
|     | <b>Total</b>                     | <b>15,241,716</b> |

under addition of assets for the FY 2020/2021 as analyzed below:

The Ksh. 15,241,716 in respect of property plant and equipment additions was classified difference was due to arithmetical error, this has been rectified.

The variance between the performance difference and recalculated performance

- iv. the Accounting Officer should enhance the capacity of officers preparing financial statements to comply with the accounting standards and should further invest in technology and processes that reduce inaccuracies in the preparation of financial statements.

### **3: Misstatement of Water Sales**

Note 10 (a) to the financial statements reflects Kshs. 150,874,825 in respect of revenue from water sales. However, the recomputed amount on a comparable basis from the monthly records reflects a total income of Kshs. 161,114,908 for the period resulting to a difference of Kshs. 10,240,083 which has not been reconciled or explained. In the circumstances, the validity, accuracy and completeness of the Kshs. 150,874,825 revenue earned from water sales could not be ascertained.

### **Management Response**

The difference of Kshs. 10,240,083 was as a result of adjustment made within the year. All the adjustments were done in line with WASREB guidelines.

### **Committee Observations**

The Committee observed that the variance of Kshs. 10,240,083 was as a result of adjustment made within the year.

### **Committee Recommendations**

Noting the clarification by the management, the Committee recommends that the matter be marked as resolved.

### **4: Unsupported Water Bills Adjustments**

Note 4 to the financial statements reflects Kshs. 136, 965,069 in respect of trade receivables which includes Kshs. 128,458,621 in respect of water sales receivables net of provision at 10% of Kshs 14,273,180. However, audit examination of water billing records revealed that various adjustments were made on water sales receivables amounting to Kshs. 10,240,083 without being supported by relevant accounting documentation. In addition, the water sales billing records reflect Kshs. 53,045,085 resulting to a variance of Kshs. 75,413,536. Further, the water sales were not supported by an aging analysis report.

### **Management Response**

On an approved adjustment of Kshs. 10, 240,084- the adjustments were done in the system in line with WASREB guidelines.

**Committee Recommendations**

The Committee recommends that the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.

As reported in the previous year, Note 4 to the financial statements reflects Kshs.136,965,069 in respect of trade receivables which includes Kshs. 1,304,587 in respect of Kshs 1,134,473 for salary advances and Kshs. 170,114 for staff loans to four (4) former officers to purchase laptops. However, supporting documentation including approvals and evidence that the Management has initiated recovery of the salary advances was not provided for audit review.

Out of Ksh 1,134,473 the company has recovered Ksh. 919,340 as per attached recovery schedule. The balance of Ksh. 208,465 we are fast-tracking the effort to recover the outstanding. Currently the company doesn't grant salary advances to employee since the company has partnered with the financial institutions.

The laptops were bought between April 2008 and May 2008 through a loan advanced to the staff which was to be recovered from their salary. However, the said staff left the organization between December 2008 and November 2010 before the full amount was recovered.

The company in 2019 after the company was under new management governance structure and since then we initiated the recovery process. The company has instituted legal process to recover against them.



**Committee Observations**

The Committee observed that-

- i. the company has made a recovery of Ksh. 919,340 out of Ksh 1,127,805 in relation to salary advances leaving a balance of Kshs. 208,465.
- ii. the company advanced Kshs. 170,114 to four (4) members of staff to purchase laptops and the said staff left the institution before the full amount was recovered.
- iii. Supporting documentation including approvals and evidence that the Management has initiated recovery of the salary advances was not provided.

**Committee Recommendations**

The Committee recommends that-

- i. the Accounting Officer of the water company takes immediate measures to fully recover the Kshs. 170,114 with interest within 60 days from the adoption of this report. Failure to which, the Board of Directors shall ensure the same is recovered from the Accounting Officer of the water company;
- ii. The Accounting Officer provides the status of recovery of the outstanding salary advances to the Auditor-General within 60 days from the adoption of this report; and
- iii. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9(1)(e) of the Public Audit Act, 2015, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62(2) of the Public Audit Act, 2015.

#### **6: Unsupported Property, Plant and Equipment**

Note 2 to the financial statements reflects Kshs.98,644,815 in respect of property, plant, and equipment. However, the amount was not supported by an updated asset register and the assets had not been valued for a long some time. Further, the company have not acquired title deed or ownership documents for both their headquarters offices in Kerugoya and the regional office in Baricho sub-location of Ndia Location. A verification visit done in the month of April 2022 established that the headquarters land had been encroached. In addition, the company has possession of several parcels of land buildings, various water installations, machines, water treatment facilities/plant, water tanks, equipment's and motor cycles and other assets spread across the Kirinyaga county whose details and documentation in regards to ownership were not available.

In the circumstances, the validity, accuracy, ownership and completeness of the property, plant, and equipment balance of Kshs. 98,644,815 as at 30 June 2021 could not be ascertained.

#### **Management Response**

We have maintained asset register however the same will be updated after acquiring the ownership documents from National Government.

The challenge the company is facing is lack of ownership documents, awaiting the transfer of assets from National Government to County Government.

#### **Committee Observations**

The Committee observed that-

- i. The management failed to submit an updated fixed asset register for audit verification;
- ii. the company has not acquired title deed or ownership documents for both their headquarters offices in Kerugoya and the regional office in Baricho sub-location of Ndia Location; and
- iii. The company had possession of several parcels of land buildings, various water installations, machines, water treatment facilities/plant, water tanks, equipment's and motor cycles and other assets spread across the Kirinyaga county whose details and documentation in regards to ownership were not available hence the query remains unresolved.

#### **Committee Recommendations**

The Committee recommends that-

- i. The Governor ensures that the water company secures full ownership of the queried assets that the company has no ownership documents for and provide a status update to the committee within 60 days from the adoption of this report; and
- ii. the Accounting Officer ensures that the water company maintains an up-to-date asset register in the format prescribed by the Public Sector Accounting Standards Board (PSASB).

#### **7: Cash and Cash equivalents**

Note 6 to the financial statements reflects Kshs. 31,564,770 in respect of cash and cash equivalents as at 30 June 2021 which includes Kshs 469,221 in respect of Mpesa account. However, the amount was not supported with Mpesa certificates, reconciliations statements and supporting schedules.

Consequently, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 31,564,770 as at 30 June, 2021 could not be ascertained.

#### **Management Response**

Mpesa Certificate is provided for audit review and its hereby attached.

#### **Committee Observations**

The Committee observed that the management submitted the Mpesa Certificate to support the balance Kshs 469,221 in respect of the Mpesa account to the Auditor-General for verification, thus the matter was resolved.

#### **Committee Recommendations**

Nothing the mitigation measures taken by the management, the Committee recommends that the matter be marked as resolved.

#### **8: Unsupported Short-Term Loan**

As reported in the previous year, Note 9 (c) to the financial statements reflects Kshs. 147,518 in respect of short term loan. However, details on the lending institution, interest charged, period of repayment, principal payments, Board approval and other terms and conditions for the loan were not provided. In the circumstances, the accuracy, completeness and validity of the short-term loan totaling to Kshs. 147,518 as at 30 June 2021 could not be ascertained.

#### **Management Response**

We have attached the ledger, Contract between Kamweli, KRFP Bank & Kiriwasco and the repayment schedule which was provided for audit review.

#### **Committee Observations**

The Committee observed that whereas the management submitted the loans ledger to support the short-term loan of Kshs. 147,518 the submission was made outside the timelines contemplated under the Public Audit Act and constitutes an offence under section 62(2) of the Act.

#### **Committee Recommendations**

The Committee recommends that-

- i. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act; and



- ii. Noting the mitigation measures taken by the management, the Committee recommends that the query be marked as resolved.

## 9: Budgetary Control and Performance

Review of the statement of budget and actual amounts indicated total receipts budget of Kshs 216,697,416 against actual budget of Kshs 177,343,545 resulting in to unrealized revenue collection amounting to Kshs 39,353,871. This is an indication of unrealized targets. There is need therefore for the management to prepare a realistic budget. Further the total payments budget amounted to Kshs 207,356,616 against actual payments of Kshs 176,214,596 again resulting to under absorption of Kshs 31,142,020.

There is need therefore for the company to have a proper budgeting mechanism with a view to utilizing the budget in full for better service delivery to the citizens of Kirinyaga County.

## Management Response

During the budgeting period it was anticipated that Kerugoya Kutus Water supply project would have been completed by 30<sup>th</sup> September 2020 which would have injected 30,000 m<sup>3</sup> per day but this was not realised within the financial year. In addition, we expected to have a new tariff in operation by 31<sup>st</sup> December 2020 which was applied in May 2018 which would have boosted increase in revenue, which dint happen. This resulted company not realizing the projected budget projection hence resulting to a shortfall of kshs. 39,353,871.

Under absorption of Kshs 31,142,020 this resulted due to shortfall of revenue in the budget hence readjustment of company activities.

## Committee Observations

The Committee observed that-

- i. The company had a revenue shortfall of Kshs 39,353,871 in the financial year under review.
- ii. The company failed to absorb Kshs 31,142,020 of its budget in the financial year under review.

## Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures; and

ii. the Board of Directors should institute proper and realistic budget planning as well as measures to enhance its own generated revenue, such as review of tariffs and connection of more customers and automation to address revenue leakages. The Auditor-General to confirm the effectiveness of the mitigating measures put in place by the water company and report in the subsequent audit cycle.

#### **10: Movement of Conditional Liquidity Grants to Deferred Income without Approved Budget**

The statement of profit or loss and other comprehensive income reflects Kshs.177,343,550 in respect of revenues for the year ended 30 June 2021 which includes Kshs.17,329,644 in respect of Conditional Liquidity grants for projects which were balances from the original grants of Kshs 33,398,916. However, Kshs. 16,069,272 was moved to deferred income but was not supported by the approved income and expenditure budget for each project.

In addition, the deferred income recognized in the financial statements could not be related to actual revenues received in excess of the approved income budget and work plans for each project in the year under consideration to warrant the accounting treatment recorded in the books of account.

In the circumstances, the treatment of the conditional grant in the financial statements in the absence of the approved budget could not be ascertained to be correct.

#### **Management Response**

The differed income was recognized in the financial statement in line with IAS 20 (differed income) to recognize CLSG grant in the profit and loss account over the period in which the entity recognize expenses utilized up to June 2021.

#### **Committee Observations**

The Committee observed that the company gave a satisfactory explanation for the movement of Kshs. 16,069,272 from Conditional Liquidity grants to deferred income thus the matter was resolved.

#### **Committee Recommendations**

Nothing the clarification by the management, the Committee recommends that the matter be marked as resolved.

#### **11: Prior year adjustment:**

#### **Prior Year Audit Matters**

NRW is caused by physical losses and commercial losses. Physical losses are caused by old dilapidated infrastructure that has caused high operational costs in repair of bursts

### **Management Response**

In the circumstances, the revenue loss may have adversely affected the company's profitability for the year.

During the year under review, Kirinyaga Water and Sanitation Company Ltd produced 6,722,945 cubic meters (M<sup>3</sup>) of water, but only 2,701,482 (M<sup>3</sup>) was billed to customers at a cost of Kshs. 150,874,825. The balance of 4,021,463 cubic Meters (M<sup>3</sup>) water which is approximately Sixty (60%) percent of the total production is unaccounted for Water (UFW) which is way above the sector recommended limit of 25%. According to the Water Services Regulatory Board (WASREB) guidelines, this quantity is thirty-five (35%) percent above the allowable loss of twenty-five (25%) percent. The Unaccounted-for Water of thirty-five (35%) percent or 2,353,030.75 (M<sup>3</sup>) of the water produced may have resulted in loss of sales estimated at Kshs.470, 606,150 (which is the minimum Tariff of water sale as per The Water Act No. 8 of 2002 at Kshs.200 per M<sup>3</sup>)

### **12: Non-Revenue Water**

Nothing the mitigation measures taken by the water company, the Committee recommends that the matter be marked as resolved.

### **Committee Recommendations**

The Committee observed that the progress on follow up on Auditors Recommendations was rectified and evidence of the same was submitted to the Auditor-General thus the matter was resolved.

### **Committee Observations**

This has since been rectified and the report done as prescribed by PSASB guideline

### **Management Response**

Appendix I - Progress on follow up on Auditors Recommendations- is incomplete as it does not capture all the prior audit issues. It also excludes key columns for capturing; issues raised, Management comment(s), focal point person to resolve the issue, status on whether the issue is resolved or not and the Time frame within which the issue(s) will be addressed as required by the PSASB circular referenced AG. 4/16/3 Vol.1 (9) dated 24th June 2020 issued regarding the preparation of annual financial statements for the year under audit.



and leaks of water. For instance, Githioro water supply system was constructed in 1940, with a design population of 2500 people. Currently, the system is serving more than 12,000 people, which is beyond its design capacity. Commercial losses are caused by faulty meters and illegal connections. The company has taken the following measures in NRW reduction:

1. The company developed Non- Revenue Water reduction plan which has been implemented in the FY 2020/2021.

2. The company has shifted from Upvc pipes to HDPE pipes. this is because HDPE pipes are more durable and elastic than Upvc pipes. further, the company is carrying out gradual rehabilitation of old water supply networks, replacing the old Unplasticized polyvinyl chloride (PVC) pipes with High Density Polyethylene (HDPE) pipes.

3. The company through Tana Water Works Development Agency has procured two ultrasonic flow meters which are helping in detecting areas of water loss.

4. Introduced Metering of production units which has improved accuracy in water production.

5. Mapping of reticulation networks and connections which has enhance real-time monitoring of leak detection/bursts and consumer connections.

6. Having 100% metering ratio.
7. Conversion of all class B meters to class C consumer meters to improve on accuracy.

8. Unearth all illegal connections and bypasses.

In the current financial year, 2022/2023 the NRW is at 56% as compared to the FY 2020/2021 which was at 60%.

#### Committee Observations

- The Committee observed that-
- i. the Non-Revenue Water stood at 60% way above the allowable 25% prescribed by the Water Service Regulatory Board (WASREB) guidelines.
  - ii. The Non-Revenue Water was attributed to physical losses (old dilapidated infrastructure) and commercial losses (faulty meters and illegal connections).

#### Committee Recommendations

- The Committee recommends that-
- i. the Accounting Officer should put in place comprehensive measures to mitigate on the Non-Revenue Water, that is, both physical and commercial losses. The measures to include replacement of old age dilapidated infrastructure, installation of smart meters for accurate billing and the application of Geographical Information System (GIS) to receive real-time data for the detection of bursts and leakages among other measures. The

Auditor-General to review the implementation of the measures put in place to mitigate the Non-Revenue Water and provide a status update on the matter in the subsequent audit cycle; and

ii. the Governor of Kirinyaga County to collaborate with the Ethics and Anti-Corruption Commission to ensure pre-emptive measures are put in place to reduce cases of theft and illegal connections.

### **13: Expired Water Tariffs**

The company has been operating without an approved water tariff structure from the Water Services Regulatory Board (WASREB) with effect from 2019/2020 financial year upon expiry and which have to date not been renewed.

In the circumstances, the non-updating of the water tariffs results to lower revenue streams in addition to the lower customer deposits which may be inadequate to cover for unpaid bills in case of default.

### **Management Response**

The company initiated process of tariff renewal application in the year 2018. This was followed by a series of activities which involved WASREB as regulator and on 9<sup>th</sup> March 2022 public participation was carried out after getting clearance from WASREB. After that the process was under WASREB until 3<sup>rd</sup> February 2023 when it was gazetted by WASREB. Currently the company has effected the newly approved and gazetted tariff structure for the period 2022/2023 to 2024/2025.

### **Committee Observations**

The Committee observed that—

i. the company operated without an approved water tariff structure from the Water Services Regulatory Board (WASREB) since 2019/2020 financial year upon expiry of the tariff.

ii. The company made an application for new tariffs in 2018, and the process was finalized on 3<sup>rd</sup> February 2023 when the new tariffs were gazetted by WASREB.

### **Committee Recommendations**

Noting the mitigation measures taken by the company, the Committee recommends that the matter be marked as resolved.

### **14: Non-Renewal of License**

The company has been operating without a License from the Water Services Regulatory Board (WASREB) with effect from 20 May 2021 upon expiry and has since not been renewed contrary to the Water Act 2016, Section 72 (c), which gives WASREB the mandate of setting license conditions and accrediting Water Service Providers.

In the circumstances, the management was in breach of the law and is operating without a license.

### **Management Response**

The company was operating with an interim license issued by the regulator on 20<sup>th</sup> May 2019 for a period of two years up to 19<sup>th</sup> May 2021. According to WASREB, renewal of license is supposed to be done 5 months before expiry of existing license. The company applied for license renewal on 22<sup>nd</sup> November 2019. WASREB as regulator and on 17<sup>th</sup> March 2022 WASREB conducted public participation on issuance of license and consequently a new five-year license for the period from 15<sup>th</sup> December 2022 to 15<sup>th</sup> December 2027 was issued. The company therefore is operating under a valid water service provision License.

### **Committee Observations**

The Committee observed that-

- i. the company operated without a valid license, during the period under review, contrary to section 72(c) of the Water Act, Cap.372.

- ii. The company has since acquired a valid license from the Water Services Regulatory Board (WASREB).

### **Committee Recommendations**

Noting the mitigation measures taken by the company, the Committee recommends that the matter be marked as resolved.

### **15: Flat Rate Billing**

Note 10 (a) to the financial statements reflects Kshs 150,874,825 in respect of income from billing of customers. However, analysis of the customer's records indicates that the company had a total of 19,230 active connections as at 30 June 2021, with 10,368 being metered with each being charged a flat rate of Kshs 250 per month irrespective of actual consumption.

In the circumstances, the charging of customers at a flat rate may result into loss of revenue for the company.



**Committee Recommendations**  
 Noting the clarification made by the management of the water company, the Committee recommends that matter be marked as resolved.

**Committee Observations**  
 The Committee observed that the company had four hundred and forty (440) duplicated meters due to change of tenancy for rental houses but only one account of the duplicates was billed, thus there were no duplicate accounts.

**Management Response**  
 According to the company's register the total number of registered connection is 43,345. What varies is the identification of account due to change of tenancy for rental houses. The report on registered connection normally gives the original registered connection while report on account will indicate total number of registered connection inclusive of change of tenancy accounts. Therefore, there are no duplication of the accounts in our database since each account has a unique identification number and its tied to a specific location on ground through GIS mapping.

**16: Duplicate Water Meters**  
 Note 10 (a) to the financial statements reflects Kshs 150,874,825 in respect of income from billing of customers. However, included in the balance are estimated sales totaling Kshs. 324,765 from four hundred and forty (440) duplicate water meters that are active in the water supply system but had only one account billed for revenue purposes.  
 In the circumstances, the charging of customers at an estimated rate for the duplicate bills may result to loss of revenue.

**Committee Observation and Recommendation**  
 The Committee observed that the 10,368 accounts that were charged a flat rate of Kshs. 250 were billed as per the water tariff structure at that time thus the Committee recommends that the matter be marked as resolved.

**Management Response**  
 According to the company water tariff structure the charges are determined by the volume consumed by customer. A consumer is charged a flat rate of Ksh. 250 for Consumption of between 0-6 units. Charges for any additional consumption is charged depending on volume consumed. The 10,368 accounts in questions consumed between 0-6 units. Hence they were charged as per the company's approved water tariff structure.

**17: Non-compliance with the Law on Fiscal Responsibility on Wage Bill**

Note 12 reflects Kshs. 92,664,607 in respect of personnel costs. However, this represents about 53% of the total expenditure of Kshs. 176,214,596, and is higher than the recommended threshold of 35% in accordance with the Water Services Regulatory Board (WASREB) guidelines.

In the circumstances, the excess personnel costs may negatively impact on the company's profitability and sustainability of services if measures are not put in place to contain the cost within the acceptable level.

### **Management Response**

The company had a staff establishment of 159 staff where technical department had a total of 107 staff and support staff were 52 in the FY 2019/2020. Since the company offers essential service which requires more technical Staff for efficient public service delivery therefore it's important to retain the total number of 157 staff. As per WASREB bench mark guideline, the company was at 5% staff per thousand connections which is within the set benchmark.

The company has put the following measures to attain 35% as per the provisions of Regulation 25(1) (a) and (b) of the Public Finance Management (County Governments) Regulations, 2015.

- Increase in water coverage ratio without increasing workforce.
- The current CBA is based on performance which will ensure the staff salary increment is commensurate on revenue growth.
- Improve on collection efficiency.

The company strategic plan 2021/2026 has set road map on company revenue growth.

### **Committee Observations**

The Committee observed that the financial statements reflected Kshs. 92,664,607 in respect of personnel costs, which about 53% of the total expenditure of Kshs. 176,214,596, and is higher than the recommended threshold of 35% in accordance with the Water Services Regulatory Board (WASREB) guidelines.

### **Committee Recommendations**

The Committee recommends that the Committee recommends that the Company to adhere with the provisions of regulation 25(1) of the Public Finance management (County Government) Regulations, 2015 which limits the wage bill

to thirty-five percent (35%) of the total revenue and establish a lean staff complement.

#### **18: Failure to Adhere to the Third rule on Basic salary**

A review of the company payroll reflected that the company deducted amounts of Kshs.16,550,260 from its 159 employees in the process exceeding a third of their basic pay contrary to Section 19(3) of the Employment Act, 2007 which states that without prejudice to any right of recovery of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection (1), may be made by an employer from the wages of his employee at any one time shall not exceed two-thirds of such wages or such additional or other amount as may be prescribed by the Minister either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.

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

#### **Management Response.**

During the period under review, The National Government granted tax relief to all employees as part of the COVID-19 Containment measures. Employees utilized the resulting increment in the net salary to apply for loan facilities with financial institutions. On the expiry of the tax relief, the total deductions for the officers exceeded the two-thirds stipulated by the law. Currently the company is in compliant

#### **Committee Observations**

The Committee observed that a review of the company payroll reflected that the company deducted amounts of Kshs.16,550,260 from its 159 employees in the process exceeding a third of their basic pay contrary to Section 19(3) of the Employment Act, 2007.

#### **Committee Recommendations**

The Committee recommends that-

- i. the accounting officer adheres to section 19(3) of the Employment Act, 2007 with regards to the one-third rule on basic salary. The Auditor-General to monitor the matter and provide a status update in the subsequent audit cycle; and
- ii. The matter be marked as unresolved.



## 19: Ethnic Staff Diversity

The company had 159 employees as at 30 June 2021. However, 147 members of staff or 92 % are from the dominant ethnic Community. This contravenes the provisions of Section 65(e) of the County Government Act, 2012 which requires County Governments to ensure that at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county.

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

### Management Response.

Most of our staff were recruited during the company's inception in year 2006 when Section 65(1)(e) of the County Governments Act, 2012 was not in place. During the year under review the COMPANY BOARD advertised for various positions in Kirinyaga Water and sanitation company website and newspaper of national circulation clearly indicating that the Company is an equal opportunity employer and received responses from interested applicants.

However, most of the applicants were from the dominant community resulting in employment of large population from the same communities. It also important to note that most of the staff in the Company were inherited from National Water which had a staff establishment that was dominated by the local ethnic community in the Company. The Company Respects Section 65 1(e) of the County Government Act, 2012 and is working towards meeting the legal requirement for diversity. Currently the Company it's at 3% and undertake to improve despite the recruitment challenges.

### Committee Observations

The Committee observed that 92% of the staff are from the dominant community which contravenes the provisions of Section 65(e) of the County Government Act, 2012.

### Committee Recommendations

The Committee recommends that-

- i. The Board and the accounting officer makes deliberate efforts to progressively comply with section 65 of the County Governments Act, 2012 which provides that at least thirty percent 30% of the vacant posts at entry level be filled by candidates who are not from the dominant ethnic community; and
- ii. The Board and the accounting officer to make deliberate efforts progressively in the endeavor to comply with section 7(1) and (2) of the

**National Cohesion and Integrity Act, 2008, which requires that public establishments shall seek to represent the diversity of the people of Kenya in employment of staff.**

## **20: Non Gazettement of Board of Directors**

The company had 7 board members serving during the year ended 30 June 2021. However, the board of directors have to date not been gazetted contrary to Mwongozo 2015 chapter one, 1.11 which states that each board member shall be formally appointed to the Board through a Gazette notice and thereafter an appointment letter.

## **Management Response.**

In appointment of the directors, the company was guided by companies Act 2015, WASREB Corporate Governance Guideline 3.4.5 and memorandum and articles of association.

However, the auditor's observation has brought the company's into attention on cited requirement in Mwongozo guideline and will be subsequently comply with it.

## **Committee Observations**

The Committee observed that the company failed to gazette the board of directors as required by chapter one of the Mwongozo Guidelines 2015.

## **Committee Recommendations**

The Committee recommends that the Accounting Officer ensures the water company fulfils the requirements by the Mwongozo Guidelines 2015 on the Gazettement of the Board of Directors.

## **21: Long Outstanding Staff Imprest**

Note 4 reflects Kshs. 136,965,069 in respect of receivables of which includes of Kshs. 4,572,727 in respect of staff debtors as at 30 June 2021. However, included in the staff debtors are long outstanding imprest of Kshs. 3,847,011 that have remained unrecovered for periods beyond six (6) months.

Further, eight (8) officers were issued with more than one imprest totaling Kshs. 1,418,770 without surrendering the earlier issued imprests. This is in contravention of section 92(8) of Public Finance Management (County Government) regulations which requires an accounting officer to ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full from his or her salary. In the circumstances, the Management was in breach of the law.

**Management Response**

After implementing control measures the company, long outstanding unsurrendered imprest reduced from Kshs. 3,847,011 to Ksh. 1,544,338.

The imprest of eight officers issued with more than one imprest totaling Kshs. 1,418,770 have been accounted fully.

**Committee Observations**

The Committee observed that-

- i. some of the water company's staff had long outstanding imprests totaling to Kshs. 3,847,011 which had been outstanding for more than 6 months.
- ii. Eight (8) officers were issued with more than one imprest totaling Kshs. 1,418,770 without surrendering the earlier issued imprests contrary to section 92(8) of Public Finance Management (County Government) regulations.

**Committee Recommendations**

The Committee recommends that-

- i. the Accounting Officer to take immediate action to recover the unsurrendered imprests amounting to Kshs. 3,847,011 from the defaulting officer with interest at the prevailing Central Bank rate failure to which the Accounting Officer commits an offence under regulation 93 of the Public Finance Management (County Governments) Regulations, 2015; and
- i. The Accounting Officer ensures strict adherence to Regulation 93(5) of the Public Finance Management (County Governments) Regulations, 2015, which requires holders of temporary imprests to account or surrender them within seven (7) working days after returning to the duty station;

- ii. The accounting officer complies with section 92(8) of Public Finance Management (County Government) regulations which requires an accounting officer to ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full from his or her salary; and

- iii. The matter be marked as unresolved.

**22: Long Outstanding Trade Creditors**



**Committee Observations**  
The Committee observed that the financial statements reflected Kshs. 186,386 in respect of taxation relating to tax payable for the 2018/2019 financial year which has not been remitted to the Kenya Revenue Authority to date. Further, the Company has

**Management Response**  
The process is ongoing to ensure the company is compliant with KRA.

**23: Non-Payment of Corporation Tax**  
As reported in the previous year, Note 9(f) reflects Kshs. 186,386 in respect of taxation relating to tax payable for the 2018/2019 financial year which has not been remitted to the Kenya Revenue Authority to date. Further, the Company has not filed tax returns since incorporation in 2006. This is contrary to Section 92(A) of the Income Tax Act, 2012 which states that "where any person is required to furnish a return under section 52B, the tax chargeable there under shall be due and payable on the last day of the fourth month following the end of the year of income or accounting period.

**Committee recommendations**  
The Committee recommends that the Auditor-General to review the company's compliance to the repayment plan and give a status update of the same to the Senate during the subsequent audit cycle.

**Committee Observations**  
The Committee observed that the company entered into a payment agreement with the Auditor-General in order to clear the outstanding audit fees of Kshs. 3,416,000.

**Management Response**  
The company had a discussion with the office of the auditor General and agreed on payment plan dated 25<sup>th</sup> May 2021 of ksh. 100,000 per month in order to settle the arrears. The company has so far paid Ksh. 800,000.

Note 9 (a) to the financial statements reflects Kshs. 96,911,065, in respect of creditors and accruals which includes Kshs. 75,577,334 in respect of trade creditors. However, trade creditors include an amount of Kshs. 3,480,000 in respect to outstanding audit fees payable to the Office of the Auditor-General which has been outstanding since 2006/2007 financial year. This is contrary to Section 41(1)(c) of the Public Audit Act, 2015 which states that the funds of the Office of the Auditor-General shall consist of audit fees charged at the rates prescribed by the Auditor-General.

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

not filed tax returns since incorporation in 2006. This is contrary to Section 92(A) of the Income Tax Act, 2012.

#### **Committee Recommendations**

**The Committee recommends that-**

- i. The Accounting Officer complies with section 92(A) of the Income Tax Act, Cap.470 on payment of tax and Section 22(2)(a) of the Public Finance Management (County Government) Regulations, 2015, which provide that the accounting officer to comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided by legislation; and

- ii. The Board of Directors to surcharge the Accounting Officer for any penalties or interests that may accrue due to late payment of corporation tax.

#### **24: Filing of Annual Company Returns**

The company was incorporated under the Companies Act Cap 486 of the Laws of Kenya. However, it has not been filing annual returns to the registrar of Companies contrary to section 125 of the Companies Act which stipulates that every company having a share capital shall, once at least in every year, make a return, and the said return shall be in the form prescribed and shall be submitted on the fourteenth day after the date of the annual general meeting.

Consequently, the company by not paying taxes and filing annual returns was in breach of the law and is exposed to fines and penalties.

#### **Management response**

The company has been filing returns to the registrar of the company find the attached company CR12 and filed return to the Registrar Company.

#### **Committee Observations**

The Committee observed that the company had not provided the supporting documents on filing of returns for the year under review during the time of audit.

#### **Committee Recommendations**

**The Committee recommends that-**

- i. the Accounting Officer complies with section 125 of the Companies Act, 2015 which stipulates that every company having a share capital shall, once

**Committee Recommendations**

The Committee recommends that the Board of Directors ensures that the water company puts in place all internal control systems such as the Internal Audit Committee as provided under section 155 (5) of the Public Finance Management Act, 2012, and a Risk Management Policy as provided under section 158 (1) of Public Finance Management (County Governments) Regulations, 2015 among others to guide the internal operations of the water company. Further, the managements to submit evidence of the same to the Auditor-General for verification; and

**Committee Observation**

The Committee observed that the company did not have an approved ICT policy.

**Management Response**

Currently the company has an approved ICT policy which comprises Security policy, Environmental policy and IT Continuity Plan, Disaster Recovery Plan and Risk Assessment Policy.

**25: Information Technology and Communication (ICT) Control Weaknesses**

As reported in the previous year, the company does not have an approved ICT policy, security policy, environmental policy and Information Technology (IT) continuity plan, disaster recovery plan and risk assessment policy.

In the circumstances, the lack of an approved ICT policy may lead to the data confidentiality, accuracy, reliability, integrity, and availability being compromised.

**iii. The Board of Directors to surcharge the Accounting Officer for any penalties or interests that may accrue due to non-filing of annual returns.**

**and**

at least in every year, make a return, and the said return shall be in the form prescribed and shall be submitted on the fourteenth day after the date of the annual general meeting and Section 22(2)(a) of the Public Finance Management (County Government) Regulations, 2015, which provide that the accounting officer to comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided by legislation;



## **26: Lack of Enterprise wide Risk Management (ERM)**

The company does not have an Enterprise wide Risk Management (ERM) in place or Risk Management Policy and Framework (IRMPF) to guide its strategic and operational activities contrary to Public Finance management regulations 2015, Section 165. (1) which requires that 'The Accounting Officer shall ensure that the government entity develops—(a) risk management strategies, which include Fraud Prevention mechanism; and (b) a system of risk management and internal control that builds robust business operations.

The company may not be having an adequate fraud prevention mechanism and a system of risk management and internal control that builds robust business operations. Further, the management was in breach of the law.

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

### **Management Response**

Currently the company has an approved Enterprise wide Risk Management (ERM) which will assist company in guiding its strategic and operational activities.

### **Committee Observation**

The Committee observed that the company did not have a Risk Management Policy and Framework (IRMPF) during the time of audit, but was later developed.

### **Committee Recommendation**

The Committee recommends that the Board of Directors ensures that the water company puts in place all internal control systems such as the Internal Audit Committee as provided under section 155 (5) of the Public Finance Management Act, 2012, and a Risk Management Policy as provided under section 158 (1) of Public Finance Management (County Governments) Regulations, 2015 among others to guide the internal operations of the water company. Further, the managements to submit evidence of the same to the Auditor-General for verification.

## CHAPTER FOUR

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR MALINDI WATER AND SEWERAGE COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor of Kilifi County Hon. Gideon Matitha Mung'aro, OGW, appeared before the Committee on Thursday, 27<sup>th</sup> April, 2023 to respond (under oath) to audit queries raised in the Report of the Auditor-the General on Financial Statements for Malindi Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2021. He was accompanied by-

- |                               |                                   |
|-------------------------------|-----------------------------------|
| i). Mrs. Yaye Shosi Ahmed     | - CECM- Finance Economic Planning |
| ii). Mr. Omar Said Omar       | - CECM – Water                    |
| iii). Mr. Isaac Chibule       | - Ag. Managing Director           |
| iv). Mr. Ezekiah Nguma Mwarua | - County Chief Officer - Water    |
- The Malindi Water and Sewerage Company Limited is wholly owned by the Kilifi County Government.

### REPORT ON THE FINANCIAL STATEMENTS

The Auditor-General rendered a **qualified opinion** on the Financial Statements of the Malindi Water and Sewerage Company Limited for the financial year 2020/2021 on the following basis -

#### Unreconciled Refundable Customer Deposits

The statement of financial position and as disclosed in Note 34 to the financial statements, reflects customer deposits balance of Kshs. 56,717,564. However, supporting records provided for audit review indicated related bank balance of Kshs. 172,996 as at 30 June, 2021, resulting to unreconciled and unexplained variance of Kshs. 56,544,568.

In the circumstances, the accuracy and completeness of the customer deposits balance of Kshs. 56,717,564 could not be confirmed.

#### Management Response

The management provided a copy of the Customer Fixed Deposit Register showing the customer deposit amount of Kshs. 56,717,564 as at 30 June 2021. Further, the management indicated that the variance of Kshs. 56,544,568 was yet to be transferred to the Fixed Customer Deposit Account from the Revenue main account.

The management also indicated that all monies were received and banked in the main revenue account and subsequently transferred to deposit account to refund what was spent from the deposit account. The management provided evidence of the amounts that were held as at March 2023, that stood at Kshs. 5,165,305.

#### **Committee Observations**

The Committee observed that –

- i). evidence of refund of Kshs 5,000,000 (Kshs. 1,000,000 Monthly) was provided to the Auditor-General and verified;
  - ii). the Accounting Officer did not provide evidence to indicate that the unreconciled balance of Kshs. 56,544,568 was held at the main revenue account and that it awaited transfer to the Customer Fixed Deposit Account;
  - iii). no repayment plan was provided for audit by the Accounting Officer to demonstrate how the balances were to be cleared; and
  - iv). no Customer Deposits Management Policy was in place.
- The query remains unresolved.

#### **Committee Recommendations**

The Committee recommends that –

- i. the Accounting Officer should, within 60 days of the adoption of this report, submit to the Auditor-General a repayment plan with clear timelines for the repayment of the customer deposits;
- ii. the Board of Directors should put in place a Customer Deposits Management Policy to guide on access, utilization and refund the money within specified timelines. Further, the Accounting Officer should ensure that there is full disclosure to the water company's customers on the utilization of the deposits; and
- iii. the Accounting Officer should ensure that all customer deposits are deposited in a fixed/call account whose access to the management is limited and where the accrued interests can be used to offset the bank charges. The Accounting Officer should submit evidence of the same to the Auditor-General within 60 days of the adoption of this report for verification; and
- iv. the Auditor-General to review the matter and submit a status report in the subsequent audit cycle.

#### **Emphasis of Matter**

**Material Uncertainty Related to Going Concern**



During the year under review, the Company reported a net profit of Kshs. 9,244,975 (2020: Loss of Kshs. 45,646,359), resulting in a cumulative retained deficit of Kshs.395,195,690 as at 30 June, 2021 (Kshs. 404,440,666 2019/2020). Further, the current liabilities of Kshs. 798,512,907 exceeded the current assets balance of Kshs. 444,688,056, resulting in a negative working capital of Kshs. 353,824,851 (Kshs. 379,595,026 2019/2020), an indication that the Company may be experiencing financial difficulties in settling financial obligations as and when they may fall due.

The existence of the above material uncertainty casts significant doubt on the Company's ability to continue as a going concern. The financial statements have been prepared on a going concern basis on the assumption that the Company will continue to receive financial support from the County Government of Kilifi, its creditors and bankers. However, this material uncertainty in relation to going concern and any mitigating measures put in place by the Company to reverse the undesirable financial position have not been disclosed in the financial statements.

## Management Response

The management submitted that the uncertainty was due to negative working cash flow and indicated that they were undertaking the following mitigation measure;

- i). Increase water coverage in the area to increase revenue base through the on-going Network Expansion and Efficiency Improvement Initiatives.
- ii). Applied for a cost-effective tariff on No objection on tariff application.
- iii). Undertake efficient measures like further reduction of water loss (non-revenue water loss) through NRW interventions in progress.
- iv). Address the historical debt issue with the Coast Water Works Development Agency (formerly Coast Water Services Board) with a possibility of write off.

They further indicated that the water company was undertaking the Utility Turn Around program on performance improvement.

## Committee Observations

The Committee observed that the query had recurred from the previous financial years and that it remains unresolved as –

- i). whereas the company realized a net profit of Kshs. 9,244,975 in the year under review, it had a negative working capital Kshs. 353,824,851 over the same period meaning that the company could not settle its financial obligations as and when they fall due;

The statement of comparison of budget and actual amounts reflects revenue final budget and actual collections on comparable basis of Kshs. 996,252,351 and Kshs. 742,619,923 respectively, resulting to a revenue shortfall of Kshs. 253,632,428 or 25% of the budget.

### **I. Budgetary Control and Performance**

The following issues were raised by the Auditor-General under Other Matter -

#### **Other Matter**

Standards Board (PSASB).

their commercial viability as required by the Public Sector Accounting financial position. Further, management to determine and ascertain existing assets and have updated assets register that reflect the current. Additionally, the management reviews and regularizes the company's to boost the financial health of the water company for self-sustainability. report, put in place strategic and innovative measures for recovery and the Accounting Officer should, within 60 days of the adoption of this v). the Accounting Officer should, within 60 days of the adoption of this Board under section 77(2) of the Water Act, Cap 372; and company in line with the standards set by the Water Services Regulatory Corporation including an assessment of the commercial viability of the iv). the County Treasury should undertake annual reporting on County the Constitution;

through the County Executive Committee in line with Article 179 (6) of Management Act Cap 412A and regularly report to the Governor county corporation in line with section 184 of the Public Finance take full responsibility for monitoring the financial performance of the iii). the County Executive Committee Member in charge of water should line with section 166 of the Public Finance Management Act, Cap 412A; regard to the financial and non-financial status of the water company in ii). the Accounting Officer should prepare and submit quarterly reports in 179 (4) of the Constitution;

management and operations of the water company in line with Article i). the Governor of Kilifi County should take keen interest in the

The Committee recommends that –

#### **Committee Recommendations**

financial position were inadequate.

iii). mitigating measures put in place by the Company to reverse the undesirable creditor; and

ii). the water company was technically insolvent, meaning that its survival was dependent on continued support from the County Government and its



i. the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures;

ii. the Board of Directors should institute proper and realistic budget planning as well as measures to enhance its own generated revenue, such as review of tariffs, connection of more customers and automation to address revenue leakages. The Auditor-General to confirm the

The Committee recommends that –

#### Committee Recommendations

revenue.

the Accounting Officer did not provide measures taken to improve sales casting doubt on the water company's ability to fully implement it. Further

ii). the Accounting Officer admitted that the approved budget was ambitious, company's plans; and

budget which could have had an adverse impact on service delivery and the the budget and an under-expenditure of Kshs. 201,858,786 or 20% of the i). the water company had a revenue shortfall of Kshs. 253,632,428 or 25% of

and that it remains unresolved as –

The Committee observed that the query had recurred from the previous financial years

#### Committee Observations

stretch the management in serving the residents.

be incurred. The management acknowledged that set budget was an ambitious one to appropriately to reflect the actual revenue to be collected and the expenditure costs to The management further stated that they would review the budget in the mid-year from the sales.

The management submitted that the shortfall in the budget was because of major customers, who are mainly the hotels reducing on purchase of water because of low business on the industry. The under expenditure was because of low revenue collection

#### Management Response

and objectives of the Company.

The revenue shortfall and under-expenditure had negative impact on the planned goals

the budget.

Kshs. 996,252,351, resulting to an under-expenditure of Kshs. 201,858,786 or 20% of Similarly, the Company expended Kshs. 794,393,565 against an approved budget of



effectiveness of the mitigating measures put in the water company and report in the subsequent audit cycle.

## **2. Unresolved Prior Year Matters**

Various prior year audit issues remained unresolved. Management has not provided reasons for the delay in resolving the prior year audit issues. Further, the unresolved prior year issues are not disclosed under the progress on follow up of auditor's recommendations section of the financial statements as required by the Public Sector Accounting Standards Board.

### **Management Response**

The management included the progress on prior year audit issues in the financial report ended 30 June 2021 on page 48 on follow up on progress of Auditor recommendations.

### **Committee Observations**

The Committee observed that a progress report on prior year audit issues had been provided by the management for audit review. However, numerous queries were still outstanding and thus the query remains unresolved.

### **Committee Recommendations**

The Committee recommends that the Accounting Officer should resolve any issues resulting from an audit that remains outstanding as required by section 149(2)(i) of the Public Finance Management Act, Cap 412A; and the Auditor-General provides a status update on the progress made on the matter in the subsequent audit cycle upon review of the progress report.

## **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

Pursuant to Article 229 (6) of the Constitution, based on the audit procedures performed by the Auditor General, the following matters formed the basis for conclusion that public resources were not applied lawfully and in an effective way –

### **1. Trade and Other Payables**

The statement of financial position and as disclosed in Note 32 to the financial statements reflects trade and other payables balance of Kshs.662,202,655, out of which an amount of Kshs.587,812,801 relates to long outstanding creditors that were over 180 days old. This is contrary to provisions of Section 13.1 of the Malindi Water and

Sewerage Company Limited Accounting and Finance Procedures and Policies Manual, 2015 which provides that, all liabilities are reviewed on a monthly basis to ensure the Company is able to honor its obligations as and when they fall due.

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

### **Management Response**

The management submitted that trade and other payables amount of Kshs. 662,202,655 included Kshs. 547,562,475.75 to Coast Water Works Development Agency (formerly Coast Water Services Board). The management also added that the Board oversaw the establishment of an appropriate tariff to recover costs for the Water Services Providers as well as pay for its creditors, which includes Coast Water Works Development Agency.

The management admitted that the water company had not been able to pay in full all its creditors due to inability to cover all the costs over the trading period leading to an accumulation of the debts over the period. They also acknowledged the issue as a challenge that they would overcome over time when the company recovered its costs. They provided a statement indicating payment movement to Coast Water Works Development Agency for scrutiny.

### **Committee Observations**

The Committee observed that the query remains unresolved as –

- i). the Accounting Officer admitted that the water company had cashflow challenges that impaired the ability to meet its financial obligations as and when they fell due; and
- ii). measures to improve revenue to enable the water company to tackle the payables were not provided; and
- iii). a repayment plan on how the outstanding payable to Coast Water Works Development Agency would be paid was not provided.

### **Committee Recommendations**

The Committee recommends that –

- i). the County Executive Committee Member in charge of water should continuously monitor the financial performance of the water company in line with section 184 of the Public Finance Management Act, Cap 412A and report on the same to the County Executive Committee, making recommendations on how the water company can improve its performance;

## Committee Recommendations

i). the water company used unauthorized tariffs for the period under review contrary to rule 32(2) of the Water Services Regulatory Rules, 2012;

ii). the management had initiated tariff review and approval of new tariffs, but it had not been acted on as of January, 2022 and no explanation was provided for the delay.

The Committee observed that the query remains unresolved as –

## Committee Observations

The management submitted that the water company had initiated the process of tariff application which was at an advanced stage. They added that the tariff application process was being handled directly by the regulator unlike previously where it was done through Coast Water Services Board.

## Management Response

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

During the year under audit review, the Company did not have a current approved tariff structure from the Water Services Regulatory Board, contrary to Rule 32(2) of the Water Services Regulatory Rules, 2012, which require that all licenses to contain the period in which such tariffs may be adjusted at least once in every three years. Information available shows that the Company used the approved tariff structures for the period 2017/2018 to 2019/2020. The Management application for a review and approval of new tariffs had not been acted on as of January, 2022.

## 2. Application of Unauthorized Tariffs

ii). within 60 days of the adoption of this report, the Governor of Kilifi County should engage the Coast Water Works Development (formerly Coast Water Services Board) and agree on a repayment plan and file a report on the same with the Auditor-General for verification. Auditor-General to provide a status update on the matter in the subsequent audit cycle; and

iii). the Accounting Officer should ensure total compliance with the Company's Accounting and Finance Procedures and Policies Manual, 2015.



The Management acknowledged that some staff had exceeded the 1/3 rule under the Public Service HR Policies and Procedures. The management indicated that they had put the relevant staff on notice, giving them a deadline for the financial year 2021/22 to clear of the breach. They further indicated that management controls were in place to ensure the matter does not happen again.

### **Management Response**

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

2016. Public Service Commission Human Resources Policies and Procedures Manual, May salaries beyond two thirds (2/3) of their basic salaries, contrary to Section C.1 (3) of the Review of the net salaries and other staff dues revealed that officers committed their four (204) employees both in Management, unionisable and temporary employees. Included in this amount are staff costs of Kshs.195,109,166 paid to two hundred and costs of Kshs.346,381,673 as disclosed under Note 11 to the financial statements. The statement of profit or loss and other comprehensive income reflects administrative

### **Over-Commitment of Staff Salaries**

Pursuant to section 7(1) of the Public Audit Act, based on procedures performed by the Auditor General, the following matter formed the basis for conclusion that internal controls, risk management and overall governance were not effective –

## **REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE**

- i). within 60 days of the adoption of this report, the Accounting Officer, and the Water Services Regulatory Board (WASREB) should finalize the tariff review and approval of the new tariffs and submit evidence of the same to the Auditor-General for verification. The Auditor-General to provide a status update on the matter in the subsequent audit cycle;
- ii). the Accounting Officer should that tariff adjustment is undertaken as required by Water Services Regulatory Board (WASREB) Tariff Guideline, 2023; and
- iii). in line with the WASREB Tariff Guideline, 2023, WASREB should ensure total compliance with guideline 4.0 on the Tariff Adjustment Process which provides that the process shall take a maximum of six months from the receipt of a complete application.

The Committee recommends that –

The staff memo on the directive was provided for scrutiny. All personal staff pay roll deductions were approved at Management level before being effected.

#### **Committee Observations**

The Committee observed that the query had recurred from the previous financial years and the management took remedial measures that were verified by the Auditor-General and considered the query resolved.

#### **Committee Recommendations**

The Committee recommends that the Accounting Officer should comply with section 19(3) of the Employment Act, Cap 226 regarding the one third rule on the deductions on the basic salary.

At the time of preparation of the response we discovered an error with respect to the paragraph on inaccuracies of financial statements of which Kshs. 99,920,746 was reported instead of Kshs. 42,304,981. This was brought to the attention of the auditor who agreed with our observation. Chair, the figure of Kshs. 33,372,791 disclosed correctly in the statement of changes in equity is the cumulative retained losses comprising of Kshs. 20,430,878 which is the net retained losses for the financial year

#### **Management Response**

The statement of financial position reflects members' equity balance of negative Kshs.42,304,981 and as disclosed under Note 19 to the financial statements. However, note 19 reflects an amount of Kshs. 99,920,746. In addition, the members' equity was not reflected in the statement of changes in equity reflects. Further, the statement of financial position reflects retained earnings of negative Kshs.20,430,878. However, the cumulative retained earnings were Kshs.33,372,791 as reflected in the statement of changes in equity. In the circumstances, the accuracy of the financial statements could not be confirmed.

#### **Inaccuracies in the Financial Statements**

The Auditor-General rendered a **qualified opinion** on the financial statements of Mandera Water and Sewerage Company for the period under review on the following basis.

#### **REPORT ON FINANCIAL STATEMENTS**

The Mandera Water and Sewerage Company is wholly owned by the Mandera County Government.

- i. Mr. Billoo Hassan - County Secretary
- ii. Mr. Ibrahim M. Adan - CEC Finance
- iii. Mr. Hussein Somo - County Attorney
- iv. Mr. Kassim H. Abdiinor - MD MADWASCO

The Governor of Mandera County, Hon. Mohamed Khalif, EGH, appeared before the Committee on Tuesday, 25<sup>th</sup> July, 2023 to respond (under oath) to audit queries raised in the Report of the Auditor General on Financial Statement for Mandera Water and Sewerage Company for the Financial Year 2020/2021. He was accompanied by-

#### **REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR MANDERA WATER AND SEWERAGE COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021**

#### **CHAPTER FIVE**



under review that was disclosed in the statement of financial position and the Kshs. 12,941,913 which is the net retained losses of the previous year.

#### **Committee Observations**

The Committee observed that the members' equity of Kshs.42,304,981 was not reflected in the statement of changes in equity.

#### **Committee Recommendations**

The Committee recommends that;

- i. the Accounting Officer should comply with section 149(2) of the Public Finance Management Act, 2012 with regard to preparation and management of financial and accounting records;
- ii. the Accounting Officer should enhance the capacity of officers preparing financial statements to comply with the accounting standards and should further invest in technology and processes that reduce inaccuracies in the preparation of financial statements; and
- iii. The matter remains unresolved.

#### **Key Audit Matters**

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

#### **Other Matters**

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

The statement of comparison of budget and actual amounts reflects revenue budget and actual revenue on comparable basis of Kshs.462,829,534 and Kshs.387,506,403 respectively, resulting to an under-collection of revenue of Kshs. 75,323,131 or 16% of the budget. Similarly, the Company expended Kshs.361,089,763 against an actual budget of Kshs.462,829,534 resulting to an under-absorption of Kshs. 101,739,771 or 22% of the budget.

The under absorption may have negatively impacted on service delivery to the residents of Mandera town and its environs.

#### **Management Response**

Chair, the company's budget was to be financed by sales, grant from the county government of Mandera and donor funds. During the financial year under review, the company was not able to collect all the revenue from sales due to the adverse effects of

the COVID-19 and drought. Similarly, the donor grants component was not received as per the signed financing agreements. This was because some of the projects were ongoing and their funds was to be released in phases.

Chair, the following were the projected donor grant which were not realized as per the initial financing agreement:

- Conditional liquidity support grant (CLSG 1) from World Bank of Kshs. 69,675,000 to mitigate effects of COVID 19 was not disbursed fully. As at the end of the financial year, only Kshs. 23,300,061 was disbursed.

- EU drought ending project under EUCIPRA program was delayed due to insecurity concerns in the county. The initial project budget of Kshs. 67,517,537.27 was not fully implemented as the donor disbursed Kshs. 52,479,683 at the end of the financial year 2020/21.

It is worth noting that in the year under review, the actual revenue received of Kshs. 387,506,403 was almost fully absorbed at an absorption rate of 93% as shown in the statement of comparison of budget and actual amounts on page 5 of the financial statements.

#### Committee Observations

The Committee observed that the Company expended Kshs.361,089,763 against an actual budget of Kshs.462,829,534 resulting in an under-absorption of Kshs. 101,739,771 or 22% of the budget.

#### Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures; and

- ii. the Board of Directors should institute proper and realistic budget planning. The Auditor-General to confirm the effectiveness of the mitigating measures put in place by the water company and report in the subsequent audit cycle.

## **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

Pursuant to Article 229(6) of the Constitution, based on the audit procedures performed by the Auditor-General, the following matters formed the basis for conclusion that public resources were not applied lawfully and in an effective way-

### **Basis for Conclusion**

#### **1. Non-Competitive Procurement of Fuel**

Included in the administration costs of KShs.48,412,794 under Note 10 to the financial statements is an amount of KShs. 18,123,743 relating to transport and fuel expenses. However, it was noted that, out of the fuel worth KShs. 7,779,000 procured during the year, fuel worth KShs. 6,322,000 was procured from one service station while fuel amounting to KShs. 1,457,000 was procured from other prequalified suppliers. This is contrary to regulation 91(5) of the Public Procurement and Asset Disposal Regulations, 2020, which requires entities to ensure a fair and equal rotation amongst the persons on the prequalified list.

### **Management Response**

The company purchases fuel from different suppliers every financial year and since the pump price of fuel at all petrol stations in Mandera are the same as set by Energy Petroleum Regulatory Authority. It is the policy of the company to competitively source the supply of fuel between the prequalified list of fuel suppliers for the different years. The year under review was marred with COVID-19 pandemic effects that disrupted operations of many businesses including the fuel suppliers. The said station, enjoys proximity to our area of operations, capacity and reliability in meeting supply as required. However, other suppliers were also considered on rotational basis as per the prequalified list.

### **Committee Observation and Recommendation**

The Committee observed that the water company submitted the prequalified list of suppliers and consideration of supply of fuel was given on rotational basis. Noting the mitigation by the water company, the committee recommends the matter be marked as resolved.

## **2. Late Remittance of Statutory Deductions**

Included in the staff cost balance of KShs. 11,198,665 disclosed under Note 10(a) to the financial statements, is an amount of KShs.237,600 which relates to payment to compulsory national social security schemes. Review of the Company's statutory deductions from the automated payrolls for the year ended 30 June, 2021 revealed that



National Social Security Fund (NSSF) deductions amounting to Kshs. 190,000 were not remitted on time contrary to Section 53(1) of the Retirement Benefits Act, 2012 as detailed below:

| Month           | Amount         | Remittance Date   | Deadline Date    |
|-----------------|----------------|-------------------|------------------|
| July, 2020      | 16,000         | 25 November, 2020 | 9-Aug-2020       |
| August, 2020    | 16,000         | 25 November, 2020 | 9-Sept-2020      |
| September, 2020 | 22,400         | 25 November, 2020 | 9-Oct-2020       |
| October, 2020   | 22,400         | 25 November, 2020 | 9 November, 2020 |
| November, 2020  | 23,200         | 12 May, 2021      | 9 December, 2020 |
| December, 2020  | 22,800         | 12 May, 2021      | 9 January, 2021  |
| January, 2021   | 21,200         | 12 May, 2021      | 9 February, 2021 |
| February, 2021  | 22,400         | 12 May, 2021      | 9 March, 2021    |
| April, 2021     | 23,600         | 12 May, 2021      | 9 May, 2021      |
| <b>Total</b>    | <b>190,000</b> |                   |                  |

In the circumstances, compliance with Section 53(1) of the Retirement Benefits Act, 2012 was not adhered to.

#### Management Response

Mr. Chairman, the company had challenges in collecting revenue from sales due to the effects of the COVID-19 pandemic, the persistent drought that affected our water production levels and our customers' ability to pay their bills, and late disbursements from the County Treasury that affected the company's ability to remit the statutory deductions on time during the year under review.

However, the company has taken appropriate steps to comply with the statutory deadlines and it now remits the deductions on time despite NSSF not having an office in Mandera.

#### Committee Observations

The Committee observed that National Social Security Fund (NSSF) deductions amounting to Kshs. 190,000 were not remitted on time due to low revenue collections and late disbursements from the County Treasury. However, the company has since began remitting their deductions on time.

#### Committee Recommendations

Noting the mitigation measures taken by the water company, the Committee

recommends that the matter be marked as resolved.

### **3. Engagement of Casual Workers for a Prolonged Duration**

Included in the staff cost balance of Kshs. 11,198,665 disclosed under Note 10(a) to the financial statements, is an amount of Kshs. 10,554,815 which relates to salaries and allowances for both permanent and temporary employees. Review of casual payrolls revealed that there were 36 casuals that were engaged continuously for more than three (3) continuous months contrary to section 37 (1)(a) and (b) of Employment Act, 2007. In the circumstances, Management was in breach of the law.

#### **Management Response**

Being a small company in capacity, MANDWASCO has been engaging staff on contractual basis for a specified period of time in line with the Public Service Commission Framework for short term employment in the Public Service Resolution of 2019 that allowed the engagement of employees on short term contract for a period not exceeding 6 months. However, the company is currently in the process of engaging the employees that are on short-term contracts to permanent and pensionable terms of service.

#### **Committee Observations**

The Committee observed that the management failed to avail short-term contract agreements for twenty-nine contractual employees for audit verification, during the audit period which constitutes an offence under section 62(2) of the Public Audit Act.

#### **Committee Recommendations**

The Committee recommends that-

- i. the Accounting Officer to submit to the Auditor-General the short-term contract agreements for the twenty-nine contractual employees for verification;

- ii. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9(1)(e) of the Public Audit Act, 2015, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62(2) of the Public Audit Act, 2015; and

**iii. The matter remains unresolved.**

**4. Failure to Establish an Audit Committee**

The Company has not established an Audit Committee and Internal Audit function contrary to Section 167(1) of the Public Finance Management (County Government) Regulations, 2015 which requires County Government entities to establish audit committees in accordance with prescribed regulations to monitor the entities governance process, accountability process and control systems, offer objective advice on issues concerning risk, control, regulatory requirements and governance of the Company. In the circumstances, Management was in breach of the law.

**Management Response**

Mr. Chairman, the company has constituted an Audit and Risk Management committee from its board members through a resolution of the board to oversee financial risks and audit issues of the company. The company is in the process of advertising for the external and independent audit committee. Chair, on the internal audit function, the Mandera County Treasury seconded an internal auditor to the company to undertake the internal audit functions as required by the Public Finance Management Act, 2012. However, the auditor absconded duties in the financial year under review and after multiple follow ups including show cause, and salary stoppage, the auditor resigned from his position. The auditor has since been replaced and the audit function and responsibilities has now resumed and is on course.

**Committee Observations**

The Committee observed that the Company had not established an Audit Committee and Internal Audit function during the financial year under review.

**Committee Recommendations**

The Committee recommends that-

- i. the Board of Directors ensures that the water company puts in place all internal control systems such as the Internal Audit Committee as provided under section 155(5) of the Public Finance Management Act, 2012, and a Risk Management Policy as provided under regulation 158(1) of Public Finance Management (County Governments) Regulations, 2015 among others to guide the internal operations of all the funds. Further, the managements to submit evidence of the same to the Auditor-General for verification; and



**ii. The matter remains unresolved.**

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

Pursuant to section 7(1) of the Public Audit Act, based on procedures performed by the Auditor General, the following matter formed the basis for conclusion that internal controls, risk management and overall governance were not effective –

**Basis for Conclusion**

**Lack of a Risk Management Policy Framework**

During the financial year under review, the Company operated without a documented Risk Management Policy Framework contrary to the requirements of Treasury Circular No. 3/2009 of 23 February, 2009 which requires all heads of public institutions to develop and implement a Risk Management Framework as a fundamental step towards establishing an accountable and innovative public service. In the circumstances, Management was not in a position to evaluate, rank and prioritize critical risks and channel resources towards mitigating identified risks.

**Management Response**

Mr. Chairman, at the time of the audit, the company had a draft risk management policy in place. However, since then, it has been finalized, approved, and is now operational.

**Committee Observations**

The Committee observed that the Company operated without a documented Risk Management Policy Framework, during the year under review. However, the management provided an approved Risk Management Policy to Committee and to the Auditor-General for verification thus the matter was resolved.

**Committee Recommendations**

The Committee recommends that, noting the mitigation measures taken by the management, the matter be marked as resolved.

## CHAPTER SIX

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR MIGORI WATER AND SANITATION COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor of Migori County, Hon. (Dr.) Ochilo George Mbogo Oyacko appeared before the Committee on Tuesday, 25<sup>th</sup> April 2023 to respond (under oath) to audit queries raised in the Report of the Auditor-General on Financial Statements for Migori Water and Sanitation Company (MIWASCO) Limited for the Financial Year 2020/2021. He was accompanied by-

- |      |                           |                        |
|------|---------------------------|------------------------|
| i.   | Mr. Maurice N. Otunga     | - CECM, Finance        |
| ii.  | Mr. Christopher O. Rusana | - CECM, Water          |
| iii. | Mr. Phidale Castro Ouma   | - Chief Officer, Water |
| iv.  | Mr. Jacob Maroa           | - MD, MIWASCO          |

The Migori Water and Sanitation Company Limited is wholly owned by the Migori County Government.

### REPORT ON THE FINANCIAL STATEMENTS

The Auditor-General rendered a **qualified opinion** on the financial statements of the Migori Water and Sanitation Company Limited for the financial years 2018/2019 on the following basis:-

#### 1. Customer Deposits Account

The statement of financial position reflects customer deposits totaling Kshs. 7,186,481. However, review of records on the deposits indicated that withdrawals totaling Kshs. 7,006,448 were made from the deposits account without the authority of the Board of Directors. It was therefore not possible to confirm the purposes for which the funds were withdrawn and how they were used.

In the circumstances, the accuracy and completeness of the customers' deposits balance totaling Kshs. 7,186,481 could not be confirmed

#### Management responses

The management noted the auditor's observation and stated that cumulatively withdrawals from the customer deposits account were made over years when the company was undergoing financial constraints to mitigate emergencies and statutory obligations. The emergencies were as follows: MIWASCO was not able to collect revenue because of non-payment of electricity bills. In the year under review, the water

company only operated for 4 months out of 12 months, hence necessitating withdrawal from the deposit account.

For the year under review, withdrawals were made in mitigating COVID-19 Pandemic and major repairs in our water intakes to ensure constant supply of water as per presidential edict on constant water supply in mitigating COVID-19 pandemics.

Currently, the current administration has carried out major management restructuring in the water company whereby the former Managing Director, Head of Finance and commercial services and technical manager contracts were terminated, and a new Managing Director was hired in August 2021. The water department seconded a senior technical water officer to help streamline the company. The current administration revoked contract engagement with former Board of Directors for failures in management.

It's worth mentioning that the county government has been consistent in paying electricity bill and buying of chemicals since September 2022 and there had not been water supply interruption for the past 8 months. This had resulted in revenue collection growth from Kshs. 212,620 in September to Kshs. 2.17 million in MIWASCO's last revenue collection in the month of February. The county has purchased fittings worth 2 million for rehabilitation and repairs of broken/vandalized lines that resulted from road works and old dilapidated pipes. The company had stepped up plans to collect debts amounting to 38.76 million owed to the company, part of which would be used to repay the borrowed funds from the deposit account.

#### **Committee Observations**

The committee observed that the query remains unresolved as–

- i. the response submitted was inadequate as the Accounting Officer did not submit to the Auditor-General, a repayment plan clearly stipulating how the borrowed customer deposits will be refunded; and
- ii. the water company borrowed Kshs. 7,186,481 from the customer deposits account to mitigate revenue shortfalls and the same had not been refunded to the account.

#### **Committee Recommendations**

The Committee recommends that –

- i). The Accounting Officer should, within 60 days of the adoption of this report, submit to the Auditor-General a repayment plan with clear



- i. The Company had three Directors and 5000 shares owned by the defunct local authorities that were not transferred to the County Government of Migori at the inception of devolution; and
- The Committee observed that the query remains unresolved as –

### **Committee Observations**

The management noted the auditor's observation and stated that the County Government has taken up the matter through the office of the county attorney to ensure that legal procedures of transferring the shares are concluded.

### **Management responses**

In the circumstances, the ownership accuracy and completeness of the issued capital of Kshs. 100,000 could not be confirmed.

The statement of financial position reflects issued capital totaling Kshs. 100,000 and as disclosed in Note 19 to the financial statements. The issued capital of the Company is divided into 5,000 shares of Kshs. 20 each. Records at the Business Registration Service in the Office of the Attorney-General and Department of Justice indicates that as at 30 June 2021, the Company had three directors two of whom held 350 shares each and one 300 shares all totaling 1000 shares reflected in the financial statements. The difference of 4000 shares between the two sets of records was not explained. Further, the 5000 shares owned by defunct local authorities were not transferred to the County Government of Migori after the advent of Devolution.

## **2. Issued Capital**

- General within 14 days of the adoption of this report for verification.
- charges. Management to submit evidence of the same to the Auditor-
- limited and where the accrued interests can be used to offset the bank
- deposited in a fixed/call account whose access to the management is
- iii). The Accounting Officer should ensure that all customer deposits are
- water company's customers on the utilization of the deposits; and
- Accounting Officer should ensure that there is full disclosure to the
- and refund the money within specified timelines. Further, the
- Management Policy to guide how the water company can access, utilize
- ii). The Board of Directors should put in place a Customer Deposits
- reporting in the subsequent audit cycle;
- timelines for the repayment of the customer deposits for verification and

- ii. The response by the Accounting Officer, is a statement of intent that does not give clear steps to be taken to ensure that the water company's ownership is in line with the law as well as the timelines involved.

### Committee Recommendations

The Committee recommends that—

- i) The Governor should take immediate measures to ensure that Migori Water and Sanitation Company is fully owned by the Migori County Government and registered in line with the law;
- ii) The Governor of Migori County should ensure that the County Government of Migori firms up the ownership of the water company in line with section 72(1) and (3) of the Water Act, Cap. 372 by making the necessary payment for the share capital in line with the Company's Memorandum and Articles of Association and submit the Share Certificate as evidence of payment to the Office the Auditor-General for verification;
- iii) The Governor of Migori County should ensure that within 60 days of the adoption of this report, the shareholding structure of the water company is in line with the Water Services Regulatory Board (WASREB) guidelines on corporate governance for entities in counties; and
- iv) The Managing Director to provide copies of share certificates, as well as, an updated CR12 in accordance with the Companies Act, 2015, to the Auditor-General within 60 days from the adoption of this report.

### 3. Comparative Trade and Other Receivables

The statement of financial position reflects trade and other receivables balance totaling KShs. 38,764,850. However, the account's comparative prior year balance totaling KShs. 34,892,265 differs with the corresponding balance of KShs. 34,680,390 reported in the previous year's audited financial statements, resulting in an unreconciled variance of KShs. 211,875.

In the circumstance, the comparative balance for trade and other receivables totaling KShs. 211,875 is not fairly stated.

### Management responses

The management noted the auditor's observation and stated that the 2020/2021 final report was finalized before the OAG report for the FY 2019/2020 was finalized due to transition within the Office of the Auditor General.

**Committee Recommendations**  
The Committee noted that the Accounting Officer had instituted mitigating measures during the subsequent audit cycle.

**Committee Observations**  
The committee observed that the query was resolved as the Company accounted for the trade and other receivables totaling Kshs. 211,873 in the 2021/2022 financial statements.

**Management response**  
The management noted the auditor's observation and stated that the 2020/2021 final report was finalized before the Auditor-General report for the FY 2019/2020 was finalized due to transition within the Office of the Auditor General. However, Management has ensured that the certified comparative figures have been adopted while submitting the 2021/2022 annual report and financial statements.

In the circumstance, the comparative balance for trade and other payables totaling Kshs. 211,873 could not be confirmed.

**4. Comparative Trade and Other Payables**  
The statement of financial position reflects trade and other payables balance totaling Kshs. 51,494,339. However, the comparative prior year balance totaling Kshs. 47,140,532 differs with the corresponding balance of Kshs. 46,928,659 reflected in the previous year's audited financial statements, resulting in an unreconciled variance of Kshs. 211,873.

**Committee Recommendations**  
The Committee noted that the Accounting Officer had instituted mitigating measures on the matter in the subsequent audit cycle.

**Committee Observations**  
The committee observed that the query was resolved as the Company accounted for the trade and other receivables totaling Kshs. 211,875 in the 2021/2022 financial statements.

However, Management had ensured that the certified comparative figures have been adopted while submitting the 2021/2022 annual report and financial statements.



## 5. Material Uncertainty Related to Going Concern

The statement of comprehensive income reflects an operating loss of Kshs. 3,041,820 (2020 loss of Kshs: 10,899,237). The loss further depleted the retained earnings of the company to negative Kshs. 48,389,889 up from negative Kshs. 45,348,066 as at 30 June 2020. The current liabilities totaling Kshs. 69,288,996 exceeded current assets of Kshs. 46,388,281 resulting to a negative working capital of Kshs. 22,900,715. The unfavourable financial status implies that the company may not be able to meet its financial obligations as and when they fall due.

The company is technically insolvent, and its continued existence as a going concern is dependent upon financial support from its creditors and the County Government of Migori. The directors have not made any specific disclosure on the risk to the going concern status of the company, or indicated the measure planned or taken to stop the loss-making trend and return the company to profitability.

### Management responses

The management noted the auditor's observation and stated that the current administration had put in place the recovery strategy of the company by:

- (a) Recruiting a new board of directors to spearhead the management of the company to operate according to laid down regulations.
- (b) The current administration has increased budgetary electricity allocation to the company and subsequently paid electricity bills for the last eight months, so that water treatment works continuously operate without disruption.
- (c) Ensuring water treatment chemicals are procured and availed to the company in time

- (d) The newly appointed County Executive Committee Member (water and energy) has improved working relationship with various partners and government agencies e.g. Water Sector Trust fund (WSTF), WASREB, Lake Victoria South Water Works Development Agency (LVSOWDA) to collectively improve the company's performance.
- (e) Through the above-mentioned partnership, the company is expecting an increase in customer connectivity by, 4500 new connections and thereby increase the company's revenue base by the end of this year.

- (f) Thus, with the improved revenue collection, the company shall prepare a payment plan with creditors, agencies and staff in an effort to reduce blotted trade payable.
- (g) The department of water has supported the company in buying fittings for repair and rehabilitation of lines at a cost of 2.0 million, which shall further improve service delivery and revenue collection.

- (h) The company is in the process of mapping out new customers'/ customer registration and carrying out client identification survey and client satisfactory survey which will further improve service delivery.
- (i) The company has embarked on an aggressive media campaign to inform the public on the ongoing restructuring and reforms by the company

#### Committee Observations

The Committee observed that the company continued to register losses and was operating at a negative working capital of Kshs. 22,900,715 which raised concerns over its ability to meet its obligations as and when they fall due.

#### Committee Recommendations

The committee recommends that—

- i. the Governor of Migori County should take keen interest in the management of Migori Water and Sanitation Company Limited (MIWASCO) in line with Article 179(4) of the Constitution;
- ii. the County Executive Committee Member in charge of water, should take responsibility for monitoring the financial performance of the county corporation in line with section 184 of the Public Finance Management Act Cap. 412A and regularly report to the Governor through the County Executive Committee in line with Article 179 (6) of the Constitution;
- iii. the Accounting Officer should ensure disclosure of material uncertainty in relation to going concern in line with the Public Sector Accounting Standards Board template;
- iv. the Accounting Officer should prepare and submit quarterly reports in regard to the financial and non-financial status of the water company in line with section 166 of the Public Finance Management Act;
- v. the County Treasury undertakes annual reporting on County Corporation including an assessment of the commercial viability of the company in line with the standards set by the Water Services Regulatory Board under section 77(2) of the Water Act;
- vi. the Accounting Officer should undertake detailed analysis of the water company's long outstanding trade receivables and payables to reflect the true and fair financial position of the Company; and
- vii. the Accounting Officer should, within 60 days of the adoption of this report, put in place strategic and innovative measures for recovery and to boost the financial health of the water company for self-sustainability. Additionally, the management reviews and regularizes the company's existing assets and



have updated assets register that reflect the current financial position. Further, management to determine and ascertain their commercial viability as required by the Public Sector Accounting Standards Board (PSASB).

## OTHER MATTERS

### 1. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 78,737,415 and Kshs. 48,758,803 respectively resulting in under-funding of Kshs. 29,978,612 or 38% of the budget. Further, the company incurred expenditure totaling Kshs. 43,280,541 against an approved budget of Kshs. 69,881,860 resulting to an under expenditure of Kshs. 26,601,319 or 38% of the budget. Further, the statement of comparison of budget and actual amounts reflects a total final budget amount of Kshs. 78,737,415 which, however, differs with the recomputed total of Kshs. 77,731,415, resulting in an unexplained variance of Kshs. 1,006,000.

The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the resident of Migori County.

### Management responses

The company underperformed in both revenue and expenditure estimate due to constraints in operating environment as a result of COVID-19 in the year under review. In addition, Presidential edict not to disconnect any customer with arrears or who don't pay for water compounded with inaccessibility of customers' homes due to COVID-19 restrictions on movement greatly affected revenue collection, billing and operations. In addition, the company was deficient in supply of water utility chemicals and non-payment of electricity bills. Further to this, there were old dilapidated pipelines that needed repair and rehabilitation, whereas the company did not have money. The supply of water was affected by the destruction of pipelines by road construction works.

The variance of Kshs. 1,006,000 was a summation error of miscellaneous receipts on the final supplementary budget posted in the financial statement.

### Committee Observations

The Committee observed that there was a 38% underfunding and under expenditure of the budget, which affected the planned activities and may have impacted negatively on service delivery to the residents of Migori County.

### Committee Recommendations



**The Committee recommends that-**

- i. **the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures; and**
- ii. **the Board of Directors should institute proper and realistic budget planning as well as measures to enhance its own generated revenue, such as review of tariffs and connection of more customers and automation to address revenue leakages. The Auditor-General to confirm the effectiveness of the mitigating measures put in place by the water company and report in the subsequent audit cycle.**

## **2. Unresolved Prior Year Matters**

In the report of the previous year, several issues were raised underreport on the financial statements and report on lawfulness and effectiveness in use of public resources. However, review of the progress on follows up of Auditors recommendations indicated that the management had not resolved the issues as at 30 June 2021. Management did not provide explanations why the matters were not resolved

### **Management responses**

The management noted the auditor's observation and committed to resolving all the issues as soon as it received recommendations by the Senate County Public Investments and Special Funds Committees.

### **Committee observations**

The committee observed that there were issues from previous years that had not been addressed, and thus the query remains unresolved.

### **Committee recommendations**

**The Committee recommends that; -**

- i) **the Accounting Officer should resolve any issues resulting from an audit that remains outstanding as required by section 149(2)(l) of the Public Finance Management Act, 2012; and**
- ii) **the Auditor-General should provide a status update on the progress made on the matter in the subsequent audit cycle upon review of the progress report.**

## REPORT ON LAWFULNESS AND EFFECTIVENESS ON THE USE OF PUBLIC RESOURCE

Pursuant to Article 229 (6) of the Constitution, based on the audit procedures performed by the Auditor-General, the following matters formed the basis for conclusion that public resources were not applied lawfully and in ineffective way -

### 1. Trade and Other Payables

The statement of financial position reflects trade and other payables totaling Kshs. 51,494,339 as disclosed in Note 22 to the financial statements. Examination of records on trade and other payables indicated that there were salary arrears totaling Kshs. 14,540,883 as at 30 June 2021. This was contrary to Section 18(2)(c) of the Employment Act 2007 which stipulates that, wages and salaries shall be deemed to be due in the case of an employee in position for a period exceeding one month, at the end of each month or part thereof.

In addition, the balance included of unpaid PAYE Tax of Kshs. 1,862,053, NSSF of Kshs. 1,005,600 and withholding Tax of Kshs. 41,100, all totaling to Kshs. 2,908,753, which had been outstanding for more than twelve months as at 30 June 2021. Failure to remit the deductions infringed on section 19(4) of the Employment Act Cap. 226 which requires statutory deductions to be paid to the relevant authorities in due time.

In the circumstances, management was in breach of the law

### Management responses

The management noted the auditor's observation and stated that the outstanding salary arrears and statutory deductions were necessitated by the company undergoing financial constraints in the period under review due to low billing and revenue collection necessitated by COVID-19 Pandemic and power disconnections. However, the company had made strides in paying arrears and statutory obligations, as demonstrated in the annexed schedules. Moving forward, the company was committed to renegotiate with the statutory and other creditors with a view to settling all the arrears.

### Committee Observations

The Committee observed that the query remains unresolved as—

- i) there were salary arrears totaling Kshs. 14,540,883 as at 30 June 2021;
- ii) management made efforts to settle with NSSF, and the Payment Order indicates a balance of Kshs. 55,200 due on 30 April 2023;

- iii) debt payment instalment agreement executed with KRA on 23 November 2020 with arrears to be completed on 15-10-2022. Latest KRA Tax Invoice not provided; and
- iv) acknowledgement and feedback by NHIF on application for waiver on 18, August 2020 not provided.

#### Committee Recommendations

The Committee recommends that—

- i. the Board of Directors and the Accounting Officer should put in place a payment plan to settle the unpaid salaries of Kshs. 14,540,883 within 60 days from the adoption of this report and provide status update to the Committee;
- ii. the Accounting Officer adheres to regulation 22(2)(a) of the Public Finance Management (County Government) Regulations, 2015, which requires the Accounting Officer of a county government entity to comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided by legislation;
- iii. the Accounting Officer to engage the NSSF, NHIF and KRA with the aim of formulating a payment agreement to settle the outstanding statutory deductions and provide a detailed status report on the same to the Auditor-General for subsequent reporting within 60 days from the adoption of this report;
- iv. the Board of Directors should ensure that the Company adheres to section 19(4) of Employment Act in regard to remittance of employee remuneration deductions in accordance with the time period specified by the relevant bodies;
- v. the County Executive Committee Member in charge of water should continuously monitor the financial performance of the water company in line with section 184 of the Public Finance Management Act and report on the same to the County Executive Committee, making recommendations on how the water company can improve its performance; and
- vi. the Auditor-General should review and provide a status update on the implementation of this recommendation and provide a report on this matter in the subsequent audit cycle.

#### 2. Agency Account

Examination of records on water levels indicated that the company owed the Water Services Regulatory Board (WASREB) Kshs. 3,007,743 and Lake Victoria South Water Service Board (LVSWSB) Kshs. 7,578,433 as at 30 June 2021. Management did



not provide a satisfactory explanation for the failure to pay the levies in due time to avoid interest and penalties for non-compliance.

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

### **Management response**

The management noted the auditor's observation and stated that failure in remitting agency levies was due to the company undergoing financial constraints in the year under review. However, there are efforts to renegotiating a payment plan with LVSWSB and WASREB to come up with an implementable payment plan.

### **Committee observations**

The Committee observed that the query remains unresolved as-

- i. the company owed WASREB Kshs. 3,007,743 and LVSWSB Kshs. 7,578,433 as at 30 June 2021 and had not provided the current status of settling the amounts; and
- ii. No evidence was submitted to demonstrate that efforts to negotiate a payment plan are underway.

### **Committee Recommendations**

The Committee recommends that—

- i. the Governor should engage LVSWSB and WASREB and agree on a repayment plan with the view of resolving this matter within 60 days from the adoption of this report;
- ii. the County Executive Committee Member in charge of water should continuously monitor the financial performance of the water company in line with section 184 of the Public Finance Management Act and report on the same to the County Executive Committee, making recommendations on how the water company can improve its performance; and
- iii. the Auditor-General should provide a status update on the matter in the subsequent audit cycle.

### **3. Payment of Salaries Below the Minimum Wage**

Review of the company's payroll for the month of June 2021 revealed that forty-two (42) out of the total fifty-nine (59) employees were earning monthly wages totaling Kshs. 10,000 contrary to the Regulations of Wages General Amendment Order of 2018

The management noted the auditor's observation and stated that Migori County is a cosmopolitan County and all communities are always encouraged to apply for the advertised vacancies in line with National Cohesion and Integration Act. However, the

#### **Management Response**

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

community

establishment from having more than one third of its staff drawn from the same ethnic Kenya in the employment of staff. Section 7(2) of the Act further prohibits any public requires all public establishments to seek to represent the diversity of the people of was contrary to section 7(1) of the National Cohesion and Integration Act, which whom 37 or 64% were members of the dormant ethnic community in the County. This Review of personnel records indicated that the Company had 58 employees, out of

#### **4. Staff Ethnic Composition**

in the subsequent audit cycle.

ii) the Auditor-General to monitor the matter and provide a status update

Regulations of Wages General Amendment Order of 2018; and

i) the Accounting Officer should ensure strict compliance with the

The committee recommended that; -

#### **Committee Recommendations**

for employees.

Company adopted a new scheme of service that aimed at addressing the minimum wage 12,523 contrary to the Regulations of Wages General Amendment Order of 2018. The The committee observed that 42 out of the 59 employees were earning less than Kshs.

#### **Committee Observations**

The management noted the auditor's observation and stated that the current restructuring of MIWASCO leadership whereby former Managing Director, Head of Finance Management Services and Technical Manager were terminated. Further the company was undergoing restructuring also as of 1st January 2022, the company adopted new scheme of service which had addressed the staff salary minimum wage.

#### **Management Response**

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

Kshs. 12,523

which sets the minimum monthly wage for employees working in Migori County at

management said that it will strive to progressively achieve ethnic diversity threshold set by law.

#### **Committee Observations**

The Committee observed that 64% of the Company employees were members of the dominant ethnic community in the County.

#### **Committee Recommendations**

The committee recommends that; -

- i) the Board and the accounting officer to make deliberate efforts progressively in the endeavour to comply with section 7(1) and (2) of the National Cohesion and Integrity Act which requires that public establishments shall seek to represent the diversity of the people of Kenya in employment of staff; and
- ii) the County Executive should work progressively towards attaining the requirement of the provisions of section 65(1)(e) of the County Government Act on ethnic inclusivity.

#### **5. Irregular Payment of Directors Emoluments**

Records on director's emolument indicated payments totaling Kshs.. 1,338,478 in the year under review. However, the following unsatisfactory matters were noted in relation to the payments:

- i. the balance included board allowance- Kshs. 145,000, board committee allowance- Kshs. 327,798 and board meal allowance- Kshs. 227,360 paid in respect of ten board meetings held in the year under review. The number of meetings exceeded the limit of six prescribed in the Office of the President Circular No. OP/CAB.9/1 on management of State Corporations, dated 1<sup>st</sup> March 2020;
- ii. board meeting notices and records of minutes of the meetings held were not provided for audit review and as a result the occurrence and purposes for the meeting could not be confirmed; and
- iii. in the circumstances, the regularity of the board emoluments totaling Kshs. 1,338,478 could not be confirmed.

#### **Management Response**

The management noted the auditor's observation and stated that the board had extra special full board meetings to pass the Business Continuity Plan (BCP) and Quick Start Quick Finish Grant (CLSG) resolutions as demanded by **Water Services Trust Fund**



**Management Response**  
The management noted the auditor's observation and stated that the company experienced a lot of water loss through destruction of main lines due to ongoing road construction works and busts in the distribution lines, faulty and non-functioning customer meters, estimate production due to faulty master meters at treatment plant.

The NRV resulted in revenue loss totaling Kshs. 13,894,703 at the average sales rate of Kshs. 59.86 per cubic meter of water billed by the company in the year under review. The large ratio of NRV further implied that the Company's water distribution system was inefficient and may, to a significant extent, explain the recurring annual operating losses reported by the Company over the years.

**6. Non-Revenue Water**  
During the year under review, the Company produced 481,921 cubic meters (m<sup>3</sup>) of water but only 249,801 m<sup>3</sup> were billed to customers. The balance totaling 232,120 m<sup>3</sup> or 48% of the total volume denoted non-revenue water (NRW) which has twenty-three percentage points above the allowable loss of 25% prescribed in Schedule E of the Water Services Regulatory Board guidelines.

The committee recommends that—  
(i) the Accounting Officer of the Company should recover the Kshs. 1,338,478 paid to directors as emoluments within sixty(60) days of the adoption of this report; and  
(ii) the Auditor General should provide a status update in subsequent audit cycle.

#### Committee Recommendations

**Committee Observations**  
The committee observed that the board of directors held ten meetings in the year under review which exceeded the prescribed number of 6 and had not provided Board meeting notices and records of meetings and received irregular payments totaling to Kshs. 1,338,478.

towards mitigating COVID-19 pandemic in the year under review thereby in excess payment of allowances above the ceiling requirement by law. The managing director has written a letter to the former company secretary to hand over the documents to the company.

However, current administration had taken initiative of buying pipes and fittings for quick repairs of busts/leakages for the company. In addition, a technical staff from the department of water had been seconded to the company to assist the technical department in line patrol and spearhead technical office and enforcing the Migori County Water Act 2021 that enforces order on road work constructors to repair the damaged water structures during construction works. The company was carrying out customer identification survey to weed out illegal connections. There was also an increase in budget allocation for pipeline and related infrastructure.

## Committee Observations

The committee observed that-

- i. the Non-Revenue Water of the company during the financial year 2020/2021 stood at 48% against the allowable loss of 25% as prescribed by Water Services Regulatory Board (WASREB) Guidelines. This has been attributed to by physical losses such as leakages, bursts, and overflows through the existing old and dilapidated water supply network, and commercial losses due to metering anomalies and illegal connections;
- ii. The management of the water company listed measures to address the Non-Revenue Water losses. These measures include, the establishment of an NRW Team which is tasked with the implementation and monitoring of NRW Reduction Strategy which includes active leak detection, and repair, and termination of cut-off accounts from the mains to curb illegal reconnections among others; and
- iii. This high level of Non-Revenue Water has largely contributed to the Company's revenue shortfall, as well as the material uncertainty relating to a going concern.

## Committee Recommendations

The committee recommends that-

- i. the company should put into place comprehensive measures to mitigate the Non-Revenue Water. These measures include the installation of smart meters to ensure accurate billing, the replacement of the old water supply network as well as the introduction of a Geographic Information System (GIS) which will help the company receive real-time data on leaks in pipes and monitor maintenance;
- ii. the Governor of Migori County should collaborate with EACC to ensure that pre-emptive measures are put into place to reduce the cases of theft and illegal connections; and

- iii. the Auditor General should review the implementation of the measures put in place by the management to mitigate the matter and provide a report on this matter in the subsequent audit cycle.

## **REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE**

Pursuant to section 7(1) of the Public Audit Act, based on procedures performed by the Auditor General, the following matter formed the basis for conclusion that internal controls, risk management and overall governance were not effective –

### **1. Lack of Risk Management Policy and Strategy**

Review of internal control and risk management indicated that the Company did not have a documented risk management policy and procedures for identifying and mitigating operational and other common risks. It was, therefore, not clear how of the Public Finance Management (County Governments) Regulations, 2015 which requires the Accounting Officer to develop risk management strategies that support robust business operations.

Management had therefore acted contrary to the law.

### **Management Responses**

The management noted the auditor's observation and provided a draft Policy document for reference, however the approval of the policy would be effected once the new board is in place in the month of May 2023.

### **Committee Observations**

The committee observed that while the management provided the Risk Management Policy framework, they did not attach the Board approval minutes.

### **Committee Recommendations**

The committee recommends that the Board of Directors ensures that the water company puts in place all internal control systems such as the Internal Audit Committee as provided under section 155(5) of the Public Finance Management Act, 2012, and a Risk Management Policy as provided under section 158(1) of Public Finance Management (County Governments) Regulations, 2015 among others to guide the internal operations of the water company and submit evidence



of the same to the Auditor-General for verification within 60 days from the adoption of this report.

## **2. Unfettered Access to The Billing System by Vendor**

Assessment of the billing system revealed the following anomalies:-

- i. the Company did not have full control of the billing system, as some functions were managed by the system's vendor;
- ii. the vendor was authorized to execute any role in the system, including administrator, normally reserved for departmental users. This was despite the vendor not being an employee of the Company and not having been assigned any responsibility in the operations of the company;
- iii. access to the organization's database was reserved to the vendor only and not to staff of the Company; and
- iv. the system administrator, who was an employee of the Company, could not change the password for the users of the billing system including his own account and was therefore dependent on the system vendor.

In the circumstances, the system's security controls were weak and as a result, management could not guarantee the security and integrity of the data in the database of the billing system

## **Management Response**

The management stated that the system vendor surrendered the admin rights of the billing system to the Managing Director-MIWASCO and also created access rights in the system to ensure checks and balances when operating the system. This was a temporary measure since the company had a new ICT officer in place. The rights would later be transferred to the ICT officer once he had undergone training. Further in Liaison with the vendor, they did a system clean up removing all dormant and past operators in the system and relocated the system server from revenue office to an isolated room in ensuring its security. Under the ongoing reforms, the company has put in place measures to procure a new Enterprise resource planner (ERP).

## **Committee Observations**

The committee observed that the company provided an updated system hand over agreement stating that they now had access control.

## **Committee Recommendations**

The Committee recommends that the Auditor General should ascertain whether the water company had access control of the billing system and report in the next audit cycle.

## CHAPTER SEVEN

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR MOMBASA WATER SUPPLY AND SANITATION COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor of Mombasa County, Hon. Abdullswamad Sherrif Nassir, appeared before the Committee on Thursday 22<sup>nd</sup> June, 2023 to respond (under oath) to audit queries raised in the Report of the Auditor-General on Financial Statement for Mombasa Water Supply and Sanitation Company Limited (MOWASSCO) for the Financial Year 2020/2021. He was accompanied by-

- |      |                   |   |              |
|------|-------------------|---|--------------|
| i.   | Mr. Evans Oanda   | - | CECM Finance |
| ii.  | Mrs. Emily Acheng | - | CECM Water   |
| iii. | Mr. Abraham Farah | - | MD MOWASSCO  |
| iv.  | Mr. Kinyai Laban  | - | GM MOWASSCO  |

The Mombasa Water Supply and Sanitation Company Limited is wholly owned by the County Government of Mombasa.

### REPORT ON FINANCIAL STATEMENTS

The Auditor-General rendered a **qualified opinion** on the financial statements of Mombasa Water Supply and Sanitation Company Limited for the financial year 2020/2021 on the following basis-

#### 1) Failure to Disclose Material Uncertainty Related to Going Concern

The statement of profit or loss and other comprehensive income reflects a loss before tax of Kshs. 78,891,997 (2020 - a loss of Kshs. 120,548,405) which brought the Company's accumulated loss to Kshs. 2,077,362,476 as at 30 June, 2021 (2020 - Kshs. 2,062,438,655). Further, the current liabilities of Kshs. 1,819,429,214 exceeded the current assets of Kshs. 354,831,536 resulting into a negative working capital of Kshs. 1,464,597,678 as at 30 June, 2021. The negative liquidity position is an indication of the existence of a material uncertainty on the Company's ability to continue as a going concern.

The financial statements have been prepared on a going concern basis on the assumption that the Company will continue to receive financial support from the County Government of Mombasa and its creditors. However, this material uncertainty in relation to going concern and any mitigating measures put in place by the Company's directors and management to reverse the undesirable precarious financial position have not been disclosed in the to the financial statements.



In the circumstances, the company is technically insolvent and may not be able to meet its current obligations as and when they fall due and it may continue to depend on support from the County Government.

## Management Response

In order to address the problem of going concern, the company has to increase water sales and also reduce NRW. The management has therefore embarked on the following;

- i) Partnering with Development partners for infrastructure development and capacity building to improve efficiency and increase water supply- the company is currently being funded by the world bank to rehabilitate and expand water pipelines which is expected to be complete by December 2023. After rehabilitation we are expecting to reduce NRW through water loss from 50% to 39%. This will consequently increase our revenue by approximately ksh 64,000,000 Further through funding from the development partners, Mombasa will drastically improve in more than three folds after the completion of Mwache Dam and Mwache Water Treatment Plant by December 2026. The designed volume to Mombasa is 180,000m<sup>3</sup> per day. This volume translates to 64,800,000m<sup>3</sup> of water annually which translates to 3,272,400,000 increase in revenue.
- ii) Formation of a NRW unit

A fully and operational unit have been formed and in the new developed organizational structure. The unit have identified the equipment and good required and procurement process initiated and contract signed awaiting delivery.

iii) Procurement of Bulk meters and Consumer meters

For the last three years the company have procured and installed 3,000 consumer meters mainly replacement of non-working meters and installed 1500 new connection through various projects.

iv) Bulk meters were installed at Boundary of the County to accurately measure the bulk supply from the sources.

Customer Identification Survey (CIS)

v) The company is undertaking Customer Identification Survey (CIS) to identify customers with illegalities and also clean up the customer database.

Implementation of ERP

The company have implemented ERP, this will improve the process of the company and mainly on Meter management and reduce the commercial NRW.



- i. the Governor of Mombasa County should take keen interest in the management and operations of the water company in line with Article 179 (4) of the Constitution;
- ii. the Accounting Officer should ensure disclosure of material uncertainty in relation to going concern in line with the Public Sector Accounting Standards Board template;
- iii. The Accounting Officer should prepare and submit quarterly reports in regard to the financial and non-financial status of the water company in line with section 166 of the Public Finance Management Act, 2012;
- iv. the County Executive Member in charge of water should take full responsibility for monitoring the financial performance of the county corporation in line with section 184 of the Public Finance Management Act,

The Committee recommends that-

#### Committee Recommendations

- i. the financial statements of the water company were prepared on a going concern basis despite the company incurring a loss of Kshs. 78,891,997 (accumulated loss of Kshs. 2,077,362,476 as at 30 June, 2021) and operating with a negative working capital of Kshs. 1,464,597,678 in the financial year under review.
  - ii. The figures above were an indication that the company was technically insolvent, meaning that its survival was dependent on continued support from the Mombasa County Government.
- The Committee observed that query remains unresolved from financial year 2019/2020-

#### Committee Observations

| Years  | 2018/2019  | 2019/2020   | 2020/2021  | 2021/2022  |
|--------|------------|-------------|------------|------------|
| Losses | 78,986,653 | 120,548,405 | 78,891,997 | 20,165,380 |

- vi) Currently the company has over 50% faulty meters while contributes to NRW, we are however expecting 10,000 meters from development partners which when installed will greatly reduce water loss.
  - vii) Purchase of Smart Meters  
The company in partnership with the County Government of Mombasa has initiated the process of asset financing from National Bank towards the purchase of 10,000 smart meters that will go along to reducing NRW as the company will be reading water bills on actuals
- From the strategies put in place the company losses has been reducing as seen from the table below;

**Management Response**

i) Out of the Kshs. 4,142,000, a voucher is attached of Kshs. 2,348,000 together with supporting documents including work done for the balance of Kshs 1,794,000, the fee note is attached and a letter giving instructions to the advocate to transfer shares.

ii) The shares have been transferred from the Municipality Council Mombasa to the County Government of Mombasa attached is the C12 to show the current shareholding of the company. Furthermore, the management has initiated the process of recovering the Kshs 1,794,000 paid to the advocate for work not done.

2) **Unsupported legal fees**

The statement of profit or loss and other comprehensive income reflects legal and professional expenses totaling Kshs. 15,021,530 as disclosed in note 18 to the financial statements which includes legal expenses of Kshs 7,612,300. The amount further includes an amount of Kshs. 4,142,000 relating to a payment made to a legal firm for registering the transfer of shares from Municipality Council Mombasa to the County Government of Mombasa, registering the appointment of the chairman and members of the board and finalizing the formal agreement of transfers of asset, liabilities and obligations. However, there was no evidence supporting the payment that was made for the work done by the legal firm.

In the circumstances, the propriety and validity of the legal expenses Kshs. 4,142,000 could not be confirmed.

v. the County Treasury should undertake annual reporting on County Corporation including an assessment of the commercial viability of the company in line with the standards set by the Water Services Regulatory Board under section 77(2) of the Water Act, 2016;

vi. the Accounting Officer should, within 60 days of the adoption of this report, put in place strategic and innovative measures for recovery and to boost the financial health of the water company for self-sustainability. Additionally, the management reviews and regularizes the company's existing assets and have updated assets register that reflect the current financial position. Further, management to determine and ascertain their commercial viability as required by the Public Sector Accounting Standards Board (PSASB).

2012 and regularly report to the Governor through the County Executive Committee in line with Article 179 (6) of the Constitution;



### **Committee Observations**

The Committee observed that the management submitted the vouchers to support a payment of Kshs. 4,142,000 made to a legal firm for registering the transfer of shares from Municipality Council Mombasa to the County Government of Mombasa to the Auditor-General for verification thus the matter was resolved. However, the Committee noted that the management did not submit the documents during audit.

### **Committee Recommendations**

The Committee recommends that-

- i. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.
- ii. Noting the mitigation measures taken by the water company, the Committee recommends that matter be marked as resolved.

### **3) Unbudgeted company secretary services**

The statement of profit and loss and other comprehensive income reflects director's expenses of Kshs 5,051,400 as disclosed in Note 20 to the financial statements, out of which Kshs. 2,348,000 relates to expenditure on Company Secretary Services. However, the expenditure was not included in the annual budget for the financial year under review. Further, the supporting Payment Vouchers were not reviewed and authorized by an appropriate senior officer before payment.

In the circumstances, the propriety of the expenditure on company secretary services of Kshs. 2,348,000 could not be ascertained.

### **Management Response**

The company did not budget for company secretary services for the year 2018/2019 therefore the it was expensed in the director's expenses vote line but currently we have currently budgeted for company secretary services.

### **Committee Observations**

The Committee observed that the water company incurred an expenditure of Kshs. 2,348,000 in relation to Company Secretary Services which was not included in the annual budget for the financial year under review.

### **Committee Recommendations**



**The Committee recommends that-**

- i. **the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures; and**
- ii. **the Board of Directors should institute proper and realistic budget planning as well as measures to enhance its own generated revenue, such as review of tariffs and connection of more customers and automation to address revenue leakages. The Auditor-General to confirm the effectiveness of the mitigating measures put in place by the water company and report in the subsequent audit cycle.**

**4) Unsupported cash and cash equivalents**

The statement of financial position as at 30 June, 2021 reflects cash and cash equivalents balance of Kshs. 184,078,579 as disclosed in Note 7 to the financial statements. Included in the balance is an amount Kshs. 4,493,344 held in an Account which was not supported by a certificate of bank balance, bank statements and cash book. Further, included in the balance is an amount of Kshs 563,391 held in a mobile money account which was not supported by a confirmation certificate.

In the circumstances, the completeness and accuracy of the cash and cash equivalents balance of Kshs. 184,078,579 could not be confirmed.

**Management Response**

The bank reconciliation and the bank statements for Posta Pay are hereby attached. We are following up with the bank to get the bank certificate.

**Committee Observations**

The Committee observed that the query remains unresolved in the previous financial year management submitted all required to support a balance of Kshs. 563,391 that was held in a mobile money account and a balance of Kshs. 4,493,344 in respect to Posta Pay Account to the Auditor-General for verification except the certificate of bank balance, which the company is yet to receive from the bank.

**Committee Recommendations**

**The Committee recommends that-**

- i. **the Board of Directors to take administrative action against the Managing Director of the water company for failing to provide the certificate of bank**

balance and ensure the same is submitted to the Auditor-General for verification with 60 days from the adoption of this report; and

ii. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.

#### 5) Unconfirmed share capital

As previously reported, the Company Limited was incorporated on 18 March 2011 to take over services of the defunct Mombasa Water and Sewerage Company limited which had an authorized share capital of Kshs.5,000,000. However, the old Company was not liquidated and no shares had been transferred to the new Company as at 30 June 2021. Further, out of the new Company's authorized share capital of 5000 ordinary shares of Kshs.1000 each, only twelve (12) shares valued at Kshs.12,000 were allotted but not paid for, leaving a balance of Kshs.4,988 shares un-allotted.

Further, note 2 to the financial statements reflect issued but not paid 5,012 ordinary shares of par value of Kshs.1000 each and twelve (12) ordinary shares of par value of Kshs.20 each, which is more than the authorized ordinary shares of 5000. In addition, the issued but not paid share capital of Kshs.5,000,240 is also reflected in the statement of financial position under assets as amount due/receivables from shareholders capital, resulting in a non-existent asset.

In the circumstances, the accuracy and completeness of the share capital balance of Kshs.5,000,240 could not be confirmed.

#### Management Response

- i) The shares have been transferred from the Municipality Council Mombasa to the County Government of Mombasa attached is the C12 to show the current shareholding of the company.
- ii) This is a presentation error on the financial statements which will be corrected in the next financial year.

#### Committee Observations

The Committee observed that-

- i. The management submitted the Company's CR12 to the Committee and the Auditor-General for verification. The document confirmed that the all shares had been transferred from the Municipality Council Mombasa to the County Government of Mombasa.



- ii. There were errors in the presentation of the financial statements in the financial year under review.

#### **Committee Recommendations**

**The Committee recommends that-**

- i. the Accounting Officer adheres to section 149(2)(b) of the Public Finance Management Act and section 47(2) of the Public Audit Act in the preparation and management of financial and accounting records;

- ii. the Accounting Officer should strengthen internal audit controls and ensure proper record keeping;

- iii. the Accounting Officer to take appropriate administrative action on the officers within the Accounts and Finance department who failed to keep complete financial records in accordance with their terms and conditions of appointment or employment and as required by the Accountants Act, Cap. 531; and

- iv. the Accounting Officer should enhance the capacity of officers preparing financial statements to comply with the accounting standards and should further invest in technology and processes that reduce inaccuracies in the preparation of financial statements.

#### **(6) Long Outstanding Debts**

The statement of financial position reflects trade and other payables balance of Kshs. 1,819,429,214 and as disclosed in Note 11 to the financial statements. Included in the balance is an amount of Kshs. 1,357,109,880 relating to trade payables, out of which Kshs. 1,317,074,279 or 97% has been outstanding for more than ninety (90) days as at 30 June 2021.

The trade payables include an amount of Kshs. 1,153,469,128 related to debts owed to Coast Water Works Development Agency. Although supporting invoices for the balance were provided for audit review, the Agency's records indicated an outstanding debt of Kshs. Ksh.1,571,123,390 and thus, resulting in a variance of Kshs. 417,654,262 which has not been explained or reconciled

Further Note 11 to the financial statements reflects a nil balance for water service trust fund grant whereas the supporting schedule provided for audit review indicated an amount of Kshs. 1,416,603. This anomaly could not be explained.

In the circumstances the accuracy and completeness of the trade and other payables balance of Kshs. 1,819,429,214 could not be confirmed.

#### **Management Response**



## Key Audit Matters

- i. the Governor of Mombasa County engages the Coast Water Works Development Agency and other relevant creditors to agree on a repayment plan for the trade and other payables balance of Kshs. 1,317,074,279 and file a report on the same with the Auditor-General for verification within 60 days from the adoption of this report. The Auditor-General to provide a status update on the matter in the subsequent audit cycle;
- ii. the Accounting Officer undertakes the necessary monthly reconciliations as required by section 90 (1) of the Public Finance Management (County Governments) Regulations, 2015 and submits evidence of the same to the Auditor-General for verification. The Auditor-General to provide a status update of the same in the subsequent audit cycle.

## The Committee recommends that-

### Committee Recommendations

- i. The amount recorded in the company's financial statement in regards to trade payables of Kshs. 1,153,469,128 owed to Coast Water Works Development Agency differed from the records of the Agency that indicated an outstanding debt of Kshs. Ksh.1,571,123,390 leading to a variance of Kshs. 417,654,262. This variance was not reconciled or explained.
- ii. The water company had a trade and other payables balance of kshs. 1,317,074,279 (97% of total payables) which had been outstanding for more than 90 days.

The Committee observed that the issue is recurring from the previous year-

### Committee Observations

- i) The company has faced cash flow challenges on high cost of operations and a lower water tariff that is below full cost recovery resulting in monthly cash deficit which was made worse by the Covid-19 Pandemic. This has largely explained its inability to meet its obligations as and when due. However, we received a Conditional Liquidity Support Grant (CLSG) from World bank through Water Sector Trust Fund (WSTF) of Kshs 71,437,328 which we used to offset part of the CWDA debt.
- ii) The company is in the process of reconciling the variance see attached reconciliation done.
- iii) The correct balance for water service trust fund is 0 as shown in the bank statement, balance confirmation certificate and bank reconciliation attached.

**Other Matter**  
**1) Failure to present the other information accompanying financial statements**

The other information accompanying the financial statements of the year under review did not contain the chairman's statement, corporate governance statement, management discussions and analysis, environment and sustainability reporting and corporate social responsibility statements. In the circumstances, the financial statements do not comply fully with the financial reporting guidelines and template issued by the public accounting standards board.

**Management Response**

This has now been complied with in 2021/2022 financial statements.

**Committee Observations**

The Committee observed that-

- i. The other information accompanying relevant statements and sustainability reporting were omitted contrary to the financial reporting guidelines issued by the Public Sector Accounting Standards Board (PSASB).
- ii. The management corrected the omission in the subsequent year's (2021/22) report thus the matter was resolved.

**Committee Recommendations**

The Committee recommends that;

- i. the Accounting Officer to take appropriate administrative action on the officers within the Accounts and Finance department who failed to keep complete financial records in accordance with their terms and conditions of appointment or employment and as required by the Accountants Act, Cap. 531;
- ii. the Accounting Officer adheres to section 149(2)(b) of the Public Finance Management Act and section 47(2) of the Public Audit Act in the preparation and management of financial and accounting records;
- iii. the Accounting Officer should enhance the capacity of officers preparing financial statements to comply with the accounting standards and should prioritize investments in technology and processes aimed at minimizing inaccuracies during preparation of financial statements;
- iv. the Accounting Officer should strengthen internal audit controls and ensure proper record keeping;
- v. noting the mitigation measures taken by the management, the Committee recommends that the matter be marked as resolved.



## 2) Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 2,302,255,054 and Kshs 1,254,780,290 respectively resulting to a shortfall in revenue of Kshs 1,047,474,764 or 46% of the budget. Similarly, the company spent 929,760,387 against an approved budget of Kshs. 2,302,255,054, resulting to an under expenditure of Kshs 1,372,494,667 or 60% of the budget.

### Management Response

i) The world witnessed unprecedented Covid 19 Pandemic break out throughout the financial year 2020/2021 and during the period, general hygiene and water in particular was singled out as the strongest weapon of curbing further spread of the virus hence the President of the republic of Kenya directed an uninterrupted provision of water to Wanchi with no disconnection over unpaid bills by water companies. The company therefore implemented the president directive and also setting out public water points and filling them with water at its own cost hence this as a result led to under collection of revenue.

ii) Major customers for the company are mainly hotels and during covid most of the hotels in Mombasa were closed there leading to reduction in bills consequently reducing the revenue.

iii) The shortfall in revenue was as a result of budgeting Kshs 210,900,000 for WSTF CLSG and we ended up receiving Kshs 71,894,175 a variance of Kshs 139,005,825. Also we budget Kshs 1,239,847,205 for WSDP and ended up receiving Kshs 475,806,074 a variance of Kshs 764,041,131.

### Committee Observations

The Committee observed that query remains unresolved from 2019/2020-

- i. The company had a revenue shortfall of Kshs. 1,047,474,764 (46% of the budget).
- ii. The company failed to absorb Kshs. 1,372,494,667 or 60% of its budget.

### Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should comply with regulation 42(1)(b) of the Public Finance Management (County Government) Regulations, 2015 on exerting budgetary control measures; and



- ii. the Board of Directors should institute proper and realistic budget planning as well as measures to enhance its own generated revenue, such as review of tariffs and connection of more customers and automation to address revenue leakages. The Auditor-General to confirm the effectiveness of the mitigating measures put in place by the water company and report in the subsequent audit cycle.
- 3) Unresolved prior audit matters
 

In the audit report of previous years, a number of issues were raised under the report on financial statements. However, management has not resolved the issues nor disclosed all the prior year audit matters as provided by the public sector accounting standards board templates.

**Management Response**

The management has noted and we shall comply going forward.

**Committee Observations**

The Committee observed that the management of the water company did not take action in resolving the queries raised in the report of the Auditor-General for the financial year 2018/2019.

**Committee Recommendations**

The Committee recommends that the Accounting Officer should resolve any issues resulting from an audit that remains outstanding as required by section 149(2)(i) of the Public Finance Management Act, 2012 and the Auditor-General provides a status update on the progress made on the matter in the subsequent audit cycle upon review of the progress report.

**REPORT OF LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

Pursuant to article 229(6) of the Constitution, based on the audit procedures performed by the Auditor-General, the following matters formed basis of conclusion that public resources were not applied lawfully and in an effective way-

  - 1) Poor Sewerage and sanitation services to Mombasa Residents.

Review of the company records and an audit inspection carried out in January, 2022 revealed weaknesses in the management of sewerage and sanitation services within Mombasa city as detailed below:

- i) The Company transports wastes from customers who are not connected to Mombasa water sewer networks using exhausters. However, the company does not have a license from National Environment Management Authority to carry out the service.
  - ii) Raw sewer wastes in Mombasa island and west main land is emptied into the ocean due to lack of sewer treatment plants.
  - iii) The sewer treatment plants at Kizingo and Kipevu have not been operating for the last 20 years and 7 years respectively. Progress report
  - iv) In addition, 9 sewer networks collapsed (five in Old town, two in Mambwe and two in West mainland) while all the eight pump stations (four in west mainland and four in island) are also not working.
  - v) Further, the untreated waste poses health hazards to the residents of Mombasa city.
- This is contrary to regulations 10 and 11 of the environmental management and coordination (waste water) regulations, 2006 which requires an operator to have a license for the transportation of waste and to operate a waste disposal site or plant among others.

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

### Management Response

- i) The company could not get the NEMA license due the condition of the waste water treatment plant but we have now embarked on the rehabilitation of the plants and the pumping station.
- ii) Raw wastewater is being released into the ocean because the treatment plants are not operational. However, through the WSDP programme the following projects are ongoing to rectify this:
  1. KE-MOWASCO-16771-CW-RFB Rehabilitation of the Kipevu wastewater treatment plant and pumping stations. The project is at 35% progress with a completion date of 1<sup>st</sup> November 2024. The project is to rehabilitate the treatment plant and West Mainland pump stations.
  2. KE-MOWASCO-113723-CW-RFB Rehabilitation and Extension of Sewer Networks in West mainland and Island. The project is at 10.5% progress with the completion date of 14<sup>th</sup> July 2024. This project entails replacing old sewer sections, rehabilitation of manholes, replacement of manhole covers and desludging of manholes.
  3. KE-MOWASCO-16772-CW-RFB/LOT 1 Improvement of storm water outlets and combined sewer overflows in Mombasa Island. This entails improvement of storm

water outlets to cater for illegal connections of sewage to storm water drains and also improvement of the pump stations within the island.

#### **Committee Observations**

The Committee observed that-

- i. The water company transported waste using exhausters despite not having a license from National Environment Management Authority (NEMA) to carry out the service contrary to regulations 10 and 11 of the Environmental Management and Coordination (Waste Water) Regulations, 2006
- ii. Various of the company's sewer networks and pump stations have collapsed or are not working.
- iii. The water company emptied raw sewer waste into the ocean due to lack of sewer treatment plants.
- iv. The water company has embarked on various projects to rehabilitate the waste water treatment plants, pumping stations, and sewer networks.

#### **Committee Recommendations**

The Committee recommends that; -

- i. the Auditor-General reviews the mitigation measures undertaken by the water company to rehabilitate the waste water treatment plants, pumping stations, and sewer networks and provide a status report on the same to the Committee; and
- ii. NEMA to submit a status report within sixty(60) days of the adoption of this report on the matter and the effectiveness of the measures taken by the County Government in adhering to NEMA guidelines on waste management.

#### **2) Irregular award of contract**

In the year under review, the company awarded a contract for motor vehicle insurance to a local motor insurance company. Review of the insurance contract number MWSS/WSDP/089/2020-2021 which was entered into with the service provider on 20<sup>th</sup> May 2021 revealed that the notification of tender award was issued on 13<sup>th</sup> May 2021 which less than the stipulated fourteen days' window period before signing the contract. Further the procurement approval was signed by a person other than the accounting officer but no authorizing letter delegating such responsibility was provided for audit verification.

This is contrary to Section 135 (3) of the Public Procurement and Asset Disposal Act, 2015 states that 'a written contract shall be entered into within the period specified in



In the year under review, the company processed the procurement of goods and services manually and outside the approved procurement systems contrary to the regulation 49(2) of Public Procurement and Assets Disposal Regulations 2020 which states that the conduct of e-procurement procedures for the supply of goods, works and services shall be carried out by a procuring entity using an e-procurement system which is integrated to state portal”

### 3) Processing of Procurement of Goods and Services outside the e-procurement system

Nothing that the water company took the measures to curb the spread of COVID-19, the Committee recommends that the matter be marked as resolved. Further, the Accounting Officer ensures that the water company strictly adheres to Section 135(3) of the Public Procurement and Asset Disposal Act, with regards to timelines for tender awards.

#### Committee Recommendations

- i. the water company awarded a contract for motor vehicle insurance to a local insurance company that deals with motor vehicles before the 14-day window period after notification of tender had elapsed, contrary to Section 135(3) of the Public Procurement and Asset Disposal Act, 2015.
- ii. The management noted that the action was as a result of measures taken to curb the spread of COVID-19.

The Committee observed that-

#### Committee Observations

- i) The Water Bowers and Vacuum Exhausters plays a great role in facilitating consistent water supply and sanitation services especially to informal settlements and in turn curbing against the spread of Covid 19. Prolonging the time to get the vehicles on the road was at the expense of saving human lives thus the Accounting Officer invoked section 69(3) of the PPADA 2015 to approve the procurement relating to an urgent need. This was in adherence to the directive issued by the Ministry of Water to provide water in strategic locations and points to enable effective handwashing and adequate provision to all the residents, hospitals, health centers and dispensaries.
- ii) The contract was duly signed as per attached

#### Management Response

In the circumstances, management was in breach of the law

the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period.

In the circumstances, management was in breach of law.

#### **Management Response**

The company has now acquired ERP system which is integrated to PPIP (Public Procurement Information Portal).

#### **Committee Observations**

The Committee observed that the water company processed the procurement of goods and services manually and outside the approved procurement systems contrary to the regulation 49(2) of Public Procurement and Assets Disposal Regulations 2020. The water company has since acquired an ERP system to support e-procurement, thus the matter was resolved.

#### **Committee Recommendations**

Noting the mitigation measures taken by the management on acquiring an ERP system to support e-procurement, the Committee recommends that the matter be marked as resolved.

#### **4) Irregular expenditure on Repairs and Maintenance of Motor vehicles**

The statement of profit or loss and other comprehensive income reflects transport and travelling amount of Kshs 31,035,839 as disclosed in note 19 to the statement of financial statements. The transport and travelling amount includes an expenditure for repairs and maintenance of motor vehicles of Kshs. 13,773,574.00, however, the repairs were not supported with pre and post inspection reports from the department of public works.

Further, the Company procured a 1-year framework contract for repair and maintenance of motor vehicle services using request for Quotation and not open tender contrary to Public Procurement Asset Disposal Regulations, 2020 which states that, a procuring entity may enter into a framework agreement through open tender using an invitation to tender which shall specify —(a) that the procuring entity intends to establish a framework agreement; (b) the number of suppliers or contractors which shall not be less than seven alternative vendors; (c) the duration of the framework agreement which shall not exceed three years; (d) the evaluation criteria; (e) an estimate of the total volume or scope of work or quantity of purchases expected to be made for the duration of the framework agreement, as appropriate; and (f) any other information as may be deemed relevant.

In addition, there was only 1 repair and maintenance service provider, contrary to framework contract requirement.



In the circumstance, management was in breach of the regulations.

### Management Response

- i) The company has engaged ministry of public works to do pre and post repair works on the vehicles.
- ii) This was not a framework contract, the company procured a 1-year contract for repair and maintenance of motor vehicle services using request for quotation. Currently we have a 1-year contract for repair and maintenance of motor vehicle services procured through open tender.

### Committee Observations

The Committee observed that the management submitted documents to support the expenditure of Kshs. 13,773,574 for repairs and maintenance of motor vehicles and the same was verified by the Auditor-General.

### Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.
- ii. Noting the mitigation measures taken by the company, the Committee recommends that the matter be marked as resolved.

### 5) Irregular expenditure on Fuel and Oils

The statement of profit and loss and other comprehensive income reflects transport and travelling amount of Kshs 31,026,839 as disclosed in note 19 to the financial statements. The transport and travelling amount includes an expenditure on fuel and oils of kshs 12,621,606. Audit review of the expenditure revealed the following anomalies:

- i. Circular No OP/CAB.9/108A dated 30<sup>th</sup> April, 2015 for supply of fuel and oil to government by National Oil Corporation of Kenya (National Oil) states that in order to realize the benefits, all ministries and Government agencies are therefore, requested to liaise and negotiate with the corporation for supply of fuel and oil. However, no evidence of negotiation between the Company and National Oil was provided for audit review.
- ii. Fuel and lubricants costing Kshs. 12,621,606 were not taken on charge vide counter receipt voucher (S13).



- iii. Work tickets of the company vehicles did not indicate total fuel drawn, fuel carried forward and distance covered.

## Management Response

- i) There was a negotiation between the company and national oil before the contract was signed.
- ii) S13 serves as the document to receive goods and as S13 is difficult to record fuel we use an internally generated fuel record sheet which is countersigned by three (3) representatives from procurement, Human Resource and Finance departments.
- iii) This has since been corrected and the company is now using complete work tickets indicating the fuel drawn and distance covered.

## Committee Observations

The Committee observed that-

- i. The management failed to provide evidence of negotiation between the Company and National Oil for supply of fuel and oil for audit review as is required by Circular No OP/CAB.9/108A dated 30<sup>th</sup> April, 2015 for supply of fuel and oil to government by National Oil Corporation of Kenya (National Oil).
- ii. The management submitted work tickets that excluded information such as total fuel drawn, fuel carried forward and distance covered. However, this was corrected and an amended copy was submitted to the Auditor-General for verification.
- iii. The management clarified that the S13 document is to receive goods, however, recording of fuel is done using an internally generated fuel record sheet.

## Committee Recommendations

The Committee recommends that-

- i. the Accounting Officer should ensure timely submission of documents during the audit process in line with section 9 (1) (e) of the Public Audit Act, failure to which the Committee shall recommend for their investigation and prosecution in line with section 62 (2) of the Public Audit Act.
- ii. Noting the mitigation measures taken by the company, the Committee recommends that the matter be marked as resolved.

## CHAPTER EIGHT

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR NANYUKI WATER AND SANITATION COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor of Laikipia County Hon. Joshua Wakahora Irungu, EGH appeared before the Committee on Thursday 21<sup>st</sup> September, 2023 to respond (under oath) to audit queries raised in the Report of the Auditor General on Financial Statements for Nanyuki Water and Sanitation Company (NAWASCO) Limited for the Financial Year 2020/2021. He was accompanied by -

- |      |                     |                                      |
|------|---------------------|--------------------------------------|
| i.   | Mrs. Leah Njeri     | - CECM Water and Sanitation          |
| ii.  | Mr. Wachira Gacheri | - CECM Finance and Economic Planning |
| iii. | Mr. Kennedy Gitonga | - MD Nanyuki Water                   |
| iv.  | Mrs. Phoebe Karimi  | - Internal Auditor Nanyuki Water     |

The Nanyuki Water and Sanitation Company Limited is wholly owned by the County Government of Laikipia.

### REPORT ON THE FINANCIAL STATEMENTS

The Auditor-General rendered a **qualified opinion** on the financial statements for Nanyuki Water and Sanitation Company Limited for the financial year 2020/2021 on the following basis-

#### 1.1 Unsupported Trade and other Receivables

As disclosed in Note 27 to the financial statements, the statement of financial position reflects trade receivables balance of Kshs. 153,505,025 as at 30<sup>th</sup> June 2021. However, audit review indicated the following anomalies;

i. Value Added Tax (VAT) refundable of Kshs 22,253,547 was not supported with correspondences from Kenya Revenue Authority.

ii. The Company's Board approved the write off of the specific bad debts amounting to Kshs 30,605,364. However, the write off was not approved by the County Executive Committee Member for Finance. This is contrary to section 150(2) of the Public Finance Management Act which requires an Accounting Officer of a County Government entity to obtain approval of the County Executive Committee Member for Finance to Write off a loss.

In addition, the criteria of selecting debtors who qualified for write off was unclear since majority of debtors were entities that still exist and Management ought to have planned for instalment payment arrangements with affected clients. This is contrary to section

150(2) of the Public Finance Management (County Governments) Regulations 2015 which provide that an Accounting Officer shall ensure that all losses written off are done in accordance with the PFM Act, the Regulations or any other relevant legislation. In the circumstances the accuracy of the trade and other receivables balance of Kshs. 153,505,025 could not be confirmed.

### Management Response

- i. The company is mandated to provide safe, potable drinking water and waste water management. VAT Act Cap. 476 (enacted in 1989 now repealed) categorized both water and waste water management as *zero rated supply*. However, the VAT Act Cap. 476 (enacted in 2013) which came into effect in September 2013, re-categorized water provision as *zero rated supply* while waste water management as taxable supply. After the repeal of the latter, the waste water management supply became *exempt supply*.

- ii. Tax Laws (Amendment) Bill, 2018 introduced amendments to the Income Tax Act by categorizing the supply of natural water excluding bottled water from *zero rated supply* to *exempt supply* hence any VAT incurred by the affected supplies would not be claimable for input tax. Guided by the provisions of the law, the company had continuously claimed the VAT input which had accumulated to Kshs. 22,253,547 at the time of audit. However, application of refund from Kenya Revenue Authority was still under review. The company will continue utilizing the VAT credits on its future VAT liabilities. The write off was presented to the County Executive Committee Member: Finance, Planning and Enterprise Development for ratification and this was done on 8<sup>th</sup> June 2022

### Committee Observations

The Committee observed that-

- i. as at 30<sup>th</sup> June 2021, KRA owed the company VAT refund amounting to Kshs. 22,253,547.
- ii. the Kshs. 30,605,364 was written off unlawfully and contravened section 150 of the PFM Act and regulation 150 of PFM (County Governments) Regulations, 2015 as the management did not seek the approval of the CECM Finance.

### Committee Recommendations

The Committee recommends that-



- i. the ownership documents for the land acquired from Nanyuki High School were not submitted to the Auditor-General in contravention of section 9(1)(e) of the Public Audit Act.

The Committee observed that the query remains unresolved as-

### **Committee Observations**

The amount of Kshs. 30,000,000 is the value of the installations at Nanyuki High school comprising of one borehole (210m deep, yield 25 m<sup>3</sup> /hr.) and two reinforced concrete storage tanks (1,136m<sup>3</sup>, 1,000m<sup>3</sup>).

The financial statements reflected a balance of Kshs. 251, 431,043 under Property, Plant and Equipment. The logbooks of the (4) motor cycles and (1) motor vehicle valued at kshs. 4,165,708 are part of assets leased from the defunct Nanyuki Municipal Council through Northern Water Works Agency to NAWASCO.

### **Management Response**

In the circumstances, the ownership and accuracy of the property plant and equipment balance of Kshs. 251,431,043 as at 30<sup>th</sup> June 2021 could not be confirmed.

The statement of financial position reflects a balance of Kshs 251,431,043 under Property, Plant and Equipment which, as disclosed in Note 19 to the financial statements, includes an amount of Kshs. 30,000,000 in respect of land acquired from Nanyuki High school. However, the title deed was not provided for audit verification. Further, logbooks for (1) motor vehicle and (4) motor cycles all valued at Kshs. 4,165,708 were not provided for audit review.

## **1.2 Lack of ownership documents**

- i. the Auditor-General to carry out debtor circularization of the VAT refund with a view to confirm and verify the amount outstanding and to verify if the amount stated is incorrect or in dispute;
- ii. the Accounting Officer to engage KRA with the aim of formulating a payment agreement to settle the outstanding VAT Refunds and provide a detailed status report on the same to the Auditor-General for subsequent reporting within 60 days from the adoption of this report; and
- iii. the Ethics and Anti-Corruption Commission (EACC) to investigate the circumstances under which the Kshs. 30,605,364 was unlawfully written off with a view to recommending to the Director of Public Prosecutions prosecution of the Board Members if criminal culpability arises.

- ii. the logbooks for one motor vehicle and four motor cycles all valued at KShs. 4,165,708 were not provided for audit review.

#### **Committee Recommendations**

**The Committee Recommends that; -**

- i. the Governor provides ownership documents for the land acquired from Nanyuki High School to the Auditor-General within twenty-one days of the adoption of this report;

- ii. the water company submits to the Auditor-General logbooks for the one motor vehicle and four motorcycles all valued at KShs. 4,165,708 within twenty-one days of the adoption of this report;

- iii. The Accounting Officer ensures that the water company maintains an up-to-date asset register in the format prescribed by the Public Sector Accounting Standards Board (PSASB) and the company to carry out a valuation of all its assets and submit the same to the Auditor-General within 60 days from the adoption of this report;

- iv. the Governor to engage the Intergovernmental Relations Technical Committee (IGRTC) to ensure that the process of transfer of all assets and liabilities are completed in a timely manner;

- v. the Auditor-General to undertake physical verification of all assets of the water company and provide a status report to the Committee within 60 days from the adoption of this report.

## **REPORT OF LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

Pursuant to article 229(6) of the Constitution, based on the audit procedures performed by the Auditor-General, the following matters formed basis of conclusion that public resources were not applied lawfully and in an effective way-

### **2.1 Non-Compliance with National Cohesion and Integrity Act 2008**

Review of human resource records revealed that during the year under review, the Company had a total of sixty-one (61) employees on permanent and pensionable terms out of which forty-nine (49) or eighty (80%) were from the dominant community. This

is contrary to Section 7(2) of the National Cohesion and Integrity Act, 2008 which provide that "No public establishment shall have more than one third of its staff from the same ethnic community."

In the circumstances, management discriminate other communities in employment and was in breach of the law.

#### **Management Response**

The company inherited all the 61 (sixty-one staff) from defunct Nanyuki Municipal Council. However, the subsequent recruitments are done competitively and fairly with advertisements from National newspapers and company website.

#### **Committee Observations**

The Committee observed that the query remains unresolved because the company had 80% of staff who were from the dominant community.

#### **Committee Recommendations**

The Committee recommends that; -

- i. The Board and the accounting officer to make deliberate efforts progressively in the endeavour to comply with section 7(1) and (2) of the National Cohesion and Integrity Act, Cap.7N, which requires that public establishments shall seek to represent the diversity of the people of Kenya in employment of staff; and

- ii. The Board and the accounting officer makes deliberate efforts to progressively comply with section 65 of the County Governments Act, Cap.265 which provides that at least thirty percent 30% of the vacant posts at entry level be filled by candidates who are not from the dominant ethnic community.

## **2.2 Non-Revenue Water**

Review of documents provided for audit revealed that the company produced 4,665,582 cubic meters of water during the year out of which 2,789,080 cubic meters billed to consumers. The balance of 1,876,502 cubic meters or approximately 40% of the total volume produced valued at Kshs 12,688,260 represents Non-Revenue Water (NRW) which is over and above the allowable loss of 25% provided by the Water Services Regulatory Board (WASREB) guidelines.



The significant level of Non-Revenue Water is an indication of inefficiency and ineffectiveness in the use of public water resources, which negatively impact on the Company's profitability and its ability to continue as going concern.

## Management Response

The company has accessed factors that caused high NRW that is above 25% in addition to evaluation of water balance component based on International water association standards (IWA) and water balance table. 68% of overall NRW was as a result of real losses attributed to the following;

### 2.2.1 Real Losses

- Poor condition of parts of the water network infrastructure
- Water supply infrastructure that was installed during the 1970s consists of deteriorated materials like Galvanized Iron (GI), uPVC, and Cast Iron. This has led to significant physical losses due to the condition of these old and degraded components.
- Vandalism and destruction of raw water mains

During the dry seasons (January to March and August to September), herders migrate to the Mt. Kenya forest in search of water and pasture. this usually results to them vandalizing the pipelines leading to water losses.

- Network Damage by Other Service Providers

In the fiscal year 2020/2021, the Non-Revenue Water (NRW) ratio experienced an upsurge as a result of infrastructure damage incurred during the installation of fiber network cables and the improvement of road networks within Nanyuki municipality.

### 2.2.2 Apparent Losses

- Metering Components Inaccuracies

Inaccurate master and consumer meters contributed to 32% of the overall NRW during the period. 8,794 of the consumer meters are more than eight (8) old hence under-registering

### 2.3.1 Mitigation to reduce NRW during the period

#### 1. Water network infrastructure

- Developed a proposal for funding to Water Sector Trust Fund (WSTF) for pipe network rehabilitation and replacement.
- Upgrade and rehabilitation of pipe line network to HDPE in Ichuga and Thingithu phase 1, Ngei, totaling to 44.8 kms of assorted pipe sizes

- Repair of Ino. Leaking storage tank (Inooro).
- Capacity building of commercial staff 1 Ino. were trained at KEWI on best practices on proper meter reading installation and meter servicing.

## 2. Vandalism and Destruction of Water system

- NAWASCO has continually collaborated with KFS, KWS and Community Forest associations (CFAs) to sensitize the herders on the need to desist from damaging and vandalizing of water infrastructure.

## 3. Damage of water systems by other service providers.

- updating of all new water and sewerage infrastructure on web-based GIS ([url:https://www.nawasco.co.ke/](https://www.nawasco.co.ke/)).

- Preliminary coordination meetings and planning with relevant utility entities before the start of construction.

- Continuous installation of pipeline markers along water pipelines and collaboration with other service providers e.g., KURA.

## 4. Metering Component Inaccuracies

- Implemented the meter replacement and management policy.
- Developed a proposal for replacement of 4000 no customer meters to WASHFIN.
- Modification of a locally assembled meter test bench.
- Replaced 616 no faulty and aged meters with AMR enabled.
- Serviced 4,800 no. Stopped customer meters.
- Introduction of barcoded tags for customer meters.

NAWASCO's diligent efforts in Non-Revenue Water (NRW) management have resulted in significant achievements. Initially, at the company's establishment, the NRW rate exceeded 60%. However, with unwavering commitment and strategic actions, this figure has been lowered to 32% in the fiscal year 2021/2022, according to the assessment by the Water Services Regulatory Board (WASREB), and currently stands at 30%.

NAWASCO has implemented a comprehensive strategy aimed at further diminishing water losses, with the ultimate goal of surpassing the industry benchmark of 18% by 2028.

The company has in place an NRW reduction strategy to further reduce water losses to below the sector benchmark of 18% by 2028.

## **Committee Observations**

The Committee observed that the query remains unresolved as the Non-Revenue water for the company was at 40% which was 15% above the sector benchmark of 25% as set out in WASREB guidelines. However, the water company has made some efforts to reduce the NRW arising from commercial and physical losses.

## **Committee Recommendations**

The Committee recommends that; -

- i. The Auditor-General to review the measures put in place with a view to assessing their effectiveness in reducing NRW and report in the subsequent audit cycle; and
- ii. The County Government to collaborate with the Ethics and Anti-Corruption Commission to ensure pre-emptive measures are put place to reduce cases of theft and illegal connections.



## CHAPTER NINE

### REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR NITHI WATER AND SANITATION COMPANY LIMITED FOR THE FINANCIAL YEAR 2020/2021

The Governor for Tharaka Nithi County, H.E Muthomi Njuki, appeared before the Committee on Tuesday, 25<sup>th</sup> July, 2023 to respond (under oath) to audit queries raised in the report of the Auditor General on financial statements for the Nithi Water and Sanitation Company Ltd for the financial year 2020/2021. The Governor was accompanied by:

1. Mr. Njue Njiai
2. Mr. Laban Mwaniki
3. Mrs. Loise Mutua
4. Mrs. Irine Kithaka
5. Mr. Nduaii E. K
6. Mr. Erick Munene
7. Mrs. Gloryfine Kathure

- CECM Water
- Managing Director
- Chief Officer Water and Irrigation
- Commercial manager
- Director Accounts
- Internal auditor
- Technical Manager

Nithi Water and Sanitation Company Limited Company is wholly owned by the County Government of Tharaka Nithi.

### REPORT ON THE FINANCIAL STATEMENTS

The Auditor-General rendered **a qualified opinion** on the financial statements of Nithi Water and Sanitation Company Limited for the period under review on the following basis:

#### 1. Fixed Assets

The statement of financial position reflects property, plant and equipment totaling ksh 176,251,207 as further disclosed in note 17 to the financial Statements. The balance includes buildings and motor vehicles with a historical value of kshs 656,645 and ksh 1,358,997 respectively. However, ownership documents, including the title deeds for the land on which the buildings are located, and the logbooks for the four vehicles were not provided for audit. Further, the value of the parcels of land are not separately disclosed in the financial statements.

In the circumstances, the accuracy, ownership and existence of the property, plant and equipment amounting to kshs 176,251,207 at June 2021 could not be confirmed.

#### Management response

Since the formation of the WSP in water reforms in accordance with the water Act, 2002 the current water works development agency (formerly known as Water Board Services) was mandated to provide support to water companies under section 53 of the above Act as its agent. Therefore the company received stated assets and many other to provide the services until further amendment of Water Act 2016 section 83 and water sector reforms.

Pursuant to section 83 of the Water Act 2016, County owned WSP shall hold assets for the public.

#### **Committee Observations**

The Committee observed that-

- i. the statement of financial position reflected property, plant and equipment totaling ksh 176,251. The balance included buildings and motor vehicles with a historical value of kshs 656,645 and ksh 1,358,997 respectively. However, ownership documents, including the title deeds for the land on which the buildings are located, and the logbooks for the four vehicles were not provided for audit.
- ii. The value of the parcels of land were not separately disclosed in the financial statements.

#### **Committee Recommendations**

The Committee recommends that-

- i. The Accounting Officer to ensure that supporting documents are provided to the Auditor during the audit period as required under section 9(1)(e) Public Audit Act, 2015.
- ii. The accounting officer to provide the ownership documents for the various assets to be verified by the Auditor General within 60 days of the adoption of this report.
- iii. The accounting officer to ensure that the value of the parcels of land are separately disclosed in the financial statements as required by the International Accounting Standards.

#### **2. Trade and other payables**

Note 28 to the financial statements reflects a balance of kshs 36,431,166 in respect to trade and other payables which includes Kshs. 7,262,572 in respect to other payables. However, the build-up of the arrears as reported in the previous year, the analysis of the opening balance and associated invoices were not availed for audit verification.

### Management response

Under the circumstance the completeness and accuracy of income generated of Kshs. 708,000 reflected in the financial statements for the year ended 30 June 2021 could not be confirmed.

Note 10 to the financial statements reflect other income totaling Kshs. 7,109,804 which includes Kshs. 708,000 in respect of exhausters. However, an audit review of the transport documents revealed that the work tickets had no entries for the fuel drawn by the exhausters and no schedule of movement was availed for audit review.

### 3. Revenue- Other income

- i. The Accounting Officer to ensure that supporting documents are provided to the Auditor during the audit period as required under section 9(1)(e) of the Public Audit Act, Cap. 412B.
- ii. The Board and the accounting officer to develop a structured payment plan to be approved by the Auditor General within 60 days of the adoption of this report to clear the outstanding debt, and the auditor-general to report in the next audit cycle.

The Committee recommends that-

### Committee Recommendations

The Committee observed that the financial statements reflects a balance of kshs 36,431,166 in respect to trade and other payables which includes Kshs. 7,262,572 in respect to other payables. However, the build-up of the arrears as reported in the previous year, the analysis of the opening balance and associated invoices were not availed for audit verification.

### Committee Observations

Wastreb do not issue invoices therefore WSPS uses gazette notice NO 12188 to tabulate amounts due. Attached find gazette notice and wastreb memo for reference.

the same.

Kshs. 7,262,572 relates to outstanding board admin fees and Regulatory levies due to water services regulatory board. Attached please find ledgers containing the build-up of

### Management response

In the circumstances, the accuracy and completeness of the trade payables of Kshs. 7,262,572 as at 30th June 2022 could not be confirmed.



## Management response

In the circumstance, the non-revenue water negatively impacted on the Company's profitability and its long-term sustainability.

loss.

(37.6%) of water produced at a cost of Kshs. 4,013,715 was therefore non-allowable 3,556,428 cubic meters (m<sup>3</sup>) produced by the Company. The loss of 1,337,905 (M3) meter (M3) of water produced and hence only 889,107 M3 loss was allowed out of on Service Performance Standards 2006 allows a maximum loss of 25% for every cubic unaccounted for. Annex I of Water Services Regulatory Board (WASREB) guidelines approximately 62.6% of the total volume produced was not billed and was therefore M3 was distributed and billed to customers while the balance of 2,227,012 M3 or under review at a production cost of Kshs.3 per cubic meter. However, only 1,329,416 the Company produced a total of 3,556,428 cubic meters (M3) of water during the year to water revenue for the year under review. Documents provided for audit revealed that under Note 6 to the financial statements reflects a Kshs. 70,446,550 balance in related The Statement of profit and loss and other comprehensive income and as disclosed

## 4. Excessive Non-Revenue Water (NRW)

Act, 2015.

their investigation and prosecution in line with section 62 (2) of the Public Audit the Public Audit Act, 2015, failure to which the Committee shall recommend for submission of documents during the audit process in line with section 9 (1) (e) of The committee recommends that the Accounting Officer should ensure timely

## Committee Recommendations

review.

the fuel drawn by the exhausters and no schedule of movement was availed for audit audit review of the transport documents revealed that the work tickets had no entries for Kshs. 7,109,804 which includes Kshs. 708,000 in respect of exhauster. However, an The Committee observed that the financial statements reflected other income totaling

## Committee Observations

from our head. However, the other one had fuel entries.

ongoing. One of the exhauster had a mechanical breakdown soon before we had fueled supply and sanitation program funded by Africa Development Bank which is still as part of the National government project known as Kenya town's sustainable water The two (2) No. Vacuum exhausters were handed over in January 2021 by TWDA

That the company acknowledges the high Non-Revenue Water figure this year of 62.6%, total production for the year was 3,556,428m<sup>3</sup>, however only 1,329,416 m<sup>3</sup> was accounted for in terms of sales. The allowable limit is 25% of total water produced, as per the Water Services Regulatory Board (WASREB), guidelines on Service Performance Standards 2006.

The company is in pursuit of the above and has made a step forward with respect to the last financial year 2019-2020. The company registered a Non-Revenue Water loss of 69%. A decrease of 6.4%. The company Strategic Plan targets are 5%. This does not justify the high Non-revenue figure; however, with the practicability in the sector on the reduction of Non-Revenue Water attaining reduction of 37.6% in a single financial year is a whole lot of task considering the challenges with our distribution system such as:

i) Water theft and limited access to carry out operations at pipeline sections passing through private land. A big percentage of the distribution system currently managed by the WSP started as community managed projects for example in two of our schemes of supply; Mitunga - Gituma and Kibung'a - Kakimiki. These schemes have an average Non-Revenue Water loss of 80%. The company is in the process of sourcing funds to re-route these pipelines to follow road corridors.

ii) Competition for way leave with other community projects. Two of our schemes are heavily affected by this challenges namely Chuka-Karingani and Chogoria schemes. Operations are very difficult in these schemes as several pipelines share a 1m width way leave hence frequent bursts accidents caused by the community water projects while accessing their supply networks. The company is undertaking a rehabilitation and re-routing of the distribution where way leave allows, including change of pipe materials from upvc pipe material to HDPE. The management is closely following this issue with the County Commissioner's office to bring the stakeholders on the table for an amicable agreement on the way forward on handling routine operations.

iii) The pipeline has also enhanced investigations of the pipelines traversing private lands as short term intervention.

iv) The company has also secured an ultra-sonic flow meter to equip the Non-Revenue Water unit. The Non-Revenue Unit has been undertaking regular meter testing and replacement.

The above challenges and/or interventions are actively pursued by the WSP, which has shown a positive outcome in the last financial year as to the reduction of Non-Revenue Water and overall revenue collection from an average of 3,500,000/= per month in the FY 2019-2020 to 5,000,000/= per month in the financial year under Audit (2020-2021).



The management therefore undertakes to actively follow on the reduction of the non-revenue figure to the set benchmark in the future financial years.

#### **Committee Observations**

The Committee observed that the non-revenue water was 62.6% over and above the allowable 25% prescribed by the Water Services Regulatory Board (WASREB) guidelines.

#### **Committee Recommendations**

The Committee recommends that-

- i. The accounting officer to put into place comprehensive measures to mitigate the Non-Revenue Water such as installation of smart meters to ensure accurate billing, the replacement of the old age dilapidated infrastructure as well as the introduction of a Geographic Information System (GIS) to provide real-time data on leakages and bursts for monitoring and timely maintenance to prevent water loss among other measures.
- ii. The Governor to engage the Ethics and Anti-Corruption Commission (EACC) for the development of institutional corruption prevention policy for the company.
- iii. The Auditor-General to review the efficacy and the implementation of the measures put in place to mitigate on the non-revenue water and report in the subsequent audit cycle.

#### **5. Long Outstanding Trade Receivables**

The statement of financial position reflects an amount of Kshs.74, 928,411 under trade and other receivables, which as disclosed under note 21 to the financial statements includes Kshs. 60,689,129 relating to trade receivables. A review of trade receivables aging analysis revealed that all trade receivables amounting to kshs. 60,689,129 have remained outstanding for more than eight (8) months. It was observed that an amount of kshs. 6,068,913 has been outstanding for more than two (2) years, Kshs. 15,172,282 has been outstanding for more than a year, while Kshs. 39,447,934 has been outstanding for between 8 and 12 months.

In the circumstances, the recoverability of the trade receivables of Kshs.60, 689,129 as at 30th June 2021 is doubtful.

#### **Management response**

As shown in the financial statement in the note no. 27(a) of trade receivables, there is an improvement of debts collection, in the year 2019/2020 the Gross trade receivables were kshs. 61,412,257 and in the year 2020/2021 they were Kshs.60, 689,129.



In the absence of risk management policy, it is not possible to define the entity's risk appetite and set risk tolerance levels by identifying boundaries against unacceptable exposure to risk.

Review of the Water company's Internal controls revealed that the Water company did not prepare and approve a risk management policy. Therefore, the Water company does not have a framework for management of risk and has not documented, risks identified, assessed and risks controls measures contrary to Section 158 of the Public Finance Management (County Government) Regulations 2015 states that the accounting officer shall ensure that the county government entity develops risk management strategies, which include fraud prevention mechanism and system of risk management and internal control that builds robust business operations.

#### 6. Lack of a Risk Management Policy

- i. The accounting officer to develop a comprehensive debt recovery strategy for the company which should be verified by the Auditor General within 60 days of the adoption of this report; and
- ii. The Accounting Officer to undertake a detailed analysis of the long outstanding trade receivables and with the Board's approval, write off the irrecoverable debts in line with the Section 130 (2) (d) of the Public Finance Management (County Governments) Regulations, 2015.

The Committee recommends that-

#### Committee Recommendations

- (i) the financial statements included Kshs. 60,689,129 relating to trade receivables.
- (ii) A review of trade receivables aging analysis revealed that all trade receivables amounting to kshs. 60,689,129 had remained outstanding for more than eight (8) months. It was observed that an amount of kshs. 6,068,913 had been outstanding for more than two (2) years, while Kshs. 15,172,282 had been outstanding for more than a year, while Kshs. 39,447,934 had been outstanding for between 8 and 12 months.

The Committee observed that:

#### Committee Observations

Compared to other previous years, the receivables maintained an upward trend but in this current year, there is an improvement which is due to formation of Debts Recovery Unit. Attached see copies of minutes of the Debts Recovery Unit.

In the circumstances, the Water Company is in breach of the law.

#### **Management response**

Management have developed our risk management policy which was approved by the board on 10th June 2022.

#### **Committee Observations**

The Committee observed that the water company did not have an approved risk management policy contrary to Section 158 of the Public Finance Management (County Government) Regulations 2015.

#### **Committee Recommendations**

The Committee recommends that the accounting officer to adhere to Section 158 of the Public Finance Management (County Government) Regulations 2015 which provides that the accounting officer shall ensure that the county government entity develops risk management strategies, which include fraud prevention mechanism and system of risk management and internal control that builds robust business operations.

## APPENDICES